ASBA
ASSOCIATION OF SUPERVISORS OF BANKS OF THE AMERICAS

Effective Cooperation for Resolution of Financial Institutions in the Americas

ASBA Working Group

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Disclaimer

The findings, interpretations, and conclusions expressed in this report are entirely those of the authors. They do not necessarily represent the views of the organizations they work for.

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DEFINITIONS OF TERMS USED IN THIS REPORT[1]

Administrator –receivers, trustees, conservators, liquidators, or other officers appointed by a resolution authority or court, pursuant to a resolution regime, to manage and carry out the resolution of a firm.

Bail-in within resolution – restructuring mechanisms (howsoever labelled) that enable loss absorption and the recapitalization of a firm in resolution or the effective capitalization of a bridge institution through the cancellation, write-down, or termination of equity, debt instruments, and other senior or subordinated unsecured liabilities of the firm in resolution, and the conversion or exchange of all or part of such instruments or liabilities (or claims thereon) into or for equity in or other instruments issued by that firm, a successor (including a bridge institution), or a parent company of that firm.

Bank – any firm that takes deposits or repayable funds from the public and is classified under the jurisdiction's legal framework as a deposit-taking institution. For the purposes of this report a bank may mean, as appropriate in the context, an individual institution or a banking group.

Bridge institution – an entity established to temporarily take over and maintain certain assets, liabilities, and operations of a failed firm as part of the resolution process.

Critical functions – activities performed by a firm for third parties, where failure would lead to disruption of services critical to the functioning of the real economy and for preserving financial stability.[2]

Deposit insurance – a system established to protect depositors against the loss of their insured deposits in the event that a bank is unable to meet its obligations to depositors.

Deposit insurer – the specific legal entity responsible for providing deposit insurance, deposit guarantees, or similar deposit protection.

Deposit insurance system – the deposit insurer and its relationships with the financial safety net participants that support deposit insurance functions and resolution processes.

Depositor preference – granting deposit liabilities a higher claim class than other general creditors against the proceeds of liquidation of an insolvent bank's assets. Depositors must be paid in full before remaining creditors can collect on their claims. Depositor preference can take the following forms:

- National (or domestic) depositor preference gives priority to deposit liabilities booked and payable within the domestic jurisdiction and does not extend to deposits in foreign branches abroad.
- Eligible depositor preference gives preference to all deposits meeting the eligibility requirements for deposit insurance coverage.

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[1] The definitions of key terms come from the October 2014 draft version of the assessment methodology for the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions*. An earlier version of the draft methodology was circulated for public consultation in August 2013 (http://www.fsb.org/wp-content/uploads/r_130828.pdf), and in the *Handbook for the Assessment of Compliance with the Core Principles for Effective DIS* issued by IADI on March 2016.

[2] See the July 2013 FSB *Guidance on Identification of Critical Functions and Critical Shared Services*, http://www.fsb.org/wp-content/uploads/r_130716a.pdf.

- Insured depositor preference gives preference to insured depositors (and the deposit insurer under subrogation).
- In a two-tiered depositor preference concept, eligible but uninsured deposits have a higher ranking than claims of ordinary unsecured, non-preferred creditors, and insured depositors have a higher ranking than eligible depositors.
- For general depositor preference, all deposits have a higher ranking than claims of ordinary unsecured, non-preferred creditors, regardless of their status (insured/uninsured or eligible/not eligible).

Differential premium system (or "risk-based premiums") – a premium assessment system that seeks to differentiate premiums on the basis of criteria such as individual bank risk profiles.

Entry into resolution – the determination by the relevant authority that a firm meets the conditions under the applicable resolution regime for the exercise of resolution powers and that it will be subject to the exercise of such powers.

Ex ante funding – the regular collection of premiums, with the aim of accumulating a fund to meet future obligations (e.g., reimbursing depositors) and cover the operational and related costs of the deposit insurer.

Ex post funding – systems in which funds to cover deposit insurance obligations are only collected from surviving banks after a bank failure.

Financial firm or **financial institution** – any entity whose principal business is to provide financial services or conduct financial activities, including banks, insurers, securities or investment firms, and financial market infrastructure firms. References in this report to "firm" refer to a financial firm or financial institution.

Financial group – a group composed of entities the primary activities of which are financial in nature.

Financial safety net – the functions of prudential regulation, supervision, resolution, lender of last resort, and deposit insurance. In many jurisdictions, a department of government (generally a Ministry of Finance (MOF) or Treasury responsible for financial sector policy) is included in the financial safety net.

Firm in resolution – a firm in which resolution powers are being exercised. Where resolution powers have been or are being exercised in relation to a firm, that firm is considered to be "in resolution" for as long as it remains subject to measures taken or supervised by a resolution authority or to insolvency proceedings initiated in conjunction with resolution.

Group – a parent company (which may be a holding company) and its direct and indirect subsidiaries, both domestic and foreign**.**

Holding company – a company formed to control financial firms. The holding company concept covers direct, intermediate, and ultimate control, and includes a parent company that itself carries out financial operations.

Home jurisdiction – the jurisdiction where the operations of a financial group are supervised on a consolidated basis.

Legal framework – the comprehensive legal system for a jurisdiction established by any combination of the following: a constitution, primary legislation enacted by a legislative body that has authority in the jurisdiction, subsidiary legislation (including legally binding regulations or rules) adopted under the primary legislation of the jurisdiction, or legal precedent and legal procedures of the jurisdiction.

Legal gateways – provisions set out in statute or other instruments with the force of law that enable the disclosure of nonpublic information to specified recipients or for specific purposes. Legal gateways may be contingent on, or supported by, memoranda of understanding (MOUs) or other forms of agreement between the providing and recipient authorities.

Liquidation – (or *receivership*) the winding down (or *winding up* as used in some jurisdictions) of the business affairs and operations of a failed bank through the orderly disposition of its assets after its license has been revoked and it has been placed in receivership. In most jurisdictions, *liquidation* is synonymous with *receivership*.

Liquidator – (or *receiver*) the legal entity that undertakes the winding down of the failed bank and the disposition of its assets.

Moral hazard – when parties have incentives to accept more risk because the costs that arise from the risk are borne, in whole or in part, by others.

Public policy objectives – the goals which the deposit insurance system is expected to achieve.

Public ownership – full or majority ownership of an entity by the State or an emanation of the State.

Resolution – the exercise of resolution powers, including in particular the exercise of a resolution power specified in KA3, by a resolution authority for a firm that meets the conditions for entry into resolution, with or without private sector involvement, with the aim of achieving the statutory objectives of resolution set out in KA2.3. The exercise of resolution powers may include or be accompanied by an insolvency proceeding with respect to the firm in resolution (for e.g., to wind up parts of that firm).

Resolution authority – a public authority that, either alone or together with other authorities, is responsible for the resolution of firms established in its jurisdiction (including resolution planning functions). References in this document to a *resolution authority* should be read as *resolution authorities* where appropriate.

Resolution powers – powers available to resolution authorities under the legal framework for the purposes of resolution and exercisable without the consent of shareholders, creditors, debtors, or the firm in resolution, including in particular those set out in KA3.

Resolution regime – the elements of the legal framework and the policies governing resolution planning and preparing for, carrying out, and coordinating resolution, including the application of resolution powers.

Subrogation – the substitution of one party (e.g., the deposit insurer) for another (e.g., the insured depositor) with reference to a lawful claim, demand, or right, so that the party which substitutes succeeds to the rights of the other in relation to the debt or claim, and its rights and remedies.

Supervisor or **supervisory authority** – the authority responsible for the supervision or oversight of a financial institution. The *supervisor* or *supervisory authority* includes prudential and business or market conduct supervisors, and oversight authorities in the case of FMIs.

Systemically important financial institution – a financial institution or group that, because of its size, complexity, and systemic interconnectedness, would, in the view of the relevant authorities, cause significant disruption to the domestic or broader financial system and economic activity if it were to fail in a disorderly manner.

Systemically significant or critical – a financial firm is *systemically significant* or *critical* if its failure could lead to a disruption of services critical to the functioning of the financial system or real economy.

Target fund size – the size of the ex-ante deposit insurance fund, typically measured as a proportion of the assessment base (e.g., total or insured deposits), sufficient to meet the expected future obligations and cover the operational and related costs of the deposit insurer.

ABBREVIATIONS OF TERMS USED IN THIS REPORT

ASBA	Association of Supervisors of Banks of the Americas
BCBS	Basel Committee on Banking Supervision
BCPs	Basel Core Principles for Effective Banking Supervision
BRRD	Bank Recovery and Resolution Directive (EU)
CMG	Crisis Management Group
CP	IADI's Core Principles for Effective Deposit Insurance Systems
DI	Deposit Insurance (a FSN Function)
DIA	Deposit Insurance Agency (an FSN participant)
DIF	Deposit Insurance Fund
DIS	Deposit Insurance System
D-SIBs	Domestic Systemically Important Banks
ECCB	Eastern Caribbean Central Bank
FI	Financial Institution
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
FSN	Financial Safety Net
GFC	Global Financial Crisis
G-SIBs	Global Systemically Important Banks
G-SIFIs	Global Systemically Important Financial Institutions
IADI	International Association of Deposit Insurers
IMF	International Monetary Fund
KAs	Key Attributes of Effective Resolution Regimes for Financial Institutions
LLR	Lender of Last Resort
MOF	Ministry of Finance
MoU	Memorandum of Understanding
P&A	Purchase and Assumption transactions
RA	Resolution Authority
RRP	Recovery and Resolution Planning
SRR	Special Resolution Regime
USA	United States of America
WG	Working Group

EXECUTIVE SUMMARY

Since the Association of Supervisors of Banks of the Americas (ASBA) published its report titled *Effective Deposit Insurance Schemes and Bank Resolution Practices*[3] in September 2006, a new generation of standards for deposit insurance and bank resolutions has emerged. In the aftermath of the global financial crisis of 2007 to 2008, it became evident that financial stability requires a well-integrated financial safety net (FSN). The prolonged effects of the financial crisis eased the way for regulatory bodies to agree on elements that should be present in orderly resolution processes for institutions of all sizes, in conjunction with effective protection schemes for depositors and other clients or customers. Authorities in ASBA member jurisdictions have revised their financial stability frameworks based on these standards.

To promote cooperation and knowledge transfer among members, ASBA established a Working Group (WG) made up of deposit insurers and supervisors from member jurisdictions in the Americas to share and disseminate their experiences in enhancing the regulatory environment in their respective jurisdictions. The WG's objectives were to identify current challenges, propose guidelines for effective cooperation and collaboration within the FSN, and ensure effective resolution processes in the Americas.

The findings in this report are based on responses from two surveys involving selected elements from the International Association of Deposit Insurers (IADI) *Core Principles of Effective Deposit Insurance Systems* (CPs), the Financial Stability Board (FSB) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (KAs), and the Basel Committee on Banking Supervision (BCBS) *Core Principles for Effective Banking Supervision* (BCPs). The three sets of international standards (BCPs, CPs, and KAs) together support the building of a collaborative environment and help to identify opportunities for cooperation among the FSN members.

Survey responses and exchanges among WG members helped identify how the absence of proper coordination and information-sharing mechanisms affect effective resolution processes and the performance of bank supervisors, deposit insurers, and resolution authorities. Dynamic discussions among WG members raised awareness of common and individual challenges. This exchange was fundamental in identifying solutions based on international standards.

The relationship between supervision, resolution, and deposit insurance is intricate and requires a safety net with well-aligned public policy objectives, mandates, and powers. Rigorous prudential supervision is essential for deposit insurance and resolution mechanisms to be effective. Supervisors play a central role in integrating FSNs because of their in-depth knowledge of the financial institutions they oversee. Likewise, a properly designed deposit insurance system (DIS) contributes to public confidence and thus limits contagion from banks in distress. And a regime that enables orderly resolution processes of nonviable (no longer viable, or likely to be no longer viable, and with no reasonable prospect that recovery actions will be successful)[4] institutions of all sizes without the use of public funds, while maintaining continuity of their vital functions, contributes to market discipline and avoids unnecessary losses. Collaboration and coordination among these functions contribute to ensuring a well-integrated FSN. This

[3] See the September 2006 ASBA paper titled *Effective Deposit Insurance Schemes and Bank Resolution Practices,* http://www.asbasupervision.com/en/todos/virtual-library/publications-of-asba/working-groups/280-gt03/file.

[4] This definition is used throughout the paper.

report articulates opportunities for coordination within the FSN to enhance the effectiveness of all three functions both individually and collectively.

The effectiveness of deposit insurance and resolution mechanisms greatly depends on a supervisory regime that ensures timely intervention. In addition, the legal framework should incorporate a system of laws that guide financial transactions and provide the authorities with the power to determine and enforce prudential norms. The adequacy of deposit insurance and resolution regimes cannot be evaluated without taking into account the architecture of the FSN and how that framework assigns roles and responsibilities to these functions individually and collectively. Regardless of the FSN architecture, opportunities exist for enhanced coordination throughout the life of financial institutions (FIs).

Cooperation mechanisms should assist all stakeholders involved in the resolution process from beginning to end. The following actionable guidelines for effective cooperation are presented in the last section of this report:

- *Coordination agreements* that inform the decision-making process and provide structure for changes in leadership as the roles and responsibilities of FSN participants change and as events and developments occur and evolve.
- *Legal gateways* that create the opportunities and provide the right incentives for timely information sharing and collaboration.
- *Coordination mechanisms and information-sharing frameworks* enabled by memoranda of understanding (MOUs), financial stability committees, and crisis management groups.
- *A collaborative environment* that integrates day-to-day collaboration, timely intervention and preparation for resolution, application of resolution powers, and settlement and liquidation.

Regulatory bodies across the Americas are taking steps to enhance current safety net arrangements to affect orderly resolution processes. Yet the findings in this report indicate that continued development is needed to achieve this goal, as most responding jurisdictions stated that they lack a formal financial safety net platform (S1, Q39).

1. INTRODUCTION

1.1 BACKGROUND

In the aftermath of the most recent global financial crisis (GFC), standard-setting bodies—including the Financial Stability Board (FSB), the International Association of Deposit Insurers (IADI), and the Basel Committee on Banking Supervision (BCBS)—introduced international standards for deposit insurance and bank resolutions. IADI's *Core Principles of Effective Deposit Insurance Systems* (CPs), the FSB's *Key Attribute of Effective Resolution Regimes* (KAs), and the BCBS's *Core Principles for Effective Banking Supervision* (BCPs) assert that supervision, deposit insurance, and resolution are distinct safety net functions that must be closely coordinated to safeguard the financial system in periods of stability and times of crisis.

ASBA member jurisdictions are taking steps to implement the international standards and to improve the level of coordination among safety net participants, but challenges remain. ASBA, therefore, created a WG to review jurisdictions' resolution frameworks to determine how best to overcome these challenges, ultimately improving coordination and strengthening the FSN. The WG focused specifically on jurisdictions in the Americas—Latin America, the United States, and the Caribbean—as these jurisdictions are ASBA members.

The WG circulated surveys to ASBA member jurisdictions to (1) assess the level of coordination among safety net participants in those jurisdictions and (2) determine the challenges to increasing and improving coordination. The survey responses revealed that formal methods for coordinating safety net functions are not typical but that jurisdictions are taking steps to enhance coordination by focusing on best practices and, in some cases, proposing reforms to regulatory and legal frameworks.

1.2 OBJECTIVES AND METHODOLOGY

A supervisor's core function is to be vigilant and ensure that "living" financial entities carry out their operations in a safe and sound manner. The deposit insurer (DI) and resolution authority's (RA) core functions are to be vigilant and ensure that when "living" financial entities that are "dying or will most probably die", can exit the system in a manner that is safe and sound for their customers, the financial sector, and ultimately, the whole economy.

The WG's objective was to identify opportunities for jurisdictions to increase the level of cooperation between their deposit insurance and resolution functions.

To attain this objective, the WG

1. Analyzed depositor protection schemes and resolution regimes to determine how they carry out their public policy objectives and mandates, and how they cooperate and coordinate actions with supervisors before, during, and after a resolution;
2. Explored bank supervision practices to identify current approaches for identifying and dealing with weak and problem institutions;
3. Studied the inter-institutional arrangements for early and timely intervention, and the resolution process for nonviable banks and financial group holding companies, as well as their affiliated entities;
4. Determined challenges in adopting a Special Resolution Regime (SRR); and

5. Produced recommendations to foster coordination among supervisors, DIs, and RAs in times of stability and times of crisis.

In this report, supervision regimes are analyzed in terms of their use of techniques and tools for identifying and dealing with weak banks, and entry into resolution. Deposit insurance is analyzed in terms of its role before, during, and after a resolution process. Resolution regimes are analyzed based on whether jurisdictions have a designated resolution authority (RA) and an SRR to deal with nonviable financial institutions.

The WG circulated two surveys to ASBA member jurisdictions in Latin America, the United States, and the Caribbean. Twenty-one jurisdictions responded to Survey 1[5] (S1) on deposit insurance, and 21 responded to Survey 2[6] (S2) on resolution frameworks. The survey responses, along with testimony from WG members on their jurisdiction's efforts to adopt best practices for safety net functions, informed the WG's analysis. Throughout this report, jurisdictions that responded to the surveys are referred to as *responding* jurisdictions, and jurisdictions that participated in WG meetings, wrote letters, and responded to surveys are referred to as *participating* jurisdictions. Discussions among WG members during two meetings held in Lima, Peru, in April 2015 and June 2016 also informed the analysis. Contributions from different ASBA member jurisdictions illustrating their experiences are contained in Annex A.

The report has six sections. Section one is an introduction. Section two presents the findings from the surveys on selected features of supervision, deposit insurance, and resolution regimes. The second section also discusses challenges for each financial safety net function and demonstrates how weaknesses in coordination undermine each function's performance. The third section establishes links among the three sets of international standards for adequate collaboration and draws on the challenges from section two to identify goals for enhanced coordination that can be achieved by adopting best practices. Recommendations to solve coordination issues are proposed in this and the next two sections. Section four explains how the FSN participants can collaborate throughout the life span of financial institutions (FIs), before, during, and after resolution. Section five proposes general guidelines in establishing formal coordination and information-sharing mechanisms. The report concludes with the sixth section, which suggests that changing the collective mindset is necessary to create more effective and integrated FSNs. Annex A contains experiences shared by participating jurisdictions in the adoption or application of best practices, and the results of the surveys are found in Annexes B and C.

2. MAIN FINDINGS

Progress by financial authorities to adopt best practices for key financial safety net (FSN) functions—bank supervision, deposit insurance, and resolution—varies widely among jurisdictions in the Americas. This report does not assess compliance with the international standards; rather, it presents the challenges that authorities in these jurisdictions have encountered in establishing effective coordination among financial safety net participants and describes the progress made to address those challenges.

[5] The following 21 jurisdictions responded to Survey 1: Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, ECCB, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, Trinidad and Tobago, Uruguay, and the USA. Completed surveys were submitted in April 2015.

[6] The following 21 jurisdictions responded to Survey 2: Belize, Bolivia, Brazil, Cayman Islands, Chile, Colombia, Dominican Republic, ECCB, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Spain, Trinidad and Tobago, Uruguay, and the USA. Completed surveys were submitted in February 2016.

In this section, we present challenges common to supervisors, DIs, and resolution authorities (RAs) as well as those unique to each of the FSN functions they perform. Survey findings are presented for each function.

2.1 Common Challenges

According to the BCPs,[7] effective crisis management frameworks and resolution regimes help to minimize potential disruptions to financial stability arising from distressed or failing banks and financial institutions. A sound institutional framework for crisis management and resolution requires a clear mandate and an effective legal underpinning for each participating authority in charge of supervision, deposit insurance, and resolution. The authorities should agree on their individual and joint responsibilities in times of stability and in times of crisis. Institutional arrangements should allow FSN participants to share confidential information in order to efficiently handle recovery and resolution situations when they occur.

Common challenges for participating jurisdictions lie in both their institutional legal frameworks and coordination arrangements. Specifically, these frameworks and arrangements do not plainly distinguish the responsibilities, scopes, and mandates of the FSN functions the way international standards would prescribe.

2.1.1 Differentiating Scopes

The scope of competence of each function comprising the FSN should be separate and distinct, regardless of the jurisdiction's institutional arrangements and legal frameworks that may have evolved over time within the safety net. A distinction should be made between resolution and supervisory powers within financial sector authorities. Resolution authorities must be able to deal with property and third-party rights related to a resolution process and the allocation of losses to creditors and shareholders. Supervisory authorities in all surveyed jurisdictions are authorized to require corrective action and enforce a range of penalties, including authorizing entry into resolution, when financial institutions do not meet prudential requirements. Several surveyed jurisdictions reported that supervisors also perform resolution functions, but the legal frameworks for those jurisdictions do not clearly address the treatment of operational or legal challenges that arise after closing a financial institution. When the supervisor carries out resolution actions, it performs such actions from a supervisor's perspective, not necessarily with the criteria and public policy objectives recommended for the RA contained in KA2. In addition, supervisory authorities might have limited capabilities to respond to the general public in times of crisis. Their organizational structures are not guided by customer service objectives in resolution; therefore, responsiveness to depositors and other creditors of a failed institution is generally lacking. Naturally, this lack of responsiveness is to be expected when an agency's main purpose is something other than deposit insurance and/or resolution, as an agency must predominately allocate its resources to its main missions.

Most participating jurisdictions recognize that aligning the mandates, objectives, and powers among authorities of their FSN may require legal reforms, and thus these jurisdictions are reviewing their legal frameworks to strengthen their crisis management capabilities. Specifically, they are addressing their FSN institutional frameworks and arrangements, better defining their functional scopes, and formulating SRRs.

[7] BCP, paragraph 51.

2.1.2 Differentiating Clientele

FSN participants have different clientele that may overlap. The clientele of lenders of last resort are typically governments, banks, and other real economy agents, while the primary clientele for supervisors are the entities they supervise. The main clientele of both DIs and RAs are depositors and other financial sector consumers. The deposit insurance and resolution functions are incentive compatible[8] in minimizing losses to creditors and the economy, including to the deposit insurance fund (DIF).

To determine the appropriate institutional arrangements for the FSN, it is important to align the natural clienteles and incentives of each safety net participant. Such an alignment can facilitate identifying the proper distribution of mandates and objectives; which, in turn, would improve mandate deliverance and performance.

2.1.3 Interacting Throughout the "Life" of FIs

During the WG discussion meetings, it became evident that a need exists for FSN participants to fully understand how FSN functions interact throughout the life and death of a financial operation. Supervisors, DIs, and resolution authorities each have unique roles and responsibilities in the financial safety net. In general, supervisors are responsible for licensing[9] financial institutions and ensuring that only sound deposit-taking institutions participate in the financial system. DIs verify deposit data and ensure that deposit insurance terms and limitations are communicated properly to the public. When an FI enters resolution, DIs should also have a working understanding of the conditions leading to the FI's wind-down, the timeframe for the resolution process, and the criteria under which deposit insurance funds will be applied (should they be required). DIs also must ensure that the proposed use of the institution's funds results in the least permanent cost. RAs must understand the operating arrangements of FIs in their jurisdictions, including whether those arrangements provide critical services, how they might be interconnected in the financial system and the economy, and the mechanisms that would allow for an orderly and least costly resolution.

To fulfill their mandates, FSN participants must have the appropriate resources, authority, organization, and constructive working relationships with each other and with other applicable agencies throughout an FI's "life" stages. Yet the WG's findings indicate that legal frameworks in participating jurisdictions do not fully enable such a collaborative and coordinated environment for "birth-to-death" regulatory oversight and interactions. WG members indicated the need for greater clarity not only for aligning mandates, objectives, and powers among FSN authorities but also for allowing safety net participants to engage, individually and collectively, with FIs throughout their different life stages.

