FSB FINANCIAL STABILITY BOARD

Consultative Document

Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions

28 August 2013

The Financial Stability Board (FSB) is seeking comments on its **Consultative Document on a proposed methodology for assessing the implementation of the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (‘the *Key Attributes*’).**

The purpose of the methodology is to guide the assessment of a jurisdiction’s compliance with the *Key Attributes* and also to serve as guidance to jurisdictions that are adopting or amending national resolution regimes to implement the *Key Attributes*.

The *Key Attributes* set out minimum requirements for effective resolution regimes for financial institutions that could be systemically significant or critical in the event of failure. The draft methodology proposes a set of essential criteria (EC) for each Key Attribute (KA) that should be used to assess compliance with the relevant KA. In addition, it includes explanatory notes (ENs) that provide examples, explanations, and cross-references to other relevant KAs.

The FSB invites comments on the draft methodology and the specific questions set out below by 31 October 2013. Responses should be sent to fsb@bis.org. Responses will be published on the FSB’s website unless respondents expressly request otherwise.

Overview

Background

At the Cannes Summit in November 2011, the G20 Leaders endorsed the *Key Attributes of Effective Resolution Regimes for Financial Institutions* ('the *Key Attributes*') as the international standard for resolution regimes.[1] The *Key Attributes* set out the core elements considered to be necessary to make feasible the resolution of financial institutions without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions through mechanisms that make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims.[2]

To be considered for inclusion in the FSB's list of key standards for sound financial systems and to be used in assessments by the IMF and World Bank under the Standards and Codes (S&C) Initiative, the *Key Attributes* need to be complemented by an assessment methodology. With the involvement of experts from FSB member jurisdictions, and representatives of CPSS, IADI, IAIS, IOSCO, and the IMF and World Bank, the FSB is therefore developing a single assessment methodology for the *Key Attributes* with suitable assessment criteria for all financial sectors.

Purpose and structure of the draft methodology

The purpose of the methodology is to guide the assessment of a jurisdiction's compliance with the *Key Attributes* and also to serve as guidance to jurisdictions that are adopting or amending national resolution regimes to implement the *Key Attributes*. Once finalised, the methodology will enable the *Key Attributes* to be included in the FSB's list of key standards for sound financial systems and to be used in assessments by the IMF and World Bank under the Standards and Codes (S&C) Initiative.[3]

An assessment of the implementation of the *Key Attributes* in a particular jurisdiction needs to take into account the structure and complexity of the jurisdiction's financial system, including the systemic importance of financial institutions in different sectors (for example, banking, insurance), and the overall level of development of the financial system.

The methodology proposes a set of essential criteria (EC) for each KA that should be used to assess compliance with the relevant KAs. In addition, the methodology includes explanatory notes (ENs) that provide examples of how jurisdictions implement a specific KA, explanations, cross-references to other relevant KAs and specific definitions. The ENs are intended to guide the interpretation of the KAs and related ECs. The ENs do not contain assessment criteria and jurisdictions are not assessed against the explanations, examples and definitions that they contain.

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1 The *Key Attributes* are published at: http://www.financialstabilityboard.org/publications/r_111104cc.pdf

2 See the Preamble to the *Key Attributes.*

3 The S&C Initiative, launched in 1999 (see http://www.imf.org/external/standards/index.htm), is designed to strengthen international financial architecture through the development, adoption and implementation of international standards and codes. The key standards are assessed by the IMF and WB as part of the Financial Sector Assessment Program (FSAP) or as stand-alone Reports on the Observance of Standards and Codes (ROSCs).

Treatment of different financial sectors

The *Key Attributes* are an 'umbrella' standard for resolution regimes for all types of financial institutions that are potentially systemically significant or critical in failure. This design was a strategic choice, motivated by the fact that jurisdictions need to have resolution regimes in place that are capable of managing the failure of systemically important financial institutions (SIFIs), whatever their licensing status or nature of financial activities. In order to be consistent with that choice, the draft methodology has also been developed as a single, comprehensive methodology.

The methodology should guide the assessors in evaluating the relative strengths and weaknesses of the regimes in light of the structure of the financial system. The assessment must be proportionate to the complexity and systemic importance of the firms to which the resolution regime applies. For example, the presence of a global systemically important financial institution (G-SIFI) in a particular sector should result in greater weight given to the evaluation of compliance with the *Key Attributes* of the regime for that sector.

The draft methodology comprises both EC that apply to all sectors and sector-specific EC. In addition, it contains explanations of sector-specific features in the Introductory Chapter (Section V) and the EN that accompany the assessment criteria. The Appendix (Structure and Guidance for Assessment Reports) also provides guidance on how assessors should evaluate sectoral regimes.

In a number of cases, the sector-specific EC and EN refer to the (currently draft) guidance on the resolution of Financial Market Infrastructure (referred to as *Annex on FMI resolution*), the resolution of insurers (*Annex on Insurance resolution*), the protection of client assets in resolution (*Annex on Client asset protection*) and information sharing for resolution purposes (*Annex on Information sharing*). [4] While the Annexes to the *Key Attributes* are not subject to assessment on their own, they do provide interpretation on the implementation of the *Key Attributes* in relation to resolution regimes for different types of financial institutions. As this work on sector-specific resolution regimes progresses and as national regimes evolve, additional sector specific ECs and ENs may need to be incorporated in the methodology.

Testing and finalisation of the methodology

Before being finalised, the draft methodology will also be used in several pilot assessments carried out jointly with the IMF and World Bank to test the adequacy and suitability of the assessment criteria and to refine the guidance provided to assessors. It will thereafter be revised in light of the findings from the pilot assessments and the public consultation.

[4] These draft Annexes are currently under public consultation. See http://www.financialstabilityboard.org/press/pr_130812.pdf.

Questions for consultation

1. *Do the Essential Criteria (EC) proposed in the draft methodology focus on relevant and assessable features of resolution regimes that need to be in place to comply with the Key Attributes? What, if any, additional features of resolution regimes, in particular in relation to their sector-specific aspects, should be covered in EC?*
2. *Do any Key Attributes or relating EC require further explanation or interpretation to promote a consistent assessment and implementation of the Key Attributes across jurisdictions?*
3. *Does KA 4 regarding set-off, netting, collateralisation and the segregation of assets require additional explanation or interpretation? What should be the appropriate length of the temporary stay of early termination rights provided for in KA 4.3? Should authorities have the power to extend the temporary stay? If so, what additional conditions or safeguards should apply?*
4. *Is additional guidance needed to help assessors evaluate the relative strengths and weaknesses of resolution regimes in light of the structure of the financial system?*
    a) *Should assessors be required to make a determination as to which firms in a jurisdiction may be systemic in failure prior to carrying out an assessment of the resolution regimes that apply to those firms?*
    b) *Should the presence of a G-SIFI require assessors to give greater weight to compliance with the Key Attributes of the resolution regimes that applies to that G-SIFI?*
5. *Do the 'preconditions' set out in Section VI of the Introduction cover the relevant elements of a jurisdiction's legal and institutional framework that are necessary for resolution regimes to operate effectively?*
6. *Is the methodology suitable for use in assessments of countries with financial markets at different stages of development? Does the methodology provide sufficient guidance on how it should be applied in a proportionate manner in different country circumstances? Should the methodology apply a higher standard to home or key host jurisdictions of G-SIFIs?*
7. *Are there any additional elements that should be covered or elaborated in more detail in the methodology?*

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ABBREVIATIONS

BCBS	Basel Committee on Banking Supervision
CCP	Central Counterparty
CMG	Crisis Management Group
COAG	Institution-specific Cooperation Agreement
CPSS	Committee on Payment and Settlement Systems
CSD	Central Securities Depository
DAR	Detailed Assessment Report
FMI	Financial Market Infrastructure
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
EC	Essential Criteria
EEA	European Economic Area
EN	Explanatory Note
EU	European Union
G-SIFI	Global Systemically Important Financial Institution
G-SII	Global Systemically Important Insurer
IADI	International Association of Deposit Insurers
IAIS	International Association of Insurance Supervisors
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
KA	Key Attribute
PFMI	CPSS-IOSCO Principles for Financial Market Infrastructure
ROSC	Report on the Observance of Standards and Codes
RRP	Recovery and Resolution Plan
SSS	Securities Settlement Systems
TR	Trade Repository
WB	World Bank

INTRODUCTION

The Financial Stability Board (FSB) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (*Key Attributes*) were adopted by the FSB in October 2011 and endorsed as a new international standard for resolution regimes by the G20 Leaders at the Cannes Summit.[1] 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.

The *Key Attributes* apply to resolution regimes for any type of financial institution that could be systemically significant or critical if it fails. Financial institutions include banks, insurers, investment and securities firms and financial market infrastructures (FMIs). While the *Key Attributes* constitute an 'umbrella' standard for resolution regimes for all types of financial institutions, not all *Key Attributes* are equally relevant for all sectors. As a consequence, the *Key Attributes* may require some adaptation and sector-specific interpretation of individual KAs is needed. The *Key Attributes* also cover the resolution of financial groups and conglomerates and therefore extend to both holding companies of and non-regulated operational entities within a financial group or conglomerate. Special requirements (see, in particular, KAs 8 to 10) apply with respect to financial institutions that are designated as global systemically important financial institutions (G-SIFIs) by the FSB.[2]

On 12 August 2013, the FSB published for consultation additional guidance on: (i) FMI resolution, (ii) Insurance resolution, (iii) Client asset protection, and (iv) Information sharing.[3] Once finalised, the guidance will be incorporated into the Key Attributes as additional Annexes. The purpose of the guidance is to assist jurisdictions and authorities in interpreting and implementing the *Key Attributes* with respect to resolution regimes for FMI, insurers and firms with holdings of client assets. The guidance complements and should be read in conjunction with the *Key Attributes*. The Annexes to the *Key Attributes* do not form part of the standard that is subject to assessment under this methodology.

The methodology was developed collaboratively by representatives of national authorities, the European Commission, standard setting bodies (Basel Committee on Banking

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1 *http://www.financialstabilityboard.org/publications/r_111104cc.pdf*

2 The list of global systemically important banks was first published by the FSB in November 2011, and was updated in November 2012 http*://www.financialstabilityboard.org/publications/r_121031ac.pdf.* A first list of global systemically important insurers (G-SIIs) was published by the FSB in July 2013: *http://www.financialstabilityboard.org/publications/r_130718.pdf*.

3 http://www.*financialstabilityboard*.org/press/pr_130812.pdf

Supervision (BCBS), Committee on Payment and Settlement Systems (CPSS), International Association of Deposit Insurers (IADI), International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO)), the International Monetary Fund (IMF) and the World Bank (WB).

I. DEFINITIONS OF KEY TERMS USED IN THE METHODOLOGY

"Action Plan" – a formal plan that recommends and prioritises improvements of a general or sector-specific nature to a jurisdiction's resolution regime that is developed in response to an assessment performed using this methodology and that is designed to achieve compliance with the *Key Attributes*.

"Bail-in within resolution" – restructuring mechanisms (howsoever labelled) that enable the recapitalisation of a firm in resolution or the effective capitalisation of a bridge institution through the write-down or termination of equity, debt instruments and other senior or subordinated unsecured liabilities of the firm in resolution, and the conversion or exchange of all or part of such instruments or liabilities (or claims thereon) into or for equity or other instruments in that firm, the parent company of that firm or a newly formed bridge institution or its successor.

"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 itself, 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 is classified under the jurisdiction's legal framework as a deposit-taking institution.

"Bridge institution" – an entity that is established to temporarily take over and maintain certain assets, liabilities and operations of a failed firm as part of the resolution process.

"Client assets" – Client assets means the assets that are treated as client assets and subject to protection as such under the applicable laws or regulations. Typically, they are assets held by a firm (whether or not through a custodian) for or on behalf of a client in the course of or in connection with services provided by the firm to the client, and where the client has a proprietary or similar right to the return of the asset or its substitute. (See paragraph 2.1 of *Annex on Client asset protection* for typical examples of client assets.) Client assets do not include: deposits held by banks unless the deposits held by a firm with a bank constitute customer funds under the applicable legal framework and are labelled as such; assets held by an insurer or policyholder claims and rights in connection with insurance business; or assets delivered to a firm as 'collateral' in a title transfer transaction.

"Conditions for entry into resolution" are met when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so.

"Critical functions" – activities performed by a firm for third parties, where failure would lead to disruption of services critical to the functioning of the real economy and for preserving financial stability.[4] In the case of FMIs, critical functions include critical operations and services.

"Early 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.

"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 or any of its affiliates.[5]

"Entry into resolution" - the determination by the relevant authority that a firm meets the conditions under the applicable resolution regime for the exercise of resolution powers, and that it will be subject to the exercise of such powers.

"Financial contract" – any contract that is explicitly identified under the legal framework of the jurisdiction as subject to defined treatment in resolution and insolvency for the purposes of termination and netting. This includes, as a minimum, any contract for the purchase or sale of securities; derivatives contracts; commodities contracts; repurchase agreements; and any similar contract or agreement.

"Financial conglomerate"– any group of companies under common control or dominant influence, including any financial holding company, that conducts material financial activities in at least two of the regulated banking, securities or insurance sectors.[6]

"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, banks, insurers, securities or investment firms and financial market infrastructure firms. References in this methodology to "firm" refer to a financial firm.

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4 See FSB Guidance Paper on the Identification of Critical Functions and Critical Shared Services of 16 July 2013, *http://www.financialstabilityboard.org/publications/r_130716a.pdf*.

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

6 As defined in the Joint Forum Principles for the supervision of financial conglomerates, September 2012.

"Financial group" – a group composed of entities the primary activities of which 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 (CSDs), securities settlement systems (SSSs), central counterparties (CCPs), and trade repositories (TRs). [7]

"Firm in resolution" – a firm in relation to which resolution powers are being exercised. Where resolution powers have been or are being 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 in conjunction with resolution.

"G-SIFI" – a financial firm designated by the FSB as globally systemically important.

"G-SII" – an insurer designated by the FSB as globally systemically important (and therefore as a G-SIFI).

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

"Holding company" – a company that is formed to control financial firms. This concept covers both intermediate and ultimate control, and includes a parent company that itself carries out financial operations.

"Home jurisdiction" – the jurisdiction where the operations of a financial group are supervised on a consolidated basis.

"Investment firm" or "Securities firm" – any non-deposit-taking firm that conducts investment or securities business on a regular basis, including any of the following: 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.

"Key host jurisdiction" – in the case of a G-SIFI, the host jurisdictions where the G-SIFI

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[7] As defined in the CPSS-IOSCO Principles for Financial Market Infrastructure (PFMI): *http://www.bis.org/publ/cpss101a.pdf* and *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

has established operations that are material to the resolution of the G-SIFI; in the case of an FMI, "key host jurisdiction" may be understood as referring to the jurisdictions, other than the FMI's home jurisdiction, where the FMI provides critical functions and jurisdictions where major participants of the FMI are located. If a particular currency is material to the critical functions of an FMI (for example, it clears products denominated in a particular currency or settles transactions in a currency), the central bank that issues that currency may also be material to resolution of the FMI.

"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 (including legally binding regulations or rules) adopted under the 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 other clients, 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 of an entity by the State or an emanation of the State.

"Resolution" – the exercise of resolution powers, including in particular the exercise of a resolution power specified in KA 3, by a resolution authority in respect of a firm that meets the conditions for entry into resolution, with or without private sector involvement, with the aim of achieving the statutory objectives of resolution set out in KA 2.3. 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" – a public 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 resolution authorities under the resolution regime or broader legal framework 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.

"Safety-net" – the functions of the resolution authority, the lender of last resort and the authorities responsible for prudential regulation and supervision and for financial sector policy, and relevant insurance schemes and arrangements for the protection of depositors, insurance policy holders and other protected clients.

"Supervisor" or "supervisory authority" – the authority responsible for the supervision or oversight of a financial institution. References include, as relevant, prudential and business or

market conduct supervisors, and oversight authorities in the case of FMIs.

"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" - a financial firm is systemically significant or critical if its failure could lead to a disruption of services critical for the functioning of the financial system or real economy.

II. PURPOSE AND USE OF METHODOLOGY

The purpose of the methodology is to guide the assessment of a jurisdiction's compliance with the *Key Attributes* and ensure that assessments are carried out in a consistent way across jurisdictions.

The methodology can be used in the following contexts:

(i) assessments performed by authorities of existing resolution regimes of their jurisdiction and of any reforms to those regimes that implement the *Key Attributes*;

(ii) peer reviews of agreed G20 and FSB financial reforms conducted within the FSB framework for implementation monitoring by member jurisdictions;

(iii) IMF and WB assessments of resolution regimes, for example in the context of Financial Sector Assessment Programs (FSAPs) and Reports on the Observance of Standards and Codes (ROSCs); and

(iv) reviews conducted by private third parties.

The primary audience for this methodology is assessors, resolution authorities and authorities responsible for developing legislation related to resolution regimes. The methodology can be used to assess the entire resolution regime of a jurisdiction as it applies to all financial institutions that could be systemically significant or critical if they fail, or the regime for resolution of a specific sector.

III. CONDUCT OF COMPLIANCE ASSESSMENT

The primary objective of an assessment is to evaluate compliance of a jurisdiction's resolution regime with the *Key Attributes*. The assessment should examine the legal framework and the policies governing the resolution regime for firms in all financial sectors. Where relevant, the assessment should also address practical implementation of the requirements of the *Key Attributes* to establish whether it achieves the intended effect or outcome of the relevant specific KA, or, in the absence of practical experience, whether there are potential obstacles to its effective implementation. Implementation is deemed to be effective when the objective of a specific KA has been or could reasonably be expected to be met. The assessment should not focus solely on deficiencies, but should also highlight specific achievements and provide concrete recommendations for addressing any weaknesses highlighted. The assessment is a means to an end: it should assess a jurisdiction's resolution regime against the *Key Attributes* and recommend the measures that need to be taken in order to address any shortcomings identified. The key goal of the assessment is therefore not to assign a compliance grade but rather to focus authorities' attention on areas that need improvement and to suggest an Action Plan.

The methodology may also be a useful tool for a jurisdiction that is adopting new resolution regimes or reviewing, reforming or making improvements to its existing regimes.

A. Essential criteria (EC)

The methodology proposes a set of essential criteria (EC) for each KA that should be used to assess compliance with the relevant KA. The EC are the only elements on which an assessor should assess and grade compliance with a KA. The methodology does not include additional criteria (which are used in some assessment methodologies and are based on best practices that might go beyond the core elements required by the standards in question).

The EC set out minimum requirements for effective resolution regimes which apply to all jurisdictions as regards their resolution regimes for financial institutions that could be systemically significant or critical in the event of failure (unless it is explicitly indicated that particular EC apply only to jurisdictions that are home or key host to a G-SIFI).

An assessment of a jurisdiction against the EC must, however, recognise that its resolution regime should be proportionate to the complexity and systemic importance of the firms to which the resolution regime applies. In other words, the assessment must consider the context in which the resolution regime is applied. This principle should underpin the assessment of all EC even if it is not always explicitly referred to in the EC.

The assessment must be comprehensive enough to allow a judgment on whether EC are met in practice, not just in theory. Laws and regulations need to be sufficient in scope and depth, and be effectively enforced and complied with. Assessors should ensure that all powers that are to be exercised by a public authority, in accordance with the *Key Attributes*, have a

sufficient legal basis. Moreover, the existence alone of laws and regulations may not provide sufficient indication that a particular EC is met. The onus is on the assessed country to demonstrate that it has met the EC.

B. Explanatory notes (ENs)

In addition, the methodology includes explanatory notes (ENs) that provide examples, explanations, cross-references to other relevant KAs, and specific definitions not included in the Definitions of key terms used in the methodology (see section I above). The information provided in the ENs is intended to guide the interpretation of the KAs and the EC.

The ENs do not contain assessment criteria and jurisdictions are not assessed against the explanations, examples and definitions that they contain.

C. Four-grade assessment scale

For assessments, the following four-grade scale will be used:

- **Compliant:** A jurisdiction will be considered compliant with a KA when all applicable EC are met without any significant deficiencies.

- **Largely compliant:** A jurisdiction will be considered largely compliant with a KA whenever only limited shortcomings are observed which do not raise any concerns about the jurisdiction's ability and clear intent to achieve full compliance with the KA within a prescribed period. The grading "largely compliant" can, in particular, be used when the regime does not meet all EC, but overall the regime is sufficiently robust, comprehensive and likely to deliver the objectives of the *Key Attributes* and no material risks are left unaddressed.

- **Materially non-compliant:** A jurisdiction will be considered materially non-compliant with a KA whenever there are severe shortcomings in the jurisdiction's compliance with the relevant KA, including in instances where formal rules, regulations and procedures exist but practical implementation of the KA has been weak. It is acknowledged that the gap between "largely compliant" and "materially non-compliant" is wide and that a choice between the two grades may be difficult, The intention is to require assessors to make a clear statement.

- **Non-compliant:** A jurisdiction will be considered non-compliant with a KA when there is no substantive implementation of the KA, several EC are not complied with or the resolution regime is manifestly ineffective. If there is only one EC for a KA and the jurisdiction does not meet that criterion, then the jurisdiction will be considered non-compliant with respect to that KA.

An individual KA will be considered "not applicable" when, in the assessors' view, the KA does not apply to a jurisdiction given its structural, legal and institutional features. For

example, if a KA applies only to a jurisdiction that is home to a G-SIFI, that KA will be considered not applicable with respect to a jurisdiction that is not home to a G-SIFI. A KA is also not applicable for the purposes of a limited, sector-specific assessment if it is stated clearly in the ENs that the KA is not relevant for the sector being assessed.

Grading is not an exact science and the EC should not be seen as a checklist: instead, assessors should apply a qualitative approach in their assessments. The overall assessment should take into account the structure and complexity of the financial sector, such as the presence of G-SIFIs and relative systemic importance of different sectors (for example, banking, insurance), the market environment and the overall level of development of the financial system of the jurisdiction that is being assessed.

Depending upon the structure of the financial sector and the circumstances in a given jurisdiction, compliance with some ECs for a specific KA may be more critical for the completeness or effectiveness of the resolution regime than compliance with others. As a consequence, the number of individual ECs complied with is not always an indication of the overall compliance rating for any given KA.

Where relevant, assessors should establish whether a KA has been, or could be implemented or applied in practice in an effective way; that is, whether the objective or intended outcome of the KA has been, or could be met.

The overall grade for a specific KA will also be determined by the compliance assessment of sectoral resolution regimes where they exist. For instance, in a jurisdiction with separate resolution regimes for banks and insurers, when assessing the implementation of KA 3 (resolution powers), an assessor will first have to assess whether each regime provides a resolution authority with the resolution tools specified in KA 3 that are relevant for the sector in question. The overall grade for KA 3 will then be determined by two factors: (i) the grade for each individual regime; and (ii) the relative importance of the specific sector in the financial system. For instance, shortcomings in a resolution regime for insurers should be given greater weight in jurisdictions that are home to a G-SII, as opposed to a jurisdiction that is neither home nor host to any G-SII.

The Appendix contains further guidance and a format for assessment reports prepared by the IMF and the WB.

D. Need for access to a range of information and stakeholders

The assessor must have access to a range of information and meet a range of individuals and organisations in order to evaluate fully a jurisdiction's compliance with the *Key Attributes*. These may include the resolution and supervisory authorities, the market regulator, the central bank, the deposit insurer and other entities providing protection to financial institution clients, relevant government ministries and other authorities, financial institutions and industry associations, auditors, bankruptcy and insolvency practitioners and other financial sector participants.

Some of the required information will already be public, such as the relevant laws, regulations and certain policies. Other information required by the assessor may not be publicly available, for example any self-assessments, operational guidelines for resolution authorities and, where necessary and appropriate, the overall results of supervisory and resolvability assessments of and recovery and resolution planning for financial institutions, and institution specific cooperation agreements.[8] This information should be provided to assessors unless doing so would breach secrecy or confidentiality requirements that bind the relevant public authorities. Experience has shown that some concerns as to confidentiality may be solved through *ad hoc* arrangements between the public authorities of the jurisdiction being assessed, the assessor and the firms to which the information relates.[9]

Assessors should note any instances where required information is not provided or where meetings that they requested could not be held, and indicate the reasons why the information was not provided or the meeting not held and the impact this might have on the completeness and accuracy of the assessment. In the absence of valid reasons for the failure of the jurisdiction under assessment to provide requested information or arrange requested meetings between assessors and the jurisdiction's authorities or representatives of the private sector, assessors should be entitled to conclude that the jurisdiction has not implemented the specific KA for which that information or those meetings were relevant and reflect this in their rating.

E. Cross-border aspects

In assessing compliance with the KAs relating to cross-border cooperation (in particular KAs 7, 8, 9 and 12), the assessor will need to determine whether a framework and processes for cooperation and information sharing are in place and whether such cooperation and information sharing actually takes place to the extent needed during normal times and (if applicable for the jurisdiction under review) during a crisis. The grading of a jurisdiction should not be reduced as a result of problems in cooperation and information sharing if those problems arise exclusively from the unwillingness or inability of authorities of other jurisdictions to cooperate or enter into appropriate cooperation agreements.

The cross-border application is not dealt with explicitly in the criteria for certain KAs - for example, KA 3 on resolution powers, and KA 4 on stays on early termination rights and safeguards - although it is highly relevant for the effective application of those provisions. In

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[8] As the objective of the methodology is not to assess the resolvability of individual institutions, access to individual results of supervisory and resolvability assessments of and recovery and resolution planning for individual financial institutions is not necessary.

[9] Some organisations and agencies involved in an assessment provide comfort letters on their policies on the treatment of confidential information rather than signing confidentiality agreements.

those cases, assessors should be satisfied that the legal and practical implementation of KA 7, which sets out standards for cross-border cooperation and processes to give effect to resolution actions taken in other jurisdictions, is sufficient to support the cross-border effectiveness of those provisions.

F. Recommended actions ("Action Plan")

On the basis of each assessment, assessors should develop a formal 'Action Plan' for the jurisdiction in question. For each KA, the Action Plan will recommend specific actions and measures to improve the resolution regime (see Appendix). Where appropriate, the Action Plan should also contain sector-specific recommendations or recommendations focused only on the elements of the regime relating to G-SIFIs.

A desired outcome of an assessment is a shared view between assessors and the authorities on recommended actions needed to improve a jurisdiction's resolution regime. However, the actions to be recommended are ultimately a decision for the assessors to make. Undue emphasis should not be placed on the specific grade that is given; rather, attention should focus on the commentary that accompanies the assessment of each KA and on the measures recommended in the Action Plan.

Recommendations relating to the preconditions (see section VI below) will not be part of the Action Plan, but may be included in general recommendations for strengthening the resolution regime.

