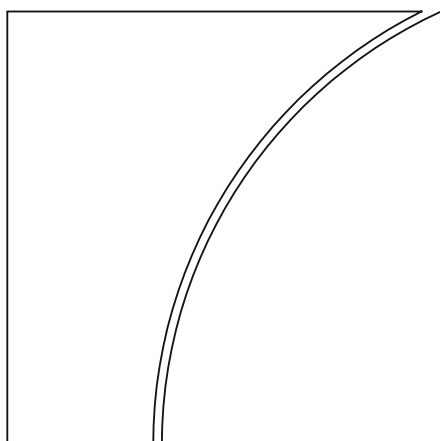


# Financial Stability Institute

## FSI Insights on policy implementation No 32



### Institutional arrangements for bank resolution

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May 2021

JEL classification: G21, G28, K23

Keywords: resolution, resolution authority, supervision, institutional arrangements, operational independence, mandates, conflicts of interest



**BANK FOR INTERNATIONAL SETTLEMENTS**

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Authorised by the Chairman of the FSI, Fernando Restoy.

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ISSN 2522-2481 (print)

ISBN 978-92-9259-465-7 (print)

ISSN 2522-249X (online)

ISBN 978-92-9259-466-4 (online)

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# Institutional arrangements for bank resolution<sup>1</sup>

## Executive summary

**One of the main lessons from the Great Financial Crisis was the need for robust bank resolution frameworks.** In response, the Financial Stability Board developed international standards in the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes), and many jurisdictions have substantially strengthened existing, or established new, frameworks for managing bank failures.

**Those resolution frameworks must be supported by institutional arrangements that have several important features.** While the Key Attributes are not prescriptive about where resolution functions should be located within a jurisdiction's institutional architecture, they do set out a number of principles that the institutional arrangements should meet, irrespective of their location. Core to those principles is the expectation that resolution authorities should have the necessary operational independence to carry out their functions, and that mechanisms are in place to control any conflicts of interest that arise between resolution and other functions carried out by the authority.

**Internationally, approaches to the institutional location of resolution functions vary.** Common locations are the central bank, the prudential supervisory authority or the deposit insurer. This paper reviews how the principles set out in the Key Attributes are implemented in the institutional arrangements in 16 jurisdictions, chosen as a representative sample of different institutional models. The review draws predominantly on interviews with officials from the relevant authorities in those jurisdictions. The interviews focused on features such as the mechanisms for ensuring operational independence and control of conflicts of interest, arrangements for cooperation with other domestic authorities, and the resources, accountability and legal protection of the resolution function.

**The decision about where to locate the resolution function entails trade-offs.** For example, consideration should be given to the interplay between the operational independence of the resolution function and its cooperation with other relevant functions – the supervisory function in particular. When the two functions are located within the same institution, the internal arrangements generally need to balance the exploitation of synergies, on the one hand, and the management of potential conflicts of interest, on the other. Conversely, when the resolution and supervisory functions are located in different institutions, the emphasis is likely to be on ensuring effective coordination and information-sharing between them.

**The mechanisms for achieving a suitable balance between the resolution and supervisory functions generally combine legal or structural separation with well developed cooperative arrangements.** The authorities interviewed recognised a possible tension between the operational independence of the resolution function and its synergies with supervision, but considered the various mechanisms in place for ensuring appropriate autonomy to be effective. These mechanisms include legal or structural separation of the resolution function from supervision and other functions with which conflicts of interest could arise; internal governance arrangements for informed decision-making that allow conflicting views to be weighed and resolved; and multi-level arrangements for coordination, supported by effective information-sharing. A framework of accountability and transparency, including review or reporting of its activities, may also support the actual and perceived operational independence of the

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The authors are grateful to contacts at the financial authorities covered in this paper and to David Archer, Eva Hüpkes, Marianne Klumpp, Hans Sassen, Alfonso Ventoso and Jeffery Yong for helpful comments. Annick Seagrave provided valuable administrative support with the paper. The views expressed herein are those of the authors and not necessarily those of the BIS, BdE or other Basel-based standard setters.

resolution function. The form and combination of these mechanisms vary depending on the model of institutional arrangements for resolution, but they are present to a greater or lesser degree in all the featured jurisdictions.

**Conflicts of interest between the resolution and supervisory functions can arise irrespective of whether they are institutionally co-located or separate.** All forms of institutional arrangements therefore need to ensure that material conflicts are identified, and managed by close coordination and information exchange. Where the functions are in separate authorities, it is likely that greater attention needs to be devoted to ensuring there are well developed cooperative arrangements that allow issues of mutual interest to be discussed, differences to be exposed and addressed, and policies coordinated where necessary. Where the two functions are co-located within the same institution, governance arrangements and decision-making procedures need to ensure that disagreements are solved internally in a way that is consistent with the authority's mandate and statutory objectives. One challenge in this context is ensuring that the resolution function has sufficient weight in decision-making arrangements.

**In spite of the need for an autonomous resolution function, there are clear benefits to institutional arrangements that facilitate close cooperation between the two functions.** The bank resolution function in its current form is relatively new, and untested, in many jurisdictions, and practices may be still developing. In particular, the institutional balance between operational independence of the resolution function on the one hand, and exploiting synergies on the other, is evolving in some authorities as new arrangements mature. Firm conclusions on the benefits of specific institutional arrangements may therefore be premature, although experience to date emphasises the advantages of arrangements that provide a strong framework for cooperation between the two functions, coupled with decision-making procedures that can effectively resolve conflicts.

## Section 1 – Introduction

1. **Following the Great Financial Crisis (GFC), authorities have substantially strengthened existing, or established new, bank resolution frameworks.** International efforts to agree standards culminated in the publication of the Financial Stability Board’s (FSB) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes).<sup>2</sup> The main objective of the Key Attributes is to facilitate the orderly management of failing banks with appropriate loss-bearing by shareholders and creditors, without reliance on public bailouts.

2. **In many jurisdictions, this reform entailed an adjustment in institutional arrangements.** The Key Attributes require jurisdictions to designate an administrative authority (or authorities<sup>3</sup>) to plan for and carry out resolution and to undertake other resolution-related functions,<sup>4</sup> and set out a number of principles that the institutional arrangements should meet. Core to those principles is the expectation that resolution authorities should have the necessary operational independence to carry out their functions in a way that is free from undue political influence. Where an authority combines resolution with other functions, such as supervision, operational independence requires arrangements to manage the conflicts of interest that may arise, in particular, from a tendency towards supervisory forbearance or a bias towards the objectives of going-concern supervision over preparedness for timely resolution.

3. **The Key Attributes are not prescriptive about where resolution functions should be located within a jurisdiction’s institutional architecture.** The international standard leaves considerable flexibility as to how the principles should be met by specific governance arrangements. Accordingly, institutional arrangements for resolution vary. Publicly available sources indicate a range of approaches, although with a predominant tendency to locate bank resolution functions within the same entity as bank supervision.

4. **Nevertheless, irrespective of where resolution functions are located, the institutional arrangements engage with common considerations and trade-offs.** These arise from the interplay between operational independence for the resolution function and cooperation between resolution and other relevant functions – and the supervisory function in particular. Where the resolution authority is legally and institutionally separate from the prudential supervisor, those considerations tilt towards cooperative arrangements that support effective and timely exercise of its functions. Where resolution functions are co-located with supervisory functions – for example, within a central bank – the institutional setup entails some degree of trade-off between the structural separation of the resolution function, the exploitation of the

<sup>2</sup> See FSB (2011). The Key Attributes were first published in 2011, and were subsequently supplemented and republished in 2014. However, the provisions relating to the nature of the resolution authority were unchanged in the 2014 revision. The Key Attributes apply to resolution regimes for any financial institution that could be systemic in failure.

This paper focuses on the institutional arrangements for bank resolution, as that concept is understood within the Key Attributes – that is, a framework that confers special resolution tools on an administrative authority. In some jurisdictions, bank resolution frameworks exist in parallel with insolvency regimes that apply to banks that do not meet specified thresholds or conditions for the use of the special resolution tools. This paper only considers the arrangements for resolution, and does not address the institutional framework for insolvency proceedings, even where the insolvency regime as applied to banks is not exclusively judicial and administrative authorities have some role.

<sup>3</sup> The Key Attributes recognise that resolution functions may be split between two or more authorities. References to a resolution authority in this paper include cases where a jurisdiction has allocated resolution-related functions to more than one authority.

<sup>4</sup> In this paper, “resolution-related functions” are all functions related to planning for and executing resolution. This includes the development of resolution plans and assessing resolvability. However, the determination that a bank meets the non-viability conditions for resolution is not considered, on its own, to constitute a resolution-related function. This determination is commonly the responsibility of the supervisory function. In some jurisdictions, the supervisor is also responsible for the associated determination that measures short of resolution would not be likely to prevent failure or return the bank to viability. These determinations do not make the supervisor a resolution authority as contemplated by the Key Attributes.

synergies with supervision, and the management of the conflicts of interest that might arise despite those synergies.

5. **This paper illustrates the range of practices and different ways in which those trade-offs are achieved within the institutional frameworks of 16 selected jurisdictions.** Most of the information was gained through interviews with the authorities<sup>5</sup> which focused on the policy reasons for the location of the resolution function; its mandate; mechanisms for ensuring operational independence and control of conflicts of interest; arrangements for cooperation with other domestic authorities; and the resources, accountability and legal protection of the resolution function. The paper is organised as follows. Section 2 summarises the relevant principles of the Key Attributes and associated guidance. Section 3 provides a high-level classification of the four approaches to location of the resolution function among the featured jurisdictions. Section 4 describes the main policy considerations and motivations of those jurisdictions in their choice of approach. Section 5 examines the arrangements used to control conflicts of interest and achieve operational independence of the resolution function from the supervisory function and from political influence. Section 6 considers the arrangements in place to facilitate coordination and information-sharing between relevant functions and authorities, Section 7 provides some concluding remarks.

## Section 2 – International standards for resolution authorities

6. **The FSB Key Attributes set out high-level standards for resolution authorities.** It is a core principle of that standard that resolution is an administrative process, conducted in pursuit of public interest objectives by an administrative authority with the requisite mandate, a range of specified powers and the legal and operational capacity to use them effectively. This guiding principle informs the provisions of the Key Attributes, while leaving flexibility for jurisdictions in the way they design the institutional arrangements under their resolution frameworks. The high-level standards are supplemented by essential criteria (EC) and explanatory notes in the FSB Key Attributes Assessment Methodology for the Banking Sector (KAAM).<sup>6</sup> These have the dual purpose of providing implementation guidance for jurisdictions and guiding an assessment of a jurisdiction's bank resolution framework (for example, in the context of the Financial Sector Assessment Progra(FSAP) conducted by the International Monetary Fund (IMF) and the World Bank). Taken together, the Key Attributes and the KAAM specify the outcomes that jurisdictions should achieve in their institutional arrangements for the performance of resolution-related functions and decision-making.<sup>7</sup>

7. **Resolution authorities should have a clear mandate and the operational independence to carry out their statutory responsibilities.** Resolution-related functions for a specific sector may be split between different authorities but, where this is the case, the roles and responsibilities should be clearly defined, allocated and coordinated. The KAAM explains that the resolution authority should be operationally independent in the performance of its responsibilities both as a matter of law and in practice. This means, in particular, that the resolution authority is not subject to undue political or industry influence. Arrangements to achieve this include internal governance arrangements that promote sound and independent decision-making and rules on conflicts of interest.

8. **A resolution authority can have functions other than resolution, provided the resolution functions are operationally independent and conflicts are managed.** Operational independence does not require resolution-related functions to be performed by a dedicated and legally separate authority. The KAAM clarifies that an authority that carries out other functions such as supervision or deposit insurance may be a designated resolution authority, provided there are governance arrangements in place to manage any conflicts of interest that arise from the combination of functions within a single authority.

<sup>5</sup> See Annex 1 for a list of the featured jurisdictions and authorities.

<sup>6</sup> See FSB (2016).

<sup>7</sup> See Annex 2 for the relevant provisions of the Key Attributes and the KAAM.

9. **Operational independence does not require the resolution authority to be exclusively responsible for all aspects of resolution.** Other entities that are not designated resolution authorities may be involved in specific capacities, such as the provision of temporary funding to support a resolution. This permits the framework to require government approval for certain resolution actions that involve public funding. Resolution authorities may also coordinate and share information with ministries of finance or other government authorities without that automatically compromising their independence. Similarly, courts may be involved in resolution provided that the involvement is subject to objectives that are aligned with the statutory objectives of resolution.

10. **In order to be operationally effective and independent, the resolution authority should also have access to adequate resources to carry out its functions.** This includes staff with sufficient expertise, and the ability to expand its human resources where necessary by drawing on supervisory expertise or commissioning external experts with the necessary professional skills and independence.

11. **The resolution authority and its staff should be protected from liability for actions taken or omissions made while exercising resolution functions.** Appropriate indemnities should be in place to ensure that the authority as a legal entity, and the members of its governing body and staff in a personal capacity, are not liable where they have discharged their duties in good faith, acting within the scope of the authority's powers. Directors and staff should also be indemnified against the costs of defending any legal action brought against them in relation to those functions.

