CHAPTER 5

Cross-border Cooperation, Coordination and Information Sharing

The FSB Key Attributes have underscored the importance of cross-border cooperation and coordination among the relevant authorities in different jurisdictions for orderly resolution of financial institutions with cross-border operations. Accordingly, the FSB Key Attributes recommend a framework for overcoming the national legal hindrances, barriers and obstacles and to improve the effectiveness of cross-border resolution measures. The resolution authority should be empowered to achieve a cooperative solution with foreign resolution authorities. The legal framework should not provide for unilateral action by the host jurisdiction as a result of official intervention or initiation of resolution actions in home or other jurisdictions. Recognizing the importance of appropriate exchange of information between relevant authorities for cross-border resolution of large and systemically important financial institutions, the key attributes provide for addressing and removing the legal, regulatory or policy impediments to information sharing, while ensuring the confidentiality and protection of sensitive data.

5.1 Financial conglomerates and large and complex globally active financial groups dominate the financial landscape in various countries. These institutions not only transcend national boundaries but also cross over the traditional business lines. The activities of these groups have expanded beyond traditional deposit-taking and lending to include a range of non-bank financial activities, encompassing securities, insurance, funds and asset management. In addition, these global systemically important financial institutions (G-SIFIs) also act as systemically important nodes within a globalized market for capital. The development of these institutions has been spurred by financial liberalization, increased competition in the financial industry, search for yield, development of new financial instruments and techniques for transfer of risk, economies of scale in terms of product offerings and services, and the removal of barriers to cross-functional and cross-border mergers and acquisitions.

5.2 Global integration and greater efficiency do not necessarily guarantee greater financial stability. Larger financial institutions may have a greater capacity to withstand stress; their operations are more diversified; they tend to have more sophisticated risk management capabilities and they have bigger capital cushions. Yet, they pose the risk of transferring shocks from one corner of the world to another in the event that they encounter financial distress due to unforeseeable economic shocks, risky business models, mismanagement, or fraud.

5.3 The recent global financial crisis has shown that the complexity of the corporate structure of most international financial conglomerates is in itself a significant source of risk. The failure of a large and complex financial institution can cause widespread damage to financial sector in more than one jurisdiction. Since most of these institutions are managed in an integrated fashion along business lines with only minimal regard for legal entities, national borders or functional regulatory domains, mapping of an institution's business activities into its legal entities presents a formidable challenge. Moreover, these legal entities would be subject to scores of different national regulatory and resolution mechanisms, which will not be harmonised. This was clearly evident in the Lehman Brothers, wherein a trade performed in one company could be booked in another and the lines of business did not necessarily map to the legal entity lines of the companies.

5.4 Whatever may be the powers available to a resolution authority, there are inherent difficulties in cross-border resolution of financial institutions, making it practically impossible to resolve them smoothly. Even among the Benelux countries, what started out as a cooperative effort to recapitalize Fortis, ended up in a strife as each country attempted to protect its own national interest. In the case of Icelandic banks, the UK resorted to the use of anti-terrorist legislation to protect the interests of UK depositors, which was against the norms followed by the members of European Economic Area (EEA).

Challenges in Crisis Resolution

5.5 The recent financial crisis illustrated the limitations of the national resolution regimes to resolve financial institutions that are global in nature. Mervyn King, former Governor of Bank of England, said that the large financial groups have been '*international in life, but national in death*'. This was amply demonstrated in many of the financial institutions' failures during the global financial crisis that suffered due to the absence of a cross-border crisis management framework.

5.6 The various obstacles to the ability of the home and host authorities to cooperate in the resolution of the G-SIFIs amplified the recent crisis. Given the fact that resolution is itself highly complex and cannot be achieved by mechanically applying pre-defined resolution tools, it is recognized that resolution of financial institutions across the boundaries is even harder to achieve. The barriers and challenges in effecting orderly resolution of G-SIFIs can be observed in the relatively simple resolution of Bank of Credit and Commerce International (Overseas) Limited [BCCI], which also had presence in India in the form of a single branch**(Box 5.1)**.

