

# **Living wills – an international perspective**

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Solution for Too Big to Fail  
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# Outline

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Where we came from - no capacity to resolve SIFIs

How the world has changed – the FSB Key Attributes and GSIFI requirements

Cross-border resolution planning – challenges ahead

# The pre-crisis world

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- Absence of suitable tools and authorities to resolve failing financial institutions
- Misalignment of supervisory and crisis resolution frameworks
- Differences in resolution policies and procedures across major financial centers
- Lack of effective cross-border arrangements – MoUs did not work
- No advance planning and inadequate information sharing – nobody was prepared
- Uncertainty and unpredictability about rights and obligations and customers' access to their assets
- Time-inconsistent decisions and political pressures: forbearance
- Weak market discipline for TBTF firms



**HOW THE WORLD HAS CHANGED**



*“Systemically important financial firms should develop internationally-consistent firm-specific contingency and resolution plans”*

Pittsburgh, September 2009



*“We are committed to design and implement a system where we have the powers and tools to restructure or resolve all types of financial institutions in crisis, without taxpayers ultimately bearing the burden”*

Toronto, June 2010



*“G-SIFIs should be subject to a sustained process of mandatory international recovery and resolution planning.”*

Séoul, November 2010



*“A new international standard for resolution regimes”*

Cannes November 2011

*“So if you're a big bank or financial institution, you are no longer allowed to make risky bets with your customers' deposits. You're required to write out a "living will" that details exactly how you'll pay the bills if you fail -- because the rest of us aren't bailing you out ever again.”*

President Obama  
State of the Union Address  
24 January 2012

The «**FSB Key Attributes of effective resolution regimes for financial institutions**» as a point of reference for reforms of national resolution regimes

Specific resolution planning requirements for 29 institutions designated by the FSB as “**globally systemically important**”

## 29 institutions designated as Global SIFIs\*

- Bank of America
- Bank of China
- Bank of New York Mellon
- Banque Populaire CdE
- Barclays
- BNP Paribas
- Citigroup
- Commerzbank
- Credit Suisse
- Deutsche Bank
- Dexia
- Goldman Sachs
- Group Crédit Agricole
- HSBC
- ING Bank
- JP Morgan Chase
- Lloyds Banking Group
- Mitsubishi UFJ FG
- Mizuho FG
- Morgan Stanley
- Nordea
- Royal Bank of Scotland
- Santander
- Société Générale
- State Street
- Sumitomo Mitsui FG
- UBS
- Unicredit Group
- Wells Fargo

\* See FSB, 'Policy Measures to Address Systemically Important Financial Institutions', 4 November 2011 8



# G-SIFI requirements

## CMGs

- To develop group resolution plans and coordinate resolvability assessments pre-crisis and achieve effective cross-border cooperation in-crisis

## Institution-specific agreements

- To set out how CMGs cooperate and share information and implement jointly agreed resolution strategies

## Recovery plans

- Living documents to be maintained by firms drawn up on the basis of severe stress scenarios

## Resolution plans

- Living documents to be maintained by authorities consisting of resolution strategies and operational plan to implement them

## Resolvability assessments

- To evaluate the credibility and feasibility of resolution and identify actions to improve resolvability

# Objectives

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- Lower probability of failures: *recovery*
- Lower cost of failures : *resolvability*
- Maintenance of critical functions in resolution
- Losses to be absorbed by shareholders and creditors, not taxpayers
- Less complex structures
- Lower moral hazard: credibility of “no bail-out”
- Strengthened market discipline

# Recovery plans

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- Maintained by firms and regularly updated To include **recovery options** that address both idiosyncratic and market wide **stress scenarios assuming no public support** - arrangements to
  - maintain and fund operations of critical functions
  - conserve/restore the firm's own funds
  - ensure adequate access to contingency funding sources
  - reduce risk and leverage
  - to restructure liabilities and business lines
  - maintain continued access to FMIs and functioning of IT services and other firm infrastructure
- Estimated time for achieving each material part of the plan
- Processes to ensure timely implementation

# Resolution plans

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- Developed by the authorities and consisting of a **substantive resolution strategy** and a **detailed operational plan** setting out how to execute the strategy
- **Components** (cf. Key Attributes, Annex III)
  - Mapping of critical functions to legal entities
  - Suitable resolution options to preserve those functions or wind them down in an orderly manner
  - Funding arrangements
  - Relevant information on group structure, intra-group exposures and exposures to counterparties, other intra-group interdependencies, service level agreements, etc.
  - Potential barriers to resolution and actions which firms could take to address them

# Resolvability

- **To review how good resolution plans and strategies are** and to identify actions to improve them

Key Attribute 10: “*Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm’s failure on the financial system and the overall economy.*”)

- **Key questions :**
  - *Which functions are critical or core?*
  - *What are resolution strategies for maintaining their continuity?*
  - *Are these strategies feasible given the authorities’ legal capacity?*
  - *Can they be implemented over a “resolution weekend”?*
  - *Are they credible in the light of the impact of failure?*
  - *Are the cross-border cooperation and information sharing arrangements sufficiently robust? Will foreign authorities support a joint resolution strategy and refrain from ring-fencing?*

# Roles of home and host

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The **home authority** to

- lead the development of the **group resolution plan** in coordination with all CMG-members
- conduct **group resolvability assessments** within the firm's CMG, taking into account national assessments by host authorities.
- coordinate with **host jurisdictions where the firm has a systemic presence** (but is not represented on the CMG) and provide access to RRP's and other relevant information

**Host resolution authorities**

- may maintain their own resolution plans for local operations, cooperating with the home authority to ensure consistency

The top officials of the **home and key host authorities** are to review at least annually the overall resolution strategy

# Challenges

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- Difficulties in relation to foreign law contracts, affiliate contracts with cross-default/termination provisions
- Access to information and information sharing
- Single vs. multiple points of entry into resolution - ring-fencing and liquidation triggers arising from foreign insolvency regimes
- Sources of funding for cross-border resolutions
- Local vs. global interests
- Political risk

# Way forward

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- Need for greater convergence of national resolution regimes – EU Directive will be important
- Need to develop group-wide resolution strategies that align local interests with a good global solution
- Need to enhance legal certainty and predictability of resolution measures



# FSB Initiatives to foster reform

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2012

Elaboration of an assessment methodology for the Key Attributes for use in IMF World Bank FSAP and ROSC assessments

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Thematic peer review to assess implementation of the Key Attributes (second half 2012)

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G-SIFI resolvability assessments, recovery & resolution plans and cross-border cooperation agreements (by end-2012)

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2013

Review of the implementation of the G-SIFI specific resolution requirements

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Assessment methodology for Key Attributes (“pilot assessments” and public consultation )

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Assessment methodology for Key Attributes (final)

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