12. **The resolution authority should be accountable for the way it discharges its statutory responsibilities.** Accountability implies that there should be procedures for reviewing and evaluating the authority's activities and transparency through periodic public reporting. However, the implementing guidance in the KAAM is not prescriptive in this regard: internal review by management or a function within the resolution authority may be sufficient, although review by an external body of the effectiveness of the authority in meeting its statutory objectives would strengthen accountability. Public reporting should take the form of periodic reports on actions and policies relating to the authority's mandate and statutory objectives at sufficient intervals to keep stakeholders and the public adequately informed. It might also include case-specific reports following a resolution to assess the outcome and effectiveness of the intervention, although this is not a firm expectation under the standards.

### Section 3 – Classification of institutional models

13. **This paper builds upon a previous study of changes to the financial supervisory architecture following the GFC.** That study (Calvo et al (2018)) includes a broad-based overview of the location of the bank resolution function in 69 jurisdictions, which found that:

- 1) where central banks were responsible for bank supervision, the bank resolution function was also located in the same institution in 90% of the cases;
- 2) where the supervisory authority was separate from the central bank, close to two thirds of those authorities were also responsible for bank resolution; and
- 3) a free-standing resolution authority – either a dedicated authority or the deposit insurer – existed in less than one fifth of the jurisdictions.

14. **This paper deepens that analysis by focusing in more detail on the institutional arrangements in a representative sample of jurisdictions.** The sample spans various geographical areas and includes different institutional models for resolution, and the analysis is based on publicly available



material<sup>8</sup> and interviews with relevant national authorities. On the basis of those models, the selected jurisdictions are classed into four groups:

- 1) The resolution authority is co-located with the supervisory authority, which is separate from the central bank: Australia and Austria.
- 2) The resolution authority is co-located with the supervisory authority within the central bank: Brazil, France, Hong Kong SAR, Ireland, Italy, Singapore, South Africa and the United Kingdom.
- 3) The resolution authority is institutionally separate from both the central bank and the supervisor:<sup>9</sup> Canada, Indonesia.
- 4) More than one authority is designated as resolution authority or retains resolution-related functions ("hybrid model"): Denmark, Japan, Norway and Spain (see Box 1 for more details.)

15. **Consistent with the findings of the earlier study, resolution and supervisory functions are co-located in the majority of the jurisdictions sampled for this paper.**<sup>10</sup> In half of those jurisdictions, both functions are housed within or under the institutional umbrella of the central bank. However, there are material variations within this broad structure, in the way that separation between functions is achieved, the decision-making arrangements, and the autonomy of supervisory function relative to the governance structures of the central bank.<sup>11</sup> Similarly, in the majority of the jurisdictions with a free-standing supervisory authority, some or all resolution functions are located within that authority. This includes the jurisdictions with a hybrid model: in each case, certain resolution-related activities are carried out by the authority responsible for prudential supervision.

16. **Some jurisdictions have conferred resolution functions on the deposit insurer.** Within the sampled countries, this is common where the deposit insurer has historically had a role in funding or managing failure of its member institutions. In two jurisdictions, Canada and Indonesia, this approach has resulted in the deposit insurer being designated as the jurisdiction's resolution authority and responsible for all resolution-related functions for banks within its remit. Similarly, in two jurisdictions with a hybrid model, the deposit insurer has executive resolution functions (ie the Danish Financial Stability Company (FSC<sup>12</sup>) and the Deposit Insurance Corporation of Japan (DICJ)). In these cases, the deposit insurance fund can generally be used to help finance resolution measures as an alternative to liquidation and payout of insured deposits. In other cases, the deposit insurance fund may be managed within the same entity as the resolution function, but is not necessarily available to support resolution.

17. **The arrangements featured in the paper do not include the Single Resolution Mechanism (SRM) of the European banking union.** The SRM consists of the Single Resolution Board, a European resolution authority with resolution-related functions only, and the national resolution authorities of the banking union member states. Five countries in the sample (Austria, France, Ireland, Italy and Spain) are members of the banking union and within the SRM. The analysis in this paper focuses on the domestic arrangements in those countries. However, they are overlaid by and operate within the SRM. See Annex 3 for details of the role of the European and national authorities within the SRM.

<sup>8</sup> This includes IMF FSAP and/or FSB Peer Review Reports published in the last five years for the featured jurisdictions.

<sup>9</sup> This does not preclude the authority from having functions closely related to bank failure management, such as deposit insurance.

<sup>10</sup> In this paper, the terms "located" and "co-located" refer to the institutional housing of a function within an authority or body. It does not necessarily imply that functions are in physically in the same location.

<sup>11</sup> In two cases – France and South Africa – the supervisory authority has distinct governance arrangements from the central bank under which it is located. In France, the resolution function is located within the supervisory authority, while in South Africa it is within the central bank governance and decision-making arrangements.

<sup>12</sup> The FSC is the continuation of an existing national resolution authority established in 2008, prior to the implementation of the EU resolution framework. The administration of the Danish DGS was fully transferred to the FSC in 2015.

## Hybrid models

### *Denmark*

The Danish authorities distinguish between a “going-concern” and a “gone-concern” resolution authority. As the going-concern resolution authority, the bank supervisory authority (the Danish Financial Supervisory Authority (DFSA), where a resolution unit is established) is the single point of contact for banks in business as usual for resolution-related purposes. In this capacity, it collects information needed for resolution planning, approves resolution plans, sets and monitors bank-specific minimum requirements for own funds and eligible liabilities (MREL), and issues orders to address or remove impediments to resolvability. The gone-concern resolution authority is the FSC, a free-standing entity that is fully owned by the Danish government but with an independent board of directors. The FSC is responsible for developing resolution plans, in cooperation with the resolution unit in the DFSA, and executing resolutions. It also manages the deposit guarantee scheme (DGS) and national resolution fund. Both authorities are members of the EU “resolution colleges” for the cross-border banks operating within Denmark.

### *Japan*

The Japanese framework has two administrative regimes, in addition to the “limited coverage scheme” for managing failing banks: “measures for orderly resolution” and “measures against financial crisis”.<sup>①</sup> Decisions to apply an administrative resolution regime are taken by the prime minister, following deliberations by the Financial Crisis Response Council, composed of the prime minister, the chief cabinet secretary, the minister for financial services, the minister of finance, the commissioner of the Japanese Financial Services Agency (JFSA) and the Governor of the Bank of Japan. The JFSA sets resolution policy and carries out resolution planning, in coordination with the Deposit Insurance Corporation of Japan (DICJ) and the Bank of Japan on operational aspects. It also provides the information needed by the prime minister for the decision to apply resolution measures, and is responsible for taking resolution actions, including issuing an order that the business and assets of a failed financial institution be placed under management by the DICJ. The DICJ executes the resolution measures under both administrative regimes in its capacity as financial administrator, and provides funding where relevant.

### *Norway*

The resolution function is placed within the Financial Supervisory Authority (FSA), which carries out all tasks assigned to resolution authorities in the European framework. This includes collecting information needed for resolution planning, assessing and approving recovery plans, adopting resolution plans and bank-specific MREL, and issuing orders to address or remove impediments to resolvability. The Ministry of Finance is, however, responsible for decisions of significance to financial stability. This includes determining whether the conditions for resolution are met, including the public interest assessment and the failing or likely to fail determination, based on recommendations of the FSA in its capacity as resolution authority. The FSA is responsible for the execution of resolution proceedings, with its own discretion as to the choice of tools.

### *Spain*

Resolution-related functions are divided between a “preventive” and an “executive” resolution authority. As the preventive resolution authority, the Bank of Spain (BdE), which is also the national bank supervisory authority, is responsible for resolution planning, resolvability assessments and setting MREL. Executive resolution functions are vested in a free-standing authority, the FROB,<sup>②</sup> which exercises resolution powers and carries out bank resolutions. The FROB is also responsible for levying contributions to the resolution fund.

<sup>①</sup> A limited coverage scheme involves the payout of insured deposits and the liquidation of the failed bank, or a transfer of insured deposits to an acquiring bank with financial assistance from the DICJ. This regime applies only where the authorities determine that the failure would not cause systemic risk. The other two options are used where a failure has systemic implications. Measures for orderly resolution include orderly liquidation of a financial institution that is insolvent or likely to become so, while protecting the systemically important assets and liabilities. Measures against financial crisis include: recapitalisation of a deposit-taking institution that is not insolvent, financial assistance in an amount exceeding the cost of insured deposit payout, and temporary nationalisation in cases that threaten financial stability. <sup>②</sup> ‘FROB was originally the acronym of the Fondo de Reestructuración Ordenada Bancaria (Fund for Orderly Bank Restructuring), but that is no longer the case following the change of its status to the Spanish Executive Resolution Authority. However, the name FROB has been retained.

## Section 4 – Motivations for the location of resolution functions

18. **Jurisdictions have generally taken a pragmatic approach to the location of resolution functions, driven predominantly by existing institutional structures and cost considerations.**

Although the sample represents a range of approaches, in all cases the decision about location was heavily influenced by prior experience of dealing with failing banks and the structures already in place for that purpose. Cost considerations are particularly pertinent for smaller jurisdictions or for jurisdictions where the national authorities are only responsible for a small part of the banking sector.<sup>13</sup> In those cases, a dedicated resolution authority may not be justified by the size of the banking sector, or may not be the best use of limited resources.

19. **While the concept of resolution was formalised by the Key Attributes following the GFC, most jurisdictions already had some form of administrative arrangements in place to deal with failing banks.**

Reforms to implement the Key Attributes gave national authorities the opportunity to reflect on and, where necessary, build on or modify those arrangements. One country in the sample, South Africa, changed the location of its resolution function when developing a new resolution framework. However, most of the featured jurisdictions adapted existing arrangements by formalising a new resolution function within the authority that had already been responsible for dealing with failing banks. This was explained in part on the grounds that establishing new dedicated authorities would be particularly costly, in relative terms, for jurisdictions with smaller banking sectors. Others noted that existing arrangements had proved effective, so there was no policy need to change them fundamentally.

20. **A key defining feature of the institutional arrangements is the location of the resolution function in relation to the supervisory function.**

A majority of the jurisdictions in the sample have co-located those functions within the same institution. As discussed below, jurisdictions that adopted this approach consider that the benefits outweigh the possible risks, provided that there are adequate governance arrangements. How that co-location is achieved depends largely on pre-existing arrangements. Where the resolution authority is located in the central bank, in nearly all cases the central bank already housed the bank supervisory function.<sup>14</sup> Similarly, in most cases where the existing supervisory authority was separate from the central bank, the resolution function was established or formalised within that authority.

21. **Several resolution authorities noted the specific benefits of co-location within the central bank.**

They emphasised, in particular, the alignment of the objectives of resolution with the general financial stability mandate of a central bank. One considered that the central bank's stronger system-wide focus could be helpful given the potential systemic repercussions of bank failures. Some highlighted the benefit of being able to receive policy and operational inputs from other relevant central bank functions, such as financial stability, operation of payment systems, oversight of financial market infrastructure, market operations or liquidity management.<sup>15</sup> Indeed, one authority noted that the primary reason for locating the resolution function within the central bank related to the possible use of central bank resources in resolution. Bringing resolution decision-making within the same governance structure as the departments

<sup>13</sup> In the European banking union, national resolution authorities are responsible only for smaller banks. Most resolution-related functions (other than executing a resolution) in relation to "significant institutions" and cross-border groups are carried out by the Single Resolution Board. See Annex 3 for details.

<sup>14</sup> In the United Kingdom, the banking supervisory authority was separate from the central bank at the time a resolution function was first established, but was subsequently brought within the central bank.

<sup>15</sup> A different arrangement is in place in Austria, where the resolution function is within the supervisory authority, but the central bank has a role in supporting resolution planning, for example by contributing financial market stability analysis. Since the central bank has a large dedicated team that conducts on-site inspections for the supervisor, it also carries out that task for the resolution function where required and provides a reporting platform for both supervision and resolution.

responsible for the central bank's balance sheet and its market operations was considered more relevant than potential synergies between resolution and supervision at the time the resolution function was established. While the benefits of the latter have subsequently been acknowledged – reduced bureaucratic barriers to information flows, a holistic approach to assessing risk – the original motivations are still considered a strength of conferring resolution functions on the central bank.

22. **A principal motivation for legal separation of resolution and supervisory functions was to establish appropriate counterbalance.** For example, under the new South African resolution framework, a deliberate policy decision was taken to place the resolution function within the central bank rather than the supervisory authority, which is statutorily separate from the South African Reserve Bank (SARB).<sup>16</sup> Key considerations in this decision were the reduced risk of forbearance and the aim of making resolution more objective by separating it statutorily from supervision. Nevertheless, the fact that the Prudential Authority (PA) is within the same organisation as the central bank enables close cooperation between the resolution and the supervisory functions, including sharing of institution-specific knowledge.<sup>17</sup>

### Co-location of the resolution and supervisory functions: main considerations

23. **The principal reason for co-locating resolution and supervisory functions was the perceived synergies.** Benefits cited included smooth information flows between the resolution and supervisory functions, and the resolution function's easy access to the supervisory perspective and to the institution-specific knowledge available in the supervisory authority. Some authorities referred to the continuity of processes between supervision and resolution as an advantage, allowing the resolution function to be informed of deterioration in a bank's condition in a timely way and prepare for action. This was seen to facilitate early contingency planning and speedy intervention.<sup>18</sup> Where supervision and resolution functions are in different bodies, developed cooperative arrangements are needed to achieve similar outcomes.