IV. ASSESSMENTS OF POLICY MEASURES FOR G-SIFIS

While most of the KAs apply generally to resolution regimes for financial institutions that could be systemically significant or critical if they fail, some are aimed specifically at G-SIFIs. Those are KAs 8 and 9, which require home and key host authorities of G-SIFIs to maintain a Crisis Management Group (CMG) and institution-specific cooperation agreements (COAGs) for those firms; and KA 10, which requires resolvability assessments for, at a minimum, G-SIFIs. The ENs note where EC apply only to jurisdictions that are home or key host to one or more G-SIFIs.

Assessments under this methodology should focus on whether a resolution regime provides the framework, powers and requirements necessary to implement the G-SIFI-specific KAs in the jurisdiction under review, rather than examining how the regime has been applied to individual firms. The FSB is developing a separate review process (Resolvability Assessment Process RAP) that will focus specifically and exclusively on how the requirements specific to or targeted at G-SIFIs are implemented by home and, as relevant, host authorities.

V. SECTOR-SPECIFIC CONSIDERATIONS

Sector-specific resolution regimes should comply with each KA and the associated ECs, and should achieve the objectives set out in the Preamble to the *Key Attributes*. The objective of ensuring continuity of critical functions applies to any financial firm, including banks, insurers and FMIs. However, not all resolution powers and attributes of resolution regimes set out in the *Key Attributes* are suitable or relevant for all sectors. Different types of financial firms - even within a particular sector - have distinctive features that need to be reflected in regimes for the resolution of such entities. For example, there is no need for a sector-specific resolution regime for insurers or for FMIs to provide for the protection of depositors, and powers to write down and convert liabilities should be adapted to the capital and funding structures of institutions in specific sectors. Where such distinctive features are relevant to the application of a particular KA, it is reflected where appropriate in sector-specific EC and the associated ENs.

As a consequence, the application of the *Key Attributes* may need to be adapted for specific sectors.

- **Banks -** The-full range of general resolution powers specified in the *Key Attributes* should be available to resolution authorities with responsibility for the resolution of banks.

- **Insurers -** The *Key Attributes* recognise that two particular resolution tools – portfolio transfer and 'run-off' – are likely to be particularly relevant for the resolution of an insurer. The assumption is that traditional insurance activities that are no longer viable will typically be resolved through one of those procedures. It may not, however, be possible to rely on those tools in all circumstances. For example, they may not suffice to mitigate the systemic impact of a sudden deterioration in the viability of a larger, complex insurance group also engaging in non-traditional insurance and non-insurance activities[10] that may involve some degree of bank-like leverage and maturity transformation, or where continuity of insurance cover is critical to the economy or to confidence in the financial system and the business cannot be rapidly transferred or replaced. Insurance companies, insurance groups and insurance conglomerates, including reinsurance companies and reinsurance groups that could be systemically significant or critical if they fail therefore should be subject to resolution regimes that meet the standard set out in the *Key Attributes*. Additionally, insurers that are designated by the FSB as G-SIIs should be subject to the requirements of the KAs that

[10] For an analysis of non-traditional and non-insurance activities, assessors are referred to the IAIS paper on *Insurance and Financial Stability*, November 2011.

apply specifically to G-SIFIs.

- **Securities and investment firms -** Ensuring the rapid return of a firm's holdings of client assets or their transfer to a third party or bridge institution is likely to be an important consideration for resolution authorities when resolving securities and investment firms.

  The resolution regime will need to take account of jurisdictional-specific features in the organisation and business models of securities and investment firms. Regimes for client asset protection vary significantly in the methods by which client assets are protected because such protection depends on the particulars of the laws defining property rights and insolvency regimes in each jurisdiction. Moreover, the concept of a 'client asset', that is subject to a particular form of protection and rights for the client, varies across jurisdictions. Whatever arrangements apply, client assets should be shielded - in a manner appropriate to those arrangements - from the failure of the firm and, to the extent possible, of any third party custodian or sub-custodian. The legal status of client assets and the clients' entitlement to them should not be affected by entry into resolution of the firm.

  Rules and principles on client asset protection regimes are contained in a number of reports issued by the Technical Committee of IOSCO,[11] and are not expected to be subject to assessment under this methodology. However, the *Key Attributes*, and in particular *Annex on Client asset protection*, call for clear, transparent and enforceable arrangements that ensure the effective segregation of and prompt access to client assets in resolution, and assessors will need take a view on whether the powers to return or transfer client assets in resolution (which are subject to assessment under this methodology) are impeded by weaknesses in the regime for client asset protection or its enforcement.

- **FMIs -** The key objective of resolution regimes for FMIs should be to ensure continuity of critical FMI functions without exposing taxpayers to loss from solvency support. Accordingly, such resolution regimes should empower the resolution authority to enable the timely completion of payment, clearing and settlement functions by an FMI throughout the period that it is in resolution, including on the day that it enters into resolution. The regime should also enable authorities to preserve critical functions by restructuring and restoring the FMI's ability to provide those services as a going concern; arranging their orderly transfer to another FMI or bridge institution; or

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[11] Namely, *the Report on Client Asset Protection*, August 1996; the *Final Report on Survey of Regimes for the Protection, Distribution and/or Transfer of Client Assets*, March 2011; and *the Consultation Report on Recommendations Regarding the Protection of Client Assets*, February 2013.

providing participants sufficient time to establish and to move to an alternative arrangement. The resolution regime needs to take account of the specific features of different types of FMI, the specific operations that they engage in and, as a result, the range of risks to which FMIs are exposed. In particular, a distinction should be made between FMIs that are exposed to credit and liquidity risk (such as CCPs) and those that are not.

When assessing a resolution regime for FMIs, assessors should have regard to any assessment of jurisdiction's implementation of the CPSS-IOSCO PFMI.

To achieve these outcomes, a statutory resolution regime should provide a resolution authority with a broad set of tools and powers consistent with those in the *Key Attributes* and *Annex on FMI resolution*, and should take account of features that are likely to be relevant in the resolution of an FMI, such as the low level of substitutability of many FMIs in the markets they serve and the migration costs, operational risks and implications for market concentration associated with moving operations to another FMI. Subject to a small number of exceptions, the *Key Attributes* can be applied to resolution regimes for FMIs in a manner that achieves the objective of avoiding systemic disruptions by ensuring the continuity of critical functions of FMIs while minimising risks of loss for taxpayers. In some cases, interpretation is needed in applying particular KAs to FMIs generally, or to certain kinds of FMIs, while a limited number of KAs may not be applicable or relevant to FMIs. Some of those exceptions are purely technical while others – such as the power to impose a moratorium on payment obligations – should be exercised only in limited circumstances for reasons related to the effectiveness of resolution. Those cases are addressed in the ENs that accompany the EC for the relevant KAs.

VI. PRECONDITIONS FOR EFFECTIVE RESOLUTION REGIMES

A number of preconditions have a direct impact on the effectiveness of resolution regimes. These include:

A. a well-established framework for financial stability, surveillance and policy formulation (Precondition A);

B. an effective system of supervision, regulation and oversight of financial institutions (Precondition B);

C. effective protection schemes for depositors, insurance policy holders and other protected clients or customers, and clear rules on the treatment of client assets (Precondition C);

D. a robust accounting, auditing and disclosure regime (Precondition D); and

E. a well-developed legal framework and judicial system (Precondition E).

These preconditions are mostly outside the direct responsibility and competence of resolution authorities. The presence of the preconditions will have a positive, and weaknesses in those areas may have a negative, impact on the effectiveness of resolution regimes. Where assessors have concerns about weaknesses in the preconditions, their assessment should analyse any actual or potential negative impact.

The main sources of information on the extent to which the preconditions are present in a jurisdiction will be reports of country assessments carried out by the IMF and WB under FSAPs and the ROSCs relating to relevant supervisory standards.[12]

Experience has shown that insufficient implementation of the preconditions can seriously undermine the quality and effectiveness of resolution. Assessors should aim to give a factual review of preconditions so that the reader of an assessment can easily understand the environment in which the financial system and the resolution regime are operating. This will provide the perspective for a better appreciation of the assessment and grading of individual KAs.

Assessors should not assess the preconditions themselves, as this is beyond the scope of the individual standard assessments. Instead, assessors should rely as far as possible on official IMF and WB documents. When relevant, the assessors should attempt to include in their

[12] For the FSB's compendium of standards, see *http://www.financialstabilityboard.org/cos/index.htm*.

analysis the links between these factors and the effectiveness of resolution regimes. The assessment of compliance with individual KAs should indicate how it is likely to be affected by preconditions that are considered to be weak. To the extent shortcomings in preconditions are material to the effectiveness of resolution, they may affect the grading of the affected KAs. Any suggestions aimed at addressing deficiencies in preconditions are not part of the recommendations of the assessment but can be made.

Precondition A: A well-established framework for financial stability, surveillance and policy formulation

In view of the interplay between the real economy and the financial system, it is important that jurisdictions have a robust framework for macro-prudential surveillance and the formulation and implementation of financial stability policy.[13] Such a framework should specify the authorities responsible for the following functions:

- identifying systemic risk in the financial system;
- monitoring and analysing market and other financial and economic factors that may lead to the accumulation of systemic risks;
- formulating and implementing appropriate policies; and
- assessing how such policies may affect individual financial institutions and the financial system more broadly.

The framework should also include mechanisms for effective cooperation and coordination between the relevant authorities and stakeholders, and sound governance of the agencies that constitute the 'safety-net'. A governance framework based upon independence, accountability, transparency and integrity will strengthen the architecture of the financial system and contribute directly to its stability. It is important that each safety-net participant is operationally independent and has the necessary powers to fulfil its mandate.[14]

[13] The results of a FSAP or ROSC carried out by the IMF and/or WB may be used to assess the existence and effectiveness of such a framework.

[14] Specific expectations for the governance of the resolution authority or authorities are specified in the KAs, and are also set out in the relevant supervisory standards developed by the BCBS, IOSCO, IAIS, CPSS-IOSCO and BCBS-IADI (see footnotes 15 to 19).

Precondition B: An effective system of supervision, regulation and oversight of financial institutions

Jurisdictions should have a system of supervision, regulation and oversight that meets the relevant regulatory and supervisory standards (BCBS,[15] IOSCO,[16] IAIS[17] and CPSS-IOSCO[18]) and that:

- develops and maintains a forward-looking assessment of the risk profile of individual firms, thereby enabling supervisors to identify, assess and take action with respect to risks arising from individual firms or the financial system as a whole;

- provides for increased intensity of supervision of a firm that is encountering difficulties that, if not addressed, could jeopardise its continued viability and ensures that such heightened supervisory attention will support early intervention and orderly resolution consistent with the *Key Attributes* in those cases where serious problems cannot be remedied by other measures and the insolvency of the firm in question would pose a threat to financial stability;

- provides the supervisor with an adequate range of enforcement tools to bring about timely corrective action and address unsafe and unsound practices or activities that could pose risks to firms or to the financial system; and

- provides for well regulated FMIs where counterparty and other risks as defined in the PFMI are effectively controlled and managed.

Precondition C: Effective protection schemes for depositors, insurance policy holders and other protected clients or customers, and clear rules on the treatment of client assets

Jurisdictions should have one or more effective protection schemes for depositors[19] and

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[15] *Core Principles for Effective Banking Supervision*, September 2011.

[16] *Objectives and Principles of Securities Regulation*, June 2010.

[17] *Insurance Core Principles, Standards, Guidance and Assessment Methodology*, October 2011.

[18] *CPSS-IOSCO Principles for Financial Market Infrastructures, April 2012; IOSCO Principles regarding cross-border supervisory cooperation, May 2010; CPSS Central Bank oversight of payment and settlement systems report, 2005; IOSCO Multilateral memorandum of understanding for cooperation and cooperation and the exchange of information, May 2002.*

[19] Standards for deposit insurance schemes are set out in the BCBS-IADI *Core Principles for Effective Deposit Insurance Systems*, June 2009.

insurance policy holders[20] that implement the relevant international standards. Jurisdictions should also maintain arrangements to promote a high level of coordination between protection schemes and other agencies that constitute the 'safety net' to support clear allocation of responsibilities and accountability and effective crisis management.

Jurisdictions should have rules on the safeguarding of client assets, including clear rules on what assets fall within the scope of client assets for that purpose, and record keeping requirements consistent with international standards that ensure that client assets and clients' rights in client assets can be clearly identified in a timely manner in order to facilitate the timely return or transfer (of custody over or possession) of client assets in resolution or insolvency. Those rules should be comparable and meet the same regulatory objectives as the relevant international standards.[21]

Jurisdictions should have in place clear rules on how losses are shared between clients in the event of shortfalls in any pool of client assets.

Precondition D: A robust accounting, auditing and disclosure regime

There is a robust accounting, auditing and disclosure regime that includes the following elements:

- comprehensive and well defined accounting principles and rules that command wide international acceptance;
- a system of independent external audits designed to provide users of financial statements with independent assurance that financial statements are presented fairly, in all material respects, and provide a true and fair view of the financial position of the financial institutions, and are prepared in accordance with accounting principles that are widely recognised internationally (or equivalent national standards), with auditors held accountable for their work; and
- sound arrangements for transparency and disclosure of information.

Precondition E: A well-developed legal framework and judicial system

There is a well-developed legal framework and judicial system that includes the following

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[20] Standards in relation to protection schemes for insurance policy-holders are set out in the *Insurance Core Principles*, October 2011.

[21] Including the IOSCO *Recommendations Regarding the Protection of Client Assets*.

elements:

- a corpus of laws, including corporate, bankruptcy, contract, consumer protection, private property laws and conflict of laws rules, that is clear and consistently enforced;

- effective creditor rights systems consistent with the WB principles;[22]

- an independent judiciary; and

- availability of competent, independent and experienced professionals (for example, accountants, auditors, lawyers and insolvency practitioners), who are subject to appropriate oversight and whose work is required to comply with technical and ethical standards that are set and enforced by official or professional bodies and consistent with international standards.

[22] *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems*, February 2003.

VII. ASSESSMENT METHODOLOGY

KA 1 Scope

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

(i) holding companies of a firm;

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

(iii) branches of foreign firms.[23]

Essential criteria

EC 1.1.1 Any financial institution that could be systemically significant or critical in the event of failure is subject to a resolution regime.

EC 1.1.2 The scope of application of the resolution regime is defined in the legal framework.

EC 1.1.3 The legal framework provides the resolution authority with defined powers over, and specifies the manner and circumstances in which those powers apply to, the following entities:

(i) direct, intermediate and ultimate holding companies of one or more firms;

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

[23] This should not apply where jurisdictions are required by the applicable legal framework to recognise resolution of financial institutions under the law of, and carried out by the authorities of their home jurisdiction (for example, the EU Directives on the Winding up and Reorganisation of credit institutions and of insurance undertakings).

(iii) branches of foreign firms. [24]

Explanatory Notes

EN 1.1 (a) Form of resolution regime - This may consist of sector-specific statutes and rules, or may consist of a single regime covering firms from all sectors. KA 1.1 is neutral as to the form of the regime, provided that it has the attributes set out in the *Key Attributes*, and that all firms that could be systemically significant or critical in the event of failure are subject to an effective resolution regime. The resolution regime may adapt, modify or be distinct from the ordinary corporate insolvency regime, but the relationship between the resolution regime and the ordinary corporate insolvency regime (if applicable to financial institutions) and the circumstances in which the resolution regime will apply should be clear in the legal framework.

EN 1.1 (b) Determination of systemic significance – Resolution regimes may apply more broadly than to systemically significant or critical firms. Where the scope of application of some or all resolution powers is limited to firms that are determined to be systemically significant or critical in failure, the regime may either provide for that determination in respect of a firm to be made in advance of any failure, or at the point when intervention is being considered. However, where the regime provides for determinations in advance, there should also be procedures to allow the regime to apply to firms that are shown to be systemically significant or critical only at the point of failure, given the prevailing circumstances. Regimes that provide for formal determinations at the point when intervention is being considered should also ensure that requirements for resolution planning apply and are implemented for domestically incorporated firms that could be systemically significant or critical if they fail, in accordance with KA 11.

EN 1.1 (c) Holding companies - The resolution regime should extend to holding companies, so that resolution measures can be taken in relation to the direct, intermediate and indirect holding company of a failing financial institution insofar as that is necessary to resolve the financial institution or a financial group as a whole. This may be the case, for example, when authorities choose to implement a 'single point of entry' resolution strategy and resolve a financial group through the application of resolution powers at the level of the holding company.[25] The resolution powers available in respect of holding companies should be sufficient to allow authorities to exercise effective control over the financial institutions in the group, and should include powers to enable the transfer of the ownership of financial institutions by the holding company to another entity, including a third party purchaser or

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[24] See footnote 23.

[25] *http://www.financialstabilityboard.org/publications/r_130716b.pdf*

bridge institution, and to write down and convert debt issued by the holding company. The powers should be available irrespective of whether a holding company itself carries on regulated financial activities (a parent operating company), and irrespective of whether holding companies are licensed or authorised under the jurisdiction's legal framework. See EN 3.1 (b) on the conditions for the exercise of resolution powers in respect of holding companies.

EN 1.1 (d) Domestic branches of foreign financial institutions - Resolution authorities should have resolution powers with regard to local branch operations of foreign institutions. See KA 7.3 and associated EC and ENs. A regime is not required to apply to domestic branches of foreign firms in cases where resolution of such branches falls within a regime, such as that established under the EU Directives on the reorganisation and winding-up of credit institutions and of insurers, that gives exclusive competence in the resolution of a financial institution, including all its branches within the EU/EEA, to the home jurisdiction and requires the host resolution authorities to recognise a resolution of the financial institution and all its branches carried out by the home resolution authority.

EN 1.1 (e) Non-regulated operational entities within a financial group or conglomerate - Non-regulated operational entities may provide services (for example, treasury services, risk management and valuation, accounting, human resources support, IT, transaction processing or legal services and compliance) that are necessary for the continuity of systemically important functions carried out within the group. The abrupt withdrawal of those services could jeopardise the resolution objective of maintaining those functions. The resolution regime should extend to non-regulated operational entities within a financial group or conglomerate, so that measures can be taken in relation to such entities insofar as that is necessary to support the resolution of an affiliated financial institution or the group as a whole. The resolution authority should therefore be able to exercise appropriate powers to achieve that objective (as specified in KA 3.4 (iv)); and powers to access information that is relevant for resolution or resolution planning and that is held by the non-regulated operational entity. Provided that these objectives can be achieved, it is not necessary for a resolution regime to provide for all the resolution powers in KA 3.2 (such as transfer and bail-in powers) to apply directly to non-regulated operational entities. It is consistent with EC 1.1.3 if the resolution regime requires consideration to be paid to non-regulated operational entities for the services provided in resolution.

EN 1.1 (f) Assessing compliance – Factors relevant to compliance with KA 1.1 include the existence of guidelines or procedures for assessing whether a firm could be systemically significant or critical if it fails (where the scope of the regime or particular powers are limited to such firms). Where appropriate, those guidelines and procedures should reflect relevant

standards or guidance endorsed by the G20, including the BCBS framework for dealing with domestic systemically important banks.[26]

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

Essential criteria

EC 1.2.1 All FMIs that are systemically important, other than FMIs owned and operated by central banks, are subject to a resolution regime that applies the *Key Attributes* in a manner appropriate to the specific characteristics of the type of FMI in question and its critical role in financial markets.

EC 1.2.2 The legal framework provides that any licenses, authorisations, recognitions and legal designations of a (domestic or foreign) FMI necessary for the continued performance of the FMI's critical functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules, are not revoked automatically solely as a result of the entry into resolution of the FMI (under either domestic or foreign law).

Explanatory Notes

EN 1.2 (a) Scope of resolution regime for FMIs - Irrespective of their licensing status (for example, FMIs licensed as banks), FMIs should be subject to a resolution regime that includes the elements and delivers the objectives set out in *Annex on FMI resolution*. There is no requirement for FMIs that are owned and operated by central banks to be subject to the resolution regime or any elements of it, irrespective of their systemic importance (see Part I, paragraph 2.1 of *Annex on FMI resolution*). The discussion of "systemically important" in paragraph 1.20 of the PFMI is relevant for this purpose. All CSDs, SSSs, CCPs and TRs are presumed to be systemically important, at least in the jurisdiction where they are located and operate, typically because of their critical roles in the markets they serve, unless the jurisdiction's authorities explicitly determine otherwise.[27] It also suggests that in general a payment system is systemically important if it has the potential to trigger or transmit systemic

[26] *http://www.bis.org/publ/bcbs233.pdf*

disruptions.

EN 1.2 (b) Continuity of critical FMI functions - The legal framework should provide that any licenses, authorisations, recognitions and legal designations of a (domestic or foreign) FMI necessary for the continued performance of the FMI's critical functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules remain in effect, unless revoked for a reason other than resolution, until those functions are transferred to another entity or a substitute provider has been found.

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

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

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

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

Essential criteria

EC 1.3.1 If the jurisdiction under review is home to one or more G-SIFI(s), the resolution regime requires the development and maintenance of a recovery and resolution plan, including a group resolution plan, for such G-SIFIs.

EC 1.3.2 If the jurisdiction under review is home to one or more G-SIFI(s), the resolution regime requires resolvability assessments for such G-SIFI(s).

EC 1.3.3 If the jurisdiction under review is home to one or more G-SIFI(s), the relevant authorities are required to put in place and maintain institution-specific cross-border cooperation agreements.

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[27] The presumption applies unless an authority determines and publicly discloses that a CSD, SSS, CCP or TR in its jurisdiction is not systemically important. Conversely, a jurisdiction's authority may disclose the criteria used to identify which FMIs are systemically important and the FMIs that it determines to be systemically important in accordance with those criteria.

Explanatory Notes

EN 1.3 (a) Assessment in connection with KAs 9, 10, and 11 - KA 1.3 requires an assessment of whether a jurisdiction requires recovery and resolution plans to be maintained, regular resolvability assessments to be carried out and cross-border cooperation agreements to be in place for all domestically incorporated G-SIFIs, at a minimum. An assessment of compliance with KA 1.3 should focus on whether the resolution regime provides for such requirements. The content and adequacy of the cooperation agreements, resolvability assessments, recovery and resolution planning are assessed under KAs 9, 10 and 11.

A jurisdiction can only be graded as compliant with KA 1.3 if its grading in relation to KA 9, 10 and 11 is at least 'largely compliant". The responsibilities of home authorities are set out in relation to recovery and resolution plans, in EC 11.8.1; in relation to resolvability assessments, in EC 10.1.1; and in relation to institution-specific cross-border cooperation agreements, in EC 9.1.1.

KA 2 Resolution authority

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

Essential criteria

EC 2.1.1 The legal framework clearly identifies one or more resolution authorities and provides it or them with a clear mandate.

EC 2.1.2 Where there are multiple resolution authorities, the legal framework provides for a clear allocation of objectives, functions and powers of those authorities, with no material gaps, overlaps or inconsistencies and clear and effective arrangements for cooperation and communication between them.

Explanatory Notes

EN 2.1 (a) Designated administrative authority or authorities – KA 2.1 requires jurisdictions to confer resolution powers on administrative authorities to ensure that the objectives of the framework can be delivered in a timely manner. Jurisdictions may designate as their resolution authorities one or more authorities, including, for example, central banks, financial supervisors, protection schemes, ministries of finance or dedicated administrative authorities**.**

EN 2.1 (b) Arrangements for cooperation and communication – Such arrangements should be properly documented. Evidence of "arrangements for cooperation and communication between the authorities" includes, typically, the existence of memoranda of understanding that provide for the type of information to be exchanged, confidential channels for communication and contact persons. If the arrangements provide for formal inter-agency committees, their mandate, objectives and operating rules should be clearly defined. Subject to appropriate confidentiality provisions, there should be no legal restrictions on exchanges between domestic authorities of information necessary for those authorities to carry out their functions in relation to recovery and resolution.

EN 2.1 (c) Cooperation between multiple resolution authorities for FMIs – Where there are multiple authorities in a jurisdiction with responsibility in relation to the resolution of FMIs, arrangements for cooperation and communication between those authorities should, to the extent possible, take into account the principles set out in Responsibility E of the PFMI and any existing arrangements adopted in accordance with Responsibility E.

KA 2.2 Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction.

Essential criteria

EC 2.2.1 Where there are multiple resolution authorities in charge of resolving legal entities of the same group within a single jurisdiction, the resolution regime identifies a lead authority that coordinates the resolution of affiliated legal entities within that jurisdiction.

Explanatory Notes

EN 2.2 (a) Coordination by a lead authority – EC 2.2.1 requires the resolution regime to identify a lead resolution authority in cases where the resolution of affiliated entities falls within the statutory responsibilities of more than one resolution authority. This might be the case, for example, where there are separate resolution authorities for different sectors and resolution action is required in relation to affiliated domestic entities of different financial sectors. A regime complies with EC 2.2.1 if it contains provision for a lead authority to be identified on a case-by-case basis: advance identification is not necessary. While "coordination" does not require that the lead authority has powers to direct or issue binding instructions to the other authorities, the arrangements for coordination should provide a process for a single decision to be made in the case of any disagreement between the authorities. Evidence of compliance with this requirement might include specific statutory provision for coordination by an identified lead authority, memoranda of understanding or other documented arrangements between authorities.

EN 2.2 (b) Lead authority - The lead authorities for financial groups within a jurisdiction may vary according to the nature of the group structure and the entities within the group.

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

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

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

(iii) avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors,

where that is consistent with the other statutory objectives; and

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

Essential criteria

EC 2.3.1 The statutory objectives and functions of the resolution authority include those set out in KA 2.3, as applicable to the sectoral responsibilities of the authority. If an authority is responsible for the resolution of FMIs, insurers and / or firms with holdings of client assets, its statutory objectives and functions include the additional objectives set out in *Annexes on FMI resolution, Insurance resolution, and Client asset protection* (as applicable).

EC 2.3.2 In relation to those resolution actions that are carried out through an administrator appointed and supervised by a court upon application of the resolution authority, the objectives of administration are aligned with the statutory objectives of resolution set out in KA 2.3 and, where the administrator is appointed to an FMI, an insurer or a firm with holdings of client assets, those set out in *Annex on FMI resolution, Insurance resolution, or Client asset protection* (respectively), during the period in which those statutory objectives are pursued.

Explanatory Notes

EN 2.3 (a) Objectives and functions of the resolution authority – The objectives and functions set out in KA 2.3 may either be specified explicitly stated in law or in other documents that define the mandate of the resolution authority. Where they are incorporated in the authority's mandate (rather than set out in statute), the resolution regime, including the functions and any statutory objectives it confers on the resolution authority, must enable the resolution authority to pursue the objectives set out in KA 2.3.

Where the objectives are incorporated in the mandate of the resolution authority, factors that assessors should consider when assessing compliance with KA 2.3 include the existence of general guidance, policy documents and memoranda of understanding between relevant authorities relating to that mandate and, in particular, guidance on the information that authorities should take into account when choosing and exercising resolution powers and otherwise carrying out their functions in accordance with their mandate.

