

**Resolution of Systemically Important
Financial Institutions**

Progress Report

November 2012

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Summary

Since the adoption of the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“the *Key Attributes*”)¹ as a new international standard for resolution regimes in November 2011, many jurisdictions have initiated reforms to align national resolution regimes and institutional frameworks with the *Key Attributes*. Overall, progress is encouraging.

Implementation of the Key Attributes in national resolution regimes

Recent reforms focus on extending the resolution tools to include powers such as bail-in, transfer and bridge bank powers, and on widening the scope of resolution regimes to cover non-bank financial institutions that could be systemically critical if they fail, including investment firms, financial market infrastructures (FMIs) and insurers (particularly insurance groups with non-traditional insurance activities). The *Key Attributes* will need to be applied in a manner that reflects the specificities and objectives of resolution of particular sectors, such as protecting insurance policy holders in resolution; facilitating the rapid return or transfer of holdings of client assets in resolution to protect the interests of customers of investment firms; and ensuring the continuity of critical operations and services of FMIs.

Recovery and resolution planning for G-SIFIs

High importance is being given to the effective implementation of the *Key Attributes* that are directed at global systemically important financial institutions (G-SIFIs). This includes the requirements for cross-border crisis management groups (CMGs), institution-specific cross-border cooperation agreements (COAGs), recovery and resolution plans (RRPs) and resolvability assessments for all G-SIFIs. Considerable but uneven progress has been made in implementing these requirements, guided by CMGs which are now established for nearly all the G-SIFIs designated by the FSB in November 2011.² In the course of that work it became clear that recovery planning, resolvability assessments and the development of COAGs are inter-dependent and iterative processes, and progress in these areas is largely dependent on a clearly articulated, high level ‘resolution strategy’ for a firm. Accordingly, the priorities of CMGs were adapted to focus on the development of resolution strategies by end-2012.

Recognising that certain aspects of the recovery and resolution planning requirements would benefit from deeper examination and building on the experience of its Members to date, the FSB has developed guidance that it is releasing for public consultation on: (i) the nature of the stress scenarios and triggers for recovery actions that should be used in G-SIFIs’ recovery plans; (ii) the development of resolution strategies and associated operational resolution plans tailored to different group structures, drawing on two stylised approaches to resolution - ‘single point of entry’ and ‘multiple point of entry’;³ and (iii) the identification of the critical

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

² http://www.financialstabilityboard.org/publications/r_111104bb.pdf

³ In the ‘single point of entry’ approach, group resolution takes place primarily through action at the level of the parent or holding company; whereas in a ‘multiple point of entry’ approach, resolution actions are taken

functions that would need to be maintained. This guidance is expected to assist those CMGs, authorities and firms at earlier stages of the recovery and resolution planning process and to promote consistency in the approaches of CMGs.

Implementation of the remaining G-SIFI resolution planning requirements is on track to be completed during the first half of 2013, after which the implementation of the resolution planning requirements in relation to each G-SIFI will be reviewed through resolvability assessments by resolution authorities and CMGs, and through a resolvability assessment process that the FSB expects to launch in 2013. For financial firms that are no longer designated as G-SIFIs, the implementation of those requirements will not be evaluated through the FSB assessment process. However, such firms will still be required to have RRP, and national authorities are encouraged to continue to apply the other requirements proportionately to those firms.

by multiple authorities along national, regional or functional lines. Some combination of approaches is likely in practice.

Introduction

The global financial crisis provided a sharp and painful lesson of the costs to the financial system and the global economy of the absence of effective powers and tools for dealing with the failure of systemically important financial institutions (SIFIs). In November 2011, the G20 endorsed the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“the *Key Attributes*”)⁴ as a new international standard for resolution regimes, while in June 2012 the G20 Leaders reiterated their commitment to make national resolution regimes consistent with the *Key Attributes* and expressed their support for the on-going elaboration of RRP and COAGs for all G-SIFIs.⁵

This report describes the progress so far in implementing the *Key Attributes*, including the specific requirements aimed at G-SIFIs, and the additional work that the FSB is undertaking to advance the effective implementation of the *Key Attributes*.

