Annex 1

Recent Legislative Reforms in Major FSB Jurisdictions

Resolution Framework in the United States

1. The resolution framework in the US underwent changes in response to the financial crisis by enactment of the Dodd-Frank Act on July 21, 2010. The resolution framework as envisaged under Dodd Frank framework makes a distinction between systemic and non-systemic institutions. The financial firms that are non-systemic are resolved as per their respective laws, while the provisions of Dodd Frank apply in case of systemically determined firms. The Dodd-Frank Act also provides for a framework for better coordination among authorities, domestically and internationally, in recognition of the complexity and global reach of many systemically important financial institutions. U.S. regulators have promulgated rules implementing certain provisions of the Dodd-Frank Act, and continue to develop rules to implement other provisions.

Scope and Coverage

2. The applicability of Dodd-Frank Act and other laws in resolution of various financial firms (systemic as well as non-systemic) is given below:

- ***Banks and other insured deposit-taking institutions*** are resolved pursuant to the FDI Act. In addition, domestic branches and agencies of foreign banking organizations are resolved under federal law (for federally licensed branches and agencies) or applicable State law (for state-licensed branches or agencies), where not pre-empted by federal law.
- ***Brokers, dealers and other investment firms*** for which a systemic determination is made under Section 203 of the Dodd-Frank Act may be resolved under Title II of that Act. Registered brokers, dealers and other investment firms that are not deemed to be systemic are generally resolved pursuant to Securities Investor Protection Act (SIPA). Investment firms that are not registered brokers or dealers may be resolved under the Bankruptcy Code.
- Dodd-Frank Act applies to ***insurance companies*** for which a systemic determination is made under Section 203 of that Act; however, insurance companies are to be liquidated or rehabilitated as provided under State law. Insurance companies for which no systemic determination is made under Section 203 of the Dodd-Frank Act

are generally resolved in accordance with the applicable requirements of the State in which the insurer is legally domiciled.

- Privately owned and operated ***financial market infrastructures*** for which a systemic determination is made under Section 203 of the Dodd-Frank Act may be resolved under Title II of that Act. Privately owned and operated financial market infrastructures for which no systemic determination is made under Section 203 of the Dodd-Frank Act may be resolved under the Bankruptcy Code.
- The orderly liquidation authority under Title II of the Dodd-Frank Act may apply to both ***financial holding companies and bank holding companies***, including holding companies of insured depository institutions, brokers or dealers, or insurance companies. Under the FDI Act, the resolution authority does not extend to holding companies of insured depository institutions. Under State law, the resolution authority does not extend to holding companies of regulated insurance entities.
- The orderly liquidation authority under the Dodd-Frank Act may extend to certain ***subsidiaries of a covered financial company*** subject to the orderly liquidation authority. Under the FDI Act, the resolution authority does not extend to operational affiliates of insured depository institutions but the resolution authority would generally control subsidiaries as an equity holder of such entities. Under State law, the resolution authority does not extend to non-subsidiary operational affiliates of regulated insurance entities.

Scope of Dodd-Frank Act

3. The orderly liquidation authority established in 2010 under Title II of the Dodd-Frank Act applies to bank holding companies and certain other financial companies (including privately owned and operated financial market infrastructures) and certain of their subsidiaries whose "failure … and resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States." "Financial companies" include bank holding companies, nonbank financial companies supervised by the Federal Reserve Board, any company that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto, and any subsidiary thereof that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto (other than a subsidiary that is an insured depository institution or an insurance company).

4. More specifically, the orderly liquidation authority under Title II of the Dodd-Frank Act applies to a financial company only following, among other things, an evaluation by the specified U.S. agencies as to why a case under the Bankruptcy Code is inappropriate and a

determination by the Secretary, in consultation with the President of the United States, that such financial company's failure and resolution under otherwise applicable Federal or State law would have serious adverse effects on U.S. financial stability. Such a determination is made as part of the decision to put the financial company into resolution under the orderly liquidation authority of the Dodd-Frank Act.

Role of FDIC

5. The powers granted to the FDIC as receiver under Title II of the Dodd-Frank Act are analogous to those the FDIC uses to resolve failed insured depository institutions under the FDI Act. The FDIC must exercise these powers in a manner which is intended to preserve financial stability while minimizing moral hazard. These authorities include

(i) an immediate source of liquidity for an orderly liquidation, which allows continuation of essential functions and maintains asset values;

(ii) the ability to make advance dividends on creditor claims and prompt distributions to creditors based upon expected recoveries;

(iii) the ability to continue key, systemically important operations, including through the formation of one or more bridge financial companies; and

(iv) the ability to transfer all qualified financial contracts with a given counterparty to another entity (such as a bridge financial company) and avoid their immediate termination and liquidation to preserve value and promote stability.

6. Under the reforms, the FDIC's resolution authority is significantly expanded. The FDIC is to be appointed receiver for failed systemically important financial companies under the Dodd-Frank Act and for failed insured depository institutions under the FDI Act. The FDIC must be appointed as receiver for insured federal savings associations and national banks. For state chartered and Federal Reserve member banks, the chartering authority has the option of appointing the FDIC as receiver, although rarely has another entity been appointed.

7. In addition, the FDIC as receiver of a covered financial company under Title II of the Dodd-Frank Act may, in certain circumstances, appoint itself receiver for any of the covered financial company's subsidiaries that are not themselves insured depository institutions, insurance companies, or certain brokers or dealers. In the event of multiple resolution proceedings for separate legal entity subsidiaries of a parent holding company deemed to be systemically significant, the FDIC would retain the role as lead resolution authority for the entire financial group.

8. Arrangements for cooperation and communication are typically set out in statutes. For example, the Dodd-Frank Act requires that when the FDIC acts as receiver for a covered broker or dealer, the FDIC must appoint the Securities Investor Protection Corporation (SIPC) to act as trustee. Where the FDIC is appointed receiver for an insurance company, such resolution is required to be conducted in accordance with applicable State law. The Dodd-Frank Act also contemplates consultation by the FDIC as receiver with SIPC and the Securities and Exchange Commission (SEC) in connection with the determination of whether to transfer customer accounts of a covered broker or dealer to another broker or dealer rather than to a bridge financial company.

