FINANCIAL STABILITY BOARD

16 July 2013

Recovery and Resolution Planning for Systemically Important Financial Institutions:

Guidance on Developing Effective Resolution Strategies

16 July 2013

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Introduction

This Guidance should assist home and host authorities in meeting the resolution planning requirements under the *FSB Key Attributes of Effective Resolution Regimes for Financial Institutions ('Key Attributes'* or KAs*).*[1] It describes key considerations and pre-conditions for the development and successful implementation of effective resolution strategies. The Guidance complements the *Essential Elements of Recovery and Resolution Plans* set out in Annex III to the *Key Attributes*.

The *Key Attributes* (KA 11.1) require an ongoing process for recovery and resolution planning covering, at minimum, domestically incorporated firms that could be systemically significant or critical if they fail. This guidance focuses primarily on resolution strategies for global systemically important financial institutions (G-SIFIs).[2] However, many aspects will also be relevant for the elaboration of resolution strategies for domestically systemically important financial institutions. While it is developed for banking institutions, some aspects may also be relevant for firms in the non-bank sector.

Crisis Management Groups (CMGs)

The *Key Attributes* (KA 8.1) require home and key host authorities of all G-SIFIs to maintain CMGs with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm.

Resolution strategy

The *Key Attributes* (KA 11.6) require the development of a resolution strategy for G-SIFIs that establishes an approach for resolving the failing firm in a way that protects its critical functions, government funds and systemic stability, and achieves other relevant resolution objectives. The resolution strategy is a key component of the overall resolution plan required under the *Key Attributes*.

Operational resolution plan

The resolution strategy should be supported by a more detailed operational resolution plan that sets out the actions necessary to implement the strategy and highlight any "potential barriers to effective resolution and actions to mitigate those barriers" (KA11.6).

Institution-specific cross-border cooperation agreements (COAGs)

The resolution strategies and plans should be supported by institution-specific COAGs (KA 9). COAGs should define the roles and responsibilities of participating authorities and establish processes for coordination and information sharing in developing recovery and resolution plans and carrying out resolvability assessments, and for coordination both in the run up to a possible resolution and in a resolution. They should also "provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures" (KA 9.1).

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[1] http://www.financialstabilityboard.org/publications/r_111104cc.pdf

[2] The FSB published an initial list of G-SIFIs on 4 November 2011 and an updated list on 1 November 2012. The group of G-SIFIs will be updated annually and published by the FSB each November.

Resolvability assessments

Authorities should regularly undertake resolvability assessments to evaluate the feasibility and credibility of resolution strategies and their operational resolution plans, identify factors and conditions that have an impact on the effective implementation of resolution actions and to help determine the specific actions necessary to achieve greater resolvability (KA10.1; Annex II Resolvability Assessments). In order to do so accurately, authorities will need to review the resolution strategies, plans and institution-specific COAGs and their alignment with the firm's legal, financial and operational structures. It cannot be assumed that a firm is resolvable if there is no feasible and credible strategy to resolve it.

In the first stages of resolution planning, resolvability assessments help authorities to identify impediments to resolution and determine the right resolution strategy. Thereafter, resolvability assessments will inform the further development and review of resolution plans. Resolution strategies and plans will need to be kept up to date as banks' business models and markets evolve and as resolution authorities learn lessons from resolving banks.

Where resolvability assessments identify potential barriers to the implementation of the preferred resolution strategy, authorities and firms should ensure that those barriers are removed or materially mitigated in a timely way. Actions to remove or mitigate barriers may include changes to firms' legal, financial or operational structures where these impede the effective application of resolution powers (having regard to the effect of such changes on the soundness and stability of ongoing business); or processes (including by contract) for giving effect to foreign resolution actions and cooperation agreements to address weaknesses and uncertainties in cross-border cooperation and coordination. Authorities should take reasonable steps to alert their national governments and legislative bodies where the barriers arise from limitations in the powers of resolution authorities.

Annual review by top officials in CMGs

The *Key Attributes* require that institution-specific COAGs "provide for meetings to be held at least annually, involving top officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy for G-SIFIs" (KA 9.1(ix)). The high-level review should cover, among other things, a review of the robustness of the conclusions of the resolvability assessment, particularly with regard to the credibility of the resolution strategy, and a review of whether operational resolution plans or COAGs (including information sharing arrangements) need to be strengthened or updated.

1. Development of resolution strategies

1.1. Common considerations for the development of resolution strategies

Resolution strategies and plans should help achieve an orderly resolution and facilitate the effective use of resolution powers with the aim of making the resolution of any firm feasible without severe systemic disruption and without taxpayer solvency support (KA 11.6 and *Essential Elements of Recovery and Resolution Plans*, Annex III to the *Key Attributes*).