The objectives and functions do not need to be concentrated in a single resolution authority and may be distributed across several authorities within a jurisdiction that have functions and responsibilities in relation to resolution. However, if this is the case that distribution should be well coordinated and should minimise the risk of conflicts.

The relative importance of each of the objectives may vary, depending on the circumstances of the case, and the legal framework should ensure that authorities have sufficient flexibility

to balance the objectives.

EN 2.3 (b) Multiple resolution authorities - If there is more than one resolution authority in a jurisdiction, the objectives of each authority should be appropriate to the sector for which it is responsible. For example, objectives relating to continuity of payment, clearing and settlement systems may not be relevant for authorities that are responsible for resolution of insurers.

EN 2.3 (c) Objectives of authorities with responsibilities for the resolution of FMIs - As part of their statutory objectives and functions, resolution authorities for FMIs (or an administrator of an FMI appointed by the resolution authority) should also be guided in the exercise of resolution powers by the specific objective of ensuring continuity of the critical functions of an FMI in resolution without losses for taxpayers, set out in Part I, paragraphs 1.1 and 3.1 of *Annex on FMI resolution* (in addition to the other relevant general objectives set out in KA 2.3). Achieving continuity of critical functions may include: (i) continuity and timely completion of critical payment, clearing, settlement and recording functions (as relevant); (ii) timely settlement of obligations due to participants and to any linked FMI and the continued application of relevant finality rules; (iii) continuous access of participants to securities or cash accounts provided by the FMI and (securities or cash) collateral posted to and held by the FMI that is owed to such participants; (iv) no disruption in the operation of links between the FMI in resolution and other FMIs; and (v) adequate safeguarding, preservation and continuous processing of and access to data stored in a TR.

EN 2.3 (d) Objectives relating to protection of insurance policy holders – As part of their statutory objectives and functions, resolution authorities (or an administrator appointed by or acting on behalf of the resolution authority), when exercising resolution powers in relation to an insurer, should be guided by the general objectives set out in the *Key Attributes* (Preamble and KA 2.3).

The implementation guidance on the resolution of insurers in *Annex on Insurance resolution* specifies that, additionally, a resolution regime for insurers should have the protection of insurance policy holders as a statutory objective. Since protection schemes for insurance policy holders are not universal and are not prescribed at the level of international standards, that objective should apply irrespective of whether the jurisdiction has a protection scheme for policy holders or, if there is such a scheme, irrespective of whether particular policy holders or policies fall within the scope of the scheme.

EN 2.3 (e) Objectives and functions relating to protection of client assets in resolution - As part of their statutory objectives and functions, resolution authorities (or an administrator appointed by the resolution authority), when exercising resolution powers in relation to a firm with holdings of client assets, should be guided by the specific objectives related to the protection of those client assets (in addition to the general objectives set out in KA 2.3) set out in the implementation guidance on the protection of client and custody assets in resolution in section 1 of *Annex on Client asset protection*. Those specific objectives are: ensuring prompt access for the firm's clients to their assets through the continued functioning of the firm following stabilisation in resolution, the rapid return to the client of identifiable

and segregated client assets or the transfer of the client asset holdings of that firm to a performing third party or bridge institution; and avoiding adverse impacts that might arise from lack of access to client assets. If a resolution regime does not include those specific objectives, assessors should satisfy themselves that the general objectives of financial stability will not be compromised by shortcomings in the regime in relation to client asset protection.

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

Essential criteria

EC 2.4.1 The legal framework provides the resolution authority with the capacity to enter into agreements with foreign resolution authorities and other relevant supervisory authorities (where that is necessary for the resolution authority to perform its functions).

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

Essential criteria

EC 2.5.1 The principle of the operational independence of the resolution authority is set out in statute, and its governance structures are prescribed by statute and publicly disclosed. There are safeguards in place against undue political or industry influence that would compromise the operational independence of the resolution authority, or its ability to obtain or deploy the resources needed to carry out its mandate and achieve an effective resolution.

EC 2.5.2 The resolution authority is accountable through a transparent framework for the discharge of its duties in relation to its statutory responsibilities. This framework includes procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities, including through the periodic release by the resolution authority of public reports on its resolution actions and policies.

EC 2.5.3 The resolution authority has operating funds, or access to such funds, sufficient to

enable it to carry out its functions effectively without undermining its independence, both before and during a crisis.

EC 2.5.4 The resolution authority is demonstrably able to attract and retain staff with sufficient expertise and in sufficient numbers to carry out its functions, and to commission outside experts with the necessary professional skills and independence where necessary to support those functions.

EC 2.5.5 The resolution authority has a training budget and programme for its personnel to ensure that their knowledge and skills remain current and that they have the expertise to deal with the resolution of any large and complex firms operating in its jurisdiction.

EC 2.5.6 The authority has a budget for IT and other equipment sufficient to equip its staff with the tools needed to carry out its functions.

EC 2.5.7 The authority has a travel budget that allows for appropriate onsite work and coordination work with other resolution authorities.

EC 2.5.8 The resolution authority maintains governance arrangements and procedures that define the responsibilities, authorities and accountability of its governing body and senior management, and promote sound decision-making and effective control and oversight of personnel and management. These include:

(i) rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant) and senior management; and

(ii) a code of conduct including rules on conflicts of interest that applies to the head of the authority, all its management and personnel.

Explanatory Notes

EN 2.5 (a) Operational independence - The requirement for the resolution authority to be operationally independent does not mean it can have no functions other than resolution. An authority that carries out resolution functions may also carry out other functions, such as supervision or deposit insurance, provided that adequate governance arrangements are in place to manage any conflicts of interests that may arise from combining those functions within a single authority.

The requirement for operational independence does not prevent finance ministries from having a statutory role in resolution, provided that such governance arrangements are in place. It is not inconsistent with the operational independence of the resolution authority if some aspects of resolution are not under its exclusive discretion. This may be the case, in particular, where temporary public funding is required to support a resolution.

When assessing compliance with KA 2.5 the assessor should reach a judgement as to whether the rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant) and senior management limit the potential for undue political interference. Appropriate safeguards could include transparent appointment procedures; statutory constraints that would prevent the head of the resolution authority being removed during his or her term of office for reasons other than those specified in law; and public disclosure of the reason(s) for that early dismissal.

The requirement for operational independence should not prevent the resolution authority from coordinating and sharing information with finance ministries and other governmental authorities where necessary for the exercise of resolution functions and achieving the statutory objectives of resolution. A requirement to obtain governmental approval for certain resolution actions, for example those which have implications for public funds, does not in itself mean that the resolution authority is not operationally independent.

EN 2.5 (b) Review of actions by resolution authority and periodic public reports – The requirement for procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities may be satisfied by procedures for internal review by management or a function within the resolution authority. The resolution authority should also publish periodic reports on its resolution actions and policies relating to its mandate and its statutory objectives at sufficiently frequent intervals to keep stakeholders and the public adequately informed about the authority's activities under and in support of the resolution regime. Where in the public interest, public reports may include case-specific reports that are released once the resolution of a specific firm has concluded, assessing the outcome of the resolution and the effectiveness with which the resolution was carried out by reference to the statutory objectives.

EN 2.5 (c) Operating funds – the requirement that the resolution authority has operating funds or access to such funds refers to the funds necessary to finance the administrative costs of the authority. Requirements relating to funding of resolution are set out in KA 6.

EN 2.5 (d) Resolution authority staff and expertise - Factors that assessors could consider when assessing compliance with KA 2.5 include, where the resolution authority is separate from supervisory authorities, the ability of the resolution authority to draw on the expertise of the latter; and the availability of standing arrangements with external experts on which the resolution authority can draw on an *ad hoc* basis, and of sufficient financial resources for commissioning such external experts where needed. Other factors that could be taken into account include evidence of policies or arrangements to maintain crisis management capacity, including through regular crisis simulations exercises.

An assessment of the adequacy of knowledge and expertise of the personnel of the resolution authority as a whole should take into account the size and complexity of the firms established and operating in the particular jurisdiction for which the resolution authority is responsible.

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

Essential criteria

EC 2.6.1 The legal framework provides legal protection through statute for the resolution authority itself, its head, members of the governing body and its staff, against liability for actions taken or omissions made while discharging their duties in good faith and acting within the scope of their powers, including actions taken in support of foreign resolution proceedings.

EC 2.6.2 The legal framework provides that the head of the resolution authority, members of the governing body, its staff and any of its agents will be indemnified against any costs of defending actions taken or omissions made while discharging their duties in good faith or otherwise acting within the scope of their powers, including actions taken in support of foreign resolution proceedings.

Explanatory Notes

EN 2.6 (a) Protection from liability - Protection from liability should not prevent judicial review of the actions of the resolution authority (cf. KA 5.4) and any associated claims for damages.

EN 2.6 (b) Agents of the resolution authority – For the purposes of EC 2.6.2, agents include any person, other than an employee, who carries out actions on behalf of the resolution authority under a contract for services. KA 2.6 does not require agents of the resolution authority to be protected by statute against liability for actions undertaken or omissions made when acting in good faith and within the scope of their agency on behalf of the authority. However, where no provision is made for such protection, agents should be indemnified contractually by the authority for the costs of defending an action and damages awarded.

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

Essential criteria

EC 2.7.1 The resolution authority has the power under the legal framework to obtain in a timely manner any information from firms that is material for the planning,

preparation and implementation of resolution measures in relation to the firms.

EC 2.7.2 The resolution authority has the power under the legal framework to gain access to all the premises of the firm whenever necessary to carry out resolution planning or the preparation and implementation of resolution measures in relation to the firm.

Explanatory Notes

EN 2.7 (a) Requirements to provide information - Access by the resolution authority to information may take the form of direct access to the firm or (prior to resolution) indirect access through a supervisory authority, whereby the supervisory authority provides firm-specific information that is under its control to the resolution authority. However, if the resolution authority requires additional information to prepare for resolution it should not be denied direct access to the firm.

When assessing compliance with KA2.7, assessors should consider the existence of requirements for firms to produce information material for planning, preparation and conduct of resolution and to any evidence of the ability of firms actually to provide such information on request and in a timely manner. The latter might include information from audits or tests of firms' management information capabilities conducted by the authorities. For example, a firm could be required during its examination cycle to demonstrate routinely to its supervisor or resolution authority its capacity to rapidly produce information necessary to conduct an orderly resolution. The assessor should look for evidence that requests for information from firms have been made and have been met in a timely and satisfactory manner. The guidance in EN 12.2 (a) on the meaning of 'on a timely basis' is also relevant to an assessment of whether requests for information have been met in a timely manner.

EN 2.7 (b) Access to premises – The right to seek information and access to premises may be subject to applicable privileges or constitutional protections, legal remedies or due process requirements that are consistent with KA 5.4.

KA 3 Resolution powers

Entry into resolution

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

Essential criteria

EC 3.1.1 The legal framework includes clear criteria that specify when resolution can be initiated. It permits resolution to be initiated both when the firm is no longer viable and when the firm is likely to be no longer viable and, in either case, has no reasonable prospect of return to viability.

EC 3.1.2 The resolution regime supports the timely and early entry into resolution or exercise of resolution powers before the firm is insolvent by establishing arrangements to support the timely determination of non-viability and limiting the risk of forbearance by authorities.

Explanatory Notes

EN 3.1 (a) Non-viability - The concept of non-viability should permit exercise of resolution powers before a firm is insolvent (meaning balance-sheet insolvent, cash-flow insolvent, or any other definition of insolvency used for the purposes of the applicable insolvency regime) and before all equity has been fully absorbed. The assessment of non-viability should not therefore require proof that the firm is insolvent.

A determination of non-viability must be capable of being made without undue delay, and the resolution authority should have the power to intervene in appropriate cases sufficiently quickly thereafter (subject to any applicable procedural safeguards such as court approval) to preserve financial stability and support the statutory objectives of resolution. Where the determination of non-viability is the responsibility of an authority other than the resolution authority, there should be policies or arrangements in place to promote communication between that authority and resolution authority. In all cases, the jurisdiction should have in place rules or arrangements governing communication between the supervisory authority and the resolution authority (or the supervisory and resolution functions, if contained within the same authority) from the point when the supervisor is first aware that the firm is encountering stress that might result in non-viability.

'No reasonable prospect of return to viability' means that there are no measures that could reasonably be taken by the firm without relying on public financial assistance that are likely

to restore the firm to viability in a timeframe that is reasonable having regard to the circumstances and the risks to financial stability and to insured depositors, insurance policy holders, other protected clients and participants in an FMI that are associated with the non-viability of the firm. This includes any outstanding recovery measures identified in the firm's recovery plan including, in the case of an FMI, any use of its default resources or application of any loss allocation rules.

EN 3.1 (b) Non-viability in respect of holding companies – The legal framework should permit the exercise of resolution powers in respect of a holding company of a financial institution sufficiently early to allow resolution authorities, in appropriate cases, to take action at the level of the holding company to manage the failure of all or parts of the financial group. This objective can be met if resolution powers can be exercised in respect of a holding company when one or more subsidiary financial institutions meet the conditions of non-viability specified in the legal framework.

EN 3.1 (c) Quantitative or qualitative criteria to assess non-viability – The conditions for entry into resolution or exercise of resolution powers should be clear and transparent and set out in law: the standards or suitable indicators of non-viability may be set out in guidance or other policy documents. The requirement for clear criteria specifying when resolution can be initiated may be satisfied by the identification of quantitative or qualitative factors that are used by the relevant public authority to guide its decisions as to whether a firm meets the conditions for entry into resolution. Examples of non-viability could include:

(i) regulatory capital or required liquidity falls below specified minimum levels;

(ii) there is a serious impairment of the firm's access to funding sources;

(iii) the firm depends on official sector financial assistance to sustain operations or would be dependent in the absence of resolution;

(iv) there is a significant deterioration in the value of the firm's assets; or

(v) the firm is expected in the near future to be unable to pay liabilities as they fall due;

(vi) the firm is expected in the near future to be balance-sheet insolvent.

However, exclusive reliance on criteria for non-viability that are closely aligned with insolvency or likely insolvency would not meet the test for timely and early entry into resolution (although it should always be possible to apply resolution measures to an insolvent firm). The conditions for entry into resolution should accommodate sectoral specificities, and differences between institutions within a particular sector.

Suitable specific indicators of non-viability for insurers may include those set out in paragraph 4.1 of *Annex on Insurance resolution*: for example, the supervisory authority determines that there is an unacceptably low probability that policy holders will receive payments as they fall due; or the supervisory authority, in consultation with the resolution

authority, determines that the resolution objectives cannot be achieved by run-off procedures alone. For FMIs, the causes and indicators of non-viability may vary between those FMIs (such as CCPs and some SSSs) that are exposed to credit and liquidity risk and those that are not.

EN 3.1 (d) Arrangements that support timely determination of non-viability - Arrangements to support timely determination of non-viability could include the following:

(i) a framework for structured early intervention that would require the need for action to be considered or action taken when specified quantitative or qualitative thresholds or conditions are met; and

(ii) a power for another authority to initiate or recommend that a resolution be initiated if it believes that action is not being taken by the authority primarily responsible for initiating resolution in a timely manner.

General resolution powers

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

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

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

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

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

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

the firm's business or its liabilities and assets;

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

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

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

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

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

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

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

Essential criteria

EC 3.2.1 The resolution authority has the power (either directly, or through the supervisory

authority) to remove and replace senior management and directors of the firm in resolution.

EC 3.2.2 The resolution authority has the power (either directly or through another body) to pursue claims against responsible persons with a view to recovering monies from such persons. This includes the power to recover variable remuneration, both awarded and deferred, as appropriate from senior management and directors whose actions or omissions have caused or materially contributed to the failure of the firm, irrespective of whether those persons have been removed from their position.

EC 3.2.3 The resolution authority has the power to appoint, or secure the appointment of, an administrator to take control of and manage a firm in resolution with an objective of restoring the firm, or parts of its business, to ongoing and sustainable viability.

EC 3.2.4 The resolution authority has the power to temporarily operate and resolve a firm, including powers to terminate contracts, continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm's operations. In the case of an authority that is responsible for the resolution of FMIs, that power should also include the power to settle on time any payment obligations connected with the critical functions of an FMI in resolution.

EC 3.2.5 To ensure continuity of essential services and functions, the resolution authority has powers conferred by the legal framework to do any of the following (as appropriate in the particular case):

(i) require that the firm in resolution temporarily provides, to any successor or acquiring entity to which assets and liabilities of the firm have been transferred, services that are necessary to support continuity of essential services and functions related to those assets and liabilities;

(ii) require companies in the same group located within the jurisdiction (whether or not they are regulated) to continue to provide services that are necessary to support such continuity to the firm under resolution or to any successor or acquiring entity at a reasonable rate of reimbursement; and

(iii) procure such services from unaffiliated third parties at a commercial rate of consideration.

EC 3.2.6 The resolution authority has the power to override the rights of shareholders of the firm in resolution as set out in KA 3.2 (v).

EC 3.2.7 The resolution authority has the power to transfer or sell assets and liabilities, legal rights and obligations and ownership in shares of a firm in resolution, as set

out in KA 3.2 (vi) and KA 3.3.

EC 3.2.8 The resolution authority has the power to establish a bridge institution in accordance with KA 3.2 (vii) and KA 3.4.

EC 3.2.9 The resolution authority has the power to establish a separate asset management vehicle or equivalent corporate entity as set out in KA 3.2 (viii).

EC 3.2.10 The resolution authority has powers to achieve the write down and conversion of liabilities within resolution, in accordance with KA 3.2 (ix), KA 3.5 and KA 3.6.

EC 3.2.11 The resolution authority has the power to temporarily stay the exercise of early termination rights in accordance with KA 3.2 (x) and KA 4.

EC 3.2.12 The resolution authority has the power to impose a moratorium (stay of creditor actions and suspension of payments) as set out in KA 3.2 (xi). In the resolution of an insurer, this includes the power to temporarily restrict or suspend the rights of policy holders to withdraw from or change their insurance contracts and the power to stay rights of reinsurers of the firm in resolution to terminate cover for periods relating to the period for which the insurer is in resolution, or policies commencing after the insurer has entered resolution.

EC 3.2.13 The resolution authority has the power to effect the closure and orderly wind-down and liquidation of the whole or part of a failing firm, and in such event, the legal framework enables the resolution authority to effect or secure any of the following (as appropriate in the particular case):

(i) the timely pay-out to insured depositors, insurance policy holders or other protected clients;

(ii) the prompt transfer of insured deposits or insurance contracts to a third party or bridge institution;

(iii) prompt access for clients to transaction accounts;

(iv) the timely transfer or return of client assets.

EC 3.2.14 Authorities require firms to maintain practical arrangements to support timely transfer, access or pay-out, including an IT system that provides a single client view or equivalent that enables sorting and aggregation of deposits for insurance determination.

Explanatory Notes

EN 3.2 (a) Powers of the resolution authority – Where the EC refer to powers of the resolution authority to take specific resolution actions, these powers should be set out in the legal framework applicable to the authority.

EN 3.2 (b) Characteristics of resolution powers - The availability of powers should be assessed on the basis of the ability to achieve the outcome specified in the relevant EC, rather than the terminology used in the legal framework, which may differ between jurisdictions. Powers that achieve the outcomes specified in KA 3.2 may not necessarily be labelled as 'resolution powers'. Nevertheless, in order to comply with KA 3.2 and to enable authorities to deliver their statutory resolution objectives and achieve the necessary outcomes, the powers should have certain features that distinguish them from powers used for ordinary supervisory purposes, and from ordinary corporate insolvency regimes.

- Resolution powers enable the resolution authority to interfere with third party rights (for example, by imposing a moratorium on the enforcement of claims and imposing a temporary stay on early termination rights) and to allocate losses to creditors and shareholders. This is a standard feature of insolvency proceedings. In a resolution regime, such powers should be exercisable by an administrative resolution authority (either directly or through an appointed administrator with appropriate objectives (see EN 3.2 (j)).

- Resolution powers must not require or be contingent on the cooperation of the failing firm or its shareholders, and should be exercisable without the consent of the firm, its shareholders or its creditors. 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 that prevent, impede or interfere with resolution (subject to the safeguards described in KAs 4 and 5).

- Resolution powers should be exercised by an administrative authority. While it is not necessarily inconsistent with the *Key Attributes* if the resolution regime makes provision for a court order or confirmation for the exercise of resolution powers to be effective, it is important to ensure that any requirement for court approval does not impede rapid intervention and the ability to achieve the specified objectives of resolution. (See 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, and EN 5.4 (b), which indicates how provision for court involvement might be consistent with the speed and flexibility of application that are necessary for effective resolution powers).

EN 3.2 (c) Relationship between KAs 3.2. 3.3, 3.4 and 3.5 - The resolution powers specified in paragraphs (vi), (vii) and (ix) of KA 3.2 are elaborated in more detail in KA 3.3, 3.4 and 3.5 respectively, and assessors should have regard to the more detailed essential criteria for and further guidance associated with those KAs when assessing implementation of those resolution powers.

EN 3.2 (d) Multiple resolution authorities - If there is more than one resolution authority in a jurisdiction, it is not necessary for each resolution authority to have the full range of powers. For instance, sector-specific resolution powers, such as run off for insurers, do not need to be available to resolution authorities for other sectors. However, where there are multiple resolution authorities, effective arrangements for information sharing and

coordination should be maintained (see KA 2.1 and EC 2.1.2).

EN 3.2 (e) Interaction of resolution powers with other legislation - The resolution powers should not be made ineffective in practice by other legislation. To the extent consistent with overriding constitutional principles, there should be appropriate adjustments to other legislation, including corporate, insolvency, employment, securities regulation (see also KA 5.6) and tax law, so as not to undermine the effective exercise of the resolution powers or impede achievement of the statutory objectives of resolution.

EN 3.2 (f) Exercise of resolution powers – The resolution powers may be exercised directly by the resolution authority, by an administrator appointed and supervised by the resolution authority, or by another authority or agency in coordination with or at the request of the resolution authority.

EN 3.2 (g) Legal safeguards and due process – The exercise of the resolution powers specified in KAs 3.2, 3.3, 3.4 and 3.5 may be subject to constitutionally protected legal remedies and due process requirements consistent with KA 5.4.

EN 3.2 (h) Powers to remove and replace management – Subject to the remedies and requirements mentioned in EN 3.2 (g), the power to remove and replace management specified in KA 3.2 (i) should not be conditional on proof of responsibility for the failure of the firm on the part of individuals that are removed.

EN 3.2 (i) Recovery of monies and claw-back - The power of the resolution authority to "claw-back" variable remuneration specified in KA 3.2 (i) may be exercised through another agency, a court, or an administrator or liquidator that is authorised under the legal framework to pursue a claim. That power may take several forms, including:

(i) the power to reduce or prevent the payment of deferred elements of variable remuneration that have been awarded but not yet paid out; or

(ii) the power to recover variable remuneration that has already been paid.

The power to recover monies may include investigation and pursuit of claims against a responsible person by any of the following:

(i) the resolution authority;

(ii) another agency or authority (for example, the supervisor or regulatory authority);

(iii) judicial authorities; or

(iv) other governmental disciplinary or enforcement bodies.

Monies may be recovered directly from the individual or from any available professional liability insurance. Claims might include claims for damages in civil or criminal proceedings. The responsibility of a person for the failure of the firm should be determined in accordance

with the jurisdiction's law.

The need for a court order to recover the sums or benefits paid to persons responsible for failure of the firm does not prevent the regime from being compliant with KA 3.2 (i).

EN 3.2 (j) Appointment of administrator to operate and resolve a firm in resolution – If the legal framework authorises the resolution authority itself to carry out the resolution of a firm, it is not inconsistent with KA 3.2 (ii) or EC 3.2.3 if the resolution authority does not have the power to appoint or secure the appointment of an administrator.

"Administrator' includes receivers, trustees, liquidators or other officers appointed by a resolution authority or court, pursuant to a resolution regime, to manage and carry out the resolution of a firm. Where an administrator is appointed by the resolution authority, the administrator should be subject to broad oversight by the resolution authority. Factors relevant to that oversight may include a requirement (either statutory or set out in agreements, policies or the administrator's terms of appointment) for the administrator to:

(i) be subject to instructions of the resolution authority, report regularly to the resolution authority and provide any information the resolution authority requires;

(ii) provide periodic budgets or forecasts to the resolution authority for review or approval;

(iii) notify or obtain the consent or approval of the resolution authority or supervisory authority before taking or prohibiting certain major actions (including sale of major assets or parts of the business; encumbrances placed on assets; hiring and dismissal of senior or key employees and managers; payment of bonuses to employees; pay-out to creditors, commencing litigation); or

(iv) provide all necessary cooperation and information with all relevant authorities (for example, a supervisory authority or deposit insurance authority) to fulfil their mandates.

Where an administrator has been appointed and is subject to oversight by the resolution authority, that authority should also have the power to replace or dismiss the administrator, or to recommend the removal of the administrator to the court if the administrator fails to pursue the statutory objectives of resolution.

Where the administrator is an officer of the court, assessors should ensure that the regime provides for the objectives of the administrator to be aligned with the statutory objectives of the resolution authority. In such cases, evidence of adequate oversight and control by the resolution authority might include arrangements such as a right for that authority to recommend the chosen administrator to the court.

EN 3.2 (k) Continued performance of critical functions of an FMI in resolution - The resolution authority or an appointed administrator, conservator or similar official for an FMI should have the power and the capacity to ensure the continuity of the FMI's critical

functions (see EN 2.3 (e)), until the FMI can be restored to viability or those functions transferred, replaced by another provider or wound down in an orderly manner.

EN 3.2 (l) Provision of services to the firm in resolution – Resolution authorities should have the power to require both regulated and non-regulated companies in the same group and within the same jurisdiction as a firm in resolution to continue to provide any services to that firm or to any successor (including a bridge institution or third party purchaser) that has acquired all or part of its critical functions, in order to ensure the continuity of those functions. An explicit power is required since it may not always be possible to achieve the necessary outcome by means of the control as shareholder that a firm in resolution has over subsidiaries (for example, the service provider may be a 'sister' affiliate rather than a subsidiary of the firm in resolution).

EN 3.2 (m) 'Reasonable rate of reimbursement' - 'Reasonable rate of reimbursement' means a rate that covers the costs to the affiliated entity of providing the service. This may be different from the 'commercial rate of consideration' for services provided by entities at arms-length, which reflects the market price for such services.

EN 3.2 (n) Transfer of ownership of the firm in resolution without shareholder consent – the powers required by KA 3.2 (v) for resolution authorities to override the rights of shareholders of the firm in resolution, and the transfer powers required by KA 3.2 (vi), should include powers to transfer shares or capital instruments of such a firm to a third party purchaser or a public authority without the consent of the shareholders or holders of those instruments (subject to safeguards in accordance with KA 5).