- **Section 1** provides an overview of the status of reforms of national resolution regimes and the FSB’s initiative to evaluate progress through a first thematic peer review of effective resolution regimes.
- **Section 2** reports on additional work underway to support implementation of the *Key Attributes*, which includes the development of an assessment methodology, work on the application of the *Key Attributes* to resolution regimes for the non-banking sector, including insurers, FMIs and firms with significant holdings of client assets, and the sharing of relevant information for resolution purposes between all authorities having a role in resolution.
- **Section 3** discusses the status of implementation of the set of resolution planning requirements that specifically apply to G-SIFIs as well as the work on further guidance to support their implementation.

⁴ See footnote 1.

⁵ G20 Leaders’ Declaration, Los Cabos, 19 June 2012, para. 41.

1. Implementation of the *Key Attributes*

1.1 Overview

The *Key Attributes* set out twelve essential features that should be part of resolution regimes in all jurisdictions (see Text Box 1). Their objective is to enable authorities to resolve any financial firm that could be systemically significant or critical in the event of failure, irrespective of its size, the nature of its business or its geographical reach, without severe systemic disruption and without exposing taxpayers to loss.

Text Box 1: The twelve Key Attributes

The *Key Attributes* set out the core elements considered necessary for an effective resolution regime for any type of financial institution, including banks, insurers, securities and investment firms and FMIs:

1. **Scope** - The regime should cover any financial institution that could be systemically significant or critical if it fails.
2. **Resolution authority** - The regime should be administered by a resolution authority (or authorities) with a statutory mandate to promote financial stability and the continued performance of critical functions.
3. **Resolution powers** - The regime should provide for a broad range of resolution powers, including powers to transfer the critical functions of a failing firm to a third party; powers to convert debt instruments into equity and preserve critical functions ('bail-in within resolution'); powers to impose a temporary stay on the exercise of termination rights under financial contracts (subject to safeguards for counterparties) and impose a moratorium on payments and on debt enforcement actions against the failing firm; and powers to achieve the orderly closure and wind-down of all or parts of the firm's business with timely pay-out or transfer of insured deposits.
4. **Set-off, netting, collateralisation, segregation of client assets** - The segregation of client assets should be effective in resolution. Financial contracts, including netting and collateralisation agreements, should be enforceable. However, entry into resolution and the exercise of any resolution powers should not in principle constitute an event that entitles any counterparty of the firm in resolution to exercise acceleration or early termination rights under such agreements provided the substantive obligations under the contract continue to be performed (as would be the case if the contracts were transferred to a sound financial firm or bridge institutions).
5. **Safeguards** - All creditors should receive at a minimum what they would have received in a liquidation of the firm ('no creditor worse off than in liquidation' safeguard). Resolution powers should be exercised in a way that respects the hierarchy of claims, subject to some flexibility for authorities to depart from the general principle of equal treatment of creditors of the same class where necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole. Rights to judicial review should be available for affected parties to challenge actions that are outside the legal powers of the resolution authority.

6. **Funding of firms in resolution** - Resolution regimes should include funding mechanisms that can provide temporary financing to continue critical operations as part of the resolution of a failing firm. Such funding should be derived, or recovered, from private sources.
7. **Legal framework conditions for cross-border cooperation** - Resolution regimes should empower and encourage resolution authorities wherever possible to act to achieve a cooperative solution with their foreign counterparties. Authorities should be able to give effect in their jurisdiction to resolution measures taken by a foreign resolution authority.
8. **Crisis Management Groups (CMGs)** - Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness for, and facilitating the resolution of a G-SIFI.
9. **Institution-specific cross-border cooperation agreements (COAGs)** - COAGs should be in place between the home and relevant host authorities that need to be involved in the preparation and management of a crisis affecting a G-SIFI.
10. **Resolvability assessments** - Resolvability assessments should be carried out for all G-SIFIs. Authorities should have appropriate powers to require the adoption of appropriate measures to ensure that a firm is resolvable under the applicable regime.
11. **Recovery and resolution planning** - Recovery and resolution plans (including high level resolution strategies) should be in place for all firms that may be systemic or critical in the event of failure.
12. **Access to information and information sharing** - Jurisdictions should remove legal, regulatory or policy impediments that hinder the domestic and cross-border exchange of information - in normal times and during a crisis - necessary for recovery and resolution planning and for resolution.

