

Thematic Review on Resolution Regimes

Peer Review Report

11 April 2013

Thematic Review on Resolution Regimes

Table of Contents

Foreword.....	i
Definitions of key terms used in the report.....	2
Glossary	5
Abbreviations for Financial Authorities in FSB Jurisdictions.....	6
Executive Summary.....	8
Recommendations	11
I. Introduction	14
1. Background	14
2. Objectives and scope of the review.....	16
II. Actions undertaken in response to the financial crisis	17
III. Key features of resolution regimes.....	18
1. Scope of resolution regimes (KA 1)	18
2. Resolution authority (KA 2)	20
3. Resolution powers (KA 3)	23
4. Set-off, collateralisation, segregation of client assets (KA 4).....	27
5. Safeguards (KA 5)	27
6. Funding of institutions in resolution (KA 6).....	28
7. Legal framework for cross-border cooperation (KA 7).....	29
8. Resolvability assessments (KA 10).....	31
9. Recovery and resolution planning (KA 11)	32
10. Access to information and information sharing (KA 12)	33
IV. Planned reforms to resolution regimes	34
V. Conclusions and recommendations	37
1. Conclusions.....	37
2. Recommendations.....	40
Annex A: Recent Major Legislative Reforms in FSB Jurisdictions.....	43
Annex B: Selected Features of Resolution Regimes in FSB Jurisdictions.....	47
Annex C: Planned Reforms to Resolution Regimes in FSB Jurisdictions.....	57
Annex D: Detailed Features of Resolution Regimes in FSB Jurisdictions.....	60

Foreword

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

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

This report describes the findings of the first peer review on resolution regimes, including the key elements of the discussion in the FSB Resolution Steering Group and the FSB Standing Committee on Standards Implementation. The draft report for discussion was prepared by a team chaired by Martin J. Gruenberg (US Federal Deposit Insurance Corporation), comprising Alessandra de Aldisio (Bank of Italy), Bader T. Alsudairi (Saudi Arabian Monetary Agency), Felton C. Booker (US Federal Reserve Board), Christine Hauner (BaFin Germany), Katharina Hartmann (German Federal Ministry of Finance), Junichi Kashiya (Japan Financial Services Agency), Barry King (UK Financial Services Authority), Vincent Lee (Hong Kong Monetary Authority), Mike Mercer (Canada Deposit Insurance Corporation), Geof Mortlock (Australian Prudential Regulatory Authority), Liu Qin (People's Bank of China), Reto Schiltknecht (FINMA Switzerland), Virginia Rutledge (International Monetary Fund), and David Scott (World Bank). David Hoelscher, Costas Stephanou and Ruth Walters (FSB Secretariat) provided support to the team and contributed to the preparation of the peer review report.

¹ See http://www.financialstabilityboard.org/publications/r_100109a.pdf.

Definitions of key terms used in the report²

“Bail-in within resolution” – restructuring mechanisms to recapitalise a firm in resolution or effectively capitalise a bridge institution, under specified conditions, through the write-down, conversion or exchange of debt instruments and other senior or subordinated unsecured liabilities of the firm in resolution into, or for, equity or other instruments in that firm, the parent company of that firm or a newly formed bridge institution, as appropriate to legal frameworks and market capacity.

“Bail-out” – any transfer of funds from public sources to a failed firm or a commitment by a public authority to provide funds with a view to sustaining a failed firm (for example, by way of guarantees) that results in benefit to the shareholders or uninsured creditors of that firm, or the assumption of risks by the public authority that would otherwise be borne by the firm and its shareholders, where the value of the funds transferred is not recouped from the firm, its shareholders and unsecured creditors or, if necessary, the financial system more widely, or where the public authority is not compensated for the risks assumed.

“Bank” – any firm that takes deposits or repayable funds from the public, and that is defined by the relevant national legislation as a bank.

“Bridge institution” – an entity, authorised or licensed in accordance with any applicable requirements under national law, that is established to temporarily take over and maintain certain assets, liabilities and operations of a failed firm as part of the resolution process.

“Early termination rights” – contractual acceleration, termination or other close-out rights in financial contracts held by counterparties of a firm that may be triggered on the occurrence of an event or circumstances set out in the financial contract, such as an insolvency event or the entry into resolution of the firm.³

“Entry into resolution” – the formal determination by the relevant authority or authorities that a firm meets the conditions for entry into resolution and that it will be subject to resolution powers.

“Financial contract” – any securities contract, commodities contract, forward contract, repurchase agreement, options contract, swap agreement and any similar agreement that, in every case, is explicitly identified under the legal framework of the jurisdiction as subject to defined treatment in resolution and insolvency (for example, in relation to early termination rights or to preserve the effect of netting agreements) that is distinct from other (non-financial) contracts.

“Financial conglomerate” – any group of companies under common control or dominant influence, including any financial holding company, that conducts material financial activities

² The definition of key terms is based on the January 2013 version of the draft assessment methodology for the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions*.

³ For example, see §§ 5(a) (vii) and 6 of 2002 ISDA Master Agreement; section 10 of Global Master Repurchase Agreement 2000.

in at least two of the regulated banking, securities or insurance sectors.⁴

“Financial firm” or “financial institution” – any entity the principal business of which is the provision of financial services or the conduct of financial activities, including, but not limited to, deposit-taking, credit intermediation, insurance, investment or securities business or operating financial market infrastructure.

“Financial group” – a group composed of entities whose primary activities are financial in nature.

“Financial market infrastructure (FMI)” – a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of, clearing, settling or recording payments, securities, derivatives or other financial transactions. It includes payment systems, central securities depositories, securities settlement systems, Central Counterparties (CCPs), and trade repositories.⁵

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

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

“Holding company” or “financial holding company” (of a financial group or conglomerate) – a company that is formed to control financial firms. This concept covers intermediate or ultimate control.

“Home jurisdiction” – the jurisdiction where the operations of a financial firm or, in the case of a G-SIFI, its global operations, are supervised on a consolidated basis.

“Investment firm” or “Securities firm” – any non-deposit-taking institution that conducts investment or securities business on a regular basis, including: safeguarding and administering investments or securities; dealing in investments or securities as principal; and dealing in investments or securities as agent. For the sake of brevity, the term “investment firm” is used in this methodology, and should be construed widely to cover any firm that is classified as an investment firm or a securities firm, including broker-dealers, under the applicable regulatory regime.

“Intervention” or “official intervention” – any actions, including formal corrective action, taken by supervisory or resolution authorities in response to weaknesses in a financial firm prior to entry into resolution.

“Legal framework” – the comprehensive legal system for a jurisdiction established by any combination of the following: a constitution; primary legislation enacted by a legislative body that has authority in respect of that jurisdiction; subsidiary legislation adopted under the

⁴ As defined in the *Principles for the supervision of financial conglomerates* by the Joint Forum (September 2012, <http://www.bis.org/publ/joint29.pdf>).

⁵ As defined in paragraph 1.8 of the April 2012 CPSS-IOSCO *Principles for Financial Market Infrastructures* (<http://www.bis.org/publ/cpss101a.pdf>).

primary legislation of that jurisdiction; or legal precedent and legal procedures of that jurisdiction.

“Protection scheme” – any scheme or fund that protects depositors, insurance policy holders or investors, as the case may be, from specified losses that they might otherwise incur as a result of the failure of a financial firm.

“Public ownership” – ownership or control of an entity by a public authority or other emanation of the State.

“Resolution” – any action taken by a public authority in respect of a firm that meets the conditions for entry into resolution, including in particular the exercise of a resolution power specified in KA 3, with or without private sector involvement, with the aim of achieving one or more of the statutory objectives of resolution. Resolution may include the application of procedures under insolvency law to parts of a firm in resolution, in conjunction with the exercise of resolution powers.

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

“Resolution powers” – powers available to public authorities under the legal framework and resolution regime for the purposes of resolution, including in particular those set out in KA 3.

“Resolution regime” – the elements of the legal framework and the policies governing the application of resolution powers by national authorities. This may consist of sector-specific statutes and rules, or may consist of a single regime covering all firms. The KAs are neutral as to the form of the regime, provided that all firms that could be systemically significant or critical in the event of failure are subject to an effective resolution regime.

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

“Systemically significant or critical” – an activity or operation is systemically significant or critical if its interruption, suspension or discontinuation could lead to a disruption of services vital for the functioning of the financial system or real economy

Glossary

A&L	Assets and Liabilities
ADIs	Authorised Deposit-taking Institutions (Australia)
AMC	Asset Management Company
CCP	Central Counterparty
CMG	Crisis Management Group
COAG	Institution-specific cross-border cooperation agreement
CPSS	Committee on Payment and Settlement Systems
D-SIBs	Domestic Systemically Important Banks
EU	European Union
FCS	Financial Claims Scheme (Australia)
FCD	Financial Collateral Arrangements Directive (European Union)
FDI Act	Federal Deposit Insurance Act (United States)
FHC	Financial Holding Company
FI	Financial Institution
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
G-SIBs	Global Systemically Important Banks
G-SIFIs	Global Systemically Important Financial Institutions
IAIS	International Association of Insurance Supervisors
IOSCO	International Organisation of Securities Commissions
KAs	<i>Key Attributes of Effective Resolution Regimes for Financial Institutions</i>
MoU	Memorandum of Understanding
OLF	Orderly Liquidation Fund (United States)
P&A	Purchase & Assumption
RA	Resolution Authority
RRP	Recovery and Resolution Plan
SIFIs	Systemically Important Financial Institutions
SIPA	Securities Investors Protection Act (United States)
SSB	Standard Setting Body
SRR	Special Resolution Regime
UK	United Kingdom
US	United States

Abbreviations for Financial Authorities in FSB Jurisdictions

Argentina

BCRA	Central bank and banking supervisor
SSN	Insurance supervisor

Australia

APRA	Integrated financial regulator
------	--------------------------------

Brazil

BCB	Central bank and banking supervisor
SUSEP	Insurance supervisor

Canada

CDIC	Deposit insurance and bank resolution agency
OSFI	Prudential supervisor

China

PBC	Central bank
CBRC	Banking supervisor
CIRC	Insurance supervisor
CSRC	Securities regulator

France

ACP	Prudential supervisor
AMF	Securities regulator

Germany

BaFin	Integrated financial regulator
FMSA	Agency to perform bank resolution tasks and administrator of resolution fund

Hong Kong

HKMA	Monetary authority and banking supervisor
SFC	Securities regulator
IA	Insurance supervisor

India

RBI	Central bank and banking supervisor
-----	-------------------------------------

Indonesia

BI	Central bank and banking supervisor
IDIC	Deposit insurance agency
FSSF	Financial system stability forum

Italy

BoI	Central bank and banking supervisor
IVASS	Insurance supervisor
CONSOB	Securities regulator

Japan

FSA	Integrated financial regulator
-----	--------------------------------

Korea

FSC	Integrated financial regulator (together with FSS)
KDIC	Deposit insurance and bank resolution agency

Mexico

IPAB Deposit insurance and bank resolution agency
SHCP Ministry of Finance

Netherlands

DNB Central bank and integrated financial regulator
MoF Ministry of Finance

Russia

BoR Central bank and banking supervisor
DIA Deposit insurance and bank resolution agency
FFMS Securities regulator

Saudi Arabia

SAMA Central bank and prudential supervisor
CMA Securities regulator

Singapore

MAS Monetary authority and integrated financial regulator

South Africa

Registrar of Banks Prudential supervisor (within Reserve Bank)
Registrar of Insurance Insurance supervisor (within Financial Services Board)
Registrar of CIS Securities regulator (within Financial Services Board)

Spain

FROB Bank resolution agency
DGSFP Insurance and pension funds supervisor (within the Ministry of Economy and Competitiveness)
CNMV Securities regulator

Switzerland

FINMA Integrated financial regulator

Turkey

BRSA Banking supervisor
SDIF Deposit insurance and bank resolution agency
CMB Securities regulator

United Kingdom

BoE Central bank and prudential supervisor (PRA)
HMT Ministry of Finance

United States

FDIC Deposit insurance, prudential supervisor, and bank resolution agency
OCC Banking supervisor
SIPC Securities investor protection corporation

Executive Summary

Background

The global financial crisis demonstrated the urgent need to improve resolution regimes so as to enable authorities to resolve failing financial institutions (FIs) quickly without destabilising the financial system or exposing taxpayers to loss from solvency support. Following the crisis, the FSB published the *Key Attributes of Effective Resolution Regimes for Financial Institutions* as part of the package of policy measures to address the moral hazard risks posed by systemically important financial institutions (SIFIs). The *Key Attributes* (KAs) set out the core elements of effective resolution regimes that apply to any financial institution that could be systemically significant or critical if it fails.

Resolution regimes have been identified as a priority area by the FSB. As a result, the implementation of the KAs by FSB member jurisdictions will undergo intensive monitoring and detailed reporting. To ensure timely and effective implementation, the FSB will carry out an iterative series of peer reviews on the implementation of the KAs.

The objective of this first peer review is to evaluate FSB jurisdictions' existing resolution regimes and any planned changes to those regimes using the KAs as a benchmark. The review compares national resolution regimes both across individual KAs (focusing primarily on KAs that cover core provisions of those regimes) and across different financial sectors (banking, insurance, securities, and financial market infrastructure (FMIs)). It provides recommendations for future work by the FSB and its members in support of an effective and credible resolution regime for SIFIs, which is a critical component of the policy framework for ending too-big-to-fail.

Main findings

While major legislative reforms have already been undertaken by some FSB jurisdictions (particularly those directly affected by the financial crisis) to develop new, or revise existing, resolution regimes, it is clear that implementation of the KAs is still at an early stage. This is not surprising as the KAs are a new international standard and the reforms needed to implement them may involve significant legislative changes. Several FSB jurisdictions are in the process of adopting those reforms to further strengthen their resolution regimes. For example, the proposed European Union (EU) Directive on recovery and resolution for banks and investment firms, once approved, will represent a major step forward in aligning the resolution regimes of EU member states with the KAs.

Resolution regimes across FSB member jurisdictions exhibit a broad range of practices in terms of scope, mandates and powers of authorities. This is to be expected. The KAs do not prescribe the specific form of the resolution regime or particular type of resolution authority as long as that regime is consistent with the KAs. However, jurisdictions sometimes have different interpretations of what constitutes a 'resolution regime' and its relationship to ordinary insolvency regimes and powers for ordinary supervisory purposes. This divergence in interpretation can make it difficult to draw definitive conclusions about the alignment of national powers across different sectors with the KAs. Additional clarification and guidance

on the application of the KAs is therefore necessary to assist jurisdictions in implementation, facilitate monitoring, and ensure consistency in assessments of compliance with the KAs.

A number of features of resolution regimes in FSB jurisdictions are broadly consistent with the KAs. In particular, all jurisdictions are able to use some of the resolution powers specified in KA 3 in relation to banks, although they are not exercised in all cases by administrative resolution authorities. Nearly all jurisdictions have available one or both of the resolution powers specified in KA 3 for insurers (portfolio transfer and run-off), although in several cases those powers are exercised by a court-appointed administrator or liquidator in the context of a wind up. Most jurisdictions accompany resolution powers with some of the safeguards specified in KA 5, such as respect for the hierarchy of claims and a right for creditors to judicial review of resolution actions. Finally, many jurisdictions report that they can achieve at least some of the objectives of the KAs through existing supervisory powers – for example, powers to develop recovery and resolution plans (RRPs) or to require resolvability assessments for certain FIs.

Nevertheless, there are significant divergences from, or inconsistencies with, the KAs that need to be addressed. Moreover, additional clarification and guidance on the application of the KAs is needed in a number of areas to facilitate progress. The main areas where further enhancement of resolution regimes by national authorities, or additional guidance by the FSB and relevant standard-setting bodies (SSBs), may be necessary are as follows:

Comprehensive resolution powers for banks – KAs 1 and 3 (see recommendation 1a): Although resolution regimes are generally more developed for banks than for other financial institutions, few jurisdictions have equipped administrative authorities with the full set of powers to resolve banks set out in KA 3. For example, very few authorities have the statutory power both to write down and to convert liabilities of a failing institution (bail-in within resolution). Moreover, in some cases resolution actions may require court approval or the cooperation of the failing firm or its shareholders, while in other cases resolution actions, such as the transfers of assets and liabilities, are carried out by an administrator that may neither be mandated to achieve the objectives in the KAs nor subject to direction by the resolution authority.

Resolution regimes for non-bank FIs – KA 1 (see recommendations 1b and 2b): Resolution regimes are most advanced for banks and progressively less so for insurers, securities or investment firms and FMIs, where both mandates and powers fall well short of the standards in the KAs. This in part reflects the less advanced state of guidance on the application of the KAs to those sectors.⁶ For example, in many FSB jurisdictions there is no designated administrative resolution authority for securities or investment firms and FMIs. Powers for non-bank FIs are often supervisory in nature and do not achieve the outcomes specified in the KAs or are limited to firm liquidation or wind up at the instigation of the supervisor or, in some cases, through some form of specially adapted insolvency regime.

Powers to resolve financial groups – KA 1.1 (see recommendations 1c, 1d, 2c and 2d): Most FSB jurisdictions lack powers to take control of the parent or affiliates of a failed FI,

⁶ The Foreword to the KAs recognises that not all resolution powers are suitable for all sectors and all circumstances. Guidance is currently under development by the FSB and sectoral standard setters on resolution regimes for non-bank FIs to better reflect the way in which the powers and tools set out in the KAs are applied when resolving such entities.

particularly if the FHC or significant operational affiliates are unregulated. This is a particular problem for G-SIFIs that tend to have integrated and highly complex structures. Further clarity as to the nature of powers needed for FHCs, non-regulated operational entities and branches of foreign FIs would also be desirable to ensure a consistent approach. In addition, few jurisdictions have in place a coordination framework that designates a lead authority where two or more domestic resolution authorities are responsible for resolving different entities of a financial group within the same jurisdiction.

Cross-border effectiveness of resolution measures – KA 7 (see recommendations 1e and 2e): The financial crisis demonstrated the need to strengthen arrangements for cross-border cooperation in dealing with failing FIs. However, national legal frameworks for cross-border cooperation in resolution are, overall, less well-developed across all sectors than other areas of the KAs. Only a few jurisdictions currently empower and encourage their resolution authorities through statutory mandates to cooperate and coordinate wherever possible with foreign resolution authorities. Moreover, the ability of existing mechanisms in many jurisdictions to give effect to foreign resolution actions remains unclear. Very few jurisdictions have provisions for expedited (administrative or court-based) procedures for recognition and enforcement of actions taken by foreign authorities. This is a major weakness since it may undermine the legal certainty of resolution actions in relation to assets and liabilities in other jurisdictions and thereby jeopardise the effective implementation of resolution strategies for cross-border groups.

Information sharing for the purposes of resolution – KAs 7.6, 7.7 and 12 (see recommendation 1f): Few FSB jurisdictions have clear and dedicated statutory provisions for domestic authorities to share confidential information with foreign resolution authorities. While most jurisdictions rely on existing powers to disclose non-public information for supervisory purposes, these powers may not be sufficiently broad to allow such information to be shared with all domestic and foreign authorities that are not supervisors but have a responsibility for planning or carrying out resolution. Unless home and host authorities have the capacity to share such information, it is unrealistic to expect them to meaningfully discuss cross-border resolution strategies and plans or to cooperate effectively in a crisis.

Treatment of financial contracts in resolution – KA 4 (see recommendation 1g): Resolution authorities in most jurisdictions either lack powers to impose a temporary stay on the exercise of contractual acceleration or early termination rights in financial contracts that arise by reason only of entry into resolution or in connection with the exercise of resolution powers or, where the power exists, it is not subject to suitable safeguards.

Funding – KA 6 (see recommendation 2f): Funding arrangements differ greatly across sectors and jurisdictions. Most jurisdictions rely on privately funded protection funds to finance resolution actions, but it is not clear whether such arrangements are adequate or appropriate in scale or scope. Public financial support therefore remains an important component of resolution funding arrangements for SIFIs. Mechanisms for the recovery of public funds are not well developed, while conditions on their use are largely absent.

Recovery and resolution planning and actions to improve resolvability – KAs 10 and 11 (see recommendations 1h, 1i and 2g): In most jurisdictions, there is no explicit requirement in statute or rules for RRP for domestic SIFIs. Moreover, most authorities lack the power to require firms to make changes to their organisational and financial structures solely in order

to improve their resolvability and in advance of resolution.

Operational capacity to resolve complex SIFIs – KA 2 (see recommendation 2h): However good a resolution regime might look in statute, it will not be effective unless the national authorities responsible for resolution have the operational capacity – including staff with the appropriate level and range of expertise, and adequate resources – to resolve complex financial groups and SIFIs. This critical dimension cannot be verified in a desktop exercise such as the peer review and will need to be assessed in on-site IMF-World Bank country assessments using suitable criteria in the assessment methodology for the KAs.

Rigorous monitoring of implementation progress in aligning resolution regimes in FSB jurisdictions with the KAs (see recommendation 3): Several FSB jurisdictions are implementing or considering reforms to their resolution regimes. Given the early stage of those reforms, a rigorous monitoring framework needs to be developed to ensure comprehensive reporting of progress by jurisdictions in aligning their resolution regimes with the KAs. While future “deep dive” peer reviews will be useful in that regard, they should be complemented by regular reports using a standardised template to enhance the reporting of implementation progress by jurisdiction, sector and KA.

Recommendations

Based on the above findings of the peer review, there are three sets of recommendations for implementation by the FSB itself or relevant member jurisdictions (see below). Work on some of the recommendations addressed to the FSB is already underway.⁷ Most of the recommendations that involve actions by national authorities can – and should – be implemented now without waiting for additional FSB guidance. Jurisdictions may consider establishing a phased reform program to address the issues identified below. In some cases, early work on resolution planning and resolvability assessments, including the introduction of resolution planning requirements to all firms that could have an impact on financial stability in the event of failure, may reveal specific weaknesses or gaps in the powers needed for effective resolution and thereby assist jurisdictions in the development of such a program.

Recommendation 1: Full implementation of the Key Attributes

FSB member jurisdictions should undertake the following actions to introduce, or revise their existing, resolution regimes for financial institutions in order to fully implement the KAs:

- a. Reviewing, and revising as needed, resolution regimes for banks to ensure that all the powers set out in KA 3, including powers to transfer assets and liabilities and powers to write-down and convert debt within resolution, are available to administrative resolution authorities;
- b. Reviewing the adequacy and effectiveness of resolution regimes for non-bank FIs, and adopting any necessary reforms to ensure that administrative resolution authorities with adequate powers are designated for those institutions;

⁷ For example, guidance is being developed on information sharing for resolution purposes, the protection of client assets in resolution, and the implementation of the KAs in relation to insurers and FMIs. Other recommendations will be addressed in the assessment methodology for the KAs that is also under preparation.