The following considerations should guide the development of resolution strategies. They are relevant to all resolution strategies, although the necessary outcomes (for example, the location of loss absorbing capacity within a group) may vary depending on the strategy that is pursued.

1. Sufficient loss absorbing capacity (LAC)

LAC needs to be available in sufficient amounts and at the right location to facilitate a recapitalisation or orderly wind down of the firm (or of part of the firm) and avoid the need for a bail-out with public funds. LAC may take the form of equity, subordinated debt, senior unsecured debt, and other unsecured uninsured liabilities. The location of that LAC (for example, whether issued by a parent company or by subsidiaries) is a significant factor in the choice of a preferred resolution strategy (see subsections 2.1 and 3.1 below).

Depending on the group structures and resolution strategies, authorities may need to consider the introduction of requirements for firms to hold a sufficient amount of LAC, taking into account the potential impact of such requirements on the firms' financing cost and business operations, including in crisis times. Such requirements may define a minimum maturity for eligible LAC and, depending on the resolution approach, solo and/or consolidated requirements for LAC.

In addition, it may be necessary to ensure LAC is held by parties that can absorb losses without adverse effects on financial stability, for instance by adopting limits on cross-holdings of bank LAC by other banks and concentration limits on investments in LAC of individual firms by long term savings institutions (such as insurance companies and pension funds) and asset managers. Such limits could help to avoid sectoral concentrations of holdings of LAC and thereby reduce the contagion effects of imposing losses on LAC holdings on the banking, insurance and pensions sectors.

2. Position of LAC in the creditor-hierarchy

In determining the appropriate resolution strategy authorities need to assess the position of LAC in the creditor hierarchy under the laws applicable to the group entities where the LAC is located.

The *Key Attributes* (KA 3.5 and 5.1) require resolution authorities in the exercise of resolution powers to respect the statutory hierarchy of claims that would apply in liquidation when using resolution powers to ensure that a firm's losses are fully allocated. This means that equity holders are the first to absorb losses, followed (if there is insufficient equity to absorb all the losses) by subordinated creditors, then senior (general) creditors, then preferred creditors.[3] Creditors of the same class should be treated on an equal footing (*pari passu*). However, authorities should have some flexibility to depart from the general principle of equal treatment of creditors ranking *pari passu* if justified by financial stability concerns and to maximise value (KA 5.1).

The position of depositors in the creditor hierarchy is a critical consideration in the resolution of a bank. Unless a jurisdiction provides for depositor preference, a strict application of *pari passu* would require that uninsured deposits and, in respect of insured deposits, the deposit insurer assume losses along with senior unsecured debt if both are in the same class.

In an insolvency, the deposit insurer generally assumes the rights and obligations of insured depositors in respect of the insured part of their deposits. The position of the deposit insurer in the creditor hierarchy, and the extent to which it will bear losses, will therefore depend on whether insured deposits are preferred.

The *Key Attributes* (KA 7.4) require that the "treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors." Authorities in the home and relevant host jurisdictions should therefore make clear the creditor hierarchy in their respective jurisdictions, including the ranking of deposits and scope of depositor preference,[4] if applicable.

Appropriate safeguards should be in place so that the principle of 'no creditor worse off than in liquidation' is applied to all creditors including the deposit insurer.

3. *Operational and legal structure and operational continuity*

A firm needs to be legally and operationally structured in a way that supports effective resolution under the chosen strategy, so that the continuity of its critical functions[5] can be maintained in resolution whilst allowing for an orderly wind down of business lines where necessary.

To resolve a failing firm in a manner that maintains continuity of its critical functions, it is important that the firm in resolution, or a transferee to which those critical functions have been transferred, can continue to rely on services provided by the financial market

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[3] Jurisdictions may provide for several classes of preferred debt, including: deposits, accrued payroll and wage claims; social security and claims of the fiscal and other public authorities; and debtor in possession (DIP) financing, which is a special form of financing provided to firms under US Chapter 11 bankruptcy process that is given priority over pre-existing debt.

[4] The following approaches can be distinguished: (i) general depositor preference gives preference to all deposit liabilities of a deposit-taking institution, irrespective of their deposit insurance eligibility, their covered status or the location where the deposits are booked or payable (whether in the local jurisdiction or at a foreign branch); (ii) eligible depositor preference gives preference to all deposits meeting the eligibility requirements for deposit insurance coverage (e.g., all classes of deposit covered by the scheme irrespective of limits); and (iii) insured depositor preference covers only insured depositors and no depositors outside the scope and limits of the deposit insurance system. The uninsured amount of a deposit will be treated as an unsecured senior creditor claim

[5] *See FSB Guidance on Identification of Critical Functions and Critical Shared Services*,

infrastructure (FMIs) in which it participates, subject to adequate safeguards to protect the sound risk management and safe and orderly operations of the FMI. The resolution strategy should therefore address the need for the continued provision of financial infrastructure services, including continued access to FMIs, and set out how the firm can continue to meet the obligations of membership and maintain access to FMIs or critical FMI services as it undergoes the resolution process.