1.2 Status of reforms of national resolution regimes

Reforms are underway in many jurisdictions to align national statutory resolution regimes and institutional frameworks with the *Key Attributes*. In the US, the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which provides for powers to resolve systemically important financial institutions and requires the preparation of resolution plans, represents an important step towards implementation of the *Key Attributes*. Likewise, the adoption by the European Commission of a proposal for an EU regime for bank recovery and resolution is critical for advancing consistent reforms across the EU.⁶ A number of FSB member jurisdictions are in the process of reforming their statutory regimes or have recently introduced legislative changes or other actions to implement the *Key Attributes*:

⁶ See Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm). On 5 October, 2012, the Commission launched a consultation on a possible framework for the recovery and resolution of financial institutions other than banks (see the same link above).

- **Australia** - Australia undertook comprehensive reforms of its crisis resolution framework, which included the introduction of a deposit guarantee regime in 2008. It recently released a consultative document with proposals to further strengthen powers to resolve financial institutions, including insurers and FMIs, as well as non-regulated entities within a financial group in resolution.
- **Germany** - In Germany, reforms came into force in 2011 that strengthened and expanded crisis management and resolution powers. They include transfer and bridge bank powers, the establishment of a special restructuring fund, and the introduction of a two-stage recovery and reorganisation procedure for banks.
- **Netherlands** - In May 2012, the Netherlands introduced a new Act on Special Measures for Financial Institutions which provides a range of new resolution powers to the De Nederlandsche Bank (Dutch Central Bank) and the Dutch Ministry of Finance. These powers include the powers to carry out a sale of a problem institution to a private party or bridge institution by transfer of shares; and the powers to transfer assets and liabilities of a problem institution to a private party or bridge institution, in case of guaranteed deposits with funding from the deposit guarantee scheme.
- **Spain** – The powers of the Spanish resolution authorities were significantly expanded in August 2012: Banco de España was provided with additional early intervention powers; the Fund for Orderly Restructuring of Banks (FROB) was given powers to provide temporary financial assistance under a restructuring plan approved by Banco de España; and a new legal framework for the resolution of banks was established. That framework enables the FROB to carry out the restructuring or resolution of a failing bank, overriding shareholders’ rights where necessary, and includes powers to impose losses on subordinated liabilities (“limited bail-in”). Resolution tools in Spain now include: sale of assets or business lines of a failing bank; and transfer to a bridge bank or asset management company.
- **Switzerland** - Switzerland introduced legislative changes in 2008, 2011 and 2012 to strengthen its resolution regime. These included the introduction of a recovery and resolution planning requirements, bridge bank powers and extension of the Swiss Financial Market Supervisory Authority’s (FINMA) resolution powers to insurers and other types of financial institutions.
- **United Kingdom** - The introduction of the Special Resolution Regime for UK banks in 2009 gave UK authorities a broad range of resolution powers for failing UK banks. The Financial Services Act adopted in 2010 required banks to have RRP. UK deposit taking banks and systemic investment firms were required to have completed RRP by June 2012. In August 2012, the UK Treasury published a consultation paper, accompanied by draft legislation, setting out proposals on enhancing the mechanisms available for dealing with the failure of systemically important non-bank financial institutions and FMIs. The proposal covers four broad groups: investment firms and parent undertakings; central counterparties (CCPs); other FMIs (such as payments systems); and insurers.
- **United States** - The orderly liquidation authority established under Title II of the Dodd-Frank Act applies to financial companies and certain of subsidiaries that could

be systemically significant or critical in failure. The Dodd-Frank Act also introduced a resolution planning requirement.

Legislative reforms will be necessary in many jurisdictions to fill remaining gaps in the implementation of the *Key Attributes*. In many jurisdictions the scope of application of the resolution regime remains limited to domestically incorporated banks and does not extend to non-bank financial institutions that could be systemically significant or critical if they fail, such as large investment firms or CCPs. Nor is it clear in many cases whether the national regime extends to branches of foreign financial institutions.⁷ A number of jurisdictions do not have the full range of resolution tools called for by the *Key Attributes*, such as bail-in powers or the authority to impose temporary stays on acceleration or early termination rights in financial contracts. The absence of a clear mandate of resolution authorities to seek cooperation with their foreign counterparts and the lack of legal capacity to give effect to foreign resolution measures may pose significant impediments to cross-border resolutions, if not addressed.