2.1.4 Point of Nonviability

Determining the point of nonviability for FIs and, thus, when resolution actions should be implemented remains a challenge for participating jurisdictions. A change in mindset, away from compliance-based judgments by some supervisors, may be necessary to reach consensus on the determination of the point of nonviability, a point that should be of no return. However, in 13 responding jurisdictions, courts can override the RA (S2, Q20), and in most others an administrative process can delay entry into resolution,

[8] Beck, T., *The Incentive-Compatible Design of Deposit Insurance and Bank Failure Resolution*, The World Bank, May 2003.

[9] Licensing and chartering are terms used by participating jurisdictions to refer to the process for authorization to operate by financial regulators.

to the detriment of the objectives of effective resolution. Rules and criteria for determining the point of nonviability should be clear for all FIs and FSN participants.

In general, legal frameworks in participating jurisdictions provide supervisors with discretionary powers to require corrective action and to determine the point of nonviability based on a wide range of qualitative and quantitative criteria. However, existing incentives and institutional arrangements do not allow the necessary level of interagency consultation and integration recommended in the KAs. Moreover, many of the participating jurisdictions hold a traditional view of the failed FI wind-down process in which the supervisor closes the insolvent operation and prepares it for judicial liquidation, usually on the basis of capital thresholds for intervention, both of which can exacerbate the inefficiencies of the current institutional arrangements.

As expected, a majority of responding jurisdictions reported that they would trigger the resolution process when an FI reaches or is nearing the prudential thresholds (see Annex C-4). Approximately one-half of responding jurisdictions said they would do so when no viable private sector alternative exists to prevent the default (S2, Q7). Moreover, notwithstanding the criteria set forth in the legislation, in most responding jurisdictions,[10] a court would have the power to suspend or overturn the decisions made by the RA. To implement effective resolutions in line with the objectives of the KA, a change of mindset about nonviability and resolution triggers is essential.

2.1.5 Treatment of Holding Companies and Financial Groups

When supervisors oversee banks that are part of a corporate group, the BCPs recommend that supervisors consider the banks and their risk profiles from three different perspectives: on a solo basis, on a consolidated basis, and on a group-wide basis. Group entities, whether inside or outside the banking group, may be a source of strength. They may also, however, represent exposures that can adversely affect the financial condition, reputation, and overall safety and soundness of the bank.[11]

WG member jurisdictions reported having limited powers to create rules for financial holding companies and financial groups or conglomerates. They also reported having no authority to develop rules for mixed-activity holding companies (see Annex B-2). Without the authority to issue regulation that adequately captures the risk exposure of these groups, supervisors may be limited in their ability to properly monitor them and minimize their potential impact on the group and the financial system.

2.1.6 Implementing Recovery and Resolution Planning

The KAs call on jurisdictions to implement recovery and resolution planning (RRP) as part of their supervisory and resolution regimes. RRP is different from issue-specific contingency planning in that it requires FIs to develop recovery plans based upon breaches of predetermined triggers. RRP takes into account the specific circumstances of the firm, including its nature, complexity, interconnectedness, level of substitutability, and size. The resolution plan is intended to facilitate the effective use of resolution powers in a way that ensures continuity of critical functions, without severe disruption and without exposing public funds to losses. Supervisory and resolution authorities should verify that recovery and resolution plans identify options to restore firms to a safe and sound condition, should the firms come under severe stress.

[10] Belize, Brazil, Cayman Islands, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Peru, Trinidad and Tobago, and Uruguay.

[11] See BCPs, paragraph 22.

Among responding jurisdictions, only Mexico, Spain, and the United States of America (USA) require RRP as defined by the KAs. All three require resolvability assessments (Annex C-7, C-8).[12]

2.1.7 Identifying and Managing Systemic Events

Financial system authorities are responsible for identifying systemic events. Generally, this involves a broader financial safety net that includes the ministries of finance and other relevant supervisors, depending on the scope and nature of the event and the structure of the financial system in the jurisdiction. Systemic events are not limited to those involving systemic institutions. Indeed, a nonviable FI, not classified as systemic or critical *a priori,* may present a systemic risk upon entry into resolution. And, without proper management, failures can evolve into events with systemic impact.

An integrated policy response requires seamlessness between stable and crisis modes, which can be achieved by a single piece of legislation that covers a variety of failures within the financial industry. Participating jurisdictions are facing challenges in building practical and seamless resolution regimes for systemic or critical FIs and events.

According to survey results, the legal frameworks in 14 of the responding jurisdictions do not provide specific tools for determining the systemic importance of failing institutions (S2, Q6). Table 1 shows when and how the jurisdictions with systemic event tools use them.

[12] Resolvability assessments, as defined by KA 10, 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.

Table 1: Application of Systemic Event Tools by Jurisdiction

Country	Timing	Criteria
Honduras	*A priori*	FI controls 20% or more of total deposits, loans, or payment system transactions.
Mexico	Upon occurrence	Banking Stability Committee (CEB) determines whether a special resolution regime will be used in cases where the FI poses a systemic risk.
Nicaragua	Upon occurrence	In cases in which an FI poses a systemic risk, the DI, the central bank, and the supervisor jointly determine whether a special resolution regime is used.
Paraguay	Upon occurrence	The Ministry of Finance (MOF) and central bank, with a favorable review by the supervisor, determine the resolution approach if an FI poses a systemic risk.
Peru	Upon occurrence	The supervisor, with the favorable opinion of the MOF and the central bank, determine the resolution approach if an FI poses a systemic risk.
Dominican Republic	Upon occurrence	The Monetary Board, with the recommendation of the supervisor, determines the resolution approach if an FI poses a systemic risk.
United States	*A priori*	Upon satisfaction of predetermined criteria and the recommendation to the Secretary of the U.S. Treasury by two U.S. financial regulatory agencies, the FDIC will be appointed receiver of the financial company.

Source: Survey 2, questions 6-9

2.2 Challenges for The Supervisor

When assessing the quality of supervisory systems, the BCPs emphasize that supervisory practices are not static. Lessons learned from financial system participants contribute to a dynamic process whereby supervisory systems are developed and refined. Supervisors often encourage banks to adopt best practices. Supervisors can consequently lead by example, continually moving toward higher international standards. They can also support, to the extent possible, the adoption of such standards for the other FSN functions in their jurisdictions.

The BCBS's *Guidelines for identifying and dealing with weak banks*[13] establish that the lack of both contingency arrangements and an understanding of the tools available for dealing with weak banks contribute not only to unnecessary delays in supervisory and resolution actions but also to the high cost of resolving banking sector problems. Experiences of supervisors and RAs in recent years confirm the importance of enhancing risk-based supervision, intensifying efforts and resources dedicated to monitoring entities of systemic importance, adding a macro-prudential perspective to the micro-prudential supervisory regime, and strengthening crisis management frameworks with RRP that reduce the possibility of failures and their impact, should they occur.

Supervisors' commitment to building proper collaboration and information-sharing mechanisms to attain these objectives is imperative to the effectiveness of the FSN. However, supervisors in participating jurisdictions that have made this commitment have encountered several challenges, which are outlined in the next section.

2.2.1 Enabling Cooperation and Information Sharing

Formal and informal arrangements should be established to ensure cooperation, timely information sharing, and analysis of that information between relevant domestic and foreign supervisors (BCP3). At a minimum, the information shared should include a wide range of strategic and operational information,

[13] BIS, *Guidance for identifying and dealing with weak banks*, July 2015.

including bank-specific and sector-specific performance data as well as risk-monitoring reports and related analyses. The arrangements should also encourage collaboration while protecting the confidentiality of the information.

In approximately one-half of responding jurisdictions, law requires coordination among functions of the FSN (S1, Q36). However, survey respondents said coordination and information sharing were limited. Even when coordination was required by legislation, information sharing was limited. Eight[14] of 21 responding jurisdictions have different regulators for different financial activities. Notably, most responding jurisdictions (16) do not have cross-border arrangements within their resolution functions or agencies (S1, Q40). Table 2 illustrates some elements of coordination arrangements among responding jurisdictions.

Table 2: Coordination Arrangements by Jurisdiction

Country	Coordination within FSN	EWS*	EWS results shared	Systemic events treatment	Formal FSN	Cross-border arrangements for supervision	Cross-border arrangements for resolution
Bolivia	Required	Yes	No	Yes	No	Yes	No
Brazil	Discretionary	Yes	No	No	No	Yes	Yes
Chile	Required	Yes	with FSN	No	No	Yes	No
Colombia	Required	Yes	with FSN	Yes	Yes	Yes	No
Costa Rica	NR	NR	NR	NR	NR	Yes	No
Dominican Republic	Discretionary	Yes	No	Yes	No	Yes	No
ECCB	NR	NR	NR	NR	NR	NR	NR
Ecuador	Required	Yes	with DI	No	Yes	Yes	No
El Salvador	Required	Yes	with FSN	No	Yes	Yes	No
Guatemala	Discretionary	Yes	No	Yes	No	Yes	No
Haiti	Discretionary	Yes	No	No	No	No	No
Honduras	NR	Yes	with FSN	Yes	Yes	Yes	No
Mexico	Required	Yes	with FSN	Yes	Yes	Yes	Yes
Nicaragua	Required	Yes	with DI	Yes	No	Yes	No
Panama	NR	Yes	No	Yes	No	Yes	No
Paraguay	Discretionary	Yes	with DI	Yes	Yes	Yes	No
Peru	Discretionary	Yes	No	Yes	No	Yes	No
Spain	Required	Yes	No	No	No	Yes	Yes
Trinidad and Tobago	Required	Yes	No	Yes	Yes	Yes	No
Uruguay	Required	Yes	with FSN	No	Yes	Yes	No
USA	Discretionary	Yes	with FSN	Yes	Yes	Yes	Yes

Source: Survey 1, Questions 36-40.
*NR = No Response
*EWS = Early Warning System

2.2.2 Risk Management Issues

Effective prudential supervision requires the bank supervisor to have the capacity and resources to fully understand all material risks assumed by or evident in regulated entities, and the ability to determine whether bank management has established a comprehensive risk management process (BCP15). Effective banking supervision most typically involves a risk-based approach using a mix of on-and off-site inspection and other monitoring tools. The vast majority of responding jurisdictions (S1, Q23) reported in the survey that they used this approach. However, WG discussions revealed that, in practice, many respondents rely

[14] Chile, Dominican Republic, Eastern Caribbean Central Bank (ECCB), Ecuador, Mexico, Panama, Paraguay, and the USA (S1, Q20).

heavily on a rules- and compliance-based approach to bank supervision, which typically focuses on the financial institution's condition and adherence to prescribed regulatory requirements (e.g., rules and performance metrics) at a particular point in time.

An effective supervisory review process requires supervisors to implement a risk-based supervisory approach with forward-looking components. In this forward-looking approach, the supervisor identifies the areas of greatest concern by assessing the bank's various business lines and risks; its associated strategies; and the quality of its governance, management, and internal controls. Early risk detection will assist supervisors in gauging the risks institutions are exposed to as ongoing concerns and those that can impact the system when they need to be resolved.

The adoption of an effective risk-based supervisory approach that prioritizes early risk detection will also help bank supervisors, deposit insurers, and resolution authorities better prepare for bank failures. As emphasized by the FSB (KA3), resolution should be initiated when a firm is no longer viable or likely to be no longer viable. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully extinguished.

During WG discussions, participating jurisdictions reported that they are moving toward more effective risk-based supervision approaches and plan to adopt KA elements, such as RRP; in most cases, however, proper implementation requires legal reforms.

2.2.3 Dealing with Weak FIs

As the GFC illustrated, early intervention is essential for preserving value in a failing firm and limiting externalities and other spillovers. The supervisor is expected to act at an early stage to address risks to banks or to the financial system. Supervisors must have at their disposal an adequate range of supervisory tools to authorize timely corrective actions, including revoking a banking license or recommending its revocation (BCP11).

The BCBS defines a weak bank as "one whose liquidity or solvency is impaired or will soon be impaired unless there is a major improvement in its financial resources, risk profile, business model, risk management systems and controls, and/or quality of governance and management in a timely manner."[15] In addition, the BCBS recommends that banking supervisors maintain close communication with other domestic agencies that have an interest in the bank's financial condition, such as the central bank, the RA, and the DI, among others.

The legal framework in all responding jurisdictions mandates corrective actions when weaknesses in FIs are identified (S1, Q25). Supervisors in all surveyed jurisdictions appear to have substantive enforcement authority for taking formal and informal action, yet challenges arise when corrective actions are not successful and nonviability becomes imminent. At that point, supervisory authority might not be sufficient to ensure an orderly wind-down of the failed FI, resulting in delayed intervention and preventing a timely and orderly resolution.

2.2.4 Action upon Nonviability

When an institution experiences high levels of stress and corrective actions are unsuccessful, the authorities should prepare for resolution. Supervisors across jurisdictions tend to agree on most of the objective elements recommended by the KAs to guide authorities in determining when an institution

[15] See BCBS *Guidelines for identifying and dealing with weak banks*, July 2015.

infringes, or is likely to infringe, on the requirements for continued authorization, which would justify the withdrawal of its license to operate.[16] However, their legal frameworks in many cases emphasize capital compliance and often do not provide the incentives or the full menu of options to take resolution actions when other regulatory requirements, not only capital requirements, are breached. In addition, when the supervisory authority is also the resolution authority, resources are often focused on identifying recovery strategies, making resolution planning and coordination a lower priority.

The legal framework should contain pre-determined criteria for entry into resolution, but triggers for resolution action should not be automatic. On the contrary, in each case, the relevant authorities should decide whether the institution is failing, or is likely to fail, based on a comprehensive assessment of qualitative and quantitative criteria. Discussions are ongoing in participating jurisdictions on the qualitative and quantitative criteria, as well as the appropriate time for determining when such criteria have been satisfied for entry into resolution. It is essential to harmonize criteria for determining nonviability in order to coordinate among domestic and cross-border authorities. As the resolution dialogue continues, authorities should consider adopting legal provisions that define nonviability to include circumstances in which firms are no longer viable or likely to be no longer viable, and have no reasonable prospect of becoming so. Only five responding jurisdictions—Belize, Cayman Islands, Spain, Trinidad and Tobago, and USA—have legal provisions containing criteria that include the concept of nonviability as defined by the KA (no longer viable or likely to be no longer viable) (S2, Q26).

2.3 Challenges for the Deposit Insurer (DI)

A significant lesson from the financial crisis, according to IADI's Core Principles, is that deposit insurance plays an important role in the safety net and must be part of contingency planning and crisis management frameworks (CP6). As the GFC unfolded, deposit insurance systems (DISs) were put to the test. In the crisis aftermath, many jurisdictions formally adopted the lessons learned to refine their systems where appropriate. The roles of DIs[17] and the legal mandates of DISs have evolved since then, reflecting greater international consensus on appropriate design features.[18] Opportunities for improvement remain, but as more jurisdictions adopt the CP, convergence in system design will help to identify opportunities for improvement, including improvement in building cooperation mechanisms. This section presents challenges to cooperation encountered by DIs in surveyed jurisdictions.

2.3.1 Mandate and Integration with the Financial Safety Net

The main public policy objectives of DISs are to protect depositors and to contribute to financial stability (CP1). These objectives are most often shared with the other FSN participants. Therefore, it is important

[16] General examples of elements to determine nonviability in advance, according to the FSB *Key Attributes Assessment Methodology for the Banking Sector*, Explanatory Note 3(c), are

(i) regulatory capital or required liquidity falls below specified minimum levels;
(ii) there is a serious impairment of the bank's access to market-based funding sources;
(iii) the bank depends on official sector financial assistance to sustain operations or would be dependent in the absence of resolution;
(iv) there is a significant deterioration in the value of the bank's assets; or
(v) the bank is expected in the near future to be unable to pay liabilities as they fall due.

Exclusive reliance on criteria for nonviability that are closely aligned with insolvency or likely insolvency would not meet the test for timely and early entry into resolution.

[17] Not all jurisdictions have an agency to perform the DI's role.

[18] See FSB *Thematic Review on Deposit Insurance Systems*, February 2012.

to ensure that the legal framework states not only the DIS mandate and objectives but also the authorities granted by law to the deposit insurance agency (DIA) to meet those objectives. A clear and cohesive legal framework would facilitate consistency among the safety net participants, collectively and individually, and would improve their performance and operations. The DIS mandate should guide the design of the DI's operation and specify the roles that the DI must perform to contribute to financial stability; it should also specify the mechanisms and timing for engaging with DIS members and all other stakeholders.

According to the FSB, deposit insurer mandates can vary from "paybox" to "risk minimizer," as described below.

- *Pay box* mandate: the deposit insurer is only responsible for the reimbursement of insured deposits.
- *Pay box plus* mandate: the deposit insurer has the responsibilities of a pay box mandate in addition to other responsibilities, such as certain resolution functions (e.g., financial support).
- *Loss minimizer* mandate: the insurer selects from among several least-cost resolution strategies.
- *Risk minimizer* mandate: the insurer has comprehensive risk minimization functions that include risk assessment/management, a full suite of early intervention and resolution authorities, and in some cases prudential oversight responsibilities.

Exhibit 1 displays the DIS mandates for responding jurisdictions. Fifteen of the 16 responding jurisdictions that have a DIS reported that their DI schemes were established by legislation (S1, Q5). Of those, most (12) are independent entities (S1, Q4).

WG members shared that, in some cases, the mandates of their DISs are not always clearly aligned with their legal frameworks. For DIs to carry out their role properly, the DIS mandate must be supported by law. In addition, in jurisdictions where the DI has not fully established the capacity to execute its mandate, or is unable to fulfill its mandate because of insufficient resources or staff, attention and resources should be allocated to ensure that the DI develops the appropriate capabilities, rather than having another safety net participant make up for it.

Exhibit 1: DIS Mandates by Jurisdiction

Note: ECCB, Costa Rica, Haiti, Panama and Chile do not operate explicit deposit insurance systems.

2.3.2 Opportunity for Access to Information

The CPs list several DI responsibilities for reimbursing depositors (CP15), including the following: (1) The DI reimburses most insured depositors within seven working days; (2) The DI has access to depositor records at all times, so that it can provide depositors prompt access to their funds; and (3) The DI can carry out the reimbursement process promptly.

Most often, the DIS relies on the supervisor to provide timely, accurate, and comprehensive information on FI weaknesses. Regardless of mandate, all DISs must have sufficient notice of emerging problems in order to be adequately prepared before a firm's failure (CP6). They must prepare for deposits restitution, either through direct payout or by facilitating a resolution, which means they may need to consolidate information provided by supervisors with information collected from insured institutions. Survey data reveal that this information consolidation could be improved. Only Ecuador, Honduras, Paraguay, Nicaragua, and USA share examination reports with the DI (S1, Q24).

Cooperation agreements for most participating jurisdictions grant the DI access to quantitative data but do not provide the DI an opportunity to analyze the data in a timely manner if received weeks or even months after processing. Further, the agreements do not always include qualitative information. Supervisors in Ecuador, Paraguay, and Nicaragua share their early-warning systems reports exclusively with the DI. Chile, Mexico, Uruguay, USA, El Salvador, Colombia, and Honduras share them with all FSN participants (S1, Q37).

2.3.3 Building Trust in the Deposit Insurance System (DIS)

Trust is a key component for financial stability. To build and maintain trust, DIs should have a permanent public awareness program. In addition, they should work closely with banks and other safety net participants to ensure the consistency and accuracy of the information provided to depositors. Likewise, DIS member institutions should support the DI's efforts to maximize the public's awareness of the benefits and limitations of the deposit insurance system. Banks should be required to provide information about deposit insurance in the language(s) and format prescribed by the DI (CP10.6).

For effective trust building, DIs should present their system's key features in the context of the particular role they play in the FSN. The following need to be comprehensively explained in such a context: the operational arrangements of the DIS; its policies according to its mandate; and the means by which it engages in the safety net before, during, and after member institutions fail. Trust-building efforts also require the DI to have a continuous presence in the public's mind, rather than only when a member institution has failed. Too often, DIs are given a less relevant role in the FSN out of concern that their presence will disrupt financial markets. To the contrary, markets are likely to remain calm when DIs frequently engage with member institutions. Indeed, DIs should engage with member institutions throughout their "lives." Yet this is not standard practice among participating jurisdictions.

The level of engagement by DIAs in different financial sector events varies. Jurisdictions were asked to qualify[19] whether, in practice, the DIA engaged in a range of events. The results, shown below in Table 3, point to several opportunities for enhancing information sharing and collaboration to ensure the DI may contribute more effectively to financial stability.

Table 3: DIA Powers/Levels of FI Engagement by Jurisdiction

	License authorization to member institutions	Changes or Transformations	Issue of regulation	Setting the level of Coverage	Scope of coverage	Timely intervention	Setting premiums	Resolution processes	Resolution strategy
Bolivia	None	None	None	By Invitation	None	None	None	Much	None
Brazil	None	None	None	Much	Much	None	Much	By Invitation	By Invitation
Colombia	None	By Invitation	None	None	None	By Invitation	None	By Invitation	By Invitation
Dominican Rep.	None	None	None	None	None	None	None	Much	Much
Ecuador	None	None	By Invitation	By Invitation	By Invitation	Much	By Invitation	Much	By Invitation
El Salvador	None	None	Much	None	None	By Invitation	Much	Much	Much
Guatemala	None	None	None	None	None	None	None	None	None
Honduras	None	None	Much	Much	Much	Much	Much	Much	Much
Mexico	None	None	Little	None	None	Much	Little	Much	Much
Nicaragua	None	None	Much	Much	Much	Much	Much	Much	Much
Paraguay	Little	Little	Little	Much	Much	Little	NR	Much	Much
Peru	None	None	Little	Little	Little	None	Little	Little	None
Spain	None	None	None	None	None	None	None	None	None
Trinidad & Tobago	None	None	None	Very much	Very much	None	Very much	Somewhat	Somewhat
Uruguay	By Invitation	Little	Much	Much	Little	Much	Much	Much	Much
USA	Somewhat	Very much	Very much	Very much	Very much	Very much	Very much	Very much	Very much

Source: WG Effective cooperation for resolution of FIs in Latin America, Survey 1 Question 11

2.3.4 Fund Sustainability and Prompt Reimbursement of Covered Deposits

In the absence of some form of a deposit protection scheme, financial system authorities face an ever-present threat of deposit runs. The certainty of prompt payment is as important as the speed of reimbursement. Timely and orderly resolutions facilitated by supervisors, together with DI funding, prevent deposit runs, contagion to healthy FIs, and exposure of the DI fund to losses. Also, timely resolutions that avoid unnecessary losses to all creditors, including the DI fund, contribute to increased confidence in the FSN, its participants, and the financial system. A DI should be funded appropriately, with access to contingency funding, to ensure that it can fulfill its objectives.

[19] Answer choices—not at all, somewhat, by invitation, much, and very much—are meant to represent how the participating DIAs perceive their actual participation in the different events included in the question, "What is the level of participation of the deposit insurer in the following processes?" (Survey 1, Q11)

Funding and fund targets for deposit insurance vary across responding jurisdictions, as shown in Exhibit 2.