Triggers for Resolution

9. Under the FDI Act, the decision to resolve an insured depository institution is made by its Federal or State chartering authority. If the chartering authority decides to place the institution into receivership, the FDIC must be appointed receiver. Under the FDI Act, intervention will be triggered by the failure of an insured depository institution to maintain adequate capital, and/or operating in an unsafe or unsound condition. Triggering events include:

- (i) failure to maintain adequate capital (below a tangible capital to assets level of less than 2 per cent of assets under the prompt corrective action scheme);
- (ii) assets are less than the institution's obligations;
- (iii) substantial dissipation of assets due to any violation of any statute or regulation, or any unsafe or unsound practice;
- (iv) an unsafe or unsound condition to transact business;
- (v) any wilful violation of a cease-and-desist order;
- (vi) any concealment of the institution's books, papers, records, or assets;
- (vii) the institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business;
- (viii) the institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized without federal assistance;
- (ix) any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, weaken the institution's condition or otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund;
- (x) the institution consents to the appointment;
- (xi) the institution ceases to be an insured institution;

(xii) the institution is undercapitalized under the prompt corrective action scheme and (a) has no reasonable prospect of becoming adequately capitalized; (b) fails to become adequately capitalized when required to do so; (c) fails to submit a capital restoration plan acceptable to its federal supervisor within the time prescribed; or (d) materially fails to implement a capital restoration plan;

(xiii) the insured depository institution is critically undercapitalized;

(xiv) for national banks, the bank has fewer than five directors;

(xv) the insured depository institution has been found guilty of a money laundering offense;

(xvi) under the Dodd-Frank Act, the insured depository institution defaults on an obligation guaranteed by the FDIC; and

(xvii) for a federally licensed branch of a parent foreign bank, if the Comptroller of the Currency is of the opinion or has reason to believe that such foreign bank has violated or failed to comply with any of the relevant provisions, or any rules, regulations or orders of the Comptroller of the Currency, or a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization.

10. Under the Dodd-Frank Act, a financial company is subject to orderly liquidation following the statutorily prescribed recommendation, determination and expedited judicial review process, which includes the requirement that the Secretary determine, among other things, that the financial company is in default or in danger of default. Section 203(c)(4) of the Dodd-Frank Act provides that, for purposes of Title II of the Dodd-Frank Act, a financial company shall be considered to be in default or in danger of default if -

a) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code,

b) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion,

c) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others, or

d) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

11. In order for the FDIC to be appointed receiver under Title II of the Dodd-Frank Act for a failed or failing systemically important financial company, a recommendation, determination and expedited judicial review process must transpire. The recommendation process is initiated at the Secretary's request or upon the initiative of the Federal Reserve Board and the FDIC, in the case of a standard financial company. The recommendation to place a broker or dealer (or a financial company in which the largest domestic subsidiary is a broker or dealer) into receivership is made by the Federal Reserve Board and the SEC, in consultation with the FDIC. Similarly, the recommendation to place an insurance company (or a financial company in which the largest domestic subsidiary is an insurance company) is made by the Federal Reserve Board and the Director of the Federal Insurance Office, in consultation with the FDIC. In each instance, the decision to resolve a financial company is simultaneously a decision under the statute to appoint the FDIC as receiver for the failed financial company.

12. Upon a 2/3 vote by both boards (or a 2/3 vote by the Federal Reserve Board and the SEC in the case of a broker or dealer or a financial company in which the largest domestic subsidiary is a broker or dealer, or a 2/3 vote by the Federal Reserve Board and the approval of the Director of the Federal Insurance Office in the case of an insurance company or a financial company in which the largest domestic subsidiary is an insurance company), a written recommendation is delivered to the Secretary. The written recommendation must include: an evaluation of whether the financial company is in default or danger of default; a description of the effect the failure of the financial company would have upon U.S. financial stability; an evaluation of why a case under the Bankruptcy Code is not appropriate; and certain other evaluations required by statute.

13. The Secretary, in consultation with the President, is responsible for making a determination as to whether the financial company should be placed into receivership under the Dodd-Frank Act. Such determination must include, among other things, the Secretary's determination that the financial company is in default or in danger of default, that the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on U.S. financial stability, and that an orderly resolution under Title II would avoid or mitigate the adverse risks to U.S. financial stability.

14. The FDIC is appointed receiver of the financial company following successful completion of an expedited judicial review process. Under that statutory process, the board of directors of the financial company may acquiesce to the appointment of the FDIC as receiver. If the board of directors does not acquiesce to the appointment, the Secretary is

responsible for petitioning the District Court for the District of Columbia for a hearing. The hearing is confidential. Its results may be appealed, but there is no stay pending any such appeal.

15. If the District Court does not make a determination within 24 hours of receipt of the Secretary's petition, the Secretary's petition is granted by operation of law, and the FDIC is appointed receiver of the covered financial company.

Resolution Tools

Purchase and Assumption Transactions

16. The most common resolution method used by FDIC for failing banks and thrifts is the purchase and assumption (P&A) transaction. A P&A transaction is a closed institution transaction in which a healthy institution (generally referred to as either the acquirer or the "assuming" bank or thrift) purchases some or all of the assets of a failed bank or thrift and assumes some or all of the liabilities, including all insured deposits. Occasionally, an acquirer may receive assistance from the FDIC as insurer to complete the transaction. As a part of the P&A transaction, the acquirer usually pays a premium to the FDIC for the assumed deposits, which decreases the total resolution cost.

Deposit Payoffs

17. A deposit payoff is only executed if the FDIC does not receive a bid for a P&A transaction that meets the least cost test. There are two types of deposit payoffs. The first type is a straight deposit payoff, in which the FDIC in its corporate capacity ensures that each depositor is paid the amount due, up to the insured limit. The second type is an insured deposit transfer, in which insured deposits and secured liabilities of a failed bank or thrift are transferred to a healthy institution, and service to insured depositors is uninterrupted.

Bridge tool

18. Under the Dodd-Frank Act and the FDI Act, a receiver is generally appointed in respect of a failed financial company or insured depository institution, respectively, at which time such institution is closed. The receiver has the authority to manage and operate assets and operations of the predecessor institution in resolution, including by use of a bridge entity. In addition, the FDIC is authorized under both the Dodd-Frank Act and the FDI Act to utilize private persons to, among other things, provide management services in respect of bridge institutions and entities in resolution. The FDIC can repudiate contracts, transfer contracts, purchase and sell assets, and has other powers necessary to resolve the failed institution, including by establishing a bridge institution. In addition, the FDIC can manage, through a

receivership or one or more bridge entities, the assets and operations of the failed firm in receivership. The FDIC is empowered to operate the failed insured depository institution or covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the entity, and to conduct all business of the entity.

19. Under both the Dodd-Frank Act and the FDI Act, a bridge institution may operate without any capital or surplus, or with such capital or surplus as the FDIC as receiver may in its discretion determine to be appropriate. The FDIC as receiver also has discretion to cause capital stock or other securities of a bridge institution to be issued and offered for sale in amounts and on terms and conditions as the Corporation may determine. Under the Dodd-Frank Act, the status of a bridge financial company shall terminate as such upon, among other things, the sale of 80 per cent or more of its capital stock to a person or entity other than the FDIC or another bridge financial company. Under both the Dodd-Frank Act and the FDI Act, the FDIC as receiver may in its discretion either raise capital or make funds available for the operation of the bridge institution in lieu of capital. Under the Dodd-Frank Act, the FDIC as receiver may authorize a bridge institution to obtain credit.