BOX 5.1

Resolution of Bank of Credit and Commerce International (Overseas) Limited

Bank of Credit and Commerce International (Overseas) Limited (BCCI) was a foreign bank incorporated in Grand Cayman Islands. The bank had presence in India in the form of a single branch at Bombay. On surfacing of viability problems, the bank was placed under control of a receiver (Mr. Ian Wight), appointed by the Governor of the Cayman Islands by an order dated 5th July, 1991 under Section 18 of the Bankruptcy Law as applicable in the Cayman Islands. The said order directed and authorized the appointed Receiver to take charge of the properties of the BCCI wherever situated.

On 6th July, 1991, the Manager-in-charge of BCCI, Bombay was advised by its head office to suspend all payments and other banking transactions. The Manager-in-charge of BCCI in Bombay forwarded a copy of the same to RBI. On receipt of information from BCCI, Bombay and also from the Provisional Liquidators of the UK Branches of BCCI, the Reserve Bank issued directives to BCCI, Bombay to safeguard the interests of the local depositors and also filed a petition before the Bombay High Court (BHC) on 15th July, 1991 under Section 38 (3) of the Banking Regulation Act, 1949 (BR Act) read with Companies Act, 1956 for winding up of BCCI, Bombay and appointment of State Bank of India, Central Office, Bombay as liquidator.

The High Court on 15th July, 1991, as an interim measure, appointed SBI as Provisional Liquidators in respect of the assets of BCCI in Bombay, which was confirmed by the court on 22nd January, 1992. On 14th January, 1992, the Grant Court of the Cayman Islands confirmed its ad-interim order of 5th July, 1991.

On 22nd January, 1992, the Bombay High Court, after hearing the concerned parties including the Joint Provisional Liquidators of BCCI, appointed by the Court of Cayman Islands, confirmed its ad-interim order dated 15th July, 1991 appointing SBI as Provisional Liquidators of BCCI, Bombay branch. Consequently, all the business activities of BCCI Bombay branch was suspended.

On 16th January, 1992, a Memorandum of Understanding (MoU) was entered into between the said Official Liquidator and RBI for disposal of the Bombay branch of BCCI, whereunder it was agreed that BCCI Bombay branch be sold to one of the buyers to be appointed by the RBI. The purchaser was to assume full responsibility of both the depositors and creditors, including the liabilities of the staff, so also all other existing as also future liabilities of BCCI, Bombay branch. Another option under the MoU was to sell the branch to SBI and/or its subsidiary in accordance with the law. The High Court approved the arrangement by its order dated February 22, 1992.

On approval by Bombay High Court, the RBI held negotiations with all concerned including Official Liquidators, Cayman Islands. The Joint Official Liquidators invited offers for sale of the undertaking of the Bombay branch of BCCI to which SBI responded and submitted its offer. The offer of SBI was accepted by Official Liquidators, Cayman Islands and also got the approval from the Court of Granting Cayman for the sale. This was communicated by fax on February 24, 1993.

The Bombay High Court, accepting the offer of SBI for the purchase of BCCI Bombay branch as a going concern, gave directions for safeguarding the interest and claims of all concerned. This was

taken over by a subsidiary of SBI (SBICL). The High Court passed its final order on November 12, 1993 confirming the action.

Supervisory responsibility

5.7 The Basel Accord governs the supervisory responsibilities of the home and host country of the parent of a banking group and its subsidiary respectively. The Accord entrusts the responsibility of supervision of the group on a consolidated basis to the home country supervisor (of the parent), while the host country supervisor is responsible for subsidiaries authorized in the host country. Further, the Accord provides that the responsibility for the supervision of the branch with respect to solvency resides primarily with the home supervisor. However, the responsibility with respect to the supervision of liquidity resides with the host supervisor.