- c. Extending the scope of resolution regimes to financial holding companies, non-regulated operational entities that are significant to the critical functions carried out within the group, and branches of foreign financial firms;⁸
- d. Where multiple resolution authorities exist, strengthening coordination frameworks and designating a lead authority for resolving domestic entities of the same group;
- e. Enhancing the mandates and capacity of resolution authorities to cooperate and coordinate measures across borders;
- f. Reviewing the domestic legal framework for information sharing, and revising it as needed to ensure that domestic authorities can share information with all relevant domestic and foreign authorities for planning and carrying out resolution;
- g. Introducing powers to impose a temporary stay on the exercise of contractual acceleration or early termination rights in financial contracts, subject to suitable safeguards as described in KA 4 and Annex IV to the KAs;
- h. Introducing a RRP requirement for all domestically incorporated firms that could be systemically significant or critical if they fail; and
- i. Empowering supervisory or resolution authorities to require financial institutions to adopt changes to their structure, organisation or business practices where it is necessary to improve their resolvability.

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

The FSB should provide additional clarification and guidance on the application of the KAs to assist jurisdictions in implementation, facilitate monitoring, and ensure consistency in assessments of compliance with the KAs, by:

- a. Clarifying the nature of resolution powers as compared with the ordinary corporate insolvency regime and powers for ordinary supervisory purposes;
- b. Working with SSBs to develop guidance on the features and powers necessary for resolution regimes in each non-bank financial sector to meet the standards of the KAs;
- c. Developing guidance on the nature of powers needed for FHCs, significant non-regulated operational entities, and branches of foreign financial firms;
- d. Developing guidance and identifying good practices for coordination where two or more domestic resolution authorities are responsible for resolving entities of the same financial group;
- e. Taking stock of mechanisms to give effect to foreign resolution measures – such as administrative and judicial powers of recognition and contractual mechanisms requiring counterparties to recognise the exercise of powers by a foreign resolution authority – and evaluating their effectiveness (e.g. in terms of timing and predictability) in the implementation of cross-border resolution strategies;
- f. Taking stock of resolution funding arrangements across jurisdictions and identifying

⁸ The recommendation concerning branches of foreign financial firms should not apply where jurisdictions are subject to a binding obligation to respect the resolution of financial institutions under the authority of the home jurisdiction (for example, the European Union’s Winding up and Reorganisation Directives).

good practices so that temporary public funding does not give rise to moral hazard and is subject to conditions and mechanisms for recovery from private sector sources;

- g. Clarifying the nature and scope of the powers that authorities should have to require firms to take measures to improve their resolvability; and
- h. Ensuring that the assessment methodology for the KAs contains suitable criteria to assess the operational capacity of resolution authorities.

Recommendation 3: On-going implementation monitoring

The FSB should undertake monitoring and reporting on the implementation of the KAs by:

- a. Developing a standardised reporting template to facilitate the analysis of implementation progress by jurisdiction, sector and KA;
- b. Undertaking follow-up peer reviews focused on resolution powers, cross-border cooperation and information sharing, and recovery and resolution planning; and
- c. Carrying out, in coordination with relevant SSBs, peer reviews on the application of the KAs to individual non-banking sectors (insurance, investment and securities firms, FMIs) once relevant guidance by those bodies is issued.

I. Introduction

1. Background

The global financial crisis demonstrated the urgent need to improve resolution regimes so as to enable authorities to resolve failing financial institutions quickly without destabilising the financial system or exposing taxpayers to loss from solvency support. Following the crisis, a number of jurisdictions have adopted, or are currently preparing, legislation to strengthen their resolution regimes, while some progress has also been made in establishing crisis management groups (CMGs) for global systemically important financial institutions (G-SIFIs) and enhancing cross-border cooperation.⁹

The FSB adopted the *Key Attributes of Effective Resolution Regimes for Financial Institutions*¹⁰ in November 2011 as part of the package of policy measures to address the moral hazard risks posed by SIFIs. The *Key Attributes* (KAs) represent a new international standard that sets out the core elements of effective resolution regimes that apply to any financial institution that could be systemically significant or critical if it fails (see Box 1).

Work is ongoing across a number of resolution-related work streams. These include the development by the FSB of an assessment methodology for the KAs which contains explanatory material and additional guidance on various aspects of recovery and resolution planning; and work by the relevant standard-setting bodies (SSBs) – namely, the Committee on Payment and Settlement Systems (CPSS) and the International Organisation of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS) – on, respectively, the application of the KAs to financial market infrastructure (FMI) and insurers.¹¹

Resolution regimes have been identified as a priority area under the FSB Coordination Framework for Implementation Monitoring.¹² As a result, the implementation of the KAs by FSB member jurisdictions will undergo intensive monitoring and detailed reporting. To ensure timely and effective implementation, the FSB will carry out an iterative series of peer reviews on the implementation of the KAs.

⁹ See the FSB “Progress Report on the Resolution of Systemically Important Financial Institutions” (November 2012, available at http://www.financialstabilityboard.org/publications/r_121031aa.pdf) and the report on “Resolution policies and frameworks - progress so far” by the Basel Committee on Banking Supervision (July 2011, available at <http://www.bis.org/publ/bcbs200.pdf>).

¹⁰ See http://www.financialstabilityboard.org/publications/r_111104cc.pdf.

¹¹ The CPSS and IOSCO have issued a consultative report on the “Recovery and resolution of financial market infrastructures” (July 2012, <http://www.bis.org/publ/cpss103.pdf>), which analyses the application of the KAs to resolution regimes for FMI. The IAIS published an “Issues paper on resolution of cross-border insurance legal entities and groups” (June 2011, <http://www.iaisweb.org/Issues-papers-and-other-reports-48>) for insurers. The analysis by the standard setters will feed into the assessment methodology for the KAs.

¹² See http://www.financialstabilityboard.org/publications/r_111017.pdf.

Box 1: Key Attributes of Effective Resolution Regimes for Financial Institutions

The *Key Attributes* set out the core elements that the FSB considers to be necessary for an effective resolution regime. Their implementation should allow authorities to resolve financial institutions in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining continuity of their vital economic functions. They set out essential features in twelve areas that should be part of the resolution regimes of all jurisdictions, which 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 (COAGs)
10. Resolvability assessments
11. Recovery and resolution planning
12. Access to information and information sharing.

Not all resolution powers set out in the *Key Attributes* are suitable for all sectors and all circumstances. To promote effective and consistent implementation across jurisdictions the FSB will continue to work with its members to develop further guidance, taking into account the need for implementation to accommodate different national legal systems and market environments and sector-specific considerations (e.g. insurance, FMIs).

The *Key Attributes* also contain specific requirements for resolvability assessments, recovery and resolution planning, and the development of COAGs between home and host authorities, which must be met for G-SIFIs.

Annexes I to IV of the document provide more specific guidance to assist authorities in implementing the *Key Attributes* with respect to:

- COAGs (Annex I)
- resolvability assessments (Annex II)
- Recovery and Resolution Plans (Annex III)
- temporary stays on early termination rights (Annex IV).

2. Objectives and scope of the review

The objective of the peer review is to evaluate FSB member jurisdictions' existing resolution regimes and any planned changes to those regimes using the KAs as a benchmark. The review provides a comparative analysis of the overall legal, institutional and policy framework of existing resolution regimes, both across individual KAs and across different financial sectors (banking, insurance, securities or investment firms, and FMIs). In doing so, the review has made use of the draft assessment methodology for the KAs that is currently under preparation.

The broad scope of the review is motivated by the fact that it is the first in a number of proposed thematic peer reviews in this area. Since the KAs were only recently developed as an international standard, their effective implementation will require substantial follow-up work by national authorities, SSBs and firms, including legislative changes in many jurisdictions.

The review focuses primarily on those KAs that cover the core provisions of national resolution regimes applicable to any financial institution that could be systemically important or critical if it fails. These are KA 1 (scope of resolution regime), KA 2 (existence, mandate and governance of resolution authorities), KA 3 (resolution powers) and KA 6 (funding arrangements to support resolution). The peer review also covers other provisions in national resolution regimes in less depth so as to avoid unnecessary overlaps with work undertaken by other FSB work streams. These include KA 4 (legal framework governing set-off rights, contractual netting, collateralisation arrangements, and segregation of client assets), KA 5 (existence of safeguards), KA 7 (legal framework for cross-border cooperation), and KA 12 (access to information and information sharing). KA 10 (resolvability assessments) and KA 11 (recovery and resolution planning) are covered only as regards to whether national authorities have developed frameworks for carrying out resolvability assessments and recovery and resolution planning for financial institutions (FIs) in their jurisdiction. The review does not examine the implementation of those attributes for individual G-SIFIs and does not include KA 8 (crisis management groups) and KA 9 (institution-specific cross-border agreements) that apply only to G-SIFIs.

The depth of coverage across sectors reflects differences in reforms to resolution regimes and progress in policy work by relevant SSBs across those sectors. A significant part of the review is dedicated to banking, since most of the resolution-related reforms in recent years have been focused on that sector. The review gives due consideration to sectoral specificities and recognises that not all powers and characteristics of resolution regimes set out in the KAs are suitable or relevant for all sectors and under all circumstances.

The primary source of information for the peer review is the responses to a questionnaire by FSB member jurisdictions, which was mostly based on essential criteria set out in the draft assessment methodology.¹³ The review also made use of available reports or guidance by SSBs relating to resolution-related considerations for specific sectors.

The report and its Annexes are structured as follows:

¹³ See http://www.financialstabilityboard.org/publications/r_120813.pdf.

- Section II and Annex A review the resolution-related actions undertaken in response to the global financial crisis, including lessons learned and legislative reforms initiated during or in the aftermath of the crisis;
- Section III describes the main features of existing resolution regimes, organised by Key Attribute, and is supplemented by further detail in Annexes B and D;
- Section IV and Annex C summarise planned resolution regime reforms by FSB jurisdictions; and
- Section V summarises the key findings and provides recommendations to promote the timely and consistent implementation of the Key Attributes.

II. Actions undertaken in response to the financial crisis

During the financial crisis that began in 2007, most FSB member jurisdictions took policy measures to support and enhance confidence in their domestic financial system. A number of those jurisdictions also took actions – often on an ad hoc basis – to intervene in, resolve, restructure or wind up financial institutions (FIs) deemed systemically significant. Most of the affected FIs were banks. In some cases, the banks were relatively small and domestically oriented, but were deemed to be systemic in the prevailing financial market environment.

Most of those jurisdictions took action under existing sector-specific powers to restructure and wind-up failing FIs. In a number of cases those powers and authorities proved inadequate, leading some jurisdictions to adopt emergency legislation to enable the necessary resolution actions. In the United Kingdom (UK), emergency legislation enabled the resolution of several banks through nationalisation, the transfer of deposits and assets to third parties and the establishment of bridge banks; the time-limited emergency legislation was subsequently replaced with a new statutory special resolution regime. In the United States (US), emergency legislation enabled the purchase of troubled assets from FIs. Germany recapitalised banks with state funds and restructured them, including by transferring bad assets to asset management companies (AMCs) through a newly established agency that provided the necessary funding and acted as umbrella for the AMCs. The Netherlands adopted legislation for the recapitalisation or transfer of assets and liabilities of banks or insurers to another FI or a bridge institution and the intervention in a parent or holding company. The Swiss authorities reinforced the capital base of a systemic bank by subscribing to mandatory convertible notes and financing the transfer of some of the bank's illiquid assets to a special purpose vehicle; these actions were implemented through emergency legislation. France adopted legislation allowing state financial support to be provided to FIs. Russia adopted a special resolution regime for systemically important banks empowering the deposit insurer to provide capital and liquidity support. Spain adopted legislation establishing a new resolution authority with the power to recapitalise and restructure banks; several smaller banks were granted capital and liquidity support, and were sold to other banks with assistance from the resolution authority in the form of asset guarantees and capital and liquidity support.

Financing for the resolution and restructuring of failing FIs came from public sources – generally national governments and central banks – with only limited recourse to the private sector. France, Netherlands and the UK relied solely on treasury financing. Russia relied on contributions by the treasury and loans by the central bank to the resolution authority. Some

jurisdictions, including France, Germany and Spain, established special public entities to provide funding and expertise. A few jurisdictions also reported the use of private sector funds for resolution actions, mainly as a result of using industry-funded deposit insurance funds. The US relied on a combination of treasury, central bank and deposit insurer funds. Most jurisdictions intend to recoup financial assistance by the sale of FIs and assets acquired in the course of resolution actions and to replenish deposit insurance funds through industry contributions.

The financial crisis highlighted the need to significantly enhance existing resolution regimes in FSB jurisdictions. Implicit reliance on public support was shown to be a policy that penalised taxpayers, contributed to moral hazard and was not viable in the long term. Many jurisdictions recognised the need to enhance resolution powers, undertake more formal recovery and resolution planning, strengthen arrangements for domestic and cross-border cooperation in dealing with failing FIs, and develop mechanisms to recoup any public funds used in resolution. Some jurisdictions, particularly those that were directly affected by the financial crisis, drew the lesson that the general corporate insolvency law was not suitable for resolving systemic FIs, and have already undertaken major legislative reforms to develop new, or revise their existing, resolution regimes. These reforms include measures to introduce new resolution tools and to expand resolution authority to non-bank financial institutions (see Annex A). Several other jurisdictions are implementing or considering reforms to their regimes (see section IV).

III. Key features of resolution regimes

This section summarises the key features of resolution regimes of FSB member jurisdictions by individual KA. This summary is complemented by Annexes B and D, which respectively set out selected and detailed features of resolution regimes in FSB jurisdictions.

1. Scope of resolution regimes (KA 1)

KA 1 requires that all financial institutions that could be systemically significant or critical in the event of failure, including banks, securities and investment firms, insurers and FMIs, be subject to a resolution regime that has the features set out in the KAs. In order to be capable of resolving financial groups, those regimes should extend to branches of foreign FIs, financial holding companies (FHCs), and non-regulated operational entities that are significant to the business of a financial group.

All FSB jurisdictions report that they have specific powers to restructure and/or wind up banks that are distinct from ordinary corporate insolvency (see Table 1A in Annex D), although the extent to which the sector-specific regimes differ from ordinary corporate insolvency is not always clear. Eight jurisdictions¹⁴ report that the use of certain powers is restricted to systemically important banks. Most jurisdictions¹⁵ also have specially adapted

¹⁴ Germany, Indonesia, Japan, Netherlands, Russia, Switzerland, UK, USA. In the case of the Netherlands and the US, these powers apply to all SIFIs, including non-bank FIs.

¹⁵ Argentina, Australia, Brazil, Canada, China, France, Germany, Hong Kong, Italy, Japan, Korea, Mexico, Netherlands, Russia, Saudi Arabia, Singapore, Spain, Switzerland, Turkey, UK, US.

insolvency regimes for insurance firms that typically rely on a combination of ordinary insolvency law supplemented by powers for supervisory authorities (see Table 1B in Annex D). Resolution regimes for securities or investment firms and FMIs are even less well established. Thirteen FSB jurisdictions¹⁶ indicate that they have specific powers to restructure and/or wind up securities or investment firms outside of ordinary corporate insolvency (see Table 1C in Annex D), while only eight jurisdictions¹⁷ report having sector-specific powers in place for restructuring and/or winding up all or some classes of FMI (see Table 1D in Annex D). Three of those jurisdictions¹⁸ note that, where certain FMIs (such as CCPs) are authorised as banks, they are currently within the scope of that jurisdiction's bank resolution regime. Work is ongoing by CPSS and IOSCO to clarify how the KAs should be applied to FMIs, so as to provide a basis for jurisdictions to design and implement resolution regimes for this sector.

It should be emphasised, however, that sector-specific powers to restructure and/or wind up FIs are not necessarily aligned with the KAs. In many cases, the reported powers are supervisory in nature, require the consent of shareholders or are limited to liquidation or winding up of the firm at the instigation of the supervisor or, in some cases, through some form of specially adapted insolvency regime. This was especially the case in relation to the range of powers available in many jurisdictions in respect of insurers, securities or investment firms, and FMIs. These types of powers are useful supplements to the core resolution powers outlined in KA 3 but do not constitute on their own a resolution regime that meets the standards of the *Key Attributes*.

While many jurisdictions report that they have specific powers to restructure and wind up holding companies that are regulated as banking or insurance groups, only eight of them¹⁹ have the ability to use those powers for FHCs that are not themselves a bank or other regulated institution. Such a restriction would limit the resolution strategies available to deal with a financial group, and appropriate resolution powers should therefore apply more broadly to non-regulated FHCs.

In most FSB jurisdictions, the resolution framework cannot be applied to non-regulated operational entities within a financial group. Authorities in only seven jurisdictions²⁰ have direct powers in relation to non-regulated operational entities that can be exercised in the resolution of the whole or a part of the financial group or conglomerate to which those entities belong; the nature of those powers also varies across jurisdictions. Non-regulated operational entities may provide services that are necessary for the continuity of systemically important functions carried out within the group, and a lack of appropriate powers in relation to such entities may result in an abrupt withdrawal of those services that jeopardises the resolution objective of maintaining those functions.

¹⁶ Brazil, China, France, Italy, Korea, Russia, Netherlands, Saudi Arabia, Spain, Switzerland, Turkey, UK, US (for systemic firms).

¹⁷ France (only CCPs), Germany, Italy, Netherlands (if FMI is classified as a financial undertaking), Russia, Switzerland (if it has a banking license), UK (only CCPs), US (systemic FMIs).

¹⁸ France, Germany, Switzerland.

¹⁹ Brazil, France, Germany (under certain conditions), Italy, Korea, Netherlands, UK, US.

²⁰ Brazil, Italy, Saudi Arabia, Spain, Switzerland, UK, US.

In a majority of cases, authorities report that they have powers over branches of foreign financial institutions.²¹ In some cases, those powers are limited to actions under the ordinary corporate insolvency regime (such as the power to ring-fence local assets and realise them to meet the claims of creditors of the branch) under the jurisdiction or supervision of domestic courts. In many jurisdictions, powers in respect of branches are much less comprehensive than those available for locally incorporated entities (see KA 7).

2. Resolution authority (KA 2)

KA 2 requires jurisdictions to have a designated administrative resolution authority (or authorities) that is (are) operationally independent and adequately resourced. The statutory objectives and functions of resolution authorities should require them to pursue financial stability, protect depositors, insurance policy holders and investors (as appropriate); avoid unnecessary destruction of value; and consider the potential impact of their actions on financial stability in other jurisdictions. Where there is more than one resolution authority in a jurisdiction, their roles should be clearly defined and coordinated, and the resolution regime should identify a lead authority to coordinate resolution of a multi-sector financial group within that jurisdiction.

Responsibility and powers for the resolution of (at least some) FIs are conferred on one or more public authorities in all FSB member jurisdictions (see Table 1). The division of resolution powers and responsibilities between those authorities varies considerably: the KAs are not prescriptive in this regard. Many jurisdictions confer the primary responsibility and powers for the resolution of banks on supervisory authorities with different degrees of functional separation,²² while the resolution authority is separate from the main sectoral supervisor in only a minority of cases.²³ While all FSB jurisdictions report that their resolution authorities are operationally independent, this has not been verified in the peer review.

For the insurance sector, almost all FSB jurisdictions currently have prudential supervisors that can intervene in troubled or failing institutions in a variety of ways (such as license withdrawal, appointment of administrator, or court petition for winding up), although most jurisdictions require the courts to appoint an administrator or liquidator to carry out the resolution.

²¹ In the European Union (EU), home member states have exclusive competence for reorganisation and winding up measures in respect of EU credit institutions and insurers, and host member states of branches must recognise any such home state measures.

²² Argentina, Australia, Brazil, China, France, Germany, Hong Kong, Italy, Japan, Netherlands, Russia, Saudi Arabia, Singapore, Switzerland, and Turkey. In Indonesia, resolution functions are divided between the supervisory authority and the deposit insurance agency. In the UK, the resolution powers are conferred on the central bank (or the Treasury in the case of temporary public ownership), while the supervisory authority (PRA) is an operationally independent subsidiary of the central bank.

²³ Canada, Indonesia, Mexico, Turkey, US. In Spain, there is a separate banking resolution authority but the supervisory authority, which is the one that triggers resolution, must approve the resolution plan drawn up by the resolution authority.

In many FSB jurisdictions, there is no administrative authority responsible for restructuring and winding up securities or investment firms and FMIs.²⁴ This reflects the limited scope and powers for resolving systemically important non-bank SIFIs under the existing regimes (see the discussion in KAs 1 and 3). The involvement of public administrative bodies in those sectors relates to their role as market conduct or oversight authorities, with measures to address or manage failing institutions typically limited to standard insolvency procedures. Indeed, in many cases where jurisdictions report the existence of a resolution authority for securities or investment firms and FMIs, that authority is actually a supervisor that is only able to exercise certain powers under a sector-specific regime for restructuring or winding up, but does not have the administrative resolution powers specified in KA 3. As previously noted, there are a few exceptions where the responsible authority has powers in relation to certain categories of FMI that are similar to those for other types of FI.

The KAs recognise that not all attributes and resolution powers are relevant for all financial sectors; however the designation of an administrative authority or authorities with the responsibility, powers and means to resolve systemically important firms is an essential element of an effective regime across all sectors. While resolution measures may be implemented by an administrator that is appointed and supervised by a court (as is the case in several FSB jurisdictions), the objectives of that administrator should be aligned with KA 2.3.

In those jurisdictions with multiple resolution authorities, nearly all report having some form of coordination arrangements in place between the authorities, although the adequacy of those arrangements has not been analysed in the peer review. However, several jurisdictions do not appoint a ‘lead authority’ to coordinate the resolution of domestic entities of the same group.²⁵ The responses of some jurisdictions indicate that the boundaries between the respective roles and responsibilities of those authorities with resolution functions are not always clear, which may hamper effective resolution.

Very few jurisdictions have statutory objectives in place for their resolution authorities that are fully aligned with the KAs. However, many such authorities (including prudential supervisors, market conduct authorities, central banks, finance ministries, deposit insurance and other protection schemes) may have broader responsibilities related to financial stability, and the objectives relating to their role in resolution may not necessarily be reflected in a separate statute or other public policy document. Although nearly all authorities have formal objectives (often not related specifically to their resolution functions) to maintain financial stability and protect depositors or policyholders, most do not have mandates to avoid destruction of value (beyond maximising recoveries in liquidation) or to consider the impact of resolution actions on other jurisdictions.

²⁴ Argentina, Australia, Canada, Hong Kong, India, Indonesia, Japan, Mexico, and Singapore have no designated resolution authority for either securities or investment firms or FMIs. Germany has no designated resolution authority for securities or investment firms. Brazil, China, Korea, Saudi Arabia, South Africa, Spain and Turkey have no designated resolution authority for FMIs.

²⁵ Argentina, Brazil, Canada, Hong Kong, Indonesia, Mexico, Russia, South Africa, Turkey.