The resolution strategy also needs to set out minimum requirements for operational continuity in resolution in respect to critical shared services that are either performed within the firm or outsourced to third parties,[6] including in cases where the resolution strategy provides for a break-up or partial wind-down of the firm. It needs to ensure that the necessary financial resources and adequate governance and control arrangements are in place so that the service providers, internal and external, can continue to provide their services. Where services are provided by third parties, service level agreements need to remain valid and enforceable in resolution in all relevant jurisdictions.

4. Resolution powers to deliver the strategy

The resolution strategy also should identify the resolution powers to be applied by home and host authorities that are most likely to deliver the strategy, such as the use of a bridge institution, purchase and assumption or "bail-in" powers. It will need to take account of critical procedural requirements and conditions for applying these powers, for example, how the firm is placed into receivership so that some or all if its operations being transferred to a newly established bridge institution or how the "bail-in" of debt instruments is effected.

5. Enforceability and implementation of "bail-in"

As set out in the *Key Attributes* (KA 3.2 (ix) and KA 3.5), the power to "bail-in" consists of the ability to "wipe out" equity and achieve the write down of creditor claims to the extent necessary to absorb the losses; *and* to convert creditor claims into equity (or other instruments of ownership of the firm under resolution or any successor in resolution (for example, a bridge institution) or the parent company within the same jurisdiction.

There needs to be sufficient legal certainty that actions by the resolution authority to write-down or convert debt into equity instruments of the recapitalised entity or a successor entity will be effective, including where the debt issued by the firm incorporated in the jurisdiction of the resolution authority is subject to foreign law, issued out of a foreign jurisdiction (for example, a foreign branch or special purpose entity), or held by debt-holders in a foreign jurisdiction. This may require the inclusion in the debt instruments of clauses that contractually recognise resolution actions by the firm's home resolution authority or complementary actions by the relevant foreign jurisdiction that give effect to the write-down or conversion. Alternatively, authorities may need to consider whether to require that the debt issued by firms incorporated in their jurisdiction be issued out of, and governed by the law of, that jurisdiction.

[6] See *FSB Guidance on Identification of Critical Functions and Critical Shared Services*.

6. Treatment of financial contracts in resolution

CMGs need to assess the risk that entry into resolution leads to a close-out and termination of large volumes of financial contracts that creates systemic instability and frustrates the implementation of resolution measures aimed at maintaining continuity. CMGs therefore need to evaluate: (i) whether such outcomes can be avoided by temporary stays of counterparties' early termination rights, including under cross-default clauses, and of their rights to seize collateral upon entry into resolution; or (ii) whether the laws in the home and relevant host jurisdictions provide, subject to adequate safeguards, for automatic statutory stays or overrides of contractual termination rights in financial contracts with a firm in resolution that arise solely because of the entry into resolution or exercise of resolution powers in respect of the firm or the firm's parent or affiliates (including in foreign jurisdictions).

Given the limited jurisdictional reach of temporary prohibitions or stay powers, in the absence of fully aligned statutory frameworks for cross-border recognition authorities may need to review their regulatory policies and incentives for firms to adopt contractual provisions that would temporarily suspend events of default and cross-default rights where certain resolution actions have been taken.

7. Funding arrangements

The implementation of the resolution strategy may require the provision of significant amounts of temporary liquidity to the firm in resolution or a successor that assumes its critical functions, and the resolution strategy needs to address how such demands could be met by funds provided by the industry or recovered from the industry. It should identify available sources of resolution funding including, where relevant and appropriate, national deposit insurers, resolution funds and other potential funding sources. Governance arrangements should be in place detailing the involvement of the providers of such funding in decision-making processes in the event that their funds are used to support resolution. The strategy should also specify any related preconditions and requirements for use of sources of funding.

8. Cross-border cooperation and coordination

Resolution strategies should be complemented by institution-specific COAGs that specify procedures agreed between home and host authorities for information sharing, coordination of resolution planning, consultation in the run up to a potential resolution, and coordination and cooperation in executing a group-wide resolution of the firm in question. Where practicable and appropriate, COAGs should provide clearly defined procedures for implementing the resolution strategy and operational resolution plan across multiple authorities in different jurisdictions and time zones. In particular, a firm's COAG or the operational resolution plan should make clear in what circumstances and subject to what conditions home and relevant host authorities would be prepared to cooperate in executing the group-wide resolution strategy and to take actions to support that strategy, if necessary, rather than acting on their own.