5.8 This division of supervisory responsibility between the home and host country supervisors may not necessarily be consistent with the division of responsibilities relating to crisis management and resolution.

Misalignment of incentives of different national regulators

5.9 In the case of problems in a G-SIFI and in the absence of effective cross border resolution framework, each of the national authorities will act in accordance with its own statutory obligations. The priorities of national supervisors and resolution authorities are financial stability within their own jurisdiction as also protection of interests of national creditors, depositors and taxpayers. Thus, the obligation to protect local markets and local creditors' interests (ring fencing) will take precedence over a more global perspective encompassing markets and creditors in other countries. There is, therefore, a high risk that the resolution procedure will be highly influenced by national interests. Moreover, the losses incurred by the creditors will not be uniform between jurisdictions. This is a central concern that lies behind moves towards ring-fencing and territorial approaches.

5.10 Such problems have led to host countries' inclination towards a "subsidiarization" solution for local branches under which the local subsidiary is required to maintain sufficient capital and follow other prudential norms including sufficient assets to cover its liabilities. The UK had suggested such an approach under the label of "ring fencing" in the wake of 2007/2008 crisis.

National resolution frameworks

5.11 While international financial groups operate globally, the frameworks for addressing their distress and failure are local and apply to distinct parts of the group rather than to the group as a whole. Moreover, resolution frameworks are established by national laws and are enforceable only in respect of those institutions or branches of institutions operating in the national territory. In the absence of international legal framework, the resolutions of such financial groups are subject to different national frameworks that do not recognize the law of other jurisdictions. FSB has made some progress in setting standards for cross-border resolution, the implementation of which will pose challenges in modifying national regimes and their success will depend on *quid pro quo* from other countries.

5.12 Further, differences between home and host insolvency regimes, untested enforceability of netting and collateral arrangements, depositor/insurance policyholder/investor protection legislation, ring fencing practices, and the imposition of governmental or judicial measures, such as moratoria, receivership measures, and financial sanctions, introduce significant uncertainty that makes it difficult to plan a resolution measure or wind down in a cross-border context. Depending on the location of the assets and determination of the applicable law, different rules will apply with respect to preference, ownership interests and set-off.

Informational asymmetries and regulatory competition

5.13 Effective crisis management requires access to timely, accurate and relevant information about the G-SIFI and its operations. The usefulness of the information depends on how quickly it can be obtained and how up-to-date it is. In a crisis, if particular types of information can help to achieve a solution that is more advantageous for the domestic jurisdiction, the regulator or the supervisor may not be inclined to share that information with the foreign authorities.

5.14 The legal frameworks of many jurisdictions do not sufficiently facilitate coordination and do not empower their supervisors or the relevant resolution authority to share information with their counterparts in other jurisdictions. Some countries address information sharing only during the normal times of supervision. They do not clearly differentiate the provisions or arrangements in place for information sharing in crisis situation. Moreover, some authorities do not have a clear authority for, or are prevented by law from sharing information directly with a foreign authority other than with a supervisor restricted for supervisory purposes. Moreover, even if the information is obtained, there are restrictions or

requirements as to the approval of the authority that furnished information, for onward disclosure of information.

Complexity of group structures

5.15 The operation of large international group structure in multiple jurisdictions and their internal and external exposures and relationships creates opaqueness in the risk exposures and also makes crisis resolution difficult and costly. Further, the complexity of the business model and/or the financial products provided by an institution contributes to its systemic relevance, as it renders it very difficult for the market participants to assess the impact and the outcome of a crisis situation.

Need for Cooperation and Coordination

5.16 Establishment of an international treaty that would obligate countries to defer to the resolution decisions of the jurisdiction where the financial institution or group has its main activities does not seem practically feasible. An effective framework for resolution of cross-border financial group would therefore, require enhanced cooperation and coordination among resolution authorities and harmonization of methods for achieving equitable cross-border outcomes based on legally effective crisis management agreements. Such crisis management agreements need to be embedded in the national resolution frameworks incorporating a number of provisions designed to underpin and support the international market in financial services.