24. **Cost efficiencies were sometimes a factor in the decision.** One authority referred to benefits for the industry, since information-sharing between the two areas within the same institution reduced the reporting burden for banks and avoided duplication of their reporting requirements. It should be noted, however, that other models were presented as achieving a similar outcome: for example, a shared database where resolution and supervision are separate authorities, or a hybrid model in which one authority is the single point of contact for banks for the purpose of information-gathering.

25. **However, a number of authorities acknowledged the potential for conflicts of interest between the two functions.** They referred variously to supervisory forbearance, a possible bias of supervisory over resolution objectives in the event of conflict, and the need for the resolution function to exert sufficient influence within the decision-making structure of the organisation. Conflicts could manifest in an institutional resistance to the use of resolution powers deriving from a reluctance to acknowledge that a supervised institution has failed, concerns about reputational damage or misguided optimism that it can recover given time. For example, the supervisor may seek to delay determining a stressed bank to be non-viable and extend the period for recovery measures, whereas the resolution authority generally has a clear interest in taking resolution actions as early as possible. This risk is material if the supervisory authority has

<sup>16</sup> Prior to the new resolution framework, the supervisory authority has been responsible for bank failure management. The new framework is expected to enter into force in 2021.

<sup>17</sup> The PA is a separate legal entity, but within the administration of SARB, and maintains a close relationship with the central bank. The governing body of the PA is the Prudential Committee, whose membership is the SARB Governors. One of the Deputy Governors is also the Chief Executive Officer of the PA.

<sup>18</sup> See Box 2 for an overview of the distribution of supervisory and resolution functions under the US framework. This paper does not otherwise cover the US regime.

sole responsibility for determining that a bank meets conditions for resolution based on non-viability or imminence of failure. Some authorities cited a possible conflict with regard to levels of loss absorbency, between a supervisory going-concern focus on profitability and the resolution authority's incentives to maximise the gone-concern resources that would be available in resolution.<sup>19</sup>

26. **Those conflicts could be exacerbated if the supervisory function, being longer established and larger, could exercise a stronger influence than the resolution one.** Some noted that this as a problem in jurisdictions with no recent experience of banking crises, since in those circumstances it may be more difficult for the resolution function to assert sufficient weight in the event of a conflict of views with supervision. Several authorities emphasised that where the resolution function is relatively newer and smaller than the supervisory function, it would need to be proactive in establishing itself and its influence within the authority in the early stages of its operations. However, this view was not universal. A couple of authorities considered that, within their own arrangements, there was no imbalance of power or influence between resolution and supervision, and emphasised the close alignment of their mandates.

27. **The benefits of co-location were considered to outweigh the potential drawbacks, which authorities considered could be adequately managed with the appropriate mechanisms.** Mechanisms for managing risks of supervisory forbearance and conflicts of interest include clear mandates for the functions, clarity about the point of transition between supervision and resolution, and distinct responsibilities within well defined parameters to limit the scope for overlap of competencies. Section 5 explores these in more detail. A couple of authorities argued that the incidence of disagreements between supervision and resolution was reduced in their jurisdiction by prudential policies such as gold-plating international supervisory standards that increase loss absorbency and lower the likelihood of failure.

28. **The co-location of resolution and supervisory functions was also considered to facilitate effective decision-making.** A number of authorities emphasised that co-location helped in the resolution of differences because it facilitated dialogue between the two functions: conflicts could be more easily resolved within the internal decision-making structures of a single institution. Where necessary, escalation to the ultimate decision-making body enables the issue to be decided in a way that takes due account of the position of both areas.<sup>20</sup> For example, a potential point of friction might be the evaluation of the conditions for resolution. Supervisors are normally responsible for the determination of non-viability, while assessment of other conditions such as the inadequacy of alternative private measures or any public interest threshold is frequently the responsibility of the resolution function. Co-location of the two functions was considered helpful in that it allowed the input and involvement of both parties during the whole process and was more likely to minimise risks of forbearance. This benefit assumes that the resolution function has access to timely information about emerging problems, which in turn requires internal information-sharing arrangements where the functions are structurally separate.

Box 2

## Resolution and supervisory functions under the US framework

### *Distribution of supervisory functions between US federal agencies*

The Federal Deposit Insurance Corporation (FDIC) has supervisory functions in tandem with its roles as deposit insurer and resolution authority for all US insured depository institutions (IDIs). It is the primary supervisor for state-chartered banks and savings associations that are not members of the Federal Reserve System, and has backup supervisory authority for all IDIs, in support of its responsibilities as resolution authority and deposit insurer. It is also the resolution authority for large, complex non-bank financial institutions, including bank holding companies.①

<sup>19</sup> Many of the potential conflicts mentioned may arise irrespective of whether the resolution and supervisory functions are within the same institution, but co-location may require different mechanisms for managing conflicts. This is considered in Section 5.

<sup>20</sup> See Kirakul et al (2021) for a description of other institutional arrangements in selected authorities to mitigate potential conflicts of mandates.

The other US federal agencies responsible for banking supervision are the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC). The FRB is the primary supervisor for state-chartered banks that are members of the Federal Reserve System, bank holding companies, savings and loan holding companies, and US operations of foreign banking organisations (FBOs). The OCC is the primary supervisor for national banks, federal savings associations and federally licensed branches of FBOs.<sup>②</sup>

### *Inter-agency cooperative arrangements*

The various federal agencies have established enhanced cooperation arrangements and a range of formal and informal mechanisms for information-sharing and coordination. Those arrangements include the Financial Stability Oversight Council (FSOC), a collaborative body established by statute and chaired by the Secretary of the Treasury.<sup>③</sup> The FSOC brings together the federal financial regulators (including the FDIC, FRB and OCC), state regulators and an independent insurance expert appointed by the president. Its statutory duties include facilitating regulatory coordination and information-sharing between the member agencies, identifying systemic risks and responding to emerging threats to financial stability. Of its five committees, the Regulation and Resolution Committee supports the FSOC on resolution plan requirements and the orderly liquidation authority rules and regulations.

### *Organisation of supervisory and resolution functions within the FDIC*

The FDIC recently centralised its supervision and resolution activities for the largest banks for which the FDIC is not the primary federal regulator and for complex financial institutions (LCFIs), in a new Division of Complex Institution Supervision and Resolution (CISR) (McWilliams (2020)). The centralisation of these activities in a single Division seeks to foster closer a holistic approach to supervision and resolution planning and to enhance information-sharing among staff, allowing a broader view and increased operational readiness.

The CISR is responsible for planning and, where necessary, executing resolution for LCFIs in the FDIC's portfolio, and its role for the FDIC as backup supervisor is closely linked to those functions. CISR performs the ongoing risk-monitoring of LCFIs and back-up supervision of the IDIs related to these firms. For that purpose, it participates with the primary supervisors in joint examinations and (off- and on-site) monitoring of potential risk. This allows CISR staff to work closely with the primary supervisor to ensure that the FDIC is aware of a firm's risk profile and able to develop strategies that facilitate resolution planning and readiness.

In conjunction with forming CISR, the FDIC established the new position of Deputy to the Chairman for Financial Stability to focus on financial stability issues, including the resolvability of large banks. In this role, the Deputy to the Chairman for Financial Stability oversees and coordinates the work of CISR, the Division of Insurance and Research, and the Division of Resolutions and Receiverships.

The FDIC also continues to perform its long-standing supervision and resolution responsibilities for IDIs for which the FDIC is the primary Federal regulator. The Division of Risk Management Supervision and the Division of Resolutions and Receiverships respectively are responsible for performing these activities.

<sup>①</sup> The FDIC's authorities and responsibilities in relation to IDIs are conferred by the Federal Deposit Insurance Act (FDIA), and its resolution-related responsibilities and authorities in relation to non-bank financial companies are governed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). <sup>②</sup> See IMF (2020a). <sup>③</sup> The US Treasury Secretary (TS) has a role in a number of aspects of the FDIC's response to the failure of IDIs or bank holding companies. In relation to the FDIC's functions under the FDIA, the TS decides on the financial backstop for the Deposit Insurance Fund and invoking the systemic risk exception to the least-cost test for FDIC resolution measures. Under the DFA, the agreement of the TS is required for triggering Title II resolution, using the orderly liquidation authority powers and orderly liquidation fund funding, among other things.

## Hybrid model

29. **Most hybrid models, where the resolution function is split between two authorities, preserve established institutional roles or expertise.** For example, in Japan the role of the Deposit Insurance Corporation of Japan (DICJ) in executing resolution measures is a continuation of its pre-existing role as financial administrator in relation to failed banks, while the resolution-related functions of the Japanese Financial Services Agency (JFSA), which include resolution policy and planning, are linked to its financial stability mandate. Similarly, existing structures drove the allocation of resolution-related functions in a

number of EU member states. Over a decade ago, Europe experienced a severe financial crisis, which affected the banking sector in several countries. In response to that crisis, some countries established a dedicated agency, such as the FROB<sup>21</sup> in Spain and the Financial Stability Company (FSC) in Denmark. When those countries transposed the EU Bank Recovery and Resolution Directive (BRRD), they built around those existing agencies. However, different reasons were cited for adopting a hybrid model.

- In Spain, the framework builds upon the FROB's original role in bank restructuring, which was conferred with its creation in 2009. The rationale for the split of functions between the FROB and the BdE with the implementation of the BRRD was to ensure the independence of supervisory and executive resolution functions. Preventive functions are located within the BdE in an independent Directorate General. The BdE is also solely responsible for determining that a bank is failing or likely to fail, putting an end to its going-concern status. The separation also helps to prevent conflicts between banking supervision and the FROB's additional function of managing legacy holdings of shares in entities from the restructuring measures undertaken in the early 2010s. Once those holdings are sold, the institutional arrangements may be reviewed.<sup>22</sup>
- In Denmark, the main reason for splitting functions was to preserve the distinct and well tested roles of the Danish Financial Supervisory Authority (DFSA), as the body responsible for going concern banks, and the FSC as the dedicated authority for dealing with failing banks, which had been operating since 2008. During the GFC, both the DFSA and FSC had certain overlapping functions. The current hybrid model was therefore designed to avoid that, and to retain the expert knowledge and experience in financial transactions and valuation gained by the FSC during that period. In addition, the DFSA's role as the single point of contact for going-concern banks was considered to be an efficient arrangement for the industry.
- In Norway, the hybrid model with a decision-making role by the Ministry of Finance (MoF) had been in place since the banking crisis of the 1990s, and was considered to have worked well during the GFC. The principal driver for retaining MoF involvement was its accountability to parliament and to the public, considered desirable because of the intrusive nature of resolution and the public interest dimension it entails.

30. **This model may bring benefits of experience and specialisation.** A couple of authorities noted that their hybrid model built upon the institutional knowledge of bank failure management and restructuring within existing dedicated entities, while also benefiting from the expertise within supervisory functions. In addition, the model may be geared towards bringing different perspectives to discussions about resolution. The use of a separate legal entity to carry out resolution may also increase operational independence of executive resolution functions, although this depends on how key decisions are made.

31. **However, this arrangement also entails certain costs.** Several authorities acknowledged that the model relies on strong coordination between the authorities, which could be time-consuming and resource-intensive, and in some cases results in duplication of work. There was also a risk that decision-making could be a more cumbersome process. Finally, arrangements for information-sharing need to function smoothly, to avoid risks of information flows being less fluid than under other arrangements.

<sup>21</sup> See footnote 2 in Box 1.

<sup>22</sup> The preamble to Law 11/2015 (which allocates the resolution functions) states that once the processes currently under way have been completed, this institutional model will be assessed in order to achieve greater efficiency. The assessment will take into account the experience of the Single Resolution Mechanism and of the resolution authorities of the euro area member states and the evolution of the financial situation.

## Institutionally separate resolution authority

32. **Two countries in the sample have a resolution authority that is institutionally separate from both the supervisor and the central bank.** The Canadian Deposit Insurance Corporation (CDIC) and the Indonesia Deposit Insurance Corporation (IDIC)<sup>23</sup> are both the deposit insurer and the resolution authority for member institutions. This arrangement was driven by existing mandates and structures. The IDIC has both a depositor protection mandate and a wider mandate to participate in maintaining the stability of the banking system that supports its resolution functions.<sup>24</sup> The CDIC was established in 1967 as a deposit insurer, but since the beginning had acted as the de facto resolution authority for its member institutions. When the current Canadian federal resolution framework was developed, the CDIC was formally designated as federal resolution authority without any substantial policy consideration of other models. The established practice of good cooperation with the supervisory authority up to that point was a sound foundation for continuing cooperation in the CDIC's resolution functions. The Canadian institutional arrangements are designed to avoid the challenges of timely access to firm-specific information that might arise where a self-governing resolution authority is fully legally and operationally separate from the supervisory authority. An inter-agency committee facilitates policy decisions and the exchange of information, and a single information system shared by the CDIC, the supervisor and the central bank also enables each authority to access the data it requires for its functions. As deposit insurer and as part of its loss minimisation mandate, CDIC can also independently collect information from its member institutions for risk assessment and resolution planning purposes.