Such circumstances and conditions may include considerations of whether: (i) capital and liquidity will be down-streamed from the parent to the subsidiary or access to temporary liquidity support will be made available to local entities by host jurisdictions; (ii) the resolution strategy is effective in preserving vital economic functions in host jurisdictions;

(iii) stakeholders will be treated equitably across home and host jurisdictions; and (iv) host authorities require a specified level of assets to be maintained in the host jurisdiction.

9. Coordination in the proximity of failure

In conjunction with the development of a strategy, CMGs may need to consider processes to step up their preparation for resolution in the pre-resolution phase where the financial situation of a firm is deteriorating. Institution-specific COAGs should indicate when consultation and discussion of possible coordinated actions would be expected to take place, taking account of the early intervention frameworks of the relevant authorities. Such a phase, which may involve implementation of recovery measures by the firm, should, where appropriate, involve supervisors working progressively closely with resolution authorities.

CMGs may also need to consider the extent to which recovery measures (for example, measures to de-risk and shrink the firm's business or simplify trading books) support or are consistent with the resolution strategy.

10. Approvals or authorisations needed to implement the strategy

In developing a resolution strategy, CMGs will need to consider how any critical requirements for regulatory approval or authorisation can be met in a timely manner in order for the implementation of the resolution strategy to be fully effective. These may include regulatory and third party approvals for change of control of an existing entity or the establishment of new financial entities, including requirements set by company and securities regulators and workplace authorities. Jurisdictions may need to consider the introduction of accelerated authorisation procedures that can be relied on in a resolution.

Where possible, a firm in resolution should be returned to the market as quickly as possible, including through the listing of its securities on all relevant exchanges. Relevant securities laws and associated disclosure regimes should be reviewed and, where appropriate, adapted (for example, through waivers or exemptions from the requirements relating to offering documents that may not be met by a bridge bank) to support timely exit strategies from resolution.

11. Maintaining essential functions and services ("fall back options")

As part of their overall resolution planning, CMGs should consider fall-back options for cases in which their preferred resolution strategy cannot be implemented, for example, owing to the extent of losses suffered across different parts of the firm, the specific causes of the failure and state of the firm or the specific conditions prevailing in the financial system and economy more generally.

Such fall-back options should identify the most "elemental" of the firm's critical functions[7] that need to be preserved in all circumstances and the conditions that need to be in place to ensure continuity of those functions in all resolution scenarios. Providing such continuity may

[7] See discussion of criticality, pp. 5-6, of the FSB *Guidance on the Identification of Critical Functions and Critical Shared Services*

require, for example, measures to be taken during resolution planning to ensure that the functions can be easily detached and continued in resolution.

12. Information systems and data requirements

CMGs may need to consider whether firms' information systems and the data requirements that apply to firms ensure that the authorities will be able to obtain all the data needed to implement the resolution strategy and carry out credible valuations before and during resolution. Valuations will be required, for example, around the time of entry into resolution to estimate the level of debt write down needed in a bail-in to recapitalise the firm, and may also be required to apply the "no-creditor-worse-off-than-in-liquidation" safeguard (KA 5.2) or to determine the DGS contribution, if any, to the resolution. The institution-specific COAG or the operational resolution plan should define processes that ensure that credible valuations can be carried out quickly and effectively prior to implementation of a resolution measure. These should set out what valuations and what information may be required, the valuation principles that would apply and the need for the appointment of independent valuers.

13. Post-resolution strategy

CMGs may also consider possible measures to underpin the viability of the operations that emerge from the resolution. Such measures may include shrinking the firm's balance sheet, breaking the company up into viable saleable and non-viable parts, including through an operational and legal separation. Any remaining parts of the business will need to have strong corporate governance and management oversight, which would be likely to require significant changes to management and board personnel and internal governance processes. The post-resolution strategy should also indicate any applicable legal or regulatory constraints, such as a maximum duration for bridge entities or restrictions under competition law.

1.2. Single point of entry (SPE) and multiple point of entry (MPE): determining a preferred strategy

The resolution strategies that are being developed by CMGs are broadly based on two stylised approaches: "single point of entry resolution", in which resolution powers are applied to the top of a group by a single national resolution authority and "multiple point of entry resolution" in which resolution tools are applied to different parts of the group by two or more resolution authorities acting in a coordinated way.

- **Single point of entry (SPE)** involves the application of resolution powers, for example, bail-in and/or transfer tools, at the top parent or holding company level[8] by a single resolution authority – probably in the jurisdiction responsible for the global consolidated supervision of a group. An SPE strategy operates through the absorption of losses incurred within the group by the top parent or holding company through, for example, the write-down and/or mandatory conversion of unsecured debt issued by

[8] In this document, references to a holding company include a parent operating company, recognising that an SPE resolution of the latter may entail additional challenges, which should be considered in the operational resolution plan.

that top company into equity ("bail-in"). Provided that sufficient LAC is available at the top parent or holding level, operating subsidiaries should be able to continue as a going concern without entering resolution.[9] However, host authorities may need to exercise powers to support the resolution led by the home authorities.