Exhibit 2: Funding and Fund Targets

Primary source is the banking sector	Mixed funding (government and banking sector)	Predetermined target fund as a % of *insured* deposits	Predetermined target fund as a % of *total* deposits
• Bolivia • Brazil • Dominican Rep. • Ecuador • El Salvador • Guatemala • Mexico • Nicaragua • Peru • Spain • Uruguay • USA	• Colombia • Honduras • Paraguay • Trinidad and Tobago	• Brazil 2% • Ecuador 10% • Uruguay 5% • USA 2%	• Bolivia 5% • Dominican Rep. 5% • Honduras 5% • Paraguay 10%

For most DIs in responding jurisdictions, the main source of funding is premium income from member institutions. Four of the jurisdictions rely on a combination of both government and banking sector funding (S1, Q7). No jurisdiction in our sample relies solely on its government for DI funding. Fund targets are not explicitly determined in legislation but rather through provisions for suspending premiums or contributions at a set percentage of total or insured deposits. The law is silent on fund targets in El Salvador, Nicaragua, Peru, and Spain (S1, Q9). Among surveyed jurisdictions, the most common method for determining premiums for insured firms is a risk-adjusted rate or percentage premiums.

In the absence of formal public policy objectives, issues related to funding, fund targets, and uses of DI funds are considered judgment calls by the authority that determines their application. If the authority determining their application is not the DI, conflicts of interest may arise, which may also be detrimental to DIF sustainability.

For DI funding to be adequate, funding and target fund objectives must be consistent with coverage levels. In addition, coverage levels will influence the effectiveness of the DI when it funds resolution mechanisms. For example, if the coverage is too low and DI funding of resolution alternatives has to pass a least-cost test, payout would likely be the least costly solution. If these DIS design elements cannot be measured against pre-established public policy objectives, the effectiveness of the DIS will be limited.

2.4 Challenges for the Resolution Authority (RA)

Financial crises have taken place in most economies in the world at different points in time and with varying levels of severity.[20] Until the GFC, past experiences with bank failures did not encourage the development of internationally consistent solutions for preventing systemic exposures. Policy debates paid little attention to the practical and legal aspects that would need to be settled in the aftermath of bank failures. The assumption was that in a heavily regulated industry like banking, the financial or operational failure of institutions would be rare events. The regulatory community found it more natural to discuss and develop safety standards, which were designed to minimize the emergence of undue risks, than to contemplate failure as a likely scenario requiring contingency planning. In many instances, the

[20] Laeven and Valencia identified 147 systemic banking crises during the period 1970 to 2011. L. Laven and F. Valencia, "Systemic banking crisis database: An update," IMF Working Paper No WP/12/163 (June 1012), available at www.imf.org/external/pubs/ft/wp/2012/wp12163.pdf.

regulatory community would handle bank failures in an *ad hoc* fashion with improvised crisis management based on a combination of administrative actions that lacked clear legally binding guidance and discretionary financial interventions.[21]

Since the GFC, authorities across the globe are adopting international standards that aim to prevent unnecessary loss of value and deter interruptions to the financial system and the economy as a whole. Such an update of resolution regimes presents challenges as it requires a change in the ways resolution processes are envisioned, a redistribution of roles and powers, and safeguards that depart from what is customary in most jurisdictions.

2.4.1 Binding Objectives for Resolution

As mentioned previously, supervisors in all responding jurisdictions have the powers to require corrective actions and to enforce a range of penalties when prudential requirements are not met, including the power to instruct entry into resolution. However, many legal frameworks do not provide clear solutions for addressing operational and legal challenges that arise after a financial institution fails. In general, supervisors use a special legal provision to manage the estate of the failed bank after the decision to revoke its license to operate. Resolutions are approached as a last resort supervisory action, rather than as a forward-looking function that ensures the orderly exit of the FI in a manner that protects depositors and contributes to financial stability.

Survey data indicate that most jurisdictions follow an alternative resolution regime rather than a general bankruptcy code when winding down deposit-taking institutions (see Annex C-2). In most cases, however, these alternative regimes do not have resolution frameworks as recommended by the KA. In general, jurisdictions largely rely on supervisory powers that are based on banking or other financial laws, rather than a separate resolution regime with a designated administrative RA.

2.4.2 Powers to Carry Out Resolutions

During the GFC, governments around the world were forced to rescue very large, complex banks as well as other financial institutions. This response illuminated the need to establish specific competencies of each of the functions within the FSN for the resolution of assets, the maximization of recoveries, and the continuity of critical functions[22]. The KAs recommend designating a public authority, either alone or in combination with other authorities, to be responsible for the resolution of nonviable firms. RAs should have the resolution powers to control, manage, marshal, and dispose of the financial institutions' assets and liabilities in carrying out their specific competencies.[23]

The legal frameworks of 19 of the 21 surveyed jurisdictions establish one or more resolution authorities for insolvent FIs (S2, Q3). However, some of these designated authorities do not have the full suite of resolution powers contained in KA3. Specifically, 15 of 21 respondents said they do not have a legal framework specifying one or more administrative RAs for holding companies (S2, Q13). And, in 13 of the

[21] Hadjiemmanuil, Christos, "Special Resolution Regimes for Banking Institutions: Objectives and Limitations," LSE Law, Society and Economy Working Papers 21/2013, available at https://www.lse.ac.uk/collections/law/wps/WPS2013-21_Hadjiemmanuil.pdf.

[22] Board, Financial Stability. "Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Identification of Critical Functions and Critical Shared Services." (2013).

[23] Krimminger, Michael, "Controlling Moral Hazard in Bank Resolutions: Comparative Policies & Considerations in System Design," 2006.

21 responding jurisdictions, courts have the power to suspend or overturn the decision of the RA (S2, Q20).

2.4.3 The Resolution Toolkit

As mentioned above, most jurisdictions rely on supervisory powers and special provisions in their banking and other financial laws to carry out resolutions, but they do not have a designated administrative resolution authority with a full range of resolution powers, as recommended by the KAs. Slightly more than half of the responding jurisdictions (11 of 21) stated that they have the authority to establish a temporary bridge bank to take over assets, rights, and liabilities from a firm in resolution (S2, Q43). And most jurisdictions (18) (S2, Q29 & 48) have the authority to:

- transfer all or selected assets and liabilities to a healthy FI;
- displace all management organisms;
- take control of and operate a firm in resolution, including the ability to enter into, continue, terminate and assign contracts and service agreements; and
- purchase or sell assets.

Few jurisdictions reported having bail-in mechanisms, the capacity to reduce unsecured obligations, or the power to suspend termination rights. Table 4 shows the resolution tools available in participating jurisdictions.

Table 4: Resolution Tools Available in Participating Jurisdictions

	Belize	Bolivia	Brazil	Cayman Islands	Chile	Colombia	Dominican Rep	Ecuador	El Salvador	Spain	Guatemala	Haiti	Honduras	México	Nicaragua	Paraguay	Peru	St Kitts and Nevis	Trinidad & Tobago	Uruguay	USA
Remove Control Organs	✓	✓	✓	✗	✓	✓	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Remove Management	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Continuity of Critical Functions	✓	✗	✗	✓	✓	✗	✓	✓	✓	✓	✗	✓	✓	✓	✗	✗	✓	✗	✓	✗	✓
Continuity of Affiliated	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✗	✗	✓	✓	✗	✗	✗	✗	✗	✗	✓
Establish Bridge Bank	✓	✗	✗	✗	✗	✓	✓	✗	✗	✓	✗	✗	✓	✓	✓	✗	✓	✓	✓	✗	✓
Asset Management Co.	✓	✓	✗	✗	✗	✓	✓	✓	✓	✓	✓	✗	✓	✓	✗	✗	✗	✗	✓	✓	✓
Transfer Assets and Liabilities	✓	✓	✓	✗	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Reduce Capital	✓	✗	✗	✗	✓	✓	✓	✓	✗	✓	✗	NR	✓	✗	✓	✓	✓	✗	✗	✗	✓
Reduce Unsecured Claims	✗	✗	✗	✗	✗	✓	✓	✗	✗	✓	✗	NR	✓	✗	✓	✓	✗	✗	✗	✗	✓
Bail-in	✗	✗	✗	✗	✗	✓	✓	✗	✗	✓	✗	NR	✗	✗	✓	✓	✗	✓	✗	✗	✓
Suspension of Termination Rights	✗	✗	✗	✗	✗	✗	✓	✗	✗	✓	✗	✗	✓	✓	✓	✗	✓	✗	✗	✗	✓

Source: ASBA WG Survey 2
*NR = No Response

2.4.4 Safeguards

An SRR has a broad range of tools and powers that may affect property rights. Consequently, a regime needs to provide certain safeguards for creditors, the failed FI personnel working under the direction of the RA, and others that might be affected by the resolution process. These safeguards are designed to balance the needs of the creditors with the needs of the authorities. They also assure equitable treatment of creditors and other affected parties in a resolution. In addition, these safeguards provide authorities sufficient time and flexibility to carry out an orderly resolution. Safeguards also ensure that the authorities are not able to "cherry pick" which assets or liabilities to include in a resolution transaction.

As shown in Table 4, 14 of the 21 participating jurisdictions do not have an RA with the power to temporarily stay the exercise of early termination rights that may otherwise be triggered upon early entry into resolution of a firm or in connection with the use of resolution powers (S2, Q65). In cases where a liquidator may suspend payment of obligations, binding safeguards on the suspension timeframes often do not exist.

Legal protections should also be part of an SRR so that authorities are willing to act, when they have the power to do so, without the fear of legal consequences. They should be protected for their acts and omissions when representing their FSN functions.

3. STANDARDS INTERACTION

The revised BCPs (2012) discuss several key trends and developments from the past few years of market turmoil that underscore the need to better integrate FSN functions. For effective supervision, the BCPs emphasize the following:

- The need for greater intensity and resources to effectively deal with systemically important banks
- The importance of applying a system-wide, macro perspective to the micro-prudential supervision of banks that will assist in identifying, analyzing, and taking pre-emptive action to address systemic risk
- The need for an increased focus on effective crisis management, recovery, and resolution measures to reduce the probability and impact of a bank failure[24]

The three sets of international standards—BCPs, CPs, and KAs—support the building of a collaborative environment and identify opportunities for cooperation among the RA, supervisor, and DI. They provide a common ground to promote an FSN structure that avoids duplication of efforts and resources for regulatory authorities and FIs. The standards overlap with regard to procedures and operational arrangements among FSN participants. Adopting these best practices facilitates the separation of each FSN function while helping to identify coordination mechanisms that best integrate the participants, regardless of the architecture of the FSN.

3.1 Core Principles and Prudential Supervision

The strength of prudential regulation and supervision influences the functions and effectiveness of a DIS and is a critical factor in mitigating moral hazard.[25] Prompt corrective action and deposit insurance work in collaboration to complement each other. Before insolvency, prompt corrective action imposes increasingly stringent supervisory controls on a weak institution in an attempt to reduce risk-taking and improve the firm's financial condition. Enforcement of prompt corrective action limits the exposure of the DIF to losses by mandating supervisory action and requiring the closure of a failing bank before it exhausts its capital and accumulates additional losses.[26] DIs must understand the condition of member institutions, both as ongoing concerns and as failing operations, in order to properly manage the risks they represent to the DIF and to prepare for fulfilling their mandate. Therefore, DIs must be kept informed of all enforcement actions, including regularization measures, taken by bank supervisors and must be advised about the possibility of a closing as soon as the supervisory authority contemplates such an action.

3.1.1 Sharing Operating Environments

The operating environment required for an effective DIS is affected by (1) the quality of supervision and (2) the level of coordination between the deposit insurer and the supervisor. A DIS designed with careful regard to best practices will not be effective unless the DI and supervisor share information and coordinate their activities. A strong and fluid relationship between the DI and the supervisor enables an effective DIS, while a weak and inconsistent relationship dwarfs the role of the DIS and renders the FSN weaker. As DIs and supervisors share the same operating environment, the DIs will adjust their policies

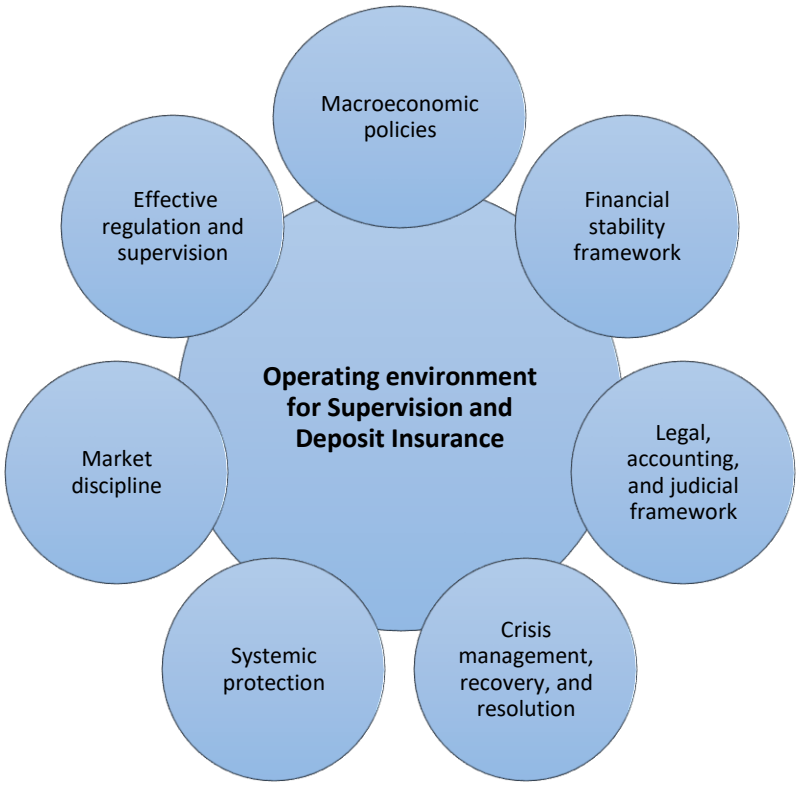
[24] Basil Committee on Banking Supervision, *Core Principles of Effective Banking Supervision,* September 2012.

[25] IADI, *Core Principles for Effective Deposit Insurance Systems*, November 2014.

[26] Krimminger, Michael, "Controlling Moral Hazard in Bank Resolutions: Comparative Policies & Considerations in System Design," 2006.

within their legal mandates when changes and developments in the financial sector occur. Exhibit 3 displays the shared operating environment of the supervisor and the DIS.

Exhibit 3: Conditions of the Supervisor's and DI's Operating Environment



In the absence of a collaborative environment, potential tensions between the two authorities could arise, for example, if the DI believes that the supervisor is delaying or avoiding instructing entry into resolution (forbearance). This, in turn, can create an incentive for troubled institutions to engage in riskier activities (moral hazard). Coordination between the supervisor and the DI in making transparent and well-informed decisions will help to prevent these types of situations and strengthen the DIS's potential contribution to financial stability.

Structuring the most appropriate coordination and information-sharing frameworks for FSN participants will always pose challenges, as institutional arrangements can vary widely.

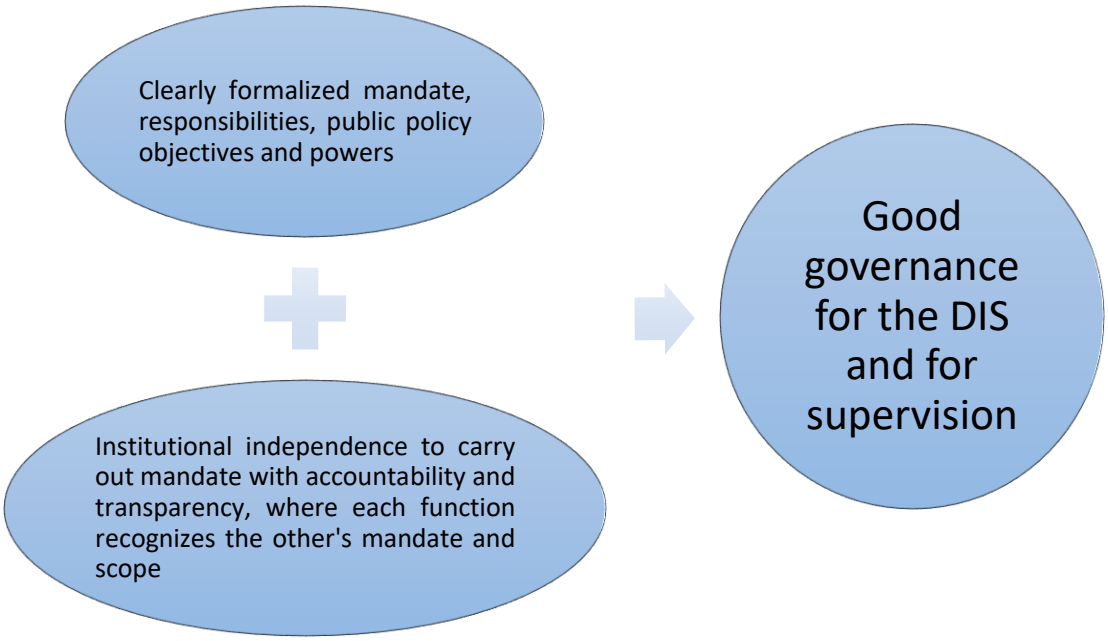
3.1.2 Good Governance

CP3 recommends that the DI be operationally independent, well-governed, transparent, accountable, and insulated from external interference. The DI should have the capabilities to support its operational independence and fulfill its mandate. It should benefit from an institutional structure that minimizes the potential for real or perceived conflicts of interest. The institutional arrangements should be made public and recognized by the other FSN functions, and they should allow the DI to deliver its clear and formally specified public policy objectives (CP1). Regardless of the DIS mandate, deposit insurance is meant to protect retail and other small depositors, minimize the potential of deposit runs, and minimize contagion

in the financial system.[27] Governance will deteriorate if the DI is established in law but exists only on paper without the proper resources, or if its powers are not in line with its legal mandate. This is particularly true in cases where the DI is a standalone entity, yet relies on the infrastructure, staff, or resources of another FSN participant. The powers assigned to the DI must enable it to do in practice what its mandate sets out in theory (CP2).[28]

According to BCP1, supervisors must be able to undertake timely corrective action to address safety and soundness concerns by imposing a range of sanctions, triggering resolution when appropriate, revoking the bank´s license to operate, and cooperating with relevant authorities to achieve the orderly resolution of a bank. BCP2, on independence, accountability, resourcing, and legal protection for supervisors, calls for the supervisors to have operational independence, transparent processes, sound governance, financial autonomy, and adequate resources, and to be accountable for its duties and use of its resources. Exhibit 4 displays the recommended standards that drive good governance for both the DIS and for supervision.

Exhibit 4: Recommended Standards for Good Governance



3.1.3 Information Symmetry

All jurisdictions should have coordination and information-sharing frameworks that include the DI. According to CP4, FSN participants should exchange information regularly, particularly when material supervisory actions affect DIS member institutions. The agreements for coordination and information sharing between the DI and other safety net participants must be in writing and be viable, without any impediments for accessing information pertinent to the DI.

The DI should have full and direct access to deposit records at all times and should have the authority to require banks to maintain and share information in a standard format created by the DI.[29] In addition,

[27] See Ellis, D., *Building Credible and Effective Deposit Insurance Systems*, FDIC, November 2016.

[28] IADI, *A Handbook for the Assessment of Compliance with the Core Principles for Effective Deposit Insurance System*, March 2016.

[29] See *A Handbook for the Assessment of Compliance with the Core Principles for Effective DIS*, IADI, 2016.

DIAs must participate in pre-crisis planning to ensure that they have a voice, especially if they will be funding the resolution alternative.[30]

DIAs should be informed of the current conditions and practices of all insured institutions as part of its risk management regime. DIs with broad mandates[31] may be responsible for planning and implementing the resolution process, which requires continued access to a suitable flow of information. To ensure access to the information, without burdening FIs with redundant reporting requirements, it is important to coordinate the collection and sharing of existing information between the DI and the other safety net participants, especially supervisors. Whenever pertinent, DIs should still be able to access supplemental information directly from its member institutions. The DI must receive information in a timely manner and well in advance of failure, so that it has sufficient opportunity to prepare for payout or other resolution options and can meet its reimbursement obligations or engage in resolution options.[32]

The primary concern of all safety net participants should be ensuring that all relevant information is known to all participants, addressing data gaps and timeliness, and strengthening reporting and accounting standards. Because the financial sector is a constantly evolving and innovating industry, FSN participants should be in a constant learning mode so that they may understand and respond appropriately to new products, new markets, new services, and new risks. As supervisors develop and implement policies and processes to identify, measure, evaluate, monitor, report, and control or mitigate risk on a timely basis (BCP17), a framework should be in place that promotes cooperation and collaboration between supervisors and all other relevant domestic authorities (BCP3). Such a framework should provide an opportunity for the DI to actively engage as its legal mandate requires.

3.1.4 Early Intervention and Timely Resolution

In a well-integrated FSN, the supervisor is expected to be the lead authority on early intervention and timely resolution. The supervisor, in turn, would support the DI and RA in gathering pertinent information so that they can prepare for and perform their roles in resolution. Bringing together the views of all FSN participants in healthy debate should contribute to better-informed decisions that lead to financial stability.

Since the GFC, DIs across participating jurisdictions are performing functions that are closer to those required by a "loss minimizer" mandate. The expansion in DI mandates will likely continue as more attention is paid to developing effective resolution regimes. With a clear focus on protecting depositor funds and ensuring rapid and orderly resolution, DIs now have a more prominent role among safety net participants.[33]

RRP must incorporate DIs to ensure proper contingency planning. RRP and the information exchange that it fosters among supervisors and other participants in the safety net facilitate timely intervention. In mitigating the risk of loss to creditors, including the DIF, supervisory actions should aim to preserve the value of the bank's assets with minimal disruption to its operation, subject to minimizing total resolution costs. Formal coordination mechanisms should grant authorities the tools and powers necessary to

[30] Idem.

[31] DIs with mandates of loss minimizers and risk minimizers are considered of a broad mandate.

[32] Idem (Handbook CP 4, EC3).

[33] Financial Stability Board, Thematic Review on Deposit Insurance Systems, February 2012.

intervene in banks at a sufficiently early stage, with the goal of minimizing externalities of a crisis such as the interruption of core financial services, contagion to other market players and fiscal costs.[34]

3.2 Key Attributes and the Resolution Regime

The general goal of an SRR is to resolve nonviable FIs quickly, thereby ensuring the stability of the financial system, preserving the main banking operations, and ensuring the continuity of the payment system. A resolution framework that is not distinct from an ordinary corporate insolvency regime, that relies exclusively on supervisory powers, or that lacks most of the recommended resolution powers would not be compliant with KA1.[35]

An SRR links the supervisory and insolvency functions of the safety net authorities, thereby allowing resolution strategies to be carried out by relevant experts; avoiding unnecessary loss of value; and ensuring prompt response to depositors, other users, and clients of the failed institutions. An SRR also should contain proper safeguards which ensure that shareholders and unsecured creditors, being the first to absorb losses, still have due process and an opportunity for judicial review, allowing only financial redress. This type of resolution regime allows for departure from a judicial liquidation priority of claims based on the principle that no creditor will be worse off under a resolution process, allowing the subrogation of the DIA to the claims of depositors for the amounts it paid them.

3.2.1 Resolution Authority (RA)

The operational independence recommended in KA2 does not imply that the RA is to have no other function aside from resolution. An authority that carries out resolution functions may also perform other functions, such as supervision or deposit insurance, provided that adequate governance arrangements are in place to manage any conflicts of interest that may arise.[36] This operational independence requires that some aspects of resolution be under the exclusive discretion of an executive RA, such as when temporary public funding is provided to support a resolution process (including DI funds when deposit insurance is a function of a government agency).