5.17 A suitable framework for enhanced cooperation and coordination will essentially involve amendment to existing national laws so as to enable national authorities to coordinate resolution efforts with their counterparts in other jurisdictions to the maximum extent consistent with the interests of creditors and domestic financial stability. In such a framework, the national authorities would continue to retain the discretion to act independently, if in their judgment such action is more consistent with these objectives. Enhanced coordination mechanism will be substantiated between those countries that have sufficiently aligned resolution frameworks and rules (i.e., non-discrimination against foreign creditors, appropriate and similar resolution tools, appropriate creditor safeguards, and robust rules on depositor, policyholder and investor preference, etc.), robust supervisory frameworks and institutional capacity to reorganize and implement an international solution.

5.18 Considering the legal hindrances, barriers and obstacles indicated above, the FSB has sought to improve the cross-border effectiveness of resolution measures by specifying

certain key attributes that the jurisdictions should follow. For this to work, both the home and host authorities must have the requisite powers and regimes for application of resolution measures not only to domestically incorporated financial institutions but to domestic branches of foreign institutions, and to assets, liabilities and contracts of foreign institutions located within a jurisdiction. At the minimum, this would require the authorities to be legally empowered with the capacity to cooperate with the foreign resolution authorities.

Statutory mandates to foster cross-border cooperation

5.19 The FSB has suggested that in order to achieve orderly resolution of financial institution with presence in multiple jurisdictions, the resolution authorities should be mandated statutorily with the powers to act for achieving a cooperative solution with foreign resolution authorities. The legal framework or the regulatory norms in a particular jurisdiction should not provide for triggering of unilateral action in a jurisdiction on initiation of any resolution or insolvency proceedings or any official intervention in another jurisdiction. On the other hand, the statute should provide for extension of the perimeter of resolution powers of the resolution authority, in addition to the locally incorporated financial institutions, to the local branches of foreign institutions and to use its powers either to support a resolution carried out by a foreign home authority or to take measures on its own initiative.

5.20 In the absence of effective cross-border cooperation and information sharing or in the event of inaction or inappropriate action by the foreign home authority, the statutory framework should provide the right to the resolution authority for taking discretionary national action on its own initiative, if considered necessary, to achieve financial stability. In case of exercise of discretionary national resolution action by the host resolution authority, they should have the capacity through cooperative arrangements for consultation with the foreign home authority to assess the impact of resolution action on financial stability in other jurisdictions. In case of exercise/application of resolution powers to individual components of a financial group, the resolution authority needs to take into account the impact on the group as a whole. The host authority should also have the capacity to give prior notice of discretionary national action in relation to the local branch of a foreign bank, to a foreign home resolution authority.

5.21 The practice of having legal framework mandating the national authorities to seek cross-border cooperation with foreign authorities for the purpose of crisis resolution is practically uncommon in most of the jurisdictions. However, eight jurisdictions[1] have

[1]Australia, Hong Kong, Indonesia, Japan, Spain, Switzerland, UK and US.

statutory provisions that explicitly empower or strongly encourage resolution authorities to cooperate with foreign authorities.

5.22 The Working Group noted that though the Indian banks or other financial institutions do not qualify as G-SIFIs, 15 out of 29 G-SIBs identified in November 2013have operational presence in India in the form of branches[1]. The foreign insurance companies also have presence in India but in the form of joint ventures[2]. On the other hand, the Indian financial institutions (banks as well as insurance companies)though mostly national in nature, do have presence in other jurisdictions in the form of branches and/or subsidiaries. However, the share of international assets as a percentage of total consolidated assets of such financial institutions is very low.