- **Multiple point of entry (MPE)** involves the application of resolution powers by two or more resolution authorities to different parts of the group, and is likely to result in a break-up of the group into two or more separate parts. The group could be split on a national or regional basis, along business lines, or some combination of each. The resolution powers applied to the separate parts need not be the same and could include resolution options, such as bail-in within resolution, use of a bridge entity, transfer of business or wind-down. MPE strategies nevertheless require actions to be coordinated across jurisdictions so as to avoid conflicts or inconsistencies that undermine the effectiveness of the separate resolution actions, a disorderly run on assets and contagion across the firm.

There is no binary choice between the two approaches. In practice, a combination might be necessary to accommodate the structure of a firm and the local regimes in the key jurisdictions where it operates. For example, some MPE strategies may involve applying multiple SPE resolutions to different parts of the firm, for example, regional blocs that are separable from one another.

The choice of the strategy needs to take account of the existing structure and business model of the individual firm and the firm's particular characteristics. For example, an SPE strategy may represent the most effective option if the debt issued at the top of the group is sufficient to absorb the group's losses and ensure the viability of the operating subsidiaries. It may be more suitable to a firm that operates in a highly integrated manner (through, for example, centralised liquidity, trading, hedging and risk management). An MPE strategy may be suitable for firms with a decentralised structure and greater financial, legal and operational separation along national or regional lines, with sub-groups of relatively independent, capitalised and separately funded subsidiaries, particularly if different parts of the group can continue on a standalone basis. In some cases, a group may need to be restructured to make it amenable to one or other of an SPE or MPE resolution strategy.

The successful implementation of a chosen resolution strategy will depend on a range of factors and the considerations that are described in the following sections. To some extent, the pre-conditions for successfully executing an SPE strategy (see Section 2) differ from those for successfully executing an MPE strategy (see Section 3). In resolution planning, authorities therefore should identify in advance the preferred strategies for a firm or parts of the firm.

[9] In cases where the losses in one or more operating companies exceed the loss absorbing capacity of the top parent or holding company, resolution of particular operating companies may also be necessary.

2. Single Point of Entry

2.1. Preconditions

The successful implementation of an SPE strategy relies on a series of assumptions and preconditions. This subsection sets out a number of key considerations that authorities need to address when developing an SPE resolution strategy.

1. *Point of entry and scope of the resolution*

The resolution strategy needs to identify the top parent or holding entity that will be subject to resolution. It should also identify those operational subsidiaries (domestic and foreign) and their affiliates that should be able to remain open and operating during the resolution if losses are passed up to and absorbed at the top of the group and the top parent or holding company down-streams capital and liquidity to support subsidiaries. It should also assess whether certain group entities are sufficiently separable to be resolved separately (which may be necessary, as a fall-back, in cases where the preferred resolution strategy cannot be implemented because losses of specific operational subsidiaries exceed the loss absorbing capacity of the top parent or holding company).

2. *Resolution authority and tools*

The top parent or holding company and material subsidiaries need to be located in jurisdictions with resolution regimes that provide for effective resolution powers consistent with the *Key Attributes*. The resolution strategy should identify the preferred resolution tools, such as the write-down of equity and debt of the parent or holding company or the conversion of debt of the parent or holding company into equity of the existing (recapitalised) entity or a newly established bridge entity; or use of a newly established bridge institution to assume all or parts of the operations, assets and liabilities of the parent or holding entity). The tools identified should be capable of being applied to all relevant entities, including the parent or holding company, under the applicable regime.

3. *Adequate amount of LAC*

The SPE strategy needs to specify the amount and nature of the LAC that is available at the top parent or holding entity and assess whether it is likely to be sufficient to absorb losses sustained within operational subsidiaries or other affiliates of the group that are intended to be maintained in resolution.

4. *Quality of LAC*

The LAC should (preferably) consist of equity or long-term debt held "in the right hands", that is, not concentrated within other financial firms, insurers or pension funds to such an extent that the write-down of that equity or debt could have a further negative impact on financial stability.

The ranking of the debt in the creditor hierarchy also matters. If the debt that should be bailed in ranks equally with other liabilities, such as deposits (or certain types of deposits, such as retail and SME deposits), the resolution authority's actions may be constrained by a strict application of the *pari passu* principle (i.e., the requirement to treat creditors of the same class equally), unless the resolution authority has the power under the resolution regime to depart from the *pari passu* principle. Differential treatment of equal-ranking creditors should be possible if it is necessary to contain the systemic impact of the firm's failure or to maximise value for the benefit of the creditors as a whole, (KA 5.1). Differential treatment of equal-ranking creditors may give rise to compensation claims by creditors if they are worse off as a result of resolution than they would have been in liquidation.