Table 1: Administrative Authority Responsible for Restructuring and/or Winding Up FIs

Jurisdiction	Banks	Insurers	Securities / Investment Firms	FMI	Lead authority for resolution of entities of the same group
Argentina	BCRA	SSN			N
Australia	APRA	APRA			N/A
Brazil	BCB	SUSEP	BCB		N
Canada	CDIC	OSFI (1)			N
China	PBC / CBRC	CIRC	CSRC		Y
France	ACP	ACP	ACP / AMF	ACP (only CCPs)	Y
Germany	BaFIN / FMSA	BaFIN		BaFIN	Y
Hong Kong	HKMA	IA			N
India	RBI				N/A
Indonesia	IDIC FSSF (2)				N
Italy	BoI	IVASS	BoI / CONSOB	BoI / CONSOB	Y
Japan	FSA	FSA			N/A
Korea	FSC / FSS / KDIC	FSC / FSS / KDIC	FSC / FSS / KDIC		Y
Mexico	IPAB	SHCP			N
Netherlands	DNB MoF (3)	DNB MoF (3)	MoF (only if financial undertakings) (3)	MoF (only if financial undertakings) (3)	Y
Russia	BoR / DIA	FFMS	FFMS	FFMS	N
Saudi Arabia	SAMA	SAMA	CMA		Y
Singapore	MAS	MAS			N/A
South Africa	Registrar of Banks	Registrar of Insurance	Registrar of CIS		N
Spain	BoS / FROB	DGSFP	CNMV		(4)
Switzerland	FINMA	FINMA	FINMA	FINMA (only if FMI has banking license)	N/A
Turkey	BRSA / SDIF	Treasury	CMB		N
United Kingdom	BoE HMT (6)	PRA (BoE)	BoE (5) HMT (6)	BoE (only CCPs) (6)	Y
United States	FDIC (7)	State regulators FDIC (2)	SIPC FDIC (2)	FDIC (2)	N/A (systemic firms)

Note: See list of abbreviations for financial authorities in FSB jurisdictions (pages 6-7) and Tables 1A-D in Annex D for details. The absence of an administrative authority to restructure and/or wind up FIs in a particular sector indicates that FIs in that sector are subject to the ordinary corporate insolvency process. However, the existence of a designated authority with specific powers to restructure and/or wind up FIs in a sector does not mean that those powers are necessarily aligned with the KAs.

- (1) OSFI has powers of intervention in respect of insurance companies, but winding up is largely directed by the courts. For life insurance companies, Assuris (the private sector policyholder protection organisation) can undertake certain going-concern solutions and act as compensation authority post-liquidation.
- (2) Authority is only involved if a systemic determination is made for the financial institution under Section 203 of the Dodd-Frank Act.
- (3) The Dutch Minister of Finance is given resolution powers if the failure of a FI or its parent firm presents an immediate and serious threat to financial stability in the Netherlands.
- (4) The Spanish regime provides for lead authorities only where a conglomerate is headed by a bank.
- (5) The provisions of the Financial Services Act extending the resolution regime to investment firms, CCPs and related group companies in the UK will take effect once the secondary legislation has been finalised.
- (6) The UK HMT is the relevant authority only in the case of temporary public ownership.
- (7) The OCC may appoint a receiver for a federally licensed branch of a foreign banking organization.

3. Resolution powers (KA 3)

KA 3 sets out the range of resolution powers that should be available in resolution regimes. These include powers to transfer assets, rights and liabilities of, or shares in, failing institutions to a purchaser, bridge institution or asset management company (AMC); to write down and convert debt of the firm in resolution (bail-in); to appoint an administrator; and to operate the firm in resolution and take actions necessary to restructure or wind down its operations. Authorities responsible for resolving insurers should also have powers to transfer portfolios and “run-off” the insurance business of a firm in resolution. All powers should be exercisable without any requirement for creditor consent or shareholder approval. Regimes should provide for resolution to be triggered when a firm is, or is likely to be, no longer viable, and before it is balance-sheet insolvent and the equity has been fully wiped out.

Most FSB jurisdictions report that they are able to provide for timely entry into resolution or the exercise of resolution powers at or before the point of non-viability, and before the firm is balance-sheet insolvent. In most cases, the reported non-viability triggers for insurers, securities or investment firms and FMIs apply later than for banks, which may be due to the fact that they reflect triggers available under corporate insolvency regimes.

Jurisdictions report that resolution powers are considerably more developed for banks (see Table 2) than for insurance and, especially, for securities or investment firms and FMIs. While some of the resolution powers specified in the KAs may not be necessary to resolve certain types of non-bank FIs, no special powers (outside ordinary insolvency) are available for securities or investment firms and FMIs in most jurisdictions.

In all FSB jurisdictions, a supervisory or resolution authority has the power to appoint an administrator or to apply to the court for such an appointment (see Table 2 in Annex D). The powers of that administrator vary, but most jurisdictions report that the administrator has a wide range of powers, including to operate the firm and to manage or dispose of its assets. In some cases,²⁶ the powers of the administrator are restricted to the powers of the firm’s management, which suggests that the administrator cannot override shareholders’ rights for actions that require shareholder approval under the constitution of the FI or applicable corporate law. In other cases, the administrator has the same powers as the appointing authority, or the authority is able to confer such powers on the administrator.²⁷

Most jurisdictions also provide for powers to transfer assets and liabilities from a failed bank. However, in many cases those powers are exercised by the appointed administrator and it is not clear whether the administrator can be mandated to achieve the objectives laid out in the KAs. It is also not clear in all cases whether transfer powers can be exercised (if not sanctioned by the court) without the need for shareholder approval or creditor consent. Transfer powers are generally less well-established in the case of insurers, and even less so in the case of securities or investment firms and FMIs.

In a majority of jurisdictions, authorities have the power to establish and operate a bridge institution, although that power is not always based on express statutory authority. In most cases where the use of a bridge institution is available, it is used only for banks; relatively

²⁶ Brazil, France, Hong Kong, Russia.

²⁷ Canada, Germany, Saudi Arabia.

few jurisdictions report having bridge powers for insurers, securities or investment firms or FMIs.²⁸ Similarly, in a majority of jurisdictions, authorities have the power to establish an asset management company, and to transfer assets of a failing entity into it although, as with bridge institutions, this power is largely confined to the banking sector.

Bail-in within resolution, as contemplated by the KAs, requires powers that enable authorities to: (i) write down equity in and unsecured creditor claims against a firm in resolution to the extent necessary to absorb the losses of the firm; and (ii) convert all or parts of unsecured creditor claims into equity of the firm in resolution, its parent company or any successor in resolution (such as a bridge institution). Only two jurisdictions²⁹ report that both powers are conferred by statute on their resolution authority, while another jurisdiction reports that it is able to both write down and convert liabilities within resolution using other powers.³⁰ Several other jurisdictions report that they can achieve, at least to some degree, the economic effect of bail-in through existing powers, such as transfer and bridge bank powers, although those powers alone are not fully equivalent to the bail-in within resolution power that is specified in the KAs. Powers for a resolution authority to write down and convert liabilities are generally not available for insurers, securities or investment firms and FMIs.

In some cases, jurisdictions reported that the use of (at least some) resolution powers requires the cooperation of the failing firm or its shareholders. This is not consistent with the concept of a resolution power under the KAs and is insufficient for the purposes of a resolution regime. It is critical for effective resolution that all resolution powers be exercisable by authorities without any need for shareholder consent or triggering any other third party rights (subject to the safeguards described in KAs 4 and 5). This is because resolution authorities must be able to take action, which may include interfering with third party rights quickly and without the consent of shareholders, creditors or other stakeholders of the firm.

At least one of the two specific resolution powers for insurers (portfolio transfer and ‘run-off’) is available in nearly all FSB jurisdictions, although in some jurisdictions the powers are only exercisable by the liquidator in insolvency proceedings.³¹

In many jurisdictions, resolution powers are distributed across two or more authorities. In other jurisdictions, including some that have a single resolution authority, the exercise of resolution powers may require a court order or confirmation to be effective. While this is not inconsistent with the KAs, a requirement for court approval may impede rapid intervention and the ability to achieve the specified objectives of resolution, and may be uncertain as to the outcome. This is recognised by KA 5.4, which requires authorities to take account of the time needed for court processes in resolution planning so as not to compromise effective implementation of resolution measures. However, an assessment of that requirement was beyond the scope of this peer review.

²⁸ Australia (insurers), Japan (insurers), Saudi Arabia (insurers), US (insurers, securities/investment firms and FMIs).

²⁹ Spain, Switzerland. In Spain, the power is limited to subordinated liabilities and will expire in June 2013.

³⁰ US.

³¹ Both powers are available in sixteen jurisdictions: Australia, China, France, Germany (portfolio transfer for life and health insurance only), Italy, Korea, Mexico (run-off by liquidator), Netherlands (run-off by court), Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Turkey, UK, US.

Table 2: Selected Powers for Resolving Banks in FSB Jurisdictions

Jurisdiction	Authority over non-regulated FHCs	Authority over non-regulated group entities	Override shareholder rights	Temporarily operate a firm	Transfer / sell Assets and Liabilities (A&L)	Bridge	AMC	Write down debt and convert to equity*	Impose temporary stay ton early termination rights in financial contracts	Comments
Argentina			X		X					BCRA directs resolution and may ask the court for appointment of a trustee to execute available resolution measures. Power to override shareholders' rights limited to forced recapitalisation or to require shareholders to transfer their shares.
Australia			X	X	X	X	X			Regime based on powers of APRA, including compulsory business transfers, statutory or judicial management, and the power to direct firm management to take certain actions to facilitate resolution, including directions to recapitalise an institution, without any requirements for shareholder approval.
Brazil	X	X		X	X	X	X			Operation of intervened bank carried out through an administrator or liquidator appointed by the BCB.
Canada			X	X	X	X	X		X	CDIC can take control of a failing bank. Shareholder rights are overridden if the CDIC is appointed by the federal Cabinet to take control of the bank.
China			X	X	X					Regime based on powers for CBRC to liquidate, and apply to court for restructuring or liquidation. CBRC also has power to take over and restructure banks with significant risks.
France	X			X						Power to operate a bank in resolution exercised through administrator appointed by ACP, which may exercise all powers of management.
Germany	X		X		X	X	X			No direct power to temporarily operate a firm in resolution but able to appoint an administrator. Transfer powers may be exercised without consent from the institution's shareholders and creditors, and do not require court approval. Once BaFin issues the transfer order, FMSA is responsible for implementation of that order.
Hong Kong				X	(1)		X			Limited regime based on powers for HKMA to give directions in relation to a bank's business and assets, and to appoint a manager to operate a bank without the ability to override either shareholders or any other requirements for consent.
India			X	X						Very limited powers are available to the RBI under statutes for resolving private sector banks and foreign banks with offices in India.
Indonesia			X	X	X	X				Once the BI triggers resolution, the IDIC (or the FSSF in the case of a systemically important bank) determines the resolution action to be taken and implements it.
Italy	X	X	X	X	X		X			Regime based on special administration and compulsory administrative liquidation, through appointment and supervision by the BoI of special administrator or liquidator. Shareholders can only be overridden under compulsory administrative liquidation.
Japan			(3)	X	X	X	X			Powers exercised through a financial receiver appointed by FSA. Court approval required for certain resolution actions of receiver. Requirements for creditor approval overridden. Shareholder rights may be overridden only with court approval .

Korea	X		X	X	X	X	X			FSC triggers resolution upon determination of insolvency and decides the resolution action for the insolvent bank, which the KDIC then implements. Shareholder rights can be overridden without court involvement.
Mexico			X	X	X	X	X			IPAB may exercise transfer powers (including to a bridge bank) and override shareholder rights without court involvement. Powers to take control and temporarily operate through appointment of conservator.
Netherlands	X		X		X	X	X			DNB determines the resolution action and submits transfer plan to the court for approval; once approved, the court appoints a transferor to execute the plan. Where the failure of a bank poses serious and immediate danger to the stability of the financial system, the Minister of Finance has the power (without court approval) to transfer ownership in, or assets and liabilities of that bank.
Russia			X	X	X		X			Powers to operate a bank through temporary administrator (which can be the DIA) appointed by BoR. Transfer powers exercisable without court involvement, and overriding shareholder rights.
S. Arabia		X	X	X	X	X	X			Wide discretionary powers for SAMA to intervene, but circumstances in which shareholder and third party rights can be overridden not set out explicitly in legal framework.
Singapore			X	X	X	X	X			Administrative powers are available to MAS, and shareholder rights can be overridden, without court involvement.
S. Africa										Very limited powers outside of judicial insolvency (pending new framework). The Minister of Finance, on the recommendation of the Registrar of Banks, is responsible for appointing an administrator ('curator') to wind up the bank.
Spain			X	X	X	X	X	X (4)	X	The BoS triggers resolution and appoints the FROB as administrator; the FROB prepares a resolution plan and, once approved by the BoS, implements it. Administrative powers are exercisable without court involvement and overriding shareholders.
Switzerland		X	X	X	X	X	X	X	X	Administrative powers are exercisable by FINMA without court involvement and overriding shareholders.
Turkey			X	X	X		X			Once the BRSA triggers resolution of failed bank, the SDIF decides upon and implements resolution actions. Administrative powers are exercisable without court involvement and overriding shareholders.
UK	X (2)	X (2)	X	X	X	X				Once the conditions for resolution are met, the BoE decides upon and implements resolution actions. Administrative powers are exercisable without court involvement and overriding shareholders. The HMT is the authority only in the case of temporary public ownership.
USA	X	X	X	X	X	X	X	X	X	Once the insured depository institution's chartering authority appoints the FDIC as receiver under the FDI Act, the FDIC's receivership powers are thereafter exercised administratively, overriding shareholders and with no requirement for creditor consent. In the case of a bank holding company, if the Treasury Secretary makes a determination that it should be placed into receivership under the Dodd-Frank Act, the FDIC is appointed as receiver through an expedited court procedure and powers thereafter are also exercised administratively.

* Several other jurisdictions report that they can achieve the economic effect of bail-in, at least to some degree, through the exercise of other resolution powers, such as transfer and bridge bank powers. However, those powers are not fully equivalent to the power to carry out bail-in within resolution as specified in the KAs.

(1) Powers to transfer assets but not liabilities.

(2) The provisions of the Financial Services Act extending the resolution regime to investment firms, clearinghouses and related group companies (including those of banks) in the UK will take effect once the secondary legislation has been finalised.

(3) Court approval is required for powers to be exercisable without shareholder consent.

(4) Powers to write down and convert debt are limited to subordinated liabilities and expire in June 2013.

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

KA 4 requires that resolution authorities have the power to impose a temporary stay on the exercise of acceleration and early termination rights in financial contracts that are triggered by entry in resolution or the exercise of resolution powers. That stay should be subject to the safeguards specified in Annex IV to the KAs, including strict limitation in the period of the stay, application of the ‘no cherry-picking rule’, and preservation of early termination rights triggered by defaults other than entry into resolution (such as a failure to make payment or deliver margin).

Only four jurisdictions³² currently provide for the imposition of a temporary stay on the exercise of contractual acceleration or early termination rights in financial contracts (see Table 2). In all of those jurisdictions (except for the US in cases where the FDIC has been appointed as receiver) the power is limited to banks, while only three jurisdictions³³ provide for safeguards for counterparties to financial contracts comparable to those specified in Annex IV to the KAs. Where a power to impose a stay on early termination rights in financial contracts is not accompanied by adequate safeguards, this fails to achieve the intended balance between effective transfer powers in relation to financial contracts to preserve value and continuity of critical services and minimising disruption to counterparties.³⁴

5. Safeguards (KA 5)

KA 5 sets out a number of legal safeguards for persons affected by resolution actions, and in particular creditors of a firm in resolution. These require respect for the hierarchy of claims in resolution; departure from the principle of equal treatment of creditors of the same class only in accordance with specified principles; rights to compensation for creditors that are worse off in resolution than they would have been in liquidation; and a right to judicial review of resolution actions.

Almost all member jurisdictions³⁵ report that their legal frameworks require resolution authorities to respect the hierarchy of claims when exercising resolution powers (see Table 4 in Annex D), although it is not clear in every case whether those frameworks apply outside of corporate insolvency. Only a few FSB jurisdictions³⁶ report that resolution authorities have

³² Canada, Spain, Switzerland, US. Under the US framework, the temporary stay is statutory and applies in all cases rather than it being a discretionary power of the resolution authority. In addition, under the UK and Dutch resolution frameworks, the Bank of England and the DNB respectively have the power to prohibit the exercise of early termination rights in connection with an exercise of transfer powers. However, that power is limited to termination rights under contracts that are not covered by the EU Financial Collateral Directive (FCD), which currently prevents EU member states from staying rights under financial collateral arrangements. The draft EU directive on bank recovery and resolution is expected to remove that obstacle (see Box 2). The Spanish framework anticipates the change that will be made by that directive, and provides for a power to impose a temporary stay on all early termination rights in financial contracts, including those that are covered by the FCD.

³³ Spain, Switzerland, US.

³⁴ Several other FSB jurisdictions report that they have other forms of stay, such as an indefinite stay triggered by entry into insolvency or resolution but without special treatment for financial contracts. However, these forms of stay lack the features specified in KA 4.

³⁵ The exceptions are Canada, Germany (banks, under certain conditions), Turkey (non-bank financial institutions) and US.

³⁶ Australia, Canada, Germany, UK, US.

the power to depart where necessary (e.g. for reasons of financial stability) from the general insolvency principle of equal treatment of creditors of the same class (*pari passu*).

Very few jurisdictions³⁷ provide an explicit statutory right to compensation for any creditor that is worse off in resolution than would have been the case in liquidation, and set out a mechanism for administering any such compensation.³⁸ This right would be particularly relevant where the regime also permits departure from the principle of equal treatment of creditors of the same class (and that departure results in some creditors being worse off than in liquidation) or in the unlikely circumstance that insolvency would have resulted in less destruction of value than the resolution action that was taken.

There are differences across FSB jurisdictions in the rights to judicial review of resolution actions and the forms of redress available under their legal frameworks. The majority of jurisdictions provide a right to such judicial review either under general administrative law or as an explicit right under the resolution regime and, in most cases, remedies other than monetary compensation are available. In such cases, the legal framework needs to strike an appropriate balance between protected legal remedies on the one hand and the certainty of resolution and the effectiveness of the measures taken on the other.

6. Funding of institutions in resolution (KA 6)

KA 6 requires jurisdictions to have adequate arrangements for funding resolution from private sources (such as deposit insurance or resolution funds) or temporary public funding. In order to reduce moral hazard, any provision of temporary public funding should be subject to conditions and mechanisms for recovery from the firm itself, its creditors or the private sector.

In general, resolution funding arrangements are available for banks, but less so for insurance and securities firms, and are largely non-existent for FMIs (see Table 5 in Annex D).³⁹ Arrangements to fund the resolution of banks are generally based on a mix of private and public sources. A majority of jurisdictions report the existence of private sector sources of funding for resolution purposes, although their current adequacy for resolving failing SIFIs has not been examined. Specifically, three FSB jurisdictions⁴⁰ have privately funded dedicated resolution funds, while fifteen jurisdictions⁴¹ have a deposit insurance system (funded either *ex ante* or *ex post* by industry levies) that may be drawn on to fund bank resolution, in addition to pay-out. Where a deposit insurance fund can be used to support resolution measures, it is generally subject to conditions such as limitations on the purpose for

³⁷ Australia (banks and insurers), Canada, Germany (banks), Spain (banks), Switzerland, UK (banks), US.

³⁸ The absence of a statutory right to compensation and arrangements for administering compensation does not preclude a general right for affected creditors to apply to the court for financial remedies. However, a general right to damages may be procedurally more onerous and the outcome less certain, particularly where valuation has to be carried out in the course of the judicial process.

³⁹ In the case of CCPs, default funds are used as standing loss mutualisation mechanisms. Similar participant-based arrangements may be available to fund continuity of the services of the CCP, along with arrangements for write down of shareholders' equity in appropriate cases to absorb losses.

⁴⁰ Germany (for limited purposes), Japan, US (the Orderly Liquidation Fund is initially funded by the US Treasury, which then gets repaid from asset resolution and the industry over no more than 5 years).

⁴¹ Argentina, Brazil, Canada, France, Indonesia, Italy, Japan, Korea, Mexico, Netherlands, Russia, Spain, Turkey, UK, US.

which those funds may be used or caps in the amount that can be used for a specific resolution (e.g. no more than the amount that would have been available to pay out depositors).

Policyholder or investment protection funds have been established in some jurisdictions but play a limited role in funding resolution for insurance or securities or investment firms. Fourteen jurisdictions⁴² have a protection fund for insurance policyholders or investors, but several of them restrict use to compensation of policyholders or investors in a liquidation scenario and do not allow the fund to be used for financing the resolution. No jurisdictions reported having a resolution fund dedicated to FMIs.

Notwithstanding the existence of private sources of funding, public financial support remains an important component of resolution funding arrangements. While the majority of FSB jurisdictions indicate that public funding for resolution measures is available, particularly for banks, in only one case this takes the form of a dedicated, publicly sourced resolution fund.⁴³

Mechanisms for recovery of public funds from shareholders, participants or creditors of the failed firm, or the wider financial industry, are less well developed, although several jurisdictions have facilities for appropriations or levies to recoup on an ex post basis any public funds used in resolution.⁴⁴ In addition, conditions on the use of public funds (for example, a requirement that losses should be borne by shareholders and unsecured creditors) are largely absent.

7. Legal framework for cross-border cooperation (KA 7)

KA 7 requires that resolution authorities are empowered and encouraged by statutory mandate to achieve a cooperative solution with foreign authorities wherever possible, including by exercising powers in relation to branches of foreign FIs to support foreign resolution measures and sharing information with foreign authorities for the purposes of planning and carrying out resolution. Legislative frameworks should not contain provisions whereby automatic actions in relation to a firm are triggered by the initiation of insolvency or resolution proceedings in another jurisdiction. To facilitate cooperation, jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of procedures for mutual recognition or by using powers under the domestic framework to take measures that support and complement the foreign resolution in relations to local operations of the firm. The resolution regime should also confer powers over branches of foreign firms, which may be used either to support resolution measures carried out by the home resolution authority or, in exceptional cases, to take measures on its own initiative to protect domestic financial stability.

National legal frameworks for cross-border cooperation in resolution are, overall, less well-developed across all sectors than other areas of the KAs (see Table 6 in Annex D). In most

⁴² Australia, Canada, China, France, Germany, Hong Kong, Italy, Japan, Korea, Singapore, Spain, Turkey, UK, US.

⁴³ Spain.

⁴⁴ For example, in Australia public funding for resolution raised by a standing legislative appropriation may be recovered from the firm in question and, in some cases, expenditure by the Financial Claims Scheme (FCS) may be recovered through levies on the industry more generally; the Netherlands can impose a banking sector levy to recover temporary public funding; and the US framework includes a provision for shortfalls that are not recovered from claimants to be recouped through levies on eligible financial companies.

FSB jurisdictions, there are few or no relevant statutory provisions for coordination and cooperation for the effective resolution of cross-border firms.