33. **Even where the resolution authority is located with a deposit insurer, conflicts with the supervisor remain possible.** Supervisory forbearance is a risk where the supervisor is responsible for determining that a bank is no longer viable, as a condition for entry into resolution. Conflicts of interest in that regard may be exacerbated if the deposit insurer's risk and loss minimisation mandates result in a lower risk appetite than the supervisory authority. Institutional governance mechanisms help to resolve and mitigate potential conflicts as they arise. On the other hand, no authority interviewed considered there to be a conflict between deposit insurance and resolution functions.

## Section 5 – Operational independence and management of conflicts of interest

34. **This section examines the types of arrangements adopted to confer an appropriate level of operational independence for the resolution function and to mitigate any conflicts of interest that arise.** At the heart of this is the question for authorities of how to achieve the right balance between managing conflicts on the one hand, and realising the benefits of cooperation between supervisory and resolution functions on the other. That balance is found in the interplay of institutional organisation, structures for decision-making and internal coordination arrangements, and varies between authorities. The discussion focuses on the mandate of the resolution functions, means of achieving its structural separation from other relevant functions, and how resolution-related decisions are taken with the institution. Some authorities have published statements on how operational independence of the resolution function is

<sup>23</sup> This paper uses the English name and abbreviation. The Indonesian name is Lembaga Penjamin Simpanan (LPS).

<sup>24</sup> Under the Indonesian framework, the role of IDIC as resolution authority is complemented by the Financial System Stability Committee (KSSK). The abbreviation derives from the Indonesian name (Komite Stabilitas Sistem Keuangan). The KSSK is a coordination forum comprising the finance minister and the heads of Bank Indonesia, the Financial Services Authority (OJK) and IDIC (as a non-voting member). The KSSK is responsible for determining and coordinating the response to failure of D-SIBs and systemic banking crises. IDIC executes the resolution measures.



achieved (Box 3). The section then addresses independence from political influence by outlining the role of government bodies such as ministries of finance under the resolution framework of a number of the sampled jurisdictions. It concludes with short descriptions of approaches to accountability and transparency of the resolution function, protection against liability for the resolution authority and its staff, and ensuring that the resolution function is adequately staffed to perform its mandate.

35. **Operational independence for the resolution function within an organisation is generally conferred through structural separation and governance arrangements.** The risk of conflicts between the going-concern perspective of supervision and the gone-concern perspective of resolution was recognised by a number of the authorities.<sup>25</sup> Those conflicts are typically managed through a combination of clear mandates, alignment of objectives and separate governance and decision-making procedures. An explicit mandate for resolution, ideally set out in statute, underpins appropriate delineation of the roles and responsibilities of different functions. This may be of particular importance where resolution is introduced as a new function and the resolution authority needs to develop institutional weight within an existing structure. Alignment of objectives for different functions within an organisation may help to minimise conflicts. Structural separation between resolution and supervision, with separate reporting lines, supports independent policy development and decision-making for resolution-related issues, while the arrangements for the ultimate decision-making body within the institution can manage conflicts by ensuring that different perspectives of resolution, supervision or other relevant functions are appropriately taken into account. The following subsections describe how these features are incorporated in the institutional arrangements of a number of the authorities interviewed.

Box 3

### Public statements and guidance on operational independence of resolution authority

The European Banking Authority (EBA) has published guidance on how the requirement for operational independence applies where the resolution function is located within an authority multiple functions.<sup>①</sup> A number of authorities, including the Bank of England (BoE) and the Hong Kong Monetary Authority (HKMA), have published statements describing how operational independence of the resolution authority is achieved within their own entities.<sup>②</sup>

#### *European Banking Authority*

The guidance takes the form of a Q&A on the application of Article 3.3 BRRD. That article allows the resolution function to be part of, or co-located with, the supervisory authority, provided there is operational independence between resolution and supervision or other relevant functions. This includes having in place adequate structural arrangements to avoid conflicts of interest and to ensure that staff of the resolution function are structurally separate from staff carrying out other functions, and subject to separate reporting lines.

The guidance provides that while the resolution function can cooperate and exchange information with other functions (subject to confidentiality requirements) the actions of the resolution authority should not be constrained by decisions taken by other functions within the same institution. It also emphasises the need for structural separation (meaning different personnel) and separate reporting lines for staff of the resolution function.

<sup>25</sup> Within the models covered by this paper, this was frequently cited as relevant where the resolution function is located within the supervisory authority or where both the prudential supervisor and the resolution authority are part of the central bank or monetary authority. Nevertheless, where resolution and supervision are segregated in different authorities, similar conflicts may arise. However, the mechanisms for addressing conflicts between separate authorities differ from the arrangements needed to manage conflicts of interest between functions within the same authority. This section of the paper focuses on the latter.

However, it also notes that the reporting lines of different functions may converge, ideally at the level immediately below the highest decision-making body in the institution. That body can receive a draft decision on resolution issues, which is the outcome of the consultation and coordination process between the relevant internal functions. This is explained as consistent with allowing the resolution function to be located in a larger institution such as a central bank, where the Governor and executive board, as ultimate decision-makers, oversee all functions.

### *Bank of England*

The BoE is designated as the bank resolution authority in the United Kingdom and is also the prudential supervisor in its capacity as the Prudential Regulation Authority (PRA). The BoE statement sets out how the decision-making framework is designed to achieve operational independence of the resolution function with separation of staff and reporting lines, while maintaining close cooperation between the supervisory and resolution functions in relation to resolution activities.<sup>③</sup>

*Decision-making* – Resolution decision-making structures are generally separate from the decision-making structures of other parts of the BoE, including the PRA. Different Deputy Governors are responsible for bank resolution and bank supervision, and are advised by different committees. While those committees have members from across the BoE and PRA to facilitate cooperation, decision-making authority for resolution rests solely with the relevant Deputy Governor or the Executive Director for Resolution. The most important resolution decisions are reserved for, or escalated to, the Governor, who may be advised by the Deputy Governors. Decision-making authority for the BoE’s macroprudential and monetary policy functions also resides with separate statutory committees, both of which include external members.

*Structural separation of staff* – A Resolution Directorate with its own staff, separate from the rest of the BoE and PRA, has operational responsibility for discharging the functions of the resolution authority.

*Separate reporting lines* – Resolution Directorate staff report directly to the Executive Director for Resolution, who in turn reports to the Deputy Governor for Markets and Banking (who is also responsible for resolution). That Deputy Governor reports to the Governor.

### *Hong Kong Monetary Authority*

As designated resolution authority, the Monetary Authority (MA) has issued a chapter of the Code of Practice that describes how it achieves operational independence.<sup>④</sup>

*Structural independence* – A dedicated Resolution Office, which works independently from the other parts of the HKMA and is headed by a commissioner, supports the MA in the discharge of its functions as resolution authority. The commissioner reports directly to the MA.

*Internal coordination and decision-making mechanism* – The decision-making mechanism ensures that key decisions may be taken swiftly and independently from the other functions of the MA, thus minimising the potential for conflicts of interest. Internal coordination arrangements are in place to help ensure that decisions are taken on a sufficiently informed basis, with the appropriate early warning mechanism and the avoidance of any asymmetry of information.

<sup>①</sup> See EBA (2015). <sup>②</sup> For example, in accordance with the requirement under the BRRD to adopt and publish rules to comply with Article 3.3, the Central Bank of Ireland has published its internal rules on, among other things, its structural arrangements to ensure operational independence of the resolution authority (see Central Bank of Ireland (2019)). <sup>③</sup> See BoE (2021). <sup>④</sup> See HKMA (2017). The Code of Practice is issued by the MA as resolution authority pursuant to the Financial Institutions (Resolution) Ordinance (FIRO, section 196), which establishes a resolution regime for financial institutions in Hong Kong SAR.

## Mandates and objectives

36. **The Key Attributes require jurisdictions to provide resolution authorities with a statutory mandate, objectives and functions.** In most jurisdictions in the sample, the resolution function has an explicit mandate and objectives tailored to resolution. However, in a couple of cases resolution powers are provided under the same statutory framework as supervisory powers, and there are no distinct objectives for resolution. This risks a lack of clarity in attribution of responsibilities between supervisory and resolution

functions and possible ambiguity about the point when a bank passes from being under (albeit intensive) supervision to resolution. That passage is significant since it is likely to affect the rights of owners, creditors or other stakeholders.

37. **While functions should be clear and distinct, some alignment of objectives between supervisory and resolution functions may help to reduce conflicts.** Several authorities noted the effect of common financial stability objectives for different functions in minimising conflicts. For example, orderly resolution contributes to the objectives of the UK banking supervisor, the Prudential Regulation Authority (PRA), which is co-located with the resolution function within the Bank of England (BoE). The PRA has a primary statutory objective to promote the safety and soundness of the firms it regulates. One of the ways it is required by statute to pursue this objective is by minimising the adverse effect that the failure of such firms could have on the stability of the UK financial system. Since the PRA does not aim to operate a zero-failure regime, it pursues this objective by seeking to ensure that failures of regulated firms do not result in significant disruption to their critical functions. The PRA considers resolvability as part of its supervisory work, with a view to ensuring that firms are structured and operate in a way that is compatible with the preferred resolution strategy set by the resolution function.<sup>26</sup> Similarly, one of the PRA's eight Fundamental Rules stipulates that all PRA-licensed firms must prepare for resolution so, if the need arises, they can be resolved in an orderly manner with a minimum disruption of critical services.<sup>27</sup> While this does not necessarily eliminate potential for divergence between supervisory and resolution function on topics such as the desired levels of loss absorbency, it helps to frame the discussion within aligned objectives.

## Structural separation of the resolution function

### Central banks

38. **In most of the authorities interviewed, a separate department or division is responsible for the resolution function, with discrete reporting lines up to the highest decision-maker in the institution.** In a central bank, this typically means that the resolution function has separate reporting from the supervisory functions up to the level of Deputy Governor or Governor.<sup>28</sup> A different approach is taken by the Monetary Authority of Singapore (MAS), where resolution functions are divided between supervisory teams, which are responsible for resolution planning and would play a role in executing resolution, and a Resolution Unit (RSU) that is responsible for policy development and works with the supervisory teams on resolution planning and execution. The RSU is structurally separate from the supervisory teams, and reporting lines are separate to the level of Assistant Managing Director (AMD), with the RSU reporting to the AMD for Policy, Payment and Financial Crime, who has no conflicting supervisory responsibilities. The reporting lines converge at the level of the Deputy Managing Director in charge of Financial Supervision.

39. **Where resolution is structurally separate from bank supervision, approaches vary as to where the resolution function is located within the central bank.** In the Central Bank of Brazil (BCB), the resolution function is located in the Department of Resolution and Sanctioning Action and reports to the Deputy Governor for Licensing and Resolution. In the BoE, the resolution directorate is headed by an Executive Director who reports to the Deputy Governor for Markets and Banking, who has responsibility for

<sup>26</sup> Bank of England (2018) and BoE Independent Evaluation Office (2018). The BoE's Resolvability Assessment Framework is supported by both the Bank, as resolution authority, and the PRA.

<sup>27</sup> See Bank of England (2016). The Fundamental Rules apply to all PRA-licensed firms. They collectively act as an expression of the PRA's general objective of promoting the safety and soundness of regulated firms. Fundamental Rule 8 relates to preparedness for resolution.

<sup>28</sup> This is the case, for example, in the Central Bank of Brazil and the Central Bank of Ireland. In the BoE reporting is separate up to the level of the Executive Commission (composed of the Governor, the Deputy Governor and the two additional members from the Governing Council). In the HKMA the Commissioner of the Resolution Office reports directly to the Chief Executive, which is the equivalent of a Governor.

resolution (with the most important resolution decisions reserved to the Governor). Under the cross-sectoral resolution regime of Hong Kong SAR, the resolution function in relation to banks is undertaken by the Resolution Office of the HKMA. This is a separate office headed by a Commissioner who is exclusively responsible for resolution and reports directly to the Chief Executive of the HKMA in the latter's capacity as resolution authority. In the Bank of Italy (BdI), the Resolution and Crisis Management Unit is structurally separate from all other functions and reports directly to the Governing Board. In the BdE, resolution is in the Directorate General Financial Stability, Regulation and Resolution, separate from the Directorate General for Banking Supervision. The French Autorité de contrôle prudentiel et de résolution (ACPR) is a combined prudential supervisor and resolution authority that is under the institutional umbrella of the Bank of France.<sup>29</sup> Resolution functions are undertaken in a directorate that is separate from supervision and under the Deputy General Secretary of the ACPR, who is not in charge of supervision function. The Resolution Directorate has a separate budget, and its head is nominated by a different procedure to other director positions within the ACPR.

40. **In some cases, an existing resolution function was relocated within the central bank in response to international standards.** For example, in Ireland, since its establishment, the resolution function has been located in three different areas within the Central Bank of Ireland (CBI). First, prior to implementation of the BRRD, it was within the Supervisory Unit; then within the Corporate Affairs Directorate, before being moved to its present position within the Financial Stability Directorate, which is also responsible for macroprudential policy, the central credit register and climate change, with a mandate to maintain financial stability. In this position, resolution is the responsibility of the Governor, but with reporting lines through the Director of Financial Stability and the Deputy Governor for Central Banking.