A resolution regime should be clear about the distribution of roles and responsibilities of the RA[37] and the supervisory authority. RAs must be able to deal with third-party rights related to a bank resolution and the allocation of losses across creditors and shareholders. Supervisory authorities perform preventative functions, through risk identification and minimization, and determine entry into resolution, among other responsibilities. Most legal frameworks in participating jurisdictions include such preventative functions but lack clarity on specific powers for determining and executing resolution mechanisms.

Exhibit 5: Responsibilities at Entry into Resolution

[34] EBC, Monthly Bulletin, "The New EU Framework for financial crisis management and resolution," p. 85, July 2011.

[35] FSB, *Key Attributes Assessment Methodology for the Banking Sector*, October 2016, p. 17.

[36] Idem, p. 21.

[37] KA 2.1 provides that "[E]ach jurisdictions 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.

After a determination of nonviability, the supervisory authority either instructs or recommends entry into resolution. FSN participants are then responsible for three different actions as shown in Exhibit 5. The administrative public entities responsible for each of these actions may vary among jurisdictions, depending on the institutional arrangements of the FSN, but they should carry out these actions according to their mandate and in a manner that avoids conflicts of interest.

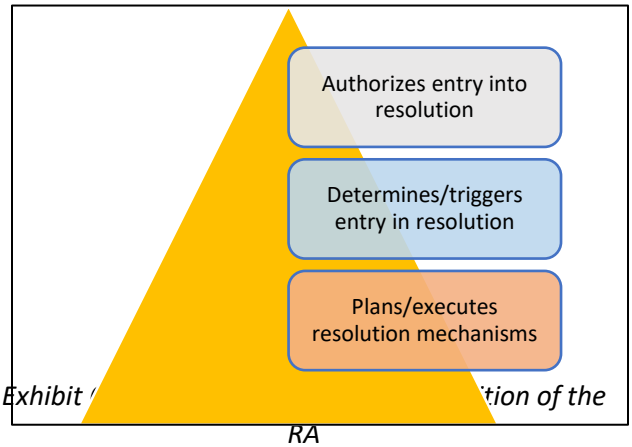
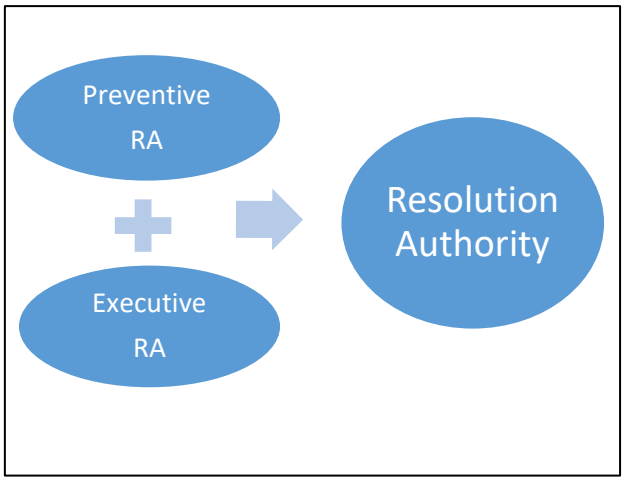


Exhibit (ition of the RA



To better align mandates and powers while making KA operational,[38] a practice is emerging whereby the RA is integrated with (1) an administrative authority that performs preventative actions and (2) an authority that executes resolution functions, as seen in Exhibit 6. Preventative resolution functions are typically carried out by applying supervisory powers. Resolution powers, as those recommended in KA3, need to be clearly established to enable the executive RA.

The legal framework should distinguish between preventative and executive functions. The authority charged with the preventative function requires FIs to maintain updated recovery planning and ensures a timely assessment as well as a comprehensive, credible, and proportionate corrective action plan upon identification of weaknesses. The authority in charge of executive functions must have the appropriate powers to carry out resolution planning and resolvability assessments. These resolvability assessments evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy (KA10.1). The executive RA must also be able to determine the resolution strategy upon entry into resolution in conjunction with the DIS and any other protection scheme in place in the jurisdiction. Notably, the BCPs do not include specific practices for resolution, precisely because resolution is a separate and different function from supervision.

3.2.2 Resolution Triggers: Determining the Point of Nonviability

Developments in the aftermath of the crisis have highlighted the particular risks that large and interconnected banks, financial holding companies, and financial market infrastructures (FMI) can pose to financial stability, should they need to be resolved. In response, supervisors and other authorities have focused on developing tools and techniques to mitigate these risks, including enhanced capital standards, heightened micro prudential supervision, complementary macro prudential surveillance, and the development of recovery and resolution regimes specifically tailored to large institutions.

Resolution regimes should enable the preventative RA (which is typically the supervisor) to determine the criteria for the point of nonviability, and authorities should enforce it fully. Supervision cannot, and should

[38] Recovery, F. S. B., and Resolution Planning, *Making the Key Attributes Requirements Operational,* FSB Consultative Document, 2012.

not, convey the perception that banks and other supervised FIs will not fail. Individual bank failures are not impediments to financial authorities' objectives of protecting the financial system and the interests of depositors. In fact, the occasional bank exit will contribute to the credibility of financial authorities, therefore providing the right incentive balance.[39] Moreover, if bank resolutions are carried out in an orderly manner and at the lowest cost, they will likely enhance market discipline and financial stability.

Emerging practices in making the KAs operational, such as the Bank Recovery and Resolution Directive (BRRD),[40] recommend that resolution actions be implemented when all of the following conditions are satisfied:

- The competent authority, after consulting the resolution authority, determines that the institution is failing or likely to fail.
- The resolution authority after consultation with the competent authority, determines that the institution is failing or likely to fail.
- Having regard to timing and other relevant circumstances, the competent authority deems that there is no reasonable prospect that any alternative private sector measures would prevent the failure of the institution within a reasonable timeframe.
- The competent authority determines that a resolution action is necessary in the public interest.

The BRRD adds to these conditions, that an FI is failing or likely to fail when one or more of the following circumstances are met:

- The institution has breached, or there are objective elements to support a determination that the institution will breach, the requirements for continuing authorization.
- The assets of the institution are, or there are objective elements to support a determination that the assets of the institution will in the near future be, less than its liabilities.
- The institution is, or there are objective elements to support a determination that the institution will be in the near future, unable to pay its debts as they fall due.
- Extraordinary public financial support is required, except when it is the only alternative to remedy a serious disturbance in the economy and preserve financial stability.

The KAs emphasize the need for the RA to be able to act before technical insolvency. Resolution planning would therefore facilitate the difficult decision to place a firm into insolvency proceedings when necessary.[41] RRP should capture the main issues that authorities should consider in preparing resolution strategies.

3.2.3 Enabling Orderly Resolution

An SRR is a framework that ensures the orderly resolution of financial institutions. It also includes elements that attempt to prevent failures in the first place. The framework should allow for enhanced oversight by the RA through all phases of a banking crisis. This will ensure that the RA can carry out preparatory actions and preventative and early detection measures and implement timely intervention

[39] See *Guidance for dealing with weak and problem banks*, paragraph 195.

[40] See Directive 2014/59/EU.

[41] http://www.oecd.org/finance/financial-markets/48963966.pdf

strategies to return the institution to viability. If the preventative measures do not succeed, the framework should enable the winding down of the operation.[42]

The conditions for entry into resolution aim to achieve a balance between facilitating an orderly exit before all of the institution's value has been eroded and avoiding placing a firm into resolution before all realistic options for a private sector solution have been exhausted.[43] Coordination is fundamental for ensuring that the RA has the opportunity to determine the most appropriate resolution strategy and operational plan, and is aware of the timeframe necessary to close the FI.

Upon entry into resolution, the RA's actions and decisions should be irrevocable.[44] The RA should be able to use a wide range of resolution options and powers in any combination or sequence necessary to attain the objectives of the resolution regime. Once the RA takes control of the nonviable FI, it should be able to take quick and decisive action to stabilize and restructure the entire institution's business or some part of it, as appropriate. The RA should be able to act without shareholder or creditor consent. The decision-making process in determining the most appropriate mix of resolution tools will be better informed if a collaborative environment exists among FSN participants throughout the life of FIs, rather than only when FI failure is imminent.

3.2.4 Resolution Costs and DIF Sustainability

Minimizing resolution costs and ensuring the sustainability of the DIF requires effective resolution, effective deposit insurance, and effective supervision. According to CP6, every DI should engage in contingency planning and crisis management to ensure that the DI is prepared to fulfill its mandate, whether that involves effectively implementing a payout, facilitating a purchase and assumption transaction (P&A), or taking other resolution measures that may be included in its mandate.

Deposit insurance funds should only be applied to protect the depositors of DIS member institutions and to resolve nonviable FIs. In theory, an exit strategy that requires closing the bank when it still has positive capital should provide sufficient sale proceeds to pay depositors and other creditors. In practice, however, capital ratios are lagging indicators of the true value of the bank. In addition, under typical market conditions, the sale or liquidation value of the bank will always be less than the value of an operating business. Consequently, even if the bank is closed with positive regulatory capital, it is likely that the proceeds from the sale of its assets will be less than its liabilities to depositors and creditors.[45] As a result, deposit insurance funding is necessary to guarantee prompt payment to depositors and to facilitate the transfer of assets and liabilities to a healthy acquiring institution.

The sustainability of the DIF complements the resolution objective of avoiding the use of the public purse. Adequate fund sizes, together with contingency funding mechanisms, contribute to ensuring that adequate resources are available in the event of a bank failure. Coming full circle, the adequacy of the fund will be influenced by the DI operating environment, and a collaborative FSN environment will buttress its sustainability.

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[42] See KA 3 for a comprehensive list of resolution powers.

[43] Bank of England, *The Bank of England's approach to resolution*, October 2014.

[44] KA 5.5 - The legislation establishing resolution regimes should not provide for judicial actions that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified.

[45] Krimminger, Michael. "Controlling Moral Hazard in Bank Resolutions: Comparative Policies & Considerations in System Design." (2006).

Regardless of its mandate, when the DI funds a resolution mechanism, it should understand the potential for the subsequent recoveries or losses of its funds that can result.[46] Once a bank is authorized to operate and becomes a member of the DIS, the supervisor should work with the DI and the RA to identify, assess, and mitigate emerging risks across banks and to the banking system as a whole.[47] Information sharing and close cooperation among relevant FSN participants are vital when identifying bank weaknesses and when the corresponding corrective actions are required. In preparation for resolution, the DI should work closely with the supervisor and RA early in the process to ensure the continuity of access to insured deposits[48] and to determine the least costly resolution.

3.2.5 Cross-Border Issues

Increasing cross-border activity without robust risk management may be a potential threat to financial stability, but these potential risks can be avoided. Enhanced cross-border consolidated supervision across Latin America and the Caribbean should enable supervisors to monitor complex cross-border activities of banks and financial conglomerates. Supervisory and resolution colleges together with MOUs that pledge cross-border cooperation should provide early warnings of problems and help manage those that occur. With this expanded toolkit, jurisdictions may be more willing to integrate regionally, as the benefits begin to outweigh the cost of enhancing the regulatory regime to protect financial systems from systemic risks.[49] Harmonizing legal frameworks for bank resolution and restructuring, as well as nonbank insolvency regimes should contribute to a more dynamic financial sector regional integration.

3.3 Converging Standards to Strengthen the Financial System

Compliance with the Core Principles should foster overall financial system stability, but it will not guarantee it nor will it prevent the failure of banks. In a market economy, failures are part of risk-taking.[50] Moderating moral hazard and contributing to market discipline are shared responsibilities of FSN members. The moral hazard present in protecting deposits needs to be mitigated by a careful DIS design and a strict supervisory regime that fully enforces prudential regulation and enables timely determination of nonviability. A special resolution regime will reduce moral hazard through timely intervention and by ensuring that owners, shareholders, and unsecured/uninsured creditors are the first to suffer losses from the bank failure.

The principles guiding the BCPs, the CPs, and the KAs are intended to strengthen the FSN and safeguard the financial system. To enhance the effectiveness of the FSN as a whole, each safety net function must be clearly defined. Self-assessments on compliance with international standards may help authorities clarify the roles of the FSN participants in their jurisdictions to build proper cooperation mechanisms. In turn, this would facilitate the creation of crisis management frameworks with the required flexibility to respond when necessary. The outcome of such coordination would be a more resilient financial system.

Table 5: International Standards' Converging Guidance

[46] See CP 9 Sources and uses of funds.

[47] See BCPs 8 and 9.

[48] See BCBS, *Guidelines for identifying and dealing with weak banks*, July 2015, paragraphs 146 and 195.

[49] IMF, *Financial Integration in Latin America*, 2016

[50] BCBS, BCPs, paragraph 44.

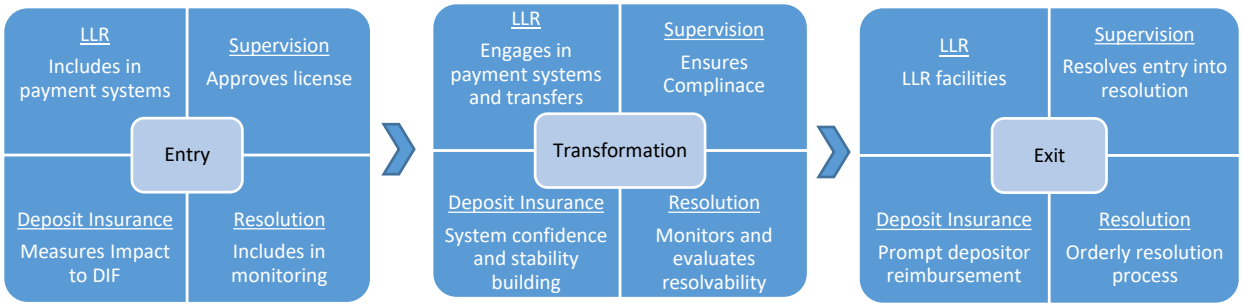
Principles	Concept	Guidance
BCP3, CP4, KA7.6, KA2.1	Cooperation and collaboration	Authorities (including supervisors, DIs, and RAs) should have the legal capacity to establish coordination and information-sharing mechanisms, subject to adequate confidentiality requirements.
BCP8, BCP9, CP13, KA3.1, KA2.7	Early detection and timely intervention	Supervisors should have a framework in place for early intervention, and have plans in place, in partnership with other relevant authorities, to take action to resolve banks in an orderly manner if they become nonviable. The supervisor, in conjunction with other relevant authorities, seeks to identify, assess, and mitigate any emerging risks across banks and to the banking system as a whole.
BCP11, CP14, CP15, KA2.3	Failure Resolution	The supervisor cooperates and collaborates with relevant authorities in deciding when and how to instruct entry into resolution. Coordination mechanisms help the RA to (i) pursue financial stability and ensure continuity of systemically important financial services, by carrying out payment, clearing, and settlement functions; (ii) protect depositors and investors, where applicable, and coordinate with the relevant schemes and arrangements in place; (iii) avoid unnecessary destruction of value and seek to minimize the overall costs of resolution in home jurisdictions, host jurisdictions, and to creditors; and (iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions. Depositors should be reimbursed promptly (ideally no later than seven days after the bank's closing).
BCP Preconditions, CP15, CP16, KA5.2	Settlement and Liquidation	When depositors and other legitimate creditors have pending claims, they are provided with credible solutions to their claims and queries in compliance with the order of priorities set out in the law, and in line with the assumptions (and policy decisions) in the "no worse off than in liquidation" safeguard scenario. Reporting and audit processes are considered and included. Actions and conditions for the authority requesting liquidation of residual assets and extinction of the legal entity of the failed institution, through judicial action, are also included.
BCP Preconditions, CP6, KA2.2, KA10.2	Crisis Management Framework	The development of system-wide, crisis preparedness strategies and management policies are the joint responsibilities of all safety net participants. Where multiple RAs in a single jurisdiction are charged with resolving different entities within the same financial or economic group, a leading RA coordinates the resolution process. To enable the continued operations of systemically important functions, authorities coordinate responsibilities and actions to follow.
BCP13, CP5, KA7.7, KA2.4	Cross-border MOUs	Legal gateways support cooperation mechanisms. Home supervisors, host supervisors, and other key authorities of cross-border banking groups share information and cooperate for effective supervision of the financial group and group entities, and for effective handling of crisis situations.

Principles	Concept	Guidance
		Agreements include formal information sharing and coordination arrangements among DIs in relevant jurisdictions.

4. OPPORTUNITIES FOR ENHANCED COORDINATION

Ensuring smooth cooperation, trust, and goodwill among FSN participants is vital. And, as with all relationships, creating an environment for effective collaboration requires time and continued engagement. Exhibit 7 displays the opportunities for engagement throughout the life of an FI. Information sharing and coordination are particularly essential, and explicit arrangements should be designed to avoid or minimize potential conflicts. The more complex the safety net institutional arrangements are, the more crucial it becomes to define formal mechanisms. It is particularly necessary for safety net participants to coordinate their actions when the need to handle an FI failure arises.

Exhibit 7: Birth-to-Death FSN Collaboration



4.1 ENGAGING WITH FIS FROM "BIRTH TO DEATH" ON A LEVEL PLAYING FIELD

Each participant in the safety net shares in the responsibilities of ensuring financial stability and engaging with FIs in the market place on a level playing field. Collaboration at the entry, transformation, and exit of FIs should be possible, regardless of FSN architecture, as long as the safety net participants have a clear mandate and the powers to carry out their competencies. Each of the FI's stages of "life" presents opportunities for collaboration among the FSN functions.

When an FI enters the financial system, all FSN basic functions are involved to a certain extent. Their involvement may include authorizing, acknowledging, or including the new institution into their span of control and action. At this point, the FSN may have the following roles:

(a) LLR – issues favorable opinion or approves license to operate and includes new entities in payment systems.

(b) Supervisor – ensures compliance with regulatory requirements for license authorization and continued safe and sound practices.

(c) DI – registers[51] newly licensed entities so depositors are protected, includes the FI in public awareness and outreach efforts, and monitors and measures the FI's impact on the DIF.

(d) RA – acknowledges and includes the new entity in RRP, resolvability monitoring, and the evaluation regime.

As FIs operate their business, supervisors remain vigilant in ensuring that they grow in a safe and sound manner. Supervisors make sure that those who own and run the FIs are fit and proper. Accordingly, they

[51] In Peru, newly licensed deposit-taking institutions (DTI) will pay contributions to their DIA (FSD) for 24 months before having their deposits covered.

establish the rules that must be followed, provide guidance on management and disclosure of risks, continuously monitor FI actions, and impose penalties for unsound behavior.[52]

After an FI is established, other functions in the FSN also continue to be engaged. The LLR, DI, and RA are all notified of any changes in the composition of capital and shareholders of the institution and its business model. In addition,

(a) The LLR engages with the institution as an agent to implement microeconomic policy in the financial system;

(b) The DI measures any potential impacts on the DIF and, in partnership with the institutions, builds confidence through public awareness strategies; and

(c) The RA continues to monitor/evaluate the FI's resolvability.

Once the supervisor identifies a weakness in an FI (which cannot be solved through an enhanced supervisory regime and corrective measures) and determines that the institution is not viable, the FI enters resolution. During this phase, any earlier collaboration efforts among FSN participants during the life of the FI will reap the benefits, as cooperation within the FSN is vital to financial stability. Ideally, cooperation and integration among FSN participants should gradually increase as the problem institution approaches resolution. The following explains the role of each FSN function during resolution:

(a) LLR – determines whether emergency liquidity is feasible and appropriate; otherwise, the LLR approves revocation of the institution's license to operate and, if appropriate, participates in the vetting of the resolution strategy.

(b) DI – assesses insured deposits to estimate the institution's liquidity requirements, resource needs, and possible risk exposure. To ensure that the proposed resolution strategy represents the least cost to the DIF, the DI requires an understanding of the value of the institution's assets and the timeframe for the resolution process (given that the value of the institution's assets depends on the time necessary to liquidate them).

(c) RA – implements resolution strategies and plans with a full understanding of the FI's operation and the knowledge of the fair value of the FI's net assets. At this point, it is essential to accurately determine the quality of the loans, the number of loans impaired, and whether collateral can be executed. The RA also appropriately adjusts and applies the provisions for nonperforming loans. In addition, it is essential that the RA assess the extent of insider and connected lending, as well as measure the fair value of assets that are difficult to value and complex financial products held in the trading book. An accurate assessment of the fair value of the bank's net assets should determine the actions required.

4.2 Recovery and Resolution Planning (RRP)

Recovery and resolution plans, also known as "living wills," are tools for pre-crisis contingency planning; they enhance the credibility of the resolution regime and contribute to market discipline. The KA provides guidelines for the implementation of an ongoing RRP process to promote resolvability as part of the overall supervisory process. At a minimum, RRP should cover domestically incorporated firms that could be systemically significant or critical should they fail (see KA11). The RRP process involves the cooperation of FI management, the RA, and all other relevant authorities. It is a compelling supervision and resolution

[52] Vinals, J. and Fiechter J., *The Making of Good Supervision: Learning to Say "No,"* IMF, May 18, 2010.

tool that allows supervisors, DIs, and RAs to be on the same page about each other's roles in contributing to financial stability and in preparing for resolution.

4.2.1 Timely Intervention Guided by Recovery Plans

The goal of recovery planning is to identify quantitative and qualitative criteria that would trigger the implementation of the recovery plan, whether fully or partially. Banks can become weak at any time and for many different reasons. Thus, recovery planning requirements are meant to help FI management identify coping mechanisms for a wide range of scenarios. The requirements are also created to ensure timely implementation of recovery options, making corrections before enforcement measures are required by the supervisory authority. FIs, along with the supervisor and RA, should ensure that triggers for implementing recovery plans are calibrated in order to provide a warning early enough to allow the FI to take corrective action and for the RA to begin appropriate contingency planning. The aim of triggers in recovery planning is to enable banks to restore financial strength and viability through their own efforts.[53] FIs should provide supervisors and RAs with an explanation of the process leading to determination of the trigger calibrations and demonstrate that these triggers would be breached early enough to be effective.

The BIS *Guidance for identifying and dealing with weak and problem banks* recognizes that individual bank weaknesses do not appear in isolation, but rather as a series of problems that evolve simultaneously. If recovery plans are not successful and if the FI begins to face greater distress, then an escalation of corrective actions should ensue. Whether or not the supervisor is flexible in allowing the FI an opportunity to recover, coordination with the DI and the RA can allow for preparatory tasks in case remedial action does not return the FI to viability. To help safety net participants coordinate action, they should develop joint criteria that allows for proportionality and graduality in the decision-making process.

4.2.2 Readiness by Resolution Planning

The objective of resolution strategies and plans is to facilitate an orderly resolution of an FI while avoiding severe systemic disruption and the use of public funding. Resolution strategies and operational resolution plans must adapt to fit an FI's individual characteristics and conditions in the marketplace at the time of resolution. The FSB advises[54] authorities to determine the appropriate approaches for resolution and rely on FIs to supply up-to-date, accurate information and analysis to support their resolution planning. Specifically,

- Resolution strategies need to include the key elements of the proposed resolution approach in terms of the resolution powers (refer to KA3) to be applied, such as recapitalization, restructuring, or transferring all or part of the FI.
- Operational resolution plans must provide details regarding the actions, conditions, and arrangements for implementing the plan, including requirements for funding, information, and data.

[53] FSB, *Recovery and Resolution Planning: Making the Key Attributes Requirements Operational Consultative Document*, November 2012.

[54] Idem.