The legal framework of most jurisdictions neither requires nor prohibits cooperation with foreign resolution authorities. Eight jurisdictions⁴⁵ have statutory provisions that explicitly empower or strongly encourage resolution authorities to cooperate with foreign authorities, while several others indicate that it is their policy to cooperate where possible. No jurisdiction has comprehensive obligations for domestic authorities to avoid taking resolution actions that may have an adverse effect on the financial stability of other jurisdictions.⁴⁶ Authorities in EU member states are required to consider the impact of their actions on financial stability in other EU states.

No jurisdictions report that their legal framework contains legislative triggers that require automatic actions in relation to a firm for which they are a host jurisdiction when the home jurisdiction initiates resolution or insolvency proceedings or undertakes any other official intervention in respect of that firm.

While the legal frameworks in the majority of FSB jurisdictions do not provide for differential treatment of creditors (including depositors and policyholders) by location of their claim or the jurisdiction in which the claim is payable, there is provision for differential treatment of certain claims – in most cases, deposits – under the insolvency or resolution regime of eight jurisdictions.⁴⁷

About a third of FSB jurisdictions have mechanisms for giving legal effect to decisions by foreign authorities, but the majority of those are based on application to the court. While court-based processes are not precluded by the KAs, they are generally less well-adapted to meeting the objectives of KA 7 than administrative procedures in that they may be more time-consuming and the outcome less predictable. Very few jurisdictions⁴⁸ have provisions for administrative recognition and enforcement by the resolution authority of resolution actions taken by foreign authorities. In only one of those jurisdictions⁴⁹ does the national resolution authority have the power to recognise the transfer by the home country resolution authority of local assets and liabilities of a foreign bank, and make that transfer effective under local law.

Most jurisdictions report that they have some powers over branches of foreign banks. However, in most cases, those powers stem from the domestic insolvency framework⁵⁰ or are much less comprehensive than the powers available for locally incorporated banks.⁵¹ Domestic authorities may be able to use those powers to support resolution actions taken by

⁴⁵ Australia (trans-Tasman cooperation with New Zealand), Hong Kong, Indonesia, Japan, Spain, Switzerland, UK, US.

⁴⁶ Australia imposes a limited obligation to avoid bank resolution actions adversely affecting the financial stability of New Zealand.

⁴⁷ Australia (depositors and insurance policyholders), Indonesia (deposits in foreign branches only protected in certain circumstances), Japan, Korea (depositors), Singapore, Switzerland, Turkey (depositors), US (depositors).

⁴⁸ Singapore, Switzerland. In the EU, there is a requirement for recognition and enforcement of reorganisation and winding up measures taken by courts or authorities in other EU member states in respect of an EU bank or insurer.

⁴⁹ Switzerland.

⁵⁰ For example, the ability for creditors or authorities to petition national courts for separate domestic insolvency proceedings in relation to the branch, in which local assets may be ring-fenced.

⁵¹ In the case of the EU, host jurisdictions only have full competence in relation to branches of non-EU financial institutions, and winding up and reorganisation measures for branches of EU banks and insurers fall within the exclusive competence of the EU home state.

the home authority, but the legal framework generally does not make that explicit or set any conditions to the exercise of such powers independently of home state action.

8. Resolvability assessments (KA 10)

KA 10 requires jurisdictions to undertake regular resolvability assessments, at least for G-SIFIs. The resolvability assessments should be conducted in accordance with the guidance set out in Annex II to the KAs, and in coordination with other authorities responsible for the firm in question. Supervisory or resolution authorities should have powers to require firms to adopt appropriate measures where necessary to improve their resolvability.

Only one jurisdiction⁵² has in place a formal statutory requirement for resolvability assessments to be carried out (see Table 3). Home jurisdictions of G-SIFIs report that, in the absence of formal requirements, supervisors can use general supervisory powers and processes to carry out such assessments. Few host jurisdictions of G-SIFIs report that they undertake resolvability assessments at this stage, although some indicate their intention to do so.⁵³ A few other jurisdictions also report that they are planning to undertake resolvability assessments as a core part of domestic resolution planning work. Where resolvability assessments are being carried out or planned, the focus is generally on global or domestic systemically important banks (G-SIBs and D-SIBs respectively) rather than on a wider range of FIs. Only two⁵⁴ jurisdictions currently require resolvability assessments for institutions from other financial sectors. Given the lack of a formal statutory framework or rules, few jurisdictions have established guidance about how resolvability assessments should be conducted or the consequences if firms are not assessed as resolvable.

In most FSB jurisdictions, supervisory authorities have some powers to ask supervised institutions to make changes to their business organisation and legal structure, but the purposes for and circumstances under which authorities can exercise such powers vary across jurisdictions and financial sectors. A few jurisdictions report that their supervisory authority has a broad range of powers to take necessary measures to ensure financial stability, and that the exercise of those powers is not restricted to specific circumstances based on distress of the institution in question. However, it is not clear whether the authority can actually require changes solely to improve resolvability of a firm, as specified in the KAs. In other jurisdictions, the powers to require certain actions can only be exercised, or may more readily be used, after a firm fails to meet specific regulatory requirements, comes close to meeting the conditions for resolution, is facing insolvency, or is already in resolution. Given the intrusive nature of requirements to take measures to improve resolvability and the fact that, where necessary, they should take effect in advance of any deterioration in a firm's condition, a clear power to require changes explicitly for the purposes of improving resolvability is necessary.

⁵² Switzerland.

⁵³ FSB member jurisdictions that are home or significant host jurisdictions to a G-SIFI have agreed to carry out preliminary resolvability assessments for those firms in the second half of 2013. The conduct of those assessments and their outcomes will be monitored and reported separately by the FSB.

⁵⁴ UK (for large investment firms), US (for non-bank SIFIs).

Table 3: RRPs and Resolvability Assessments in FSB Jurisdictions

Jurisdiction	Resolvability assessments			Recovery and resolution planning			Ability to require changes to firm structures solely to improve resolvability (1)
	Requirement	Source	Scope	Requirement	Source	Scope	
Argentina							X
Australia				(2)	(2)	(2)	
Brazil							
Canada	X	Policy	SIFIs	X	Policy	SIFIs	
China	X	Policy	G-SIFIs	X	Policy	SIFIs	
France	X	Policy	G-SIFIs	X	Policy	SIFIs	
Germany	X	Policy	G-SIFIs	X	Policy	SIFIs	
Hong Kong							
India							
Indonesia							X
Italy	X	Policy	G-SIFIs	X	Policy	G-SIFIs	
Japan	X	Policy	SIFIs	X	Policy	SIFIs	
Korea							X
Mexico							
Netherlands	X	Policy	SIFIs	X	Policy	SIFIs	
Russia							
S. Arabia							X
Singapore	X	Policy	SIFIs	X	Policy	SIFIs	X
S. Africa				X	Policy	Banks	
Spain	X	Policy	G-SIFIs	X (3)	Statute	Banks	X
Switzerland	X	Statute	G-SIFIs	X	Statute	SIFIs	X (4)
Turkey							X
UK	X	Policy	Banks plus (5)	X	Statute	Banks plus (5)	X
USA	X	Policy	SIFIs	X	Policy	SIFIs	X

- (1) Some jurisdictions report that their supervisor has powers to require changes to firm structures, but it is not clear whether these powers can be applied solely for purposes of improving resolvability.
- (2) No requirement in statute or rules, but a pilot program on recovery (but not resolution) planning undertaken by APRA in 2012 for the six largest banks.
- (3) The new legal framework for bank resolution includes requirements for recovery plans that will be developed through implementing regulations. Prior to these requirements, Spanish G-SIFIs have been requested to develop recovery plans under supervisory rules.
- (4) FINMA also has the power to grant rebates on the capital surcharge of systemically important banks based on its assessment of their global resolvability.
- (5) The requirements cover all deposit-takers and significant investment firms (defined as those with assets exceeding a specified threshold).

9. Recovery and resolution planning (KA 11)

KA 11 requires jurisdictions to put in place a process for on-going recovery and resolution planning for domestically incorporated firms that could be systemically significant or critical in the event of failure. RRPs should contain the essential elements set out in Annex III to the KAs, and home resolution authorities of G-SIFIs should coordinate with the firm's CMG to produce a group resolution plan.

Although few jurisdictions have formal statutory requirements for RRP, ⁵⁵ many are developing such plans for G-SIBs and D-SIBs. Currently, jurisdictions that are home authorities of G-SIBs have started working on the development of RRP through supervisory policy, and many jurisdictions have required firms to prepare recovery plans under existing supervisory powers. ⁵⁶ Recovery and resolution planning in FSB jurisdictions – whether undertaken currently or under development – is predominantly focused on banks. Only two jurisdictions have a framework for RRP for other categories of financial institution, while another jurisdiction is developing RRP under general supervisory powers. ⁵⁷

Many jurisdictions report that they have legal frameworks in place for authorities to approve firms' recovery plans, and some emphasised that authorities have the power to require changes to submitted recovery plans if they are not satisfied with them. For jurisdictions where there is no formal requirement for RRP, the source of powers to require changes is not clear, although some jurisdictions ⁵⁸ stated that their general supervisory framework provides the necessary powers.

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

KA 12 requires jurisdictions to ensure that no legal, regulatory or policy impediments hinder the disclosure of firm-specific information to domestic and foreign authorities for the purposes of planning and carrying out resolution, irrespective of whether those authorities have supervisory functions.

Domestic authorities with resolution functions are generally able to share non-public information with each other. This general principle is subject to a few exceptions, where the sharing of confidential information with non-supervisory domestic authorities for both planning and carrying out resolution is either not permitted; ⁵⁹ limited to specific circumstances, such as the entry of a firm into resolution ⁶⁰ or conditional on a decision to undertake a resolution involving public funds. ⁶¹ Where powers to disclose information are limited or conditional in that way, this may prevent authorities from sharing information for the purposes of resolution planning and assessing resolvability.

⁵⁵ Spain (where the new legal framework for bank resolution includes requirements for recovery plans that will be implemented shortly on the adoption of rules), Switzerland (for systemically important banks), and the UK (where FSA rules requiring firms to prepare and submit RRP will be brought into force once the new prudential supervisor, the Prudential Regulation Authority, is in place).

⁵⁶ FSB member jurisdictions that are home or significant host jurisdictions to a G-SIFI have agreed to put in place initial resolution plans for those firms by June 2013. Progress in the development of RRP for G-SIFIs will be monitored and reported separately by the FSB.

⁵⁷ The frameworks in the UK and US extend to large investment firms and non-bank SIFIs respectively. Canada has requested certain insurers to complete recovery plans using general supervisory powers. Rules for FMI covering contingency or business continuity planning may also include some element of recovery planning.

⁵⁸ For example, Australia, Canada, Japan, South Africa, UK.

⁵⁹ Brazil, India.

⁶⁰ Italy.

⁶¹ Switzerland.

Cross-border information sharing is considerably more restricted. Eight FSB jurisdictions⁶² allow domestic authorities to share non-public information with foreign resolution authorities that are not supervisors. In many cases, information can be shared cross-border between supervisory authorities using existing supervisory gateways, but not as readily through other channels.⁶³ Supervisory gateways are not, however, sufficiently broad to allow confidential information to be shared with all foreign authorities that have a responsibility for planning or carrying out resolution of the firm in question.

In most cases, jurisdictions do not require a memorandum of understanding (MoU) as a condition for disclosure of information under existing gateways, but a number of jurisdictions indicated that a MoU was in practice a prerequisite or seen as desirable.

IV. Planned reforms to resolution regimes

Some jurisdictions have already undertaken major legislative reforms since the financial crisis to develop new or revise existing resolution regimes (see section II and Annex A). Several other FSB jurisdictions have either submitted formal reform plans to the national legislature or for public consultation, or have reforms under development (see Annex C). This is necessitated by the fact that in most cases the relevant legislation pre-dates the KAs. The reforms aim at a range of objectives, including: (i) strengthening the powers available for the resolution of financial institutions; (ii) expanding resolution regimes to non-bank financial sectors; and (iii) aligning resolution regimes with the KAs. Many of these jurisdictions are basing their draft legislation on selected elements of the KAs.

Jurisdictions are at varying stages of the reform process. Nine jurisdictions⁶⁴ have recently enacted relevant legislation and are preparing implementing rules and regulations. In most cases, these reforms apply to the banking sector and do not establish or extend resolution powers for non-banks. Eight jurisdictions and the European Commission (for the EU) have issued documents for public consultation or are preparing draft legislation to further strengthen their resolution regimes, including by extending the regime to insurers, securities or investment firms and/or FMIs.⁶⁵ In addition, nine jurisdictions are considering a variety of additional reforms to their resolution regimes.⁶⁶ Several other jurisdictions report that they are

⁶² Australia, Canada, France (where foreign authorities have similar functions to ACP and are subject to equivalent standards of professional secrecy), Hong Kong (subject to specified conditions set out in the relevant legislation), Saudi Arabia, Spain (in the case of non-EU resolution authorities, where the receiving authority is subject to equivalent standards of professional secrecy), UK, US.

⁶³ Argentina, Mexico, Russia, South Africa, Turkey.

⁶⁴ See Annex A for Australia, Germany, Netherlands, Spain, Mexico, UK, and US. In addition, Turkey enacted a new Capital Markets Law in December 2012 that revises the resolution regime for securities and investment firms (investor compensation, firm liquidation process, cooperation and information sharing with domestic and foreign authorities), while Canada amended the deposit insurance legislation in December 2012 to provide a limited automatic stay on the ability of certain counterparties of a failed CDIC member institution to terminate eligible financial contracts for one business day following the incorporation of a bridge institution.

⁶⁵ Australia (banks, insurers and FMIs), Brazil (banks, securities firms and FMIs), France (banks and investment firms), Germany (banks and FMIs licensed as banks), Indonesia (banks and insurers), Singapore (all FIs), South Africa (all FIs). The European Commission's legislative proposal covers banks and investment firms, while its consultation covers the need for a recovery and resolution framework for insurers and FMIs.

⁶⁶ Canada, Hong Kong, India, Japan, Mexico, Russia, Saudi Arabia, Switzerland, UK.

planning to introduce reforms requiring recovery and resolution plans for financial institutions that could have a systemic impact.

The proposed EU Directive on recovery and resolution, once approved, will represent a major step forward in aligning the resolution regimes of EU member states with the KAs (see Box 2).⁶⁷ The new Directive will apply to banks and investment firms, and to holding companies of those firms. The Directive introduces core resolution objectives and a set of common resolution powers for all EU members, including the transfer of assets and liabilities, establishment of a bridge bank, and powers to write down liabilities and to convert them to equity. It also requires resolution authorities to have the power to impose a temporary stay on the exercise of early termination rights under financial contracts when a firm enters into resolution. The Directive will also require resolvability assessments and recovery and resolution plans for banks and investment firms.

⁶⁷ See http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm for details.

Box 2: European Commission Legislative Proposal on Recovery and Resolution of Credit Institutions and Investment Firms

In June 2012, the European Commission published a draft Directive on recovery and resolution of credit institutions and investment firms.

Scope: The Directive covers banks and investment firms, EU holding companies of those firms and EU branches of non-EU banks and investment firms. It does not cover insurers or FMIs. EU member states are required to designate an administrative resolution authority, but have flexibility as to the nature of that authority (for example, it may be a separate resolution authority, or a function within a supervisory authority, the central bank, a ministry or other public authority).

Objectives and triggers: The objectives of the resolution authority must include (i) ensuring continuity of critical functions; (ii) avoiding negative effects on financial stability. (iii) protecting public funds, (iv) avoiding unnecessary destruction of value and minimizing the cost of resolution; and (v) protecting insured deposits, client funds and client assets. Conditions for resolution are (i) determination that the institution is failing or likely to fail; (ii) lack of alternative measures to prevent the failure, and (iii) the public interest.

Resolution powers and funding: Authorities should have the powers to:

- transfer assets, rights and liabilities of a failing firm to a private sector purchaser;
- establish and transfer assets, rights and liabilities to a bridge institution;
- establish and transfer assets to a separate asset management vehicle;
- write down and convert liabilities (including in an “open-bank” resolution of institutions);
- impose a temporary stay on the exercise of early termination rights under financial contracts; and
- require affiliated entities to provide services to a firm in resolution or successor firm (including a bridge institution or private sector purchaser).

In exercising resolution powers, resolution authorities must be able to override the firm’s shareholders and any requirements for consent from creditors. They should have the power to operate the institution under resolution, manage and dispose of the assets and property and remove and replace senior management. Losses should be borne first by the shareholders and creditors. EU member states are also required to establish financing arrangements, including provision for both ex ante and extraordinary ex post contributions from financial institutions, which may be used to fund resolution.

Legal framework for cross-border cooperation: Within the EU, the recovery and resolution framework prioritises resolution at group level, under the leadership of a group resolution authority, with strong coordination in the resolution college. The rights of EU host authorities are recognised by a provision for joint decision where possible. The directive provides for recognition of measures taken in resolution proceedings by non-EU countries unless those measures would have an adverse effect on EU financial stability.

Resolvability assessments and recovery and resolution planning: Resolvability assessments are required for all EU banks and investment firms at individual entity and group levels. The resolution authority must have the power to require firms to take measures to remove impediments to the firm’s resolvability. Recovery and resolution plans will also be required for all EU banks and investment firms, although the requirement is proportionate to the size and complexity of the firm. The plans must cover the holding companies.

Access to information and information sharing: Resolution authorities must cooperate closely with both supervisors and Finance Ministries. How and how much information is shared depends on national law. Information may be shared with third country authorities where professional secrecy standards are equivalent to those of the EU.

V. Conclusions and recommendations

1. Conclusions

The financial crisis highlighted the need to significantly enhance existing resolution regimes in FSB jurisdictions. While major legislative reforms have already been undertaken by some of those jurisdictions (particularly those directly impacted by the financial crisis) to develop new, or revise existing, resolution regimes, it is clear that implementation of the KAs is still at an early stage. This is not surprising as the KAs are a new international standard and the reforms needed to implement them may involve significant legislative changes.

Resolution regimes across FSB member jurisdictions exhibit a broad range of practices in terms of scope, mandates and powers of authorities. This is to be expected. The KAs do not prescribe the specific form of the resolution regime or particular type of resolution authority as long as that regime is consistent with the KAs. However, the responses to the questionnaire indicate that jurisdictions have different interpretations of what constitutes a ‘resolution regime’ and its relationship to ordinary insolvency regimes and powers for ordinary supervisory purposes (see recommendation 2a). This divergence in interpretation can make it difficult to draw definitive conclusions about the alignment of national powers across different sectors with the KAs. Additional clarification and guidance on the application of the KAs is therefore necessary to assist jurisdictions in implementation, facilitate monitoring, and ensure consistency in assessments of compliance with the KAs.

A number of features of resolution regimes in FSB jurisdictions are broadly consistent with the KAs. In particular, all jurisdictions are able to use some of the resolution powers specified in KA 3 in relation to banks, although they are not exercised in all cases by administrative resolution authorities. Nearly all jurisdictions have available one or both of the resolution powers specified in KA 3 for insurers (portfolio transfer and run-off), although in several cases those powers are exercised by a court-appointed administrator or liquidator in the context of a wind up. Most jurisdictions accompany resolution powers with some of the safeguards specified in KA 5, such as respect for the hierarchy of claims and a right for creditors to judicial review of resolution actions. Finally, many jurisdictions report that they can achieve at least some of the objectives of the KAs through existing supervisory powers – for example, powers to develop RRP or to require resolvability assessments for certain FIs.

Nevertheless, there are significant divergences from, or inconsistencies with, the KAs that need to be addressed. Moreover, additional clarification and guidance on the application of the KAs is needed in a number of areas to facilitate progress. The rest of this section sets out conclusions in respect of areas where further enhancement of resolution regimes by national authorities, or additional guidance by the FSB and relevant SSBs, may be necessary.

Comprehensive resolution powers for banks – KAs 1 and 3 (see recommendation 1a)

Although resolution regimes are generally more developed for banks than for other financial institutions, few jurisdictions have equipped administrative authorities with the full set of powers to resolve banks as set out in KA 3. For example, very few authorities have the statutory power both to write down and to convert liabilities of a failing institution (bail-in within resolution). In addition, in some cases resolution actions may require court approval or the cooperation of the failing firm or its shareholders, while in other cases resolution actions,

such as the transfer of assets and liabilities, are carried out by an administrator that may neither be mandated to achieve the objectives in the KAs nor subject to direction by the resolution authority.

Resolution regimes for non-bank FIs – KA 1 (see recommendations 1b, 2b)

Resolution regimes are most advanced for banks and progressively less so for insurers, securities or investment firms and FMIs, where both mandates and powers fall well short of the standards in the KAs. This in part reflects the less advanced state of guidance on the application of the KAs to those sectors.⁶⁸ For example, in many FSB jurisdictions there is no designated administrative resolution authority for securities or investment firms or FMIs. Powers for non-bank FIs are often supervisory in nature and do not achieve the outcomes specified in the KAs or are limited to firm liquidation or wind up at the instigation of the supervisor or, in some cases, through some form of specially adapted insolvency regime. It is important for financial stability that resolution powers are expanded to those sectors.

Powers to resolve financial groups – KA 1.1 (see recommendations 1c, 1d, 2c, 2d)

Most FSB jurisdictions lack powers to take control of the parent or affiliates of a failed FI, particularly if the FHC or significant operational affiliates are unregulated. This is a particular problem for G-SIFIs that tend to have integrated and highly complex structures. Further clarity as to the nature of powers needed for FHCs, non-regulated operational entities and branches of foreign FIs would also be desirable to ensure a consistent approach. In addition, few jurisdictions have in place a coordination framework that designates a lead authority where two or more domestic resolution authorities are responsible for resolving different entities of a financial group within the same jurisdiction. The lack of a designated lead authority may adversely impact the effectiveness of resolving a domestic mixed-activity financial group.

Cross-border effectiveness of resolution measures – KA 7 (see recommendations 1e, 2e)

The financial crisis demonstrated the need to strengthen arrangements for cross-border cooperation in dealing with failing FIs. However, national legal frameworks for cross-border cooperation in resolution are, overall, less well-developed across all sectors than other areas of the KAs. Only a few jurisdictions currently empower and encourage their resolution authorities through statutory mandates to cooperate and coordinate wherever possible with foreign resolution authorities. Moreover, the ability of existing mechanisms in many jurisdictions to give effect to foreign resolution actions remains unclear. Very few jurisdictions have provisions for expedited (administrative or court-based) procedures for recognition and enforcement by the resolution authority of actions taken by foreign authorities. This is a major weakness since it may undermine the legal certainty of resolution actions in relation to assets and liabilities in other jurisdictions and thereby jeopardise the effective implementation of resolution strategies for cross-border groups.

⁶⁸ The Foreword to the KAs recognises that not all resolution powers are suitable for all sectors and all circumstances. Guidance is currently under development by the FSB and sectoral standard setters on resolution regimes for non-bank FIs to better reflect the way in which the powers and tools set out in the KAs are applied when resolving such entities.