1.3 Thematic peer review to evaluate implementation in FSB member jurisdictions

The reform of resolution regimes have been identified as a priority area under the FSB Coordination Framework for Implementation Monitoring (CFIM).⁸ As a result, the implementation of the *Key Attributes* by FSB member jurisdictions will undergo intensive monitoring and detailed reporting, with a first thematic peer review of resolution regimes already underway. The objective of the peer review is to evaluate FSB member jurisdictions' existing resolution regimes and any planned changes to those regimes using the *Key Attributes* as a benchmark.⁹ The review will provide a fuller picture of the status of reforms and the progress made by different jurisdictions across different financial sectors (banking, insurance, securities, and FMIs). The findings will be published in early 2013.

⁷ Under the framework of the EU Winding up and Reorganisation Directives, EU branches of banks or insurance undertakings headquartered in the European Economic Area (EEA) are resolved under the authority of the home jurisdiction.

⁸ http://www.financialstabilityboard.org/activities/implementation_monitoring/index.htm.

⁹ http://www.financialstabilityboard.org/publications/r_120813.pdf

2. Work underway to support effective implementation

2.1 Overview

The FSB has further work underway to support implementation of the *Key Attributes*. An assessment methodology is being developed as guidance for jurisdictions when implementing the *Key Attributes* and as a tool for the conduct of assessments in the context of peer reviews. The FSB is working with sectoral standard setters to ensure that the methodology reflects sector-specific considerations and to develop further guidance as necessary. In response to external events, including the failure of MF Global, the FSB is undertaking further work on the protection of client assets in resolution. The FSB is also working to address barriers to information exchange amongst relevant authorities, since these have the potential to thwart the development of resolution strategies and plans and their implementation in a crisis.

2.2 Development of a methodology to assess implementation

The FSB is working with representatives of national authorities, the European Commission, the IMF and World Bank, and standard setting bodies (Basel Committee on Banking Supervision (BCBS), Committee on Payment and Settlement Systems (CPSS), International Association of Deposit Insurers (IADI), International Association of Insurance Supervisors (IAIS) and International Organization of Securities Commissions (IOSCO)) to develop an assessment methodology for the *Key Attributes*.

The methodology will complement the *Key Attributes* by providing criteria against which implementation of each individual *Key Attribute* can be assessed, and explanatory notes about particular criteria where the FSB considers that further detail or explanation would be useful. It is intended as guidance for jurisdictions when implementing the *Key Attributes* and as a tool for the conduct of assessments in the context of peer reviews within the FSB framework for implementation monitoring or IMF and World Bank assessments of resolution regimes in the context of Financial Sector Assessment Programs (FSAPs) and Reports on the Observance of Standards and Codes (ROSCs).

The FSB plans to consult publicly on a draft of the methodology in the second half of 2013.

2.3 Sector-specific considerations

The *Key Attributes* are an ‘umbrella’ standard for resolution regimes for all types of financial institutions that can potentially be systemically important in failure. Sector-specific resolution regimes should therefore be consistent with the objectives and relevant requirements of the *Key Attributes*. However, not all resolution powers and features of resolution regimes set out in the *Key Attributes* are relevant for all sectors. Different types of financial firms - even within a particular sector - have distinctive features that need to be reflected in the way in which the powers and tools set out in the *Key Attributes* are applied when resolving such entities (see Text Box 2).

As a consequence, the *Key Attributes* may require some adaptation for sector-specific application. The FSB is working with standard setters to ensure that the assessment methodology deals comprehensively with the application of individual attributes to different types of financial institutions and sectors. The IAIS is currently analysing the *Key Attributes*

from the perspective of the resolution of insurers and the protection of policy holders. The IAIS consultation document on globally systemically important insurers (G-SIIs) that was released in October 2012 includes a proposal to consider whether to develop a specific template for assessing the resolvability of G-SIIs.¹⁰ It also proposes that resolvability assessments assess the extent of ex ante separation of traditional and non-insurance activities from traditional insurance activities, and that the authorities consider and take all necessary actions to ensure effective resolution, including removing obstacles to the separability of non-traditional and non-insurance activities from traditional insurance activities during a stressed event.¹¹ The IAIS also proposes, where necessary, to explore with members the need to develop further guidance for inclusion in the FSB's assessment methodology for the *Key Attributes*.