- Firm-specific cross-border cooperation agreements (COAGs) must guide the activities of Crisis Management Groups (CMGs) in planning, coordinating, and implementing resolution strategies and plans that incorporate home and key host authorities.[55]

Resolution strategies and operational plans, in addition to COAGs, should be maintained as living documents that are improved and updated over time. This requires continued coordination and collaboration among all relevant authorities. Further, resolvability assessments[56] will inform necessary adjustments to RRP as resolution strategies and plans are evaluated to measure (1) how they meet the stated objectives of protecting systemic stability and protecting critical functions without exposing public funds to loss and (2) whether their implementation is feasible and credible.

4.3 Dealing with Problem Banks and Determining Nonviability

Supervisory regimes should establish incentives that encourage supervisory authorities to take early and decisive action in response to indications of material deterioration in an institution's viability. Supervisors should have the discretion to act pre-emptively when weaknesses in a bank are detected, without necessarily waiting for a threshold to be breached. A best practice is to act as quickly as possible to prevent an escalation of the problem. Once an institution has reached the point of nonviability, the supervisor and the RA should act decisively to ensure that the failing institution is either restored to viability or resolved in an orderly manner. Clear criteria or suitable indicators of nonviability should be in place to help the supervisor determine whether an institution meets the conditions for entry into resolution.[57]

Once FIs have been given an opportunity to present their case to the supervisory authority, and if all corrective measures have failed or appear to be failing to restore the institution to health, resolution actions need to be implemented. Criteria for nonviability should take into consideration the requirements and conditions that an institution must meet to gain license approval, and be guided by the principles and objectives of the KAs. The supervisor should be the leading authority in determining such criteria, since the decision to trigger entry into resolution is, in essence, a regulatory judgment. When a bank or FI no longer meets the conditions for authorization, and has no prospect of doing so in the future, it would be reasonable to move it into resolution.[58]

Leaving the determination of nonviability to the supervisor may lead the supervisor to delay too long in triggering entry into resolution, an issue known as regulatory forbearance. Forbearance can be addressed by a legal framework that allows for entry into resolution before the FI is balance sheet insolvent, thus increasing the likelihood of an orderly, rapid resolution that would preserve the value of the remaining operation. An additional measure used to avoid regulatory forbearance is allowing the DI and other protection schemes to terminate membership of the weak or problem FI, on the grounds that such forbearance exposes the protection scheme funds to unnecessary potential losses. Whenever the RA is a separate entity from the supervisor, the RA could trigger entry into resolution on the grounds that further delay by the supervisor would diminish the opportunity for an orderly resolution, making it more difficult for the RA to succeed in its resolution objectives.[59] Nonetheless, termination of membership to a protection scheme should be subjected to the nonviability criteria determined by the supervisor. Also,

[55] Key host authorities are those host authorities that are members of the CMG.

[56] See section 3.2.1 for more on resolvability assessments.

[57] See *Guidelines for identifying and dealing with weak banks*, paragraph 26.

[58] Brierley, P., *The UK Special Resolution Regime for failing banks in an international context*, Bank of England, Financial Stability Paper No. 5, July 2009.

[59] Idem.

whichever authority is terminating the membership should have to notify the supervisor so actions can be coordinated in such a way that they are consistent with the objective of an orderly resolution.

4.4 Crisis Management Frameworks: Domestic and Cross-Border

The leadership role of crisis management must be delegated to one FSN participant. Management of a crisis may present concerns about conflicts of interest for any of the FSN functions, yet the least-exposed function to such conflicts is the one without responsibility for the day-to-day oversight of the operations of institutions in the financial system. Conflict could arise, especially when determining whether to use public funds for a bail-out. Administrative and technical independence is tantamount for accountability and decision making. The decision to close an FI, systemic or not, should be economic rather than political. Clear mandates should be assigned (1) to monitor systemic risk in order to facilitate macro prudential oversight, and (2) to carry out system-wide crisis preparedness.

Handling systemic failures requires an explicit and comprehensive framework. When managing a systemic crisis, vast amounts of financing may be required and system-wide relaxation of prudential regulation may be necessary. In essence, these actions amount to an almost complete reversal of the policy priorities of the SRR, since in an isolated bank failure, including that of a systemically important institution, strict enforcement of the balance-sheet constraints may dominate the choices of the RA (at least in the form of the least-cost resolution principle). In contrast, the preferred resolution approach in a systemic crisis will typically disregard such constraint.

An effective crisis management framework entails both institutional and operational components, which allow for managing both domestic and cross-border situations. This framework should provide the proper authorities and tools in the areas of systemic risk detection, early intervention, official liquidity assistance, resolution, and deposit insurance. Deciding the appropriate level of systemic protection is a policy question for all relevant authorities, particularly if a commitment of public funds is certain. In handling systemic issues, it is imperative to balance several factors, including risks to confidence in the financial system, risk of contagion to otherwise sound institutions, and possible distortion to market signals and discipline.

It is important to note the significant presence of regional financial groups among ASBA member jurisdictions. Home and host supervisors of cross-border financial groups must share information and cooperate for effective supervision of the group and group entities, and for effective handling of crisis situations (BCP13). Based on a bank's risk profile and systemic importance, the home supervisor, working with its domestic RA, should be able to develop a framework for cross-border crisis cooperation and coordination among the relevant home and host authorities. To effect a successful resolution, relevant authorities should share information on crisis preparations from an early stage while adhering to applicable confidentiality provisions. Even though most participating jurisdictions have some kind of information-sharing and cooperation agreements, these are not legally binding. In addition, during the WG meetings, jurisdictions voiced concerns about inconsistency in the language used when MOUs are signed bilaterally, versus multilaterally, since cross-border issues could involve more than the two signing jurisdictions.

Whenever a safety net fails to anticipate political and economic pressures during a crisis, the result is a weaker safety net in which risk-shifting is driven by governmental discretion rather than by prudential rules.[60] Legal frameworks should be reviewed to ensure public policy objectives, mandates, and powers

[60] Brock, P., *Financial Safety Nets and Incentive Structures in Latin America,* University of Washington Seattle, Washington, August 1998.

are properly aligned so that each FSN function can deliver its responsibilities in a consistent and reliable manner, both individually and collectively. Since the GFC, it has become apparent that the strength of safety nets is determined by their weakest link. Indeed, prudential regulation, supervision, deposit insurance, and the resolution regime all influence each other and their effectiveness.

5. GUIDELINES FOR EFFECTIVE COOPERATION

Tensions between organizations can arise as a result of conflicting mandates, limited resources, and reputational incentives, among other things. Building cooperation mechanisms that promote coordination and goodwill among safety net participants is therefore a challenging, yet important, task. One way to smooth this coordination is to create an irrefutable division of powers and responsibilities for each organization.

If formal information-sharing arrangements are used, they should clearly acknowledge the roles and responsibilities of the respective parties. In addition, these arrangements should specify the type, level of detail, and frequency of information to be exchanged and by whom. Confidentiality of information exchanged between parties should be respected at all times. Coordination mechanisms should be general enough to cover all possible scenarios.

As mentioned in previous sections, difficulties in timing the shift in policy stance, questions about triggering mechanisms, and concerns about the size of contingent liabilities have all pointed to the need for a unified safety net framework. These issues should be addressed in cooperation MOUs, and safety net functions should be mandated by law.

5.1 Principles Guiding Coordination Agreements

MOUs should clearly assign roles and responsibilities among FSN functions when opportunities for collaboration exist. Criteria contained in the BCPs, CPs, and KAs can guide the content and language in these agreements. In addition, MOUs should inform the decision-making process and changes in leadership, considering that the roles and responsibilities of each FSN function may have more or less influence as events and developments occur and evolve. A bank closing may become a crisis, or it may run its course uneventfully. To enable effective collaboration, MOUs should therefore address coordination channels for general and everyday collaboration, as well as describe what would be expected from all functions engaged in the different stages of a resolution process.

5.2 Legal Gateways and Purpose

Legal frameworks should include gateways[61] that create the opportunity for information-sharing and coordination mechanisms to be established and executed by authorities in their engagements with domestic and cross-border counterparts. All authorities involved should be authorized to share timely information, subject to any applicable data protection or bank secrecy requirements, and under appropriate confidentiality obligations for all current and past employees and representatives. In addition, authorities should not refuse to disclose information relating to resolution for reasons of confidentiality if the recipient is subject to adequate confidentiality requirements.[62]

According to the KAs, legal gateways should be sufficient to permit disclosure of firm information to appropriate authorities for the purposes of carrying out functions relating to resolution, including the following:

[61] Legal gateways refer to provisions set out in statute or other instruments with the force of law that enable the disclosure of nonpublic information to specified recipients or for specified purposes. Legal gateways may be contingent on, or supported by, memoranda of understanding (MOUs) or other forms of agreement between the providing and recipient authorities.

[62] See *Key Attributes for Effective Resolution Regimes of Financial institutions*, I-Annex 1, Information Sharing for Resolution Purposes, 2014.

(i) A resolvability assessment

(ii) Development of resolution strategies

(iii) The development of operational resolution plans

(iv) The conduct of simulation exercises and scenario analyses for the purposes of resolution planning

(v) Early detection and monitoring, and the supervision, regulation, and oversight of firms

(vi) Implementation of recovery measures

(vii) An assessment of the effectiveness of recovery measures for restoring viability, the likelihood that resolution measures might be required, and the possible timeframe in which those measures might be required

(viii) Preparation for the implementation of resolution measures

(ix) The exercise of resolution powers

5.3 Coordination Mechanisms and Information-Sharing Framework

A well-established institutional framework is a crisis management tool and a pre-condition for an effective safety net. Relevant authorities should agree on their individual and joint responsibilities for crisis management and resolution, as well as how they will discharge these responsibilities in a coordinated manner.[63] Jurisdictions are increasingly recognizing the need for *ex ante* planning, both at the domestic and cross-border levels. An effective coordination and information-sharing framework should be enabled by MOUs, financial stability committees, and CMGs. Each of these mechanisms should have clear descriptions of roles and applications, and be reviewed to ensure that they work in practice.

5.3.1 MOUs for Effective Resolution

Resolution legal frameworks should empower and encourage continued collaboration. The KAs advocate that coordination agreements between supervisors, DIs, and RAs contain the following basic elements:

(i) Provisions for regular and extraordinary meetings of the parties involved and the relationship with existing collaboration structures

(ii) The statutory and contractual bases for prompt information sharing among the different FSN members and other extended domestic and cross-border parties, considering existing constraints for proper and timely coordination and how these could be addressed

(iii) The level of detail in regard to information sharing

a. whether and how it would change in everyday collaboration, intervention, closing, and resolution phases

b. whether and how it would change in settlement and liquidation, providing for enhanced coordination in cases of extraordinary or systemically important events

[63] See BCPs (September 2012), in particular, on preconditions for "Clear framework for crisis management, recovery and resolution."

(iv) Procedures for information sharing at both senior and technical levels, and tools used for information exchange (e.g., the use of a secure website)

(v) Commitment to maintain up-to-date contact lists, covering multiple means of communication for key senior and working-level staff

(vi) Commitment to maintain confidentiality of shared information and measures to ensure confidentiality (e.g., limiting the number of personnel with access to the data, having a confidentiality agreement signed by all relevant personnel, having a procedure in place in case confidentiality is breached)

Institution-specific agreements containing the key elements on how home and host authorities will cooperate should also be signed. These agreements should establish the objectives and processes for cooperation through CMGs; define the roles and responsibilities of the authorities in preparation for, during, and after a crisis; and outline mechanisms and timeframes for information sharing.

Coordination agreements should be tested through simulation exercises and be periodically reviewed.

5.3.2 Financial Stability Committees

Financial stability committees are established as strategic cabinets that are responsible for a wide range of tasks, including (1) sharing information; (2) identifying and developing tools to monitor the financial sector; (3) analyzing the impact of macroeconomic events, as well as other evolving risks, on the financial system; and (4) identifying and creating risk-mitigating tools. To function properly, each jurisdiction's financial stability committee requires the involvement of all main FSN participants such as central banks, supervisory authorities, ministries of finance, DIs, and RAs.

Financial stability committees should be formally established so that their decisions are legally binding. This is particularly important when determining strategies for managing systemic events. The committee should have a governance framework, along with formal objectives, mandates, and powers to ensure legal certainty for their actions and decisions.

5.3.3 Crisis Management Groups (CMGs)

The KAs require that a CMG be established for each globally systemically important financial institution (G-SIFI) to facilitate the resolution of the institution. The CMG should allow home and host key authorities to coordinate and develop the preferred resolution strategy for the FI. In addition, CMGs should continually review the FI and report on the following:

- Progress in coordination and information sharing within the CMG participants, and with host authorities that are not represented in the CMG
- The RRP process for G-SIFIs under institution-specific cooperation agreements
- The resolvability evaluations of G-SIFIs

5.4 Everyday Collaboration

FSN participants should establish coordination arrangements that ensure symmetry in the access to information. Timely shared information informs everyday decisions, the analysis when monitoring financial institution operations, and policy determination and communication. Agencies should avoid

duplication of functions and overburdening institutions under their authority. The member of the FSN primarily tasked with day-to-day responsibilities for the financial system is most likely the prudential supervisor. The supervisory authority must ensure that only safe-and-sound firms enter the financial system and should be the leading authority that triggers an FI's exit from the system. This is notwithstanding the fact that the resolution of problem banks may be a function of a different administrative entity.[64] Information-gathering mechanisms should be coordinated with the supervisory authority. The monitoring reports produced by all three functions—supervisory authority, resolution authority, and deposit insurer—should be shared, so that FSN participants can gain insight from different analysis and perspectives.

5.5 Timely Intervention and Preparation for Resolution

Dealing with a failing institution, much less a crisis, can be complex. Coordination among FSN participants, with pre-determined rules of engagement, is paramount in guiding the decision making process. *Ad hoc* pronouncements and actions usually result in market instability and loss of confidence in policymakers. MOUs containing the basic elements (see section 5.3.1) seek to ensure accountability, independence, and transparency in the FSN working environment, and aim to minimize the cost of resolving failed institutions.

Sound coordination mechanisms should complement resolution legal frameworks in providing speed, transparency, advance planning, and as much predictability as possible through clear procedures.[65] It is important for the bank supervisor, the RA, and the DI to have well-developed action and contingency plans that ensure timely and effective implementation of intervention measures that are proportionate to the gravity of a bank's weaknesses.[66] DIAs with resolution responsibilities should be able to accompany the prudential supervisor to on-site examinations to gather information (DIAs would not carry out examination activities or tasks). Such advanced planning will also reinforce a macro prudential perspective, mitigating the buildup of excess risks across the system and identifying the effects of actions taken and policy decisions made by the participants individually and collectively.

5.6 Entry into Resolution

Determining that a failing entity must enter resolution because it has either become nonviable or has no prospect of returning to viability requires the involvement of the supervisor, the DI, and the RA. Coordination mechanisms should enable the actions needed to implement the resolution strategy and operational plans. These actions include carrying out valuations, appointing advisors, ensuring continuity of payment systems and other FMIs, reviewing information and data requirements, and communicating with stakeholders and the wider public. Importantly, the coordination mechanisms should provide for the post-resolution restructuring and restoration to viability of those parts of the business that are to be continued, and the orderly wind-down of those (if any) that are not.[67] In jurisdictions where it is appropriate, MOUs should include details for single or multiple points of entry (SPE or MPE).

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[64] Singh, D. and LaBrosse, J.R., "Developing a Framework for Effective Financial Crisis Management," *OECD Journal: Financial Market Trends* 2011, no. 2 (2012).

[65] See the preamble to the KAs.

[66] See *General Guidance on Early Detection and Timely Intervention for Deposit Insurance Systems*, IADI (2013).

[67] See *Guidance on Developing Resolution Strategies and Operational Resolution Plans*, FSB (2012).

5.7 Settlement and Liquidation

Depending on the FSN institutional arrangements, MOUs may be required for coordinating settlement and liquidation actions. These MOUs should include provisions for the following situations:

- Depending on the resolution strategy, settling transactions such as the exercise of options by the acquirer, either any repurchase of assets by the receiver or any "put back" of assets to the receiver by the assuming institution
- Disposing of the failed institution's residual assets
- Conducting investigations to determine if negligence, misrepresentation, or wrongdoing was committed that contributed to the failure of the FI and, when appropriate, filing a lawsuit to help recover losses caused by these acts
- Reviewing and settling payment of eligible claims
- Notifying and approving requests for the judicial extinction of the failed FI
- Determining lessons learned from the process and identifying opportunities for enhancements and adjustments

Cooperation mechanisms should assist all stakeholders through the end of the resolution process.

6. FINAL COMMENTS

Financial sector authorities face multiple challenges in harmonizing their operational and legal frameworks to replicate the implementation of international standards. Jurisdictions have different legal systems—civil or common law—that involve different legislative processes and enforcement capabilities. They also have financial systems and safety nets with varied levels of depth and complexity, developed over decades, through events that have influenced the evolution and structure of their legal and operational frameworks.

Jurisdictions that are reforming their resolution schemes must carefully design frameworks, guided by the objectives set out in the KAs, to achieve feasible orderly resolutions without severe systemic disruption and without creating the expectation of publicly funded bailouts. Establishing a Special Resolution Regime (SRR) should enable financial sector authorities to carry out resolutions with enhanced legal certainty for every party involved, ensure continued access to critical financial functions, and instill market discipline.

An SRR provides tools to protect financial stability by effectively managing banks and other deposit-taking institutions (DTIs), investment firms, banking group companies, and central counterparties that are failing while protecting depositors, client assets, taxpayers, and the wider economy. It should assign powers to the RA that allow it to take flexible and decisive actions that maximize recoveries, limit delays in reimbursing depositors, and minimize the time necessary to return client assets to the financial system. When multiple administrative entities comprise the RA within a jurisdiction, their respective mandates, roles, and responsibilities should be distinctly defined and coordinated.

If a jurisdiction's laws do not authorize prompt, decisive action to restructure or continue key banking functions of nonviable FIs of all sizes, the inevitable response will be to bypass any prohibitions and effectively prop up weak institutions (including through injections of public funds), keeping them in operation. Moral hazard can, and should, be controlled by limiting the use of public funds while providing responsible authorities with the legal tools to maintain key banking operations through the sale of the business or transfer of assets and liabilities to another bank or through operation of a temporary bridge bank. Review of legal frameworks where appropriate, with the goal of adopting international standards, should allow for a departure from the compliance-based culture. In turn, reformed legal frameworks should be more conducive to better data-gathering capabilities through careful planning. Such reforms also would allow for a comprehensive understanding of the risks involved in individual FIs, both as ongoing concerns and as they become nonviable operations, as well as how their entry into resolution could affect the financial system as a whole.

The starting point in the reform agenda begins with changing our collective mindset about the importance of a strong safety net where each function, individually and collectively, can help to foster financial system stability. Close coordination based on recognizing the mandates and competencies of all FSN participants will drive effective resolution processes.

ANNEXES

ANNEX A: WG MEMBERS CONTRIBUTIONS

Lessons learned are shared by WG members.

I – Experiences in the adoption or application of selected IADI Core Principles of Effective DIS

Core Principle	Country
CP2 Mandate and Powers	Paraguay - FGD
CP3 Governance	México – IPAB
CP4 Relationships within the Financial Safety-Net	Guatemala - SIB
CP5 Cross Border Issues	Guatemala - SIB
CP6 Contingency Planning and Crisis Management	Mexico - IPAB
CP7 Membership	El Salvador - IGD
CP8 Coverage	Guatemala – FOPA
CP9 Sources and Uses of Funds	Brazil - Supervisor
CP10 Public Awareness	Colombia - FOGAFIN
CP 11 Legal Protection	USA – FDIC
CP12 Dealing with Parties at Fault	México – IPAB
CP13 Early Detection and Timely Intervention	Chile – Supervisor; USA-FDIC
CP14 Failure Resolution	México – IPAB
CP15 Reimbursing Depositors	Peru – FGD

Core Principle 2: Mandate and Powers The mandate and powers of the deposit insurer should support the public policy objectives and be clearly defined and formally specified in legislation.	**Deposit Guarantee Fund-Central Bank of Paraguay**
Context	Law 2334/03 establishes the Deposit Guarantee Fund (FGD - Fondo de Garantía de Depósitos) and gives the Central Bank of Paraguay (BCP) the authority to perform all required acts and adopt the necessary measures to operate it. On that basis, the Board of Directors of the BCP established the Deposit Guarantee Fund Administrative Unit (UAFGD), to be responsible for providing depositor protection, should their deposit taking institution fail. Upon failure, and in coordination with the Superintendence of Banks, UAFGD may reimburse depositors either by facilitating a resolution mechanism or through payout, always based on the least-cost alternative. Law 2334/03 obliges officials to provide grounds regarding the application or utilization of FGD resources with regard to the criterion of the minimization of costs. The Fund may be used exclusively for the following: Facilitating resolution mechanisms, including: Direct transfer of covered deposits to an agent bank; Direct transfers of assets and liabilities either to a healthy acquiring bank or to a trust fund (fideicomiso), or Providing the funds for direct payment of covered deposits up to the maximum coverage amount. Based on its public policy objectives and mandate, the FGD is a "loss-minimizer"; however, the powers assigned in the law fall short to enable the UAFGD to deliver this broad legal mandate effectively. The Board of Directors of the Central Bank of Paraguay determines the regulations that govern the general functions of the financial safety net. In order to better align UAFGD's mandate and powers, the Board has appointed a team to determine how progress can be made through regulatory changes, and to identify those issues that can only be corrected through a legal reform. Both projects are ongoing.
Challenge	**Protection of Deposits** Rules and regulations for eligibility and assessment of covered deposits are unclear and do not contribute to ensuring reimbursement within the legal timeframe. Rules and regulations for transfers of assets and liabilities and/or transfers to trust vehicles are determined *ad-hoc*. Ineffective information sharing mechanisms prevent the FGD from adequately understanding the financial condition of its member institutions and from properly preparing for reimbursement and for resolution. **Participation of the FDG in dealing with systemic events** Faults in the design of the systemic event framework, including the distribution of roles and responsibilities of parties involved, render it impracticable. Limitations about the substitution of the failed institution's administrative authorities and the liquidation of shareholders' rights. Absence of authority for the establishment of temporary or bridge bank.

	Misalignment of objectives, mandates and powers of the different functions of the financial safety net.
Solution	Introduce reforms to the legal framework in order to: Add clarity to the scope of the supervision and resolution functions on the basis of competencies. Formalize coordination mechanisms and operational arrangements. Ensure resolution strategies are guided by the objectives of: (i) continuity of access to critical services and of the payments system, and (ii) avoiding unnecessary loss to the value of assets in resolution. Enable least-cost analysis of resolution strategies. Add clarity to the process of displacement of the failed institution's management and termination of its shareholders' rights upon resolution. Adopt a wider resolution toolkit, including bridge bank authority. Formally align the functions of supervision, deposit insurance and resolution by clearly describing objectives, mandates and powers, and specifying roles and responsibilities for dealing with problem bank closings and systemic events.