5. *Financial structure - up-streaming losses and down-streaming capital*

An SPE resolution strategy should specify how the (domestic and foreign) group entities that are to remain a "going concern" in resolution are able to pass their losses to the top of the group. The group's capital and liability structure therefore needs to be set up in a way that allows for losses in group entities to be absorbed by (or "up-streamed" to) the top parent or holding company. This may be achieved, for example, through the provision of debt funding by the parent to subsidiaries that could be either written down ("forgiven") or converted into equity in resolution, once the capacity of the parent's equity holdings in the subsidiaries to absorb losses has been exhausted. This may also require, for example, that set-off between a subsidiary's claims against its parent and the parent's claims against the subsidiary should not be available. Regulatory large exposure limits at the top of the group on intra-group funding may be an impediment to SPE resolution strategies.

Authorities also need to consider the ranking of funding provided by the parent to subsidiaries by way of intra-group loans. If such loans rank senior to or *pari passu* with external creditors of subsidiaries, it may not be possible for losses incurred by subsidiaries to be absorbed by the parent before external creditors of the subsidiaries suffer losses.

In order to reduce operational barriers to resolution in the case of firms that operate with "vertical" structures, it may be desirable to reduce the number of companies that losses need to pass through to reach the top parent company.

6. *Cross-border aspects – home and host assurances*

The successful implementation of an SPE strategy will depend on the home authority providing adequate assurances to the host authorities regarding the treatment of local subsidiaries and, in particular, that sufficient capital and liquidity will be down-streamed to operating subsidiaries in their jurisdictions. This is necessary to give host authorities the necessary comfort so that they refrain from taking independent action and instead rely on action by the home authorities to give effect to a group-wide resolution. It should be clear under what circumstances and conditions a host would be willing to rely on the home authorities to implement the resolution strategy. The provision of debt funding by the parent to subsidiaries (see point 5 above) may provide host authorities with some assurance that there is local LAC that could be relied on if necessary. The conditions under which host authorities would be prepared to refrain from taking independent action and instead support a group-wide SPE resolution effected by the group's home authorities should be set out in the firm's COAG or operational resolution plan.

CMGs need to review whether the laws in relevant home and host jurisdictions override contractual termination rights in financial contracts that arise solely because of the failure and resolution of counterparty's parent holding company or another affiliated company.

2.2. Suitability of an SPE strategy as preferred strategy

The following questions may help authorities to identify the resolution strategy most suited to a firm and assist them in identifying any potential remaining barriers to a firm's resolvability under an SPE strategy:

1. *Is sufficient LAC available at the top parent or holding company?*
2. *Can losses incurred by subsidiaries be effectively passed to that top parent or holding company?*
3. *Are there any practical impediments to the write-down or conversion of LAC of the parent, e.g., arising from legal enforceability, in particular where the debt is issued out of a foreign jurisdiction or governed by foreign law?*
4. *Do any legal, regulatory, accounting and tax requirements prohibit the parent company from assuming losses of operating subsidiaries or down-streaming resources generated through "bail-in" at parent company level to such subsidiaries, for example, due to strict intra-group exposure limits or concentration rules applied to the parent company?*
5. *Can a valuation be carried out quickly and effectively to determine the amount of write-down required? Is any key information on the group and regional entities not available and accessible in a timely fashion, for example, for purposes of valuation or development of a comprehensive resolution plan?*
6. *Is the LAC held by investors that, if faced by losses, could have an adverse impact on financial stability or other material adverse effect?*
7. *Do holders of the LAC have rights of set-off against other claims they have against the firm that reduce the effectiveness of LAC instruments in absorbing losses?*
8. *Do any subsidiaries hold claims against the parent company and can these claims be set off against claims from the parent against subsidiaries?*
9. *Have host authorities identified the conditions under which they would be prepared to refrain from taking action and rely on the home authorities to implement an SPE resolution? Beyond the jurisdictions included in CMGs, are there other host jurisdictions that are relevant to the operations of the group that need to be included in the resolution planning (to minimise the risk that they will take independent national action that hampers the SPE resolution)?*
10. *Do home or host authorities face any potential obstacles to the implementation of the strategy (for example, risk of commencement of local insolvency proceedings following petitions from directors or creditors of local subsidiaries or regulatory actions to seize or ring fence local assets)?*
11. *Are changes needed to the group's legal, financial or organisational structure to make SPE a credible preferred strategy?*

12. *What is the fall-back strategy if, for any reason, the preferred SPE strategy cannot be implemented, including where losses in operating entities that perform critical functions exceed the LAC of the top parent or holding company?*

3. Multiple point of entry

3.1. Preconditions

Under an MPE strategy, a distressed part of the group may need to be detached from the rest of the group, or group entities in more than one jurisdiction are likely to enter into resolution. For each part of the group that may be separated in resolution, a preferred resolution strategy (and fallback strategy) is required. In a global MPE approach, subsidiaries and branches may sit beneath each point of entry in a number of jurisdictions and these sub-groups may be each subject to either a regional or national SPE or MPE approach. However, because such a combination of SPE and MPE approaches would entail more than one point of entry, it is referred to as an MPE resolution. This sub-section sets out a number of key considerations that authorities need to address when developing an MPE resolution strategy.