Similarly, in July CPSS-IOSCO published a consultative report on recovery and resolution of FMIs.¹² The report analyses how the *Key Attributes* apply to FMIs in a manner that achieves the objective of avoiding systemic disruptions by ensuring the continuity of critical operations and services of FMIs. The outcome of that analysis and public consultation will be incorporated into the assessment methodology for the *Key Attributes*. CPSS-IOSCO are working to provide further guidance on how FMIs should produce viable and robust recovery plans and how these should fit alongside resolution plans.

Text Box 2 – Sector-specific considerations

Banks – The full range of resolution powers specified in the *Key Attributes* should be available to resolution authorities with responsibility for the resolution of banks that could be systemically significant or critical in the event of failure.

Insurers – As an international standard the *Key Attributes* generally also apply to resolution regimes for insurance firms that could be systemically significant or critical in the event of failure. The *Key Attributes* directed at G-SIFIs (see Text Box 3) apply to any insurer that is designated as a G-SII. The *Key Attributes* recognise that two resolution tools – portfolio transfer and ‘run-off’ – are likely to be particularly relevant for the resolution of an insurer. However, when insurers also engage in either non-traditional insurance business or non-insurance business some of the other resolution powers set out in *Key Attribute 3* that are not generally aimed at traditional insurance business may be necessary.

Financial Market Infrastructure - The key objective of resolution regimes for FMIs needs to ensure uninterrupted continuity of the critical operations and services of a failing FMI. Accordingly, it should ensure the timely completion of payment, clearing and settlement functions by an FMI throughout the period that it is in resolution. The regime should enable authorities to

¹⁰ *Global Systemically Important Insurers: Proposed Policy Measures*, Public Consultation Document, 17 October 2012: <http://www.iaisweb.org/index.cfm?pageID=967>.

¹¹ For an analysis of non-traditional and non-insurance activities, see the IAIS paper on *Insurance and Financial Stability*, November 2011: http://www.iaisweb.org/view/element_href.cfm?src=1/13348.pdf.

¹² *Recovery and resolution of financial market infrastructures*, Consultative report, June 2012: <http://www.bis.org/publ/cpss103.pdf> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD388.pdf>.

preserve those systemically critical operations and services, either by arranging their orderly transfer to another FMI or bridge institution; by providing participants sufficient time to establish and to move to an alternative arrangement; or by the restoring the FMI's ability to provide those services as a going concern (including by allocating any shortfall in the FMI's resources across participants or other creditors of the FMI). To achieve these outcomes and taking into account the specificities of different types of FMIs, statutory resolution regimes for FMIs should provide for a broad set of tools and powers consistent with those in the *Key Attributes* and resolution authorities should apply them in a manner that is consistent with the CPSS-IOSCO Principles for Financial Market Infrastructures.¹³

Securities and investment firms - Ensuring the rapid return of client money and assets or their transfer to a sound firm or bridge institution is a key objective of the resolution of securities and investment firms. Resolution authorities therefore require clear powers to transfer holdings of client assets to a performing third party or bridge institution, without the consent of the affected clients (see below 2.4). In order for that power to be exercisable effectively, the regulatory framework needs to include clear rules requiring the segregation and identification of client assets, and compliance with those rules is enforced. As with the exercise of other resolution powers, arrangements are needed to give effect to transfers, or to facilitate recovery by a resolution authority or liquidator, of client assets that are located in other jurisdictions.

2.4 Resolution of firms with significant holdings of client assets

The *Key Attributes* state that an effective resolution regime should ensure the rapid return of segregated client assets and call for clear, transparent and enforceable arrangements that promote the effective segregation of client assets and prompt access to segregated client funds in resolution. Greater understanding is needed of how those objectives can be achieved in the case of financial firms with significant holdings of client assets, and particularly where those assets are held in different jurisdictions.

The transfer of holdings of client assets to a private sector firm or bridge institution may be the preferred resolution option, given that it maintains continuity of the services provided to the clients and minimises any interruption of access by clients to their assets. Resolution regimes should therefore include a power for resolution authorities to transfer holdings of client assets to a performing third party or bridge institution.¹⁴ The power should be available especially for banks, non-deposit-taking investment firms or broker-dealers, and FMIs that could be systemically significant or critical in the event of failure.