Information sharing for the purposes of resolution – KAs 7.6, 7.7 and 12 (see recommendation 1f)

Few FSB jurisdictions have clear and dedicated statutory provisions for domestic authorities to share confidential information with foreign resolution authorities. While most jurisdictions rely on existing powers to disclose non-public information for supervisory purposes, these powers may not be sufficiently broad to allow such information to be shared with all domestic and foreign authorities that are not supervisors but have a responsibility for planning or carrying out resolution. Unless home and host authorities have the capacity to share such information, it is unrealistic to expect them to meaningfully discuss cross-border resolution strategies and plans or to cooperate effectively in a crisis.

Treatment of financial contracts in resolution – KA 4 (see recommendation 1g)

Resolution authorities in most jurisdictions either lack powers to impose a temporary stay on the exercise of contractual acceleration or early termination rights in financial contracts that arise by reason only of entry into resolution or in connection with the exercise of resolution powers or, where the power exists, it is not subject to suitable safeguards.

Funding – KA 6 (see recommendation 2f)

Funding arrangements differ greatly across sectors and jurisdictions. Most jurisdictions rely on privately funded protection funds to finance resolution actions, but it is not clear whether such arrangements are adequate or appropriate in terms of scale or scope. Public financial support therefore remains an important component of resolution funding arrangements for SIFIs. Mechanisms for the recovery of public funds are not well developed, while conditions on their use are largely absent. It is important that funding arrangements do not give rise to moral hazard and that any temporary public funding is subject to conditions and mechanisms for loss absorption by equity and unsecured debt claims, and recovery of public funding from the financial sector.

Recovery and resolution planning and actions to improve resolvability – KAs 10 and 11 (see recommendations 1h, 1i, 2g)

In most jurisdictions, there is no explicit requirement in statute or rules for RRP for domestic SIFIs. Moreover, most authorities lack the power to require firms to make changes to their organisational and financial structures solely in order to improve their resolvability and in advance of resolution. Both of these findings are inconsistent with the requirements of the KAs (KA 11.1 and 10.5 respectively).

Operational capacity to resolve complex SIFIs – KA 2 (see recommendation 2h)

However good a resolution regime might look in statute, it will not be effective unless the national authorities responsible for resolution have the operational capacity – including staff with the appropriate level and range of expertise, and adequate resources – to resolve complex financial groups and SIFIs. This critical dimension cannot be verified in a desktop exercise such as the peer review and will need to be assessed in on-site IMF-World Bank country assessments using suitable criteria in the assessment methodology for the KAs.

Rigorous monitoring of implementation progress in aligning resolution regimes in FSB jurisdictions with the KAs (see recommendation 3)

Several FSB jurisdictions are implementing or considering reforms to their resolution regimes. Given the early stage of those reforms, a rigorous monitoring framework needs to be developed to ensure comprehensive reporting of progress by jurisdictions in aligning their resolution regimes with the KAs. While future “deep dive” peer reviews will be useful in that regard, they should be complemented by regular reports using a standardised template to enhance the reporting of implementation progress by jurisdiction, sector and KA.

2. Recommendations

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

- Actions by national authorities to ensure that their resolution regimes are fully aligned with the KAs;
- Actions by the FSB to develop additional guidance or to provide clarification in the assessment methodology for the KAs to facilitate consistent implementation across jurisdictions; and
- Actions by the FSB and relevant SSBs to promote effective implementation monitoring in this area.

Work on some of the recommendations addressed to the FSB is already underway.⁶⁹ Most of the recommendations that involve actions by national authorities can – and should – be implemented now without waiting for additional FSB guidance. Jurisdictions may consider establishing a phased reform program to address the issues identified below. In some cases, early work on resolution planning and resolvability assessments, including the introduction of resolution planning requirements to all firms that could have an impact on financial stability in the event of failure, may reveal specific weaknesses or gaps in the powers needed for effective resolution and thereby assist jurisdictions in the development of such a program.

Recommendation 1: Full implementation of the Key Attributes

FSB member jurisdictions should undertake the following actions to introduce, or revise their existing, resolution regimes for financial institutions in order to fully implement the KAs:

- a. Reviewing, and revising as needed, resolution regimes for banks to ensure that all the powers set out in KA 3, including powers to transfer assets and liabilities and powers to write-down and convert debt within resolution, are available to administrative resolution authorities;
- b. Reviewing the adequacy and effectiveness of resolution regimes for non-bank FIs, and adopting any necessary reforms to ensure that administrative resolution authorities with adequate powers are designated for those institutions;

⁶⁹ For example, guidance is being developed on information sharing for resolution purposes, the protection of client assets in resolution, and the implementation of the KAs in relation to insurers and FMIs. Other recommendations will be addressed in the assessment methodology for the KAs that is also under preparation.

- c. Extending the scope of resolution regimes to financial holding companies, non-regulated operational entities that are significant to the critical functions carried out within the group, and branches of foreign financial firms;⁷⁰
- d. Where multiple resolution authorities exist, strengthening coordination frameworks and designating a lead authority for resolving domestic entities of the same group;
- e. Enhancing the mandates and capacity of resolution authorities to cooperate and coordinate measures across borders;
- f. Reviewing the domestic legal framework for information sharing, and revising it as needed to ensure that domestic authorities can share information with all relevant domestic and foreign authorities for planning and carrying out resolution;
- g. Introducing powers to impose a temporary stay on the exercise of contractual acceleration or early termination rights in financial contracts, subject to suitable safeguards as described in KA 4 and Annex IV to the KAs;
- h. Introducing a RRP requirement for all domestically incorporated firms that could be systemically significant or critical if they fail; and
- i. Empowering supervisory or resolution authorities to require financial institutions to adopt changes to their structure, organisation or business practices where it is necessary to improve their resolvability.

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

The FSB should provide additional clarification and guidance on the application of the KAs to assist jurisdictions in implementation, facilitate monitoring, and ensure consistency in assessments of compliance with the KAs, by:

- a. Clarifying the nature of resolution powers compared with the ordinary corporate insolvency regime and powers for ordinary supervisory purposes;
- b. Working with SSBs to develop guidance on the features and powers necessary for resolution regimes in each non-bank financial sector to meet the standards of the KAs;
- c. Developing guidance on the nature of powers needed for FHCs, significant non-regulated operational entities, and branches of foreign financial firms;
- d. Developing guidance and identifying good practices for coordination where two or more domestic resolution authorities are responsible for resolving entities of the same financial group;
- e. Taking stock of mechanisms to give effect to foreign resolution measures – such as administrative and judicial powers of recognition and contractual mechanisms requiring counterparties to recognise the exercise of powers by a foreign resolution authority – and evaluating their effectiveness (e.g. in terms of timing and predictability) in the implementation of cross-border resolution strategies;
- f. Taking stock of resolution funding arrangements across jurisdictions, and identifying good practices so that temporary public funding does not give rise to moral hazard and

⁷⁰ The recommendation concerning branches of foreign financial firms should not apply where jurisdictions are subject to a binding obligation to respect the resolution of financial institutions under the authority of the home jurisdiction (for example, the European Union’s Winding up and Reorganisation Directives).

- is subject to conditions and mechanisms for recovery from private sector sources;
- g. Clarifying the nature and scope of the powers that authorities should have to require firms to take measures to improve their resolvability; and
 - h. Ensuring that the assessment methodology for the KAs contains suitable criteria to assess the operational capacity of resolution authorities.

Recommendation 3: On-going implementation monitoring

The FSB should undertake monitoring and reporting on the implementation of the KAs by:

- a. Developing a standardised reporting template to facilitate the analysis of implementation progress by jurisdiction, sector and KA;
- b. Undertaking follow-up peer reviews focused on resolution powers, cross-border cooperation and information sharing, and recovery and resolution planning; and
- c. Carrying out, in coordination with relevant SSBs, peer reviews on the application of the KAs to individual non-banking sectors (insurance, investment and securities firms, FMIs) once relevant guidance by those bodies is issued.

Annex A: Recent Major Legislative Reforms in FSB Jurisdictions

Australia

Legislation was enacted in 2008 and 2010 to strengthen the crisis resolution powers available to APRA, including with respect to powers of direction, business transfer powers, statutory management for authorised deposit-taking institutions (ADIs), and judicial management for general and life insurers. As a result of this legislation, APRA can facilitate recapitalisation of a distressed ADI or insurer in a manner that by-passes the normal requirements and processes for shareholder consent. APRA can also appoint a statutory manager to assume control and implement a wide range of open and closed resolutions. The legislative changes also enable APRA to establish a bridge ADI or insurer.

The Australian government released a discussion paper in September 2012 with proposals for further reforms to APRA's crisis management powers. The Government is also considering the recommendations made by the Council of Financial Regulators on strengthening resolution powers in respect of FMIs and will consult further with stakeholders before finalising any legislation.

Germany

The German Restructuring Act entered into force on January 1, 2011 and included three main elements for restructuring entities: (i) procedural provisions for a two-stage restructuring procedure for credit institutions; (ii) regulations regarding the transfer orders; and (iii) the establishment of a Restructuring Fund. In addition, BaFin's preventative prudential instruments were strengthened and extended; for example, BaFin was given the power to appoint a special representative to an institution during early stages of a crisis.

Restructuring procedure: Two new procedures were introduced for distressed institutions: a restructuring procedure and a reorganisation procedure. The restructuring procedure cannot affect third party rights. The Federal Financial Supervisory Authority (BaFin) assesses whether the plan complies with the legal requirements, is plausible and the relevant advisor is competent. On a positive assessment, BaFin submits the plan to the Higher Regional Court. The second procedure is reorganisation: this applies where the credit institution believes there are no alternatives or the stability of the financial system at risk and is able to affect third party rights (e.g. liquidation, deferral or partial write down of liabilities, debt to equity swaps, share capital reduction, capital increase, spin-offs). Both procedures are initiated by the credit institution at its own discretion.

Transfer order: The German Banking Act provides for the transfer of the whole business, or a partial transfer of the assets and liabilities. It extends the measures available to BaFin to stabilise a bank if the non-viability of that bank presents a risk to the stability of the financial system, without the consent of the bank's management, creditors and shareholders. The transfer order may be issued only if the stability of the financial system at risk and the systemic risk cannot be eliminated in any other manner. The Financial Market Stabilisation Authority (FMSA), in coordination with BaFin, is responsible for measures following a transfer order, including the establishment of a bridge bank, measures necessary to give effect

to the transfer of assets and liabilities of the failed institution to the bridge bank and the valuation of assets.

Restructuring Fund: Almost all credit institutions in Germany have to contribute to the fund. The fund can use its financial capacity to establish bridge banks and the acquisition of shares, issue guarantees and adopt recapitalisation and other measures. The Restructuring Fund is administered and the decisions on allocation of its resources are taken by FMSA.

Mexico

Amendments to existing laws (Banking Law, Law to Regulate Financial Groups, Bank Savings Protection Law) since 2006 have created a bank resolution framework that allows financial authorities to intervene in troubled banks and undertake resolution actions such as the transfer of assets and liabilities and the establishment of a bridge bank. The framework also establishes a special procedure for dealing with institutions whose failure could have systemic consequences.

In March 2013, this framework was strengthened by amendments to the “*Amparo Law*”, the effects of which are that resolution processes can no longer be suspended by a request for judicial review. Those amendments provide that courts may only grant a suspension when social interests and public interest provisions are not affected, but specify that such interests and provisions would be affected by, among other things, the suspension of resolution measures for financial entities that are taken by the authorities in order to protect depositors or the stability of the payment system.

Netherlands

The Dutch resolution framework was broadened to address the risks posed by systemically relevant banks.

The Dutch Intervention Act for Financial Institutions authorises the Dutch Central Bank (DNB) to adopt a Transfer Plan for the transfer of bank deposits, (other) assets and liabilities of a bank or insurance company, or issued shares in the capital of a bank or insurance company. A Transfer Plan may be adopted when a bank or insurance company faces difficulties relating to solvency, liquidity or compliance with regulatory ‘technical provisions’ that cannot be reversed in a timely manner. The resolution powers of the DNB are limited to licensed banks and insurers, and do not apply to foreign branches of European Economic Area banks or to securities or investment firms.

If the stability of the financial system is at risk, the Minister of Finance may intervene in a financial firm or its parent company or expropriate assets or liabilities of a bank, insurance company, another financial firm, or the parent company. The resolution powers of the Dutch Minister of Finance apply to all “financial undertakings” defined as: (i) a bank; (ii) a management company; (iii) a collective investment scheme; (iv) an investment firm; (v) a payments service provider; (vi) a depositary; (vii) a clearing institution; (viii) a risk accepting entity; (ix) a financial service provider; (x) a financial institution; (xi) a pension depositary; (xiii) an insurer; or (xiv) a money transaction office.

The scope of application is not limited by an institution’s size or systemic importance. Nevertheless, the systemic relevance is considered when selecting resolution options. The

systemic criterion, however, is not an institution's size or systemic importance, but rather the systemic relevance of the failure.

Spain

Following the financial crisis, the Spanish government strengthened the deposit insurance agency (FGD), which is able to provide financial support in resolution, and in June 2009 created the Bank Resolution Authority (FROB) to assist the reorganisation of the banking industry. In addition, an asset management company (Sareb) has recently been established with the main purpose of taking over and managing real estate and related problem assets from the banks.

A new legal framework for bank resolution entered into force on 31 August 2012. The framework aims at improving the regime that had been in force since 2009, and takes into account the EU legislative proposal on the recovery and resolution of banks and investment firms. Under the new framework, the FROB is able to provide temporary financial support for the restructuring and resolution of banks in difficulties. Support during the restructuring period may take the form of guarantees, loans, subordinated debt, or acquisition of assets or capital injections. The FROB also has the authority to draw up plans for the resolution of non-viable banks that specify one or more of the following actions: sale to a third party purchaser; transfer of assets to a bridge bank or Sareb; and liability management exercises (although the power to restructure debt is limited to subordinated liabilities and expires in June 2013). Moreover, the FROB has the power to take over managerial functions of banks in resolution.

Switzerland

Following the financial crisis, the Swiss Banking Act was revised in 2011 and 2012 to include specific requirements for systemically important banks and additional restructuring provisions. The Banking Act provides for early intervention rights and an accelerated restructuring and resolution procedure under the lead of FINMA including, in particular, bail-in powers and powers to transfer assets and liabilities to another legal entity. The Banking Ordinance has also been amended to address recovery and resolution planning and improvements to the resolvability of systemically important banks. In addition, FINMA issued the Bank Insolvency Ordinance at the end of 2012 to bring together the different provisions on bank bankruptcy and restructuring, thereby creating an effective and coherent set of regulations.

United Kingdom

The Banking Act 2009 created a Special Resolution Regime (SRR) that replaced emergency legislation introduced in order to deal with the failure of banks and building societies. The SRR gave the Bank of England (BoE) a key role in implementing a resolution, allowing the authorities to:

- transfer all or part of a bank's business to a private sector purchaser;
- transfer all or part of a bank's property to a bridge bank;
- place a bank into temporary public ownership (the Treasury's decision);

- apply to put a bank into the Bank Insolvency Procedure for rapid depositor pay-out or transfer to another financial institution.

Under the Banking Act, the Financial Services Authority, in consultation with the BoE and the Treasury, makes the decision to put a bank into the SRR. The Treasury decides whether to put a bank into temporary public ownership, and the BoE, in consultation with the other authorities, decides which of the tools to use and implements the resolution.

The Financial Services Act, which received Royal Assent in December 2012, extends the resolution regime to investment firms, CCPs and related group companies (including those of banks). The Act will take effect once the secondary legislation has been finalised.

United States

The Dodd-Frank Act was enacted in July 2010 to enhance the supervision of financial institutions—particularly large bank and non-bank financial companies—and require certain financial institutions (including those deemed to be systemically important) to develop resolution plans to facilitate a rapid and orderly resolution under the US Bankruptcy Code. Under the reforms, the Federal Deposit Insurance Corporation’s (FDIC) resolution authority is significantly expanded. The Dodd-Frank Act also provides a framework for better coordination between authorities through the establishment of an interagency council—the Financial Stability Oversight Council—to detect and deter emerging threats to the financial system.

The orderly liquidation authority under Title II of the Dodd-Frank Act includes broad authorities to restructure and wind-up failing financial companies that meet certain systemic criteria. The powers granted to the FDIC as receiver under Title II of the Dodd-Frank Act are analogous to those the FDIC uses to resolve failed insured depository institutions under the FDI Act. These include: (i) an immediate source of liquidity for an orderly liquidation, which allows continuation of essential functions and maintains asset values; (ii) the ability to make advance dividends on creditor claims and prompt distributions to creditors based upon expected recoveries; (iii) the ability to continue key, systemically important operations, including through the formation of one or more bridge financial companies; and (iv) the ability to transfer all qualified financial contracts with a given counterparty to another entity (such as a bridge financial company) and avoid their immediate termination and liquidation to preserve value and promote stability.

Annex B: Selected Features of Resolution Regimes in FSB Jurisdictions

Jurisdiction	Scope and authority (KAs 1, 2)	Powers for banks (KA 3)	Creditor safeguards and funding (KAs 4, 5, 6)	Cross-border cooperation and information sharing (KAs 7, 12)	RRPs and resolvability assessments (KAs 10, 11)
Argentina	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks and insurance companies, but not for securities firms or FMIs (1) • No power over non-regulated FHCs • Multiple authorities (BCRA: banks; SSN: insurers) • No lead authority for resolution of entities of the same group 	<ul style="list-style-type: none"> • Powers of RA: <ul style="list-style-type: none"> - Require increase or sale of the capital of an institution - Transfer assets and liabilities - Transfer trust ownership of assets - Establish control of the institution • Power to override shareholders' rights limited to forced recapitalisation or to require shareholders to transfer their shares • Missing powers: <ul style="list-style-type: none"> - Bail-in within resolution - Impose temporary stay on early termination rights - Establish bridge bank - Establish AMC - Require group companies to provide services 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No right to compensation for creditors that suffer greater losses in resolution than in insolvency • No separate resolution funds • Privately funded protection fund for banks • Temporary public ownership is not possible as part of resolution action • Existence of mechanism for recovery of public funds 	<ul style="list-style-type: none"> • No legal mandate for cross border cooperation • No mechanism for giving effect to foreign resolution actions • No differential treatment by location of claim • Only the central bank (supervisor) is allowed to share information with foreign counterparts 	<ul style="list-style-type: none"> • Powers to require changes to firm structures • No supervisory requirement for resolvability assessments • No supervisory requirement for RRP
Australia	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks and insurers, but not for securities firms or FMIs (1) • Powers only over authorised FHCs (banks and insurers) • No powers over non-regulated FHCs or non-regulated group entities • Single authority: APRA (banks and insurers) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Remove and replace senior management - Appoint administrator - Operate and resolve bank through appointment of statutory manager - Transfer assets and liabilities - Establish and operate a bridge institution - Transfer assets to an AMC • Missing powers: <ul style="list-style-type: none"> - Require group companies to provide services (other than powers of direction for authorised banks, insurers and non-operating holding companies) - Bail-in within resolution - Impose temporary stay on early termination rights • Powers exercisable without shareholder consent 	<ul style="list-style-type: none"> • Departure from equal treatment of creditors of the same class possible in the exercise of transfer powers • General right to compensation for interference with property, including where creditors receive less in resolution than in liquidation • No resolution or privately funded protection funds • No formal mechanism for recovery of public funds. FCS costs recovered through priority claims in liquidation and industry levies 	<ul style="list-style-type: none"> • Statutory provision requiring trans-Tasman cooperation • No mechanism for giving effect to foreign resolution actions (requires court order) • Authorities able to share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments • Some supervisory powers to require changes to firm structures, but not clear whether they can be applied for purposes of resolvability • No legal requirements for RRP, but possible under general supervisory powers; pilot programme for recovery planning undertaken for six largest banks • No legal requirements for review of recovery plans • No specific powers to require changes to recovery plans, but possible under general supervisory powers

Brazil	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers, and securities firms (1) • Powers over FHCs and non-regulated group companies • Multiple authorities (BCB: banks, securities firms; SUSEP: insurers) • No lead authority for resolution of entities of the same group 	<ul style="list-style-type: none"> • Powers of the RA <ul style="list-style-type: none"> - Operate a firm - Require continued essential services (if part of banking group) - Transfer assets liabilities - Establish a bridge bank - Establish an AMC • Missing powers: <ul style="list-style-type: none"> - Override shareholder rights - Bail-in within resolution - Impose temporary stay on early termination rights 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No safeguards for creditors with greater losses than in liquidation • No separate resolution funds • Privately funded protection fund for banks • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • Implicit policy to encourage cross-border cooperation • No differential treatment by location of claim • No administrative mechanism for giving effect to foreign resolution actions • Only the central bank (supervisor and RA for banks) can share information with foreign counterparts 	<ul style="list-style-type: none"> • Supervisory powers to require changes to firm structures • No supervisory requirement for resolvability assessments • No supervisory requirement for RRP
Canada	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks and insurers, but not for securities firms or FMIs (1) • No powers over FHCs or significant non-regulated group entities • Multiple authorities (CDIC: banks, OSFI/Assuris: some powers for insurers, but not designated resolution authorities) • No lead authority for resolution of entities of the same group 	<ul style="list-style-type: none"> • Powers to: <ul style="list-style-type: none"> - replace firm management - appoint an administrator - operate and resolve the firm - transfer assets and liabilities establish temporary bridge institution - establish AMC - impose temporary stay on early termination rights - effect closure/liquidation • Powers exercisable without shareholder or creditor consent • Missing powers: <ul style="list-style-type: none"> - Require companies in same group to provide services - Bail-in within resolution 	<ul style="list-style-type: none"> • Ability to depart from equal treatment of creditors of the same class • Right to compensation for creditors that suffer greater losses in resolution than in insolvency • No separate resolution funds • Privately funded protection fund for banks, insurers and securities firms • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • Implicit policy to encourage cross-border cooperation • No differential treatment by location of claim • No mechanisms for giving effect to foreign resolution actions (requires court order) • Ability to share non-public information with foreign resolution authorities (except for Bank of Canada in the case of FMIs) 	<ul style="list-style-type: none"> • Resolution authority (CDIC) assesses the resolvability of banks as part of its preparation of resolution plans • No powers to require changes to firm structures for resolvability purposes • Supervisory requirement for recovery plans (only for SIFIs) • Requirements for minimum recovery plan content • Resolution plans are prepared annually by the RA (banks) • Resolution plans are reviewed annually by authorities
China	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers and securities firms, but not FMIs (1) • No power over FHCs or non-regulated group entities • Multiple authorities (PBC/CBRC: banks; CIRC: insurers; CSRC: securities firms) • Lead authority for resolution of entities of the same group (PBC) 	<ul style="list-style-type: none"> • Powers to: <ul style="list-style-type: none"> - replace firm management - appoint administrator - operate or resolve the firm - require group companies to provide services - transfer assets and liabilities • Powers exercisable without shareholder or creditor consent • Missing powers: <ul style="list-style-type: none"> - Bail-in within resolution - establish temporary bridge institution - establish AMC - impose temporary stay on early termination rights 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No power to compensate for creditors that suffer greater losses in resolution than in insolvency • No separate resolution funds • Privately funded protection fund for insurers and securities firms • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • Policy to support cross-border cooperation • No mechanisms for giving effect to foreign resolution actions • Information sharing limited by law 	<ul style="list-style-type: none"> • Supervisory requirements for resolvability assessments • Powers to require changes to firm structure and business practices • Supervisory requirements for RRP (systemically important or critical)
France	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers, investment firms 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Replace management with an administrator - Operate firm through a provisional 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class 	<ul style="list-style-type: none"> • Legal provision provides for cross-border cooperation • No mechanisms for giving 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments, but undertaken for G-SIFIs using