1. *Points of entry and scope*

The MPE strategy should set out the points at which entry into to resolution is likely to occur; that is, the legal entities to be subject to resolution powers, and the operating subsidiaries and affiliates of those points of entry that will be included in the resolution action, including where any regional or other blocs are envisaged. If such blocs or sub-groups are potentially subject to a regional or national SPE approach within a global MPE strategy, and depending on their structures and business operation, consideration may need to be given to whether such an approach may be facilitated by sub-holding company structure and whether it requires the sub-group to issue debt externally, either directly or through such an intermediate financial holding company.

2. *Resolution authorities and tools at the points of entry*

The MPE strategy should set out the approaches that are likely to be used at each point of entry to resolve that entity and any sub-group beneath it; for example, write-down and/or conversion of debt, transfer of operations to a third party purchaser or bridge institution, wind down. As indicated above, MPE strategies may involve applying multiple SPE resolutions to different parts of the firm, for example, separable regional blocs. The MPE strategy should ensure that the discrete resolution actions at each point of entry are not inconsistent or based on unrealistic assumptions (for example, sale of several parts of the firm to the same purchaser).

3. *LAC at points of entry*

Each legal entity in the group that may be subject to a separate resolution action should have sufficient LAC to cover its likely losses in resolution and those of subsidiaries below it for which a separate resolution is not planned. Alternatively, it should be capable of being wound down without affecting the rest of the group. The MPE strategy should therefore evaluate the amount of LAC currently available at each point of entry, including the scope, if any, for deposit insurers or other protection funds to bear losses in accordance with their position in the creditor hierarchy.

Debt is likely to be issued by operating subsidiaries to third parties, with the consequence that the use of resolution powers to convert debt to equity may result in a change of ownership, loss of control by the top parent or holding company and, potentially, separation from the group. The resolution strategy should address how such change of ownership and separation from the group can be implemented without disruption to the firm's critical operations.

4. Legal and operational structure

The MPE approach is likely to require a much greater degree of financial and operational separation of entities that are identified as "points of entry", so that host resolution authorities can effectively resolve such an entity (and those below it) in a manner that results in their separation from the wider group. The MPE strategy will also need to set out how foreign branches will be treated in resolution, in particular in cases where they are material in terms of size, funding role, provision of critical functions, or systemically significant in the jurisdiction.

5. Critical functions and services

Where material legal entities depend on other group companies for the provision of critical shared services or access to infrastructure, this may present an obstacle to the successful break-up of a group under an MPE resolution strategy. Critical functions and critical shared services should therefore be organised in a way that facilitates continuity under an MPE resolution strategy that could result in a break-up of the group, with the continued operation of some parts and the wind-down of others. This might entail, for example, the provision of critical shared services or functions out of adequately capitalised separate legal entities that are dedicated to service provision, or advance preparation for a carve-out in a crisis. Authorities will need to consider whether service level agreements between group entities, including cross-border inter-company service agreements, can be enforced in resolution in all relevant jurisdictions and how critical shared services could be provided to different parts of the former group after it has been split in an MPE resolution.

Material legal entities of the group need to be able to maintain access to FMI arrangements (including access to central clearing and payment and settlement systems), subject to adequate safeguards to protect the safe and orderly operations of the FMI, if they are to be resolved separately under an MPE strategy.

Where firms engage in extensive cross-border and cross-entity booking and hedging practices, these may act as an obstacle to splitting the group in an MPE resolution. Material legal entities should have stand-alone booking and risk management practices if they are to be resolved separately under an MPE strategy.

6. Financial structure

Material subsidiaries or regional blocs should have in place funding arrangements that make it possible for them to be separated and continue operating should other parts of the group enter resolution. Intra-group financial interdependencies (for example, guarantees and contingent claims) and other exposures between group entities that would hamper a clean separation or risk the spread of contagion through the group should be limited. For example, exposures between group entities may need to be reduced and any intra-group funding should be provided at 'arm's length' and subject to appropriate large exposures limits.

7. *Legal-entity specific information*

Critical management information, including financial statements, should be available at the level of subsidiaries or local blocs (although consolidated financial statements for blocs are unlikely to be readily available). This includes detailed information on capital, subordinated debt, contingent capital and debt, and operational links. Firms should be able to produce legal entity specific information upon request for all entities that are systemic in any jurisdiction. Additionally, local management information systems should be readily separable from the rest of the corporate organisation so that they can be relied on at the level of relevant subsidiaries or local blocs.