EN 3.2 (o) Powers to establish a bridge institution or asset management vehicle – The legal framework of a jurisdiction complies with KA 3.2 (vii) and (viii) if another agency or body has the power (either through explicit statutory provision or through its general powers) to establish a legal entity to function as a bridge institution or asset management vehicle, provided that the resolution authority has the power to transfer selected assets, liabilities, legal rights or obligations to, and to operate or manage, or provide for the operation or management of, that institution or vehicle.

EN 3.2 (p) Asset management vehicle - For the purposes of the power specified in KA 3.2 (viii), a "separate asset management vehicle" means a separate legal entity to which assets are transferred from the firm in resolution. It may not necessarily be the case that the relevant statute uses the term 'asset management vehicle', and a jurisdiction should be treated as compliant provided there is a mechanism by which assets of a firm in resolution that are impaired (such as non-performing loans) or difficult to value can be separated (that is, removed from the balance sheet) and managed. The vehicle may be used to receive and manage the assets of more than one firm, or may be established for use in the resolution of a specific firm. The resolution authority or other public authority may either manage the assets in the asset management vehicle itself or through an agent, or it may appoint an independent asset manager to manage the assets in accordance with a mandate set by the resolution authority.

EN 3.2 (q) Transaction accounts and segregated client funds - The requirement for 'prompt access' for clients to transaction accounts (for example, within seven days) and to segregated client funds will require that firms are required to maintain adequate records and organisational arrangements, to prevent misuse of client assets and to ensure that client assets are not available to meet claims of other creditors.

EN 3.2 (r) Insured deposits - The legal framework should provide for both pay-out to insured depositors and transfer of insured deposits to a solvent third party in any resolution action or insolvency procedure carried out in connection with resolution. Different actions will be appropriate in different cases. KA 3.2 (xii) and EC 3.2.13 do not require that the decision to use resources of the deposit protection scheme must be taken by the resolution authority (if different from the protection scheme). It is consistent with those provisions if such decisions are the responsibility of the management of the protection scheme. Practical arrangements to support timely transfer or pay-out of insured deposits include, for example:

(i) ongoing access for the deposit protection scheme or other relevant authority or body to detailed information about the deposit base;

(ii) the capacity for a single customer view, advanced information on deposits or other arrangements designed to ensure that depositors have immediate access to the amounts of their deposits that are covered by the relevant deposit insurance scheme (this is not necessary for any uninsured amounts that exceed the coverage level);

(iii) early notification of the deposit protection scheme of circumstances that might result in transfer or pay-out of insured deposits and arrangements for involvement of the deposit protection scheme in the preparation of any resolution action that might draw on deposit protection funds.

If timely pay-out is not possible, assessors should consider other circumstances: for example, a longer period for full pay-out may be treated as largely complying with KA 3.2 (xii) if the legal framework permits the resolution authority or deposit insurer to give depositors access to a substantial proportion of their insured deposit within a timely period.

EN 3.2 (s) Insurance contracts - Due to the nature of insurance business, the timeframe for 'timely pay-out or transfer' of insurance contracts is likely to be different from, and in most cases much longer than, that for bank deposits. The continuation of the contract through its transfer to another entity is likely to be more beneficial for the policy holder than a pay-out would be (with the exception of policy holders with immediately payable claims that are likely to be one-off events, for example claims for property damage). Nevertheless, there should be arrangements in place for insurance claims and benefits (for example, under retirement schemes and annuities) to be paid on time until a transfer can be fully effected.

EN 3.2 (t) Power to suspend policy holders' surrender rights – In order to achieve an effective resolution, the resolution authority should have the power to restrict or suspend temporarily the rights of policy holders to withdraw from or change their insurance contracts

with an insurer in resolution. . The exercise of the power and duration of the temporary restriction or suspension should be appropriate to the nature of the insurance product (for example, the distinction between life and non-life insurance).

EN 3.2 (u) Power to stay termination rights in reinsurance - The resolution authority should have a power to stay rights of reinsurers of the firm to terminate cover for periods relating to, or policies incepting, after the commencement of resolution. The resolution authority should also have the power to stay any right to no longer reinstate reinsurance cover upon payment of a premium. However, that power should be exercisable only if it incorporates an arbitration or compensation mechanism to determine a fair value of reinsurance premium to be paid in relation to the continued period of reinsurance cover. (See paragraph 4.10 of *Annex on Insurance resolution.*

EN 3.2 (v) Moratoria and critical functions of FMIs – A resolution authority should not impose a moratorium on payments due by the FMI to its participants or to any linked FMI if that would affect the ordinary flow of payments, settlements and deliveries being processed by the FMI in the course of its core functions (subject to the use of any loss allocation powers referred to in Part I, paragraph 4.8 of *Annex on FMI resolution* in relation to such payments and deliveries) and be inconsistent with the resolution objective of ensuring continuity of critical functions. The objective of a moratorium and a stay on enforcement actions is to avoid the dissipation of value and ensure the equal treatment of all creditors in a liquidation. For most FMIs, the ability to make payments, including within payment and settlement systems, transfer variation margin between participants or return initial margin, is fundamental to the continuity of their critical functions. The imposition of a moratorium on payments due by the FMI to its participants or any linked FMI that are associated with the performance of critical functions would mean a full or partial interruption of the system, which would be likely to defeat the objective of continuity of critical operations and services. Moreover, by preventing outgoing payments even for a short period, the imposition of a moratorium on payments by certain FMIs would carry the risk of continuing or amplifying systemic disruption, in particular by causing a build-up of exposures between market participants, placing liquidity strains on some market participants and causing or exacerbating market illiquidity. However, the resolution regime should not prevent a resolution authority from imposing a moratorium on payments to general creditors (that is, creditors whose claims on the FMI do not arise from use of the FMI's critical functions).

The imposition of a moratorium in the context of the resolution of a firm should not interfere with any payment and delivery obligations of the firm to any FMIs of which it is a participant.

Transfer of assets and liabilities

KA 3.3	Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution. Any transfer of assets or liabilities should not: (i) require the consent of any interested party or creditor to be valid; and (ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party (see Key Attribute 4.2).

Essential criteria

EC 3.3.1 The resolution authority has the power to transfer selected assets and liabilities of a firm in resolution to a third party or bridge institution.

EC 3.3.2 The resolution authority has the power to transfer client assets that are held by the firm in resolution to a third party or bridge institution.

EC 3.3.3 The resolution authority has the power to effect the transfer of assets or liabilities (including holdings of client assets) without requiring the consent of any interested private party such as the shareholders, creditors and clients of the firm in resolution.

EC 3.3.4 The legal framework ensures that any transfer of assets or liabilities (including holdings of client assets) by the resolution authority does not trigger rights of early termination in relation to any obligation relating to the assets and liabilities transferred or under any contract to which the firm in resolution is a party.

Explanatory Notes

EN 3.3 (a) Powers of the resolution authority – The transfer powers may not apply to assets and liabilities located in a foreign jurisdiction. The cross-border effect of resolution powers is addressed by KA 7 and KA 7.5 in particular.)

EN 3.3 (b) Choice of assets and liabilities to be transferred – The resolution authority should be able to select which assets, rights or liabilities will be transferred so as to best achieve the statutory objectives of resolution, subject to certain limited constraints which include the following:

(i) the restriction on 'cherry-picking' individual financial contracts with a given counterparty referred to in KA 4.3 (ii) and set out in paragraph 2.1 (iii) of Annex IV to the *Key Attributes*; and

(ii) where liabilities are secured by collateral, the liabilities and associated collateral

should be either transferred or left behind together. The legal framework may provide for exemptions from this constraint where that is necessary to effect an orderly resolution, and the regime otherwise provides adequate protection for counterparties of the contractual benefits. For this purpose, examples of adequate protection might include the provision of a credit support agreement or financial compensation to counterparties.

The legal framework may set out additional considerations to guide the exercise of the authorities' discretion when selecting which liabilities to transfer so as to ensure that creditors are treated in accordance with the principles set out in KA 5.1 and that the objectives of resolution are met. For example, the resolution regime may explicitly stipulate that a transfer using the power set out in KA 3.3 can only be made to an entity that has the expertise, capacity and resources to effectively assume the shares, assets and liabilities transferred, so as to engender sufficient confidence in creditors and counterparties that the public policy objectives of financial stability and continuity can be met.

EN 3.3 (c) Requirements for consent to a transfer - Requirements to notify shareholders, creditors, clients or other interested parties of transfers do not prevent a resolution regime from being compliant with KA 3.3 (i), provided that there is no right of veto or requirement for consent by shareholders, creditors or other stakeholders of the firm in resolution, nor a requirement for a minimum period of notification prior to resolution.

A requirement for the consent of the entity receiving transferred assets and liabilities (including the consent of its shareholders) is not inconsistent with KA 3.3 (i).

EN 3.3 (d) Transfer of client assets – In order to maintain access for clients to their client assets held or deposited with the firm in resolution with minimal interruption, the firm's holdings of client assets that are subject to segregation may be transferred expeditiously to a willing transferee (for example, through a bulk transfer). A requirement for the resolution authority to obtain individual consent to the transfer from each affected client would be impracticable in the context of a resolution, or would give rise to delays that could be inconsistent with the clients' interest in continued access to and control over their assets. The authority should therefore have the power to transfer holdings of client assets without the consent of clients, subject to appropriate safeguards (including notification to the client). Transfer powers should enable the resolution authority to transfer entire business lines and related client assets without that transfer being prevented by contractual porting arrangements or the default rules of an FMI. However, there should be nothing to prevent such clients from subsequently transferring their assets from the transferee to another firm in accordance with their legal rights in relation to those assets.

EN 3.3 (e) Transfer of FMI functions – Resolution authorities should have the power to transfer the ownership of an FMI or all or part of the critical functions of an FMI (for example, the transfer of some or all of the clearing functions of a CCP, or the transfer of clearing in specific products only). Where an FMI in resolution holds client assets in a capacity as custodian, the transfer powers should enable the authority to transfer those assets to another institution for custody without affecting the ownership rights or entitlements of the

relevant clients to those assets (see Part I, paragraph 4.14 of *Annex on FMI resolution*).

EN 3.3 (f) Relationship with KA 4 - More detailed criteria in relation to KA 3.3(ii) are set out in EC 4.1.3, in relation to KA 4. Compliance with KA 4 means compliance with KA 3.3(ii).

EN 3.3 (g) Transfer for value – A jurisdiction can be compliant with KA 3.3 if its legal framework requires that the transfer of assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution must be for consideration or other value.

Bridge institution

KA3.4 Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including:

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

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

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

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

Essential criteria

EC 3.4.1 The resolution authority has the powers set out in KA 3.4 to establish one or more bridge institutions in order to maintain continuity of critical functions and viable operations of the failed firm by the bridge institution. The legal framework specifies, or gives the resolution authority the power to specify, the terms and

conditions under which a bridge institution will be set up and operate as a going concern, including:

(i) its ownership structure;

(ii) the sources of capital, its operational financing and liquidity support;

(iii) the applicable regulatory requirements, including regulatory capital;

(iv) the applicable corporate governance framework; and

(v) the process for appointing the management of the bridge institution and its responsibilities.

EC 3.4.2 The legal framework provides for the transfer of assets and liabilities to one or more bridge institutions for the maintenance and continuity of critical functions and viable operations.

EC 3.4.3 The resolution authority has the power to transfer assets or liabilities back from the bridge institution to the firm in resolution, the estate of the firm or to an asset management vehicle that has been set up to manage and run-down non-performing loans or difficult to value assets. The exercise of the reverse transfer power is subject to appropriate safeguards.

EC 3.4.4 In relation to FMIs, the regime provides that where functions of an FMI are transferred to a bridge institution, the following should also be transferred or applied to the bridge institution:

(i) any licenses, authorisations, recognitions and legal designations of the FMI necessary for the continued performance of those functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules;

(ii) any domestic or cross-border links with other FMIs that are essential for the continuity of the transferred functions.

Explanatory Notes

EN 3.4 (a) Establishment of bridge institutions - Legal frameworks may either empower the resolution authority (or another authority – see EN 3.2 (n)) to establish one or more bridge institutions each time this resolution tool is needed (so that the institution is either sold or wound up at the end of the arrangement); or to maintain one or more permanent legal entities (shell companies) that are used as a 'bridge' on each occasion the tool is used (so that the business transferred on each occasion is ultimately sold on or wound up, but the legal entity remains in existence). If an authority is able to establish a bridge institution using existing powers to incorporate entities, this is sufficient to comply with this element of EC 3.4.1, provided that the resolution authority can exercise all of the powers set out in points (i)

to (iv) of KA 3.4. Where the establishment and operation of a bridge institution has potential implications for public funds, a requirement for the resolution authority to obtain governmental approval for use of a bridge institution does not, by itself, mean that a jurisdiction does not comply with KA 3.4.

EN 3.4 (b) Term of bridge institutions – It is not necessary that the resolution regime prescribes an express and binding term for the existence of a bridge institution. However, in the absence of a time limit for bridge institutions, the resolution regime should contain principles or guidelines to the effect that a bridge arrangement should not be permanent (except as a shell company) and that involvement by public authorities in the ownership and control of the bridge institution should end as soon as is reasonably practicable. The objective of a bridge institution is the sale or transfer of some or all of the transferred business to one or more private sector entities. The framework may provide for onward sale to be deferred if prices are expected to return to reasonable levels in the short to medium term. Winding-down of the business of a bridge institution is also an option, but would generally be pursued only if a sale or other transfer is not possible within a reasonable timeframe.

EN 3.4 (c) Wind-down of bridge institution - If it ultimately proves necessary to wind-down a bridge institution that includes insured deposits and client assets, the wind-down should be carried out in a manner that is consistent with financial stability and orderly resolution. For example, any wind-down of a bridge bank should be accompanied by prompt pay-out of insured deposits or transfer of deposits and client assets in order to minimise the risk of undermining the effectiveness of future uses of bridge institution powers in preserving financial stability.

EN 3.4 (d) Transparency - It is not necessary for a bridge institution to be subject to the requirements for regulatory capital that apply generally to financial institutions that carry on the same class of activities, but the legal framework should be transparent as to what regulatory capital requirements, if any, will apply. Subject to parameters that should be set out in the resolution regime, it may be open to the resolution or supervisory authority to determine what form of corporate governance and regulatory framework is appropriate, depending on the anticipated period of operation of the bridge institution and the nature of the activities that it performs.

EN 3.4 (e) Reverse transfers and appropriate safeguards - The ability to transfer assets or liabilities back from the bridge institution to the firm in resolution may be established either in the legal framework or as a matter of contract. Appropriate safeguards for the exercise of a power to transfer assets or liabilities back from a bridge institution might include the following: (i) an exemption from the scope of those reverse transfer powers of deposits and any other liabilities that might provoke a creditor run and undermine the operations of the bridge institution and continuity of the business transferred to it; (ii) appropriate transparency about the assets and liabilities that may be subject to the reverse transfer power, either by positive identification in the transfer instrument or expressly excluded categories in legislation; and (iii) clear and binding limitations on the period during which liabilities may be returned. As an alternative to a reverse transfer as a means for dealing with non-

performing assets that have been transferred to a bridge institution, resolution authorities may instead transfer such assets to an asset management vehicle that has been set up to run-down non-performing loans or difficult to value assets.

EN 3.4 (f) Use of bridge institutions in resolution of insurers – The legal framework should include the power to use a bridge institution to assume the business, or particular business lines, of a failing insurer, including as an interim measure where there are no alternative providers. Authorities should be able to exercise the power flexibly, so that either all or only part of the business of an insurer can be taken into a bridge institution. If it ultimately proves necessary to wind-down a bridge institution that includes policyholder-related assets and liabilities, the wind-down should be carried out in a manner that is consistent with financial stability and orderly resolution. For example, any wind-down of a bridge insurer should be accompanied by prompt pay-out of obligations to policyholders in order to minimise the risk of undermining the effectiveness of future uses of bridge institution powers in preserving financial stability.

EN 3.4 (g) Use of bridge institutions for FMI resolution – The legal framework should include the power to use a bridge institution for FMIs, since this might more readily achieve the broader objectives of maintaining continuity and stability while avoiding (at least temporarily) the legal and operational impediments that may arise in an immediate transfer to a third party. It will also be important where there are no immediate alternative providers or viable entities to assume the services of the failing FMI. Authorities should be able to exercise the power flexibly, so that the ownership of and FMI, or all or part of its operations can be transferred to one or more bridge institutions For example, a payment system might be transferred in its entirety to a bridge institution to simplify operational challenges and minimise complexities in IT migration. However, the operations of a CCP might be separated on the basis of the different products cleared and risk management arrangements, or different products may be risk-managed separately, with distinct margin and default fund arrangements. In such a case, if the loss arising from default of a participant in one particular product exceeds the financial resources for that product, one option may be to maintain the clearing of other products either by the CCP or by transferring them to a bridge institution, while the clearing of the first product is resolved separately.

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

Bail-in within resolution

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

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

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

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

Essential criteria

EC 3.5.1 The resolution authority has the power to give effect to all of the following actions as necessary to absorb losses:

(i) terminate or write down equity or other instruments of ownership of the firm;

(ii) write down subordinated and senior unsecured and uninsured creditor claims; and

(iii) exchange or convert into equity or other instruments of ownership of the firm, any successor in resolution (such as a bridge institution to which part or all of the business of the failed firm is transferred) or the parent company within that jurisdiction, all or parts of subordinated or senior unsecured creditor claims.

EC 3.5.2 The legal framework provides clarity as regards the scope of the bail-in power set out in KA 3.5, that is, the range of liabilities covered and the hierarchy according to which bail-in powers may be applied.

EC 3.5.3 The legal framework enables the resolution authority to require or bring about, including through application to the court, any of the following actions where necessary to give effect to the write-down or conversion, quickly and without the need for existing shareholder consent:

(i) the cancellation of share capital and instruments;

(ii) the issuance of new shares or other instruments of ownership;

(iii) the overriding of pre-emption rights of existing shareholders of the firm;

(iv) the issuance of warrants to equity holders or subordinated (and if appropriate senior) debt holders whose claims have been subject to bail-in (to enable adjustment of the distribution of shares based on a further valuation at a later stage);

(v) the suspension of shares and other relevant securities from listing and trading, and a prohibition against dealing in the shares, for a temporary period; and

(vi) temporary exemptions from disclosure requirements.

EC 3.5.4 Bail-in powers are available for financial firms of any form or corporate structure.

EC 3.5.5 The legal framework enables contingent convertible instruments not triggered prior to entry into resolution to be terminated, written down or converted in accordance with the particular contractual terms immediately on entry into resolution, and enables bail-in powers to be applied to the instruments or claims resulting from that termination, contractual write-down or conversion, *pari passu* with instruments of the same type, except if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole (see KA 5.1).

EC 3.5.6 A resolution authority that is responsible for the resolution of FMIs should have the powers, subject to the relevant safeguards set out in KA 5 and Part I, paragraph 4.9 of *Annex on FMI resolution*, to:

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

(ii) write down (fully or partially) equity in the FMI;

(iii) write down or convert to equity ("bail in") any outstanding debt of the FMI;

(iv) reduce the value of any variation margin payable by the FMI to participants;

(v) where consistent with the legal framework and the rules of the FMI, write down initial margin of direct and, where permitted, indirect participants, to the extent that, under the legal framework and the rules of the FMI, the margin covers the obligations of participants other than the participant that posted it; and

(vi) terminate ("tear up") or close out contracts and settle in cash.

Explanatory Notes

EN 3.5 (a) Power to carry out bail-in within resolution - The powers to (i) write down equity and unsecured creditor claims of the firm in resolution, and (ii) to convert unsecured claims into equity or other instruments of ownership in the firm in resolution, a parent company or a newly established bridge institution may either be explicit statutory powers, or a facet of a general power of the resolution authority to value claims and assign losses to creditors provided that any such general power enables the authority to carry out all the actions set out in KA 3.5. They may also include the power to trigger write-down clauses in debt instruments through a determination of non-viability. Bail-in may also be achieved, for example, by termination of the corporate rights (other than economic claims) of equity and unsecured debt holders upon entry into resolution and a claims payment process whereby former equity and unsecured debt holders bear losses and received payment for remaining value in the form of equity and debt securities of a newly established company. The jurisdiction's legal framework does not need to use the term 'bail-in' or 'bail-in within resolution' in order to be assessed as compliant with EC 3.5.1 to EC 3.5.6, provided that the resolution powers available under the legal framework allow the resolution authority both to effectively write down equity and unsecured creditor claims and to effectively convert such claims into equity or other instruments of ownership, in order to achieve continuity of essential functions by at least one of the methods set out in KA 3.2(ix).

EN 3.5 (b) Scope - The requirement for clarity and certainty as regards the scope of the bail-in power does not preclude discretion for authorities as to the unsecured liabilities that are subject to bail-in powers in each individual case, subject to the safeguards under KA 5.2. The exercise of the bail-in power should respect the statutory hierarchy of claims while providing flexibility to depart from the general principle of *pari passu* treatment of creditors of the same class, in a way that is consistent with KA 5.1. As such, some degree of flexibility may be necessary for authorities to take full account of the circumstances of each individual case and prevailing market conditions, recognising that counterparties need a similar degree of advance certainty about the treatment of their claims and the levels of loss to which they are exposed in the event of a bail-in, as applies with use of any other resolution tool. However, the range or amount of liabilities subject to bail-in should be sufficiently broad to ensure effective resolution.

EN 3.5 (c) Contractual cross-border recognition clauses - To promote legal certainty and predictability of bail-in within resolution in a cross border context, resolution authorities may, where necessary for the effectiveness of bail-in measures, require that firms incorporated in their jurisdiction include a contractual recognition term in debt instruments that are within the scope of the bail-in regime but subject to foreign governing law (see EN 7.5 (d)).

EN 3.5 (d) Contingent convertible and contractual bail-in instruments - The existence of statutory powers for resolution authorities to carry out bail-in within resolution should not prevent firms from issuing debt instruments that write down or convert into equity contractually before or at the time of entry into resolution, nor do they prevent public authorities from requiring firms to do so (pursuant to other provisions or powers under the

legal framework).

EN 3.5 (e) Powers to restructure insurance and reinsurance liabilities - The legal framework should include powers for the resolution authority to restructure or limit liabilities, including insurance and reinsurance liabilities, and allocate losses to creditors, policy holders and claimants in a way that is consistent with the statutory creditor hierarchy, subject to the safeguards set out in KA 5. This might include powers to: reduce future (or contingent) benefits, such as the sum assured or the annuity provided, whilst maintaining continuity of insurance cover and payments falling due; reduce the value of contracts upon surrender; reduce or terminate guarantees, such as the guaranteed sum assured or annuity rate provided by a with-profits policy; terminate or restructure options provided to policyholders; convert an annuity into a lump sum payment; settle crystallised and contingent insurance obligations by payment of an amount calculated as a proportion of estimated present and future claims; convert insurance liabilities from one type of insurance liability into another; and reduce the value of inwards reinsurance contracts or restructuring inwards reinsurance contracts (see paragraph 4.4 of *Annex on Insurance resolution*). The resolution authority should be able to exercise powers of conversion or commutation without being required to notify every creditor or potential creditor, and the exercise of powers should bind unknown creditors where claims have not yet arisen.

EN 3.5 (f) FMIs – A resolution regime should be considered non-compliant with this KA if it does not include statutory powers to allocate losses within resolution for FMIs. This should include powers to enforce any existing or outstanding contractual obligations of the FMI participants to meet cash calls or make further contributions to a guarantee or default fund, or any other rules and procedures of the FMI for loss allocation, where not applied exhaustively by the FMI prior to the entry into resolution of the FMI. The PFMI, and specifically Principle 4, Key Consideration 7, provide that FMIs should establish explicit rules and procedures that address how potentially uncovered credit losses would be allocated (see EN 6.2 (b)). For example, the rules and procedures of an FMI might provide for the allocation of uncovered credit losses by the write-down of unrealised gains of non-defaulting participants and through additional contributions from participants based on the relative size and risk of their portfolios (see paragraph 3.4.25, footnote 61 of the PFMI).

Additionally, resolution authorities should have powers to allocate losses further by reducing (hair-cutting) in-the-money claims of FMI participants Where consistent with the legal framework and rules of the FMI, resolution authorities should also have powers to write down initial margin of direct and, where permitted, indirect participants, to the extent that, under the legal framework and the rules of the FMI, the margin covers the obligations of

participants other than the participant that posted it[28] (see Part I, paragraph 4.8 of *Annex on FMI resolution*). Where the FMI has debt instruments in issue, loss allocation could also take the form of write down or conversion of those debt instruments. Any loss allocation should be subject to the safeguard in KA 5.2 (no creditor worse off in resolution than in liquidation, as elaborated in Part I, paragraph 6.1 of *Annex on FMI resolution*).

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

Essential criteria

EC 3.6.1 The resolution authority has the power to apply 'bail-in within resolution' as set out in KA 3.5 in combination with the other resolution powers specified in KA 3.2 and regulatory measures, including powers to replace senior management of the failing firm and to require the development of a new business plan.

Explanatory Notes

EN 3.6 (a) Use of other resolution tools in conjunction with bail-in - In cases where bail-in is used to restore the capital position of the failing firm (where the firm in resolution continues to carry on some or all of its activities) additional measures are needed to address problems or weaknesses that led to the failure of the firm, such as a change of management and a reorientation of the business strategy. The assessor should therefore be satisfied that the resolution regime provides that the use of bail-in in such cases is accompanied by the exercise of other resolution powers that address the causes of the firm's failure.

Resolution of insurers

KA 3.7	In the case of insurance firms, resolution authorities should also have powers to: (i) undertake a portfolio transfer moving all or part of the insurance business

[28] In principle, initial margin is only available to cover obligations of the participant that posted it. In addition, in many jurisdictions the regulatory framework requires initial margin to be bankruptcy remote.

to another insurer without the consent of each and every policy holder; and

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

Essential criteria

EC 3.7.1 The resolution authority has the power to undertake a portfolio transfer without having to obtain the consent of any insurance policy holder.

EC 3.7.2 The resolution authority has the power to discontinue the writing of new business once an insurance firm is placed in resolution while existing contractual policy obligations continue to be administered (run-off).

Explanatory Notes

EN 3.7 (a) Portfolio-transfers - Portfolio transfers typically enable all or part of the insurance business of a failing insurer to be moved to another insurer without the consent of each and every policy holder, subject to approval by the regulatory authorities and consent from the entity that will receive the portfolio. Portfolio transfer powers should also enable the resolution authority to transfer insurance business to a bridge institution. The regime should also provide for a pre-agreed mechanism to adjust the value of contracts after a transfer has been effected in cases where the value of contracts is uncertain or requires considerable time to evaluate (see paragraph 4.7 of *Annex on Insurance resolution*).