20. The transfer of assets or liabilities from the institution in an FDIC receivership to the bridge institution is typically effectuated through purchase and assumption agreements. Typically, the terms of the purchase and assumption agreements provide for only a limited period during which assets or liabilities transferred to a bridge institution may be put back to the receivership, and then only for purposes consistent with efficient resolution.

Single Point Entry

21. The FDIC has developed a resolution strategy - the single point of entry creditor capitalization resolution strategy - that is being specifically tailored for use in the resolution of those global systemically important financial institutions ("G-SIFIs") that are potentially subject to the FDIC's resolution authority under Title II. Under this still-evolving resolution strategy, the FDIC will be appointed as receiver of the ultimate parent holding company of the financial group following the company's failure and the completion of the appointment process set forth in Title II of the Dodd-Frank Act. Immediately following the parent holding company being placed into receivership, a bridge financial company will be formed into which the assets of the failed financial company, including its investments in and loans to subsidiaries, will be transferred. This newly-formed bridge financial company will allow the enterprise to continue to perform the systemically important functions of the failed financial company, thereby minimizing disruptions to the financial system and minimizing the risk of spill over effects to counterparties. Subsidiaries - both domestic and foreign - of the financial

company may remain open and operating. The Orderly Liquidation Fund will be available to provide liquidity and guarantees, as necessary, to the bridge financial company, which will then serve as a source of strength to its subsidiaries by arranging for necessary funding. Following completion of a valuation and claims process, the enterprise may be recapitalized by creditors in the failed financial company receiving a combination of equity and new debt in the new financial company in satisfaction of their claims against the receivership.

22. The FDIC has broad discretion in exercising the single point of entry creditor capitalization resolution strategy (e.g., bail-in within resolution). The receiver has the authority to exercise this resolution strategy by satisfying creditor claims through provision of equity in a newly formed bridge entity. The FDIC anticipates that in most cases, general creditor claims such as long-term unsecured debt would be subject to conversion to equity. Such debt would not be limited to pre-defined instruments such as contingent capital. As part of the claims administration process, the receiver is required to administer claims in accordance with the statutory order of priorities.

Funding for Operational Expenses

23. The operations of the FDIC acting in its corporate capacity are generally funded by the Deposit Insurance Fund, which is funded through regular assessments on insured depository institutions. With respect to operations of the FDIC in its capacity as receiver of failed insured depository institutions, such operations are funded by the assets of the failed insured depository institution and, if necessary, the Deposit Insurance Fund.

24. Reasonable implementation expenses of the FDIC incurred as part of its efforts to implement Title II of the Dodd-Frank Act, including expenses related to the development of policies, procedures, rules and regulations and other planning activities, are to be reimbursed by the Financial Stability Oversight Council (FSOC). The FSOC's expenses are funded through assessments on industry participants by the Office of Financial Research. The FDIC's operations relating to the resolution of covered financial companies under Title II of the Dodd-Frank Act are funded by the assets of the failed covered financial company and the Orderly Liquidation Fund. If the proceeds of the resolution of the failed covered financial company are insufficient to repay any amounts borrowed from the Orderly Liquidation Fund, such shortfall is funded through risk-based assessments on certain financial companies. By law, taxpayers shall bear no losses from the FDIC's exercise of authority under Title II of the Dodd-Frank Act.

25. The Dodd-Frank Act amended the FDI Act to prohibit the FDIC from providing

assistance to an open insured depository institution. Similarly, Section 1101 of the Dodd-Frank Act amended the FRA to prohibit the Federal Reserve Board from providing certain emergency assistance to insolvent institutions.

26. With respect to securities investors, SIPA created a SIPA Fund, which may be used by SIPC in the resolution of a broker or dealer. SIPC uses the fund to advance to the trustee for the liquidation up to $500,000 for each customer of the broker or dealer with a claim for cash or securities as may be required to pay or otherwise satisfy customer claims when such customer claims exceed the pro rata share of customer property. With respect to insurance entities, State-operated guaranty funds compensate claimants according to the limits of State laws. Insurance guaranty funds are funded by assessments on the remaining industry participants offering coverage for that line of insurance in that State.

Order of priorities in claims

27. As part of the claims administration process, the receiver is required to administer claims in accordance with the statutory order of priorities. Under the priority scheme, subordinated claims, general creditor claims (which would include senior unsecured claims) are subordinate to certain other claims, including administrative claims, and therefore may be subject to loss. Equity interests are the lowest priority claim. Accordingly, an equity claimant would not be entitled to receive any remuneration (including any interest in a newly formed bridge entity) until all other creditors, including general unsecured creditors and subordinated creditors, had been paid in full.

Recovery and resolution planning

28. Under Title II of the Dodd-Frank Act, the FDIC is the resolution authority for failing financial companies for which a systemic determination is made under Section 203 of that Act. Accordingly, the FDIC is preparing standby resolution plans and resolution strategies to be able to exercise this authority, if necessary, in the event of the failure of such an institution. The U.S. banking agencies, under their supervisory powers and safety-and-soundness authority, requested the largest globally active U.S. banking organizations to develop recovery plans beginning in 2010. The Federal Reserve expects to provide additional guidance related to recovery planning and require all U.S. G-SIFIs to create and maintain recovery plans by the end of 2013.

Information sharing arrangements

29. The U.S. banking agencies have authority to share information with domestic and foreign regulatory and supervisory agencies, as well as with “any person that the Federal

banking agency determines to be appropriate." An authority would generally be considered an "appropriate" or "proper" recipient if it has supervisory or resolution responsibilities for a financial institution, it has a clear and legitimate need for the information in order to carry out those responsibilities, and it agrees to keep the information confidential to the fullest extent possible under applicable law. As a general matter, only information directly relevant to the specific statutory responsibilities of an authority would be shared with that authority.

30. The U.S. banking agencies may share all types of information (including customer and firm-specific data) related to the recipient's responsibilities for supervision and resolution of financial institutions. Customer data is afforded a high degree of protection and is generally not shared unless a foreign authority has a specific supervisory or resolution-related need for such information. There are, however, no significant legal hurdles to sharing such information in appropriate circumstances.

31. The U.S. banking agencies require the recipient of shared information to agree to maintain the confidentiality of the information under a fully adequate legal regime and to the fullest extent permitted by law. Before providing information to foreign authorities, the U.S. banking agencies generally request and evaluate information about the legal regime governing protection of information in the foreign authority's jurisdiction. The U.S. banking agencies would not provide information (or would provide more limited information) if the foreign legal regime did not appear adequate to protect it.

