Annex 2

Thematic Peer Review on Resolution Regimes - Highlights

1. The Financial Stability Board (FSB) conducted its first thematic peer review of all FSB member jurisdictions (24 countries) to evaluate their existing resolution regimes and any planned changes to those regimes using the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions (the Key Attributes) as a benchmark. The review provides a comparative analysis of the overall legal, institutional and policy framework of existing resolution regimes, both across individual Key Attributes and across different financial sectors (banking, insurance securities or investment firms and financial market infrastructures (FMIs)). The review focuses primarily on those Key Attributes that cover the core provisions of national resolution regimes applicable to any financial institution that could be systemically important or critical if it fails.

Scope of resolution regime

2. All FSB jurisdictions have resolution regimes with specific powers to restructure and/or wind up banks. These resolution regimes in most of the jurisdictions apply principally to deposit-taking institutions (mainly to commercial banks and other deposit-taking institutions). 8 jurisdictions[1] use certain powers specifically to systemically important banks. 21 jurisdictions[2] also have specially adapted insolvency regimes for insurance firms that rely on combination of ordinary insolvency law supplemented by powers for supervisory authorities. While 13 jurisdictions[3] have specific powers to restructure and/or wind up securities or investment firms outside the ordinary corporate insolvency laws, only 8 jurisdictions[4] have sector-specific powers for all or some classes of FMIs.

3. The range of powers available in many jurisdictions in respect of insurers, securities or investment firms and FMIs are not aligned with the KAs and they are either supervisory in nature and require shareholders' consent or are limited to liquidation and winding up at the initiative of the supervisors, or in some cases through some form of specially adapted insolvency regime.

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[1] Germany, Indonesia, Japan, Netherlands, Russia, Switzerland, UK and USA. In the case of Netherlands and US, these powers apply to all SIFIs, including non-bank FIs.

[2] Argentina, Australia, Brazil, Canada, China, France, Germany, Hong Kong, Italy, Japan, Korea, Mexico, Netherlands, Russia, Saudi Arabia, Singapore, Spain, Switzerland, Turkey, UK and US.

[3] Brazil, China, France, Italy, Korea, Russia, Netherlands, Saudi Arabia, Spain, Switzerland, Turkey, UK, US.

[4] France (only CCPs), Germany, Italy, Netherlands, Russia, Switzerland (if having a banking license), UK (only CCPs), US (systemic FMIs).

4. Majority of jurisdictions have specific powers to restructure and wind up holding companies that are regulated as banking or insurance groups. However, only eight jurisdictions[1] of them have the ability to use those powers for financial holding companies (FHCs) that are not bank or other regulated institution. In most of the jurisdictions, the resolution regime cannot be applied to non-regulated operational entities within a financial group. Only seven jurisdictions[2] have direct powers in relation to non-regulated operational entities that can be exercised in the resolution of whole or a part of the financial group or conglomerate. A majority of jurisdictions have powers over branches of foreign financial institutions. The powers in respect of foreign branches are much less comprehensive than those available for locally incorporated entities.

Resolution Authority

5. All FSB member jurisdictions have conferred responsibility and powers for the resolution of financial institutions to one or more public authorities. Majority of jurisdictions[3] confer the primary responsibility and powers for the resolution of banks on supervisory authorities. For the insurance sector, almost all jurisdictions have prudential supervisors that can intervene in failing institutions in a variety of ways (such as license withdrawal, appointment of administrator, or court petition for winding up), although most of them require the courts to appoint an administrator or liquidator to carry out the resolution. Majority of the jurisdictions[4] do not have any administrative authority responsible for restructuring and winding up securities or investment firms and FMIs. This indicates the limited scope and powers for resolving systemically important non-bank SIFIs under the existing regimes.