	<ul style="list-style-type: none"> and CCPs (1) • Powers over non-regulated FHCs • No powers in relation to unregulated group entities • Multiple authorities (ACP: banks, insurers, CCPs; ACP & AMF: investment firms) • Lead authority for resolution of entities of the same group (ACP) 	<ul style="list-style-type: none"> administrator • Missing powers: <ul style="list-style-type: none"> - Require group companies to provide services - Transfer assets and liabilities - Establish bridge bank - Establish AMC - Bail-in within resolution - Impose temporary stay on early termination rights • Powers of provisional administrator to operate firm are exercisable without shareholder consent 	<ul style="list-style-type: none"> • No right to compensation where creditor worse off as a result of partial property transfer than in liquidation • No separate resolution funds • Privately funded protection fund for banks and investment firms • Temporary public ownership not possible as part of resolution action • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> effect to foreign resolution actions (requires court order) • Authorities able to share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> supervisory powers • No powers to require changes to firm structures • No legal requirement for RRP (including their review and changes to them), but possible using supervisory powers
Germany	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks (including FMI since they are licensed as banks) and insurers, but not for investments firms (1) • Powers over bank FHCs in some circumstances • Limited powers in relation to unregulated group entities • Authorities with different functions (BaFin: for banks and insurers, triggers resolution and determines the resolution method, issues transfer order; FMSA: implements transfer order and administers restructuring fund for banks) • Lead authority for resolution of entities of the same group (BaFin) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Replace senior management - Appoint administrator (special representative) - Operate firm through special representative: no direct powers - Transfer A & L to bridge bank or purchaser - Establish and operate bridge bank - Establish and operate AMC • Missing powers: <ul style="list-style-type: none"> - Require group companies to provide services (3) - Bail-in within resolution - Impose temporary stay on early termination rights • Transfer powers exercisable without shareholder consent 	<ul style="list-style-type: none"> • No explicit provision, but departure from equal treatment of creditors of the same class possible subject to compensation • Right to compensation where bank creditor worse off as a result of transfer order than in liquidation • Privately funded resolution fund and protection fund for banks • Mechanism for recovery of public funds from financial system participants 	<ul style="list-style-type: none"> • Legal provision to encourage cross-border cooperation limited to notification within EEA: otherwise policy of cooperation with foreign authorities • No mechanisms for giving effect to foreign resolution actions (requires court order) • Authorities able to share non-public information with foreign resolution authorities (with the exception of finance ministries) 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments: some assessment carried out under supervisory powers • No powers to require changes to firm structures for purposes of resolvability • No general legal requirement for RRP currently in force, but may be required from firms that are subject to restructuring and reorganisation process • No legal requirements for review of recovery plan • No specific powers to require changes to recovery plans
Hong Kong	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks and insurers (through appointed manager), but not for securities firms or FMIs (1) • No powers over FHCs • No powers over non-regulated group entities • Multiple authorities (HKMA: banks; IA: insurers) • No lead authority for resolution of entities of the 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - remove, but not appoint, senior management - appoint a manager - operate bank through appointment of manager (no direct power) - transfer assets - establish AMC • Missing powers: <ul style="list-style-type: none"> - transfer liabilities - bridge bank - bail-in within resolution - Impose temporary stay on early 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No right to compensation where creditor worse off than in liquidation • No separate resolution fund • Privately funded protection fund for deposits, certain statutory insurance policies, and specified securities or futures contracts 	<ul style="list-style-type: none"> • Legal provision to require cooperation with both domestic and foreign authorities • No mechanisms for giving effect to foreign resolution actions • Authorities able to share non-public information with foreign resolution authorities (subject to certain preconditions) 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments • Supervisory powers to require changes to firm structures (can be used for purposes of resolvability) • No requirement for RRP

	same group	<ul style="list-style-type: none"> termination rights <ul style="list-style-type: none"> - require group companies to provide services Regime does not provide for exercise of powers without shareholder consent 	<ul style="list-style-type: none"> Temporary public ownership is not possible as part of resolution action No mechanism for recovery of public funds (2) 		
India	<ul style="list-style-type: none"> Limited specific powers to restructure and/or wind up banks, but not for insurers, securities firms or FMIs (1) No powers over FHCs or non-regulated group entities Single authority for banks (RBI) 	<ul style="list-style-type: none"> Powers to: <ul style="list-style-type: none"> - replace firm management - operate and resolve the firm - appoint an administrator (banks) Powers exercisable without shareholder or creditor consent Missing powers: <ul style="list-style-type: none"> - require group companies to provide services - transfer assets and liabilities - establish bridge institution - bail-in within resolution - establish AMC - impose temporary stay on early termination rights 	<ul style="list-style-type: none"> No power to depart from equal treatment of creditors of the same class No right to compensation for creditors that suffer greater losses in resolution than in insolvency Temporary public ownership is not possible as part of resolution action (4) No separate resolution fund Privately funded protection fund for banks No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> Implicit policy supporting cross-border cooperation No mechanisms for giving effect to foreign resolution actions No authority to share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> No requirements for resolvability assessments No powers to require changes to firm structure and business practices No requirements for RRP
Indonesia	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks, but not for insurers, securities firms or FMIs (1) No powers over FHCs or non-regulated group entities Multiple authorities for banks: IDIC: non-systemic banks; FSSF: systemic banks 	<ul style="list-style-type: none"> Powers to: <ul style="list-style-type: none"> - replace firm management - appoint administrator - operate and resolve the firm - require group companies to provide services - transfer assets and liabilities - establish temporary bridge institution Powers exercisable without shareholder or creditor consent Missing powers: <ul style="list-style-type: none"> - impose temporary stay on early termination rights - establish AMC - bail-in within resolution 	<ul style="list-style-type: none"> No power to depart from equal treatment of creditors of the same class No right to compensation for creditors that suffer greater losses in resolution than in insolvency No separate resolution fund Privately funded protection fund for banks No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> Legal framework supports and encourages cross-border cooperation No mechanisms for giving effect to foreign resolution actions Resolution authorities can share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> No requirements for resolvability assessments Powers to require changes to firm structure and business practices No requirements for RRP
Italy	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks, insurers, securities firms and FMIs (1) Powers both over FHCs and non-regulated group entities for banks and insurers Multiple authorities (BoI: banks; IVASS: insurers; BoI and CONSOB: securities) 	<ul style="list-style-type: none"> Powers of the RA: <ul style="list-style-type: none"> - Appoint administrator - Temporarily operate firm - Continuity of services to group - Replace management - Transfer assets and liabilities - Establish AMC Powers exercisable without shareholder or creditor consent Missing powers: 	<ul style="list-style-type: none"> No power to depart from equal treatment of creditors of the same class No separate resolution fund Privately funded protection fund for banks and securities firms Temporary public ownership is not possible as part of resolution action 	<ul style="list-style-type: none"> Legal provisions encourage cross border cooperation No mechanisms for giving effect to foreign resolution actions No differential treatment of creditors by location Mechanisms exist for giving effect to foreign resolution actions in the EU 	<ul style="list-style-type: none"> No powers to require changes to firm structures for resolvability purposes Policy for supervisory requirement for resolvability assessments Supervisory requirement for RRP (only for G-SIFIs)

	<p>firms and FMIs)</p> <ul style="list-style-type: none"> Lead authority for resolution of entities of the same group (sectoral regulator) 	<ul style="list-style-type: none"> Bail-in within resolution Impose temporary stay on early termination rights Establish bridge bank - 	<ul style="list-style-type: none"> No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> Central bank, supervisors, and resolution authorities can share information with foreign counterparts 	
Japan	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks and insurers, but not securities firms or FMIs (1) No powers over FHCs or non-regulated group entities Single authority (FSA) 	<ul style="list-style-type: none"> Powers of RA: <ul style="list-style-type: none"> Operate firm Replace management Transfer assets and liabilities Establish bridge bank Establish AMC Court approval required for powers to be exercisable without shareholder consent Missing powers: <ul style="list-style-type: none"> Bail-in within resolution Impose temporary stay on early termination rights 	<ul style="list-style-type: none"> No power to depart from equal treatment of creditors of the same class (except in court-led rehabilitation and reorganisation proceedings) Creditors with greater losses than in liquidation can be compensated Privately funded resolution fund for banks (separate from DICJ fund for depositor protection) Privately funded protection fund for banks and insurers Mechanism exists for recovery of public funds (banks and insurers) 	<ul style="list-style-type: none"> Legal provisions empower cross border cooperation Mechanisms exist for giving effect to foreign resolution actions Differential treatment of creditors by location A liquidator can be appointed for a branch of a foreign bank. Supervisor (resolution authority) and central bank can share information with foreign resolution authorities 	<ul style="list-style-type: none"> Powers to require changes to firm structure and business practices Supervisory authority to require resolvability assessments Supervisory requirement for RRP
Korea	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks, insurers, and securities firms, but not FMIs (1) Powers over FHCs Multiple authorities (FSC/KSS/KDIC for banks, insurers and securities firms) Lead authority for resolution of entities of the same group (FSC) 	<ul style="list-style-type: none"> Powers to: <ul style="list-style-type: none"> replace firm management appoint administrator operate and resolve the firm transfer assets and liabilities establish temporary bridge institution establish AMC Powers exercisable without shareholder or creditor consent upon determination of insolvency by FSC Missing powers: <ul style="list-style-type: none"> require group companies to provide services impose temporary stay on early termination rights bail-in within resolution 	<ul style="list-style-type: none"> No power to depart from equal treatment of creditors of the same class No power to compensate for creditors that suffer greater losses in resolution than in insolvency No separate resolution fund Privately funded protection fund for banks, insurers and securities firms No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> No mechanisms for giving effect to foreign resolution actions RA has expanded information sharing through MOU FSC/FSS can share non-public information with overseas resolution authorities 	<ul style="list-style-type: none"> Powers to require changes to firm structure and business practices No requirements for resolvability assessments No requirements for RRP
Mexico	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks and insurers, but not securities firms or FMIs (1) No powers over FHCs or non-regulated group entities Multiple authorities (IPAB: banks; SHCP: insurance) No lead authority for resolution of entities of the 	<ul style="list-style-type: none"> Powers of RA: <ul style="list-style-type: none"> Temporarily operate firm Replace management Transfer assets and liabilities Establish bridge bank Establish AMC Powers exercisable without shareholder consent Missing powers: <ul style="list-style-type: none"> Require continued services to group 	<ul style="list-style-type: none"> No power to depart from equal treatment of creditors of the same class No explicit procedure for compensation for creditors with greater losses than in liquidation, but regime specifies that creditors should not be worse off as a result of P&A than in liquidation 	<ul style="list-style-type: none"> No legal mandate for cross border cooperation (5) No mechanism for giving effect to foreign resolution actions (5) No differential treatment by location of claim Only the supervisor is allowed to share information with foreign authorities carrying 	<ul style="list-style-type: none"> No requirement for resolvability assessments or RRP No powers to require changes to firm structures and business practices

	same group	<ul style="list-style-type: none"> - Bail-in within resolution - Impose temporary stay on early termination rights (unless subject to P&A) 	<ul style="list-style-type: none"> • No separate resolution fund • Privately funded protection fund for banks • No mechanism for recovery of public funds (2) 	out regulatory or supervisory functions	
Netherlands	<ul style="list-style-type: none"> • Specific powers to restructure and wind up banks and insurers, and investments firms and FMIs legally defined as “financial undertakings” (1) • DNB has no powers over FHCs (powers limited to holding companies that are banks) but MoF has such powers • No powers over non-regulated group entities • Multiple authorities (DNB and MoF) • MoF lead authority where stability of the financial system is at risk. Otherwise, DNB is the lead authority (but requires consent of MoF for a transfer of ownership of the bank in resolution) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Remove and appoint senior management - Appoint ‘silent’ administrator - Transfer A & L and ownership - Establish and operate bridge bank - Transfer assets to AMC • Powers exercisable without shareholder consent • Missing powers: <ul style="list-style-type: none"> - Power to require group companies to provide services - Operate a firm (except via bridge bank) - Bail-in within resolution - Impose temporary stay on early termination rights 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No right to compensation where creditor worse off than in liquidation (because transfer not permitted in those circumstances) • No separate resolution fund • Privately funded protection fund for banks • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • No explicit legal provision to encourage cross-border cooperation (other than within EU) • No mechanisms for giving effect to foreign resolution actions • Powers to share non-public information with foreign (non-EEA) resolution authorities (with the exception of finance ministries) in emergency situations, subject to confidentiality arrangements of receiving authority. Powers more restricted when not an emergency. 	<ul style="list-style-type: none"> • Requirement for resolvability assessments some assessment for all systemically important banks • No powers to require changes to firm structures for purposes of resolvability • Supervisory requirement for RRP for all systemically important banks • Supervisory requirement for review of recovery plan • Powers to require changes to recovery plans
Russia	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers, securities firms and FMIs (1) • No powers over FHCs or non-regulated group entities • Multiple authorities (BoR and DIA: banks and other credit institutions; FFMS: insurers, securities firms and FMIs that are not credit institutions) • No lead authority for resolution of entities of the same group 	<ul style="list-style-type: none"> • Powers to: <ul style="list-style-type: none"> - replace firm management - appoint administrator - operate and resolve the firm - require group companies to provide services - transfer A & L - establish AMC • Powers exercisable without shareholder or creditor consent • Missing powers: <ul style="list-style-type: none"> - establish temporary bridge institution - Bail-in within resolution - Impose temporary stay on early termination rights 	<ul style="list-style-type: none"> • Temporary public ownership is available as part of resolution action • No power to depart from equal treatment of creditors of the same class • No power to compensate for creditors that suffer greater losses in resolution than in insolvency • No separate resolution fund • Privately funded protection fund for banks • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • No mechanisms for giving effect to foreign resolution actions • No specific mandate to share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> • No requirements for resolvability assessments • No powers to require changes to firm structure and business practices • Supervisory recommendation for recovery planning for banks
Saudi Arabia	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers and securities firms, but not FMIs (all of which are publicly-owned) (1) 	<ul style="list-style-type: none"> • Powers to: <ul style="list-style-type: none"> - replace firm management - appoint administrator - operate and resolve the firm - require group companies to provide 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class when exercising resolution powers • Right to compensation for 	<ul style="list-style-type: none"> • No mechanisms for giving effect to foreign resolution actions • There are no laws that limit the ability to share non-public 	<ul style="list-style-type: none"> • Powers to require changes to firm structure and business practices • No requirements for resolvability assessments

	<ul style="list-style-type: none"> • Powers over non-regulated group entities • No FHCs in Saudi Arabia • Multiple authorities (SAMA: banks and insurers; CMA: securities firms) • SAMA is lead authority for resolution of entities of the same group 	<p>services</p> <ul style="list-style-type: none"> - transfer A & L - establish temporary bridge institution - establish AMC - administrative authority to impose temporary stay - effect closure/liquidation <ul style="list-style-type: none"> • Resolution has occurred without shareholder consent but not tested in court • Missing powers: <ul style="list-style-type: none"> - Bail-in within resolution - Power to impose a temporary stay on early termination rights is uncertain 	<p>creditors that suffer greater losses in resolution than in insolvency</p> <ul style="list-style-type: none"> • No resolution fund or privately funded protection fund • No mechanism for recovery of public funds (2) 	<p>information with foreign resolution authorities</p>	<ul style="list-style-type: none"> • No requirements for RRP
Singapore	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks and insurers, but not for securities firms or FMI (1) • No powers over FHCs • No powers over non-regulated group entities • Single authority (MAS) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Remove and replace senior management - Appoint (and give binding directions to) administrator - Operate and resolve firm (either directly or through statutory manager) - Require regulated group companies to provide services - Transfer A & L - Establish and operate a bridge institution - Transfer assets to an AMC - Effect closure and liquidation (through application to court) • Powers exercisable without shareholder consent • Missing powers: <ul style="list-style-type: none"> - Bail-in within resolution - Require non-regulated group companies to provide services - Impose temporary stay on early termination rights 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No formal right to compensation where creditor worse off as than in liquidation • Privately funded protection fund for insurers • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • No explicit legal provision to encourage cross-border cooperation (but MAS cooperates as a matter of policy) • MAS has power to give due consideration to support or implement to foreign resolution actions taking into account the financial stability and other interests in Singapore • MAS able to share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments, but assessments undertaken as a matter of policy on several systemically important institutions • Powers to require changes to firm structures and business practices • Requirement for RRP in supervisory rules, for any institutions identified as systemically significant or critical • Supervisory framework provides for review and approval of recovery plans • MAS has the power to require changes to recovery plan
South Africa	<ul style="list-style-type: none"> • Sectoral regulators (registrars) responsible for initiating wind-up of financial institutions (through application to court) (1) • No powers over non-regulated FHCs • No powers over non-regulated group entities • Multiple authorities (sectoral registrars) • No lead authority for resolution of entities of the same group 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Power to appoint administrator (curator) for banks and insurers - Remove and replace senior management (for insurers) • Shareholder consent not relevant to current powers • Missing powers: <ul style="list-style-type: none"> - Remove and replace senior management (for banks) - Operate and resolve firm - Require group companies to provide services - Transfer A & L 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • No right to compensation where creditor worse off than in liquidation • No resolution fund or privately funded protection fund • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • No explicit legal provision to encourage cross-border cooperation • No mechanisms for giving effect to foreign resolution actions • Ability to share non-public information only with foreign regulatory and supervisory authorities 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments • No powers to require changes to firm structures to improve resolvability • Requirement for RRP in supervisory rules (for all banks and branches of foreign banks) • Rules provide for review and approval of recovery plans • Power to require changes to recovery plan

		<ul style="list-style-type: none"> - Establish bridge institution - Bail-in within resolution - Establish AMC - Impose temporary stay on early termination rights 			
Spain	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers, securities firms and FMIs (1) • Powers only over regulated FHCs (for banks or insurers) • Powers to require provision of services by non-regulated group companies (for banks) • Multiple authorities (BoS/FROB: banks; DGSFP: insurers; CNMV: securities firms) • Lead authority only for resolution of entities of the same banking group 	<ul style="list-style-type: none"> • Powers of the RA: <ul style="list-style-type: none"> - Operate banks - Require continued essential services - Transfer assets liabilities for banks and securities - Establish a bridge bank for bank - Establish an AMC for banks - Impose temporary stay on early termination rights - Bail-in within resolution (limited to subordinated liabilities and expire in June 2013) • Powers exercisable for banks without shareholder consent 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • Publicly funded resolution fund • Privately funded protection fund for banks and insurers • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • Legal provisions encourage cross border cooperation • No mechanisms for giving effect to (non-EU) foreign resolution actions (requires court order) • No differential treatment of creditors by location • Any data or information can be shared with relevant authorities 	<ul style="list-style-type: none"> • No supervisory requirement for resolvability assessments • Statutory requirement for recovery plans (implementing regulations have not yet been adopted) • Supervisors can require structural changes in banks to enhance resolvability
Switzerland	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers, securities firms and FMIs (that have a banking licence) (1) • No powers over non-regulated FHCs • Powers over non-regulated group companies only when within FINMA's scope • Single authority (FINMA) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Remove and replace senior management - Appoint (and give binding directions to) administrator - Operate and resolve firm (either directly or through statutory manager) - Bail-in within resolution - Power to require regulated group companies to provide services - Establish and operate a bridge institution - Transfer A & L - Establish an AMC - Impose temporary stay on early termination rights • Powers exercisable without shareholder consent 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class • Right to compensation for creditors that suffer greater losses in resolution than in insolvency • No temporary public ownership as part of resolution action • No private resolution fund available, but SIFIs required to issue low-trigger contingent capital instruments that are bailed-in in case of resolution • Privately financed protection fund for banks • No mechanism for recovery of public funds (2) 	<ul style="list-style-type: none"> • Legal framework supports and encourages cross-border cooperation • Mechanism for giving effect to foreign resolution actions. • No differential treatment by location of claim • Resolution authorities can share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> • Powers to require changes to firm structure and business practices, and ability to grant rebates on the capital surcharge of systemically important banks based on assessment of their global resolvability • Supervisory authority to require resolvability assessments • Supervisory requirement for RRP • Rules provide for review and approval of recovery plans • Power to require changes to recovery plan
Turkey	<ul style="list-style-type: none"> • Specific powers to restructure and/or wind up banks, insurers and securities firms, but not FMIs (1) • Powers over FHC and non- 	<ul style="list-style-type: none"> • Powers to: <ul style="list-style-type: none"> - replace firm management - appoint administrator - operate/resolve the firm - require group companies to provide services 	<ul style="list-style-type: none"> • No power to depart from equal treatment of creditors of the same class when exercising resolution powers • No power to compensate for 	<ul style="list-style-type: none"> • Legal framework supports and encourages cross-border cooperation • Mechanisms for giving effect to foreign resolution actions 	<ul style="list-style-type: none"> • Powers to require changes to firm structure and business practices • No requirements for resolvability assessments