A jurisdiction can be compliant with KA 3.7 if its legal framework requires that the transfer of selected assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution must be for consideration or other value.

EN 3.7 (b) Run-off - Run-off is the process whereby existing contractual policy obligations of a failing insurer continue to be administered while the writing of new business is discontinued. Claims are paid from the existing reserves of the insurer. Where an insolvent insurer is allowed to run-off, the run-off can be managed by an authority, an appointed administrator or other third party. In order to permit run-off, the legal framework must provide for the appropriate regulatory authorisation or permission (that is, the permission to write new business should be distinct from the permission necessary to carry out existing contracts). The duration of the run-off depends on the portfolio (for example, property, casualty or life insurance) and the strategy chosen (for example, whether the run-off manager actively seeks early conclusion of the existing contracts to accelerate the process).

Exercise of resolution powers

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

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

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

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

Essential criteria

EC 3.8.1 The resolution authority has the power and the operational capacity to combine resolution actions, to apply them sequentially and to apply different resolution powers to different parts of the business of the firm in resolution. This includes the power to apply resolution powers to maintain the continuity of critical functions and to initiate a wind-down of operations that, in the particular circumstances, are judged by the authorities as not critical to the financial system or the economy.

EC 3.8.2 There are mechanisms, processes, policies or criteria in place for determining whether particular operations of a firm are critical to the financial system or the economy.

Explanatory Notes

EN 3.8 (a) Exercise of resolution powers - The choice of resolution actions should be guided by the statutory resolution objectives, and authorities should be able to take the action that is most likely to achieve the resolution objectives set out in KA 2.3 in the particular circumstances.

The requirement for 'operational capacity' should be interpreted in a manner consistent with KA 2.5. Assessors should not simply consider staff numbers and expertise, but should also take into account the ability of authorities to draw rapidly upon the expertise of external professionals such as accountants, lawyers or investment advisory firms in the event that specialist knowledge or additional resources are required. Evidence of that ability might include, for example, the existence of arrangements to draw on such professional services.

KA 3.9 In applying resolution powers to individual components of a financial group

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

Essential criteria

EC 3.9.1 The resolution regime establishes processes that require that, when exercising resolution powers in relation to domestic entities of a cross-border financial group, the resolution authority evaluates and takes into account the expected or possible impact of its actions on the group as a whole (including domestic and foreign affiliates) and on financial stability in other jurisdictions where the group operates.

EC 3.9.2 The resolution regime establishes processes that require that, when exercising resolution powers in relation to an FMI, the resolution authority assesses the impact on interconnected or linked FMIs, regardless of where they are located.

Explanatory Notes

EN 3.9 (a) Requirement to take account of the impact on the group and on financial stability in other jurisdictions - Factors that assessors could consider when assessing compliance with EC 3.9.1 include:

(i) the existence of group resolution plans developed in coordination with members of the firms' CMGs (see KA 11.8);

(ii) evidence that in a domestic resolution the cross-border impact of the resolution options set out in the plan had been considered;

(iii) the existence of bilateral or multilateral cooperation and information sharing agreements that provide for ongoing dialogue on the potential implications of resolution actions;

(iv) regular communications within any CMG;

(v) a statutory provision or written policy requiring the resolution authority to consult and cooperate with the relevant authorities of jurisdictions where a firm has operations that are systemically significant or critical in that jurisdiction (see KA 8.1); and

(vi) a policy or stated intention that the resolution authority, as far as reasonably possible, will notify the relevant authority in other jurisdictions before taking a resolution action.

EN 3.9 (b) FMIs - In the case of FMIs, the assessor should also look for evidence that the resolution authority considers in its resolution planning and actions the impact of measures on linked or interconnected FMIs, both within the authority's jurisdiction and in other jurisdictions. The nature and extent of cross-border interdependencies between FMIs may require particular attention in the planning or execution of FMI resolution, and the assessor should look for evidence that this has been taken into account.

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

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

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

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

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

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

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

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

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

Essential criteria

EC 4.1.1 The legal framework sets outs the rules governing set-off rights, contractual netting and collateralisation agreements as they apply to any form of contractual arrangement (including loan agreements, deposit agreements, and other forms of financial contracts) and to any firm. The legal framework states what rights can be stayed, for how long and under what conditions, and does not otherwise prevent the enforcement of such set-off rights and netting and collateralisation agreements in resolution.

EC 4.1.2 The legal framework sets out the rules governing the identification and segregation of client assets and how such assets may be treated in resolution.

EC 4.1.3 The legal framework does not establish or contain any statutory or common law right to set-off obligations with respect to a firm that arises solely by virtue of either the firm's entry into resolution or the exercise of resolution powers against that firm, and provides that contractual set-off rights and acceleration or early termination rights are not exercisable by a counterparty of a firm solely by virtue of the entry into resolution or the exercise of any resolution power against that firm provided that the substantive obligations under the contract continue to be performed.

EC 4.1.4 With respect to financial contracts, the legal framework provides a power to impose a temporary stay on the exercise of early termination rights that arise by reason only of entry into resolution or in connection with the exercise of any resolution powers subject to the conditions set out in points (i) to (iii) of KA 4.3 and section 2 of Annex IV to the *Key Attributes*.

EC 4.1.5 The legal framework requires resolution authorities, when imposing a temporary stay on the exercise of early termination rights in financial contracts, to seek to ensure that the stay does not compromise the safe and orderly operations of exchanges and FMIs.

Explanatory Notes

EN 4.1 (a) Focus on legal certainty and predictability - The objective of an assessment of EC 4.1.1 is not to evaluate the extent to which legal regimes recognise close-out netting consistent with international practice, or the extent to which the scope and legal effects of close-out netting under the law of the jurisdiction under review are consistent with this practice. Rather the focus of the assessment is whether the existing regime is clear and promotes legal certainty and predictability and does not hamper the implementation of resolution measures.

To that end, the legal framework governing set-off rights, contractual netting and collateralisation agreements and the identification and segregation of client assets should

provide clarity regarding the rights of the firms and FMIs, and their clients, participants and counterparties and their enforceability in resolution. The requirement for clarity and enforceability extends to the rules governing the safeguarding of client assets, including when an asset is to be treated as a 'client asset'; the forms of protection of client assets that apply under the applicable law; and the rules and procedures, if any, for assessing and validating client claims to assets.

A clear and enforceable framework governing set-off rights, contractual netting and collateralisation agreements, and the safeguarding of client assets is particularly important both for effective resolution of FMIs and for maintaining market confidence regarding the enforceability of arrangements used to mitigate credit risk. If these protections are not in place and an FMI bears credit and liquidity risk towards its participants, the FMI's financial position might quickly deteriorate. This is consistent with Principle 1 of the PFMI, which states that the legal basis of an FMI should provide a high degree of certainty for each material aspect of the FMI's activities in all relevant jurisdictions. As paragraph 3.1.2 of the explanatory notes to that Principle elaborate, the legal basis for this purpose includes laws and regulations governing rights and interests in financial instruments, settlement finality, netting and collateral arrangements (including margin arrangements).

EN 4.1 (b) Protection of client assets – Rules governing the safeguarding of client assets are important to facilitate the identification and timely transfer of custody over, or return of, client assets in resolution. If a jurisdiction does not have clear rules in this regard that are properly enforced, this may hamper the ability of the resolution authority to deal with the holdings of client assets of a firm in resolution in a way that minimises the impact on market participants and financial stability. Except where provided for by the rules governing FMIs, the legal framework should also include provision as to how shortfalls or losses in relation to client assets are shared between clients or classes of clients.

EN 4.1 (c) Set-off by the resolution authority or depositors - It is not inconsistent with EC 4.1.3 if the legal framework permits the resolution authority (or administrator or liquidator for a firm in resolution) to set-off obligations and claims with respect to a firm in resolution in order to maximise the value of the firm's assets. It is also not inconsistent with EC 4.1.3 if the regime permits obligations (for example, loans) owing to the firm in resolution and not past due to be set off against claims (for example, deposits) for the purposes of determining the amount of a depositor's net claim.

EN 4.1 (d) Stay of early termination rights - KA 4.3 establishes a specific framework for financial contracts. It provides for a temporary stay on the exercise of any contractual acceleration and early termination rights that arise under such contracts solely by reason of the entry of the firm into resolution or the exercise of a resolution power. The purpose is to allow a short period of time for the resolution authority to make a determination on the treatment of the financial contracts in resolution, during which counterparties are not able to accelerate or terminate those contracts. The legal framework implementing KA 4.3 may provide for any such stay to be imposed automatically or at the discretion of the resolution authority but, whichever approach is adopted, the legal framework should clearly define the

classes of financial contract that are subject to any automatic or discretionary stay. The consequence of such a stay is to override contractual provisions that trigger early termination rights upon entry into resolution or resolution action. However, it should still be possible for counterparties to exercise early termination rights if the substantive obligations under the contract (for example, obligations to make a payment or deliver or return collateral on a due date) are not met by the firm in resolution or by a successor to which the financial contract is transferred (for example, a purchaser or bridge institution which, in either case, assumes the obligations under the contract that bound the firm in resolution).

To protect the interest of counterparties of the firm in resolution whose rights may be affected, the legal framework should:

(i) specify the rights under financial contracts that will be affected by a stay, under what conditions and the maximum period for which a stay can be imposed;

(ii) following the transfer of financial contracts, preserve the early termination rights of the counterparty against the acquiring party that do not arise solely by virtue of the entry into resolution or the exercise of any resolution power against that firm; and

(iii) not waive the continued performance of obligations by the firm (or its successor), including any obligation to provide variation margin or collateral or settlement of obligations; and

(iv) require that where financial contracts are transferred, they be transferred only to a purchaser or bridge institution that is financially sound.

EN 4.1 (e) – "no cherry-picking" restriction on transfer of financial contracts – The legal framework should provide for the application of the "no cherry-picking" safeguard set out in paragraph 2.1 (iii) of Annex IV to the *Key Attributes*. That safeguard aims to ensure that resolution actions interfere as little as possible with the protections for counterparties afforded by statutory and contractual rights to net positions under financial contracts covered by a netting agreement. Accordingly, the legal framework should provide that, when exercising transfer powers in relation to financial contracts between a firm in resolution and the same counterparty, the resolution authority should not separate financial contracts that fall within the same netting agreement: that is, it must transfer all such contracts or leave them all with the failed firm, and should not "cherry pick" among such contracts for transfer.

The legal framework may limit the scope of the "no cherry-picking" safeguard so as not to require the transfer of assets and liabilities other than financial contracts that might otherwise be captured under a netting agreement (for example, deposits, loans, bonds or similar debt instruments).

EN 4.1 (f) Transfer of related security – In general, the legal framework should require the resolution authority to transfer, along with the financial contracts that are transferred from a firm in resolution, any related security and guarantees that provide credit support under a

governing credit support or similar type of agreement. However, it is also consistent with KA 4 if the authority has the option of providing alternative forms of protection in cases where such security or guarantees cannot be transferred (for example, by substituting cash collateral or providing a government or other public sector guarantee).

EN 4.1 (g) Stay of early termination rights of participants in the resolution of FMIs - In accordance with KA 4 and Annex IV, early termination rights should not be exercisable by any participant in an FMI or other counterparties under a financial contract solely by virtue of the entry into resolution of, or the exercise of any resolution power in relation to, an FMI. Such rights should remain exercisable where the FMI (or the authority, administrator or other person exercising control over the FMI in resolution) fails to meet payment or delivery obligations, including collateral transfers, when due in accordance with its rules, subject to any application of loss allocation to margin or collateral under the rules of the FMI or the use of statutory powers.

A temporary stay can be an important tool in the resolution of FMIs. For example, the exercise of early termination rights by a large number of participants triggered by the entry into resolution of a CCP could place further significant strain on the financial and operational resources of the CCP that could prevent it from continuing critical functions. The exercise of early termination rights by participants may also increase the risk that the CCP no longer has a 'matched book', creating further market risk for the CCP and in turn making it more difficult for the resolution authority to achieve an outcome that preserves financial stability. When considering whether to impose a temporary stay consistent with KA 4 and Annex IV on the exercise by FMI participants and other relevant counterparties of early termination rights and set-off rights triggered by entry into resolution of the FMI, the resolution authority should take into account the impact on the financial markets and on the safe and orderly operations of the FMI and any linked FMI.

EN 4.1 (h) Impact of stay on safe and orderly operations of FMIs - The safe and orderly operation of FMIs includes ensuring settlement of payments and transfers both to and from the FMI. Accordingly, it is particularly important that any stay on early termination rights in the context of the resolution of a firm that participates in an FMI does not interfere with payment and delivery obligations to FMIs or affect the right of an FMI to exercise early termination rights if the firm in resolution, or a transferee to which part or all of the business of the firm in resolution has been transferred, fails to meet any ordinary course margin, collateral or settlement obligations that arise under a contract or as a result of the firm's participation in the FMI.

KA 5 Safeguards

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

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

Essential criteria

EC 5.1.1 The resolution authority is required as a general principle to allocate losses through the exercise of resolution powers in a way that respects the hierarchy of creditor claims under the applicable insolvency law and the principle of equal (*pari passu*) treatment of creditors of the same class. In particular, losses should be absorbed first by equity holders, and then by subordinated debt holders followed by unsecured creditors, including senior debt holders.

EC 5.1.2 The legal framework permits departure from the principle of equal treatment of creditors of the same class in clearly specified circumstances, where it is necessary: (i) to protect financial stability by containing the potential systemic impact of the firm's failure, or (ii) to maximise the value of the firm for the benefit of all creditors.

Explanatory Notes

EN 5.1 (a) Creditor hierarchy and contractual subordination – Debt instruments may provide for subordination in relation to other liabilities in their contractual terms (subordinated debt). These terms determine their ranking in the creditor hierarchy and also apply in resolution.

EN 5.1 (b) Departure from the pari passu principle - If, as a result of a resolution action that entails a departure from the principle of equal treatment of creditors of the same class, no creditors are worse off than they would have been in liquidation and some creditors are better off than they would have been in liquidation, the creditors as a whole should be deemed to benefit from that departure.

EN 5.1 (c) Respect for FMI loss allocation rules – Any determination of whether a participant is worse off as a result of resolution measures than in liquidation (application of

the "no creditor worse off safeguard" set out in KA 5.3) should as far as practicable be based on the losses incurred (or that would be incurred) and recovery made (or that would be made) by the participant after the full application of the FMI's rules and procedures for loss allocation.

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

Essential criteria

EC 5.2.1 The legal framework provides that creditors that receive less as a result of resolution than they would have received in liquidation have a right to compensation. It provides a mechanism for administering that compensation, including a transparent process by which the amount of compensation payable is determined and procedures for review and challenge of that determination (including review by a court or tribunal).

Explanatory Notes

EN 5.2 (a) Minimum recovery rights - For the purposes of determining creditors' minimum recovery rights and any potential compensation claims, the resolution regime should specify, or provide for the resolution authority to specify: (i) the general methods and procedures that would be used to determine the value of the firm in resolution and the amount that particular classes of creditors would have received in liquidation, in accordance with the hierarchy of creditor claims under the applicable insolvency law, any contractual subordination or waivers and the application of the *pari passu* principle; and (ii) the time when the "value available for the benefit of the creditors as a whole" would be assessed. The methods and procedures followed should be consistent with sectoral specificities (for example, the priority treatment of insured deposits and direct insurance claims (where applicable) and rules on loss allocation among participants of FMIs). Where the rules of an FMI provide for the mutualisation of losses in resolution between its direct and, where applicable and permitted by law, its indirect participants through the application of loss allocation rules, the resolution regime should give effect to those rules provided that they do not compromise financial stability or are unlikely to be successful in the circumstances; and it should ensure that the "no creditor worse off than in liquidation" safeguard takes account of the effect of those loss allocation rules.

EN 5.2 (b) "Creditors" - "Creditors" in this KA refers to all creditors of the firm, and not just creditors whose claims are booked in the jurisdiction of the intervening resolution authority.

EN 5.2 (c) Compensation - A jurisdiction may be assessed as compliant with EC 5.2.1 if the

mechanism that ensures that creditors do not receive less in resolution than they would have received in liquidation involves court approval.

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

Essential criteria

EC 5.3.1 The legal framework protects the directors and officers of the firm in resolution against liability suits or claims, including by shareholders and creditors, for all actions taken when acting in compliance with decisions and instructions of domestic resolution authorities and of foreign resolution authorities where such decisions and instructions have been recognised or given effect in the jurisdiction under review.

Explanatory Notes

EN 5.3 (a) Scope of the legal protection - The legal framework should specify the scope of legal protection, including whether it entails immunity or indemnification, and the body responsible for providing the indemnification for costs. The scope should extend to civil actions by shareholders or creditors relating to all actions taken in good faith when acting in accordance with or giving effect to decisions and instructions in connection with resolution measures of the relevant domestic authorities and of foreign authorities where such decisions and instructions have been recognised or given effect in the jurisdiction under review (see KA 7.5 and EN 7.5 (a)). Protection for directors and officers of a firm in resolution should not extend to detrimental actions they may have taken that contributed to the entry into resolution of the firm.

Legal remedies and judicial action

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

Essential criteria

EC 5.4.1 The legal framework enables the resolution authority to exercise the powers in

KA 3 in a timely manner and implementation of resolution measures is not unduly delayed by any process or legal action.

EC 5.4.2 Where prior court approval is required before a resolution action is taken or a measure applied, including in a resolution with a cross-border element, resolution authorities take that requirement into account in their resolution planning process so as to ensure that the time required for completing court proceedings will not compromise the effective implementation of resolution measures.

Explanatory Notes

EN 5.4 (a) Due process requirement - A jurisdiction should be considered compliant with EC 5.4.1 if the legal framework requires the exercise of the resolution powers by the relevant authority to respect the principles of due process that are provided for in the country's legal framework and constitution.

EN 5.4 (b) Court involvement in the resolution process – KAs 2.1, 2.3 and 5.4 should be read in conjunction. KA 2.1 requires jurisdictions to confer resolution powers on administrative authorities to ensure that resolution can proceed in a timely manner (in order to achieve the objectives of financial stability set out in KA 2.3). The resolution process should ideally therefore be administered by an administrative agency, although it is recognised in KA 5.4 that some court involvement may be necessary in certain jurisdictions and in certain circumstances. Thus, while a wholly administrative process is to be preferred, a regime may provide, for example, for certain resolution actions to be performed by an administrator that is appointed and supervised by a court. When assessing compliance in a jurisdiction that provides for court involvement in the appointment of an administrator or supervision of the resolution process, the assessor should reach a judgment as to whether the procedures for the appointment and oversight by the court allow for resolution actions to be implemented quickly and in a manner that promotes continuity and achieves the statutory objective of financial stability. Furthermore, to the extent that court approvals are required, one approach which would be consistent with KA 5.4 would be for the legal framework to provide for:

(i) expedited procedures (for example, with shortened notice, filing and decision deadlines for appeals);

(ii) *ex parte* applications (that is, applications made without notice to the firm or other affected parties) to be made by the resolution authority;

(iii) standing of the resolution authority in any resolution-related court proceedings; and

(iv) discovery (where available) to be limited only to matters directly and immediately relevant to the appraisal of the financial compensation that might be payable as an outcome of any appeal or challenge.

Where resolution powers are exercised administratively, the legal framework should provide that any form of ex-post judicial review of the exercise of those powers is consistent with KA 5.5.

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

Essential criteria

EC 5.5.1 The legal framework provides that the only remedy that can be obtained from a court or tribunal through ex-post judicial review of measures taken by resolution authorities acting within their legal powers and in good faith is monetary compensation, to the exclusion of any remedy that could constrain the implementation of, or reverse, any such measure taken by the resolution authority.

EC 5.5.2 The legal framework specifies how an aggrieved party will be compensated and the basis upon which such compensation would be awarded.

Explanatory Notes

EN 5.5 (a) Powers of the court – KA 5.5 is directed at statutory remedies provided under the resolution regime in connection with resolution measures that are within the legal powers of the resolution authority and taken in good faith, which should be limited to the award of monetary compensation. It does not limit statutory judicial remedies that may be available in relation to actions by the resolution authority that are unlawful because they have been taken in bad faith or are otherwise outside its legal powers, and does not constrain the general or inherent powers of the court to award remedies.

EN 5.5 (b) "Acting within their legal powers and in good faith" - An assessment of whether a resolution authority acted within its legal powers or in good faith when taking a resolution action is made in accordance with the applicable law of the jurisdiction under review.

EN 5.5 (c) Payment of compensation - The legal framework should specify which entity or entities will be financially responsible for the payment of compensation. In relation to compensation for creditors, see KA 5.2.

EN 5.5 (d) Court approval - Nothing in KA 5.5 constrains a jurisdiction from requiring prior court approval for the application of resolution measures. However, the process for gaining any such approval should be timely so as not to compromise the effectiveness of

these measures (see EN 5.4 (b)).

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

Essential criteria

EC 5.6.1 The legal framework allows for temporary exemptions from disclosure requirements, or the postponement of a disclosure, of information by a firm to be granted in circumstances where that disclosure could affect the successful implementation of resolution measures and the exemption or delay would not be inconsistent with the public interest.

Explanatory Notes

EN 5.6 (a) Regulatory disclosure requirements - KA 5.6 includes both the power to grant temporary exemptions by waiving regulatory disclosure requirements and the power to permit disclosures to be postponed. Regulatory disclosure requirements refer to disclosures to the public (for example, regular and ad hoc disclosures under market reporting, takeover and listing rules), and not to disclosures that are required to be made to supervisors or any other public authority.

Examples of waiver and postponements contemplated by this KA could relate to:

(i) reporting requirements for the use of emergency liquidity facilities in situations where publication of such use could significantly diminish the effectiveness of the measure; and

(ii) disclosure requirements under securities laws.

The legal framework should provide that any such waiver or postponement will be temporary and short term, and that the grant of a waiver or postponement is disclosed after the relevant information is disclosed.

EN 5.6 (b) Legal protection - The legal framework should provide protection to the firms and their directors and officers against lawsuits for non-disclosure of information where temporary waivers and postponements apply (see KA 5.3).

EN 5.6 (c) Exemptions from disclosure in a cross-border context - The power to grant temporary exemptions from domestic disclosure requirements should also be exercisable where resolution measures are taken by a foreign resolution authority, if disclosure of those measures under domestic requirements could affect the successful implementation of those

foreign measures. Cooperation in accordance with KA 7.1 and processes to support foreign resolution measures under KA 7.5 should include the use of the power to grant exemptions from domestic disclosure requirements in appropriate cases.

KA 6 Funding of firms in resolution

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

Essential criteria

EC 6.1.1 The jurisdiction has statutory or other policies in place so that resolution authorities are not constrained to rely on bail-out or public ownership as a means of resolving firms.

Explanatory Notes

EN 6.1 (a) No reliance on bail-out policies - An effective resolution regime that is consistent with the *Key Attributes* should ensure that authorities are not constrained to rely on public ownership or bail-out with public funds as a means of resolving failing firms. This is the case when authorities have resolution options other than public ownership or bail-out that are credible, practicable and plausibly likely to avoid the exposure of taxpayers to loss. This also includes arrangements to ensure that private sources of funding for resolution are available.

KA 6.1 is complied with if the resolution regime, the statutory mandate of the authority, or the policies and practices of the authority more generally demonstrate that authorities do not rely on bail-out or public ownership as a means of resolving firms. For example, the resolution regime could include restrictions that prevent the resolution authority from relying on bail-out or public ownership as a means of resolving firms; or permit it only if specified conditions are met, or only in limited and defined circumstances (for example, where only those measures and no others are likely to address a serious threat to financial stability or meet public policy objectives). Evidence of compliance with this KA might include any of the following factors:

(i) a requirement in the statutory mandate of the resolution authority that it must pursue a resolution that is the 'least-cost' option: that is, the option that the authority assesses to be most likely to impose the least cost over the course of the resolution, including by balancing consideration of the likely cost to public finances; to other financial institutions arising from the impact of the resolution option chosen on the stability of the financial system; and to the broader economy;

(ii) clear provision of alternative resolution options that are credible and feasible (such as the necessary tools, powers and policies to carry out the range of resolution measures envisaged under KA 3.2, including purchase and assumption, the use of a bridge institution, or debt write-down or conversion);

(iii) statutory conditions or objectives that restrict the use of public ownership and bail-out (for example, strict conditions designed to ensure that no other options for resolution are available in the circumstances);

(iv) the existence of resolution funds or other privately-sourced funds that are available for use in resolution;

(v) the extent to which there is evidence (for example, findings from resolvability assessments or resolution strategies that have been assessed as credible) that firms that could be systemically significant or critical in failure can be resolved in such a way as to preserve their systemic and critical functions without requiring bail-outs or public ownership; and

(vi) where applicable, actual practice under the resolution regime under review in any recent failures of financial institutions that required action by the jurisdiction's authorities.

Where the legal framework of a jurisdiction provides for temporary public ownership as a resolution option, the jurisdiction must receive a grade of 'largely compliant' or better in relation to EC 6.5.1, to be compliant with EC 6.1.1. Temporary public ownership refers exclusively to nationalisation of the firm (through acquisition by the state or a public authority of its shares or other instruments of ownership).

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

Essential criteria

EC 6.2.1 The resolution regime confers any necessary powers and establishes a process for the recovery of any temporary public funding that may be extended from public sources to support a resolution from the firm in resolution, its shareholders and unsecured creditors or, where recovery from the firm and its shareholders and creditors is insufficient, from financial system participants more widely.

EC 6.2.2 The legal framework includes appropriate cost recovery mechanisms that ensure that temporary funding necessary to maintain the critical operations and services of systemically important FMIs can be recovered from shareholders, unsecured creditors (including FMI participants) and, if necessary, from financial system participants more widely.

EC 6.2.3 The resolution regime establishes clear and transparent terms for recovery in

accordance with KA 6.2 that indicate, in particular:

(i) how the amount to be recovered from particular classes of person (for example, shareholders, junior and senior unsecured creditors, other market participants) will be determined and recovery may be enforced;

(ii) the ranking of a claim to recover funds that have been provided to a firm in resolution;

(iii) the categories of market participants that may be required to reimburse the funds that have been provided to the firm in resolution; and

(iv) the safeguards that are in place to ensure that any recovery claim does not exceed the losses that those creditors would have sustained if no temporary public funding had been provided and the firm had been liquidated (instead of being put into resolution).

Explanatory Notes

EN 6.2 (a) "Temporary public funding" - The range of funding options that are covered by the concept of 'temporary public funding' in KA 6.2 and 6.4 include, but are not limited to, the following:

(i) the provision of capital or operating funds from public sources to a bridge institution or asset management vehicle;

(ii) public financial assistance to a purchaser to facilitate resolution through purchase and assumption;

(iii) the provision of governmental guarantees or loss sharing agreements to support a purchase and assumption transaction or a separate asset management vehicle; and

(iv) the provision of temporary liquidity (other than the provision of regular liquidity assistance on standard terms to solvent entities).