41. **Policymakers of one jurisdiction opted for legal separation of resolution and supervision.** In South Africa, the PA is a separate statutory body, linked to SARB through the SARB Governors, who are the members of the Prudential Committee, which is the governing body of the PA. When the resolution framework was adopted, the SARB assumed the new resolution functions, in contrast to the earlier framework under which the PA was responsible for overseeing bank failure management. A principal reason for locating the resolution authority within the SARB rather than the PA was to achieve legal segregation of resolution and supervision, both to counter the risks of supervisory forbearance and to maximise the objectivity of resolution authority. Resolution was also considered as aligned with the SARB's financial stability mandate. Nevertheless, close cooperation and coordination with the supervision function in resolution planning and execution are considered essential, and facilitated by institutional links between the PA and the SARB.

42. **In every case, the resolution function is structurally separate from traditional central bank functions.** In general, other central bank functions such as monetary policy and open market operations, including emergency liquidity assistance and financial stability policy and oversight, were not cited as significant sources of potential conflict with resolution.<sup>30</sup> This may be because, for those functions, there is materially less potential for both complementarity and overlap with resolution compared with microprudential supervision, so potential conflicts of interest are less likely to be pronounced and may be more easily controlled.<sup>31</sup> Potential conflicts between a central bank's capacity as resolution authority and as a potential creditor of a bank in resolution that has received, and possibly continues to receive, central bank liquidity assistance were not referred to as a particular concern. Some interviews highlighted the

<sup>29</sup> The ACPR was originally established as a separate administrative authority from the central bank. Since 2017, this is no longer the case, but it remains operationally independent from the Bank of France, with a distinct governance structure, and is housed in separate premises.

<sup>30</sup> One authority noted a possible conflict with monetary policy, but considered it more notional than material.

<sup>31</sup> In particular, reputational risk is connected primarily with the supervisory function, and is realised when a bank fails. This may be the most significant source of conflict within an institution that co-locates microprudential supervision and resolution, and is likely to be a far less material concern for other central bank functions.

complementarities, such as the access, in resolution-related decision-making, to input from the monetary policy division on likely systemic impact.

### Supervisory authorities

43. **Where a free-standing supervisory authority is also the resolution authority, the unit responsible for resolution functions is generally separate from supervision in the structural organisation of the authority.** For example, in the Australian Prudential Regulation Authority (APRA), resolution functions are carried out by the Resolution Team, which is located within the directorate responsible for policy and advice. This is separate from the directorate responsible for bank supervision. Each directorate is headed by a different executive director, both of whom report to the Executive Board. In the Austrian Financial Market Authority (FMA), there is an individual department for resolution, separate from the departments responsible for supervision, and reporting directly to the Executive Board. A different approach is taken by the FSA in Norway, where the unit responsible for licensing and crisis management is institutionally within the department for banking and insurance supervision and reports to the same deputy director general. To some degree, the extent to which structural separation can be achieved may be driven in part by the size of the authority and the available resources.

### Hybrid model

44. **Even where the supervisory authority is responsible for only a subset of resolution-related functions under a hybrid model, those functions are generally also structurally separate from supervision.** This may be the case even if the distribution of the resolution functions was driven by the perceived operational synergies of the supervisory authority retaining its resolution-related functions. The Danish FSA refers to itself as the going-concern resolution authority that acts as the single point of contact for banks for the purposes of collecting information for resolution planning and setting MREL (the loss absorbency requirements under the EU framework). It also has a role in resolution planning and resolvability, although the FSC is responsible for developing resolution plans, including the operational aspects. Nevertheless, the resolution function is structurally separate from banking supervision, within the directorate for capital markets supervision. Each directorate is the responsibility of a different deputy director general, who reports directly to the Director General of the DFSA. Similarly, the BdE's functions as the "preventive" resolution authority responsible for resolution planning and MREL setting are structurally separate from supervision within the central bank, even though this model also recognises the commonalities and shared financial stability objectives of resolution planning and supervision.

## Decision-making arrangements

45. **Decision-making arrangements provide mechanisms for weighing and navigating different perspectives in the event of conflicts of interest.** Structural separation of functions within an authority or central bank normally converges at the ultimate decision-making body or individual. In the event of different views or conflicts between resolution and supervision, or other functions, that body or individual will be required to take an informed decision. The nature of the decision-making body and process varies, and many of the authorities interviewed do not have specific decision-making arrangements for resolution-related decisions.<sup>32</sup> Where decisions are taken by a governing body, the way in which resolution and supervision are represented in the process differs. For example, in the BCB different Deputy Governors are responsible for resolution and supervision, and both participate in the decision-making body, the Board of Governors, that decides by majority, although consensus is usual in practice. In the BdE, any conflicts between resolution and supervisory functions that cannot be resolved at departmental level are escalated to the general directors of each function, who bring the matter to the Executive Commission composed of

<sup>32</sup> That is, in some cases the same decision-making body is responsible for decisions relating to resolution and supervision, or other functions within the institution. However, it should be noted that the decisions for different functions remain legally distinct and the decision-making procedures under the relevant frameworks may differ.

the Governor, Deputy Governor and two members from the Governing Council, who make a collegiate decision. The general directors have a voice in that process but no vote. In the APRA, the four-member Executive Board includes the deputy chair for banking, who is responsible for both supervision and resolution and would take both perspectives into consideration in the event of conflict. The ultimate decision-making power resides with the chair.

46. **A couple of the authorities interviewed do have a specific decision-making body for resolution.** The decision-making structure of the ACPR includes separate colleges for supervision and resolution, both of which are chaired by the Governor of the Bank of France. The ACPR Resolution College has seven members, who are senior officials of relevant public authorities,<sup>33</sup> and decisions are taken by consensus. The work of the College is prepared by the ACPR Resolution Directorate, the Director of which reports to the College. In MAS, the decision-making body for matters relating to resolution policies, planning and execution, including determinations of non-viability, is the Management Resolution Committee (MRC). The MRC is chaired by the deputy managing director for financial supervision and comprises the general counsel and senior management from supervision and policy departments. The Resolution Unit has the right to comment on recommendations and provide independent views to the MRC. Decisions on the resolution of banks that are systemically important or that require resolution funding are escalated to the Crisis Management Team (CMT), which is chaired by the managing director and comprises senior management from across MAS.

47. **In some authorities that combine resolution with other functions, the ultimate decision-maker is a single person.** In the CBI, for example, the Governor takes the final decision in matters of significance, which would include a determination as to whether a bank meets all the conditions for resolution.<sup>34</sup> Under this arrangement, a resolution-related decision is based on a proposal prepared by the Resolution Unit following consultation with other relevant parties within the central bank. The Governor hears the views of supervision and other affected areas, but the Deputy Governors are not formally involved in the decision to avoid potential conflicts. In the HKMA, the Chief Executive, in the capacity of resolution authority, is responsible for resolution-related decisions, including whether the three conditions for resolution are met.<sup>35</sup> Those decisions are informed by analysis and advice from the Resolution Office and other relevant functions (including supervision) through the Crisis Management Coordination Group (CMCG) (see section below on internal coordination committees). Similarly, in the BoE the Governor is the ultimate decision-maker, although many decisions are delegated to the relevant Deputy Governor or the executive director for resolution. While resolution was formerly the responsibility of the Deputy Governor for Financial Stability, it is now assigned to the Deputy Governor for Markets and Banking. That assignment is considered to have the advantage that it helps provide a unified view on related questions of resolution and central bank liquidity provision. In the BoE, CBI and HKMA, committees are in place to support resolution decision-making by providing coordinated advice.

48. **Nevertheless, ensuring sufficient weight of the resolution function in decision-making arrangements is often challenging.** Several authorities noted the challenge of ensuring that the views of the resolution function have sufficient weight, relative to those of supervision, within the organisation. In many cases, the resolution function was created more recently than a longer established supervisory function, and is likely to be much smaller in staff numbers. This may lead to a perceived need to “punch

<sup>33</sup> The Governor of the Bank of France; the designated Deputy Governor of the Bank of France for the Resolution College; the Vice-President of the ACPR; the Director General of the Treasury or its representative; the Chair of the Autorité des Marchés Financiers (AMF, Financial Markets Authority); the presiding judge at the Commercial Chamber of the Cour de cassation; and the Chair of the Deposit Insurance and Resolution Fund.

<sup>34</sup> That is, the bank is failing or likely to fail, there is no reasonable prospect that other private sector measures would prevent its failure, and resolution is in the public interest.

<sup>35</sup> That is, a financial institution has ceased, or is likely to cease, to be viable; there is no reasonable prospect that private sector action (outside of resolution) would result in the institution again becoming viable within a reasonable period; and the non-viability of the institution poses risks to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions; and resolution will avoid or mitigate those risks.

above its weight” – a need that is exacerbated where there is a conflict with supervision. One commented, for example, that although institutionally within the decision-making process resolution has an equal status, functionally supervision has a “louder voice”, and senior staff in the resolution function have had to make efforts to ensure that their perspective is given due regard. Representatives of one central bank resolution function described the need to change prevailing mindsets across the institution that did not think systematically about bank failure. This culture change was possible because of strong support at a senior level, but nevertheless had to overcome resistance. Others referred to actions that have helped to ensure that the new resolution function has a sufficiently strong influence. This included staffing the new resolution unit, at least in part, with existing staff of the supervisory function, which helped to foster shared understanding and integrate the new unit within the authority. To some extent, these challenges were associated with the early phases of new arrangements, and there was some perception that this was changing over time as resolution became better established and understood within an authority. The demands of the response to the Covid-19 pandemic had accelerated that process in a couple of cases.

## Independence of resolution functions from undue political influence

49. **In almost all jurisdictions in the sample, government bodies play some role in the resolution process.** Most commonly, the approval of a government minister or ministry – typically the Ministry of Finance or the Treasury – is required for the use of resolution tools that may have fiscal implications (Australia, Hong Kong SAR, Ireland, United Kingdom)<sup>36</sup> or, alternatively, that involve systemic banks (Austria, Denmark, Norway, South Africa). For example, the UK Treasury (HMT) has sole statutory responsibility for any resolution decision involving public funds. This requires HMT authorisation for the use by the BoE of any stabilisation power that would have implications for public funds, including where the bank in resolution has already received financial assistance from HMT, and for any liquidity support the BoE provides outside of its published frameworks.<sup>37</sup> HMT is also responsible for any decision relating to the exercise of the Temporary Public Ownership stabilisation option under the UK framework. In addition, the chancellor has a statutory power to direct the BoE to take specific actions, including to provide emergency liquidity assistance (ELA) or to implement a particular stabilisation option, where there is a serious threat to UK financial stability.<sup>38</sup> This form of government role in resolution is contemplated by the KAAM, which notes explicitly that it is not inconsistent with the requirement for operational independence of the resolution authority. In some cases (Canada, Italy, Singapore), some form of ministerial approval is required for the use of most or all resolution tools.<sup>39</sup> Under the Japanese framework, powers to trigger or revoke resolution, select the resolution measures and impose a temporary stay on contractual early termination rights reside

<sup>36</sup> In Australia, ministerial approval is needed for resolution strategies that require large public expenditure (eg using standing appropriation to fund government recapitalisation), or where the financial claims scheme is activated. In Hong Kong SAR transfer to a temporary public ownership company, being a stabilisation option of last resort, requires the approval of the Financial Secretary recognising the heightened risks posed to public funds by this stabilisation option given that the institution would be owned by the government. In Ireland, ministerial involvement is required where a bank resolution may have fiscal implications or may pose a risk to financial stability.

<sup>37</sup> “Stabilisation option” under the UK resolution framework refers to transfers in resolution to a private sector purchaser, a bridge bank or asset management vehicle, bail-in (write down or conversion of liabilities), and temporary public ownership. Liquidity support outside the BoE’s published framework includes emergency liquidity assistance (ELA), support under the BoE’s Resolution Liquidity Framework, or use of any other public sector backstop funding mechanism.

<sup>38</sup> For a description of the roles of BoE and HMT in resolution and financial crisis management, see HM Treasury (2017).

<sup>39</sup> While in most jurisdictions a ministerial approval requires submission of the resolution decision to the competent minister, a different approach is taken in Spain, where the FROB can independently take and implement resolution decisions. Although half of the 10 members of its Governing Committee are ministerial officials, they are expected to act in accordance with their responsibilities in the FROB as board members and not as representatives of their ministries.

solely in the prime minister. The prime minister exercises those powers following deliberation by the Financial Crisis Response Council (FCRC).<sup>40</sup>

50. **Ministerial involvement is often justified on grounds of accountability of the resolution decision.** The involvement of ministers can help to bring public interest considerations in the resolution decision, which is considered important in some jurisdictions since property rights are in play. It is also seen as providing political support and legitimacy to the decision. Finally, it may shield officials of the authority that implements the resolution decision from social pressure.