5.23 *The FSLRC is of the view that an un-coordinated approach by the home and host countries' authorities would create difficulties in resolution of cross-border SIFIs in a manner that protects interests of consumers and prevents the risk of contagion. The Commission has also recognized the on-going deliberations in this area at international policy forums. It has suggested that India must participate in emerging global arrangements on cross-border resolution. The Commission has, however, recommended setting up of a Committee, five years from now (2013), to review the emerging consensus in this field and suggest amendments in the legal framework on resolution accordingly.*

5.24 The group recognizes that there are challenges in cross-border coordination and cooperation due to separate national mandates, legal frameworks, priorities, etc., and internationally work is in progress on information sharing arrangements for resolution purposes, development of data template for information sharing, norms for cooperation, coordination among the non-CMG host jurisdictions, etc. **Keeping in view plausible opening up of the Indian financial system in future and Indian financial institutions becoming G-SIFIs with large scale cross-border operations, the Group recommends that the proposed legislation for resolution regime for financial institutions should**

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[1] Among the foreign banks, Standard Chartered Bank with 101 branches has the largest presence in India in terms of outreach, followed by HSBC Ltd. with 50 branches, Citibank N.A. with 42 branches, The Royal Bank of Scotland N.V. with 31 branches, Deutsche Bank with 18 branches, BNP Paribas with 8 branches, Barclays Bank Plc. with 7 branches, Credit Agricole Corporate & Investment Bank and Bank of America with 5 branches each, The Bank of Tokyo-Mitsubishi UFJ Ltd. with 4 branches, Societe Generale with 3 branches, Mizuho Corporate Bank Ltd. with 2 branches, UBS AG, JP Morgan Chase Bank N.A. and Sumitomo Mitsui Banking Corporation with one branch each.

[2] Foreign insurance entities are not permitted to set up branch operations in India. However, almost all G-SIIs have domestic presence in India in the form of joint ventures with holding of 26% equity in insurance companies.

enable the FRA to achieve cooperative solution with foreign resolution authorities. *(Recommendation 37)*

Recognition to foreign resolution measures

5.25 Generally, the resolution tools/options adopted by the home resolution authority in order to achieve an orderly resolution of a financial institution, will not have an automatic effect in the host jurisdiction. Most of these actions could involve court proceedings that may not be timely for effective resolution. In order to reduce or remove the legal, regulatory or policy impediments that hinder conduct of effective resolution, the FSB has suggested that jurisdictions should have 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.

5.26 Such a process would enable the home authority to gain rapid control over the financial institution or its assets that are located in the host jurisdiction, in cases where the institution is being resolved under the law of the home jurisdiction. It stands to reason that recognition or support of the foreign measures should be provided only when the home authority extends equitable treatment to the creditors in the host country in the foreign resolution proceedings.

5.27 So far, only the Swiss Resolution Authority (i.e., Swiss Financial Market Supervisory Authority (FINMA)) is vested with the exclusive authority to recognize foreign insolvency decrees and resolution measures that seek control over assets and operations of foreign financial institutions in Switzerland. Swiss FINMA has the power to recognize resolution measures ordered by a foreign authority. A condition for recognition is the equitable treatment of creditors in Switzerland, taking into account the statutory preferences they enjoy under Swiss law. The scope of the recognition is fairly broad and covers any type of restructuring or resolution measures, including a compulsory debt-to-equity conversion ("bail-in") or order transferring assets, liabilities and contracts of the failed institution to a bridge bank. FINMA can also give recognition to administrators or liquidators appointed by a foreign resolution authority. Alternatively, FINMA can resolve a branch of a foreign financial institution independently under its sole authority.

5.28 Presently, the legal framework permits the Reserve Bank of India and/or the Government of India to initiate resolution actions in case of any incipient problems in the

foreign bank branches situated in India. For all practical purposes, for regulation as well as resolution, they are treated on par with private sector banks. However, the provisions contained in the Banking Regulation Act, 1949 provide for a ring-fencing clause[1] in case of foreign banks operating in India.