Core Principle 3: Governance The deposit insurer should be operationally independent, well-governed, transparent, accountable, and insulated from external interference.	**Institute for the Protection of Bank Savings (IPAB) -- MEXICO**
Context	The deposit insurer (IPAB) is a decentralized federal public entity, with financial independence. IPAB is, however, subject to the Federal Law on Budget and Financial Accountability which may constrain, to some extent, its ability to increase the number of positions on its staff. IPAB's Governing Board consists of seven members and is chaired by the Minister of Finance (SHCP), with four independent members as well as two additional ex-officio members from the Central Bank (Banxico) and the Banking Supervisor (CNBV). IPAB's Executive Director is appointed by the Governing Board and has no fixed term. The Director is not protected from being removed from his/her position without cause.
Challenge	Operational independence is hindered by different factors, including: An ex officio member acts as Chairman. Absence of a fixed term for the Executive Director. No requirement of establishment of due cause for the removal of the Executive Director The composition of IPAB's Board presents the possibility of real or perceived conflicts of interest as the Minister of Finance chairs it, and the Governor of Banxico and the Chairman of CNBV are ex officio members. Although there is a majority of independent Board members (four), there is no requirement that the Board may act only when those members are present, thereby presenting the possibility that the Board may act when only one independent Board member is present. IPAB's law requires a quorum of four members to be present for a quorum, provided that SHCP is in attendance.
Solution	Reform the law in order to: Amend the structure of the Governing Board, in particular to address the issue of the Chair being an ex-officio member. Require a majority of independent members of the Board to be present in order to have quorum for sessions.

Core Principle 4: Relationship with Other Safety-Net Participants In order to protect depositors and contribute to financial stability, there should be a formal and comprehensive framework in place for the close coordination of activities and information sharing, on an ongoing basis, between the deposit insurer and other financial safety-net participants.	**SIB -- GUATEMALA**
Context	Guatemalan law implicitly includes the basic components that comprise the financial safety-net: prudential supervision, a lender of last resort, a deposit insurance fund, and a bank resolution scheme.
Challenge or Success Story	The implementation of a bank resolution process in Guatemala requires the involvement of different stakeholders such as the Monetary Board, the Superintendence of Banks (supervisory authority), the Central Bank, as administrator of FOPA (which functions as a pay-box DI), the Board of Exclusion of Assets and Liabilities - appointed by the Monetary Board and with functional dependence of the SIB. The Monetary Board has also the authority to revoke the authorization to operate and to instruct the Superintendence of Banks to file for the declaration of bankruptcy of the competent judicial authority. The Superintendence of Banks of Guatemala (SIB) carries out a bank resolution scheme based on the exclusion of assets and liabilities (EAP), generally under a good-bank/bad-bank strategy. A "Manual of Exclusion of Assets and Liabilities" (MEAP) was developed, which contains the basic procedures in detail, from the preparatory work of the EAP to the bankruptcy petition of the entity before the competent judicial authority. FOPA, the deposit insurance fund, is a unit under the authority of the central bank, Banguat (Banco de Guatemala). Once an entity satisfies the criteria contained in the Banks and Financial Groups Law (suspension of payment of obligations, capital deficiency over 50% of the regulatory capital, default, rejection or failure to submit the regularization plan or, for other reasons duly substantiated in the report of the Superintendent of Banks), the Monetary Board proceeds to suspend its operations, appointing a Board of Exclusion of Assets and Liabilities (JEAP) with the authority to (i) exclude eligible assets for transfer to a trusteeship managed by an entity chosen by the Superintendence of Banks, or sell them directly to one or more entities; (ii) exclude eligible liabilities in as much as eligible excluded assets allow in order of priority – covered deposits, labor liabilities, all other deposits, cashier checks, money orders, transfers, bonds and notes; and; (iii) transfer excluded liabilities to another bank or banks, backed either through certificates of participation, issued by the trusteeship established to that end, or backed with eligible assets If transfers of excludes assets and liabilities are not possible, the JEAP may require FOPA to facilitate the funds to carry out direct payout either directly or through an agent bank.

Core Principle 5:Cross-border Issues Where there is a material presence of foreign banks in a jurisdiction, formal information sharing and coordination arrangements should be in place among deposit insurers in relevant jurisdictions.	**SIB -- GUATEMALA**
Context	Guatemala is part of the Central American Council of Superintendents of Banks, Insurance and Other Financial Institutions (CCSBSO), whose objective is to maintain and promote close cooperation and information sharing among the supervisory authorities that comprise it, to facilitate and improve cross-border consolidated supervision.
Challenge or Success Story	Under the strategic plan of the CCSBSO, a document entitled "Guidelines for the Treatment and Evaluation of Weak Conglomerates and financial groups" was issued, which established guidelines mainly on information sharing, for dealing with weak financial institutions with regional/cross-border presence, based on the Multilateral Memorandum of Exchange of Information and Mutual Cooperation for Consolidated Supervision and Cross-Border among Members of the Central American Council of Superintendents of Banks, Insurance and Other Financial Institutions (MOU 2007) and the "Cooperation Agreement for the Preservation and Strengthening of Regional Financial Stability, signed by the supervisory bodies and central banks of the region. The MOU's objectives are to manage, in a timely and effective manner, the run up and development of a systemic event in the region. The purpose of this MOU is to establish and maintain a flow of information and close communication among supervisors, and to enhance collaboration through concrete early intervention actions upon identification of weaknesses in participating jurisdictions. Participating supervisors are needed to prevent or mitigate the impact of domestic and cross-border financial instability. The MOU Guidelines complement and strengthen the exchange of information for normal risks already in place, based on the following objectives: Strengthen existing channels of cooperation and anticipate additional information when corrective measures are implemented for a financial institution. Ensure that home and host supervisors where the weak FI, Financial Conglomerate or Group has activities are mutually informed about the implementation and monitoring of corrective actions. Establish triggers for information exchange and communication. Document lessons learned and regional events arising from the adoption of early intervention and resolution measures, reviewing whether the objectives of the MOU have been delivered and how to make improvements to it. It should be noted that the participation of each jurisdiction's supervisory authority is limited by the extent of its authority to share information and collaborate in accordance to its legal framework

Core Principle 6: Deposit Insurer's Role In Contingency Planning And Crisis Management The deposit insurer should have in place effective contingency planning and crisis management policies and procedures to ensure that it is able to effectively respond to the risk of, and actual, bank failures and other events. The development of system-wide crisis preparedness strategies and management policies should be the joint responsibility of all safety net participants. The deposit insurer should be a member of any institutional framework for ongoing communication and coordination involving financial safety net participants related to system-wide crisis preparedness and management.	**Institute for the Protection of Bank Savings (IPAB) -- MEXICO**
Context	The deposit insurer (IPAB) has a compendium of procedures for bank resolution that form part of a larger set of procedures known as "macroprocesses." IPAB has conducted annual simulation exercises since 2011, through a program established by its Governing Board. The heads of the Central Bank (Banxico), the Ministry of Finance (SHCP), the Bank Supervisor (CNBV), and IPAB collectively create the Banking Stability Committee (CEB) and all participate in the bank recovery and resolution regime and decide whether a bank may be systemic when it fails. The four authorities also participate in the Financial Stability Council (CESF)- a permanent body for coordination, evaluation, and risk analysis for systemic oversight. In regard to a bank resolution, the coordination of public communication efforts of all financial authorities is centralized within SHCP.
Challenge or Success Story	**Success Stories** All of IPAB's operating procedures are being updated to account for the significant changes in the 2014 Banking Law. In accordance with Article 120 of the Banking Law, IPAB may conduct simulation exercises as part of the resolution plans it prepares. The IPAB participates in existing contingency planning and crisis preparedness schemes insofar as what falls under its direct responsibility. IPAB has processes for developing press releases and making the necessary arrangements for temporary call centers in case of a bank failure. **Challenges:** Within the CEB, the criteria for determining if a bank poses a systemic risk are broad and, to date, no written policies have been developed to guide them. The CESF does not have the powers to direct its constituent organizations but functions under "moral suasion." There are no regularly occurring system-wide crisis simulation exercises, even though IPAB regularly conducts its own exercises.
Solution	The authorities of the CEB should develop written polices for determining whether or not a bank is systemically important. The CESF should be granted operational powers in order to have a clearer range of action. The authorities should do more extensive planning for system-wide crisis preparedness, particularly for a systemic crisis. Such planning could include the use of simulation exercises involving all the safety net players. IPAB should undertake contingency planning for a systemic

	crisis and engage with the other safety net members on system-wide contingency planning.

Core Principle 7: Membership Membership in a deposit insurance system should be compulsory for all banks.	**Instituto de Garantía de Depósitos (IGD) – EL SALVADOR**
Context	In El Salvador, the Deposit Insurance Agency is the Instituto de Garantía de Depósitos (IGD), which was created in 1999. The membership to the deposit insurance system is compulsory for private banks, one of the two state-owned banks, cooperative banks, and all savings and loans societies. All of these financial institutions are subject to sound prudential regulation and to the supervision of the Superintendencia del Sistema Financiero (Financial System Supervisor). Banco de Fomento Agropecuario (BFA) is the state-owned bank that it is not member of the IGD, because the Salvadorian State insures the deposits of this bank; Law establishes this exception.
Challenge or Success Story	When a bank or a savings and loans society enters the DIS, they must comply with all prudential requirements established by the Supervisor. However, in the case of a cooperative bank, there is a way to enter the DIS without complying with all the prudential requirements. According to the Cooperative Banks, and Savings and Loans Societies Law, if the balance of deposits and contributions made by members of the cooperative reaches the limit of US$92.8 million, then the cooperative will automatically enter the DIS and be supervised by the Financial System Supervisor. The Law established a maximum period of 3 years for the cooperative bank to comply with all the prudential regulation and supervisor requirements. In addition, the Law indicates how the cooperative must present a plan in order to fulfill the requirements within the indicated period. During this regulation period, the IGD covers the deposits in the cooperative bank, but the cooperative does not fulfill all the requirements. With the current legal framework, the IGD is not responsible for granting membership in the DIS. When the Financial System Supervisor authorizes a new financial institution that will be covered by the DIS, the IGD is not consulted in advance, and sometimes Supervisor informs IGD at the same time that the new institution is made public. At this time, the IGD cannot terminate the membership.
Solution	Enact reforms to the law in order to: Limit the entrance of cooperative banks, which do not fulfill all the prudential and Bank Supervisor requirements. Introduce the obligation to inform the DIA when the Supervisor is assessing the authorization. Include the BFA.

Core Principle 8: Coverage Policymakers should define clearly the level and scope of deposit coverage. Coverage should be limited, credible and cover the large majority of depositors but leave a substantial amount of deposits exposed to market discipline. Deposit insurance coverage should be consistent with the deposit insurance system's public policy objectives and related design features.	**SIB -- GUATEMALA**
Context	In Guatemala the Deposit Protection Fund, FOPA, was created to ensure that depositors would recover a limited explicit amount of their deposits per individual or legal entity with deposits in a domestic private bank or branch of a foreign bank.
Success Story	By law, the amount of coverage must be modified by the Monetary Board when the percentage of deposit accounts with balances less than or equal to the amount of coverage in force is below 90% (ninety percent) of the total accounts of deposits opened in domestic banks and branches of foreign banks. This situation must be validated by the SIB, who would then submit to the Monetary Board the proposal to revise the amount of coverage, allowing it fully cover no less than 90% of such accounts. Balance compensation against coverage is required only by the amounts that are liquid, payable, and past-due. Similarly, in the case of joint deposit accounts, if any depositor is at the same time the bank borrower, the balances should be offset in the proportion that corresponds to the debtor. Eligible depositors are clearly defined. Excluded depositors include shareholders, board members, managers, assistant managers, legal representatives, and other officials. Premium payments are adjusted for risk and assessed on the basis of total deposits. As for public awareness and disclosure of deposit insurance, the Banks and Financial Groups Law, Article 94 provides that the banks are responsible to inform every person with whom they hold depositary operations about coverage and applicability of FOPA.

Core Principle 9: Sources and Uses of Funds The deposit insurer should have readily available funds and all funding mechanisms necessary to ensure prompt reimbursement of depositor's claims, including assured liquidity funding arrangements. Responsibility for paying the cost of deposit insurance should be borne by banks.	**Central Bank of Brazil (BCB) -- BRAZIL**
Context	In Brazil, deposit insurance is carried out by the Credit Guarantee Fund (FGC) and by the Cooperative Guarantee Fund (FGCoop). Both are private nonprofit entities established to manage protection mechanisms for clients of financial institutions (commercial, universal, development, and investment banks, in the case of the FGC, and credit unions and cooperative banks, in the case of the FGCoop) in the event of resolution. Although these entities are subject to the regulations issued by the National Monetary Council (CMN) and the Central Bank of Brazil (BCB), their private status has been a significant factor for their consolidation as independent institutions. Funds for the insurance provided by the FGC and the FGCoop come from ordinary contributions from associated institutions, credit rights subrogated by the FGC/FGCoop from associated institutions under resolution regime, as well as from the results of the services rendered by the FGC/FGCoop and the proceeds from investments made by them. Whenever the circumstances indicate that additional funds are needed to carry out their tasks, funds arising from the following sources may be used: extraordinary contributions from member-institutions; credit operations with private, official, or multilateral institutions; issue of negotiable instruments; other sources of funds, as proposed by their management and upon prior authorization of the Central Bank of Brazil. The Credit Guarantee Fund (FGC) complements the BCB's action, as a member of the financial safety net, performing not only the role of paybox in intervention or extrajudicial liquidation, but also the role of stabilizing agent providing financial support (e.g., loans, portfolio purchases, additional limit of insurance for certain affiliate operations) in order to maintain the stability of the national financial system and to prevent systemic banking crises.
Challenge or Success Story	Since, unlike in most jurisdictions, in Brazil the deposit insurance fund for banks (FGC) is a private entity, funded and managed by the industry, when acting to prevent or remedy a bank failure, the FGC uses only private funds, as it does not have access to public sources. At present, the Fiscal Responsibility Law of 2000 bans the use of public funds for emergency support, unless Congress passes a specific law to allow this approach.
Solution	New regulation improving the FGC's statute in general, among other aspects restricting the insurance coverage in cases of institutional investors, has been issued (Resolution CMN 4,469/2016). New regulation allowing the FGCoop to act along the same lines as the FGC, as a paybox plus, likewise being able to offer liquidity assistance to its associates, was issued in August 2016 (Resolution CMN 4,518). In the draft bank resolution law currently under discussion, the BCB will be able to advance funds to a troubled bank, as long as it is systemically important, via a resolution fund, which will have access to a backstop unsecured credit line and be co-responsible for repayment, recovering its funds from the industry at large. The BCB is comfortable with this approach because the resolution fund, which will also be a private entity like the deposit insurance fund, will have a number of alternatives in order to raise funds to repay for the loans received (e.g., the issuance of receivables to be subscribed by its participants, the establishment of extraordinary contributions). This tends to minimize losses incurred by the State in the recovery of systemically important banks.

Core Principle 10: Public awareness	Fondo de Garantías de Instituciones Financieras (Fogafín) -- COLOMBIA
Context	Since 2010, and in line with the international standards, Fogafín has been developing several campaigns in order to inform the public about the deposit insurance system and its characteristics. Fogafín is operationally independent, and its budget is not linked with national accounts. For strategy purposes, Fogafín prepares an annual communication plan, which is subject to the approval of an internal committee. Since 2010 Fogafín has established a division in charge of managing the public awareness strategy and its components.
Challenge or Success Story	Fogafín has been able to develop annual campaigns to promote the awareness of the deposit insurance system. Starting from almost an inexistent level of recognition, the deposit insurance system, by June 2016, was recognized by 42% of banked population in Colombia. The public awareness campaign comprised the use of different channels including TV, radio, and press advertisement; BTL activities in Bogota and other cities; programs and conferences with academic institutions; improvement of Fogafín's presence in social networks; and free-press publications. The campaigns have been assessed continuously in order to define further activities and identify new channels. The strategy has been conceived as a long-term effort, given its importance to achieve Fogafin's mandate and protect depositors from situations affecting financial stability. The operational independence of Fogafín has been critical to develop the public awareness campaigns. The main challenge of the campaign has been defining the mix between information about Fogafín and information on the characteristics of the DIS. The public awareness campaign includes the development of a different strategy when addressing a payout process or the participation of Fogafín in different resolution mechanisms.

CP 11 – Legal Protection (FDIC)

The legal framework in the United States provides legal protection through statute and indemnification against any costs of defending actions. Federal banking agencies and their staff are generally protected against lawsuits for actions while discharging their duties in good faith.

Under the Federal Tort Claims Act, claims cannot be brought against federal agencies such as the FDIC, or its officials, for money damages for injury or loss of property or personal injury or death caused by any allegedly negligent or wrongful act or omission committed by an employee within the scope of the employee's authority or office. In addition, a director, member, officer, or employee of the FDIC has no liability under the Securities Act of 1933, as amended, with respect to any claim arising out of or resulting from any act or omission by such person in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the FDIC, provided such act or omission was within the scope of such person's employment.

In addition to protections provided by federal statutes, the FDIC Board concluded that it is in the FDIC's best interest to indemnify Board members, officers, and employees sued for acts arising from the performance of their official duties and has established an indemnification policy for each person who is or was a director, officer, or employee of the FDIC against any and all liability and expenses that may be incurred in connection with or resulting from any claim for wrongful acts, in which the employee may become involved by reason of being or having been a director, officer, or employee or by reason of any action taken or not taken in the employee's official capacity as a director, officer, or employee, whether or not such person continues to be such at the time the liability or expense is incurred. This indemnification is supplemental to any other rights the employee may be entitled to by contract or as a matter of law.

If an action is brought against an FDIC employee, under the FDIC indemnity policy, the FDIC may advance costs, charges, and expenses, including fees and expenses of counsel, incurred in connection with any claim made against an employee before disposition of the claim. In the event the employee fails to establish to the satisfaction of the FDIC that he or she is entitled to indemnification from the FDIC, the employee will be required to repay the FDIC, upon demand, all amounts advanced on the employee's behalf. The FDIC may require, as a condition of any such advance, an undertaking satisfactory to the FDIC by or on behalf of the employee to provide sufficient collateral to repay such amounts unless it is ultimately established that the employee is entitled to receive indemnification from the FDIC. In addition, he or she must execute an agreement to reimburse the FDIC for expenses incurred in defending the action and the employee.

CP 12 Dealing with Parties at Fault in a bank failure The deposit insurer, or other relevant authority, should be provided with the power to seek legal redress against those parties at fault in a bank failure.	**Institute for the Protection of Bank Savings (IPAB) -- MEXICO**
Context	The relevant authorities (resolution authorities, liquidators, prosecutors, and members of the judiciary) have the necessary powers to seek compensation for damages done by those responsible for a bank failure. The Banking Law requires the liquidator to inform the competent authorities of any evidence of the existence of a violation of certain provisions of the Banking Act. IPAB is required to review all of the bank's information during the liquidation process and report any evidence of wrongdoing to the competent authorities.
Success Story	In the recent case of a bank failure in Mexico, the IPAB found and informed the corresponding authorities of the potential crimes detected in order that the General Prosecutor (PGR) may take the corresponding measures. Whenever irregularities are detected, the Ministry of Finance (SHCP) is directly informed, which, along with the Bank Supervisor (CNBV), makes the assessment on whether the information fulfills the criteria to be brought before the PGR. There is and it is included, within the different entities of the Public Federal Administration, the power to investigate, denounce, prosecute, and punish irregularities and crimes arising from a bank failure. Relevant authorities in Mexico, each in its range of action, are provided with the necessary powers to seek legal redress against those parties at fault in a bank failure.

Core Principle 13: Early detection and timely intervention The deposit insurer should be part of a framework within the financial safety net that provides for the early detection of, and timely intervention in, troubled banks. The framework should provide for intervention before the bank becomes nonviable. Such actions should protect depositors and contribute to financial stability.	**Superintendence of Banks and Financial Institutions (SBIF) -- CHILE**
Context	Chile has not implemented a deposit insurance program. The Superintendence of Banks and Financial Institutions (SBIF) is the banking supervisor, and the Central Bank is the financial regulator. Both institutions are independent from each other and from the Government, although SBIF relates to the Central Government through the Minister of Finance The Chilean Banking System has not had a banking crisis since 1982. Like many other countries, Chile implemented a Financial Stability Council in 2011. Financial supervisors from the main sectors (banks, pension funds, and securities and insurance) are permanent members of the council as well as the Minister of Finance who presides over it. The President of the Central Bank is also invited as a counselor. In 2014 a specific law was enacted to give the council stronger legal support and protect the technical institutions´ autonomy. The law provides for enhanced information sharing, thus allowing the council´s members to better understand and evaluate risks, particularly regarding financial conglomerates.
Challenge or Success Story	Early detection and timely intervention have been key tools for avoiding financial crisis and having successfully managed stress situations for the past thirty years. The General Banking Act provides the Supervisor with intrusive powers for the close supervision of financial risks, which has been a signature of Chile's financial stability. Therefore, early detection of problems and timely interventions have precluded the authority from conducting resolution mechanisms, given that private institutions, with the help of the supervisor, have themselves solved stress situations through pre-emptive correction measures. In order to make such a principle to properly work, some minimum conditions have to be fulfilled: information sharing, permanent monitoring, and high frequency meetings among supervisors have been key for preventive, and so far, successful work. There is no issue about whether this system is better or more suitable; it´s simply Chile´s experience. Another important feature of this council is the frequency with which it meets. The monthly meetings are the results of constant analysis of on-site and off-site monitoring of the different Superintendencies through different working groups or even internal units.
Solution	Coordination and cooperation allow financial Superintendencies a better understanding of underlying risks, providing an excellent tool for early detection and timely intervention. By having good coordination and cooperative behavior among supervisors, Chile has managed to avoid major crises for more than 30 years.

CP 14 Failure Resolution An effective failure resolution regime should enable the deposit insurer to provide for protection of depositors and contribute to financial stability. The legal framework should include a special resolution regime.	**Institute for the Protection of Bank Savings (IPAB) -- MEXICO**
Context	The deposit insurer and resolution authority (IPAB) has sufficient resources to exercise its resolution powers when its significant borrowing ability is taken into consideration. The special resolution regime in place provides tools for the resolution of banks of all sizes. The roles of all the authorities participating in a bank resolution are clearly defined in the Banking Law. IPAB is subject to the least cost rule for all nonsystemic resolutions. The creditor hierarchy is set forth in the Banking Law. Subrogated claims of IPAB are fourth in the hierarchy of claims after secured claims, worker's claims, and claims that according to law have a special preference. There is no discrimination against depositors based on nationality or residence. A claim for damages is allowed under Article 273 of the Banking Law for claims relating to the resolution of financial institutions. Changes to Article 129 of the Law on Appeals for Constitutional Protection (*Ley de Amparo*) mean that there can no longer be actions filed to halt the resolution process. The law provides IPAB with a period of up to 5 days after a bank enters liquidation to publish the bank's resolution process under Article 188 of the Banking Act.
Challenge	Legal provisions for P&A transactions have limitations that impede their practical use. IPAB cannot provide information on potential asset and deposit portfolios to prospective third-party acquirers prior to CNBV license revocation and implementation of IPAB receivership, which significantly limits the feasibility of executing a P&A transaction with a third party. A P&A to a bridge bank owned by IPAB seems potentially feasible. Given that the Mexican banking market has relatively few participants, careful consideration would have to be given to how to best assure confidentiality if a troubled bank is identified as a candidate for a P&A transaction. The role of the competition authorities would also have to be considered to be certain that any necessary approvals for an acquisition would not be unduly delayed. IPAB does not have the power to write down or convert the bank's debt to equity.
Solution	Enact reforms to the law in order to: Grant access to relevant data for potential acquirers before the bank´s license revocation Provide a faster procedure for the acquisition in order to preserve the value of the assets Include the power to write down or convert debt into equity as a forceful tool in resolution planning

CP 15 Reimbursing Depositors The deposit insurance system should reimburse depositors' insured funds promptly, in order to contribute to financial stability. There should be a clear and unequivocal trigger for insured depositor reimbursement. Essential criteria	**Deposit Insurance Fund (FSD) – PERU**
Context	In Peru, the Superintendence is the entity responsible for determining covered depositors upon resolution, and the Deposit Insurance Fund (FSD) is responsible for paying the guarantee to cover depositors. Legally, payments may begin 70 days after the troubled bank's closure (60 days used for the generation of the covered depositor's lists and 10 days to start the payments).
Success Story	In Peru, the payment of deposits covered by the Deposit Insurance Fund (FSD) is carried out promptly and efficiently. In practice, the first list of depositors covered by the FSD, and therefore the possibility of getting their money back, has been available 48 hours after the closure of a financial institution. For example, in the case of the Caja Municipal de Pisco (the only bankruptcy in the past 15 years where the resolution method was reimbursing depositors), reimbursements were available for 56% of depositors two days after the closure of the entity and for 80% of depositors eight days later. In the bankruptcies of financial institutions during the period 1999-2000, depositors received their money back in a similar period of time. FSD can quickly reimburse depositors for two main reasons: (i) one of the first tasks of the supervisor in the closed bank is to generate the list of covered depositors (according to law, the supervisor is responsible for generating this list) and send it to the FSD and to the selected bank that will act as a payment agent; and (ii) the Peruvian National System of Identification is safe and trustworthy; in order to get their money back, depositors need to show only their ID and do not have to complete any forms or do additional paperwork.

