

**ACG Comments on FSB’s Consultative Document on the Application
of the Key Attributes of Effective Resolution Regimes for Financial
Institutions to non-bank financial institutions**

**Asia-Pacific Central Securities Depository Group (ACG)
(Prepared by the ACG Legal Task Force)
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As the group of CSDs in the Asia-Pacific region, ACG welcomes the opportunity to comment on the FSB’s Consultative Document on the Application of the Key Attributes of Effective Resolution Regimes for Financial Institutions to non-bank financial institutions.

Banks and securities companies in some ACG members’ jurisdictions have their own resolution or insolvent laws and regulations, but there are no similar ones for non-bank FMIs such as clearing and settlement organizations because it is unexpected for them to come to resolution. Therefore, the resolution report should be an integral part of the comprehensive risk-prevention plan. There are following suggestions based on our own experiences.

1. The resolution plan should be closely connected and compatible with bankruptcy laws of each country or region, which are mandatory and enforceable. We may have to seek to add some items in the resolution plan to the bankruptcy law of each individual country/region or transform the plan into an international convention/treaty. Otherwise, the resolution plan will become a mere scrap of paper.

2. Regarding Appendix III (Client Asset Protection in Resolution), resolution authority holds much resolution power described as following:

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

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

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

(iii) In the case of client assets held by a third party custodian, the resolution authority should have the power to transfer the contractual rights and obligations

between the custodian, the firm in resolution and its clients to the qualified transferee.
3.2 The exercise of transfer powers should not require the consent of affected clients.”

In the document, securities companies are required to make institutional arrangements for their clients' assets (like identification, separation, etc) so that resolution authority can take related risk-prevention measures.

However, with many ACG member CSDs' account structure of direct holding under which CSDs open both securities companies' account and end-investor's account, CSDs have their own ways of client asset protection.

For direct holding account structure, securities are registered in investors' own accounts and separated from securities companies' asset. Thus there is no need to transfer securities to special accounts or third-party accounts as described in 3.1.

Related to indirect holding structure under which CSDs open only financial institution's account, there are also institutional arrangements for identifying and separating clients' assets. In some business, there is a segregation of clients' assets and securities companies' assets. For instance, in margin trading business in some ACG member's jurisdiction, it's stipulated that there should be sub-accounts, credit securities accounts, to record the data breakdown of securities entrusted by investors to securities companies. Therefore, it should be considered that not all the markets shall have such arrangement as described in 3.1.

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About ACG

The Asia-Pacific Central Securities Depository Group (ACG) was formed in November 1997 with the objective to facilitate the exchange of information and to promote mutual assistance among member securities depositories and clearing organizations in the Asia Pacific region.

The number of participants as of the end of September 2013 is 32 institutions in 23 countries/regions.

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