5.29 Indian law also does not specifically recognize foreign bankruptcy proceedings though Indian Courts on reciprocity basis to honour the decrees passed by the foreign courts, subject to the exemptions provided in Section 13 of the Code of Civil Procedure, 1908 (CPC). In terms of Section 44A of CPC, the certified copy of a decree passed by a foreign court of any reciprocating territory has to be filed in a District Court and such decree may be executed in India as if it had been passed by the District Court. As regards supporting the resolution carried out by a foreign home authority, Indian insolvency laws neither have any extra-territorial jurisdiction, nor do they recognize the jurisdiction of foreign courts in respect of the branches of foreign banks operating in India.

5.30 Since the stake involved is very high and could have serious implications on the financial stability of host countries, the Group is of the view that in absence of a binding ex-ante agreement or international legal structure, any cooperation and coordination, no matter how well it starts out, is most likely to fail in a real resolution scenario. There is, therefore, a need to wait for the experiences gained in different jurisdictions.

Access to Information and Information Sharing

5.31 For making appropriate decisions and implementing an effective action plan when resolution is imminent, the resolution authorities would not only require the provision of up-to-date information on the business operations, structures and critical economic functions but also detailed resolution analysis prepared by the affected financial institution. Such information and analysis will enable them to choose the resolution option under current laws and regulations. Moreover, in case of cross-border firms, the authorities would need additional information on the legal and regulatory frameworks in which the firm operates. This could include information on the relevant home and host authorities and their roles, functions and responsibilities in financial crisis management; the relevant aspects of applicable corporate, commercial, insolvency and securities laws and insolvency regimes affecting major portions of the group, and liquidity sources.

[1] According to Section 11(4) of BR Act, 1949, in the event of a foreign bank ceasing to carry on banking business in India, the minimum paid up capital and reserves which it is required to maintain under Section 11(2) of that Act shall be an asset of that company on which the creditors of the company in India shall have first charge.

5.32 The Key Attributes provide that the resolution authority should have legal capacity, subject to adequate confidentiality requirements and protections for sensitive data, to share information, including RRPs, pertaining to the group as a whole or the individual subsidiaries or branches, with the relevant foreign authorities for the sole purpose of preparation of RRP for the financial group as a whole or for implementing a coordinated resolution. This would mean sharing of information with the foreign supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes, not only in normal times but also in crisis situations. Such information sharing should be both at a domestic and cross-border level.

5.33 The financial crisis has demonstrated that the absence of a process of coordinated resolution of legal entities in a financial group/conglomerate limits the option available to home or host country authorities for managing the problem in an orderly manner. The different regulatory and supervisory rules along with different accounting standards, liquidity requirements and regulatory objectives that apply to different legal entities of a financial group, potentially complicate resolution of domestic financial groups. This becomes more critical in case of cross-border financial groups in view of other challenges and obstacles.

5.34 While the regulators/supervisors have been engaging in Memorandum of Understandings (MoUs)[1] with other jurisdictions' authorities, such as the Central Banks and respective financial sector regulators/supervisors with a view to promoting greater co-operation and sharing of supervisory information between the supervisors, there still lies a gap in coordination and information sharing for crisis resolution. They may not be legally enforceable and do not indicate how supervisors might cooperate in actual crisis.

5.35 However, existing national legal and supervisory arrangements are not designed to coordinate the resolution of problems in all of the significant legal entities of a financial group. Insolvency rules apply on a legal entity basis and may differ depending on the types of businesses within the financial group. There are, however, exceptions to this in some jurisdictions. In a crisis, there could be a need to exchange information across different authorities domestically as well as with the foreign authorities. This cannot happen without strong cooperation mechanism.

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[1] Reserve Bank of India has so far entered into MoUs with 19 jurisdictions for supervisory coordination and information sharing. IRDA has entered into a Multilateral Memorandum of Understanding with the IAIS, which provides an international platform for cooperation and sharing of supervisory information between regulators subject to confidentiality stipulations.