51. **Ministerial review of a resolution proposal tends to be limited to accepting or rejecting it, and disagreements are unlikely.** Ministries do not usually have the power to amend a resolution proposal put forward by the resolution authority. For example, when the Bdl submits a proposal to the Ministry of Finance to resolve or liquidate a failing bank, the Ministry may disregard that proposal, but cannot amend it. The role of the Ministry is to verify that the proposal complies with the conditions specified by statute. Although the minister could in principle take a different view to that proposed by the resolution function, most authorities interviewed considered that in the light of the technical expertise of the resolution function, it was highly unlikely that its proposal would be rejected. One also noted that reputational risks that could arise from difference of views between the resolution authorities and the minister becoming public tended to support convergence of views between them.

52. **More rarely, a minister plays a more extensive role.** While in most cases ministerial involvement is limited to the final stages of the resolution process, there are some exceptions. For example, as a complement to the UK Treasury's role in relation to any decision that involves use of public funds, there are arrangements in place to ensure that it has sufficient notice of each resolution plan that anticipates the use of stabilisation powers or the provision of liquidity support outside of the BoE's published frameworks. This allows HMT to assess the scale of the risk to public funds in the event of the bank's failure. Under these arrangements, before adopting or revising any such resolution plan, the BoE provides HMT with a copy of the draft plan and its assessment of the systemic risk of the bank failing and the implications of the draft plan for public funds. However, this is a consultative arrangement and does not constitute a formal approval of the plan by HMT. In Norway, by contrast, the minister of finance approves the resolution plans for systemic banks and determines the conditions for resolution, ie the moment at which a bank is considered failing or likely to fail. This arrangement could be seen to undermine the independence of the resolution authority in the execution of its resolution function.<sup>41</sup> So far, no public disagreements between the two authorities have emerged. In jurisdictions where the resolution authority is split between two agencies or the views of the resolution and the supervisory functions are not aligned, a ministry may be involved in resolving disagreements between them.<sup>42</sup>

53. **In other cases, grounds for ministers' involvement are limited by law.** While typically the use of public money in bank resolution is a reason for the involvement of government ministers in finalising a resolution decision, in some cases the recourse to public funds is not legally possible, thus reducing the scope of such involvement.

<sup>40</sup> Most other resolution-related decisions are delegated by the prime minister to the JFSA, and do not require prior discussion by the FCRC. Certain decisions are not delegated to the JFSA, and do not require deliberation by the FCRC: for example, those relating to the treatment of relevant bonds and shares of a failed financial institution.

<sup>41</sup> See IMF (2020b).

<sup>42</sup> For example, in Canada, the Cabinet will decide where there is disagreement between OSFI and the CDIC, and a Strategic Alliance Agreement between OSFI and the CDIC establishes a framework for cooperation and information-sharing in early intervention and the lead-up to resolution.



## Judicial involvement in resolution decisions

54. **Ex ante judicial involvement in resolution is uncommon.** In most cases, courts play no role in the design or approval of resolution decisions, irrespective of their role in ordinary insolvency proceedings. An exception is Ireland, where an order of the High Court, following a proposal by the CBI, is required to put a bank into resolution. This review is procedural in nature, focusing on whether the decision of the CBI to resolve is evidence-based and due process has been followed, and does not consider the merits of the decision. It is mainly designed to provide appropriate procedural protection where constitutional rights are at stake. The Court is expected to make its decision rapidly, generally within hours, owing to early preparation of the application for the draft resolution order. There is also a limited role for the court under the Japanese resolution framework. Although the administrative authority has a wide range of powers, court involvement is required for certain resolution actions: for example, court approval for a transfer or systemically important assets and liabilities to a bridge institution as a substitute for shareholder consent. In such a case, the court has no discretion to judge whether the resolution tool is necessary or adequate.

## Accountability and transparency

55. **Resolution authorities should be subject to proper accountability and transparency.** The Key Attributes specify that resolution authorities should be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. The implementation guidance in the KAAM indicates that this expectation may be satisfied by internal or external review procedures and periodic public reporting by the authority on its activities.<sup>43</sup>

56. **Most authorities in the sample do not have specific evaluation or transparency procedures for their resolution responsibilities.** However, the resolution function is always subject to the authorities' ordinary accountability requirements, varying from parliamentary control to internal or external audit processes. These mechanisms usually intensify following an actual resolution or are required in the event of the use of a resolution tool,<sup>44</sup> but may also be routine.<sup>45</sup> In most cases, resolution decisions may also be subject to ex post judicial review by any affected party. Similarly, where the resolution authority is co-located with a supervisory authority or central bank, it is normally not required to publish resolution-specific reports. Rather, the activities and policies of the resolution function are included in the general reporting of the authority that houses the resolution function.<sup>46</sup> Nevertheless, the authorities interviewed noted the importance of public transparency in the event of an actual resolution, to prevent market panic and ensure that stakeholders are appropriately informed.

57. **However, some jurisdictions do have specific requirements for reporting by the resolution function.** For example, the JFSA is required to report to the Diet approximately once every six months or immediately if requested. Those reports would include information on ongoing resolution-related work and the details of any resolution measures taken. In the United Kingdom, there are a number of resolution-related reporting obligations. For example, in the event of a resolution, HMT is responsible for accounting to parliament and the resolution instrument is laid before parliament. The BoE must issue reports on how it has used certain resolution powers (that HMT must lay before parliament) and also informs the chairs of

<sup>43</sup> The ex post judicial review of resolution actions also furthers the accountability mechanism, by providing a mechanism for control of arbitrary or unjustified exercise of discretionary powers. However, this is outside the scope of this paper.

<sup>44</sup> For example, in the event of the resolution of a significant bank a Royal Commission enquiry would be expected in Australia and Canada. In Hong Kong SAR, reporting to the Legislative Council is required from the MA as resolution authority upon the application of a stabilisation option, the content of the report and the length of the reporting period varies depending on the type of option applied.

<sup>45</sup> For example, the policies of the JFSA, including those related to resolution, are reviewed at least annually by independent persons with relevant knowledge in accordance with a policy evaluation process required by statute for government bodies.

<sup>46</sup> Normally, annual or biannual reports of activities and, in the case of central banks, also within their publications related to macroeconomic or financial stability issues.

the relevant parliamentary committees in relation to emergency liquidity provision (outside its published framework). The resolution function of the HKMA must meet specified reporting requirements after the use of a resolution (“stabilisation”) option that are designed to provide specific information concerning the application of that option.

58. **The perception of the authorities about industry awareness of their roles and powers is related to the regime’s maturity and the size and nature of institutions.** In jurisdictions with less developed frameworks, the industry understanding tends to be more limited or restricted to the largest banks’ senior management. Conversely, in jurisdictions with more established regimes or experience, awareness has significantly improved in recent years. In one jurisdiction with a hybrid model, the authorities considered that only smaller institutions that are expected to be liquidated if they fail are not yet entirely familiar with the distribution of competences and powers. Banks that have been subject to resolution planning are considered to understand the resolution framework and powers.

59. **A good understanding of the resolution framework by both the industry and the public is important for public support.** Authorities use a range of channels to communicate with stakeholders, depending on their needs and degree of sophistication. These include bilateral meetings, resolution planning and related communication (eg requirements for loss-absorbing capacity or contributions to resolution funds), industry dialogue, public consultations, publications, conferences or working groups.

## Protection against liability

60. **Autonomy and independence of action depend on appropriate legal protection for resolution authorities, their staff and any agents.** The protection should apply to any actions taken or omissions made in good faith in the performance of their functions, and include indemnification against legal costs incurred defending such actions.<sup>47</sup>

61. **Staff of the resolution authorities interviewed generally have an appropriate level of legal protection.**<sup>48</sup> In about half of the jurisdictions in the sample, staff of the resolution function are protected by the general liability shield of the central bank in which the resolution authority is located, or by the general administrative law regime that applies to staff of the resolution authority as public servants. In the other cases, the protection is conferred through the specific sectoral regulation. For some authorities, such as the Danish FSC, the protection is structured in two tiers, with secured insurance for board members and the CEO, and a right of recourse for damages exceeding the insurance coverage, while employees are covered by the general protection for public servants under administrative law. However, there are not arrangements in all cases for indemnification for the incurred legal costs or for the protection of agents. Several authorities also considered it unlikely that their national courts would admit an action against an individual employee in relation to actions or omissions in his or her official capacity.<sup>49</sup>

62. **The scope of protection for the resolution function is generally the same as for the other functions of the authority.** In certain cases, however, the bar for establishing liability is higher for staff of the resolution authority. For example, in Austria, employees within the resolution function are afforded the highest level of protection available under Austrian law, whereby liability can only be established for actions taken in bad faith. For other functions with the FMA, a legal claim can be established on the grounds of gross negligence. The rationale for this difference in the level of protection is that the staff dealing with

<sup>47</sup> See Key Attribute 2.6.

<sup>48</sup> The only exception is the Central Bank of Brazil. However, the current reform of the bank resolution framework aims to materially strengthen that legal protection.

<sup>49</sup> It should be noted that this principle is not universal since there have been instances where national courts have allowed such actions to be brought (although not necessarily finding the employees to have been liable).

resolution actions may be at a heightened risk of legal challenge given the consequences and sums of money potentially involved in their decisions.

## Human resources

63. **To ensure their operational independence, resolution authorities should have adequate human resources with the necessary expertise to effectively carry out their functions.**<sup>50</sup> The average number of full-time employees dedicated to a resolution function in the sampled jurisdictions varies significantly, mostly depending on the size of the financial sector and on the responsibilities of the resolution authority. In some cases, those responsibilities extend beyond resolution-related functions under the current regime to managing legacy assets and restructurings, or administering a deposit guarantee scheme or resolution fund. In a number of cases where a new resolution function was established by post-GFC reforms, that function was largely staffed initially by individuals coming from the supervisory function, and sometimes complemented by legal and industry experts, while in some authorities the resolution function continues to be heavily supported by other in-house functions, primarily supervision units. In MAS, the RSU is staffed by officials from different departments within the monetary authority,<sup>51</sup> and its role is to support supervisory teams with analysis and expertise, and provide an independent view and a challenge function where appropriate. In a few cases, support also comes from other authorities. For example, the Austrian FMA is supported by the full-time staff of the OeNB's Office for Specific Bank Resolution Matters within the Statistics Department.

64. **While in general comfortable with current staffing levels, some authorities see the need to increase their human capacity.** Some noted, however, the difficulties of making the case for more resources in jurisdictions with little or no experience of a banking crisis. Others observed that, even within current staffing limits, it was not easy to find well qualified candidates to fill positions.

65. **Most authorities can temporarily increase their capacity when needed by drawing staff from other functions within the authority and hiring external professionals.** In the majority of authorities interviewed, staff could be rapidly reassigned from other internal functions to support resolution in times of pressure, although it was less common for resources to be taken from other authorities (such as ministries or the central bank). Resolution functions would be able to hire external service providers at short notice; for example, audit firms for valuation purposes, law firms for legal support in designing and executing resolution transactions, and corporate financial advisory firms for sale and marketing processes. Arrangements to facilitate rapid use of external professionals include maintaining shortlists of vetted firms or candidates, dedicated memoranda of understanding (MoUs) and contingency contracts.

## Section 6 – Resolution-related cooperation and coordination arrangements

66. **Coordination arrangements between resolution and other relevant functions are an important part of the institutional fabric under all the models represented by the sample jurisdictions.** Where resolution and supervisory functions are co-located within the same authority, the structural separation is frequently complemented by formal cooperative arrangements that facilitate appropriate exchange between the functions. Similarly, standing arrangements are generally in place between different authorities that have resolution-related functions, including specific arrangements for information exchange and coordination with government ministries. In each case, these need to support effective cooperation without compromising operational independence.

<sup>50</sup> KAAM EC 2.5.

<sup>51</sup> The RSU draws its staff from other departments, mainly supervision, legal and policy units. The employees split their time between work on resolution activities and their department activities.

Coordination arrangements and independence of action

Table 1

Jurisdiction (resolution authority)	Location of the resolution authority	Formal coordination arrangements*	Independence	
			Government involvement**	Judicial involvement***
Australia (APRA)	Supervisor (SA)	x	✓	x
Austria (FMA)	SA	✓	✓	x
South Africa (SARB)	CB with SA	✓	✓	x
Brazil (BCB)	CB with SA	x	x	x
France (ACPR)	CB with SA	✓	✓	x
Hong Kong SAR (HKMA)	CB with SA	✓	x	x
Ireland (CBI)	CB with SA	✓	x	✓
Italy (Bdl)	CB with SA	✓	✓	x
Singapore (MAS)	CB with SA	✓	✓	x
South Africa (SARB)	CB with SA	✓	✓	x
United Kingdom (BoE)	CB with SA	✓	✓	x
Denmark (FSA and FSC)	Hybrid model	✓	✓	x
Japan (JFSA and DICJ)	Hybrid model	x	✓	✓****
Norway (FSA and MoF)	Hybrid model	x	✓	x
Spain (BdE and FROB)	Hybrid model	✓	✓	x
Canada (CDIC)	Deposit insurer	✓	✓	x
Indonesia (IDIC)	Deposit insurer	✓	✓	x

\* Between supervisory and resolution functions or authorities and, in the case of hybrid models, between the resolution authorities.