EN 6.2 (b) Cost recovery frameworks for FMIs – Mechanisms required by EC 6.2.2 could include requirements under the legal framework for certain types of FMI, in particular CCPs, to maintain a participant-based arrangement for loss allocation. CCP default arrangements are standing loss mutualisation mechanisms. Such arrangements involving continuing participants may form the basis for recovery of resolution funding, but should be supplemented by mechanisms for recovery from shareholders and financial system participants more widely (as required by EC 6.2.1) if recovery from participants and shareholders is insufficient.

Pursuant to Principle 4 of the PFMI, Key Consideration 7, the rules and procedures of an FMI should address how potentially uncovered credit losses that it may face as a result of any individual or combined default of its participants with respect to any of their obligations to

the FMI would be allocated, including in relation to the repayment of any funds the FMI may borrow from liquidity providers. Those rules and procedures should also indicate the FMI's process for replenishing any financial resources that the FMI may employ during a stress event, so that the FMI can continue to operate in a safe and sound manner. Where the arrangements of an FMI include mutualised loss sharing or loss allocation (for example, between participants of a CCP under its rules), the measures should allow for the replenishment of such resources alongside recapitalisation.

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

Essential criteria

EC 6.3.1 The legal framework establishes funding arrangements which include one or a combination of the following arrangements with a remit or the power to provide temporary financing to facilitate the resolution of failing firms:

(i) a privately financed resolution fund;

(ii) a privately financed protection scheme (for example, for deposits or insurance policy holders);

(iii) a privately financed fund with combined deposit or policy holder protection and resolution functions;

(iv) temporary recourse to public funds, coupled with a mechanism for later recovery of the costs of providing such temporary public financing from assets of the firm, unsecured creditors or, if necessary financial system participants more widely.

EC 6.3.2 Where there is more than one fund or funding mechanism in a jurisdiction that may apply, there are rules in place that determine the contribution of each in any particular case.

Explanatory Notes

EN 6.3 (a) Funding arrangements - Funding arrangements should ensure that in a resolution the resolution authority has adequate resources to use whichever of the powers listed in KA 3.2 is most likely to achieve the statutory objectives of resolution. This should include, but not be limited to, the resources and legal powers to inject cash to support a deposit transfer or transfer of insurance policies, and to capitalise or fund a bridge institution.

There should also be facilities in place, such as arrangements for foreign currency swaps, to ensure that funding can be made available in other currencies that are necessary for the continuation of critical services. This is likely to be particularly important for the resolution of certain kinds of FMI, for example CCPs that clear transactions in foreign currencies.

Funds for resolution, including funds to support transfers of liabilities, should be raised from the firm, its creditors and, if necessary, other market participants. However, this does not prevent initial funding by the government provided that those public funds are recovered in due course from assets of the firm, its unsecured and uninsured creditors or, if necessary, financial system participants. The resolution fund or other funds for resolution purposes may be either privately or publicly administered, provided that the source of the funding is private.

EN 6.3 (b) Use of deposit insurance funds for resolution - Where a deposit insurance fund can be used for financing resolution, there should be rules and policies on the use of such funds, including clarity on the extent of the contribution that may be made. Assessors are referred in this context to the Assessment Methodology for the BCBS-IADI Core Principles for Effective Deposit Insurance Systems which provides (CP 11, EC 7): "In so far as the funds of the deposit insurer may be used by other members of the safety net for the purposes of depositor protection and/or bank resolution, those circumstances are clearly stated and public and known to member banks. The deposit insurer has adequate information to: (a) understand the use of the funds; (b) seek reimbursement for the estate of the failed bank or participate in recoveries from the bank; (c) restrict the resolution or depositor reimbursement amount to the costs the deposit insurer would otherwise have incurred without such intervention or resolution."

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

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

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

Essential criteria

EC 6.4.1 The resolution regime provides that temporary public funding is made available only if:

(i) it has been assessed as necessary for financial stability by supporting the implementation of a resolution option that best achieves the statutory objectives of resolution (see KA 2.3);

(ii) private sources of funding have been exhausted or would not achieve those objectives; and

(iii) losses are allocated to shareholders and unsecured and uninsured creditors (in accordance with the hierarchy of claims) and, if necessary, to the financial industry through ex-post assessments or other mechanisms.

Explanatory Notes

EN 6.4 (a) Recovery of temporary public funding - The processes and arrangements to recover funds from the financial industry are assessed under KA 6.2 (see EC 6.2.1).

EN 6.4 (b) Regimes without provision for temporary funding – KA 6.4 is not applicable if the resolution regime of a jurisdiction does not provide for, or prohibits, any provision of temporary public funding,

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

Essential criteria

EC 6.5.1 If the resolution regime includes the option of placing a firm under temporary public ownership as part of a resolution action, such an option is subject to the following conditions:

(i) the firm involved is systemically significant or critical or its failure would cause financial instability for other reasons;

(ii) public ownership is a last resort because no other resolution options would achieve the statutory objectives of the resolution regime;

(iii) there is a general policy in place that public ownership of the firm should be temporary and that it should be returned to the private sector as soon as practicable;

(iv) there are clear rules regarding the allocation of losses to shareholders and creditors; and

(v) there are transparent arrangements to recover losses and costs incurred by the public sector arising from the temporary public ownership from unsecured and uninsured creditors or, if necessary, from financial system participants more widely.

Explanatory Notes

EN 6.5 (a) Temporary public ownership not a required resolution tool - It is not necessary for a resolution regime to include the power to place a failing firm into temporary public ownership. Temporary public ownership refers to nationalisation of the firm (through acquisition by the government or a public authority of its shares or other instruments of ownership) and is distinct from resolution measures that involve the transfer of assets and liabilities from a firm to an entity owned or controlled by the state or a public authority, such as a bridge institution.

EN 6.5 (b) Conditions for temporary public ownership –EC 6.5.1 may be complied with if the conditions set out in points (i) to (iv) are met by policies and guidance. The condition in point (v) relating to arrangements to recover losses and costs incurred by the public sector may be met if such arrangements can be put in place in an individual case under existing powers, without the need for new powers or authority from the legislature.

KA 7 Legal framework conditions for cross-border cooperation

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

Essential criteria

EC 7.1.1 The legal framework empowers and strongly encourages the resolution authority to achieve a cooperative solution with foreign resolution authorities, and there are no material barriers to such cooperation.

Explanatory Notes

EN 7.1 (a) "Statutory mandate" - The statutory mandate includes anything within the legal framework that relates to the exercise of resolution powers and from which it can be inferred that the resolution authority is empowered and strongly encouraged to achieve a cooperative solution with foreign resolution authorities.

EN 7.1 (b) "Cooperative solution" - A "cooperative solution" is one in which the resolution authority in the jurisdiction under review exercises resolution powers with respect to a firm with cross-border elements, to the maximum extent possible, in consultation and cooperation with relevant authorities in other jurisdictions (resolution authorities, supervisory authorities, central banks, ministries of finance and other authorities with functions relating to protection schemes or resolution funds).

For example:

- where the jurisdiction under review is a home jurisdiction (including where it is both home and host in relation to different firms), it may demonstrate compliance with EC 7.1.1 if the resolution authority has the power to coordinate the exercise of resolution powers with authorities in other jurisdictions and its mandate strongly encourages such coordination;

- where the jurisdiction under review is a host jurisdiction (including where it is both home and host in relation to different firms), it may demonstrate the ability to achieve a cooperative solution by having, for example, the power to take any actions to support or give effect to the resolution actions of the home authority, or to coordinate the exercise of resolution powers with authorities in other jurisdictions, and a mandate that strongly encourages the exercise of that power.

In either case, the assessor may also have regard to cases where cross-border resolution has been carried out involving that jurisdiction to assess the extent to which the mandate and the power to achieve a cooperative solution is exercised in practice.

It is not inconsistent with KA 7.1 if the resolution authority may decline to commit to, or is prevented from engaging in, a cooperative solution if that solution would result in inequitable and discriminatory treatment for local creditors or pay insufficient attention to the need to maintain financial stability in the host jurisdiction.

Similarly, it is not inconsistent with KA 7.1 if the resolution regime allows the resolution authority to take discretionary action where necessary to achieve domestic stability in the absence of effective international cooperation or information sharing (see KA 7.2)

EN 7.1 (c) Barriers to cooperation - Provisions such as material restrictions on sharing information or requirements for automatic ring-fencing of assets would be inconsistent with the mandate contemplated in KA 7.1.

To be compliant with KA 7.1, a jurisdiction must receive a grade of 'largely compliant' or better in relation to KA 7.2 to 7.7 and KA 12.1.

EN 7.1 (d) Unwillingness of other authorities to cooperate – Where the statutory mandate of the resolution authority complies with KA 7.1, the grading of that jurisdiction should not be reduced as a result of problems in cooperation if those problems arise from the unwillingness or inability of authorities of other jurisdictions to cooperate or enter into appropriate cooperation agreements.

EN 7.1 (e) Cooperation between authorities with a role in the resolution of FMIs - Resolution authorities for FMIs should cooperate with relevant foreign supervisory authorities and resolution authorities in a way that is consistent with Responsibility E of the PFMI and other relevant international principles on cooperation (see EN 8.1 (b)).[29] Responsibility E and the associated Key Considerations and explanatory notes provide guidance on cooperation between relevant authorities, both domestically and internationally, to facilitate communication, consultation and coordination in the recovery, wind-down or resolution of FMIs.

KA 7.2	Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve

[29] *IOSCO Principles Regarding Cross-Border Supervisory Cooperation* (May 2010); *CPSS Central Bank oversight of payment and settlement systems report* (2002); *IOSCO Multilateral Memorandum of Understanding for Cooperation concerning Consultation and Cooperation and the Exchange of Information* (2002).

domestic stability in the absence of effective international cooperation and information sharing. Where a resolution authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions.

Essential criteria

EC 7.2.1 The legal framework does not provide for automatic action as a result of official intervention or the initiation of resolution or insolvency proceedings in other jurisdictions. It provides the resolution authority with the power to take discretionary action in connection with such intervention or proceedings and to coordinate the action with the foreign authority.

EC 7.2.2 In the case of FMIs (without limiting the generality of EC 7.2.1), the legal framework does not provide for the automatic revocation of any licenses, authorisations, recognitions and legal designations of an FMI necessary for the continued performance of the FMI's critical functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules; and it does not automatically restrict, suspend or terminate the FMI's participation in or links with other FMIs, as a result of official intervention or its entry into resolution in another jurisdiction.

EC 7.2.3 The resolution regime allows the resolution authority to take such discretionary action when necessary to achieve domestic stability (that is, in pursuance of any of the resolution objectives) in the absence of effective international cooperation and information sharing. The resolution regime requires consideration of the impact of discretionary action on financial stability in other jurisdictions prior to taking such actions.

EC 7.2.4 The resolution authority has the capacity to consult its foreign counterparts to assess the impact of its resolution action on financial stability in other jurisdictions, and regularly tests that capacity.

Explanatory Notes

EN 7.2 (a) "Automatic action" - The types of "automatic action" that are relevant under KA 7.2 include any form of resolution action provided for in KA 3.2 or other judicial or administrative liquidation or winding-up proceedings, and acts by public authorities which have the same effect, including the withdrawal of the institution's license (except where the host authority automatically withdraws the local license of a branch of a foreign firm on the withdrawal of the license of that firm by its home authority).

The reference to "automatic action" in KA 7.2 does not cover actions or events that may be triggered as a result of contractual provisions; these issues are addressed separately in KA 4. Similarly, it does not cover actions that would lead to mutual recognition of foreign resolution proceedings in accordance with KA 7.5.

EN 7.2 (b) "Official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction" - "Official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction" refers to any form of early intervention, official administration, resolution or insolvency proceeding initiated by or on the application of the relevant public authority or, in the case of insolvency proceedings, by private sector participants in jurisdictions where they are permitted to do so.

Official intervention or the initiation of resolution or insolvency proceedings in one jurisdiction might lead creditors to take enforcement actions in another jurisdiction, which in turn might compel the domestic authorities to take action to avoid the dissipation of value and ensure the equal treatment of creditors. In such cases, the domestic authorities should coordinate wherever possible, so as to ensure that any action taken is consistent with and supports actions in foreign jurisdictions.

EN 7.2 (c) "Discretionary action" - "Discretionary action" refers to circumstances where the resolution authority has authority but is not required to take specific resolution actions with respect to a firm's operations in its jurisdiction and where the authority has discretion in the choice of the resolution measure.[30]

EN 7.2 (d) "Effective international cooperation and information sharing" - "Effective international cooperation and information sharing" implies that such cooperation and information sharing would occur in a way likely to produce the desired effect of achieving a cooperative solution that is in line with the objectives of resolution and in the interest of financial stability. The timeliness of information sharing and cooperation, for example, would be important.

EN 7.2 (e) Evidence of capacity for consultation – In assessing compliance with EC 7.2.4, assessors should have regard to the existence of policies, mechanisms, arrangements and procedures for consultation by the resolution authority with its foreign counterparts, and to procedures for assessing the impact of a resolution action under consideration on financial stability in other jurisdictions. Where relevant, assessors should also have regard to how such policies, mechanisms, arrangements and procedures have been put into practice. Evidence of compliance may also include, where relevant, provisions for consultation in cross-border cooperation agreements.

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[30] Where jurisdictions are required by the applicable legal framework to recognise resolution of financial institutions under the law of, and carried out by the authorities of their home jurisdiction (for example, the EU Directives on the Winding up and Reorganisation of credit institutions and of insurance undertakings), the requirement for a power to take discretionary action does not include the power to take discretionary action in respect of a branch of a financial institution that is the subject of resolution or insolvency proceedings under the law of the home country.

EN 7.2 (f) Requirement to consider the impact on any linked or interconnected FMIs - When applied to FMIs, the requirement to take into account the impact of resolution powers should include a requirement to consider the impact on any linked or interconnected FMIs in other jurisdictions.

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

Essential criteria

EC 7.3.1 The resolution authority has the power under the legal framework to exercise resolution powers over local branches of foreign firms.

EC 7.3.2 The resolution authority has the capacity to exercise its resolution powers with respect to the local branch of a foreign firm to support a resolution carried out by a foreign home authority and, in exceptional cases where the host resolution authority concludes that the home resolution authority, through its action or inaction, is not taking sufficient account of the need to preserve financial stability in the local jurisdiction under review, to use those powers on its own initiative and independently of actions taken by the foreign home authority.

EC 7.3.3 The resolution regime requires that, prior to exercising resolution powers in relation to the local branch of a foreign firm, the resolution authority (acting as host authority) should give prior notice of that discretionary action to and consult the home resolution authority of the firm.

Explanatory Notes

EN 7.3 (a) Branches - The requirement that the resolution authority can exercise its resolution powers over local branches does not apply where jurisdictions are subject to a regime requiring them to respect resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Directives on the reorganisation and winding-up of credit institutions and insurers, which give exclusive competence in the resolution of a firm (including all its branches within the EU/EEA) to the home jurisdiction).

EN 7.3 (b) "Exceptional cases" – A resolution authority should be able to exercise its resolution powers over local branches both to support a resolution carried out by the home authority and to take measures on its own initiative. However, the exercise of those powers on the own initiative of a host authority should be limited to cases where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability. Those cases are expected to be exceptional and, where relevant, the assessor may have regard to practice as evidence of whether the power is, in fact, exercised exceptionally.

EN 7.3 (c) Prior notification and consultation - The provision that a resolution authority (acting as host authority) should give prior notification of discretionary action to and consult a foreign home resolution authority should not be seen as requiring prior notice to or consent from the home authorities for each specific decision taken by a host authority, but rather that the host authority makes good faith efforts to communicate with the home authority the nature of its concerns and the actions it proposes to take.

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

Essential criteria

EC 7.4.1 The resolution regime does not discriminate between creditors of the same class on the basis of their nationality, the location of their claim or the jurisdiction where their claim is payable.

EC 7.4.2 The rules governing the treatment in domestic proceedings of claims, including claims against foreign branches, of depositors, insurance policy holders, FMI participants and other creditors in domestic proceedings, are transparent and publicly disclosed and accessible to depositors, insurance policy holders, FMI participants and other creditors.

Explanatory Notes

EN 7.4 (a) Discriminatory effects - Laws and regulations may be explicitly discriminatory or discriminatory in their effect. For instance, differences in procedures (for example, subjecting certain claims to expedited treatment) may have discriminatory effects. Differentiation on the basis of the nature of the claims does not constitute discrimination where that difference results in a priority ranking of those claims under the jurisdiction's insolvency regime: for example, priority treatment of tax claims, social security or other employment claims.

EN 7.4 (b) Treatment of foreign branch creditors and foreign creditors of local entities - To satisfy KA 7.4, claims of creditors of a foreign branch of a legal entity must be accorded the same priority and be entitled to the same treatment as claims of the same class in proceedings in the home jurisdiction. Similarly, foreign creditors (that is, creditors that are foreign nationals or non-residents) of local entities must be entitled to the same treatment as the claims of local creditors of the same class.

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

Essential criteria

EC 7.5.1 The legal framework of the jurisdiction under review establishes clear and transparent mechanisms or processes through which actions by a foreign resolution authority can promptly be given legal effect in the jurisdiction under review, either by way of mutual recognition or by taking consistent or complementary domestic measures. Such mechanisms or processes are available irrespective of the form in which a foreign firm is established or operating in the jurisdiction under review (for example, subsidiary, branch or only assets within the jurisdiction) and, where a firm is being resolved under the law of a foreign home jurisdiction, enable the foreign resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the jurisdiction under review.

EC 7.5.2 Recognition or support of foreign measures is provisional on equitable treatment in the foreign resolution proceeding of creditors of the firm in resolution that are located in the jurisdiction under review.

EC 7.5.3 If the jurisdiction under review is home to a G-SIFI or other firms with significant cross-border operations, the legal framework includes mechanisms that promote the cross-border implementation of its resolution strategies.

Explanatory Notes

EN 7.5 (a) Mechanisms to give effect to foreign resolution measures – Examples of mechanisms that enable actions by a foreign resolution authority to have legal effect in the jurisdiction under review include:

(i) mechanisms that provide for such actions to be given effect automatically, including through mutual recognition agreements with other jurisdictions;

(ii) mechanisms that permit application to a court by either the foreign or local resolution authority and provide standing for the applicant and a clear cause of action or procedure;

(iii) mechanisms that allow the resolution authority of the jurisdiction under review to take administrative action to implement or support the foreign resolution action (or to forbear from taking administrative action where that forbearance supports the foreign resolution action); or

(iv) a requirement that firms incorporated in the jurisdiction under review include in their debt instruments or financial contracts cross-border recognition clauses.

Different legal arrangements and circumstances may require different mechanisms to give effect locally to foreign resolution measures, and the local legal framework should be sufficiently flexible to accommodate the range of circumstances in which support for foreign resolution actions may be required. Mechanisms may accommodate procedural requirements under the domestic legal framework (for example, procedural requirements to give effect to a transfer of shares in a domestic subsidiary of a foreign firm in resolution) provided that those requirements do not undermine the efficiency, timely implementation or certainty of the foreign resolution action.

Mechanisms should be explicitly set out in the legal framework and facilitate the transfer by a foreign resolution authority of the following operations or assets of a failing firm to a third party or bridge institution:

(i) the branch operations located in the jurisdiction under review;

(ii) ownership of shares in a subsidiary located in the jurisdiction under review; and

(iii) assets located in the jurisdiction under review.

EN 7.5 (b) Conditions for giving effect to foreign resolution measures - The jurisdiction under review may establish conditions that must be met before giving effect to resolution actions taken by foreign resolution authorities. Such conditions may include:

(i) a requirement that the resolution actions of the foreign authority take into account the financial stability of the jurisdiction under review, as contemplated in KA 7.2;

(ii) a reciprocity requirement that the jurisdiction of the foreign resolution authority has in place mechanisms that give effect to resolution actions taken by the authorities in the jurisdiction under review; and

(iii) prudential considerations, including a 'fit and proper' test when assessing a change of control of a firm (or any part of it) in the jurisdiction that would result from a resolution action.

However, conditions for giving effect to foreign resolution measures should not be so restrictive as to undermine the objective of KA 7.5 that jurisdictions are able to give effect to foreign resolution measures so as to support cooperative solutions

EN 7.5 (c) Mechanisms to promote cross-border implementation of resolution strategies - Mechanisms that might be included in the legal framework of a jurisdiction that is home to a G-SIFI or other firms with major cross-border operations to promote cross-border implementation of resolution strategies might include: mutual recognition agreements with host jurisdictions; processes agreed with host authorities for obtaining their support in implementing resolution measures; or a requirement that firms incorporated in their jurisdiction include in their debt instruments or financial contracts cross-border recognition clauses (see EN 7.5 (d) for further detail).

The objective of such mechanisms is, as far as possible, to ensure that resolution measures taken by the home jurisdiction in respect of a failing firm, including transfers of assets and liabilities and write down or conversion of creditors' claims, have effect in relation to the firm's assets that are located in, or liabilities that are issued in or governed by the law of, other jurisdictions. While the success of that objective depends in part on mechanisms adopted by jurisdictions to give effect to foreign resolution measures (see EC 7.5.1 and EN 7.5 (a)), the home jurisdiction can facilitate cross-border implementation through mechanisms of the kind outlined in this EN.

EN 7.5 (d) Cross-border recognition clauses - To facilitate effective resolution in a cross-border context authorities may require that firms incorporated in their jurisdiction or issuing securities in their jurisdiction include cross-border recognition clauses in debt instruments and financial contracts. For example, contracts could include provisions whereby the counterparties recognise the exercise of resolution powers by the home authority of the issuing firm (including the power to write-down creditor claims or convert them into equity claims or to stay the exercise of early termination rights), irrespective of the law governing the contract.

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

Essential criteria

EC 7.6.1 The legal framework permits and contains adequate legal gateways for the exchange of non-public information (including firm-specific information) necessary for recovery and resolution planning and for carrying out resolution with foreign authorities that could have a role in resolution, including as appropriate supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes.

Explanatory Notes

EN 7.6 (a) "Legal gateways" - "Legal gateways" refers to provisions set out in statute or other instruments with the force of law that enable the disclosure of non-public information to specified recipients or for specified purposes. Legal gateways may be contingent on, or supported by, memoranda of understanding ('MoUs') or other forms of agreement between the providing and recipient authorities. Much of the information required for recovery and resolution planning and for implementing such plans may be held by supervisory authorities. Where the resolution authority is separate from the supervisory authority, the supervisory authority should therefore also have the capacity in law to share information with relevant foreign authorities for the purposes set out in KA 7.6. (See also paragraph 1.2 of the *Annex on Information Sharing.*)

A jurisdiction that relies on statutory powers to share information for supervisory purposes cannot be compliant or largely compliant with EC 7.6.1 if those powers are not sufficiently broad to encompass necessary information sharing with non-supervisory authorities, potentially including central banks, resolution authorities, public bodies administering resolution and protection funds, and Ministries of Finance; or if the powers frame the purposes for which information can be shared in such a way that it is not explicitly clear that they encompass the full range of activities and functions related to recovery and resolution planning, and preparing for and carrying out resolution. (See paragraphs 1.1 to 1.8 of *Annex on Information sharing*.)

EN 7.6 (b) Limitations or refusals to exchange confidential information - A jurisdiction should not be considered as non-compliant or materially non-compliant with KA 7.6 if it reasonably limits or refuses the exchange of non-public information with home and host country authorities if such authorities are unable to provide assurances that are satisfactory to the jurisdiction under review that the confidentiality of the information will be protected (see also KA 7.7). However, the assurances required should not be so extensive as to undermine the objective of KA 7.6.

When considering a request for non-public information, the authority that is requested to provide non-public information may take into account whether the requesting authority has a legitimate interest in the non-public information for recovery and resolution planning or resolution purposes, and may require the requesting authority to provide information about that interest and the purposes for which the information will be used.

A jurisdiction should not be considered non-compliant with KA 7.6 if it requires requesting authorities to enter into such confidentiality or similar agreement as may be necessary under its law to preserve privilege or confidentiality protections as condition for sharing information.

EN 7.6 (c) Information necessary for recovery and resolution and for carrying out resolution - The legal gateways should be sufficient to permit appropriate disclosure to authorities for the purposes of the full range of resolution-related purposes with regard to a firm, including: (i) the assessment of resolvability; (ii) the development of resolution strategies; (iii) the development of recovery plans and operational resolution plans; (iv) monitoring of financial problems to the extent necessary for functions relating to resolution; (v) early detection of financial stress; (vi) implementation of recovery measures; (vii) the assessment of the effectiveness of recovery measures for restoring viability, the likelihood that resolution measures might be required, and the possible timeframe in which those measures might be required; (viii) preparation for the implementation of resolution measures; and (ix) the exercise of resolution powers. (See also paragraph 1.9 of the *Annex on Information Sharing*.)

In determining whether disclosure of information to a foreign authority is necessary and appropriate for recovery and resolution planning and for carrying out resolution, an authority providing information may take into account the extent to which the authority requesting firm-specific information requires that information for purposes connected with the resolution.

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

Essential criteria

EC 7.7.1 The legal framework incorporates adequate safeguards to protect the confidentiality of information received from foreign authorities. Such safeguards:

(i) require domestic authorities receiving non-public information from foreign authorities to keep such information confidential and to use it only in accordance with the terms on which the information was provided;

(ii) prohibit domestic authorities from disclosing such information to other domestic or foreign authorities or other third parties, without the prior express consent of the authority that provided it unless such disclosure is compelled by law; and

(iii) exclude information received from foreign authorities from mandatory disclosure pursuant to freedom of information or similar legislation that may exist in that jurisdiction, or treat such information as falling under an

exemption from disclosure requirements.

Explanatory Notes

EN 7.7 (a) Adequate safeguards - An authority that receives confidential information, and its staff and agents who participate in the performance of the duties of the receiving authority, should be subject to adequate confidentiality requirements that continue to apply to former staff and agents, the breach of which gives rise to legal sanctions (which might include criminal penalties). Paragraphs 1.10 to 1.15 of *Annex on Information sharing* provide further guidance on adequate standards of confidentiality to support information sharing.

EN 7.7 (b) Terms upon which information is provided – Safeguards to protect confidentiality of information should restrict authorities, including their employees and agents, that receive non-public information from using it in a manner inconsistent with the resolution-related purposes for which and terms upon which it was provided. Those terms may either be set out in the cross-border cooperation agreements or the request for information, or otherwise specified by the provider of the information.