5.36 The objective of cooperation and information sharing among the domestic authorities in case of a domestic financial group may vary from cross-border financial group. In absence of cooperation among the various domestic regulators/supervisors and resolution authority as well as the institutions providing protection to depositors, insurance policyholders and investors, there is probability of spillover of problem in one legal entity of a group to the other due to contagion and reputation risk. Moreover, in case of a cross-border financial group, where the host country authorities are unable to obtain information from the home authorities would in all probability be more inclined to take action to protect local creditors and thus ring-fence assets. Better cooperation and information sharing can reduce the need for ring fencing.

5.37 The Group has suggested earlier (in Chapter 4) a data template for submission of information by the financial institutions, on an on-going basis, to the financial resolution authority (FRA) and the regulators/supervisors for resolution planning and assessment of their resolvability and also institution of FDMC for on-line collection of financial data from all financial institutions. In addition, the Group has also suggested earlier (in Chapter 4) for entering into a MoU between the regulators/supervisors and FRA for effective and constant information sharing. This mechanism will ensure information sharing among the domestic authorities. The existing legal framework, however, restricts the domestic financial institutions and/or the regulatory authorities from disclosure of customer related non-public information. For example, Section 45E of the RBI Act, 1934 prohibits the RBI or any banking company from disclosure of credit information, except in certain circumstances, viz. the disclosure by any banking company with the previous permission of the Reserve Bank of India of any information furnished to the RBI, publication by RBI of any information collected by it in such consolidated form[1] as it may think fit without disclosing the name of any banking company or its borrowers in the public interest, the disclosure or publication by the banking company or RBI of any credit information to any other banking company or in accordance with the practice and usage customary among the bankers or as permitted or required under any other law and the disclosure of any credit information under the Credit Information Companies (Regulation) Act, 2005.

5.38 While work in the area of cross-border information sharing is underway, which is being enhanced by the FSB through Resolution Steering Group, the Group recommends that the resolution framework in India should enable the FRA to share non-public information of Indian financial institutions with foreign home/host

[1] Section 45C of RBI Act, 1934.

resolution authorities on reciprocal basis and subject to confidentiality requirements and protection for sensitivity. ***(Recommendation 38)***

Supervisory Colleges

5.39 Supervisory colleges as a form of supervisory tool for information sharing are operational in many jurisdictions. The primary objective of a supervisory college is to assess and develop an understanding of the risk profile of an international banking group of which the home supervisor is also the lead supervisor. Over time, the supervisory colleges have developed as a forum for broader issues such as discussions and planning of supervisory assessments and sharing information about the overall risk assessment of banking entities as well as the banking group.

5.40 The IRDA is in the process of setting up a supervisory college for effective supervision of the Life Insurance Corporation (LIC) of India, a financial conglomerate with wide presence in various financial sectors domestically as well as internationally[1].On the other hand, IRDA is also participating in the supervisory colleges set up in respect of foreign entities having presence in India in the insurance sector.

5.41 Under the proposed EU resolution framework, cooperation of resolution authorities within the European Union would be done by establishing resolution colleges around the core of the existing supervisory colleges with enhancement in its membership to include resolution authorities. Such colleges would provide a platform for exchange of information between the national authorities and serve as a forum for discussing and deciding joint or coordinated actions in case of cross-border failing banks or other emergency situations. Resolution colleges would be chaired by the resolution authority responsible for the EU parent credit institution (the group level resolution authority) and would be responsible for crisis planning and preparation of resolution plans.

5.42 Considering the development of supervisory colleges as a forum for sharing information on the overall risk assessment of individual financial entities as well as the financial group and also the fact that the RBI and IRDA have signed MoUs/MMOUs with various jurisdictions/IAIS for sharing of supervisory information, the Group recommends that the supervisory colleges could be used as an information sharing platform for crisis resolution also. However, this needs to be taken up with the relevant authorities and the parties to the supervisory colleges. ***(Recommendation 39)***

[1]LIC of India has operations in Fiji, Mauritius, Bahrain, Nepal, Sri Lanka, Saudi Arabia and Kenya.