6. Only nine jurisdictions[5] have a single resolution authority for resolution of all types of financial institutions, but there is certain kind of coordination mechanism with sector regulators. In jurisdictions with multiple resolution authorities, though they have some form of coordination arrangements in place between the authorities, several jurisdictions, except a few, do not appoint any 'Lead Authority' to coordinate the resolution of domestic entities of the same financial group.

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[1]Brazil, France, Germany, Italy, Korea, Netherlands, UK, US.
[2]Brazil, Italy, Saudi Arabia, Spain, Switzerland, UK, US.
[3]Argentina, Australia, Brazil, China, France, Germany, Hong Kong, Italy, Japan, Netherlands, Russia, Saudi Arabia, Singapore, Switzerland and Turkey. In Indonesia, resolution functions are divided between the supervisory authority and the deposit insurance agency. In UK, the resolution powers are conferred on the Central Bank (or the Treasury in case of Temporary Public Ownership), while the supervisory authority (PRA) is an operationally independent subsidiary of central bank.
[4]Argentina, Australia, Canada, Hong Kong, India, Indonesia, Japan, Mexico, and Singapore. Germany has no dedicated resolution authority for securities or investment firms. Brazil, China, Korea, Saudi Arabia, South Africa, Spain and Turkey have no dedicated resolution authority for FMIs.
[5]Australia, France, Germany, Italy, Japan, Singapore, Switzerland, UK and USA.

7. Almost all jurisdictions do not have statutory objectives in place for their resolution authorities in line with the Key Attributes. Although nearly all authorities have formal objectives to maintain financial stability and protect depositors or policyholders, many do not have mandates to avoid destruction of value or to consider the impact of resolution actions on other jurisdictions.

Resolution triggers

8. Most of the jurisdictions' resolution regimes provide for timely entry into resolution or the exercise of resolution powers at or before the point of non-viability, and before the firm is balance-sheet insolvent. In most cases, the non-viability triggers for insurers, securities or investment firms and FMIs apply later than for banks, possible due to the fact that they reflect triggers available under corporate insolvency regimes.

Resolution powers

9. The resolution powers in most FSB jurisdictions are considerably more developed for banks than for insurance and, especially, for securities or investment firms and FMIs. Majority of the FSB jurisdictions have power to appoint an Administrator with varying powers, powers to transfer assets and liabilities from a failed bank (in many cases, these powers are exercised by the Administrator), powers to establish and operate a bridge institution in case of failed banks, powers to establish asset management company. A few jurisdictions[1] have bridge powers for insurers, securities or investment firms or FMIs. Only two jurisdictions (Spain and Switzerland) have bail-in powers conferred by their statutes on their resolution authority, while US is able to write down or convert liabilities within resolution using other powers. Powers for a resolution authority to write down and convert liabilities are generally not available for insurers, securities or investment firms and FMIs. At least one of the two specific resolution powers for insurers (portfolio transfer and 'run-off') is available in nearly all FSB jurisdictions[2].

10. The resolution powers are distributed across two or more authorities in many of the jurisdictions. In most of the jurisdictions, the exercise of resolution powers may require a court order or confirmation, which is not against the Key Attribute, but could impede the timely resolution action.

[1]Australia (insurers), Japan (insurers), Saudi Arabia (insurers), US (insurers, securities/investment firms and FMIs).
[2]Australia, China, France, Germany (portfolio transfer for life and health insurance only), Italy, Korea, Mexico (run-off by liquidator), Netherlands (run-off by court), Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Turkey, UK, US.

Set-off, collateralization, segregation of client assets

11. Only four jurisdictions (Canada, Spain, Switzerland and US)[1]provide for imposition of a temporary stay on the exercise of contractual acceleration or early termination of rights in financial contracts involving banks. However, only 3 jurisdictions (Spain, Switzerland and US) provide for safeguards for counterparties to financial contracts. Several other FSB jurisdictions, however, have other forms of stay, such as an indefinite stay triggered by entry into insolvency or resolution but without special treatment for financial contracts, but these lack features of Key Attributes.