32. Generally, the agency disclosing the information must determine that such disclosure will not prejudice the interests of the United States. Further, pursuant to the regulations cited above, the authority making the request must also demonstrate a need for the information.

33. Whether an MOU is necessary or appropriate depends on the circumstances. For sharing information between certain agencies, including the U.S. banking agencies, MoUs are not required, but a recipient authority would generally be required to agree in writing to use information only for the purposes of supervision, recovery and resolution planning, and resolution, and to keep it confidential to the fullest extent permitted by law. In most cases, reciprocity is not a requirement, but the U.S. banking agencies and the SEC would take into account an authority's willingness to share relevant information on a reciprocal basis.

34. Information provided to an agency by a third party would not generally be shared unless the person that provided it consents or such information is of a nature that it is not protected for some reason, for example, it is the subject of certain law enforcement

investigations. The U.S. banking agencies will only be able to share information obtained from or produced jointly with other domestic authorities (e.g., state banking supervisors) with foreign authorities with a role in resolution if the domestic authority that provided or jointly produced the information agrees to such disclosure.

Resolution Framework in the United Kingdom

35. The institutional framework for regulation of financial sector and bank resolution is governed by the following agencies:

- *Her Majesty's Treasury (HMT)*: in addition to the overall institutional structure of financial regulation and the legislation that governs it, informs to parliament regarding the management of serious disruptions to the financial system and measures to resolve them (including exceptional solvency support from HMT itself).
- *Bank of England (BoE)*: acts as lender of last resort in order to limit risk of problems affecting a particular institution from spreading to other parts of the system. It acts as the lead resolution authority for failing U.K. banks and building societies under the special resolution regime introduced by the Banking Act, 2009 (BA).
- *Financial Services Authority (FSA)*: Acts as prudential supervisor with key operational role of resolving problems at firms prior to resolution via capital raising; and business disposals. Triggers the Special Resolution Regime (SRR) and is responsible for authorization and supervision of bridge banks created under the SRR.
- *Financial Services Compensation Scheme (FSCS):* FSCS, an operationally independent body accountable to the FSA, manages a protection scheme with five sub-schemes for different categories of customers, one of those being insured depositors in deposit-taking institutions.

Banking Act 2009

36. Pre-crisis, the resolution of U.K. banks had relied on general corporate insolvency law (codified largely in The Insolvency Act of 1986). Lacking an appropriate legal framework for bank resolution, the United Kingdom responded to the failure of Northern Rock by adopting the Banking (Special Provisions) Act, 2008 (BSPA) in February 2008 as an emergency, temporary measure with a sunset clause of one year. The BSPA provided broad powers (based around forced changes to capital structure and mandatory transfers of property) to HMT used in the resolution of Northern Rock and other problem banks.

37. The BA establishes a permanent resolution framework built around a SRR for resolving banks, which includes a set of directed transfer powers (referred to as "stabilization

powers" in BA) and a Bank Insolvency Procedure (BIP) for winding up insolvent banks in a manner protecting insured depositors. The BA, inter alia, sets out the trigger points for invoking the SRR, the objectives of the SRR, the various stabilization (i.e., transfer) options under the SRR, and the tools for achieving the desired results. The BA confers on the BoE and HMT powers to effect specific stabilization options in various situations and creates an obligation to consult with other authorities. Important secondary legislation sets out the standards for compensation to stakeholders affected by the resolution and also provides important creditor safeguards, preventing property transfer powers from being used in ways that could interfere with netting, security interests, and collateral rights for the mitigation of credit risk, and ensuring that in partial property transfers creditors are left no worse off than if the whole bank had been liquidated.

Special Resolution Regime

Objectives

38. The SRR provides a major step forward in U.K. legislation and has been in many respects the model for the current proposed resolution framework in the EU. When taking or contemplating any action under the SRR, the authorities must have regard to specified objectives. The objectives are not ranked according to any priority and their relative importance depends on the particular situation.

- Objective 1: to protect and enhance the stability of the financial systems of the United Kingdom
- Objective 2: to protect and enhance public confidence in the stability of the banking systems of the United Kingdom.
- Objective 3: to protect depositors
- Objective 4: to protect public funds
- Objective 5: to avoid interfering with property rights in contravention of a convention right (within the meaning of the Human Rights Act 1998).

Resolution Tools

39. The SRR comprises three 'stabilization options' for resolving a troubled bank (i) transfer to a private sector purchaser; (ii) transfer to a bridge bank; and (iii) temporary public ownership. In this context, a 'bank' is effectively defined as an authorized deposit taking firm (per S2(1) of the Act). The stabilization options are effected by way of the "stabilization powers" which are the share and property transfer powers. The property transfer powers can be used to transfer only part of the property of the bank. The legislation also includes: (i) a bank insolvency procedure (BIP) for winding up a bank (in a manner that fully protects insured depositors) that is not resolved using a stabilization option; and (ii) a bank

administration procedure (BAP) to govern the insolvency of a residual entity that is left behind after the use of the property transfer powers where they have been exercise to transfer only part of the business of the BoE.

40. Before any stabilization power is used, the FSA (now Prudential Regulation Authority (PRA)[1])must determine that both of the following 'general conditions' have been satisfied: condition 1 is that the bank is failing, or is likely to fail, to satisfy the threshold conditions for holding a banking license; and condition 2 is that having regard to timing and other relevant circumstances it is not reasonably likely that (ignoring the stabilization powers) action will be taken by or in respect of the bank that will enable the bank to satisfy the threshold conditions. The threshold conditions that are relevant to the FSA's determination are all of the conditions that an entity must fulfill in order to be authorized to carry out the regulated activity of deposit taking. While this covers a range of both qualitative and quantitative criteria, the most important conditions for SRR purposes would be prudential standards. Although the FSA makes the determination of the general conditions, the legislation requires it to consult with HMT and BoE.