Constitution of Crisis Management Groups (CMGs) and Institution-specific Cross-border Cooperation Agreements (COAGs)

5.43 Given the legal mandate to the resolution authority for achieving a cooperative solution with the foreign resolution authorities for orderly resolution, the FSB feels that a policy framework for cross-border cooperation between resolution authorities needs to be developed for advance planning and to avoid dealing with cross-border issues through the courts. With a view to having an easy approach in the near term for such cooperation and enhancing preparedness for and facilitating the management and resolution of a cross-border financial institution, the FSB has suggested constitution of Crisis Management Groups (CMGs) for all G-SIFIs and institution-specific cross-border cooperation agreements (COAGs) at least for G-SIFIs. CMGs should comprise the supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for insurance guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution.

5.44 Generally, for reasons of operational efficiency, practicality, and effective decision-making, the membership of CMGs is limited to those jurisdictions and authorities that are material and significant for a group-wide resolution of the firm. Such a practice could possibly leave out some jurisdictions, where operations of the firm are locally systemic but not material in the context of the overall operations of the financial group, from representation in the CMG. However, the Key Attributes also require cooperation and information sharing between CMGs and authorities in other jurisdictions where the firm has a systemic presence locally but the particular jurisdiction does not participate in the CMG. Towards this end, the FSB is in the process of identifying criteria to assess jurisdictions where operations of a G-SIFI are locally systemic so as to provide guidance on cooperation and information sharing between CMGs and non-CMG host jurisdictions. The FSB considers that as a prerequisite for information sharing, the authorities need to demonstrate that they meet the standards set out in the Key Attributes 7.6, 7.7 and 12.1, and Annex on Information sharing for resolution purposes, which relates to having in place legal gateways and related confidentiality regimes to facilitate effective sharing of non-public information between domestic and foreign authorities for resolution related purposes.

5.45 The firm's recovery plan is one such information that could be requested by the non-CMG host authority from the home authority in order to assess the potential systemic impact of the recovery plan on the operations in its jurisdiction. Since the plan would generally not address the operation of the G-SIFI in non-CMG jurisdictions but for the critical functions and

material operations only, this could serve as a barrier in advanced planning by the non-CMG host authorities.

5.46 On the other hand, the main objective of the institution-specific COAG is to facilitate crisis management planning for the specific institution with proper cooperation between the relevant authorities. The agreements could also help in deciding a framework for possible solutions to the legal and other impediments that may exist in effecting an orderly resolution of a financial institution with presence in multiple jurisdictions. Thus, the institution-specific COAGs establishes a framework for the development of RRPs, based on the conduct of pre-crisis resolvability assessments, and for cooperation and coordination in a crisis in accordance with the agreed RRPs.

5.47 The essential elements that the institution-specific COAG should possess include:

- Objectives, nature and scope of the agreement
- Roles and responsibilities of authorities
- Commitments of parties to cooperate
- Information sharing
- Implementation of cross-border resolution measures

5.48 So far, CMGs have been established for all identified G-SIBs. Most jurisdictions that have established CMGs for domestically incorporated G-SIFIs are in the process of concluding institution-specific COAGs between the CMG members. Though none of the Indian financial institutions qualify as G-SIFIs, India is a member of one CMG pertaining to Standard Chartered Bank. These key attributes are generally applicable to G-SIFIs and would be applicable for India only to the extent of having representation in CMGs.

5.49 The CMGs and institution-specific COAGs are generally applicable to G-SIFIs. In view of the fact that none of Indian banks are G-SIFIs, and even though 15 out of 29 G-SIBs and 8 out of 13 global systemically important insurers (G-SIIs) have presence in India in the form of branches/joint ventures, those are not significant and material in the context of overall operations of the financial group. **The Group recommends that in the situation of an Indian financial institution becoming a G-SIFI in future, the FRA may be empowered to form CMGs and COAGs.** ***(Recommendation 40)***