¹³ *Principles for Financial Market Infrastructures*, April 2012: <http://www.bis.org/publ/cpss101a.pdf> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf>

¹⁴ This is covered by the *Key Attributes*: the powers to transfer asset, liabilities, legal rights and obligations to a solvent third party, and to transfer critical functions and viable operations to a bridge institution, as set out in points (vi) and (vii) of KA 3.2 respectively, implicitly include powers to transfer client assets.

No formal arrangements or procedures are currently in place between jurisdictions to facilitate transfers or return of client assets in a cross-border resolution.¹⁵ A foreign resolution authority, foreign administrator or liquidator generally needs to obtain the assistance of the local courts. However, the court process may take time which, as a practical matter, may represent a procedural impediment to rapid transfer or recovery, even where resolution authorities have powers to transfer client assets and assets are segregated and identified. Rapid transfers in a cross-border context could be facilitated if the home resolution authority's transfer powers were matched by broad transfer powers of the host authority and the latter were able to use those powers to effect a transfer of assets located in its jurisdiction made by the foreign home authority. The FSB has work underway to elaborate further on the nature of the powers resolution authorities need to transfer holdings of client assets to a third party or bridge institution, in particular where the firm in resolution is holding client assets in a foreign jurisdiction.

Where client assets are held by entities that are located in another jurisdiction, for example, an affiliate of the firm in resolution, a third-party custodian, or other intermediary, differences in the respective national laws relating to way in which client assets are held and protected may give rise to legal disputes as to ownership and entitlement to the assets, and complicate transfers or the rapid return of the assets to clients. The likelihood of disputes, which may take considerable time to resolve, is exacerbated in cases of correlated failures where both the firm that originally received the client assets and the firm that holds them are subject to resolution or insolvency procedures, since the administrators or insolvency appointees of both firms will have a statutory responsibility to maximise value for the clients and creditors of the firm to which they are appointed. Insufficient protection of client assets, and uncertainty about the ownership rights of clients where the firm exercises rights of use over collateral or re-hypothecates client assets, also increases the likelihood of 'runs' as clients remove assets from a stressed firm in order to protect their rights. These effects increase the risk of disorderly failure and may undermine authorities' ability to minimise contagion and preserve financial stability through resolution.

Accordingly, when developing resolution plans and conducting resolvability assessments, authorities need to consider the feasibility of executing a transfer of custodial functions to another firm. The FSB is working to develop more explicit guidance on this necessary aspect of resolution planning and resolvability assessments which will specify how the handling of clients assets should be taken into account by authorities when developing resolution plans for firms that hold a significant amount of client assets domestically or in other jurisdictions. Authorities and firms should have a clear understanding, in particular, of: (i) the applicable law governing holdings of client assets, in particular where they are held through a chain of intermediaries located in foreign jurisdictions; (ii) any rights of re-use that may be exercisable; (iii) the rules that apply where there is a shortfall of client assets; (iv)

¹⁵ The EU is an exception, to the extent that the existing directives on the winding up and reorganisation of credit institutions and insurance undertakings require the recognition in EU host member States (including states where assets of a bank or insurer are located) of measures taken under the insolvency regime of the home member State. Once adopted, the EU bank recovery and resolution directive is likely to include more explicit provisions requiring member States to give effect to transfer powers exercised under the resolution regime of the home member State.

arrangements in place that ensure that the identity of clients and their assets can be established rapidly and with certainty; and (v) the existence of arrangements, including ‘porting’ arrangements for CCPs, that would facilitate transfers in a crisis.

2.5 Information sharing for resolution purposes and confidentiality

To arrive at a group-wide resolution plan and resolvability assessment, home and host authorities will need to share views and information in the CMGs on the functions they consider to be critical and on possible strategies for ensuring the effective resolution of the group. In principle, it should be possible to share relevant information between all authorities that have a role in resolution, subject to adequate confidentiality safeguards. However, differing terms and conditions for information sharing across jurisdictions complicate cross-border cooperation. Constraints on the timely sharing of information between authorities that have responsibilities related to resolution also hamper cooperation. Particular hurdles may arise where information generated for supervisory purposes needs to be shared with non-supervisory authorities that also have a role in resolution, such as central banks (that are not acting in a supervisory capacity), resolution authorities and ministries of finance.