41. If the general conditions are met, either the BoE (for transfer to a private sector purchaser or bridge bank) or HMT (for Temporary Public Ownership (TPO)) may use a stabilization option, subject to the relevant 'specific conditions'. Essentially, the specific conditions are public interest tests, where the relevant authority (whether the BoE or HMT) have to be satisfied that use of a stabilization option is necessary to counter a threat to U.K. financial stability or to protect the public interest. The threshold in the legislation is highest for TPO. The TPO is a 'last resort' option depending on necessity to counter a "serious threat" to financial stability. (In certain situations, the TPO power may also permit HMT to place a holding company in temporary public ownership). While the BoE and HMT have primary responsibility for determining if specific conditions are met, the legislation requires that they consult with each other and the FSA. If no specific conditions for using a stabilization option are met, the bank would be placed into the bank insolvency procedure with insured deposits being transferred to another bank, or FSCS paying out to insured depositors as rapidly as possible. It should be noted that even if the specific conditions are

[1]The Prudential Regulation Authority (PRA), as part of the Bank of England, has become the United Kingdom's prudential regulator for banks, building societies and credit unions (collectively called deposit-takers), insurers and major investment firms. Accordingly, the Financial Services Authority (FSA) now ceases to exist. The PRA, whose objective is to promote the safety and soundness of these firms, seeking to minimize the adverse effects that they can have on the stability of the UK financial system, and contribute to ensuring that the insurance policyholders are appropriately protected. The PRA works with the Bank of England's Special Resolution Unit, which plans for and implements resolutions of failing UK banks and building societies, on resolution and operational resilience.

met for any of the stabilization options, the relevant authority need not take that action (i.e., the authority is not under a duty to do so, rather they have available the power to take the relevant action where the conditions are met).

42. Upon entry into the SRR, the BoE is the lead authority (except for TPO—for which HMT leads) conducting any sale of the bank to private parties or, as an intermediate measure, by establishing a bridge bank. After transfer powers have been used, the SRR also includes a bank administration process for the insolvency of the residual entity. An important feature of the bank administration process is a requirement for the residual institution in administration to provide continued services and facilities as needed to the recipient of the transferred business to enable it to operate effectively.

Scope of SRR

43. The SRR is applicable to commercial banks and, with some modifications to building societies that are authorized to accept deposits in the United Kingdom. BA provisions may also apply to credit unions, after a regulation by HMT to implement this provision in the legislation. The U.K. holding companies of banking groups are included to a limited extent (TPO is the only stabilization option to which holding companies may be subject). Also certain "continuity obligations" may be imposed on a residual bank or other banking group companies to continue to provide services and facilities to a solvent transferee (including a bridge bank) to which part or all of the business of a failing bank has been transferred. But the stabilization powers of the SRR are largely orientated at deposit-taking entities.

Triggers for the SRR

44. The triggers for initiation of the key powers available in the UK SRR are set out in Section 7 of the Banking Act. They are twofold and both conditions must be satisfied. First, the bank must be failing, or likely to fail, to satisfy its 'threshold conditions'. Second, it must not be reasonably likely that action will be taken by or in respect of the bank (other than potentially through the SRR) that would enable it once again to satisfy the threshold conditions.

45. The main reason for using the threshold conditions as the trigger is that these are the regulatory requirements which any UK bank undertakes to meet in order to gain authorisation from the FSA to accept deposits and carry out regulated banking activities. It is appropriate, therefore, that banks that no longer meet the conditions for authorisation, and have no prospect of doing so in future, should be placed into the SRR and may lose their deposit-taking authority.

46. These decisions are in essence regulatory judgements and so are taken by the FSA in the United Kingdom. The United Kingdom is no different from virtually all other major countries with special regimes in assigning to the banking supervisors the right to trigger the SRR. This does of course raise the generic and frequently highlighted risk of regulatory forbearance, which in this case means that the banking supervisors may delay too long in triggering the regime. This risk is partly addressed in the United Kingdom by a key aspect of the design of the triggers, which is that they enable a failing bank to be placed into resolution before it is balance sheet insolvent. In addition, in UK, the Bank of England has been given the right to make a recommendation to the FSA to trigger the regime.

Partial property transfers

47. The most widely commented-upon aspect of the UK SRR is the power of the authorities to split up a bank and effect a partial property transfer (PPT). The PPT powers are closely modelled on the US approach in particular. When the FDIC exercises its power to transfer part of the assets and liabilities (including financial contracts and derivatives) of a failed bank (either to a PSP or a bridge bank), it simultaneously establishes a 'receivership', into which the remaining assets and liabilities are placed. The receivership is very similar to the bank administration procedure (BAP) that comes into effect in a PPT under the UK SRR. In both cases, essential facilities or services that has not been possible to transfer may be used to support the PSP or bridge bank as necessary, while assets can be moved between the two entities in order to maximise the chances of effecting a going concern sale at a premium of as many as possible of the failed bank's assets.

48. The current crisis has resulted in increasing interest in the use of PPTs, bridge banks and good bank/bad bank resolution approaches, given the cost and difficulty of arranging whole-bank resolutions when there are no current buyers for substantial parts of failed banks' assets. In these circumstances, one of the key advantages of a PPT is that it makes it possible to effect a resolution at lower cost to the taxpayer, for example by allowing a greater proportion of the losses to be imposed on junior creditors, such as subordinated debt holders, whose claims may be left behind in the rump of the failed bank rather than being transferred to a private sector purchaser or bridge bank.

Creditor and counterparty safeguards

49. The UK SRR contains a number of explicit safeguards designed to protect creditors, counterparties and shareholders of a failed bank, especially in a PPT. The US SRR also features a version of the no creditor worse off safeguard, which was adopted in 1989. There is no depositor preference in the UK SRR, so the FSCS, when subrogated to the claims of

eligible depositors, will rank equally with the non-depositor unsecured creditors in the BIP or BAP. Further, where the SRR powers are exercised in a way that would interfere with a shareholder's, counterparty's or creditor's rights by depriving them of their contractual or property rights, the shareholder, counterparty or creditor has a valid claim to proportionate compensation under the Human Rights Act (enshrining the ECHR in UK law). The Banking Act provides a detailed framework for the payment of compensation to such claimants.

Financing Bank Resolution

50. The FSCS (the U.K.'s DGS) may participate in funding resolution under the SRR. The role of the scheme is not limited to repayment in liquidation. Indeed, it may contribute to the funding of SRR resolution transactions up to an amount not exceeding the cost to the FSCS, net of recoveries, of paying out to insured depositors in insolvency. The FSCS is funded ex post and has access to HMT finance. Normally, the costs for resolution would be met by sales and other proceeds from the bank itself. However, if additional funds are needed, the FSCS has access to liquidity support via loans from the National Loan Fund.

Financial Services Compensation Scheme

51. The FSCS is an ex-post funded scheme so when the scheme has incurred costs, the membership, which consists of all institutions having insured deposits, will be required to cover the costs on a pro rata basis (respective share of protected deposits up to the compensation limit per individual depositor per authorized bank). The principal costs for the pay-outs during 2008 have not yet been allocated, awaiting the liquidation proceedings, which will decide the final net costs to the FSCS. In the meantime, the Treasury has provided the FSCS with a loan, the principal of which will be repaid from 2012 onwards (interest on the loans is currently being repaid). In winding up procedures, when the FSCS is subrogated to transferred depositors, the FSCS ranks pari-passu with other unsecured creditors.