I – Experiences in the adoption or application of selected FSB Key Attributes of Effective Resolution Regimes for Financial Institutions

Key Attribute	Country
KA1 Scope	Brazil - BCB
KA2 Resolution Authority	Mexico - IPAB
KA3 Resolution Powers	Mexico – IPAB
KA6 Funding of Firms in Resolution	Colombia - FOGAFIN
KA8 Crisis Management Groups	Brazil - BCB
KA11 Recovery and Resolution Planning	USA - FDIC
KA12 Access to Information and Information Sharing	Uruguay - BCU

KA1: Scope	Central Bank of Brazil (BCB) -- BRAZIL
Context	Brazil's specific resolution regime for banks has been in place since 1974, when it was established by Law 6,024. The Banco Central do Brasil (BCB) is the only resolution authority for financial institutions in Brazil. According to article 51 of law 6,024/74, the BCB can extend the special resolution regime to any legal entities (regulated or not, including the holding company that controls a financial group or conglomerate) that have integrated activities or "bond of interest" in order to preserve the regulated entity's assets. A shareholding of more than 10% of the capital of the regulated entity is sufficient to be considered a "bond of interest." The resolution regime extended to unregulated companies is identical to the one applied to the regulated ones, but the assets and liabilities remain segregated (i.e., there is no pooling of assets). However, the resolution of all the companies in the group is coordinated.
Challenge or Success Story	Even though this resolution framework has not been reformed recently, a new resolution bill of law is in the final drafting stages and will be presented to Congress in the near future. The draft law aligns the Brazilian legal framework with the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions (the KAs). The operational continuity by firms in resolution or successor entities, at present, is ensured by maintaining the continuity of access of those firms to the SPB (Brazilian Payment System), a broad network system operated by the Central Bank that encompasses every payment and settlement system in Brazil.
Solution	The new resolution regime to be approved is designed for all classes of FMIs. It applies to all CCPs that are established in Brazil. The most relevant statutory objective to the resolution of CCPs is continuity of critical services. The conditions for entry into resolution are insolvency, severe liquidity issues, noncompliance with operational limits and requirements, incompatible risk exposure, noncompliance with recovery plan or preventive measures, repeated violation of the law, or a systemic risk situation. CCPs' contractual loss allocation arrangements are respected under the resolution or insolvency regime, but the resolution authority has the power not to implement an arrangement that would represent risk to the resolution regime's objectives. The proposed law also makes resolution more effective by, in addition to introducing new tools such as bail-in and temporary stay, (i) requiring institutions to have recovery plans and (ii) allowing the resolution authorities to require changes in firms' structures to improve their resolvability. Once approved, the new law will allow the BCB to determine changes to banks' practices or structures based on a resolvability assessment. The obligation for banks to present to the BCB recovery plans was instituted recently, with the advent of Resolution 4,502, dated 30 June 2016. The next step is to introduce internal procedures in order to establish how the BCB will implement resolution plans for those systemically important institutions. These RRPs will be fully implemented by the end of 2017.

KA2 Resolution Authority:	Institute for the Protection of Bank Savings (IPAB) -- MEXICO
Context	IPAB is the deposit insurer and bank resolution authority in Mexico. Nevertheless, different financial authorities may be involved in different stages of the resolution process. For instance, the Central Bank (BANXICO), the Ministry of Finance (SHCP), the Bank Supervisory (CNBV), and the IPAB are members of the CEB *(Comité de Estabilidad Bancaria)*, which determines the potential systemic implications of a bank failure, if any. The SHCP may convene the CEB, on its own behalf or by request of any other member, when a bank reaches a trigger for resolution and it is considered likely to be systemic. In addition, the CNBV has the power to withdraw a bank's license, thus triggering the bank resolution process, and also has the power to establish minimum and special corrective measures (prompt corrective actions) to banks, according to their Capital Adequacy Ratio (CAR). The four authorities also participate in the Financial Stability Council (CESF), a permanent body for coordination, evaluation, and risk analysis for systemic oversight. In general, IPAB's Governing Board determines the operations to be implemented for the bank's liquidation, considering that the estimated cost of implementing such operations is less than the estimated cost of payment of guaranteed obligations (the least cost rule). It has full discretion as to the choice of the resolution method to best achieve this rule. IPAB has the power to require commercial banks to provide relevant information for drafting resolution plans and even to conduct direct inspection visits to verify depositor and insured deposits information. The law provides legal protection to IPAB and individuals working for it from decisions and actions taken in good faith in the course of their duties and the discharge of their mandate.
Challenge	While the roles of the authorities in recovery and resolution are clear, operational independence needs to be strengthened. The legal framework includes the necessary provisions for information sharing between the financial authorities; however, IPAB is not consulted by the CNBV when a new bank license is under consideration. IPAB does not have information-sharing agreements in place with all the home authorities for which Mexico is host of a systemic bank, although by law (Article 143 of the Banking Law) it is permitted to do so. If the information to be shared is confidential, it cannot be provided directly by the IPAB but may be provided via the CNBV.
Solution	IPAB has signed Cooperation Agreements with Resolution Authorities from some of the host countries of those banks with a significant presence in Mexico in order to participate in relevant Crisis Management Groups (CMGs), but further work is needed to fully comply with the requirement for cooperation between home and host resolution authorities as established in the Key Attribute. Authorities must jointly develop written policies to facilitate timely collective decisions on systemic determinations in CEB.

KA3 Resolution Powers:	Institute for the Protection of Bank Savings (IPAB) -- MEXICO
Context	In general, the IPAB, as the resolution authority in Mexico, has all the resolution powers listed in the Key Attributes, with some caveats concerning its exact range of action: IPAB has the power to combine resolution actions, to apply them sequentially and to apply different resolution powers to different parts of the business of the bank in resolution. IPAB is empowered to : Temporarily take control of and operate a firm in resolution Remove and replace senior management IPAB is empowered to override shareholders' rights in two scenarios: If the bank does not comply with the Conditional Operation Regime, IPAB, as a second beneficiary for the bank's shares, overrides the shareholders' rights and exercises the shares' corporate and property rights. In an intervention, IPAB appoints a receiver. IPAB may ensure the continuity of those services considered necessary for the liquidation, rendering void provisions in contracts that modify terms and conditions solely as a consequence of the bank's entry into resolution. It applies for a bridge bank as well. IPAB has the power to establish a temporary bridge bank to take over assets, rights, and liabilities from a firm in resolution. The bridge bank will be organized and operated by the IPAB, and it will guarantee the whole amount of the bridge bank's liabilities. Therefore, IPAB is able to provide financial support to the bridge bank via credits. The bridge bank will not be required to comply with regulatory capital (including buffers) nor the contributions to the deposit insurance fund. The bridge bank will need to comply with all other requirements. The bridge bank may operate for 6 months, extendable once for another 6 months after which it must be liquidated. IPAB has no powers to write down and convert liabilities (bail-in). However, the Bank Supervisor (CNBV) has the power to convert unsecured subordinated debt into equity in case of noncompliance with capital requirements (if stipulated in contract) and suspension of operations with related parties or persons that may exert significant influence over the bank. IPAB has the power to temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry into resolution of a firm or in connection with the use of resolution powers.
Challenge or Success Story	The 2014 financial sector reform strengthened the bank recovery and resolution framework adopting the framework set out in the Key Attributes and addressing various recommendations of the 2012 FSAP. Among the key reforms were the following: a special resolution regime specific to insolvent banks, to establish clear timeframes for resolution action, to clarify the role of the courts and eliminate their ability to suspend resolution actions, to give IPAB broader powers to obtain information on insured deposits and premium fees from banks directly including via onsite visits; to impose fines and also to conduct analysis/valuation of banks to facilitate resolution, to give the CNBV the power to require recovery plans from banks, and IPAB to prepare resolution plans. Some challenges remain: Direct bail-in powers are not provided for; insofar as the new regime does not ensure that shareholders and unsecured creditors of a systemic bank resolved under the Open Bank Assistance (OBA) mechanisms fully bear losses prior to the use of deposit insurer, resolution authority, or public funds.

	Legal provisions for P&A transactions have limitations that impede their practical use. IPAB cannot provide information on potential asset and deposit portfolios to prospective third-party acquirers prior to CNBV license revocation and implementation of IPAB receivership, which significantly limits the feasibility of executing a P&A transaction with a third party. A P&A to a bridge bank owned by IPAB seems potentially feasible. The scope of the resolution regime does not extend to Financial Holding Companies (FHC).
Solution	The potential for shareholders and subordinated debt holders of failed systemically important banks to be bailed-out should be reduced and eventually eliminated. Expand the special resolution regime to cover FHCs. Require banks (and FHCs) to issue loss absorbing debt instruments and remove restrictions on use of subordinated debt. Develop policies for capital forbearance, consult IPAB in granting forbearance, and trigger resolution in advance of the mandatory 4.5% CET1. Adopt policies for use of OBA mechanisms (e.g., regarding valuations, level of capitalization, potential liquidity support, desired restructuring, and downsizing). Take steps to increase the practicality of using P&A transactions with third parties.

Key Attribute 6: Funding of firms in resolution	Fondo de Garantías de Instituciones Financieras (Fogafín) – COLOMBIA
Context	In line with international standards, Fogafín developed a methodology to estimate a target range for its reserve fund. Besides providing deposit insurance, Fogafin has resolution powers and is expected to contribute not only when a single bank is insolvent but also in solving a crisis of any dimension. Having a target and aiming to achieve it will diminish the possibility that public funds are required in a resolution.
Challenge or Success Story	Due to high growth of domestic deposits, achieving the estimated target requires a combination of higher premiums, enhanced returns, and possibly external funding mechanisms. Fogafín is exploring all three options, with the expectation that all will be needed for the target range to be achieved in the short to medium term. For external funding mechanisms, Fogafín is exploring the possibility of having a contingency line with an international bank. Most of the challenge lies ahead: besides securing external funding, a revision to the premiums charged and to the investment policies is expected to be conducted over the next two years.

KA8: Crisis Management Groups	Central Bank of Brazil (BCB) -- BRAZIL
Context	Brazil is not home to any G-SIB but is host jurisdiction of a resolution entity of a G-SIB. Also, there are a reasonable number of important D-SIBs in Brazil's financial system, and the country is host supervisor to some globally systemically important banks (G-SIBs).
Challenge or Success Story	The main objective of a member of a Crisis Management Group, whether a home or a host resolution authority, is to achieve an orderly resolution to minimize the impact of the failure of a SIB on financial stability, public funds, and customers. Naturally, if it finds itself, in the future, in the position of the home authority in a CMG, the BCB will act basically as the coordinator of the process of resolution of the financial group as a whole. In the role of host authority, as well as working in collaboration with and interchanging information with the home, according to the agreed resolution strategy of the CMG, the BCB will take the necessary actions conforming to its discretion and autonomy as the local resolution authority. In the case of G-SIFs (also, where it applies, to other types of financial entities such as FMIs) the importance of finding ways to enhance cross-border cooperation cannot be stressed enough. Indeed, regardless of whatever international guidelines result from the efforts to end the TBTF problem, most of the cross-border considerations involving the home and host interests in resolution, including the details concerning the distribution, composition, and trigger of loss-absorbing capacity (LAC) should, ideally, be established in line with the framework developed within a Crisis Management Group (CMG), as part of the resolution strategy reflected in a COAG or other bilateral or multilateral agreement. Naturally, this strategy should periodically be subjected to a review in a RAP or some other form of review process.
Solution	As the resolution authority of a material subsidiary of a G-SIB, as well as member of its Crisis Management Group, the Central Bank of Brazil (BCB) signed, in 2014, a Cross-border Cooperation Agreement (COAG) with Authorities from Spain and the United Kingdom concerning the Santander Group, which encompasses Banco Santander, S.A., its affiliates, and its directly or indirectly held subsidiaries. The agreement sets out how the parties will communicate and coordinate, both during normal periods and in times of crisis, with a view to facilitating the recovery or, as necessary, an orderly resolution of Santander, including its recapitalization, restructuring, sale, liquidation, or wind-down, where appropriate. This was the first COAG signed by the BCB, but similar agreements are expected to be negotiated in the future for other G-SIBS with a relevant presence in Brazil and, perhaps, for some of its D-SIBS that are internationally active. The Brazilian experience with the establishment of a COAG, even though it has not been tested in an actual process of recovery or resolution, suggests that the process automatically forces the participating authorities to focus on a review of their structure, practices, and methodologies, which will inevitably lead to improvements as they seek to make adjustments to the requirements of the respective agreements applicable to home and host supervisors. Participation in the COAG should, ultimately, result in better cooperation and trust among home and host authorities.

KA 11 – Recovery and Resolution Planning

Under the FDI Act, the FDIC is the resolution authority for insured depository institutions. Under the Dodd-Frank Act (DFA), the FDIC is the resolution authority for bank holding companies, insurance company holding companies, and other financial companies and certain of their subsidiaries whose resolution would otherwise have serious adverse effects on financial stability in the United States.

The DFA requires that bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve periodically submit resolution plans to the Federal Reserve and the FDIC. Each plan, commonly known as a living will, must describe the company's strategy for rapid and orderly resolution in the event of material financial distress or failure of the company, and include both public and confidential sections. In addition, in 2012, the FDIC approved a rule requiring insured depository institutions with $50 billion or more in total assets to submit periodically a contingent plan for its resolution in the event of its failure.

The FDIC has been developing group-wide resolution strategies and plans for U.S. global systemically important financial institutions (G-SIFIs) since the enactment of the DFA. To fulfill its mandate under the DFA, the FDIC has been developing what has become known as the Single Point of Entry strategy and has coordinated with domestic and international supervisory and resolution authorities to develop and maintain firm-specific plans for resolving G-SIFIs under Title II of the Dodd-Frank Act.

Under U.S. supervisory guidance, globally systemically important bank (G-SIB) recovery plans include options designed to remedy financial weakness and restore market confidence in the firm without extraordinary governmental support. The recovery plan includes options to conserve or restore liquidity and capital. Overall, the options prepare the firm to respond to a broad range of internal or external stresses of different levels of severity. The firm’s recovery plan is expected to identify recovery triggers and escalation procedures, and the recovery planning process is expected to lead to the timely implementation of options or other remediating actions in a stress situation. U.S. G-SIBs submit recovery plans and update those plans at least annually.

The U.S. authorities place responsibility for the recovery planning process on the firm’s senior management. The board of directors of the firm is responsible for oversight of the firm’s recovery planning process. The U.S. authorities require firms to ensure the continuation in resolution of services that are necessary for the continuity of critical operations and shared services. For example, G-SIBs should have robust arrangements in place for the continued provision of shared or outsourced services needed to maintain critical operations.

The U.S. authorities have and will continue to use their supervisory powers to identify deficiencies in firms’ recovery plans and require firms to address those deficiencies. In addition to existing supervisory authorities, the resolution planning provisions of the DFA provide the Federal Reserve Board and the FDIC with the authority to impose additional requirements on firms that present resolution plans that fail to correct such deficiencies.

Note: This is a summary of the U.S. self-assessment prepared for the 2015 U.S. Financial Sector Assessment Program. For the complete self-assessment, please see the United States Self-Assessment of Compliance with the Key Attributes of Effective Resolution Regimes for Financial Institutions, https://www.treasury.gov/resource-center/international/Documents/2015%20FSAP%20KA%20Self%20Assessment%20Response%20(FINAL).pdf.

KA 12 Access to information and information sharing:	Central Bank of Uruguay (BCU), Superintendency of Financial Services (SSF); Bank Savings Protection Corporation (COPAB)- URUGUAY
Context	Uruguay has a Memorandum of Understanding (MOU) between the Corporación de Protección del Ahorro Bancario, Bank Savings Protection Corporation (COPAB), Superintendencia de Servicios Financieros, Superintendence of Financial Services (SSF), and Banco Central del Uruguay, Central Bank of Uruguay (BCU), namely the authorities responsible for the depositor protection scheme and bank resolution, the bank supervisory authority, and the central bank[68], respectively. The MOU establishes the foundations for information sharing between the parties, in which the involvement of the COPAB intensifies as the probability of an entity crisis becomes higher. In all respects, the parties seek to permit appropriate disclosure and not duplicate efforts that could hinder their activities. It is expected that the COPAB and the SSF share information with the objective, among others, of controlling the integrity and veracity of information requested to the institutions by the COPAB and the assessment of banks' risks. In particular, in normal times, COPAP has access to information regularly from the SSF IT systems. In fact, through the SSF systems, COPAB accesses mostly the same information the supervisor receives from the entities and data processed by the SSF[69]. More specifically, COPAB can access the following: (a) Detailed balance sheet information and all information processed automatically from all member institutions through the SSF software, (b) SSF key indicators system, (c) Indicators of compliance with prudential regulation, (d) detailed interest rate data, (e) data base comprising information on the composition of member banks' economic groups, (f) Bureau of Credits (public and nonpublic data), (g) Bureau of Financial Instruments, and (h) Detailed information regarding branches. Other information that COPAB receives from the SSF is (a) copy of the "letter of recommendations" given to the institutions as a consequence of a fully assessment performed that includes the risk matrix and the category the SSF assigned to the institution (see paragraph 6), (b) any penalty process initiated to any member of the institutions' senior management, (c) requirements given by SSF to the institutions regarding organizational restructuring or replacement of senior management, and (d) requirements made by the SSF related to changes of the structure and composition of its capital. Since the COPAB is entitled by law to give opinion in relation to mergers and acquisitions and the issuance and transfer of an entity's shares, it receives sufficient information on this regard. The same applies when the COPAB has to give its opinion regarding any capital adequacy plan presented by an entity that doesn't comply with the minimum capital and in the case of new licenses. The SSF assessment methodology is known by its Spanish acronym CERT which refers to Corporate Governance (C), Economic and Financial Condition (E), Risks (R) and IT (T). The entities receive a classification for every assessed item and an overall classification, among five different categories. These categories combined with other elements determine four different main strategies the Supervisor follows to perform its duties. The MOU seeks to increase the information sharing between the COPAB and the SSF, as the strategy of the entity worsens. The information-sharing scheme is based on three levels of coordination and cooperation, as follows: First level: is the least level of weaknesses. COPAB has access to the information as stated in paragraphs 3 to 5.

[68] The SSF is part of the Central Bank and has technical and operational autonomy.

[69] There is some information subject to secrecy by law that is not received by the COPAB such as Suspicious Activity Reports related to AML/FCT.

	Second level: when an institution satisfies predetermined criteria, the SSF must communicate the situation in writing to COPAB immediately. A working group (WG) composed of people from both entities, is created in order to broaden the documentation and information available to share (e.g. SSF internal reports or information received from the institution when performing on-site assessments). The WG determines the frequency of the meetings that will depend on each specific case. Third level: once a member institution presents strong deficiencies, and the solvency of the institution has deteriorated to a point of no compliance with the regulatory minimums or it is foreseen that it will not comply with them in a short period of time. In this case, the SSF must communicate such change to COPAB immediately, and the WG continues its activities (or is designated, in case one institution reaches this level from the first two strategy categories). If the SSF or COPAB believe it is highly probably that the institution could enter into a resolution process, the WG will start planning such process based on the corresponding manuals. COPAB will establish what it considers the critical areas for the process (e.g., IT), and the SSF and the BCU will try to collaborate with qualified personnel to assist the COPAB during the early days of an intervention (estimated in around three days).
Challenge or Success Story	The three levels of coordination and cooperation explained above have been in effect since December 2012, although the information sharing stated in paragraphs 3 to 5 has been in effect since September 2009, a few months after the creation of COPAB. The Uruguayan financial system is small and not complex, and the designed information-sharing scheme seems to be adequate and consistent. Uruguay is basically a host supervisor; almost all private banks are subsidiaries or branches of international active bank groups. Therefore, the need to promote a cross-border sharing cooperation agreement for resolution purposes is not a top priority.[70] Information sharing between the COPAB and the SSF works correctly, but coordination and cooperation between them as described in the third level was not needed, because until now no institution reached it. In addition, the framework is sufficiently flexible to accommodate changing circumstances. Although Uruguayan SIFIs are not required to have in place recovery and resolution plans, some entities could be required to have them on an individual and group basis or to meet other specific requirements.
Solution	A COAG or MOU, signed by the authorities responsible for the depositor protection scheme and bank resolution, the banks supervisory authority, and the central bank that sets out standards on information sharing can help those authorities fulfill their respective duties. Equally important is to implement mechanisms to ensure the effective sharing of the information in a timely manner. Lessons learned from the 2002 financial crisis[71], led Uruguay to take decisive measures to prevent costly solutions. One of the reasons the information-sharing agreement is effective is that all parties still recall the consequences of that crisis. The challenge is to establish COAGs or MOUs, even with low risk profile institutions, and to continue improving the quality of the information shared, in order to be prepared when it comes time to face larger, even systemic institutions.

[70] SSF has signed MOUs with all relevant Supervisory Authorities with regard to the sharing of supervision information in order to comply with their respective duties and to foster the safe and sound operations of the institutions with cross border 0.5" operations in their respective countries. It also participates in the Supervisory Colleges.

[71] In 2002 Uruguay confronted the deepest banking and financial crisis of its history that led to the closing of some major banks. The crisis meant a collapse of a virtually implicit deposit guarantee that worked until then.