	<p>regulated group entities</p> <ul style="list-style-type: none"> Multiple authorities (BRSA/SDIF: banks; Treasury: insurers; CMB: securities firms) No lead authority for resolution of entities of the same group 	<ul style="list-style-type: none"> - transfer A & L - establish AMC • Powers exercisable without shareholder or creditor consent • Missing powers: <ul style="list-style-type: none"> - establish temporary bridge institution - bail-in within resolution - impose temporary stay on early termination rights 	<p>creditors that suffer greater losses in resolution than in insolvency</p> <ul style="list-style-type: none"> No separate resolution fund Privately financed protection fund for depositors, insurance companies and investment firms No mechanism for recovery of public funds 	<ul style="list-style-type: none"> • The supervisor can share confidential information with other supervisors 	<ul style="list-style-type: none"> • No requirements for RRP
UK	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks, insurers (but limited to wind-up), investment firms and CCPs (1) (6) Powers over FHCs (6) Continuity provisions in relation to non-regulated group entities (in a resolution) Multiple authorities (BoE and HMT, but HMT's powers are limited to cases that involve temporary public ownership) Lead authority for resolution of entities of the same group (HMT for temporary public ownership, BoE in other cases) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Remove and replace senior management - Appointment of administrator (through application to court) - Operate/resolve the firm - Require group companies to provide services - Transfer A & L to bridge bank or purchaser - Establish and operate a bridge institution - Effect closure and liquidation (through application to court) • Powers exercisable without shareholder consent • Missing powers: <ul style="list-style-type: none"> - Bail-in within resolution - Establish AMC - Impose temporary stay on early termination rights 	<ul style="list-style-type: none"> • Departure from equal treatment of creditors of the same class possible (where necessary for purposes of resolution objectives) • Right to compensation where creditor worse off as a result of partial property transfer than in liquidation • No separate resolution fund • Privately funded protection fund for deposits, insurers and investment firms • Mechanism for recovery of public funds: industry levies by compensation scheme 	<ul style="list-style-type: none"> • No explicit legal provision to encourage cross-border cooperation (but encouraged as a matter of policy) • No mechanisms for giving effect to foreign resolution actions (requires court order) • UK authorities able to share non-public information with foreign resolution authorities 	<ul style="list-style-type: none"> • No legal requirement for resolvability assessments, but undertaken for all deposit-takers and significant investment firms as a matter of policy • Supervisory powers to require changes to firm structures for purposes of financial stability • Legal requirement for RRP not currently in force. Supervisory requirement for RRP for all deposit-takers and significant investment firms • No current legal requirements for review of recovery plans, but reviewed under general powers • No specific powers to require changes to recovery plans, but possible under general supervisory powers
USA	<ul style="list-style-type: none"> Specific powers to restructure and/or wind up banks, insurers, securities firms and FMI (1) Powers over systemically important FHCs and non-regulated group entities Single authority (FDIC for all systemically significant nonbank FIs that at the time of failure meet the requirements of section 203 of the Dodd-Frank Act) 	<ul style="list-style-type: none"> • Powers available: <ul style="list-style-type: none"> - Operate a firm - Require continued essential services - Override shareholder rights where FDIC has jurisdiction - Transfer A & L - Establish a bridge institution - Establish an AMC - Impose a moratorium - Impose temporary stay on early termination rights - Bail-in within resolution (7) • Powers exercisable without shareholder or creditor consent 	<ul style="list-style-type: none"> • Authority to depart from equal treatment of creditors of the same class • Safeguards for creditors with greater losses than in liquidation • Privately funded resolution fund (OLF) • Privately funded protection funds for banks, insurers and securities firms • Temporary public ownership is not possible as part of resolution action • Mechanism for recovery of public funds spent in resolution 	<ul style="list-style-type: none"> • RA must work with foreign authorities when possible • Mechanisms exist for giving effect to foreign resolution actions • Possible differential treatment of creditors by location • Central bank, supervisors, and resolution authorities can share information with foreign counterparts 	<ul style="list-style-type: none"> • Powers to require changes to firm structure and business practices • Supervisory authority to require resolvability assessments • Supervisory requirement for RRP

- (1) Refers to powers to restructure and/or wind up failing financial institutions that are distinct from the ordinary corporate insolvency process.
- (2) This does not include recovery of public funding used in resolution from the proceeds of the sale of the firm or a bridge institution, or as a claim in the liquidation of the failed firm. Similarly, it does not include recovery of amounts used from protection funds through premiums.
- (3) However, the German framework provides that contracts are not terminated by reason of transfer order.
- (4) Under certain circumstances, the Indian government has the right to purchase the equity of financial institutions.
- (5) IPAB would cooperate with foreign courts or foreign representatives when they seek assistance in Mexico in connection with a foreign proceeding when the subsidiary in Mexico is also subject to a bankruptcy procedure. The Law includes a procedure that allows a foreign court to seek the assistance of Mexican courts in order to oversee the assets and businesses of the company that are located in Mexico.
- (6) The provisions of the Financial Services Act extending the resolution regime to investment firms, clearinghouses and related group companies (including those of banks) in the UK will take effect once the secondary legislation has been finalised.
- (7) Although not set forth in a single statutory provision, the write-down of debt and conversion to equity in the USA can be achieved through a combination of powers.

Annex C: Planned Reforms to Resolution Regimes in FSB Jurisdictions

Jurisdiction	Sector	Status	Scope of Reforms
Reforms Already Submitted for Consultation or to Parliament			
Australia	Banks, insurers, FMI	Development of legislation following public consultation	Following public consultation, legislative reforms are being developed to strengthen various crisis management powers over banks and insurers, including group resolution powers, statutory or judicial management regimes, direction powers and business transfer powers. Legislative reforms are also being developed to clarify rights relating to early termination, close-out and market netting. In addition, following public consultation, legislative reforms are being developed to introduce a resolution regime for FMIs similar to that for banks. The proposed framework could include enhanced powers of direction for regulators and the appointment of statutory management; the possible extension of business transfer powers to FMIs is also being considered.
Brazil	Banks, securities firms, FMI	Development of legislation following public consultation	Following the public consultation, legislative reforms are being developed to provide the powers to override shareholder rights, to bail in unsecured creditors, to impose a temporary stay and to limit early termination rights. The new framework will allow the use public funds, where necessary. The resolution regime will apply to banks, securities or investment firms, and FMIs.
EC	Banks, investment firms (legislative proposal) Insurers and FMIs (public consultation)	Legislative proposal submitted for approval; public consultation	The legislative proposal covers banks and investment firms and extends to holding companies. The resolution authority has powers to transfer assets and liabilities, establish a bridge institution, recapitalise through bail-in of liabilities and temporarily suspend early termination rights under financial contracts. Resolvability assessments must be carried out and recovery and resolution plans prepared for all banks and investment firms (see Box 2). The public consultation covers the need for a recovery and resolution framework for non-bank FIs.
France	Banks, investment firms	Draft legislation submitted to Parliament	The supervisory authority (ACP) will be responsible for resolution as an additional mandate. The existing deposit guarantee scheme will manage a resolution fund. The proposed legislation will introduce an expanded resolution toolkit (powers to change management, transfer assets, create bridge bank, reorganise the entity under resolution, and write down shares and junior debt to cover losses) and will also include an RRP requirement, power to assess banks' resolvability and to require changes in structure or activities
Germany	Banks, FMIs licensed as banks	Draft legislation submitted to Parliament; proposal submitted for public consultation	Formal statutory requirements are established for authorities responsible for resolution procedures. Requirements to be introduced include recovery and resolution planning, a process and criteria to assess resolvability and potentially require changes in firms' structure or activities. BaFin also issued for consultation a draft circular on minimum requirements and good practices for banks' recovery plans based on current law.

Indonesia	Banks and insurers	Draft legislation introduced into parliament	The draft Financial Safety Net Act clarifies the powers and responsibilities of each resolution authority and the coordination responsibilities and decision making powers of the Financial System Stability Forum. The draft Act provides a more comprehensive resolution framework, including participation from the private sector through bail-in and extends the sectoral coverage to both banking and insurance.
Singapore	Banks, insurers, securities firms, FMIs	Development of legislation following public consultation	Following public consultation, the MAS is preparing legislation to extend the existing resolution regime applicable to banks and insurers to a wider group of financial institutions (including FHCs), and to enhance the regime to include powers such as to recover monies from responsible parties (including claw back of variable remuneration) and provide safeguards (such as legal protection for directors and officers of firms acting in compliance with resolution decisions).
South Africa	Financial institutions	Proposal submitted for public consultation	The authorities issued a policy document for public consultation on implementing a 'twin peaks' model of financial regulation. Under this proposal, the South African Reserve Bank will become the administrative RA for systemically significant banks, non-bank financial institutions, FMI and financial groups. The RA will have an extended range of powers that include the ability to establish bridge institutions, recapitalisation through bail-in, override shareholders rights, restructure balance sheets, and ensure that critical functions continue. All systemically significant elements of the financial system should have RRPs in place, and CMGs will be established with countries in which South African banks have a significant presence, particularly in Africa.
Reforms Under Discussion			
Canada	Banks	Internal Policy Discussion	The Government has proposed to implement a bail-in regime for domestic systemically important banks. The Government will consult stakeholders on the design and implementation of the regime.
Hong Kong	Banks, insurers, securities firms, FMIs	Internal Policy Discussion	The relevant authorities – the Financial Services and the Treasury Bureau and sectoral regulators – are considering what may be needed in the way of legislation and other reforms to address identified shortfalls in the existing regime as compared with the KAs. The authorities expect to begin consulting on proposals in the first half of 2013. Meanwhile, in late 2012 the HKMA consulted the industry on RRP requirements for banks and is considering the responses.
India	Financial institutions	Internal Policy Discussion	A high-level Working Group, with representation from all financial sector regulators and the Government, is developing a proposal for a comprehensive resolution regime for all types of financial institutions. The recommendations of an internal RBI working group would serve as input to this work.
Japan	Banks, insurers, securities firms and financial holding companies	Published report by advisory panel	The Financial System Council, an advisory panel to the Prime Minister, published a report with recommendations for the establishment of an orderly resolution regime for financial institutions. The report includes measures such as oversight by the Deposit Insurance Corporation, provision of liquidity and financial assistance, and the temporary stay of early termination rights of financial instruments when necessary to prevent severe market disruption. The report also recommends that if losses are incurred, they should in principle be borne ex post by the financial industry.

Mexico	Banks	Internal Policy Discussion	A series of legal amendments are being considered that would bring the bankruptcy of a bank under the Banking Law rather than the commercial bankruptcy law. Reforms being developed include: (i) enhanced powers of financial authorities to share information with foreign authorities; (ii) powers to require RRP and resolvability assessments; (iii) an automatic stay of 2 business days on early termination rights of financial contracts; (iv) powers to require institutions under resolution to temporarily provide essential services to any successor or acquiring entity; and (v) powers to require companies in the same group to continue to provide necessary services to the institution under resolution.
Russia	Banks	Internal Policy Discussion	Planned reforms will require RRP from domestic SIFIs, introduce bail-in powers, remove restrictions on cross-border information sharing, authorise creation of a bridge bank, allow for the establishment of a stay on early termination rights of financial contracts, and authorise suspension of bonuses for directors and managers.
Saudi Arabia	Financial institutions	Consultation Paper Under Development	A consultation paper is being drafted that will cover all financial institutions. The paper defines the role of the resolution authority and proposes rules on resolvability assessments and RRP. It also proposes certain early intervention powers and defines a set of resolution powers that can be used. Finally, the paper proposes certain safeguards to protect the position of creditors with reference to their potential position in regular insolvency proceedings.
Switzerland	FMI	Internal Policy Discussion	Reforms are under discussion to require RRP for FMI.
United Kingdom	Insurers, non-CCP FMI	Internal Policy Discussion	The authorities have consulted, and are considering, additional reforms that may be needed for the resolution of insurers and non-CCP FMI.

Annex D: Detailed Features of Resolution Regimes in FSB Jurisdictions

Table 1A: Sector-specific Powers to Restructure and/or Wind up Banks

Jurisdiction	Sector-specific powers to restructure and/or wind up banks?*	Main legal foundation	Specific powers that apply only to systemically important banks?	Do powers to restructure and/or wind up* apply to:		
				Financial Holding Companies	Significant Non-regulated Entities in Group **	Branches of Foreign Banks
Argentina	Y	Financial Entities Law; Charter of the Central Bank (BCRA)	N	N	N	Y
Australia	Y	Banking Act, Financial Sector (Business Transfer and Group Restructure) Act	N	Y, limited powers for non-operating holding companies if FHC is authorised by APRA	N, except for powers of compulsory business transfer for any corporate body related to an ADI	Y, can give binding directions to, investigate and apply for the winding up of a branch.
Brazil	Y	Law 6,024; Decree-law 2,321; Law 9,447	N	Y	Y	Y
Canada	Y	Canada Deposit Insurance Corporation Act (CDIC); The Office of the Superintendent of Financial Institutions Act (OSFI); Bank Act; Winding Up and Restructuring Act	N	N	N	Y, OSFI only ¹
China	Y	Commercial Bank Law, Banking Supervision Law, Bankruptcy Law, Regulation on Closure of Financial Institutions, Provisional Administration Rules for Emergency Loans of the People's Bank of China	N ²	N	N	Y
France	Y	Financial and Monetary Code	N	Y	N	N (branches of EU banks) ³ Y (branches of non-EU banks)
Germany	Y	Banking Act, Financial Market Stabilisation Act, German Restructuring Act	Y	Y ⁴	N	N (branches of EU banks) ³ Y (branches of non-EU banks)
Hong Kong	Y	Banking Ordinance	N	N	N	Y
India	Y	Banking Regulation Act; Companies Act	N	N	N	Y

Jurisdiction	Sector-specific powers to restructure and/or wind up banks?*	Main legal foundation	Specific powers that apply only to systemically important banks?	Do powers to restructure and/or wind up* apply to:		
				Financial Holding Companies	Significant Non-regulated Entities in Group **	Branches of Foreign Banks
Indonesia	Y	Indonesian Deposit Insurance Corporation (IDIC) Act No. 24; Banking Act No. 7; Bank Indonesia Act No. 23; Indonesian FSA Act No. 21	Y	N	N	Y (limited to liquidation)
Italy	Y	Consolidated Banking Law BL	N	Y	Y	N (branches of EU banks) ³ Y (branches of non-EU banks)
Japan	Y	Deposit Insurance Act; Bankruptcy Act; Civil Rehabilitation Act; Corporate Rehabilitation Act; Act on Special Treatment of Corporate Reorganisation Proceedings and Other Insolvency Proceedings of financial institutions	Y	N	N	Y
Korea	Y	Act on Structural Improvement of the Financial Industry; Depositor Protection Act	N	Y	N	Y
Mexico	Y	Credit Institutions Law; Commercial Bankruptcy Law	N (but specific support mechanisms available if determined that failure would have systemic consequences)	N	N	N/A (no branches of foreign banks allowed)
Netherlands	Y	Restructuring and resolution: incorporated in the Financial Supervision Act Winding up: Financial Supervision Act and Bankruptcy Act	Y (if failure poses a systemic threat)	Y (MoF only)	N	N (branches of EU banks) ³ Y (branches of non-EU banks)

Jurisdiction	Sector-specific powers to restructure and/or wind up banks?*	Main legal foundation	Specific powers that apply only to systemically important banks?	Do powers to restructure and/or wind up* apply to:		
				Financial Holding Companies	Significant Non-regulated Entities in Group **	Branches of Foreign Banks
Russia	Y	Federal laws; "On insolvency of credit institutions"; "On additional measures to strengthen stability of the banking system"; Insolvency Law (special regime of bankruptcy procedures for financial institutions introduced 2010); "On additional measures to strengthen the stability of the banking system through Dec 31, 2011"	Y ⁵	N	N	N/A (no branches of foreign banks exist)
Saudi Arabia	Y	Banking Control Law	N	N	Y	Y
Singapore	Y	Banking Act (Cap. 19), Singapore Companies Act (Cap. 50)	N	N	N	Y
South Africa	Y ⁶	Bank Act, Reserve Bank Act	N	N	N	Y
Spain	Y	Law 9/2012 on the restructuring and resolution of credit institutions, which supersedes Royal Decree-Law 24/2012	N (where resolution of a bank would be detrimental to the stability of the financial system, the bank may also be subject to restructuring rather than resolution)	N unless holding company is a bank	N	N (branches of EU banks) ³ Y (branches of non-EU banks)
Switzerland	Y	Banking Act; Banking Ordinance; Capital Adequacy Ordinance; Banking Insolvency Ordinance; Financial Market Supervision Act	Y	N unless holding company is a bank	Y (but not to full extent)	Y
Turkey	Y	Banking Law	N	Y	Y	Y
United Kingdom	Y (banks and building societies) ⁷	Banking Act 2009	Y ⁷	Y ⁸	Y ⁸	N ³

Jurisdiction	Sector-specific powers to restructure and/or wind up banks?*	Main legal foundation	Specific powers that apply only to systemically important banks?	Do powers to restructure and/or wind up* apply to:		
				Financial Holding Companies	Significant Non-regulated Entities in Group **	Branches of Foreign Banks
United States	Y	Dodd-Frank Act (D-F) for systemic bank holding companies; Federal Deposit Insurance Act (FDI Act) for all insured depository institutions	Y (under D-F for bank holding companies)	N under FDI; Y under D-F	N under FDI; Y under D-F	Y (under state law if licensed at state level; under International Banking Act if federal license)

* Refers to powers for restructuring and/or winding up banks that are distinct from ordinary corporate insolvency proceedings. These powers are not necessarily aligned with those specified in KA 3.

** Refers to direct powers to restructure and wind up that can be applied to significant non-regulated operational entities in a financial group. It does not include powers over those entities that may be exercised indirectly through control of a parent or holding company.

1. Branches of foreign banks are not allowed to take retail deposits and are not eligible to become CDIC members. They are nevertheless supervised and regulated by OSFI.
2. However, size and systemic importance taken into account when using the powers.
3. Under the EU framework, the resolution of the branches of EU banks is the responsibility of the authorities of the bank's EU home member state. Local branches of non-EU banks fall within the national law of the EU member state where the branch is located.
4. If the parent or holding company is a bank.
5. Assets greater than household deposits; household deposits greater than rub 4bn (Moscow) or rub 1bn (outside Moscow), bank plays important role, diversified branch network.
6. Allows for appointment of a curator with special powers without court approval.
7. Special powers for banks, including transfer powers and temporary public ownership, are available where the use of those powers is necessary in the public interest, including with regard to financial stability.
8. Powers in relation to FHCs and non-regulated group entities have been adopted by statute, but have not yet come into force.

Table 1B: Sector-specific Powers to Restructure and/or Wind Up Insurers

Jurisdiction	Sector-specific powers to restructure and/or wind up insurers?*	Type of insurer covered	Legal foundation	Specific powers that apply only to systemically important insurers?	Do powers to restructure and/or wind up apply to:		
					Financial holding companies	Significant non-regulated entities in group **	Branches of foreign insurers *
Argentina	Y	All	Insurance Institutions Law	N	N	N	Y
Australia	Y	General insurers and life insurers	Insurance Act, Life Insurance Act, Financial Sector (Business Transfer and Group Restructure) Act	N	Y, limited powers for non-operating holding companies if authorised by APRA	N	Y, can give binding directions to, investigate and apply for the winding up of a branch.
Brazil	Y	Insurers and reinsurers, entities operating private open or closed pension funds; capitalisation companies	Decree-law 73 (insurance, reinsurance, capitalisation companies), Complementary Law 109 (pensions)	N	Y	Y	Y
Canada	Y	Federally incorporated insurers	Office of the Superintendent of Financial Institutions (OSFI) Act, Winding-up and Restructuring Act, Insurance Companies Act	N	N	N	Y
China	Y	All insurers	Enterprise Law of the People's Republic of China, Enterprise Bankruptcy Law of the People's Republic of China, Insurance Law of the People's Republic of China	N (however, the size and systemic importance taken into account when using powers)	N	N	Y
France	Y	All	Insurance code	N	Y	N	N (branches of EU insurers) ¹ Y (branches of non-EU insurers)

Jurisdiction	Sector-specific powers to restructure and/or wind up insurers?*	Type of insurer covered	Legal foundation	Specific powers that apply only to systemically important insurers?	Do powers to restructure and/or wind up apply to:		
					Financial holding companies	Significant non-regulated entities in group **	Branches of foreign insurers *
Germany	Y	Life and health insurance	Insurance Supervision Act	N	N	N	N (branches of EU insurers) ¹ Y (branches of non-EU insurers) ²
Hong Kong	Y	Authorised insurers	Insurance Companies Ordinance	N	N	N	Y
India	N	-	-	-	-	-	-
Indonesia	N	-	-	-	-	-	-
Italy	Y	Insurers and reinsurers	Insurance Code	N	Y	Y	N (branches of EU insurers) ¹ Y (branches of non-EU insurers)
Japan	Y	Life and non-life insurers	Insurance Business Act, Bankruptcy Act, Civil Rehabilitation Act, Corporate Rehabilitation Act, Act on Special Treatment of Corporate Reorganisation Proceedings and Other Insolvency Proceedings of financial institutions	N	N	N	Y
Korea	Y	Life insurance, Pension insurance, Fire insurance, Maritime insurance, Automobile insurance, Injury insurance	Insurance Business Act; Act on Structural Improvement of the Financial Industry; Depositor Protection Act	N	Y	N	Y (same powers as applied to domestic FIs)

Jurisdiction	Sector-specific powers to restructure and/or wind up insurers?*	Type of insurer covered	Legal foundation	Specific powers that apply only to systemically important insurers?	Do powers to restructure and/or wind up apply to:		
					Financial holding companies	Significant non-regulated entities in group **	Branches of foreign insurers *
Mexico	Y	All	Commercial Bankruptcy Law; Mutual Insurance and Insurance Companies Law	N	N	N	N/A (no branches of foreign institutions allowed)
Netherlands	Y	Re-insurers, life and non-life insurers, insurers regarding funeral insurance	Restructuring and resolution: incorporated in the Financial Supervision Act Winding up: Financial Supervision Act and Bankruptcy Act	Y (if failure poses a systemic threat)	Y (MoF only)	N	N (branches of EU insurers) ¹ Y (branches of non-EU insurers)
Russia	Y	All	Insolvency law (special regime of bankruptcy procedures for financial institutions introduced 2010)	N	N	N	N/A (no branches of foreign institutions)
Saudi Arabia	Y	Insurers and re-insurers	Co-operative Insurance Companies Control Law	N	N	Y	N/A (no branches of foreign institutions)
Singapore	Y	Registered general and life insurers	Insurance Act (Cap. 142) ,Singapore Companies Act (Cap. 50)	N	N	N	Y
South Africa	Y	N/A	-	N	N	N	N ³
Spain	Y	All	Royal Legislative Decree 6/2004: Act on Regulation and Supervision of Private Insurance; Legal Statute for the Insurance Compensation Consortium	N	N (unless holding company is an insurer)	N	N (branches of EU insurers) ¹ Y (branches of non-EU insurers)
Switzerland	Y	All	Insurance Supervision Act; Insurance Bankruptcy Ordinance; Financial Market Supervision Act	N	N	Y (but not to full extent)	Y (for insurers if they have a license)

Jurisdiction	Sector-specific powers to restructure and/or wind up insurers?*	Type of insurer covered	Legal foundation	Specific powers that apply only to systemically important insurers?	Do powers to restructure and/or wind up apply to:		
					Financial holding companies	Significant non-regulated entities in group **	Branches of foreign insurers *
Turkey	Y	Insurers, reinsurers, pension companies	Turkish Insurance Law No: 5684; Pension Savings and Investment System Law	N	Y	Y	Y
United Kingdom	Y	All	- Financial Services and Markets Act (2000) amended by Financial Services Act; Companies Act; Insolvency Act 1986; Administration Order 2010; The Insurers (Reorganisation and Winding Up) Regulations 2001 and 2004; The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005; Friendly Societies Act 1974 and 1992	N	N	N	N (branches of EU insurers) ¹ Y (branches of non-EU insurers)
United States	Y	All	D-F for systemic insurers; state law for non-systemic insurers	Y (under D-F)	N under state law; Y under D-F	N under state law; Y under D-F	Y under state law

* Refers to powers for restructuring and/or winding up insurers that are distinct from ordinary corporate insolvency proceedings. These powers are not necessarily aligned with those specified in KA 3.