52. FSCS funds may be used for:

(i) Pay-out to depositors in an application of the bank insolvency procedure.

(ii) Financing the transfer of insured deposits to another institution under the bank insolvency procedure.

(iii) Contributing to a non-payout resolution of a failed bank using the stabilization powers. In this case, the FSCS will only act upon the order of HMT and the FSCS; contribution must be no more costly to the FSCS, net of recoveries, than if the payout/liquidation option had been used.

Draft EU Framework for Bank Recovery and Resolution

53. The EU bank insolvency regime is governed by Directive 2001/24/EC, which provides exclusive competence for the home member state to take reorganisation measures and to initiate liquidation proceedings in order to resolve a parent bank and its branches in a single insolvency proceeding. As per the Directive, a credit institution is to be resolved in accordance with the laws and regulations applicable in its home member state (which is the competent country) insofar as the Directive does not provide otherwise. The Directive determines the competency and applicable law in the case of cross-border bank insolvency, but it does not harmonise the substantive laws of member states. Further, the Directive only covers insolvency of a parent bank with branches. It excludes from its scope the banking and financial groups consisting of subsidiaries. The host country authorities are competent to deal with the insolvency of subsidiaries.

Proposed EU Directive

Scope and Objectives

54. A proposed Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms establishes a regime relating to the recovery, resolution and orderly dissolution of failing credit institutions and certain investment firms and their subsidiary financial institutions and firms that are covered by the supervision of the parent undertaking on a consolidated basis. The regime also applies to financial holding companies, mixed financial holding companies, mixed activity holding companies and branches of institutions having their head office outside the EU under the specific conditions laid down in the Directive. The resolution objectives are to ensure the continuity of critical functions; to avoid significant adverse effects on financial stability and to protect public funds, insured depositors, client funds and client assets.

Institutional Framework

55. The proposed Directive requires EU member states to appoint one or more public administrative authorities as resolution authorities that should have sufficient expertise and resources to manage bank resolutions at national and cross-border levels. The resolution authorities can be central banks, financial supervisors, deposit insurance agency or special authorities. However, if a resolution authority is established within a supervisory institution, then the functional separation of two activities is suggested in order to minimise the risk of supervisory forbearance. In terms of institutional design for cross-border resolution, the proposed Directive envisages that group-level resolution authorities shall establish resolution

colleges with a clear leadership and with the participation of the European Banking Authority (EBA). All the national authorities involved in the resolution of institutions should be represented in resolution colleges.

Early intervention and trigger point

56. The proposed Directive enhances the powers of supervisors to intervene at the early stage of financial difficulties where an institution does not meet or is likely to breach the regulatory capital requirements. These powers essentially supplement the powers provided to supervisors under EU banking legislation. The powers comprise the capacity to require the institution to implement measures set out in the recovery plan; to prepare an action programme and a timetable for its implementation; to require the management to convene, or to convene directly, the shareholders' meeting, to propose the agenda and the adoption of certain decisions; to require the management to remove and replace one or more board members or managing directors; to require the institution to prepare a plan for restructuring of debt with its creditors; to acquire all necessary information in order to prepare the resolution and to contact potential purchasers. Moreover, the supervisors will have the power to appoint a special manager to replace the management of the institution for a limited period with a duty to restore the financial situation of the institution and to ensure the sound and prudent management of its business.

57. The proposed Directive aims to harmonise the triggers for the application of resolution tools. It is recognised that regulatory forbearance until the point of insolvency will limit the choice of effective options for resolution or increase the costs of resolution and the losses incurred by creditors. Therefore, to protect financial stability, the trigger conditions for the employment of resolution tools and powers ensure that authorities can take actions without being required to establish that the institution in question is insolvent. Thus, it would be possible to place the institution into resolution before it is balance-sheet insolvent and all equity has been exhausted. However, failing to meet authorisation requirements should not justify per se initiating resolution proceedings, in particular if the institution is still or likely to be viable. In this respect, an institution is regarded as failing, or likely to fail, if the institution has incurred, or is likely to incur, losses that will deplete all or most of its capital, or its assets are, or are likely to be, less than its liabilities, or it is, or is likely to be, unable to pay its debts as they fall due or it requires extraordinary public financial support.

Resolution Tools

58. The proposed Directive provides resolution authorities with the power to apply certain resolution tools including the sale of business tool, the bridge institution tool, the asset

separation tool and the bail-in tool, when the trigger conditions for resolution are determined. The Directive presents a minimum set of resolution tools that should be adopted; however, member states will be able to additionally retain specific national tools and powers to deal with failing banks when they are compatible with the principles and objectives of the EU bank resolution framework.

59. The sale of business tool comprises both merger/acquisition and purchase and assumption transactions. Thus, resolution authorities will be able to affect a sale of the institution, or the whole or part of its business on commercial terms, without the consent of shareholders or complying with procedural requirements that would otherwise apply. In this regard, disclosure of information concerning the marketing of a failed institution and the negotiations with potential acquirers might be delayed to protect financial stability.

60. Under the bridge institution tool, resolution authorities will have the power to transfer all or part of the business of an institution to a publicly controlled bridge institution that operates temporarily to ensure that essential financial services continue to be provided to the customers and that essential financial activities continue to be performed. This institution should be put back on the market, or wound down when market conditions are appropriate.

61. The asset separation tool refers to good-bank/bad-bank separation, in which the resolution authorities will be able to transfer impaired or problem assets to an asset management vehicle or a bad bank to allow them to be managed and worked out over time. The asset separation tool should only be employed in conjunction with another resolution tool in order to minimise competitive distortions and risks of moral hazard.

62. The proposed Directive also includes the bail-in tool, which can be employed to recapitalise a failing institution, allowing authorities to restructure it through an open-bank resolution as a going concern. It may also be employed in cases where the failing bank is closed, for instance, to convert claims of creditors against the failed bank into equity in a bridge bank. This tool would provide resolution authorities a great flexibility in their response to the failure of large, complex financial institution, and would be accompanied by removal of management responsible for the problems of the institution and the implementation of a business reorganisation plan in cases where it is applied to restore the capital of the failing institution to enable it to continue its operation as a going concern. The bail-in tool should not be applied to secured claims as well as certain type of unsecured claims such as insured deposits, liabilities to employees of the failing institution or commercial claims that relate to goods and services necessary for the daily functioning of the institution. The application of

bail-in tool should respect the equal treatment of creditors and the statutory ranking of claims.

Resolution powers and stakeholders safeguards

63. The proposed Directive confers resolution authorities all necessary legal powers that may be exercised in the application of the resolution tools, including the powers to transfer shares in, or assets, rights and liabilities of, a failing institution to another entity such as another credit institution or a bridge institution; powers to write off or cancel shares or write down or convert debt of a failing institution and power to replace the management. However, the proposed Directive does not prescribe the exact means through which the resolution authorities should intervene in the insolvent institutions.