The *Key Attributes* stipulate that sharing of information within CMGs with other authorities with a role in the resolution of a particular firm should be possible under the legal frameworks of all jurisdictions, subject to specific conditions being met to protect the confidentiality of the information. The recipient authority should be subject to confidentiality requirements that are equivalent to those that apply to the disclosing authority, with effective sanctions for breach; and should commit not to disclose the information to third parties or the public, to seek prior consent for any onward disclosure of information, and to undertake best efforts to resist disclosure where compelled by statute or legal process, including by employing legal means to challenge an order to disclose. Professional secrecy obligations should generally prohibit officers and employees of authorities from disclosing information acquired in the course of discharging their mandates. In jurisdictions with ‘Freedom of Information’ legislation, exemptions from disclosure requirements should be possible for resolution related information received from foreign authorities.

The negotiation of institution-specific cross-border cooperation agreements (COAGs) amongst relevant home and host authorities, as required for each G-SIFI under the *Key Attributes* (see below), is intended to put in place a more predictable and explicit framework for sharing information for resolution and resolution planning purposes. It will also require authorities to determine whether their legal framework provides the appropriate gateways for information sharing, or whether they need to be revised to allow the sharing information for resolution purposes with the full range of authorities involved in resolution. Many jurisdictions’ legal regimes already have appropriate scope for authorities to improve cross-border and domestic information-sharing for resolution purposes. However, important work remains to be done to address the practical and policy concerns involved in sharing recovery and resolution information. The FSB is examining how to address remaining obstacles and improve the on-going work, including institution-specific COAGs currently being developed, to facilitate information sharing for resolution purposes.

3. Key Attributes directed at G-SIFIs

3.1 Overview

In November 2011, the FSB released an initial list of institutions designated as G-SIFIs on the basis of a methodology developed by the BCBS.¹⁶ The FSB announced that this list will be reviewed and updated annually. Firms designated as G-SIFIs are subject to specific resolution planning requirements relating to CMGs, COAGs, RRP and regular resolvability assessments (see Text Box 3).

Text Box 3: Key Attributes directed at G-SIFIs

Crisis Management Groups (Key Attribute 8) - CMGs are mandatory for all G-SIFIs. CMGs establish a mechanism for information exchange, cooperation and coordination between the relevant authorities of the home and key host countries of the G-SIFI. Such arrangements enhance preparedness for a crisis and facilitate the management of any such crisis and, if necessary, the orderly resolution of the firm.

Institution-specific cross-border Cooperation Agreements (COAGs) (Key Attribute 9) - COAGs must be in place for all G-SIFIs. COAGs support the operations of the CMGs by setting out the objectives and processes for cooperation between the home and relevant host authorities that need to be involved in planning for and carrying out resolution of a G-SIFI. They should also define the roles and responsibilities of the authorities pre-crisis (that is, in the recovery and resolution planning phase) and during a crisis; and set out the processes for information sharing and coordination in the development of resolution strategies and the RRP for the G-SIFI.

Recovery and Resolution Plans (RRPs) (Key Attribute 11) - RRP, consisting of a recovery plan and a resolution plan, are required for all G-SIFIs and any other firms that could be systemically significant or critical if they fail.

- The **recovery plan** (prepared by the firm) should identify options to restore financial strength and viability when the firm comes under severe stress. The responsibility for developing, maintaining and executing the recovery plan lies with the firm.
- The **resolution plan** (prepared by the authorities) should set out how resolution powers would be used to preserve the firm's systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It includes a resolution strategy agreed by the home authorities in cooperation with key host authorities and an operational resolution plan that provides further detail on how the authorities would implement the strategy. The home resolution authority should lead the development of the group resolution plan for a G-SIFI in coordination with the firm's CMG. Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdiction, cooperating with the home authority to ensure that the plan is as

¹⁶ See footnote 2.

consistent as possible with the group plan.

RRPs are expected to be regularly updated and evolve over time. They should be subject to at least annual reviews by the relevant CMG. To promote ownership at top level and ensure that key decision makers are sufficiently informed and involved in the process, the resolution strategies should also be subject to regular reviews by top officials of home and relevant host supervisory and resolution authorities.

Resolvability assessments (*Key Attribute 10*) - Resolvability assessments evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Resolvability assessments should help identify any remaining barriers to resolution, and should inform the development and further improvement of the resolution plan.