\*\* The consent of a political body or representative (eg Ministry of Finance or the president) is needed for any resolution action (apart from actions that require or could require use of public funds); or a political body is represented in the resolution decision-making body.

\*\*\* Judicial or court approval is needed for any resolution action.

\*\*\*\* Limited court involvement in certain resolution actions.

Sources: FSI interviews with authorities and publicly available documents.

## Internal coordination committees

67. **Cooperation arrangements between separate functions within an authority are essential to facilitate coordinated responses and to realise the benefits of co-location.** In all sampled authorities that combine resolution with other functions, structural separation is complemented by internal cooperative arrangements, such as coordination committees, that serve mainly to exchange information, opinions and expertise relevant to bank crisis preparedness and management. They are recognised as key, both during business as usual and when an institution is at risk, for the resolution function to be aware of any concerns from an early stage, and for other functions to be able provide effective support resolution activities. This is decisive for ensuring a rapid response. Nevertheless, coordination arrangements are, in principal, in tension with the operational independence of the resolution function. The extent to which the arrangements represent a trade-off between independence and the maximisation of synergies depends on their composition and nature.

68. **The arrangements typically include representatives from the resolution and supervisory functions.** In many cases, other internal functions, such as monetary policy or conduct supervision, are represented. In jurisdictions where other bodies such as the deposit insurer or the Ministry of Finance have

a role in resolution, they may also be members or invited to attend meetings when appropriate. Given the nature of resolution-related decisions, it is also common for legal experts to have prominent positions in these forums. In Italy, for example, the Advisory Committee for Resolution and Crisis Management is chaired by Bdl's general legal counsel.

69. **In some authorities, a committee composed of different functions is the ultimate decision-maker for resolution matters.** For example, in MAS, the MRC or the CMT are responsible for decision-making in the area of resolution, depending on the systemic importance of the bank and the need for resolution funding. In the ACPR, a Resolution College, chaired by the Governor of the Bank of France and including members from ACPR and other relevant agencies, is tasked with supervising the preparation and implementation of measures to prevent and resolve banking crises.<sup>52</sup>

70. **However, in most cases committees function as internal advisory bodies to the ultimate decision-maker.** This allows decisions to be taken on an informed basis in which relevant perspectives have been discussed and, if differences still exist, they can be presented clearly to the decision-maker. For example, the HKMA CMCG was created in 2018, and provides the HKMA Chief Executive – who may also join the meetings – with coordinated options, analysis and advice. The HKMA CMCG provides the basis for enhanced cooperation and coordination across relevant departments involved in bank crisis preparedness. More broadly, while the authorities interviewed reported that in practice differences are generally settled through discussion within the committee so that recommendations are usually agreed by consensus, the arrangements allow for a range of views to be presented to the decision maker. Similarly, in the BoE a Resolution Committee (ResCo) provides advice to the relevant Deputy Governor on resolution decisions for the most significant banks, and on policy and risk issues.<sup>53</sup> A second committee – the Resolution Advisory Committee (RAC) – advises the Executive Director for Resolution on most other resolution-related matters, including resolution planning. The RAC includes representatives from relevant functions within the BoE, including the PRA and directorates responsible for markets and banking, financial market infrastructure and legal advice.

71. **Frequently, several cooperation structures are in place within the same authority, with different levels of representation.** Those composed of senior management are normally decision-oriented, often supported by working-level technical committees. In a number of authorities, the resolution function is represented in other internal committees, such as those related to financial stability or supervisory issues. For example, the BoE maintains a standing Resolution Committee with senior participation, with an advisory remit for policy issues and general oversight of resolution planning. In a crisis, a firm-specific committee would be established with broader participation, including representatives from the supervisory and legal divisions and the deposit insurance scheme, which is also managed within that central bank.

72. **In one instance, a coordination committee served to raise awareness within the authorities about the resolution framework in the early stage of its implementation.** The BCB established a Resolution Planning Committee (COPAR) to help ensure that the new resolution function was adequately integrated and influential. COPAR operated while the new resolution framework was being developed and implemented within the BCB. Composed of the heads of the departments relevant to resolution and crisis management, COPAR dealt with cross-cutting issues and was instrumental in raising awareness of the resolution framework within the BCB. It helped both supervisory and resolution functions to understand their respective roles, developed the models for cooperation between functions and facilitated a change of culture that recognised the relevance of resolution. COPAR was disbanded following the establishment of

<sup>52</sup> See paragraph 48 for more detail on decision-making arrangements in MAS and ACPR.

<sup>53</sup> ResCo includes the Deputy Governors for Markets and Banking and for Prudential Regulation, the Executive Directors for Resolution, Prudential Policy and the Directors of Financial Market Infrastructure and Banking. Unlike the BoE's statutory committees – the Prudential Regulation Committee, the Monetary Policy Committee and the Financial Policy Committee – ResCo does not have external members. Within ResCo, decision-making authority remains with the Deputy Governor for Markets and Banking for all resolution-related matters that have been delegated by the Governor. Certain matters are reserved to the Governor, and the Deputy Governor may escalate matters to the Governor if s/he considers it appropriate.

the resolution department in 2019, and internal coordination is now considered to function effectively through staff-level cooperation with periodic meetings at different levels.

## Coordination arrangements between authorities with resolution functions

73. **Where more than one authority has resolution-related functions, coordination arrangements are normally in place between various authorities.** Under a hybrid model, close collaboration between the relevant authorities is necessary for a coordinated response. In addition to continuous engagement at working level (eg for the purposes of resolution planning), hybrid models usually have formal cooperative arrangements and coordination committees that bring together representatives of the relevant authorities and functions on a regular basis. For example, in Denmark an inter-agency Steering Committee has members from the DFSA, the FSC and the central bank and serves as the main forum for inter-agency coordination on resolution planning.<sup>54</sup> Coordination arrangements may also provide a channel for information to flow between supervisors and authorities with resolution-related functions – for example, a free-standing executive resolution authority – that are not otherwise in close contact with the supervisor. Decision-making bodies may also serve as coordination forums if representatives from the other authorities are present. For example, four BdE representatives participate in the FROB's Governing Committee.

74. **The relevant authorities may also use such arrangements to coordinate common positions on wider policy issues.** For example, the BdE and the FROB use their coordination arrangements to agree working priorities or policy positions at the EU and international levels. For this reason, the relevant committees meet frequently and also discuss technical issues.

75. **To date, cooperation between authorities is working properly, although some considered that the hybrid model is not the most efficient.** While authorities had not experienced significant problems in coordination, the fact that resolution functions are split between entities lengthens processes and consumes more time and resources than equivalent activity within a single authority, as every detail must be discussed and agreed between the parties. Information exchange is also generally less fluid than within a single organisation.

## Coordination arrangements with other financial authorities

76. **Coordination arrangements may also be needed between the resolution authority and a separate supervisory authority or central bank.** Given the complementarity and interaction between the functions and the need for a smooth and timely transition into resolution, forums for regular communication are generally in place where the resolution authority is not co-located with the bank supervisor. They provide a venue for information exchange and discussions of topics relevant to both functions, including recovery and resolution planning, loss absorbency and resolvability, and non-viability determinations. When the central bank is separate from the resolution authority, it is often involved in cooperative arrangements, given its relevance in areas such as funding and liquidity or continuity of access to financial market infrastructure.

<sup>54</sup> Under the Danish framework, the FSC prepares draft resolution plans, which are subject to approval following review by the central bank. The Steering Committee meets regularly – nine or 10 times a year – with a heavy technical workload, and plays an important role in allowing potential disagreements to be exposed and addressed at an early stage.

## Coordination arrangements with ministries

77. **Various institutional arrangements are in place to facilitate coordination on resolution matters between relevant authorities and ministries.** These arrangements consist of dedicated committees or participation by ministry staff in parts of meetings of other resolution committees, and are intended to facilitate pre-crisis coordination. The committees involving ministries are of an advisory nature.

78. **Some jurisdictions have dedicated committees on resolution and crisis management involving ministries.**<sup>55</sup> For example, in Australia the Council of Financial Regulators includes the central bank, APRA (the supervisor and resolution authority), the Australian Securities and Investments Commission and the Department of the Treasury Secretary. In Singapore, the Financial Stability Coordinating Meeting includes representatives of the MAS and the Ministry of Finance, and can also serve as a coordination forum during crisis times. In Japan, the FCRC, composed of the prime minister, the chief cabinet secretary, the minister for financial services, the minister of finance, the commissioner of the JFSA and the Governor of the Bank of Japan, is convened prior to any critical resolution-related decisions, including triggering of resolution. In Indonesia, the KSSK is a coordination forum with a financial stability remit, established by statute with a secretariat provided by the Ministry of Finance. The KSSK is chaired by the minister of finance, and comprises the Governor of the Bank of Indonesia, and the chairs of the Financial Services Authority (OJK) and IDIC. The latter is non-voting in the event that a vote is required, although decisions are principally taken on consensus. The KSSK determines and coordinates the response to failure of D-SIBs and systemic banking crises. It may recommend that the president declare a status of financial system crisis, which opens a wider range of resolution powers, which would be executed by IDIC.

79. **Where dedicated committees do not exist, less formal arrangements may be used to support cooperation.** For example, in the United Kingdom the MoU<sup>56</sup> between the BoE and HMT specifies that regular meetings will take place between the chancellor and the Governor, and between the second permanent secretary and the relevant Deputy Governor. In addition, as required by the MoU, the BoE and HMT have put in place arrangements for regular meetings at operational level between officials to coordinate on resolution planning. The purpose of these arrangements are to ensure that HMT is informed of all firms that are subject to heightened risks, even if a material risk to public funds has not yet materialised.<sup>57</sup> In South Africa, the Treasury may be invited by the SARB to attend meetings of the Resolution Policy Panel (RPP) as an observer. The RPP, a subcommittee of the Financial Stability Committee (FSC), assesses policy positions for approval by the FSC, discusses the state of weak banks and will, in future, review resolution plans and resolvability assessments. The Treasury does not attend the part of the meeting where firm-specific information is discussed. Nevertheless, through this arrangement the Treasury can be informed about weak banks and strategies to deal with them. This reduces the probability of the minister disregarding a recommendation by the SARB.<sup>58</sup>

<sup>55</sup> Inter-agency and cross-sectoral forums, which are not within the scope of the analysis, are also present in a number of jurisdictions. They are composed of national financial regulators with broader perspectives, frequently related to macroeconomic or financial stability aspects, and serve as a coordination forum for policy development and implementation. They also play an important role in cross-sectoral resolution, as they bring together the regulators from different sectors.

<sup>56</sup> See HMT (2017).

<sup>57</sup> The BoE also has a statutory duty to notify HMT immediately when there is a material risk of circumstances arising in which public funds would be put at risk.

<sup>58</sup> The Minister of Finance places an institution into resolution on the recommendation of the SARB, and is also required to approve measure that require government financial support.

## Section 7 – Concluding reflections

80. **The sample of jurisdictions featured in this paper shows the variation that exists in the institutional arrangements for bank resolution.** While the adoption of the Key Attributes has given authorities an opportunity to review and possibly adjust their bank resolution arrangements, the principles-based nature of those standards as regards the resolution authority leaves scope for jurisdictions to integrate the resolution function within their existing institutional architecture. Existing structures, which often reflected historical experience of bank failure management, and resource and cost considerations have a significant influence on the current institutional arrangements in the jurisdictions represented in the sample.

81. **One of the principal considerations that emerged from discussions with authorities is how to achieve appropriate operational independence for the resolution function while enabling it to benefit from the synergies with the supervisory function.** The mechanisms used to achieve this include legal or structural separation of the resolution function from supervision and other functions with which conflicts of interest could arise; arrangements for informed decision-making that allow conflicting views to be considered and weighed; and multi-level arrangements for coordination, supported by effective information-sharing. The form and combination of these mechanisms vary depending on the model of institutional arrangements for resolution, but they are present to a greater or lesser degree in all the featured jurisdictions.

82. **While the potential for conflicts of interest between supervision and resolution is widely recognised, there is a growing perception of the benefits of institutional arrangements that support close cooperation between the two functions.** This negotiation between the two principles – operational independence and conflict management, on the one hand, and exploiting synergies on the other – is still ongoing in some authorities as new arrangements evolve and mature.

83. **Conflicts of interest between resolution and supervisory functions could arise independently of the location of the resolution function.** While the need to manage conflicts may appear more obvious and more immediate where the functions are co-located in the same authority, their legal separation in different authorities does not eliminate the risk of conflicts. In any case, the complementarities and potential overlaps between the two areas need to be managed through close coordination and information exchange. Adequate cooperation mechanisms are therefore needed to support timely information exchange and the provision of coordinated advice to the ultimate decision-maker for resolution matters. They can also expose and resolve any disagreements between the functions or authorities in a timely manner.

84. **The co-location of the supervisory and resolution functions facilitates coordination and the resolution of conflicts through internal governance arrangements.** The fact that a single authority is responsible for both functions necessarily entails that any disagreements should be solved internally, in a way that is consistent with its mandate and statutory objectives. Decision-making procedures need to be effective for this purpose. However, ensuring that the resolution function has sufficient weight in decision-making arrangements can be challenging.