64. The effective implementation of resolution tools and transfer of assets and liabilities requires allowing resolution authorities to impose a temporary stay, which would last no longer until 17:00 on the next business day, on the exercise by creditors and counterparties of rights to enforce claims and close-out, accelerate or otherwise terminate contracts against a failing institution. Such a temporary stay provides authorities a period of time to identify and value those contracts that need to be transferred to a solvent third party, without the risk that financial contracts would change in value and scope as counterparties exercised termination rights. Termination rights for those counterparties remaining with the failed institution would resume at the end of the stay. Nonetheless, transfer to a performing third party should not qualify as an event of default that triggers termination rights. These necessary restrictions on contractual rights are balanced by safeguards for counterparties to prevent authorities from splitting linked liabilities, rights and contracts: under a partial property transfer, linked arrangements should either all be transferred or not transferred at all. Arrangements include close-out netting agreements, set-off arrangements, title transfer financial collateral arrangements, security arrangements and structured finance arrangements.

65. In the light of these broad resolution tools and powers, it is expected that the decisions and actions taken by the resolution authorities should be subject to judicial review. However, in order to ensure stability of the financial system and the efficiency of resolution process, the scope of the judicial review should be limited to the legality of the action and to the award of compensation for the damages suffered by the affected persons.

Funding Arrangements

66. The funding of the resolution is vital to preserve the functioning of the systemically

important part of a failing bank. Moreover, the effective application of certain resolution tools requires short-term funding, for instance, to provide necessary funding or capital for a bridge institution or the provision of guarantees to potential purchasers. In this regard, it is necessary that member states establish financing arrangements to avoid the use of national budgets to finance resolution. The proposed Directive aims to establish arrangements for financing resolution measures, i.e., a European System of Financing Arrangements that consists of national financing arrangements, the borrowing between national financing arrangements and the mutualisation of national financing arrangements.

67. Accordingly, each member state should set up resolution financing arrangements to ensure efficient implementation of resolution tools and powers. These arrangements should solely be used in accordance with the resolution principles and objectives. In this respect, any losses and costs incurred by the employment of the financing arrangements shall be consecutively borne by shareholders and the creditors of the failed institution.

68. The proposed Directive determines the optimal amount of money that needs to be available in each member state and presents a model for ex ante contributions to the financing arrangements. According to the model, the calculation of contributions depends on the decision of the member state whether or not to use the funds of deposit insurance scheme for financing resolution measures and the amount of institution's liabilities. National financing arrangements will have the right to borrow from all other financing arrangements within the EU when the amount raised is not sufficient to finance the resolution. In parallel to this provision, national financing arrangements are obliged to lend to other financing arrangements within the EU under certain conditions. Each national financial arrangement has to contribute to the financing of group resolution together with the national financing arrangements of the other member states, in accordance with their shares. In this regard, the group level resolution authority, in consultation with the other relevant resolution authorities, should establish a financing plan determining the total financial needs for the financing of the group resolution as well as the modalities for that financing.

Resolution Framework in Australia

69. The Government enacted legislations in 2008, 2009 and 2010 to strengthen its prudential regulatory framework as well as the crisis resolution powers available to the Australian Prudential Regulation Authority (APRA). The legislation also includes with respect to powers of direction, business transfer powers, statutory management for authorised deposit-taking institutions (ADIs), and judicial management for general and life insurers.

Presently, APRA is Australia's prudential supervision authority and the primary agency responsible for the resolution of distressed ADIs and insurers. Accordingly, the APRA can facilitate recapitalisation of a distressed ADI or insurer without requiring the shareholders consent. It can also appoint a statutory manager to assume control and implement a wide range of open and closed resolutions. The APRA is also empowered to establish a bridge ADI or insurer.

70. The Australian Government has released a consultation paper in September 2012 with proposals for further reforms to APRA's crisis management powers. Though APRA has the powers to authorise a Non-Operative Holding Company (NOHC), it is not empowered to appoint a statutory manager (SM) to an ADI's NOHC and cannot apply to the Court for the appointment of a judicial manager (JM) to an insurer's authorised NOHC. Similarly, APRA does not have the power to appoint a SM to the subsidiaries of an ADI or of an authorised NOHC, and does not have the power to apply to the Court for the appointment of a JM to the subsidiaries of an insurer or of an authorised NOHC. In order to effectively and quickly resolve the distress of a financial group, with a minimum cost to the taxpayer, the Government has set out various proposals to broaden the scope of its resolution regime to the authorised NOHC and the subsidiaries of an authorised NOHC and of a regulated entity. The proposals, among others, include:

- enhancing and strengthening APRA's decision making powers, including appointment of SM or JM, over authorised NOHCs and related entities including insurers, and the subsidiaries of an authorised NOHC and of a regulated entity – including in a receivership or liquidation situation;
- empowering APRA to impose temporary stay on claw back provisions relating to financial support provided by an authorised NOHC or member of a regulated entity's group to a regulated entity as part of the resolution process and the authorised NOHC or the member subsequently been placed into insolvency administration;
- providing APRA with a specific direction power to temporarily suspend an entity's continuous disclosure obligations of information in certain circumstances for a limited period (capped at 48 hours);
- protection to directors and other officers of a regulated entity, authorised NOHC or subsidiary from any civil or criminal liability arising out of compliance of directions given by APRA;
- empowering APRA to direct a regulated entity, authorised NOHC and subsidiaries for facilitating preparation for a resolution of an entity's distress, including making specified changes to its systems, functionality, operations and group structure;

- empowering APRA to apply business transfer tool in resolution of a general insurer or life insurer, as already applicable in case of ADIs, to another body corporate;
- extending the scope of resolution regime to foreign ADIs operating in Australia;
- enabling APRA to revoke authorisation of a foreign ADI or insurer operating in Australia where the foreign regulated entity's authorisation has been revoked in its home jurisdiction;
- empowering APRA to issue directions to the foreign insurers operating through branches in Australia not to transfer its Australian assets to an offshore head office or sister branch, and also not to transfer liabilities into the Australian branch, in line with the existing powers in case of foreign ADIs;
- expanding the scope of Financial Claims Scheme to insurers in case of application made by APRA for winding up the insolvent general insurer; and
- extending the crisis management powers of APRA to FMIs.

Germany

71. The German Restructuring Act, enacted on January 1, 2011, included three main elements for restructuring entities: (i) procedural provisions for a two-stage restructuring procedure for credit institutions; (ii) regulations regarding the transfer powers; and (iii) establishment of a Restructuring Fund.