EN 7.7 (c) Situations in which an authority can be compelled to disclose confidential information - The legal framework should authorise domestic authorities to refuse any demand to disclose confidential information in their possession or control that they have received from a foreign authority for the purposes of resolution, unless they are compelled under national law to disclose in the restricted cases mentioned below.

Situations in which an authority can be compelled to disclose confidential information should be of an exceptional nature (for example, a request for information by a court or tribunal with powers of subpoena, legislative bodies or an investigative commission established by a legislative body). In the event that the authority is compelled to disclose such confidential information, it should be required to promptly notify the originating authority (unless legally prohibited from doing so), indicating what information it is compelled to release and, to the extent appropriate, the circumstances surrounding the release, and to take all reasonable steps to refuse disclosure of the confidential information without the consent of the authority that provided it. The disclosing authority should also take all reasonable steps to ensure that confidential information is disclosed under seal or made subject to a protective order limiting any further disclosure.

KA 8 Crisis Management Groups (CMGs)

KA 8.1	Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm. CMGs should include the supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution, and should cooperate closely with authorities in other jurisdictions where firms have a systemic presence.

Essential criteria

EC 8.1.1 If the jurisdiction under review is home country to one or more G-SIFIs, a CMG is established and maintained for each such G-SIFI.

EC 8.1.2 If the jurisdiction under review is the home jurisdiction of one or more G-SIFIs, it has identified criteria for determining the membership of the CMG for each such G-SIFI. The application of the criteria has resulted in the inclusion in the CMG of all relevant authorities from the home jurisdiction and from host jurisdictions of entities that are material for the group-wide resolution of the G-SIFI. The composition of the CMG is reviewed periodically or when there are material changes to the international operations of the G-SIFI.

EC 8.1.3 If the jurisdiction under review is the home jurisdiction of one or more FMIs that are systemically important in more than one jurisdiction, a CMG, or an arrangement based on the cooperative arrangements maintained under Responsibility E of the PFMI that achieves an equivalent outcome, is maintained for each such FMI. The CMG or equivalent arrangement is composed of the relevant authorities of the home jurisdiction of the FMI and other jurisdictions where the FMI is systemically important.

EC 8.1.4 If the jurisdiction under review is the home jurisdiction of one or more G-SIFIs, it has processes to ascertain which jurisdictions that are not represented in the CMG assess the local operations of the G-SIFI as systemically important to the local financial system. There is a documented process for, or other evidence of cooperation with relevant authorities in those jurisdictions that have been identified through this process.

EC 8.1.5 The jurisdiction under review (if it is not itself the home jurisdiction) participates in the CMG or equivalent arrangement for one or more G-SIFIs or FMIs that are systemically important in the jurisdiction, when invited.

Explanatory Notes

EN 8.1 (a) Jurisdictions material for resolution of G-SIFIs – For operational reasons, the membership of CMGs may be restricted to the relevant authorities of those jurisdictions that are material for the resolution of the firm in question. A jurisdiction is material for resolution when the authorities in that jurisdiction have responsibilities relating to significant or critical operations for the G-SIFI, including its material operating entities or the holding company.

In making that determination, the home authority may take into account multiple factors, including:

(i) the size as a whole of the activities (including presence of assets, funding, etc.) conducted in the host jurisdiction and their significance for the group;

(ii) the extent to which those activities are likely to have an impact on the continuity of the global operations of the firm;

(iii) the extent to which information on the firm held in the host jurisdiction, for example, presence of significant data centres under the control of host authorities, is critical for resolution;

(iv) the capacity of the host authorities to cooperate and to support a group-wide solution, including the legal authority to share information and safeguard confidential information; and

(v) the role of the host authorities in implementing a group-wide resolution strategy.

An assessment of the capacity of host authorities to cooperate and support a group-wide solution might take into account the authority's powers under the applicable legal framework to share information and support resolution actions taken by other jurisdictions, and any relevant experience of cooperation with that authority.

EN 8.1 (b) Jurisdictions where the FMI is systemically important – jurisdictions where the FMI is systemically important may include jurisdictions where the FMI provides critical functions and jurisdictions where major participants of the FMI are located.

EN 8.1 (c) Relevant authorities participating in CMGs (or equivalent) of FMIs - Relevant authorities participating in CMGs (or equivalent) of FMIs should include the authorities that participate in the cooperation arrangements adopted in accordance with Responsibility E, resolution authorities, and other relevant authorities of the jurisdictions where the FMI has operations that are material to its resolution. If a particular currency is material to the critical functions of an FMI (for example, it clears products denominated in a particular currency or settles transactions in a currency), the central bank that issues that currency may also participate in the CMG or equivalent arrangements.

EN 8.1 (d) Cooperation arrangements for FMIs - To avoid duplication of similarly constituted cross-border regulatory groups, the functions of CMGs for FMIs may be carried

out through arrangements based on the cooperative arrangements maintained under Responsibility E of the PFMI[31] and CPSS and IOSCO international principles on cooperation, provided that those arrangements achieve an equivalent outcome to CMGs (see Part I, paragraphs 9.1 and 9.3 of *Annex on FMI resolution*). In determining whether the requirements of KA 8.1 are met in relation to FMIs, assessors should have regard to any review of the implementation of Responsibility E by the jurisdiction under review. Where the functions of CMGs are carried out through cooperative arrangements formed under Responsibility E assessors should also satisfy themselves that those arrangements achieve an equivalent outcome to CMGs, as required by KA 8.1.

EN 8.1 (e) Jurisdictions not represented on the CMG - The processes in place to ascertain which host jurisdictions that are not represented in the CMG assess the local operations of the firm as systemically important to the local financial system should be sufficiently systematic to enable the home authority to be aware of the relevant jurisdictions. Guidance on such processes and the assessment of whether the operations of a firm are systemic in a jurisdiction are set out in [*FSB guidance*].[32]

EN 8.1 (f) Cooperation with host jurisdictions not represented in the CMG[33] – The level of cooperation with relevant authorities in host jurisdictions where the firm has a systemic presence that are not represented in the CMG is not necessarily the same as that required between members of a CMG. But as a minimum, cooperation with such non-CMG host jurisdictions should inform the authorities in those jurisdictions about how resolution strategies and the measures set out in recovery and resolution plans affect the parts of the firm that are systemic in their jurisdiction (see EC 11.8.3), if at all.

EN 8.1 (g) Participation in CMGs – An authority that has been invited to a CMG but does not participate may be considered compliant with KA 8.1 if it can demonstrate that the operations in its jurisdictions of the G-SIFI or FMI are not material to the resolution of that firm or FMI.

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[31] For more details, please refer to Responsibility E "Cooperation with other authorities" of the PFMI: *https://www.bis.org/publ/cpss94.pdf.*

[32] To be published in due course.

[33] To be expanded in due course to reflect outcome on ongoing work on this topic.

KA 8.2	CMGs should keep under active review, and report as appropriate to the FSB and the FSB Peer Review Council on: (i) progress in coordination and information sharing within the CMGs and with host authorities that are not represented in the CMGs; (ii) the recovery and resolution planning process for G-SIFIs under institution-specific cooperation agreements; and (iii) the resolvability of G-SIFIs.

Not subject to assessment

Explanatory Notes

EN 8.2 (a) Purpose of KA 8.2 - KA 8.2 supports FSB processes for assessing implementation of the KAs specifically directed at G-SIFIs. Cooperation with the FSB to enable it to perform its monitoring functions comprises participation in peer review exercises and surveys to take stock of resolution planning work within CMGs, and providing information to facilitate the Resolvability Assessment Process (RAP).

KA 9 Institution-specific cross-border cooperation agreements

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

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

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

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

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

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

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

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

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

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

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

Essential criteria

EC 9.1.1 If the jurisdiction under review is home to a G-SIFI it maintains institution-specific cross-border cooperation agreements at a minimum with all members of the CMG in the form of either a multilateral agreement, bilateral agreements, or a combination of multilateral and bilateral agreements. The agreement contains the elements set out in paragraphs (i) to (x) of KA 9.1, Annex I and (as regards provisions on information sharing) section 2 of *Annex on Information sharing* and, where appropriate, those elements are firm specific.

EC 9.1.2 If the jurisdiction under review is home to an FMI that is systemically in more than on jurisdiction, it maintains an FMI-specific cross-border cooperation agreements with the relevant authorities in these jurisdiction consistent with the requirements set out in Part I, paragraph 9.3 of the *Annex on FMI resolution*.

EC 9.1.3 If the jurisdiction under review is a key host jurisdiction to a G-SIFI or a systemically important FMI, the authorities have an established practice, when invited to be party to a COAG, of negotiating the terms of participation and cooperation consistent with the elements set out in paragraphs (i) to (x) of KA 9.1 and in Annex I and (as regards provisions on information sharing) section 2 of the *Annex on Information sharing*.

EC 9.1.4 If the jurisdiction under review is the home to a G-SIFI or an FMI that is systemically important in more than one jurisdiction, the home authority ensure that the CMG (or equivalent arrangements for an FMI) has processes in place for regular reviews at the level of top officials of the participating authorities the elements set out in paragraphs (i) to (iii) of KA 8.2.

EC 9.1.5 The jurisdiction under review (if it is not a home jurisdictions, but a G-SIFI host jurisdiction or jurisdiction where an FMI is systemically important) participates and cooperates with the home authorities in the reviews under KA 8.2. when invited.

Explanatory Notes

EN 9.1 (a) Reasonable efforts to negotiate cooperation agreements - To be considered compliant with this KA, authorities of jurisdictions that are home to a G-SIFI or an FMI that is systemically important in more than one jurisdiction should have in place a cooperation agreement or agreements with relevant host authorities. If an agreement is not in place with certain host authorities (but in place with others), a jurisdiction may nevertheless be considered compliant if its authorities can demonstrate that they have made reasonable efforts to negotiate such an agreement with those host authorities. In such cases where an agreement is not in place due to reasons not attributable to the jurisdiction under review (for example, because another jurisdiction has not met the standards for protecting confidential information as outlined in KA 7), the jurisdiction should not be considered to be non-compliant.

EN 9.1 (b) 'Relevant host authorities' – For the purposes of KA 9.1 'relevant host authority' refers to an authority in a key host jurisdiction that has responsibilities and functions related to resolution of the G-SIFI or FMI in question. 'Key host jurisdiction' (as defined in Section I of the Introduction to this Methodology) means a jurisdiction where the G-SIFI has established operations that are material to its resolution. In the case of FMIs that are systemically important in more than one jurisdiction, 'key host jurisdictions' include jurisdictions where the FMI provides critical functions and jurisdictions where major participants of the FMI are located. The relevant host authorities are determined by the central banks, market regulators and other authorities in those jurisdictions in accordance with Responsibility E of the PFMI and Part I, paragraph 9.2 of *Annex on FMI resolution*. If a particular currency is material to the critical functions of an FMI (for example, it has material operations clearing products denominated in, or settling transactions in, a particular currency 'relevant host authorities' may also include the central bank that issues that currency.

EN 9.1 (c) Established practice of host authorities - When assessing whether a host jurisdiction has an 'established practice' for the purposes of EC 9.1.3, the assessor should have regard to whether cooperation agreements have been signed by the host jurisdiction and whether the jurisdiction under review has been actively involved as host jurisdiction in the review and negotiation of such agreements. Evidence of such active participation would include internal processes and procedures for negotiating cross-border agreements, memoranda of understanding and other arrangements for cooperation.

EN 9.1 (d) Firm-Specific Elements - Assessors should review whether home jurisdictions have included firm-specific elements in their agreements with host authorities. The standard terms on information sharing may be documented separately from the firm-specific elements of agreements and procedures for the operation of CMGs (or equivalent arrangements for FMI) and the development of recovery and resolution plans.

EN 9.1 (e) Single or several agreements - The elements set out in Annex I and Part I, section 2 of *Annex on Information sharing* and in paragraphs (i) to (x) of KA 9.1 may either be established in a single specific agreement or in separate documents, such as agreements on information sharing or the agreed working programs of the CMG. Agreements on information sharing set out in supervisory MoUs may only be used to meet the requirements of EC 9.1.1 if they refer explicitly to information sharing for the purposes of planning or carrying out resolution: provision for the exchange of information for supervisory or oversight purposes only is not sufficient.

EN 9.1 (f) Application to FMI - The requirement for institution-specific cross-border cooperation agreements for FMIs may be met by crisis coordination and communication agreements, protocols or MoUs adopted in accordance with Responsibility E of the PFMI, provided that those arrangements are adapted, amended or supplemented where necessary to support the cooperation, coordination and information sharing needed to carry out the functions relating to recovery and resolution that are specified by the *Key Attributes* (see Part I, paragraph 9.3 of *Annex on FMI resolution*.) In determining whether the requirements of

KA 9.1 are met in relation to FMIs, assessors should have regard to any review of the implementation of Responsibility E by the jurisdiction under review.

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

Essential criteria

EC 9.2.1 The home jurisdiction publicly discloses the existence of the agreements.

KA 10 Resolvability assessments

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

Essential criteria

EC 10.1.1 If the jurisdiction under review is home to a G-SIFI, it has in place arrangements and processes whereby the resolution authorities undertake regular resolvability assessments at least for G-SIFIs in accordance with the guidance set out in Annex II and additionally, where the G-SIFI is a G-SII, the sector-specific guidance set out in Part I, section 8 of *Annex on Insurance resolution*.

EC 10.1.2 If the jurisdiction under review is home to an FMI that is systemically important, it has in place arrangements and processes whereby the relevant authorities undertake regular resolvability assessments of any such FMI in accordance with the general guidance set out in Annex II and the specific guidance on resolvability assessments of FMIs set out in Part I, section 10 of *Annex on FMI resolution*.

EC 10.1.3 If the jurisdiction under review is host to a G-SIFI or an FMI that is systemically important in more than one jurisdiction, it has in place arrangements and processes whereby the resolution authorities cooperate with the home jurisdiction and contribute to the development of the resolvability assessments where invited to do so by the home jurisdiction.

Explanatory Notes

EN 10.1 (a) Frequency of resolvability assessments - In assessing compliance with KA 10.1, the assessor should take into account the frequency with which resolvability assessments are conducted and, to the extent necessary, updated. Authorities should carry out periodic reviews to ascertain whether any material changes in the structure and operation of the firm or in the applicable resolution regimes have taken place that potentially affect the firm's resolvability. Where such changes have taken place, appropriate resolvability assessments should be conducted with a view to ascertaining the impact on the firm's resolvability and the extent to which to the firm's resolution plan may need to be updated to accommodate those changes.

EN 10.1 (b) FMIs - FMIs that are systemically important should be subject to regular resolvability assessments that are conducted in accordance with KA 10 and Annex II to the *Key Attributes*, and taking into account the additional FMI-specific implementation guidance

in Part I, section 10 of *Annex on FMI resolution*. In the case of an FMI that is systemically important in more than one jurisdiction, the resolvability assessment should be carried out within the FMI's CMG or under an equivalent arrangement (see EN 8.1 (c) and EN 9.1 (f)).

EN 10.1 (c) Other SIFIs – Given the potential impact on financial stability arising from the failure of any firm that could be systemically significant or critical if it fails, it is good practice for resolvability assessments to also be undertaken for domestic SIFIs in the jurisdiction under review. However, a jurisdiction should not be treated as non-compliant with KA 10.1 simply because it does not undertake resolvability assessments for domestic SIFIs.

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

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

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

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

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

Essential criteria

EC 10.2.1 There are rules or policies requiring that resolvability assessments include an assessment of each of the elements set out in paragraphs (i) to (iv) of KA 10.2.

EC 10.2.2 If the jurisdiction under review is home to at least one FMI that is systemically important, it conducts regular resolvability assessments on any such FMI that include, as part of or in addition to the elements set out in paragraphs (i) to (iv) of KA 10.2, the matters set out in Part I, paragraph 10.3 of *Annex on FMI resolution*.

EC 10.2.3 If the jurisdiction under review is home to at least one G-SIFI that is a G-SII, it conducts regular resolvability assessments the G-SII that include, as part of or in addition to the elements set out in paragraphs (i) to (iv) of KA 10.2, the matters set out in section 9 of *Annex on Insurance resolution*.

EC 10.2.4 If the jurisdiction under review conducts resolvability assessments of firms that are participants of one or more FMI, it takes into account the matters set out in Part II, paragraph 2.1 of *Annex on FMI resolution*, and engages regularly with

relevant FMIs in order to have a clear understanding of those matters in relation to each such firm.

Explanatory Notes

EN 10.2 (a) Relationship between KA 10.2 and Annexes II, on FMI resolution and on Insurance - In completing resolvability assessments pursuant to KA 10.2, both the home and host authorities should examine all questions set out in Sections 4 and 5 of Annex II to the *Key Attributes*, relating respectively to assessments of the feasibility of resolution strategies and to the assessments of credibility of resolution strategies through an evaluation of their systemic impact. In the case of FMIs and insurers, the authorities should also assess the matters set out in Part I, paragraph 10.3 of *Annex on FMI resolution* and paragraphs 9.3 and 9.4 of *Annex on Insurance resolution*, respectively. Assessors should look for evidence that this is done.

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

Essential criteria

EC 10.3.1 If the jurisdiction under review is home to a G-SIFI or to a FMI that is systemically important in more than one jurisdiction, it has in place a process for the conduct of group resolvability assessments and for coordinating the assessment and sharing its results within the firm's CMG (or equivalent arrangement in the case of an FMI). The process ensures that the assessment takes into account resolvability assessments of foreign subsidiaries conducted by host resolution authorities.

Explanatory Notes

EN 10.3 (a) Scope of KA 10.3 - KA 10.3 will not be assessed for jurisdictions that are not home or key host to a G-SIFI or to an FMI that is systemically important.

EN 10.3 (b) Relationship with KA 7, 8 and 12 - In assessing the effectiveness of cross border cooperation and information sharing for purposes of group resolvability assessments, including the coordination of the assessments within CMGs, assessors should take account of the jurisdiction's compliance with KAs 7, 8 and 12. To be compliant or largely compliant with KA 10.3, a jurisdiction must not receive a grade of non-compliant or materially non-compliant in respect of KAs 7, 8 and 12.

KA 10.4 Host resolution authorities that conduct resolvability assessments of subsidiaries

located in their jurisdiction should coordinate as far as possible with the home authority that conducts resolvability assessment for the group as a whole.

Essential criteria

EC 10.4.1 If the jurisdiction under review is a key host to a G-SIFI and conducts resolvability assessments with respect to subsidiaries of the G-SIFI located in that jurisdiction, it maintains a process for coordinating and sharing results of resolvability assessments with the home authority, and there is sufficient evidence that such coordination takes place in practice.

Explanatory Notes

EN 10.4 (a) Relationship with KAs 7, 8 and 12 - In assessing the effectiveness of cross border cooperation and information sharing for purposes of group resolvability assessments, including the coordination of the assessments within CMGs, assessors should take account of the jurisdiction's compliance with KAs 7, 8 and 12. To be compliant or largely compliant with KA 10.2, a jurisdiction must not receive a grade of non-compliant or materially non-compliant in respect of KAs 7, 8 and 12.

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

Essential criteria

EC 10.5.1 The supervisory authorities or resolution authorities have the power to require the adoption of appropriate measures, such as changes to a firm's business practices, legal, operational or financial structures or organisation, where necessary to reduce the complexity and costliness of resolution. When exercising the power, the authorities are required to take into account the effect of the measures considered necessary on the soundness and stability of the on-going (domestic and foreign) operations of the firm.

EC 10.5.2 Resolution authorities are required by law, rules or policy to assess the impact of the rules and procedures of FMIs in their jurisdiction that govern the default of participants on the orderly resolution of participants in those FMIs and to inform

FMIs and the relevant supervisory authorities of any impediments arising from those rules and procedures that could affect orderly resolution of such participants (see Part II, paragraphs 1.1 and 3.1 of *Annex on FMI resolution*).

Explanatory Notes

EN 10.5 (a) Action to improve resolvability - If a firm is assessed to be insufficiently resolvable, the firm should be encouraged through the supervisory process to take voluntary measures to improve its resolvability.

If the firm does not cooperate or is reluctant to take sufficient action, the supervisory or resolution authority should be able to require the firm to make appropriate changes to its business practices, structure or organisation so as to make it resolvable.

Such requirements might include: changes to legal structure or operational organisation to facilitate the legal and economic separation of critical functions from other functions; the divestment of specific assets; issuance of loss absorbing capacity by particular parts of the group to support a specific resolution strategy; limiting maximum individual and aggregate exposures; the establishment of a financial holding company in a mixed-activity group; limiting or ceasing existing activities; restricting the development of new business lines or sale of new products, or imposing structural or organisational requirements on the way such business lines or products are provided; ensuring effective segregation of client assets; imposing enhanced reporting requirements; and drawing up service agreements (either intra-group of with third parties) to support the continued provision of critical functions in resolution.

To support the effective use of the power to require changes to improve resolvability, authorities should have policies or procedures in place that enable them to evaluate whether systemically important functions should be required to be segregated in legally and operationally independent entities.

Powers to require changes to improve resolvability should be exercisable in advance of any financial problems in the firm that could lead to non-viability, and should not be contingent on the existence of such problems. Their use should be justifiable under the legal framework on public interest grounds, but should also take due account of the effect on the soundness and stability of the on-going domestic and foreign operations of the firm. The assessors should evaluate whether the authorities are able to compel such changes, the range of measures that can be required and the circumstances in which the powers can be exercised, including by assessing any experience of the use of such powers. It is not inconsistent with EC 10.5.1 if the legal framework includes safeguards for firms, such as a right of appeal.

EN 10.5 (b) Application to FMIs - Measures to improve the resolvability of an FMI might include changes to the terms or operation of its links with other FMIs and changes to delivery, segregation or portability arrangements of participants' positions or related collateral. Any such requirements should take due account of the changes on the soundness of operations of the FMI, including its risk management.

KA 11 Recovery and resolution planning

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

Essential criteria

EC 11.1.1 There are processes in place for the development and maintenance of Recovery and Resolution Plans (RRPs) for all firms covered by the requirement in KA 11.2 and EC 11.2.1.

EC 11.1.2 For jurisdictions that are home to one or more FMIs, there are processes in place for development and maintenance of RRPs for all FMIs that are systemically important (other than those owned and operated by central banks).

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

Essential criteria

EC 11.2.1 The resolution regime requires the development and maintenance of RRPs for all G-SIFIs (for which the jurisdiction is the home country) and any other firm that could, in the judgement of its home authority, have an impact on financial stability in the event of its failure. Those RRPs are required to contain, as a minimum, the essential elements set out in Annex III. In the case of G-SIIs and other insurers, those RRPs are also required to take account of additional sector-specific requirements and guidance.

EC 11.2.2 The resolution regime requires the development and maintenance of recovery and resolution plans for systemically important FMIs (other than those owned and operated by central banks) for which the jurisdiction is the home country. Those recovery and resolution plans are tailored to the specific risks to which a particular type of FMI may be exposed and the possible systemic implications of its failure and contain, as appropriate to the type of FMI, the essential elements set out in Annex III and take into account of the sector-specific requirements and guidance.

Explanatory Notes

EN 11.2 (a) Sector-specific requirements and guidance for RRPs for Insurers – Sector-specific requirements for RRPs for insurers are set out in Section 10 of *Annex on Insurance resolution* to the *Key Attributes.*

EN 11.2 (b) Sector-specific requirements and guidance for RRPs for FMIs – Sector-specific requirements and guidance for recovery plans for FMIs is provided by the relevant provisions of the CPSS-IOSCO PFMI, and in particular Principle 3, key consideration 4, as elaborated upon by the CPSS-IOSCO guidance on recovery plans for FMI.[34] Under Principle 3, FMI are expected to consider potential recovery and orderly wind down measures as part of their on-going governance, risk management and operational arrangements. Assessors should therefore have regard to any review that has been conducted of implementation of the PFMI by the jurisdiction in question when assessing compliance with KA 11 in relation to FMI. For resolution plans, paragraphs 11.6 and 11.7 of Part I of *Annex on FMI resolution* provide additional guidance on how resolution plans for FMIs should be tailored to the specific risks to which a particular type of FMI may be exposed and the possible systemic implications of its failure.

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

Essential criteria

EC 11.3.1 The requirements for the preparation of RRPs take into account in a proportionate manner the specific circumstances of individual firms, including their nature, complexity, interconnectedness, level of substitutability and size and, where available, findings from resolvability assessments.

Explanatory Notes

EN 11.3 (a) Proportionality of the RRP requirement - Requirements for RRPs should be implemented such that each of the essential elements of RRPs set out in Annex III to the *Key Attributes* (for all firms) and additional sector-specific guidance (see ENs 11.2 (a) and 11.2 (b)) are addressed in a way that is appropriate and proportionate to the specific circumstances

[34] *http://www.bis.org/publ/cpss109.htm*.

of the firm (and, in particular, of firms that are not G-SIFIs but have been assessed by their home authority as capable of having an impact on financial stability in the event of its failure) and reflects its nature, complexity, interconnectedness, level of substitutability and size.

RRPs, resolvability assessments and COAGs are mutually dependent and they should be developed in a way that is iterative and that properly reflects their interdependence. It is expected that the processes for developing RRPs and COAGs and for undertaking resolvability assessments, and the interaction between them, will be further refined and adjusted over time as more experience is gained.

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

Essential criteria

EC 11.4.1 The resolution regime imposes the responsibility for firms' internal recovery and resolution planning process on the senior management. That responsibility includes a requirement that senior management provide, without undue delay, resolution authorities or supervisory authorities with all information necessary to assess the credibility and comprehensiveness of firms' recovery plans and for the resolution authority to prepare resolution plans.

Recovery plan

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

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

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

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

Essential criteria

EC 11.5.1 The jurisdiction's requirement for recovery plans:

(i) includes measures for addressing capital shortfalls and liquidity pressures;

(ii) requires the plans to set out credible recovery options to deal with a range of stress scenarios covering both idiosyncratic and market wide stress; and

(iii) defines clear backstops and escalation procedures, identifying the criteria (both quantitative and qualitative) that would trigger implementation of the plan (or individual measures in the plan) by the firm.

Explanatory Notes

EN 11.5 (a) Measures for addressing capital shortfalls and liquidity pressures – Measures for addressing capital shortfalls and liquidity pressures might include:

(i) capital conservation and recapitalisation measures;

(ii) measures to secure sufficient funding;

(iii) steps for ramping-down or divesting business activities;

(iv) appropriate processes to ensure timely implementation, while taking account of additional requirements to which the firm may have become subject during crisis situations.