85. **To date, the bank resolution function in its current form is relatively new, and untested, in many jurisdictions.** Resolution authorities have not encountered significant obstacles in resolution planning and, where the arrangements were in place in earlier crises, in the conduct of bank resolution. Complex arrangements, such as hybrid models primarily resulting from historical experience, require greater coordination efforts. Resolution authorities also consider their staffing levels and legal protection as broadly adequate to exercise their functions, with the possibility of scaling-up resources in times of increased pressure. That said, the arrangements may not have been tested against the potential conflicts and stresses that could arise as work on bank resolution planning and resolvability develops or in the event of bank failures. Effective practices in this area may still be a work in progress.



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## Annex 1 – Jurisdictions featured and authorities interviewed

1. Australia (AU)
  - Australian Prudential Regulation Authority (APRA)
2. Austria (AT)
  - Financial Market Authority (FMA)
3. Brazil (BR)
  - Central Bank of Brazil (BCB)
4. Canada (CA)
  - Canada Deposit Insurance Corporation (CDIC)
5. Denmark (DK)
  - Danmarks Nationalbank (DN)
  - Financial Stability Company (FSC)
  - Danish Financial Supervisory Authority (DFSA)
6. France (FR)
  - Autorité de contrôle prudentiel et de résolution (ACPR)
7. Hong Kong SAR (HK)
  - Hong Kong Monetary Authority (HKMA)
8. Indonesia (ID)
  - Financial System Stability Committee (KSSK)
  - Indonesia Deposit Insurance Corporation (IDIC)
9. Ireland (IE)
  - Central Bank of Ireland (CBI)
10. Italy (IT)
  - Bank of Italy (Bdl)
11. Japan (JP)
  - Financial Services Agency (JFSA)
  - Deposit Insurance Corporation of Japan (DICJ)
12. Norway (NO)
  - Financial Supervisory Authority (FSA)
  - Ministry of Finance (MoF)
13. Singapore (SG)
  - Monetary Authority of Singapore (MAS)
14. South Africa (ZA)
  - South African Reserve Bank (SARB)
15. Spain (ES)

Bank of Spain (BdE)

Spanish Executive Resolution Authority (FROB)

16. United Kingdom (UK)

Bank of England (BoE)

## Annex 2 – International Standards and Principles relating to resolution authorities

### The FSB Key Attributes

#### Key Attribute (KA) 2

KA 2.1 Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime (“resolution authority”). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated.

KA 2.2 Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction.

KA 2.3 As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should:

- (i) pursue financial stability and ensure continuity of systemically important financial services, and payment, clearing and settlement functions;
- (ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such depositors, insurance policy holders and investors as are covered by such schemes and arrangements;
- (iii) avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and
- (iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions.

KA 2.4 The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions.

KA 2.5 The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.

KA 2.6 The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.

### Key Attributes Assessment Methodology

#### Essential Criteria (ECs)

EC 2.1 The legal framework clearly identifies one or more resolution authorities and provides it or them with a clear mandate. Where there are multiple resolution authorities or where multiple authorities are involved in a resolution process, the resolution regime provides for the identification of a lead authority; sets out clear arrangements to coordinate the resolution of affiliated legal entities, or the resolution of a single bank,

within that jurisdiction; and provides for a clear allocation of objectives, functions and powers of those authorities.

EC 2.2 The statutory objectives and functions of the resolution authority include those set out in KA 2.3, as applicable to the sectoral responsibilities of the authority. Where the exercise of resolution powers requires court involvement, the objectives of that involvement are aligned with the statutory objectives and functions set out in KA 2.3.

EC 2.3 The resolution authority is, by law and in practice, operationally independent in the performance of its statutory responsibilities. There are arrangements, procedures and safeguards against undue political or industry influence, which include:

- (i) internal governance arrangements which promote sound and independent decision-making;
- (ii) rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant) and senior management; and
- (iii) rules on conflicts of interest.

EC 2.4 The resolution authority is accountable through a transparent framework for the discharge of its duties in relation to its statutory responsibilities. This framework includes procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities, and the periodic publication of reports on its resolution actions and policies, as necessary.

EC 2.5 The resolution authority has adequate human and budgetary resources or access to such resources, sufficient to enable it to carry out its resolution functions effectively without undermining its independence, both before and during a crisis.

EC 2.6 The legal framework provides legal protection through statute for the resolution authority, its head, members of the governing body and its staff and any agents against liability for actions taken or omissions made while discharging their duties in good faith and acting within the scope of their powers, including actions taken in support of foreign resolution proceedings; including indemnification against any costs of defending any such actions.

EC 2.7 Under the legal framework, the resolution authority has unimpeded access to the domestic premises of banks where necessary for the purposes of resolution planning and the preparation and implementation of resolution measures.

## Explanatory Notes (ENs)

**EN 2 (a) Designated administrative authority or authorities** – KA 2 requires jurisdictions to confer resolution powers on administrative authorities to ensure that the objectives of the framework can be delivered in a timely manner. Jurisdictions may designate as their resolution authorities one or more authorities, including, for example, central banks, financial supervisors, protection schemes, ministries of finance or dedicated administrative authorities.

**EN 2 (b) Lead authority** – KA 2 requires the resolution regime to identify a lead resolution authority in cases where the resolution of affiliated entities falls within the statutory responsibilities of more than one resolution authority. This might be the case, for example, where there are separate resolution authorities and resolution action is required in relation to affiliated domestic entities of different financial sectors. The lead authorities for financial groups within a jurisdiction may vary according to the nature of the group structure and the entities within the group. A regime complies with EC 2.1 if it contains provision for a lead authority to be identified on a case-by-case basis: advance identification is not necessary.

**EN 2 (c) Arrangements to coordinate the resolution of affiliated legal entities** – While coordination does not require that the lead authority has powers to direct or issue binding instructions to the other authorities, the arrangements for coordination should provide a process for a single decision to be made in the case of any disagreement between the authorities. Evidence of compliance with this requirement might include specific statutory provision for coordination by an identified lead authority, memoranda of

understanding or other documented arrangements between authorities that provide for the type of information to be exchanged, confidential channels for communication and contact persons, etc.

KA 2 requires coordination arrangements with respect to the resolution of a single bank and/or the resolution of multiple regulated financial institutions within a group. Where certain entities in the group could be subject to ordinary corporate insolvency proceedings, coordination with insolvency administrators for other group entities may also be important for effective resolution and should be considered as part of overall resolution planning under KA 11.

**EN 2 (d) Operational independence** – The requirement that the resolution authority be operationally independent does not mean it can have no functions other than resolution. An authority that carries out resolution functions may also carry out other functions, such as supervision or deposit insurance, provided that adequate governance arrangements are in place to manage any conflicts of interests that may arise from combining those functions within a single authority. It is not inconsistent with the operational independence of the resolution authority if some aspects of resolution are not under its exclusive discretion. This may be the case, in particular, where temporary public funding is provided to support a resolution. A requirement to obtain governmental approval for certain resolution actions, for example those which have implications for public funds, does not in itself mean that the resolution authority is not operationally independent. The requirement for operational independence should also not prevent the resolution authority from coordinating and sharing information with finance ministries and other governmental authorities where necessary for the exercise of resolution functions and achieving the statutory objectives of resolution.

When assessing compliance with KA 2 the assessors should reach a judgement as to whether the rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant) and senior management limit the potential for undue political interference. Appropriate safeguards could include transparent appointment procedures; statutory constraints that would prevent the head of the resolution authority being removed during his or her term of office for reasons other than those specified in law; and public disclosure of the reason(s) for that early dismissal.

**EN 2 (e) Accountability** – The requirement for procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities may be satisfied by procedures for internal review by management or a function within the resolution authority. Provision for review of the effectiveness of the resolution authority in meeting its statutory objectives by an appropriate external body would strengthen accountability. The resolution authority should also publish periodic reports on its resolution actions and policies relating to its mandate and its statutory objectives at sufficiently frequent intervals to keep stakeholders and the public adequately informed about the authority's resolution activities. Public reports may include case-specific reports that are released once the resolution of a bank has concluded, assessing the outcome of the resolution and the effectiveness with which the resolution was carried out by reference to the statutory objectives. The resolution authority should however not be required to disclose publicly the operational resolution plans or results of resolvability assessments of individual banks.

**EN 2 (f) Human and financial resources** – The assessment of the adequacy of human and budgetary resources should take into account the size and complexity of the banks under the responsibility of the respective resolution authority. Budgetary resources refer to the resources necessary to finance the administrative costs of the authority as they pertain to resolution, including costs of training, onsite work and coordination work with other resolution authorities, IT and other equipment needed to carry out resolution functions. (Requirements relating to funding of resolution are set out in KA 6). Human resources refers to the ability of the authority to attract and retain staff with sufficient expertise and in sufficient numbers to carry out its resolution functions, and to commission outside experts with the necessary professional skills and independence where necessary to support those functions, including where the resolution authority is separate from the supervisory authorities, the ability to draw upon the expertise of the latter. The resolution authority should also have an adequate training budget and programme for its

personnel to ensure that their knowledge and skills remain current and that they have the expertise to deal with the resolution of large and complex banks operating in its jurisdiction.

**EN 2 (g) Protection from liability** – Protection from liability should not prevent judicial review of the actions of the resolution authority (cf. KA 5.4).

## Annex 3 – The European Banking Union Framework

### The Single Resolution Mechanism and the Single Resolution Board

The Single Resolution Mechanism (SRM) is a centralised framework for bank resolution planning and decision-making within the European banking union (BU). It consists of the national resolution authorities (NRAs) of the participating Member States (MS)<sup>59</sup> and an autonomous EU agency, the Single Resolution Board (SRB). The SRB also manages the single resolution fund (SRF). The distribution of roles between the NRAs and the SRB is specified in the SRM Regulation.<sup>60</sup>

#### Role of the SRB

Broadly speaking, significant institutions and other cross-border groups within BU MS fall within the remit of the SRB. For those banks, the SRB is responsible for resolution planning – including assessing resolvability and setting MREL – and resolution decisions in the event of their failure. In addition, it has a coordinating role to ensure the effective and consistent functioning of the SRM.

When a bank within its remit meets the conditions for resolution, the SRB prepares and adopts a 'resolution scheme' setting out how it will be resolved. The resolution scheme enters into force once it is endorsed by the European Commission (EC) or after 24 hours if no objection is raised by the EC or the Council of the European Union.<sup>61</sup>

#### Role of the NRAs

Once a resolution scheme is in force, it is implemented by the NRAs in the MS where resolution actions need to be taken. NRAs are responsible for resolution planning and execution for banks established within their jurisdictions that do not fall within the SRB's remit.

#### Cooperative arrangements: SRB and NRAs

The NRAs are involved in resolution planning and the development of resolution schemes for banks within the SRB's remit through firm-specific 'Internal Resolution Teams' and resolution colleges. They also participate in the SRB's Governing Bodies. The practical arrangements for cooperation within the SRM are detailed through a Cooperation Framework.<sup>62</sup>

<sup>59</sup> MS whose currency is the euro or any other MS that chooses to participate in the SRM and the parallel Single Supervisory Mechanism (SSM). As at [end-March 2021], the EU MS represented in the sample that are within the SRM are Austria, France, Ireland, Italy and Spain.

<sup>60</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of SRM and a SRF. The original Regulation has been amended. For a consolidated version see: EUR-Lex - 02014R0806-20201228 - EN - EUR-Lex (europa.eu).

<sup>61</sup> The Council may object on the grounds that there is no public interest or to require a material modification to the use of the SRF.

<sup>62</sup> See Single Resolution Board, *Decision establishing the framework for the practical arrangements for cooperation within the Single Resolution Mechanism between the Single Resolution Board and National Resolution Authorities*, 17 December 2018, [https://srb.europa.eu/sites/srbsite/files/decision\\_of\\_the\\_srb\\_on\\_cofra.pdf](https://srb.europa.eu/sites/srbsite/files/decision_of_the_srb_on_cofra.pdf).



## Cooperative arrangements: SRB and other EU institutions

To support rapid decision-making, a Memorandum of Understanding (MoU) provides for close cooperation and information exchange between the SRB and the EC. The EC is also a permanent observer at the Executive and Plenary Sessions of the SRB, so it will have advance notice of the resolution scheme.

A MoU covers cooperation and information exchange between the European Central Bank (ECB) (in its supervisory capacity) and the SRB. The ECB is a permanent observer at the SRB's Governing Bodies and the ECB Supervisory Board invites the Chair of the SRB as an observer in its meetings for items relating to tasks and responsibilities of the SRB (such as recovery planning or failing or likely to fail determinations).<sup>63</sup>

## Transparency and accountability of SRB

The SRB is subject to extensive oversight and is accountable to the European Parliament, the Council and the EC, and to national parliaments. Among other obligations, the SRB has to produce an annual report of activities, participate in hearings or reply to questions from relevant authorities on the performance of its resolution tasks. In the event of a resolution, the SRB will publish a press release, a non-confidential version of its decisions and a notice summarising their effects.

<sup>63</sup> The determination is made by the ECB, after consulting the SRB, or by the SRB if, after having been informed, the ECB does not react within three calendar days.