



July 3, 2018

Financial Stability Board
Centralbahnplatz 2
Basel, Switzerland
fsb@fsb.org

Thematic peer review on bank resolution planning

Dear Sir/Madam:

The Institute of International Finance (“IIF”) and the Global Financial Markets Association (“GFMA”, together the “Associations”)¹ appreciate the opportunity to contribute to the discussion of the captioned document and look forward to further exchanges with the Financial Stability Board (“FSB”) on this important topic.

Key Considerations:

- Promote timely and consistent implementation of the Key Attributes on a global scale, including the support of the most appropriate and coherent group resolution strategies.
- Encourage mutual recognition of resolution frameworks.
- Promote effective cooperation among resolution authorities in Crisis Management Groups (“CMGs”), including the review of Cooperation Agreements (“COAGs”).

¹ See the Appendix for a description of the Associations.

Detailed comments

The FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions ("Key Attributes")² provide a sound basis for the resolution of a major cross-border bank. The Associations have consistently supported the Key Attributes approach to resolution.³ In particular, we deem resolution planning and resolvability assessments to be important preconditions for any successful resolution action. In particular, we share the FSB's view on the importance of links between resolvability assessment and resolution planning.

We also support the FSB's aim to focus on banks other than G-SIBs. This approach is important to ensure level-playing fields for banks with comparable activities on a national scale. On a local basis, local subsidiaries of G-SIBs should be treated like local banks to the extent possible.

Timely and consistent implementation

The Associations would like to take the opportunity to underline the need for timely and consistent implementation of the Key Attributes on a global scale and the importance of a global level playing-field. Today, we observe the clear risk of regulatory fragmentation. Introducing higher requirements or excessive administrative burdens – such as unnecessarily frequent submission of resolution data– that are unnecessary to support an orderly resolution undermine the confidence in the effectiveness of the Key Attributes and threaten the competitiveness of banks in certain jurisdictions.

Further, we encourage the FSB to use this peer review to remind member jurisdictions that excessive prepositioning of loss absorbing capacity can lead to financial stability risks.⁴ The current tendency by major jurisdictions towards subsidiarization and local capital and liquidity requirements endangers global financial stability, as it leaves global banks with less flexibility to deploy resources in a crisis. For example, in the United States the Board of Governors of the Federal Reserve System has mandated Foreign Banking Organizations ("FBOs") to set up new

² FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions (2014), available at: http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf.

³ See e.g. IIF / GFMA, The associations' Submission Re: FSB Consultative Document On Cross-Border Recognition Of Resolution Action, FSB Consultative Document On Guidance On Cooperation And Information Sharing With Host Authorities Of Jurisdictions Not Represented On CMGs Where A G-SIFI Has A Systemic Presence (2014), available at: <https://www.iif.com/file/7060/download?token=6h71moTA>.

⁴ See e.g. *Ervin, Wilson*: Understanding 'ring-fencing' and how it could make banking riskier, Brookings Series on Financial Markets and Regulation, February 7, 2018; available at: <https://www.brookings.edu/research/understanding-ring-fencing-and-how-it-could-make-banking-riskier/>.

holding structures (intermediate holding companies – “IHCs”) for their U.S. operations and carry out capital, liquidity and resolution planning at that level, ignoring any group-wide considerations. In the European Union, it is expected that authorities will soon impose Intermediary Parent Undertaking (“IPU”) requirements for non-EU banks above a certain threshold. These requirements aggravate the perception of ring-fencing along borders and do not serve to enhance the execution of a group resolution plan.

This tendency is aggravated by a fragmentation of local resolution planning strategies – for example bankruptcy versus bail-in – and the concomitant requirements and scenarios across jurisdictions.⁵

All these factors are counter to the benefits derived from the single point of entry (“SPE”) resolution strategy. In substance, fragmentation may result in the imposition of requirements more aligned to multiple point of entry strategies (“MPE”). MPE strategies have their own merits. However, any resolution strategy should be based on the bank’s business model, corporate structure and systemic presence and not emerge as a consequence of uncoordinated policy decisions. Further, fragmentation disincentivises resolvability improvements, because it creates a false assumption that ring-fencing, subsidiarization and local capital and liquidity requirements are sufficient for crisis management.

Regulators and authorities should recognize that banks may follow different resolution strategies: SPE, MPE or a mix of both. The official sector should support the most appropriate strategy in view of a group’s structure, systemic importance in various markets and resolvability assessments. This resolution strategy should be supported by coherent resolution planning across the various jurisdictions, in order to foster confidence that the strategy will actually be implemented in case of a crisis. Ring-fencing and other regulatory action should not pre-empt or undermine this approach.

Recognising the financial stability risks, the FSB could assume the role of identifying excessive prepositioning above the globally agreed maximums by individual jurisdictions and by publishing this information in the dashboard in the Annual Report on the implementation and

⁵ For example, the working assumption for the resolution plan for systemic banks in the European Union is that resolution would usually be achieved through bail-in, with the plan drafted by the home resolution authority. In the United States, despite the Orderly Liquidation Authority of the Dodd-Frank Act, resolution planning requires certain Foreign Banking Organizations (“FBOs”) to draft a plan to show they can put their U.S. Intermediate Holding Companies (“IHCs”) in bankruptcy. Therefore, the EU resolution plan does not share the same scenario as the U.S. plan. Each plan requires different assumptions, e.g. on recapitalization costs.

effectiveness of the post crisis reforms provided to G20 Leaders. This measure would further encourage collaboration between authorities worldwide and thereby improve global financial stability.