EN 11.5 (b) Scenarios – Any rules or guidance regarding scenarios should require that they reflect the nature of the regulatory capital and liquidity requirements that are particular to the institution and sector in question.[35]

EN 11.5 (c) Recovery plans for FMIs – For the purposes of EC 11.5.1, requirements relating to recovery plans for FMI should be consistent with the relevant provisions of the CPSS-IOSCO PFMI, and in particular Principle 3, key consideration 4, and take into account the CPSS-IOSCO guidance on recovery plans for FMI.[36]

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[35] *http://www.financialstabilityboard.org/publications/r_130716c.pdf.*

[36] *http://www.bis.org/publ/cpss109.htm.*

Resolution plan

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

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

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

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

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

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

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

Essential criteria

EC 11.6.1 The resolution regime sets out the requirements for the content of resolution plans which, at a minimum, includes a substantive resolution strategy and an operational plan that meets the requirements set out in points (i) to (vi) of KA 11.6 and in Annex III (for all firms) and, additionally, for insurers, paragraph 10.10 of *Annex on Insurance resolution* and, for FMIs, Part I, paragraphs 11.6 and 11.7 of *Annex on FMI resolution*.

EC 11.6.2 If the jurisdiction is home to a G-SIFI that is systemically important in more than one jurisdiction, the home resolution authority has a process in place for the authorities represented on the CMG to review the substantive resolution strategy for the G-SIFI and for the agreement of that strategy by top officials of those authorities. If the jurisdiction is home to an FMI that is systemically important in more than one jurisdiction, there is a process in place for review of the substantive resolution strategy for the FMI by the authorities that participate in the CMG or equivalent arrangements and for the agreement of that strategy by top officials of those authorities.

KA 11.7 Firms should be required to ensure that key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying

contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.

Essential criteria

EC 11.7.1 Firms are required to ensure that their key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination from being triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.

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

Essential criteria

EC 11.8.1 If the jurisdiction is home to a G-SIFI the resolution authority has a process in place to develop a group-wide resolution strategy and plan for the G-SIFI in coordination with all members of the firm's CMG, and gives all members of the CMG access to the firm's RRP and information on measures that would have an impact on their jurisdiction.

EC 11.8.2 If the jurisdiction is host to a G-SIFI and its authorities participate in that firm's CMG, those authorities contribute to, and coordinate with the home authority in developing, the group resolution plan.

EC 11.8.3 If the jurisdiction is home to a G-SIFI or to an FMI that is systemically important in more than one jurisdiction, the home resolution authority has a process in place to cooperate with authorities of jurisdictions that are not members of the CMG (or equivalent arrangements for an FMI) but where the G-SIFI or FMI has a systemic presence, and provide authorities in those jurisdictions with access to relevant material from the RRPs and information on resolution strategies or measures that the home resolution authority judges would have an impact on their jurisdiction.

Explanatory Notes

EN 11.8 (a) Development of resolution plans for FMIs that are systemically important in more than one jurisdiction – For FMIs that are systemically important in more than one jurisdiction, it is important that arrangements are in place for cooperation between oversight, supervisory and resolution authorities in all the jurisdictions where the FMI operates and provides critical services. Arrangements adopted in accordance with Responsibility E of the PFMI may be sufficient for this purpose, provided they involve all authorities, and cover all the functions and activities, necessary for resolution planning (see EN 8.1 (c)). Under those arrangements, the oversight authorities should cooperate with resolution authorities when overseeing, assessing and activating the FMI's own recovery and orderly wind down plan that it is required to maintain under Principle 3 of the PFMI and the *Key Attributes*, and the relevant resolution authority should cooperate with the FMI's oversight authorities when developing the resolution plan for the FMI.

EN 11.8 (b) Access and information for non-CMG host authorities – Processes for cooperation with authorities that are not members of a CMG (as identified in accordance with KA 8.1 – see EC 8.1.3 and EN 8.1 (d)) - should provide those authorities at a minimum with sufficient information on the overall resolution strategy for firms that are systemically significant in their jurisdiction, so that those authorities understand the impact, if any, that measures set out in the plan would have on the firm's operations in their jurisdiction. [37] A jurisdiction may limit or refuse access to information on the RRP on the basis that the recipient authority is unable to provide necessary assurances that the information is subject to confidentiality requirements and statutory safeguards required by KA 7.7 and will be kept confidential.

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

Essential criteria

EC 11.9.1 If the jurisdiction under review is a key host of a G-SIFI and it maintains its own resolution plans for the G-SIFI's operations in its jurisdiction, there is a clear

[37] To be expanded in due course to reflect outcome on ongoing work on this topic.

process for coordination with the home authority to ensure that the plan is as consistent as possible with the group plan.

Regular updates and review

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

Essential criteria

EC 11.10.1 Firms are required to review and update their recovery plans at least annually, and sooner upon the occurrence of an event that materially changes the firm's structure or operations, its strategy or aggregated risk exposure.

EC 11.10.2 Supervisory and resolution authorities have in place a process for the review and, to the extent necessary, the update of RRPs at least annually, and sooner upon the occurrence of an event that materially changes the firm's structure or operations, its strategy or aggregated risk exposure.

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

Essential criteria

EC 11.11.1 If the jurisdiction under review is home to a G-SIFI or an FMI that is systemically important in more than one jurisdiction, it has in place a process for coordination with authorities participating in the CMG (or equivalent arrangement for FMIs) to review RRPs at least annually. The process includes an annual review of:

(i) the resolution strategies by top officials of home and relevant host authorities, involving the firm's CEO where appropriate; and

(ii) the operational plans for the implementation of resolution strategies by senior officials of the relevant (home and host) authorities.

KA 11.12 If resolution authorities are not satisfied with a firm's RRP, the authorities

should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.

Essential criteria

EC11.12.1 The supervisory or resolution authority has the power to require a firm to take appropriate remedial measures to address deficiencies in its recovery plan.

EC11.12.2 There are processes in place for consultation with other relevant authorities before a firm is required to take any such remedial measures.

Explanatory Notes

EN 11.12 (a) General – A jurisdiction's authority should be able to require appropriate measures to address deficiencies in the recovery plan that could arise where (i) the plan lacks the minimum elements set out in Annex III to the *Key Attributes* or, in the case of an insurer or FMI, the additional sector-specific elements; or (ii) the plan is not credible or unlikely to restore financial soundness in the stress scenarios identified. Assessors should review whether such powers exist, and whether prior consultation between home and relevant host authorities is provided for under the legal framework. (The sector-specific elements means, for insurers, the additional elements set out in Part I, section 10 of *Annex on FMI resolution* and, in the case of FMIs, relevant provisions of the CPSS-IOSCO PFMI, and in particular Principle 3, key consideration 4, as elaborated upon by the CPSS-IOSCO guidance on recovery plans for FMIs.)

KA 12 Access to information and information sharing

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

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

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

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

Essential criteria

EC 12.1.1 The legal framework permits and contains adequate legal gateways for the exchange of non-public information (including firm-specific information) necessary for recovery and resolution planning and for carrying out resolution with domestic and foreign authorities that could have a role in resolution, including as appropriate supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes.

EC 12.1.2 If the jurisdiction is represented on a G-SIFI CMG, its authorities have an established practice (consistent with the terms of the COAG) of sharing information relevant for recovery and resolution in a timely manner in normal times and during a crisis, with authorities represented on the CMG at an appropriate level of seniority and, as appropriate, with authorities of jurisdictions not represented on the CMG where the G-SIFI has a systemic presence.

EC 12.1.3 The resolution authority has policies and procedures in place to control and monitor the dissemination within the authority of non-public information received from a foreign home or host authority.

Explanatory Notes

EN 12.1 (a) Relation to KA 7.6 and KA 9.1 - A jurisdiction can only be graded as compliant with KA 12.1 if its grading of KA 7.6 and KA 9.1 is at least ‘largely compliant”.

EN 12.1 (b) Legal gateways for domestic and cross-border sharing of information – Whereas KA 7.6 requires resolution authorities to have the capacity in law to share information pertaining to the group as a whole, or to individual entities or branches, with relevant foreign authorities for the purposes of recovery and resolution planning or carrying out resolution, KA 12.1 (i) requires that the exchange of information is also possible among domestic authorities. See EN 7.6 (a) for an explanation of "legal gateways". Domestic information sharing arrangements should be appropriate to the needs of different types of authorities, including finance ministries, and should allow for address circumstances where information needs may escalate as a financial institution approaches failure.[38]

EN 12.1 (c) Procedures for information sharing between authorities of a CMG – relation with KA 9.1 - KA 12.1 (ii) formulates a requirement that the procedures for information sharing for resolution-related purposes between authorities represented on a firm's CMG be set out in the firm's COAG. This KA is covered in the assessment methodology by EC 9.1.1. The assessment of under KA 12.1 focuses on whether there is an established practice of information sharing amongst the authorities within the framework set out in the COAG and that there are no legal and material obstacles to information sharing in accordance with the COAG. See EC 12.1.2 and EN 12.1 (d).

EN 12.1 (d) Practice of information sharing consistent with the terms of the COAG - EC 12.1.2 assesses whether there is a practice of information sharing that takes place in accordance with the terms of the COAG.

Authorities may demonstrate compliance with EC 12.1.2 through, for example, documented evidence that information relevant for recovery and resolution has been shared with other Parties to the COAG, at least between officials at an appropriate level of seniority. This might include the use of common templates for the purposes of information sharing.

Where authorities of the jurisdiction under review that are participating in a CMG have encountered any legal or operational obstacles to disclosure of information under the COAG, they should consult the other Parties to identify appropriate measures to address those obstacles and take reasonable steps to remove the obstacles or find 'work-around' solutions. See paragraph 2.11 of the *Annex on Information sharing*.

The grading of a jurisdiction should not be reduced as a result of problems in information sharing if those problems arise exclusively from the unwillingness or inability of authorities in other jurisdictions to exchange information.

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[38] To be expanded in due course to reflect outcome on ongoing work on the topic of information sharing with finance ministries.

EN 12.1 (e) Policies and procedures in place to control and monitor the dissemination of all non-public information - To protect the sensitive nature of information received from other domestic or foreign authorities, the resolution authority should have policies and procedures in place that limit the access to information received from other domestic or foreign authorities to officials, employees and agents and any other person retained by contract that require that information in order to perform their functions relating to resolution. See paragraph 1.13 of the *Annex on Information sharing*. As appropriate, access to the information may be limited to the top officials of the authority.

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

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

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

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

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

Essential criteria

EC12.2.1 Firms subject to a recovery and resolution planning requirement are required to maintain management information systems that are capable of producing essential information for recovery and resolution planning and in resolution on a timely basis. The systems cover at least the items specified in KA 12.2.

EC12.2.2 The jurisdiction has in place processes (for example, through regular examinations) to test the firm's capability to produce information for recovery and resolution planning and in resolution quickly.

Explanatory Notes

EN 12.2 (a) Meaning of "on a timely basis" - what constitutes a "timely basis" for the provision of information by firms will vary depending on the circumstances in which the information is required. A jurisdiction should not be considered non-compliant or materially non-compliant with KA 12.2 if a relatively longer period of time is allowed for the provision of the information required for the purposes of recovery and resolution planning in normal times. In such circumstances, a "timely basis" may be analogous to the timeframes for the provision of information required by supervisors for the purposes of ongoing supervision. However, the information systems of firms must be capable of producing information in a much shorter timeframe, including within twenty-four hours or less, during a crisis, and in particular where the authority is considering or carrying out a resolution action.

EN 12.2 (b) Meaning of "essential information" – essential information for recovery and resolution planning includes data that is needed to 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. It also covers critical management information, including financial statements, information on capital, subordinated debt, contingent capital and debt, and operational links, which should also be available at the level of operational subsidiary. Assessors may take into account whether authorities use common data templates for the collection of information for resolution planning purposes.[39]

EN 12.2 (c) Information about holdings of client assets - Firms with holdings of client assets should be required to maintain information systems and controls that can readily produce - both in normal times and during resolution, and in a format understandable by a resolution authority - information that is necessary to facilitate the rapid return to clients, or rapid transfer of custody over or possession, of client assets, as set out in paragraph 8.1 of *Annex on Client asset protection*. Where client assets are held with an affiliated entity or third party custodian, firms should be able to provide information on the location of the assets and terms and conditions (including as to segregation) on which they are held.

[39] To be expanded in due course to reflect outcome on ongoing work on this topic.

APPENDIX

Structure and Guidance for Assessment Reports

This Appendix presents guidance and a format for the presentation and organisation of an assessment report of the *Key Attributes*. The format is recommended by the IMF and WB for assessments in the context of FSAPs[40] and standalone assessments of the resolution regime. A self-assessment[41] conducted by the jurisdiction's authorities prior to IMF-WB assessments, should also follow this guidance and format.

The assessment report should be divided into seven parts:

(1) a general section providing background information;

(2) an overview of institutional setting and market infrastructure;

(3) a review of preconditions for effective resolution regimes;

(4) a detailed assessment of each KA;

(5) a compliance table summarising the results of the assessment;

(6) an Action Plan; and

(7) authorities' response.

The following sections provide a brief description of each of the seven parts.

(1) Background

This section should:

(i) describe the scope of the assessment agreed with the authorities, for example, the focus on specific KAs or on a specific sector. In the case of risk-based or targeted assessments, this section should also indicate the KAs that are reassessed and the reasons for the reassessment. The names and affiliations of the assessors should be mentioned in this section;

(ii) describe the sources of information used for the assessment, including any self-

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[40] The guidance and format are also recommended for targeted or risk-based ROSCs. Risk-based or targeted assessments do not cover all KAs; rather, they focus on specific KAs based upon previous compliance assessments and on an evaluation of relevant risks and vulnerabilities in each jurisdiction.

[41] Any self-assessment conducted by the resolution authority or authorities should be made available to assessors, accompanied by supporting legislation and regulation, well in advance of an FSAP or standalone assessment.

assessments, questionnaires filled out by the authorities, relevant laws, regulations and instructions, other documents such as reports, studies, public statements, websites, unpublished guidelines, directives, supervisory reports and assessments;

(iii) identify counterpart authorities and mention, in a generic way, senior officials[42] with whom interviews were held; meetings with resolution authorities, supervisory authorities, the central bank, the Ministry of Finance, deposit insurers, private sector participants, other relevant government authorities or industry associations (such as bankers' associations, auditors and accountants); and

(iv) mention any factors that impeded the assessment, in particular, information gaps and lack of translations of documents. An indication of the extent to which those gaps may have affected the assessment should be provided.[43]

(2) Overview of the institutional setting and market infrastructure

This section should provide an overview of the resolution regime for the financial sector, with a brief description of the institutional and legal setting, in particular the mandate and oversight roles of different authorities playing a role in resolution. Furthermore, it should provide:

(i) a general description of the structure of the financial sector, mentioning, for example, the number and type of financial institutions, ratio of total banking sector assets to GDP, etc.;

(ii) a description of any assessments of systemic importance of financial institutions located in the jurisdiction;

(iii) a basic review of financial stability;

(iv) key performance data for the financial sector as a whole and individual sectors, including, where relevant capital adequacy, leverage, asset quality, liquidity, profitability and risk profile of the sector(s); and

(v) information on ownership within the financial sector, i.e., foreign or domestic, state-owned or privately-owned, existence of conglomerates or unregulated

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[42] Names are typically avoided, in order to protect individuals and encourage candour.

[43] If the lack of information adversely impacts the quality and depth of the assessment of a particular KA, assessors should refer to this in the comment section of the assessment template and document the obstacles encountered, in particular where access to in-depth information is crucial to evaluate compliance. Such issues should be brought to the attention of the mission leaders, and when necessary referred to headquarters staff for guidance.

affiliates, and similar information.

(3) Review of the preconditions for effective resolution regimes

This section should provide an overview of the preconditions for effective resolution regimes (see section VI of this methodology). Experience has shown that insufficient implementation of the preconditions can seriously undermine the quality and effectiveness of resolution. Assessors should aim to give a factual review of preconditions so that the reader of the report is able to clearly understand the environment in which the financial system and the resolution regime are operating. This will provide the perspective for a better appreciation of the assessment and grading of individual KAs.

Assessors should not assess the preconditions themselves, as this is beyond the scope of the individual standard assessments. Instead, assessors should rely as far as possible on official IMF and WB documents, ensuring that the brief description and comments in the *Key Attributes* assessment report are consistent with them. When relevant, the assessors should attempt to include in their analysis the links between these factors and the effectiveness of resolution regimes. As described in the next section, the assessment of compliance with individual KAs should mention clearly how it is likely to be affected by preconditions that are considered to be weak. To the extent shortcomings in preconditions are material to the effectiveness of resolution, they may affect the grading of the affected KAs. Any suggestions aimed at addressing deficiencies in preconditions are not part of the recommendations of the assessment but can be made in general FSAP recommendations within the scope of the FSAP exercise.

The review normally should be no longer than one or two paragraphs for each of precondition and should follow the headings indicated below.

Precondition A: A well-established framework for financial stability, surveillance and policy formulation

The review may cover the following elements:

(i) the existence or otherwise of a clear framework for macro-prudential surveillance and policy formulation;

(ii) the elements of clarity of roles and mandates of the relevant agencies;

(iii) mechanisms for effective inter-agency cooperation and coordination, communication of the macro-prudential analyses, risks, and policies, and their outcomes; and

(iv) evidence (for example, independent assessments) of the adequacy and effectiveness of the framework, where available.

Precondition B: An effective system of supervision, regulation and oversight of financial institutions

The review may cover the results of the most recent assessments of the compliance with principles developed by the relevant standard setting bodies, including those of the BCBS, IAIS, CPSS, IOSCO, and IADI.

Precondition C: Effective protection schemes for depositors, insurance policy holders and other protected clients or customers, and clear rules on the treatment of client assets

The review may cover the following elements:

(i) overview of the safety net, its components and information sharing and coordination between safety net participants;

(ii) description of existing protection schemes; and

(iii) mechanisms to meet banks' temporary short-term liquidity needs, primarily through the interbank market, but also from other sources.

Precondition D: A robust accounting, auditing and disclosure regime

The review may cover the following elements:

(i) comprehensive and well-defined accounting principles and rules that are widely recognised internationally or national standards; and

(ii) presence of a system of independent external statutory audits.

Precondition E: A well-developed legal framework and judicial system

The review may cover the following elements:

(i) presence of a system of business laws including corporate, bankruptcy, contract, consumer protection and private property laws that is consistently enforced and provides a mechanism for the fair resolution of disputes;

(ii) presence of well trained and reliable accounting, auditing and legal professions;

(iii) an effective and independent judiciary; and

(iv) efficient payment, clearing and settlement systems.

The review should draw on assessment of compliance with WB principles for creditor rights systems where available. Given that a similar precondition is contained in the core principles for the supervision of both banks and insurers, it also may be beneficial to draw upon recent assessments of compliance against such principles.

(4) A detailed KA-by-KA assessment

The template for the detailed assessment is structured as follows:

Table 1: Detailed Assessment Report (DAR) Template

KA (x) (repeating verbatim the text of the KA)	
EC x	
Description and findings regarding EC x	
Description and findings regarding EC x by sector (if applicable)	
EC 'n'	
Description and findings regarding EC 'n'	
Description and findings regarding EC x by sector (if applicable)	
Assessment of KA (x)	Compliant / Largely Compliant / Materially non-compliant / Non-compliant / Not applicable
Comments	

The "description and findings" section

This section should provide information on the practice as observed in the jurisdiction being assessed. It should cite and summarise the main elements of the relevant laws and regulations. This should be done in such a way that the relevant law or regulation can be easily located, for instance by reference to URLs, official gazettes, and similar sources. Insofar as possible and relevant, the description should be structured as follows:

(i) laws regulating financial institutions and supporting regulations;

(ii) prudential regulations, including prudential reports and public disclosure;

(iii) resolution laws, tools and instruments;

(iv) institutional capacity of the resolution authority; and

(v) evidence of implementation and enforcement or the lack of it.

Evidence of implementation and enforcement is essential. Without the implementation of

rules and regulations, and the use of powers that they grant to the resolution and other authorities, even an otherwise a well-designed resolution regime will achieve its intended objectives. Examples of practical implementation should be provided by the authorities, reviewed by the assessors, and mentioned in the report.

The "description and findings by sector" section

This section should provide information on the resolution regimes that apply to different sectors (whether there is an umbrella regime in place administered by a special resolution authority with sectoral implementation guidance, separate regimes administered by separate authorities, reliance on general corporate bankruptcy with respect to some types of institutions, or a combination of the above).

Assessors should evaluate the relative strengths and weaknesses of the regimes in light of the structure of the financial system and any assessments of systemic importance of financial institutions located in the jurisdiction under review. The systemic risk in the relevant sectors and presence of SIFIs in that sector should determine the weight that will be given to the evaluation of compliance of the regime that applies to the sector. For example, the presence of G-SIFIs in a specific sector will result in greater weight given to the evaluation of compliance of the regime that applies in the sector.

This section may also elaborate on the materiality of individual KAs in individual sectors; for example, the lack of certain powers (for example, debt to equity conversions) may be more material in the banking sector and assessed as not material in the FMI or insurance sector given the presence of alternative tools that achieve the same resolution objective.

The "assessment" section

This section should contain only one line, stating whether the system is "compliant", "largely compliant", "materially non-compliant", "non-compliant" or "not applicable" with a particular KA, as described in section VII: Assessment Methodology.

The "comments" section

The "comments" section should be used to explain why a particular grade was given. This reasoning could refer to:

(i) the state of the laws and regulations and their implementation;

(ii) the state of the effective resolution tools, for instance, bridge institution, bail-in within resolution, temporary stay;

(iii) how the relative strengths and weaknesses of sectoral resolution regimes affect the overall grade for the KA;

(iv) the quality of practical implementation;

(v) the state of the institutional capacity of the resolution authority; or

(vi) enforcement practices.

This section should highlight when and why compliance with a particular EC for a KA could not be adequately reviewed; for example, when certain information was not provided, or when key individuals were unavailable to discuss important issues. To clearly demonstrate the assessor's attempts to adequately assess a KA, requests for information or meetings should be documented in the "comments" section.

In cases where a less than a "compliant" grade is assigned, this section should be used to highlight the materiality of the observed shortcomings and indicate the type of measures that would be needed to achieve a higher level of compliance. This should also be included in the table on "recommended actions" (see below).

The "comments" should also explain cases where, despite the existence of laws, regulations and policies, weaknesses in implementation contributed to the KA being graded less than "compliant". Conversely, when a "compliant" grading is assigned because the observance of a particular KA has been demonstrated by practices or policies in a jurisdiction despite weaknesses in the underlying laws and regulations, it should be explained in this section.

Assessors may wish to highlight in the "comments" section good practices which may serve as examples for other jurisdictions.

The assessment and accompanying grades should be based on the resolution regime and practices in place at the time of the assessment and should not reflect planned initiatives aimed at amending existing or adopting new regulations and practices. Such initiatives may, however, be noted in this section. This applies in cases where such initiatives under preparation, would result in a higher compliance rating if adopted and implemented. Recent legislative, regulatory or supervisory initiatives for which implementation could not be verified should also be mentioned in this section.

When links between particular KAs, or between a precondition and a KA, are evident, this section should be used to caution the reader that, although the regulation and practices implementing that KA seem compliant, a "compliant" grading cannot be given because of material deficiencies in the implementation of another KA or a particular precondition. While recognising that there could be common deficiencies that are both relevant and material enough to affect the rating of more than one KA, assessors should avoid double-counting as far as possible. If the deficiencies found in linked KAs or preconditions are not sufficiently material to warrant a downgrade, the weaknesses should still be described in this section.

A grade for each KA should be given, regardless of the level of development of a jurisdiction. If, however, certain ECs are not applicable given the size, nature of operations and complexity of a jurisdiction's financial system, grading for the KA should be based on level of compliance with only the applicable ECs. In such cases the reasoning for not evaluating a certain EC, or grading a particular KA as "not applicable", must be clearly explained to allow a future review to reconsider the grading if the situation changes.

(5) A compliance table, summarising the assessments, KA by KA

The compliance table (Table 2) should convey a clear sense of the degree of compliance, providing a brief description of the main strengths and, especially, weaknesses with respect to each KA and, if applicable, note relevant differences across sectors.

The table used in the Detailed Assessment Report (DAR) includes an overall grade for each KA. The table to be used in the ROSC that summarizes the DAR will not include an explicit grade for each KA.

Table 2: Summary Compliance with the KAs

KA	(Grade) [44]	Comments
1. Scope		*General:*
		Sectoral:
2. Resolution authority		*General:*
		Sectoral:
3. Resolution powers		*General:*
		Sectoral:
4. Set-off, netting, collateralisation, segregation of client assets		*General:*
		Sectoral:
5. Safeguards		*General:*
		Sectoral:
6. Funding of firms in resolution		*General:*
		Sectoral:
7. Legal framework conditions for cross-border cooperation		*General:*
		Sectoral:
8. Crisis Management Groups (CMGs)		*General:*
		Sectoral:

[44] The ROSC will not include the grading in the table because the grades cannot be fully understood without the description and detailed comments (which are available only in the DAR).

KA	(Grade) [44]	Comments
9. Institution-specific cross-border cooperation agreements		*General:*
		Sectoral:
10. Resolvability assessments		*General:*
		Sectoral:
11. Recovery and resolution planning		*General:*
		Sectoral:
12. Access to information and information sharing		*General:*
		Sectoral:

(6) A "Recommended Actions" table providing KA-by-KA recommendations for actions and measures to improve the regulatory and supervisory framework and practices

This section (Table 3) should list the suggested steps for improving the compliance and overall effectiveness of a jurisdiction's resolution regimes. Recommendations should be proposed on a prioritised basis for each KA where deficiencies are identified. The recommended actions should be specific in nature. An explanation could also be provided explaining how the recommended action would improve the level of compliance and strengthen the resolution regimes. The institutional responsibility for each suggested action should be clearly indicated in order to prevent overlap or confusion. The table should indicate only those KAs for which specific recommendations are being made.

Table 3: Recommended Actions

Recommended Actions to Improve Compliance with the *Key Attributes* and the Effectiveness of Regulatory and Supervisory Frameworks	
Reference KA	**Recommended Action**
KA (x)	Ex: suggested introduction of regulation (a), supervisory practice (b)
KA (y)	Ex: suggested introduction of regulation (c), supervisory

	practice (d)

(7) Authorities' response to the assessment[45]

The assessment team should provide the resolution and other authorities being assessed with an opportunity to respond to the assessment findings. To facilitate such a response, a complete written draft of the assessment report that reflects the outcome of earlier discussions with the resolution and other authorities during the assessment process, should be provided to the authorities. Any differences of opinion regarding the results of the assessment should be clearly identified and included in the report. The assessment should not, however, become the subject of negotiations, and assessors and authorities should be willing to "agree to disagree", provided the authorities' views are presented fairly and accurately in the assessment. Finally, the authorities should also be requested to prepare a concise written response to the findings ("right of reply").

[45] If no such response is provided within a reasonable time frame, the assessors should explicitly note this in the assessment report and provide a brief summary of the authorities' initial response provided during the discussion between the authorities and the assessors at the end of the assessment mission ("wrap-up meeting").