** Refers to direct powers to restructure and/or wind up that can be applied to significant non-regulated operational entities in a financial group. It does not include powers over those entities that may be exercised indirectly through control of a parent or holding company.

1. Under the EU framework, the resolution of the EU branches of EU insurers is the responsibility of the authorities of the insurer's EU home member state. Local branches of non-EU insurers fall within the national law of the EU member State where the branch is located.
2. Regime is focused in particular on winding up the insurer.
3. Branches of foreign insurers are not allowed to conduct business within South Africa under current legislation.

Table 1C: Sector-specific Powers to Restructure and/or Wind Up Securities or Investment Firms

Jurisdiction	Sector-specific powers to restructure and/or wind up securities or investment firms?*	Main legal foundation	Specific powers that apply only to systemically important securities or investment firms?	Do powers to restructure and/or wind up apply to:		
				Financial holding companies	Significant non-regulated entities in group **	Branches of foreign securities or investment firms*
Argentina	N	-	-	-	-	-
Australia	N	-	-	-	-	-
Brazil	Y	Law 6,024; Decree-law 2,321; Law 9,447	N	Y	Y	Y
Canada	N	-	-	-	-	-
China	Y	Securities Law; Rules on Risk Disposal of Securities Companies; Enterprise Bankruptcy Law, Securities Investment Fund Law, Regulations on the Administration of Futures Trading; Administrative Measure for Futures Companies	N (however, resolution shall take the size and systemic importance into account)	N	N	N/A (no branches of foreign financial institutions)
France	Y	Financial and Monetary Code	N	Y	N	Y
Germany	N	-	-	-	-	-
Hong Kong	N	-	-	-	-	-
India	N	-	-	-	-	-
Indonesia	N	-	-	-	-	-
Italy	Y	Consolidated Law on Finance	N	N	N	Y
Japan	N	-	-	-	-	-
Korea	Y	Act on Structural Improvement of the Financial Industry; Depositor Protection Act	N	Y	N	Y (same powers as applied to domestic FIs)
Mexico	N	-	-	-	-	-

Jurisdiction	Sector-specific powers to restructure and/or wind up securities or investment firms?*	Main legal foundation	Specific powers that apply only to systemically important securities or investment firms?	Do powers to restructure and/or wind up apply to:		
				Financial holding companies	Significant non-regulated entities in group **	Branches of foreign securities or investment firms*
Netherlands	Y	Restructuring and resolution: incorporated in the Financial Supervision Act Winding up: Financial Supervision Act and Bankruptcy Act	Y (if failure poses a systemic threat)	Y (MoF only)	N	Y
Russia	Y	Insolvency law (special regime of bankruptcy procedures for financial institutions introduced 2010)	N	N	N	N/A (no branches of foreign institutions)
Saudi Arabia	Y	Capital Market Law	N	N (general rules on bankruptcy apply)	Y	Y
Singapore	N	-	-	-	-	-
South Africa	N	-	-	-	-	-
Spain	Y	Act 22/2003 on insolvency; ¹ Law 24/1988 of the Securities Market	N	Y (if the companies integrated in the holding belong to the securities sector)	N	N
Switzerland	Y	Stock Exchanges and Securities Trading Act (securities Dealers)	N	N (unless holding company is a securities dealer or bank)	Y (but not to full extent)	N
Turkey	Y	Capital Markets Law	N	N	N	N
United Kingdom	Y ²	Banking Act 2009 (as amended)	Y (resolution powers may only be applied to systemically important firms; modified insolvency regime for other firms)	Y	Y	N

Jurisdiction	Sector-specific powers to restructure and/or wind up securities or investment firms?*	Main legal foundation	Specific powers that apply only to systemically important securities or investment firms?	Do powers to restructure and/or wind up apply to:		
				Financial holding companies	Significant non-regulated entities in group **	Branches of foreign securities or investment firms*
United States	Y	D-F for financial companies subject to systemic determination under section 203 of D-F, Securities Investors Protection Act (SIPA) for non-systemic registered brokers or dealers	Y (under D-F)	Y under D-F	Y under D-F	D-F for systemic financial companies, SIPA for non-systemic registered brokers or dealers

* Refers to powers for restructuring and/or winding up securities/investment firms that are distinct from ordinary corporate insolvency proceedings. These powers are not necessarily aligned with those specified in KA 3.

** Refers to direct powers to restructure and/or wind up that can be applied to significant non-regulated operational entities in a financial group. It does not include powers over those entities that may be exercised indirectly through control of a parent or holding company.

1. General insolvency regime applies, however, Act 2(2)2003 contains various duties of information to the CNMV; CNMV can appoint administrator, special legislation regarding arrangements for clearing and settlement systems and participating entities.
2. UK powers have been adopted in statute, but not yet commenced.

Table 1D: Sector-specific Powers to Restructure and/or Wind Up FMIs

Jurisdiction	Sector-specific powers to restructure and/or wind up FMIs?*	Types of FMI covered	Main legal foundation	Specific powers that apply only to systemically important FMIs?	Do powers to restructure and/or wind up apply to:		
					Holding companies	Significant non-regulated entities in group **	Branches of Foreign FMIs*
Argentina	N	-	-	-	-	-	-
Australia	N ¹	-	-	-	-	-	-
Brazil	N	-	-	-	-	-	-
Canada	N	-	-	-	-	-	-
China	N	-	-	-	-	-	-
France	Y	CCPs (authorised as credit institutions)	Financial and Monetary Code	N	Y	N	Y
Germany	Y	FMIs that are regulated as banks	Banking Act, Financial Market Stabilisation Act, German Restructuring Act	Y	Y ²	N	N (branches of EU FIs) Y (branches of non-EU FIs)
Hong Kong	N	-	-	-	-	-	-
India	N	-	-	-	-	-	-
Indonesia	N	-	-	-	-	-	-
Italy	Y	FMIs	Consolidated Law on Finance	N	N	N	N
Japan	N ³	-	-	-	-	-	-
Korea	N	-	-	-	-	-	-
Mexico	N	-	-	-	-	-	-
Netherlands	Y	Financial undertakings ⁴	Resolution (MoF): Financial Supervision Act Winding up: normal insolvency proceedings under Bankruptcy Act	Y (if failure poses a systemic threat)	Y (MoF only)	N	Y

Jurisdiction	Sector-specific powers to restructure and/or wind up FMI's?*	Types of FMI covered	Main legal foundation	Specific powers that apply only to systemically important FMI's?	Do powers to restructure and/or wind up apply to:		
					Holding companies	Significant non-regulated entities in group **	Branches of Foreign FMI's*
Russia	Y		Insolvency law (special regime of bankruptcy procedures for FIs introduced 2010)	N	N	N	N/A (no branches of foreign institutions)
Saudi Arabia	N	-	-	-	-	-	-
Singapore	N	-	-	-	-	-	-
South Africa	N	-	-	-	-	-	-
Spain	N	-	-	-	-	-	-
Switzerland	Y	FMI's that have a banking licence	All laws as for banks	N	N unless holding company is a bank	Y (but not to full extent)	N
Turkey	N	-	-	-	-	-	-
United Kingdom	Y ⁵	CCPs	Banking Act 2009 (as amended)	Y (resolution powers may only be applied to systemically important firms; modified insolvency regime for other firms)	Y	Y	N
United States	Y	FMI's subject to systemic determination under section 203 of D-F	Section 203 of D-F for systemic financial institutions	Y (under D-F)	Y under D-F	Y under D-F	Y

* Refers to powers for restructuring and/or winding up FMI's that are distinct from ordinary corporate insolvency proceedings. These powers are not necessarily aligned with those specified in KA 3.

** Refers to direct powers to restructure and/or wind up that can be applied to significant non-regulated operational entities in a financial group. It does not include powers over those entities that may be exercised indirectly through control of a parent or holding company.

1. The central bank has however a contractual capacity to step-in to operate the debt securities settlement system (Austraclear) in certain circumstances.
2. Only if the parent or holding company is a bank.
3. For Book-entry Transfer Institution and trade repositories, the resolution authority may order an institution in resolution to transfer its business to receiver companies.
4. 'Financial undertakings' include management companies, investment firms, payments service provider, depositaries, clearing firms, risk-accepting entities, financial service providers, pension depositaries, money transaction offices.
5. UK powers have been adopted in statute, but have not yet commenced.

Table 2: Use of Administrator for Resolution

Jurisdiction	Who appoints the administrator?	Powers of administrator?
Argentina	Court appoints at the request of BCRA an individual chosen by the BCRA	Powers relevant to implementation of restructuring plan as indicated by the BCRA
Australia	ADIs: APRA Insurers: APRA proposes to Court	For ADIs and insurers the administrator has wide ranging powers, including powers of board, power to recapitalise, power to facilitate transfers. ¹ Court appointed administrators have a wide range of powers, including powers of management.
Brazil	BCB and SUSEP for respective institutions	Powers of management ²
Canada	CDIC may be administrator, OSFI can take control of FI and appoint a third party as agent to administer on its behalf	Same powers as supervisor
China	Respective sectoral authority	Wide range of powers
France	ACP (except for portfolio managers and market operators, whose administrator may be appointed by the AMF)	Powers of management; powers consistent with act of administration
Germany	BaFin appoints in case of banks	BaFin can confer wide range of powers on administrator
Hong Kong	Banks: HKMA Insurance: IA	Banks and insurers, powers of management; fewer powers in case of insurers than for banks
India	RBI appoints an Administrator in consultation with the Central Government.	The administrator operates on directions of the RBI and exercises all powers on behalf of the Board of Directors of the failed institution.
Indonesia	IDIC in case of banks	Wide range of powers
Italy	The Bank of Italy, IVASS, CONSOB or the Ministry of Finance, depending on institution	Wide range of powers
Japan	FSA for banks and insurers (Rehabilitation Trustee is appointed by the court)	Power to manage the business and dispose of properties, under the control of the FSA
Korea	FSC in case of all types of FIs except in bankruptcy, where the Court appoints KDIC	Wide range of powers
Mexico	IPAB ³	Administrator has all the powers to operate the bank
Netherlands	DNB proposes, Court appoints ⁴	'Silent' administrator approves management decisions; court administrator manages and restructures or winds up firm
Russia	Banks: BoR Other FIs: FFMS	All powers of bank's government bodies
Saudi Arabia	Banks and insurers: SAMA Securities firms: CMA	Determined by resolution authority
Singapore	MAS	Wide range of powers

Jurisdiction	Who appoints the administrator?	Powers of administrator?
South Africa	Minister of Finance	Wide range of powers
Spain	For banks: Bank of Spain ⁵ For insurers: DGSFP	The FROB can exercise all powers either as a resolution authority or temporary administrator
Switzerland	FINMA	All powers as per Key Attributes, but requires FINMA consent
Turkey	SDIF for banks Treasury Minister for insurers CMB for investment firms	Resolution powers available to resolution authority
United Kingdom	BoE applies to court for appointment ⁶	Limited powers (e.g. to operate the firm)
United States ⁷	For insured depository institutions under FDI Act: the chartering authority. For systemic FIs under D-F: FDIC, Federal Reserve and Treasury Secretary. For broker-dealers: Federal Reserve, SEC and Treasury Secretary in consultation with FDIC. For federally licensed branches of foreign banks: OCC	Manage & operate assets, repudiate contracts. P&A, operate via bridge bank

1. Statutory management for banks and judicial management for insurers can be used to implement a range of open and closed resolutions including recapitalisation without shareholder consent and transfer of business, including to a bridge bank or insurer.
2. Approval of resolution authority required for decisions that have a negative impact on assets.
3. For insurers, the SHCP is responsible for designating an administrative liquidator.
4. The DNB appoints a "silent administrator". If the court approves the plan, the Court appoints an administrator.
5. The Bank of Spain appoints the FROB as administrator of a credit entity in resolution.
6. Where the whole bank is placed into the special bank insolvency procedure, court appoints liquidator; where the residual bank is placed under the special bank administrative procedure, the court appoints the administrator.
7. The US regime uses a receiver instead of an administrator.

Table 3: Powers to Resolve Insurers

Jurisdiction	Power to effect portfolio transfer without consent of policy holder	Power to discontinue new business and run-off existing obligations
Argentina	Y	N/A
Australia	Y	Y
Brazil	N	N
Canada	Y in winding up	N ¹
China	Y	Y
France	Y	Y
Germany	Y for life and health insurance	Y
Hong Kong	N	Y
India	N	N
Indonesia	N	N
Italy	Y	Y
Japan	N	Y
Korea	Y	Y
Mexico	Y	Y, by liquidator
Netherlands	Y	Y, by court liquidator
Russia	Y	N
Saudi Arabia	Y	Y
Singapore	Y	Y
South Africa	Y	Y
Spain	Y ²	Y
Switzerland	Y	Y
Turkey	Y	Y
United Kingdom	Y ³	Y
United States	Y	Y

1. OFSI may discontinue the writing of new business when the Superintendent is in control of the insurer.
2. Where an insurer is not subject to insolvency proceedings, a proposed portfolio transfer must be notified to policyholders before it can be carried out. However, opposition by policyholders does not prevent DGSFP from carrying out the transfer where the authority considers it to be appropriate.
3. A voluntary portfolio transfer without consent of policyholders is available for insurers, but requires regulatory approval and sanction of the court.

Table 4: Safeguards

Jurisdiction	Is the resolution authority required to respect hierarchy of creditor claims?	Is it possible to depart from equal treatment of creditors of same class?	Is there compensation for creditors suffering greater loss in resolution than liquidation?	Is there statutory provision in the resolution regime for resolution decisions to be reversible in court? *	Is financial compensation available as a remedy for a resolution decision?
Argentina	Y	N	N	N	N
Australia	Y	Y ¹	Y (banks and insurers)	N	Y
Brazil	Y	N	N	N	N/A
Canada	N ¹	Y	Y	N	Y
China	Y	N	N	N	N/A
France	Y	N	N	Y	Y (for ACP actions only if liability for gross fault)
Germany	N (banks ²) Y (insurers)	Y, if compensation is provided	Y (banks) N (insurers)	N	Y
Hong Kong	Y	N	N	N	N
India	Y	N	N	N	Y
Indonesia	Y	N	N	Y	N
Italy	Y	N	N/A	N	Y
Japan	Y	N ³	N ⁴	N	N
Korea	Y	N	N	Y	N
Mexico	Y	N	N ⁵	N	Y
Netherlands	Y	N	N ⁶	Y	Y
Russia	Y	N	N	N ⁷	N
Saudi Arabia	Y	N	N	N	N
Singapore	Y	N	N	N	N
South Africa	Y	N	N	N	N
Spain	Y	N ⁸	Y (banks) N (insurers)	Y (banks) N (insurers)	Y (except insurance)
Switzerland	Y	N	Y ⁹	Y	Y
Turkey	Y (banks) N (other firms)	N	N	Y	Y
United Kingdom	Y	Y	Y (banks, where partial property transfer takes place)	N	Y (in certain circumstances)
United States	Y	Y ¹⁰	Y	N	N ¹¹

* A number of jurisdictions report that, although there is no decision in statute for resolution decisions to be reversible in court, reversal is available as a possible remedy for the court under general judicial review.

1. Departure possible in the exercise of transfer powers, but creditors left behind are entitled to compensation if worse off than in liquidation.
2. This applies only under certain conditions. The selection of assets and liabilities for transfer is based first on the need to mitigate the systemic risk of the failure in an effective and cost-efficient manner. Where the impact on systemic risk is equal, the selection is based on the ranking of claims in insolvency.
3. Departure from equal treatment possible only in court-led rehabilitation proceedings or reorganisation proceedings.
4. The framework for rehabilitation proceedings and reorganisation proceedings ensures that creditors do not suffer greater loss than in liquidation.
5. No explicit procedure for compensation for creditors with greater losses than in liquidation, but the regime specifies that creditors should not be worse off as a result of P&A than in liquidation.
6. Transfer plans must be approved by the court, and a criterion for approval is that creditors will not be worse off as a result of transfer than they would be in liquidation.
7. The court can constrain administrator or liquidator from taking measures
8. Funds provided by FROB are excluded from the application of any loss allocation measures (for example, 'bail-in' of subordinated debt).
9. Restructuring measures must ensure that creditors are no worse off than in liquidation, and allocation of losses must be applied in accordance with the applicable statutory priorities.
10. The Dodd-Frank Act allows additional payments if necessary to: (i) maximise value of assets; (ii) continue essential services; (iii) maximise present value return from asset sales; and (iv) minimise losses.
11. Although courts generally do not have jurisdiction over any claim relating to any act or omission of the FDIC as receiver for a bank or covered financial company, federal courts do have *de novo* jurisdiction over suits regarding any disallowance by the FDIC as receiver of a claim.

Table 5: Funding of Institutions in Resolution

Jurisdiction	Funding arrangements for resolution				Is there a mechanism for public funds cost recovery? ***
	Privately funded resolution fund *	Publicly funded resolution fund	Privately funded protection fund **	Are there restrictions on the use of protection funds to finance resolution?	
Argentina	N	N	Y (banks)	Y ¹	Y
Australia	N	N	N	N/A	N
Brazil	N	N	Y (banks)	Y ³	N
Canada	N	N	Y (banks, insurers and securities firms)	Y	N ⁴
China	N	N	N (banks) Y (insurers, securities and futures firms)	Y	N
France	N	N	Y (banks and insurers)	N (but restrictions applied as a matter of policy)	N
Germany	Y (banks) ⁶	N	Y (life and health insurance) ⁵	N/A	Y ⁶
Hong Kong	N	N	N	N/A	N
India	N	N	N	N/A	N
Indonesia	N	N	Y (banks)	Y	N
Italy	N	N	Y (banks and securities firms)	Y ⁷	N
Japan	Y (banks)	N	Y (banks, securities firms and insurers)	Y ⁷	Y (banks and insurers)
Korea	N	N	Y (banks, insurers and securities firms)	Y	N
Mexico	N	N ⁸	Y (banks)	Y ⁹	N
Netherlands	N	N	Y (banks)	Y ¹⁰	N
Russia	N	N	Y (banks)	Y	N
Saudi Arabia	N	N	N	N/A	N
Singapore	N	N	Y (insurers)	Y	N
South Africa	N	N	N	N/A	N
Spain	N	Y (banks)	Y (banks, insurers and investment firms)	Y ¹⁰	N
Switzerland	N ⁵	N	N	N/A	N
Turkey	N	N	Y (banks and insurers)	Y	N
United Kingdom	N	N	Y (banks, insurers and investment firms)	Y	Y, FSCS levies on industry
United States	Y ²	N	Y (banks, securities firms and insurers)	Y	Y

* Excludes deposit insurance or other types of protection schemes.

** Includes only cases where protection funds can be used to fund various resolution actions (i.e. does not include cases where they may only be used for payout).

*** This refers to mechanisms for the recovery of public funding used in resolution other than from the proceeds of the sale of the firm or a bridge institution, or in the liquidation of the failed firm (including through a priority claim in liquidation). Similarly, it excludes recovery of amounts used from protection funds through premiums.

1. Funds may be used to recapitalise or finance the entity if the costs are less than payout of deposit insurance; such limits may be exceeded up to the amount of total insured deposits in the event of a systemic crisis.
2. The Dodd-Frank Act created the OLF, a separate fund established within the US Treasury, from which the FDIC may borrow to carry out its resolution responsibilities with respect to covered financial companies. Any amounts not repaid to the OLF by the FDIC from the proceeds of the resolution shall be repaid through assessments on eligible financial companies.
3. Use of fund must be necessary for financial stability, and capped to a specified threshold.
4. However, CDIC loans have a higher priority than general creditors in liquidation. Unfinanced losses covered by premiums payable to CDIC.
5. Systemically important Swiss banks are required to issue contingent convertible instruments, triggered at a threshold of 5% common equity tier 1 capital or the point of non-viability. The equity created by triggering those instruments is used to fund resolution.
6. While the resolution fund is set up under public law, contributions to the fund are collected from banks. In case the funds are not sufficient, the resolution fund can impose special contributions on banks to recover any temporary use of public money.
7. The deposit insurance funds used for resolution cannot exceed the amount that would otherwise be paid out for depositor compensation in liquidation.
8. However, the government can provide funding to IPAB if it cannot meet its obligations.
9. Use of deposit guarantee funds generally capped at insured amount, but may make payments in excess of that where specified conditions are met.
10. The deposit insurance fund can provide support for resolution but limited to the amount of insured deposits.

Table 6: Legal Framework for Cross-border Cooperation

Jurisdiction	Is there a requirement to consider the impact of resolution actions on financial stability in other jurisdictions?	Are there legal provisions or policies that mandate or strongly encourage cross-border cooperation of resolution authority?	Are there mechanisms through which resolution actions by a foreign resolution authority can promptly be given legal effect? *	Are there provisions that trigger automatic actions due to official intervention, resolution or insolvency proceedings in other jurisdictions?	Is there differential treatment of depositors, policy holders and other creditors by location of claim or jurisdiction in which claim is payable?
Argentina	N	N	N	N	N
Australia	Y (limited to impact on New Zealand)	Y	N	N	Y (depositors and insurance policyholders) N (investors and other creditors)
Brazil	N	N	N	N	N
Canada	N	N	N	N	N
China	N	N	N	N	N
France	Y (limited to impact within EU)	Y (within EU)	Y (only within EU)	N	N
Germany	Y (limited to impact within EU)	Y (within EU)	Y (only within EU)	N	N
Hong Kong	N	Y	N	N	N
India	N	N	N	N	N
Indonesia	N	Y	N	N	Y ¹
Italy	Y (limited to impact within EU)	Y (within EU)	Y (only within EU)	N	N
Japan	N	Y	Y ²	N	Y
Korea	N	N	N	N	Y (depositors)
Mexico	N	N	N	N	N
Netherlands	N	Y (within EU)	Y (only within EU)	N	N

Russia	N	N	N	N	N
Saudi Arabia	N	N	N	N	N
Singapore	N	N	Y	N	Y (depositors and insurance policyholders)
South Africa	N	N	N	N	N
Spain	Y (limited to impact within EU)	Y	Y (only within EU)	N	N
Switzerland	Y	Y	Y	N	N
Turkey	N	N	N	Y	Y (depositors)
United Kingdom	N	Y	Y (only within EU)	N	N
United States	N	Y	N	N	Y (depositors)

* Refers to expedited procedures to give effect to foreign resolution measures, either by way of processes for mutual recognition or the ability to take administrative measures under the domestic framework that support the resolution measures taken by the foreign resolution authority.

1. The Indonesian deposit insurance agency (IDIC) only protects/guarantees depositors of a foreign bank branch if its liquidation is conducted by the IDIC after BI, at its own initiative, revokes its business license. If the foreign bank branch is liquidated due to the license revocation and liquidation of its parent, the IDIC does not guarantee the depositors of the foreign bank branch, because this action is considered as a self-liquidation (article 61 and its elucidation of the IDIC Act).

2. The Act on Recognition of and Assistance for Foreign Insolvency Proceedings makes foreign insolvency actions effective in Japan.