Recognition of resolution actions

Since the 2008 financial crisis, the industry has made great progress in improving resolvability and removing impediments to cross-border resolution. Major solutions have been developed by the industry, including the ISDA stay protocols, the identification of critical functions, self-assessments of resolvability and the front-loading issuance of Total Loss Absorbing Capacity (“TLAC”). These reforms should prevent any future bail-outs of G-SIBs at the expense of taxpayers and instill confidence in a financial sector that supports economic growth. However, in our view the public sector is lagging behind in some cases, in particular regarding mutual recognition of cross-border resolution actions.

In the interest of increased legal clarity, it remains important that the FSB encourage G20 jurisdictions to ensure the mutual recognition of resolution frameworks and the related powers and rights of resolution authorities. Such recognition would ensure that the applicable resolution framework is acknowledged, therefore legally valid, and also applicable under third country laws and regulations. This means that all the resolution powers and rights granted to the resolution authorities, such as bail-in, are effectively applicable and enforceable according to the laws and the regulations of these third countries. In our view, mutual recognition is important to foster confidence with market participants and resolution authorities in the feasibility and enforceability of the resolution actions and the bail-in of instruments issued under third country laws and distributed in countries other than the home jurisdiction.

This concept is not without precedent. Mutual recognition is regularly applied by the FSB and the G20 in a range of areas and should thus also be applied in the context of resolution actions.

Cross-border cooperation

In light of the above points on coherent resolution planning and recognition of resolution actions, we would ask the FSB to use this peer review to continue to promote effective cooperation among resolution authorities. Resolution authorities should be encouraged to

increase their focus through Crisis Management Groups (“CMGs”) and Resolution Colleges (“RCs”) on the coordination of resolution planning so as to eliminate some of the highly fragmented requirements that exist today.

Further, we strongly encourage authorities, to the extent possible, to make use of data that is already available within banks, trading venues, market authorities or supervisors themselves. We also encourage authorities to resist all forms of data localization initiatives that could impede effective resolutions and resolution plans. This includes undermining service companies by fragmenting data infrastructure and movement. To the extent that there are future or continuing data requests, regulators should seek to coordinate their requests through the home country regulator

A coordinated approach would improve the planning process and foster confidence in the seamless and coordinated execution of a resolution action. In a similar vein, close cooperation in CMGs and RCs should provide comfort to host authorities about the actions of home authorities. It would also allow a more cooperative approach to setting Internal TLAC for non-resolution entities. In general, the Associations support the Bank of England’s approach to calibrate internal MREL (Minimum Requirements for own Funds and Eligible Liabilities)⁶ based on a starting point of 75% of external MREL — i.e., at the low end of the FSB’s 75% to 90% range according to the FSB’s TLAC Term Sheet.⁷

To that end, the Associations suggest that the FSB encourages resolution authorities to expedite documentation and disclosures of institution-specific COAGs to the respective institution, through the Resolvability Assessment Process (“RAP”). Should these COAGs prove inadequate to serve the purposes of effective cross-border resolution, the FSB should consider issuing further guidance to resolution authorities, to further enhance the basis for their cooperation and information exchange.

⁶ See *Bank of England*, The Bank of England’s approach to setting a minimum requirement for own funds and eligible liabilities (MREL) Statement of Policy, June 2018 (updating November 2016), 7.7 (pp. 9-10); available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/statement-of-policy-boes-approach-to-setting-mrel-2018.pdf?la=en&hash=BC4499AF9CF063A3D8024BE5C050CB1F39E2EBC1>.

⁷ See *FSB*, Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution - Total Loss-absorbing Capacity (TLAC) Term Sheet, 9 November 2015, No. 18 (p. 19); available at: <http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>.

The IIF, GFMA and their working groups stand ready to support the FSB in its ongoing effort to improve cross-border resolution. Should you have any comments or questions on this letter, please contact Andrés Portilla (aportilla@iif.com) or Martin Boer (mboer@iif.com) at the IIF or Charlie Bannister (Charlie.Bannister@afme.eu) at GFMA.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Portilla'.

Andrés Portilla
Managing Director, Regulatory Affairs
Institute of International Finance

A handwritten signature in black ink, appearing to read 'Allison Parent'.

Allison Parent
Executive Director
Global Financial Markets Association

APPENDIX: Description of the Associations

The **Institute of International Finance** is a global association created in 1983 in response to the international debt crisis. The IIF has evolved to meet the changing needs of the international financial community. The IIF's purpose is to support the financial industry in prudently managing risks, including sovereign risk; in disseminating sound practices and standards; and in advocating regulatory, financial, and economic policies in the broad interest of members and to foster global financial stability. Members include the world's largest commercial banks and investment banks, as well as a growing number of insurance companies and investment management firms. Among the IIF's associate members are multinational corporations, consultancies and law firms, trading companies, export credit agencies, and multilateral agencies. All of the major markets are represented and participation from the leading financial institutions in emerging market countries is also increasing steadily. Today the IIF has more than 470 members headquartered in more than 70 countries. For more information, please visit <http://www.iif.com>.

The **Global Financial Markets Association** brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London, Brussels and Frankfurt, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit <http://www.gfma.org>.