Safeguards for creditors affected by resolution actions

12. The legal frameworks of all jurisdictions, except Canada, Germany, Turkey and US, require resolution authorities to respect the hierarchy of claims in resolution. However, only five jurisdictions[2] have the power to depart from the general insolvency principle of equal treatment of creditors of the same class, for reasons of financial stability. Only seven jurisdictions[3] provide an explicit statutory right to compensation for any creditor that is worse off in resolution than in normal liquidation. This right is particularly relevant where the regime permits departure from the principle of equal treatment of creditors of the same class. Majority of jurisdictions provide a right to judicial review either under general administrative law or as an explicit right under the resolution regime and, in most cases, remedies other than monetary compensation are available. In such cases, the legal framework needs to strike an appropriate balance between legal remedies on one hand and the certainty of resolution action on the other.

Funding of institutions in resolution

13. Three jurisdictions[4] have privately funded dedicated resolution funds, while 15 jurisdictions[5] have deposit insurance system (funded either ex-ante or ex-post by industry levies) that may be drawn on to fund bank resolution, in addition to pay-out. Where deposit

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[1]Under the US framework, the temporary stay is statutory and applies in all cases rather than it being a discretionary power of the resolution authority. In UK and Dutch resolution regime, the Bank of England and DNB respectively have the power to prohibit the exercise of early termination rights in connection with an exercise of transfer powers. However, that power is limited to termination rights under contracts that are not covered by the EU Financial Collateral Directive, which currently prevents EU member states from staying rights under financial collateral arrangements. The draft EU Directive on bank recovery and resolution is expected to remove that obstacle.

[2]Australia, Canada, Germany, UK and US.

[3]Australia, Canada, Germany, Spain, Switzerland, UK and US.

[4]Germany (for limited purposes), Japan, and USA (the Orderly Liquidation Fund is initially funded by the US Treasury, which then gets repaid from asset resolution and the industry over a period of 5 years).

[5]Argentina, Brazil, Canada, France, Indonesia, Italy, Japan, Korea, Mexico, Netherlands, Russia, Spain, Turkey, UK, and US

insurance fund is being used for funding resolution, there are limitations to which those funds may be used or caps in the amount that can be used for a specific resolution (e.g. not more than the amount that would have been available to pay out depositors).However, in certain jurisdictions like Belgium, Hong Kong, India, Singapore, Sweden and Switzerland, deposit protection schemes cannot be used to fund resolution measures, except indirectly to fund the repayment of retail deposits.

14. Policyholder or investment protection funds have been established in some jurisdictions but play a limited role in funding resolution for insurance or securities or investment firms. 14 jurisdictions[1] have a protection fund for insurance policyholders or investors, but several of them restrict its use for compensation of policyholders or investors in a liquidation scenario and do not allow the fund to be used for financing resolution. No jurisdictions have a resolution fund dedicated to FMIs.

15. Mechanisms for recovery of public funds from shareholders, participants, creditors of the failed firm, or the wider financial industry are not developed, although several jurisdictions (Australia, Netherlands, USA) have facilities for levies to recoup on an ex-post basis any public funds used in resolution.

Legal framework for cross border cooperation

16. National legal frameworks for cross-border cooperation in resolution are less well developed across all sectors than other areas of Key Attributes. The legal framework of most jurisdictions neither requires nor prohibits cooperation with foreign resolution authorities. Eight jurisdictions[2] have statutory provisions that explicitly empower or strongly encourage resolution authorities to cooperate with foreign authorities, while several others indicate that it is their policy to cooperate where possible. No jurisdiction has comprehensive obligations for domestic authorities to avoid taking resolution actions that may have an adverse effect on the financial stability of other jurisdictions. Authorities in EU member states are required to consider the impact of their actions on financial stability in other EU states.