8. *Cross-border coordination.*

The institution-specific COAG should describe the approach to coordination between the authorities responsible for each point of entry and the role of the home authority in coordinating the resolution actions of those other authorities. It should also describe the reach of resolution proceedings under each point of entry to avoid conflict and competition for assets between proceedings that are initiated at the same time.

Parties to the COAG should have clarity as regards the conditions and the timing for the application of resolution powers in various jurisdictions (including, as appropriate, an assessment of interdependencies, the impact on timing and any challenges arising from 'first-mover' actions).

3.2. Suitability of an MPE strategy as preferred strategy

The following questions may help authorities to identify the resolution strategy most suited to a firm and assist them in identifying any potential remaining barriers to a firm's resolvability under an MPE strategy.

1. *Are material group entities able to fund themselves on a stand-alone basis?*
2. *Is any intra-group funding provided on the same terms as to external investors (that is, at 'arm's length' and subject to counterparty risk limits)?*
3. *Are extensive cross-entity exposures or guarantees in place?*
4. *Do any material legal entities engage in significant cross-border or cross-entity booking practices?*
5. *Are the local group operations dependent on infrastructure, IT, employees or other critical shared services from other group entities (other than distinct group operational subsidiaries)?*
6. *Do any of the local operations lack effective stand-alone governance and management arrangements?*

7. *Are the local group operations dependent on risk management or hedging services performed by other group entities? Is any locally-conducted financial activity booked on the balance sheets of other group entities (that are not part of the same prospective regional bloc)?*
8. *Are critical functions carried out through cross-border branches, and are any cross-border branches systemically important in host jurisdictions?*
9. *Do home or host authorities at the points of entry into resolution have the requisite resolution powers and operational capacity to give effect to the resolution strategies and coordinate their actions?*
10. *Is there a risk that resolution actions in one jurisdiction will cause contagion to other parts of the firm, for example, through the operation of cross-default clauses?*
11. *Beyond the jurisdictions included in CMGs, are there other jurisdictions that are relevant to the operations of the group that need to be included in the resolution planning (for effective implementation of the MPE strategy)?*
12. *Are changes needed to the group's legal, financial or organisational structure to make MPE a credible preferred strategy?*

4. Disclosure of the resolution strategy

Disclosure to the public

Resolution authorities may make some of the information relating to institution-specific resolution strategies available to the wider public. Authorities should not, however, give or appear to give complete or irrevocable commitments to implement any particular preferred resolution strategy. To do so could limit the flexibility that is necessary for authorities to act, in line with their statutory responsibilities and functions, in a manner that is most likely to maintain financial stability in the prevailing market and economic circumstances at the point of failure of the firm. However, a description of the resolution tools available and of how the tools work or the disclosure of some features of a preferred resolution strategy will increase predictability for the market. Given that in many cases newly introduced resolution tools will be untested, it might also be important that home and host authorities provide clarity in advance about how these tools would be applied, without referring to individual firms. Where authorities choose not to disclose publicly the resolution strategies for individual firms, it is important that authorities communicate their possible approaches to resolving cross-border firms at a generic level without reference to individual firms in order to help inform market expectations. Host authorities may also choose publicly to support the resolution approaches outlined by home authorities.

Disclosure of LAC

Authorities may consider disclosing, or requiring firms to disclose, the amount, location and nature of LAC on an individual entity basis (including its position in the creditor hierarchy), subject to relevant legal restrictions and requirements and without disclosing the identities of individual creditors. Some of the information may already be in the public domain but not in a readily comprehensible format that indicates the capacity of firms to absorb losses and where losses might fall in resolution.

Such disclosure of LAC could help adjust market expectations of the risk of loss, facilitate better pricing of credit risk, and reduce creditor uncertainty about likely recovery should the firm enter resolution.

Disclosure to firms

Authorities may need to disclose specific aspects of their resolution strategies to firms in order to develop effective operational resolution plans. They may also need to share the results of their resolvability assessment to the extent that identified impediments to resolution arise from firm-specific barriers and need to be addressed through changes to the legal, financial or operational structure of the firm.

Subject to authorities' views and taking account of the individual circumstances of the firm, it may be appropriate to disclose a high-level outline of the proposed resolution strategy (for example, SPE or MPE). Home and host authorities should coordinate the extent to which information on resolution strategies and plans should be disclosed to firms.

Home authorities should take the lead in determining how much information on the resolution plan should be disclosed and should consult with host authorities to determine the extent of disclosure. Authorities should retain discretion to disclose information that relates exclusively to their own jurisdiction.