Restructuring procedure

72. The Act introduced two procedures that could be applied to distressed credit institutions. These include: (i) restructuring procedure, and (ii) reorganisation procedure. Both procedures can be initiated only by the concerned credit institution at its own discretion. Under the restructuring procedure, which does not affect third party rights, the Federal Financial Supervisory Authority (BaFin) assesses the proposed restructuring plan as regards its plausibility, implementation and compliance with legal requirements. On a positive assessment, the BaFin submits the plan to the Higher Regional Court. The reorganisation procedure is applied if the credit institution is of the belief that there are no alternatives or the stability of the financial system is at risk and could affect the third party rights (e.g. liquidation, deferral or partial write-down of liabilities, debt to equity swaps, share capital reduction, capital increase, etc.).

Transfer Order

73. The German Banking Act empowers BaFin to issue Transfer Order for transferring the whole business, or a partial transfer of assets and liabilities, of credit institutions in case

the non-viability of the bank presents a risk to the stability of the financial system, without the consent of the bank's management, creditors and shareholders. The Financial Market Stabilisation Authority (FMSA), in coordination with BaFin, is responsible for measures, including the establishment of bridge bank, necessary to give effect to the transfer of the failed institution to the bridge bank and the valuation of assets.

Restructuring Fund

74. A Restructuring Fund, to be administered by the FMSA, has been set up with contribution from all credit institutions and is used for the purpose of orderly resolution, including establishment of bridge banks, acquisition of shares, issue guarantees and adopt recapitalisation and other measures.

Switzerland

75. Following the financial crisis, the Swiss Banking Act was revised in 2011 and 2012 to include specific requirements for resolution of systemically important banks and additional restructuring mechanisms. The Banking Act provides for early intervention rights and an accelerated restructuring and resolution procedure under the lead of Financial Market Supervision Authority (FINMA) acting as resolution authority for banks and securities dealers including, in particular, bail-in powers and powers to transfer asset and liabilities to another legal entity. FINMA generally follows a Single Point of Entry (SPE) resolution strategy for bail-in of problem G-SIBs and focuses on the parent bank and, where appropriate, also the highest-level non-operating holding company. The strategy provides for shareholders and creditors at the highest level of the financial group to bear the losses while business operations are maintained. The group is recapitalised so as to make thorough restructuring possible. The group structure remains intact, business operations continue without interruption, and the continuity of economically critical functions is assured. Recapitalising via bail-in buys time to address the necessary adjustments to the business model.

76. FINMA has the powers to impose temporary stay on the early termination of financial contracts for a maximum of 48 hours, after which the counterparties are entitled to make use of their contractual termination rights to the extent that there has been a subsequent default. While in case of restructuring and liquidating banks, the courts have powers to deal with creditors challenges on FINMA's decisions, in case of systemically important banks the power is limited to ensuring the ex-post balancing of interests, e.g. by means of a compensation for a specific set of creditors. This would necessarily mean that the FINMA's decisions cannot be reversed by the Courts.

77. The resolution action is triggered, in case of banks in Switzerland, when there are reasonable grounds for suspecting that a bank is over-indebted or experiencing serious liquidity problems or when it fails to meet its capital adequacy requirements within a deadline set by FINMA, referred to as 'Point of non-viability (PONV)'. The capital trigger is activated for the financial group on a consolidated basis or at the individual parent bank entity level at the latest when total capital reaches 8% of the risk weighted assets or when the CET1 reaches or falls below 5% of the RWA. However, FINMA has certain discretion in determining whether or not the trigger is hit.

78. FINMA decides to activate bail-in powers in respect of a bank in case it considers that there is a clear prospect of a successful bail-in restoring market confidence and returning the restructured bank to a "business-as-usual" mode. As per Swiss Special Resolution Regime for banks, all claims, except those that are clearly defined, are subject to the regime of compulsory conversion of debt into equity or compulsory write-down of claims. However, all privileged claims, i.e. claims of employees, insured deposits up to the limit of the guarantee of 100,000 Swiss Francs per depositor, secured claims and claims subject to offset, are not eligible for activation of bail-in or subject to a haircut. This means that the uninsured deposits are also potentially subject to bail-in, but only if all other debt has already absorbed losses.

79. In a restructuring, any creditor has to receive at least what he would have received in liquidation. If the "no creditor worse off" principle does not lead to a positive result, the creditors who are worse off would have to be compensated ex-post.

80. The primary resolution objective of the Swiss authority is to rescue the problem bank by triggering the 'bail-in' and if it is not possible, then the emergency plan would be executed to protect critical functions. These functions would be maintained, sold off or wound down in an orderly manner. The remaining parts which are not systemically significant will be wound down or subject to liquidation.

Netherlands

81. The Dutch resolution framework was broadened to address the risks posed by systemically relevant banks. The Dutch Intervention Act for Financial Institutions authorises the Dutch Central Bank (DNB) to issue a Transfer Plan for transfer of a problem bank or insurance company, when a bank or insurance company faces difficulties relating to solvency, liquidity or compliance with regulatory technical provisions and cannot be reversed

in a timely manner. The resolution powers of DNB are limited to banks and insurers, and do not apply to foreign branches of European Economic Area (EEA) banks or to securities or investment firms or financial market infrastructure. The scope of application is not limited by an institution's size or systemic importance. However, the systemic relevance of failure is considered when selecting resolution options.

82. The Minister of Finance is empowered to intervene, if the financial stability of the financial system is at risk, in a financial firm or its parent company or expropriate assets or liabilities of a bank, insurance company or any other financial firm or the parent company. The resolution powers of the Dutch Minister of Finance apply to all financial undertakings, i.e. banks, management company, collective investment scheme, investment firm, payment service provider, depository, clearing institution, risk accepting entity, financial service provider, financial institution, pension depository, insurer or a money transaction office.

Spain

83. Following the financial crisis, the Spanish Government strengthened the deposit insurance agency (FGD) to extend its powers to provide financial support in resolution, and in June 2009 created the Bank Resolution Authority (FROB) to assist the reorganisation of the banking industry. In addition, the Government of Spain enacted a new legal framework for bank resolution on August 31, 2012. The framework aims at improving the resolution regime that had been in force since 2009, and takes into account the EU legislative proposal on the recovery and resolution of banks and investment firms. Under the new framework, the FROB will be able to provide temporary financial support for the restructuring and resolution of problem banks. The support may take the form of guarantees, loans subordinated debt, or acquisition of assets or capital injections. The FROB has various resolution tools at its disposal, that include sale to a third party purchaser, transfer of assets to a bridge bank or Sareb (an asset management company), and liability management exercises, and also to take over managerial functions of banks in resolution. However, the resolution can be triggered only by the supervisory authority, who also happens to be the authority for approving the resolution plan.