17. While the legal frameworks in the majority of FSB jurisdictions do not provide for differential treatment of creditors (including depositors and policyholders) by location of their claim or the jurisdiction in which the claim is payable, there is provision for differential

[1] Australia, Canada, China, France, Germany, Hong Kong, Italy, Japan, Korea, Singapore, Spain, Turkey, UK, and US.

[2] Australia (trans-Tasman cooperation with New Zealand), Hong Kong, Indonesia, Japan, Spain, Switzerland, UK, US

treatment of certain claims – in most cases, deposits – under the insolvency or resolution regime of eight jurisdictions[1].

18. Only the national resolution authority of Switzerland has the power to recognise the transfer by the home country resolution authority of local assets and liabilities of a foreign bank, and make that transfer effective under local law. In Canada, the exercise of resolution powers by foreign authorities in other countries will have no effect in Canada unless approval or recognition is given by a Court in Canada.

19. Most jurisdictions report that they have some powers over branches of foreign banks. However, in most cases, those powers stem from the domestic insolvency framework or are much less comprehensive than the powers available for locally incorporated banks.

Resolvability assessments

20. Only one jurisdiction (Switzerland) has in place a formal statutory requirement for resolvability assessments to be carried out. However, a majority of jurisdictions have shown their intention to undertake resolvability assessments as a core part of domestic resolution planning framework. Where resolvability assessments are being carried out or planned, the focus is generally on global or domestic systemically important banks rather than on a wider range of FIs. Only two jurisdictions[2] currently require resolvability assessments for institutions from other financial sectors.

21. In most FSB jurisdictions, supervisory authorities have some powers to ask supervised institutions to make changes to their business organization and legal structure, but the purposes for and circumstances under which authorities can exercise such powers vary across jurisdictions and financial sectors.

Recovery and Resolution Planning

22. Currently, only four jurisdictions[3] have formal statutory requirements for development of RRPs, and many other jurisdictions are in the process of developing such plans for G-SIBs and D-SIBs. Jurisdictions that are home authorities of G-SIBs have started working on the development of RRPs through supervisory policy and many jurisdictions have asked firms to prepare recovery plans under existing supervisory powers. However, the RRP is

[1] Australia, (depositors and insurance policyholders), Indonesia, Japan, Korea (depositors), Singapore, Switzerland, Turkey (depositors), US (depositors).
[2] UK (for large investment firms) and US (for non-bank SIFIs).
[3] Spain, Switzerland, UK and US.

predominantly focused on banks. Only two jurisdictions (UK and US) have a framework for RRPs for other categories of financial institutions, while Canada is developing RRPs for insurers under general supervisory powers.

Access to information and information sharing

23. Domestic authorities with resolution functions are generally able to share non-public information with each other. This general principle is subject to a few exceptions, where the sharing of confidential information with non-supervisory domestic authorities for both planning and carrying out resolution is either not permitted (Brazil); limited to specific circumstances, such as the entry of a firm into resolution (Italy) or conditional on a decision to undertake a resolution involving public funds (Switzerland).

24. Cross-border information sharing is considerably more restricted. Eight FSB jurisdictions[1] allow domestic authorities to share non-public information with foreign resolution authorities that are not supervisors. In many cases, information can be shared cross-border between supervisory authorities using existing supervisory gateways, but not as readily through other channels (Argentina, Mexico, Russia, South Africa, Turkey). Supervisory gateways are not, however, sufficiently broad to allow confidential information to be shared with all foreign authorities that have a responsibility for planning or carrying out resolution of the firm in question.

25. In most cases, jurisdictions do not require a memorandum of understanding (MoU) as a condition for disclosure of information under existing gateways, but a number of jurisdictions indicated that a MoU was in practice a prerequisite or seen as desirable.

[1]Australia, Canada, France (where foreign authorities have similar functions to ACP and are subject to equivalent standards of professional secrecy), Hong Kong (subject to specified conditions set out in the relevant legislation), Saudi Arabia, Spain (in the case of non-EU resolution authorities, where the receiving authority is subject to equivalent standards of professional secrecy), UK, US