3.2 Status of implementation of the Key Attributes directed at G-SIFIs

Considerable but uneven progress has been made in implementing the G-SIFI-specific recovery and resolution planning requirements. However, it is important to recognise that resolution planning is an iterative process, in which strategies and plans are developed and amended to take account of changing circumstances, including changes in financial markets, firms' internal organisation and structures, and in national legal resolution regimes and funding arrangements. As such, they need to be maintained as living documents which are improved and updated over time.

- **Crisis Management Groups** - CMGs have been established for nearly all of the 29 G-SIFIs designated in November 2011. CMG membership includes the prudential supervisor, central bank and, where it is a separate authority, the resolution authority of the home and key host countries. In some cases, the finance ministry of the home or host jurisdiction participates in a restricted manner – restrictions being necessary to protect the confidentiality of firm-specific supervisory information. Senior level engagement, with meetings at the level of Heads of Supervision and General Counsel, has proved critical in advancing recovery and resolution planning work within CMGs.
- **Recovery plans** - Initial reviews of recovery plans have taken place for most G-SIFIs, though in-depth reviews are still in progress. These reviews have highlighted a need for greater severity in the hypothetical stress scenarios and for a more exhaustive analysis with regard to impediments to the implementation of recovery measures, taking into account interconnections between group entities and constraints arising from the legal framework.
- **Resolution strategies and operational plans, resolvability assessments and cooperation agreements** - CMGs have been focusing more recently on developing a clearly articulated “resolution strategy” for their respective G-SIFIs. These strategies outline, at a high level, the strategic approach to resolution that is likely to be adopted should the need arise, but they do not prescribe the precise course of action that the authorities will pursue or preclude the development of fall-back options, given the need to consider the circumstances existing at the time of a resolution. The resolution strategies should give the necessary direction to the next stage of work in the CMGs, which should aim to develop detailed operational resolution plans to implement the

strategies and to finalise COAGs. Home authorities for each G-SIFI are to propose a basic resolution strategy to key host authorities for discussion within CMGs, with top-level participation, before the end of 2012.

As this work has progressed, it has become clear that certain aspects would benefit from deeper examination, including of the emerging lessons and that it would be beneficial to document this in the form of guidance to CMGs (see Section 3.3).

3.3 Further guidance for the recovery and resolution planning process

To support the work described in Section 3.2, the FSB will shortly be releasing a consultative document ("Recovery and Resolution Planning: Making the Key Attributes Operational") seeking comments from the public on specific aspects of recovery and resolution planning for G-SIFIs:

- (i) the nature of the stress scenarios and triggers for recovery action that should be used in G-SIFIs' recovery plans, and the extent to which plans link specific scenarios and triggers to specific recovery options;
- (ii) the development of resolution strategies and operational resolution plans tailored to different group structures, drawing on two stylised approaches to resolution: a 'single point of entry' approach by which group resolution takes place primarily through action by the home authority at the level of the parent or holding company; and a 'multiple point of entry' approach whereby resolution actions are taken by multiple authorities along national, regional or functional lines; and
- (iii) the identification of the critical functions and critical shared services that would need to be continued in resolution for reasons of systemic stability.

3.4 Coordination with host jurisdictions with a systemic G-SIFI presence

For reasons of operational efficiency, participation in CMGs should be limited to authorities from the home and key host jurisdictions. However, the failure of a G-SIFI may have an impact on financial stability in other host jurisdictions that are not included in the CMG. The *Key Attributes* therefore provide that home authorities of G-SIFIs should establish a process to ascertain which other jurisdictions assess the local operations of a G-SIFI as systemically important to the local financial system, and should ensure that appropriate arrangements for communication, cooperation and information sharing with such non-CMG jurisdictions are in place. Home authorities and CMGs may also wish to consider for this purpose the principles that the BCBS has developed to identify domestic systemically important banks. The FSB will develop further guidance for arrangements and procedures for cooperation and information sharing with host authorities for which a G-SIFI's operations are locally systemic but that are not represented on the CMG.

3.5 Review process to assess G-SIFI resolvability

Implementation of all G-SIFI resolution requirements, including resolution strategy, planning, resolvability assessments and COAGs, will be reviewed through resolvability assessments conducted by the resolution authorities and CMGs as well as through a resolvability

assessment process for G-SIFIs that the FSB expects to launch in 2013. The process should ensure adequate and consistent reporting on the implementation of all G-SIFI resolution requirements across institutions. It should help identify instances of incomplete implementation and highlight material recurring issues that need to be addressed at policy level.