ANNEX B: SURVEY 1

Annex B-1: Current Structure

Jurisdiction	Deposit Insurance Scheme	Nature of Deposit Insurance Entity	Function of Deposit Insurance	Framework	Legal Mandate	Origin of Financial Resources	Contributions based on:
Bolivia	Yes	Public Institution	As the object of a standalone entity	Legislation	Paybox	Banking Sector	A fixed rate or percentage
Brazil	Yes	Private Institution	As the object of a standalone entity	Legislation	Paybox +	Banking Sector	A fixed rate or percentage
ECCB	No						
Chile	No						
Colombia	Yes	Private Institution	As the object of a standalone entity	Legislation	Paybox +	Mixed Banking/Government Sector	A risk adjusted rate or percentage
Costa Rica	No						
Dominican Republic	Yes	Public Institution	As a unit in the central bank	Legislation	Loss minimizer	Banking Sector	A fixed rate or percentage
Ecuador	Yes	Public Institution	As the object of a standalone entity	Legislation	Loss minimizer	Banking Sector	A risk adjusted rate or percentage
El Salvador	Yes	Public Institution	As the object of a standalone entity	Legislation	Paybox +	Banking Sector	Combination of fixed/risk adjusted rate or percentage
Guatemala	Yes	Public Institution	As a unit in the central bank	Legislation	Paybox +	Banking Sector	A risk adjusted rate or percentage
Haiti	No						
Honduras	Yes	Public Institution	As the object of a standalone entity	Legislation	Paybox +	Mixed Banking/Government Sector	Total deposit in the banking system
Mexico	Yes	Public Institution	As the object of a standalone entity	Legislation	Loss minimizer	Banking Sector	A fixed rate or percentage
Nicaragua	Yes	Public Institution	As the object of a standalone entity	Legislation	Loss minimizer	Banking Sector	A risk adjusted rate or percentage
Panama	No						
Paraguay	Yes	Public Institution	As a unit in the central bank	Legislation	Loss minimizer	Mixed Banking/Government Sector	Total deposit in the banking system
Peru	Yes	Private Institution	As the object of a standalone entity	Legislation	Paybox +	Banking Sector	Total deposit in the banking system
Spain	Yes	Public Institution	As the object of a standalone entity	Legislation	Paybox +	Banking Sector	Total deposit in the banking system
Trinidad and Tobago	Yes	Public Institution	As a unit with a different organization	Legislation	Paybox +	Mixed Banking/Government Sector	A fixed rate or percentage
United States	Yes	Public Institution	As the object of a standalone entity	Legislation	Risk Minimizer	Banking Sector	A risk adjusted rate or percentage
Uruguay	Yes	Public Institution	As the object of a standalone entity	Legislation	Loss minimizer	Banking Sector	A risk adjusted rate or percentage

Source: Deposit Insurance Survey Questions 2, 3, 4, 5, 6, 7, and 8.

Annex B-2: Available Resources in Resolution Framework

Jurisdiction	MOU between supervisor -RA-DI	Policies for evaluating assets value	Least cost policy	Guidelines for formalizing seizure of a FI	Guide for closing	Paying agent determination process	Bridge Bank	Open bank assistance	Purchase and assumption agreements	Policies for qualifying potential acquirers	Bidder Confidentiality agreements	Forms for recording inventories	Notice of Seizure procedure	Social communicator during resolution	Strategic resolution plan	Reporting guidelines during resolution	Bail-in	Temporary manager
Bolivia		X		X	X	X	X		X				X		X			
Brazil	X	X		X	X	X		X	X	X	X	X	X	X		X		X
ECCB				X			X						X			X		X
Chile				X												X	X	X
Colombia	X	X					X	X	X				X	X	X	X		X
Costa Rica																		
Dominican Republic			X								X		X					
Ecuador	X	X		X	X	X			X	X	X	X	X	X	X	X	X	X
El Salvador		X	X	X	X	X			X				X					
Guatemala		X	X	X	X	X			X	X		X	X	X	X	X		
Haiti		X		X					X	X	X		X		X		X	X
Honduras	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Mexico	X	X	X	X	X	X	X	X	X		X		X	X	X	X		X
Nicaragua	X	X		X	X	X	X	X	X	X	X		X	X	X			X
Panama		X		X	X				X			X			X	X		X
Paraguay	X	X	X	X	X				X	X			X					X
Peru		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Spain		X	X	X			X	X	X	X	X	X	X		X	X	X	X
Trinidad & Tobago		X	X	X	X	X												
United States	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X
Uruguay	X	X	X	X	X	X		X	X				X	X				X

Source: Deposit Insurance Survey Question 34.

Annex B-3: Relationship with Other Safety Nets

Jurisdiction	Formal financial safety-net platform or arrangement	Early warning system findings shared outside the supervisor	Exam reports shared with deposit insurer	Cooperation/Sharing of information with safety-net participants	Cross-border mechanisms in place	Framework to deal with extraordinary events
Bolivia	No	No	No	Discretionary	For Supervision & Resolution	No
Brazil	No	No	No	Discretionary	For Supervision & Resolution	No
ECCB	No Response	N/A	N/A	No Response	No Response	No Response
Chile	No	Yes, with all members of the safety net	N/A	Mandatory	For Supervision	No
Colombia	Yes	Yes, with all members of the safety net	No Response	Mandatory	For Supervision	Yes
Costa Rica	No Response	N/A	N/A	No Response	No Response	For Supervision
Dominican Republic	No	No	No	Discretionary	For Supervision	Yes
Ecuador	Yes	Yes, with the deposit insurer	Yes	Mandatory	For Supervision	No
El Salvador	Yes	Yes, with all members of the safety net	No	Mandatory	For Supervision	No
Guatemala	No	No	No	Discretionary	For Supervision	No
Haiti	No	N/A	N/A	Discretionary	No	No
Honduras	Yes	Yes, with all members of the safety net	Yes	No Response	For Supervision	Yes
Mexico	Yes	Yes, with all members of the safety net	No	Mandatory	For Supervision & Resolution	Yes
Nicaragua	No	Yes, with the deposit insurer	Yes	Mandatory	For Supervision	Yes
Panama	No	No	No	No Response	For Supervision	Yes
Paraguay	Yes	Yes, with the deposit insurer	Yes	Discretionary	For Supervision	Yes
Peru	No	No	No	Discretionary	For Supervision	Yes
Spain	No	No Response	No	Mandatory	For Supervision & Resolution	No
Trinidad and Tobago	Yes	No Response	No	Mandatory	For Supervision	Yes
United States	Yes	Yes, with all members of the safety net	Yes	Discretionary	For Supervision & Resolution	Yes
Uruguay	Yes	Yes, with all members of the safety net	No	Mandatory	For Supervision	No

Source: Deposit Insurance Survey Questions 24, 36, 37, 38, 39, and 40.

ANNEX C: SURVEY 2

Annex C-1: Functions of the Resolution Authority[72]

The Resolution Authority can be comosed of different administrative representatives:

CB=Central Bank *DI= Deposit Insurer* *FSC= Financial Stability Committee*
PS= Prudential Supervisor *MB= Monetary Board* *RAd= Resolution Administrator*

Jurisdiction	Determines that the conditions for bank resolution are met	Triggers resolution or proposes to place a bank in resolution	Decides resolution action or actions to take place	Implements resolution
Belize	MOF	CB	CB	CB
Bolivia	PS	PS	PS	PS
Brazil	PS	CB	CB	CB
Chile	PS	CB	CB	PS
Cayman Islands	PS	PS	PS	PS
Colombia	PS	PS, FSC	PS	CB, PS, DI
Dominican Republic	CB	PS	MB	PS
Ecuador	PS	PS	PS	PS
El Salvador	PS	PS	PS, DI	PS
Guatemala	PS	PS	MB	PS
Haiti	CB, PS	CB, PS	CB, PS	CB, PS
Honduras	PS	PS	PS	PS
Mexico	PS	PS, DI	DI	DI
Nicaragua	PS	PS	DI	DI
Paraguay	CB	CB	CB	PS
Peru	PS	PS	PS	PS
Spain	PS	PS	RAd	RAd
St Kitts and Nevis	CB	CB	CB	CB
Trinidad and Tobago	CB	CB	CB	CB, DI
Uruguay	PS	PS	DI	DI
U.S.	PS	PS	DI	DI

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Question 12.

[72] Except for Bolivia and Haiti, responding jurisdictions have a bank resolution regime that is distinct from the ordinary insolvency regime.

Annex C-2: Scope of Resolution Regime

Indicates types of operations under the scope of the resolution regime.

Jurisdiction	State-owned Bank	Commercial Bank	Microfinance Institution	Cooperatives	Credit Unions	Financial holding companies	Supervised bank affiliated companies	Other operations under the scope of the resolution regime
Belize		X	X		X	X		
Bolivia		X	X	X				Only ASFI has the authority to dissolve and liquidate financial entities.
Brazil		X	X	X	X	X	X	Development banks, investment banks, security brokers, exchange brokers, leasing companies, real estate credit companies, savings and loan associations.
Cayman Islands		X			X			All banks licensed by CIMA.
Chile		X		X				
Colombia	X	X	X	X				All entities supervised by the financial supervisory authority, SFC.
Dominican Republic	X	X						Savings and loan associations and banks, and credit corporations.
Ecuador	X	X		X				Microfinance would be a business line in a bank, cooperative or other financial entity.
El Salvador	X	X						Cooperative banks and savings and loan associations.
Guatemala		X						Private financial companies.
Haiti	X	X						
Honduras	X	X	X	X				Financial companies
Mexico		X				X		
Nicaragua		X						
Paraguay		X						Financial companies
Peru		X	X					Financial companies
Spain	X	X	X	X		X	X	Investment services companies
St Kitts and Nevis		X						Licensed credit institutions
Trinidad and Tobago		X					X	Licensed non-bank financial institutions
Uruguay	X	X		X			X	Cooperatives and their affiliated companies
U.S.		X				X	X	All entities in a financial company

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Questions 5, 13, and 14.

Annex C-3: Planned Reforms

Jurisdiction	Scope of Reforms	Resolution Powers	Resolution Planning
Belize	No planned reforms	No planned reforms	No planned reforms
Bolivia	No planned reforms	No planned reforms	Issues related to the treatment of financial groups.
Brazil	A new resolution framework to expand the BCB authority to resolve Financial Market Infrastructures (FMIs) and introduce new powers, such as bail-in and temporary stay over early termination rights.	Draft bill aims to follow the principles of and comply with the Key Attributes. The bill has been extensively discussed with the Comissão de Valores Mobiliários – CVM (the Securities Exchange Commission) and with Superintendência de Seguros Privados – Susep (the insurance regulator), all of which will take part as "resolution authorities" for firms under their supervision (banks, financial market infrastructures and insurance firms, respectively). The bill seeks to: (i) ensure continuity of critical financial services; (ii) avoid use of taxpayers' funds; (iii) enhance cooperation with foreign resolution authorities; and (iv) allow for the evaluation of the impact, in other jurisdictions, of the measures taken when resolving a local institution. Existing tools – reorganization, split into good bank and bad bank, liquidation – are enhanced, and new tools (bridge bank and bail-in) are introduced. The bill makes resolution more effective by (i) requiring recovery plans; (ii) providing powers to require changes to improve resolvability; (iii) broadening criteria for entry into resolution; and (iv) introducing a short moratorium on the bank's debts and a temporary stay on early termination rights, among others. Bail-in (of shareholders, subordinated debt, any debt with conversion clauses, and amounts owed to management personnel) will be a pre-condition for injection of public funds in the institution. Bail-in can be extended to all unsecured creditors, if necessary (at the resolution authority's criteria). The bill strengthens the role of deposit insurance funds allowing information sharing for purposes of resolution, and for evaluating financial support for failing firms (which may be recovered ex-post from the financial system at large). Finally, the bill allows for cooperation and information sharing with foreign resolution authorities in connection with the resolution of multinational firms.	Draft bill requires banks to prepare recovery plans. The BCB is currently planning to start developing resolution plans and to require banks to prepare recovery plans through regulation (i.e., independently of the approval of the bill), in line with the KAs.
Cayman Islands	No planned reforms	No planned reforms	No planned reforms
Chile	Planned reforms	No response	No planned reforms
Colombia	Evaluating relevant modifications to legal framework.	No planned reforms	There is no current commitment to a legal reform. However, a self-assessment of compliance with the Key Attributes identified opportunities for improvements in the ex-ante planning of the resolution and its coordination with other entities.
Dominican Republic	No planned reforms	No planned reforms	No planned reforms

Jurisdiction	Scope of Reforms	Resolution Powers	Resolution Planning
Ecuador	No planned reforms	No planned reforms	No planned reforms
El Salvador	Considering legal reforms to: (i) widen resolution toolkit, (ii) clarify roles of safety net participants in the resolutions process, and (iii) irrevocability of resolution authority actions and decisions.	Considering reforms to (i) introduce new resolution tools, i.e. bridge bank; (ii) include provisions regarding the resolution of systemically important entities; (iii) enhance DI capabilities.	Considering reform to allow the supervisory authority to require RRP, and the mechanisms to have RRP plans in a consolidated manner.
Guatemala	Introduce a framework for events of systemic importance.	Introduce a framework for events of systemic importance.	No planned reforms
Haiti	No planned reforms	No Response	No Response
Honduras	No planned reforms	No planned reforms	No planned reforms
Mexico	No planned reforms	There are no revisions planned for the time being as the financial sector legal framework was recently amended in January 2014, which strengthened the overall banking resolution regime, and increased the compliance the FSB Key Attributes. Consideration will be given to statutory bail-in powers once the TLAC proposal is finalized by the FSB. However, based on the implementation of the Basel III capital recommendations, commercial banks are allowed to issue subordinated debt that is either convertible into equity or which can be written-down (i.e., contractual bail-in).	No planned reforms
Nicaragua	No planned reforms	No planned reforms.	No planned reforms
Paraguay	A draft bill is under discussion aiming to comply with international standards for DIS and resolutions.	A draft bill is under discussion aiming to comply with international standards for DIS and resolutions.	A draft bill is under discussion aiming to comply with international standards for DIS and resolutions.
Spain	No planned reforms	No planned reforms	No planned reforms
St Kitts and Nevis	Reforms would be in the form of legislation and regulations	No planned reforms	No planned reforms
Trinidad and Tobago	Considering introduction of preventative resolution and preparatory action.	No planned reforms	The Central Bank is currently developing a national crisis management plan.
Uruguay	Considering an update to the resolution framework, which would aim at harmonization with other related laws.	No planned reforms	No planned reforms
U.S.	No planned reforms	No planned reforms	No planned reforms

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Question 22, 81, 100

Annex C-4: Conditions for Use of Resolution Powers

Jurisdiction	Conditions for Entry into Resolution or Use of Resolution Powers
Belize	A bank must first have been under enhanced monitoring where directives were issued and the bank remained non-compliant and is jeopardizing the interest of depositors and the wider financial system and economy at large.
Bolivia	Causes of intervention include any of the following or a combination of them: a) Suspension of payments for non-compliance in the payment of one or more liquid and demandable obligations; b) Reduction of the primary capital equivalent to fifty percent (50%) or more, within a period of one (1) year; c) Failure to comply with the level of capital adequacy coefficient established in the law by more than fifty percent (50%); d) Failure to submit or rejection of the regularization or recovery plan, or the partial or total non-compliance of the plan when reaching its deadline; and e) If, during the execution of the regularization plan, the financial entity carries out transactions that make the plan unviable in an evident manner. The supervisory authority, ASFI, will establish the criteria that qualifies as non-compliance with the regularization plan.
Brazil	Situations of severe economic and/or financial distress (insolvency or its imminence), and severe violation of Brazilian banking laws. The resolution is triggered by the BCB, and its decision is based on condition reports by the supervisory team.
Cayman Islands	No response
Chile	
Colombia	Without prejudice of the measures that financial institutions must adopt in compliance with the provisions issued by the National Government, the SFC may impose resolution measures including taking over its assets, holdings and businesses.
Dominican Republic	Financial intermediation entities will be resolved based on the following causes: a) suspension of payments or failure to honor liquid, past due and enforceable obligations, including those enforceable through the Clearing House; b) failure to comply with the current solvency coefficient with an insufficiency greater than fifty percent (50%); c) non-presentation or rejection of the recovery plan by the Superintendence of Banks; d) conducting operations, during the execution of the recovery plan, that make it unfeasible; e) when upon completion of recovery plan, its causes have not been corrected; and f) if license to operate has been revoked.
Ecuador	Grounds for compulsory resolution include: 1. Revocation of license to operate; 2. Substantial breach of a corrective action plan; 3. Failure to cover technical capital deficiencies in accordance with Article 192; 4. Failure to raise the subscribed and paid-in capital to the minimum levels; 5. Losses of 50% or more of the capital stock or the subscribed paid-in capital, which cannot be covered by the entity's reserves; 6. Failure to pay its obligations, especially with depositors, in the clearing house, or failure to refund the domestic investment transactions or rediscount window, when the liquidity fund fails to cover such transactions; 7. When any of the solvency indicators shows a level below fifty percent (50%) of the minimum required level; 8. When accumulating a two-month default in the payment of contributions to the Deposit Insurance and/or the Liquidity Fund; 9. Upon completing process of exclusion and transfer of assets and liabilities referred to in article 296; and, 10. When any other cause determined in this Code is present. In turn, Art. 192 of the COMF states the causes of forced liquidation to be the following: 1. A cause of forced liquidation for a financial institution is present when the ratio of technical equity to assets and contingents weighted by risk is less than 9% for a period of more than two hundred and seventy (270) days, additional to the initial ninety (90) days specified to resolve the deficiencies within the intensive monitoring program. 2. A cause of forced liquidation is present when the entity fails to constitute the guarantee or does not maintain it in force, for as long as the asset deficiency exists. 3. It is a cause of forced liquidation of a financial institution to maintain equity values below 50% of the levels established as patrimonial requirements.
El Salvador	I. That the ratio between the required equity fund and the sum of the weighted assets is less than ten percent; II. That the ratio between the required equity fund and the sum of the weighted assets presents a deficiency of more than two percentage points; III. That the ratio of assets to total liabilities is less than six percent; IV. When the equity fund is less than the paid-in capital indicated in article 36 of this Law. Other conditions defined in Article 76 of the Banks Act.

Jurisdiction	Conditions for Entry into Resolution or Use of Resolution Powers
Guatemala	The Banking and Financial Groups Law establishes that the Monetary Board must suspend the operations of a bank when it has suspended the payment of its obligations or incurred in an equity deficiency greater than 50% of the required capital. It also establishes that the Monetary Board may decide to suspend operations when a bank fails to present a regularization plan or when the supervisor gives a definite rejection to the regularization plan, or when the bank fails to comply with such plan; or, for other reasons duly substantiated in the supervisor's report. This scheme is of general application to banks.
Haiti	No Response
Honduras	In case of one or several of the following causes are: 1) The institution's capital adequacy ratio is less than sixty percent (60%) of the minimum level required by the Commission in accordance with the provisions established in the Financial System Law; 2) Failure to present the Recovery Plan in a timely manner, not complying with the Plan, the lack of correction of the identified flaws or deficiencies; 3) When the parent company of a branch of an institution of the foreign financial system has an equity deficiency, and does not subscribe equity within thirty (30) calendar days; 4) When the Directors or Counselors, the Chief Executive Officer or other officials are removed by the Commission, but continue to participate in the activities of the institution; 5) When the capital of an institution in the financial system is lower than the legally required minimum and when the legal deadline for its replacement has passed, but the capital has not been subscribed; 6) When the institution loses the capacity to face its liquid and past due obligations with the public; 7) When, in order to conceal its true equity and financial situation, the institution does not comply with the accounting and registration procedures for operations required by the Commission; 8) When it proves, at any time, that false information was provided in relevant aspects that determined the granting of the authorization; 9) When the Recovery Plan is not effective or cannot be implemented.
Mexico	1) The first triggering event is when the commercial bank´s CAR falls below the minimum required by law. Currently, the minimum CAR required is 8%. However, when a bank´s CAR is between 8% and 4.5%, the bank may continue to operate if it submits itself to a Conditional Operating Regime (COR), subject to CNBV approving the bank´s capital restoration plan (The bank must provide a capital restoration plan for approval by the CNBV and comply with it within one year. In addition, depending on its CAR, additional corrective actions (prudential measures) may be imposed) and voluntarily conveying to an irrevocable trust at least 75% of its equity shares (The COR ends if the bank takes remedial action and, as a consequence, increases and maintains for three consecutive months a CAR above 8%). If a bank´s CAR falls below 4.5%, the bank will automatically enter a bank resolution process. If a bank does not qualify (because of its capital restoration plan being rejected or failing to comply with its plan) or does not apply to the COR, or if it becomes illiquid and the CEB determines that its failure may entail a systemic risk, the CNBV must order the intervention of the bank; However, if, in exercising its functions of inspection and oversight, the CNBV detects irregular conduct that could compromise the interests of the bank's depositors and creditors it may declare the intervention. 2) The second triggering event occurs when a commercial bank, whose capital is below 8% and submitted itself to the COR, breaches the prompt corrective actions established in the LIC; and 3) The third triggering event is when a commercial bank experiences serious liquidity problems without its CAR falling below 8%. A commercial bank is deemed illiquid and its license may be revoked if it fails to pay (These provisions are not applicable in case the commercial bank proves to the authority that it has enough liquid assets to face its obligations or when the relevant liabilities are subject to judicial dispute): - 20 million UDIS (approx. USD 7 million) or more of interbank liabilities (including obligations with BANXICO); or liabilities due to issuance of securities; or - 2 million UDIS (approx. USD 700 000) or more, for more than 2 business days within any clearing system; or at the bank´s branches. The Mexican legal framework does not foresee a special resolution regime applicable to holding financial companies. Foreign financial firms operate in Mexico through subsidiaries, not through branches.
Nicaragua	The Superintendent of banks shall instruct entry into resolution under the following conditions: 1. A bank is in suspension of payments failing to pay its liquid, past due and payable obligations or when there are indications of an imminent state of suspension of payments. 2. The entity does not submit a Recovery Plan. 3. The entity fails to comply with the Recovery Plan in accordance with the corresponding regulations; 4. When maintaining a regulatory capital level below 50% of what is required by regulation; 5. When during the execution of a Recovery Plan, serious situations are revealed that evidence the impossibility of achieving the recovery of the entity; 6. If the entity persists in violating the provisions of this Law, its own deed of incorporation or its own bylaws or rules, as well as regulations established by the Central Bank's Board of Directors or the Directors Council of the Superintendence, as well as instructions and resolutions of the

Jurisdiction	Conditions for Entry into Resolution or Use of Resolution Powers
	Superintendent, or if the entity persists in managing its business in a manner not authorized by law; and 7. If the entity incurs in a reserve deficit for more than one quarter. The instruction for entry into resolution must be notified to FOGADE, who will at as receiver and carry out the resolution strategy.
Paraguay	Upon satisfaction of criteria for entry into resolution (having suspended the payment of its obligations, insufficiency in the solvency ratio below 50%, rejection of the regularization or recovery plan, revocation of the authorization), the Board of Directors of the Central Bank of Paraguay will order commencement of the Resolution Procedure, within 24 hours of being aware of such circumstance.
Peru	The conditions for initiating resolution are the same for commercial banks, microfinance institutions and financial institutions. There are no differences made when the resolution refers to the branch of a foreign financial institution. The conditions are established in Articles 95, 104, and 114 of the General Law, and these are mainly related to non-compliance with regulatory capital, breach of reserve requirements, breach of limits, among others.
Spain	https://www.boe.es/buscar/act.php?id=BOE-A-2015-6789 Ley 11/2015, art.19
St Kitts and Nevis	1. Insolvency 2.Corporate Governance Concerns; 3. Risk to Depositor Funds; 4.Liquidity; 5. Risk to the Payment System; 6. Risk to Financial Stability of the country and region
Trinidad and Tobago	Section 44D91) &(2) of the Central Bank Act and Sections 63-65 of the Financial Institutions Act, 2008 set out the conditions for entry into resolution.
Uruguay	When a financial intermediation institution's liquidity, solvency, or management capacity is affected irreversibly and cannot be remedied through a plan of recovery, reorganization, or reconstitution.
U.S.	In the U.S., the FDIC has authority to use resolution powers to resolve non-viable systemically important financial institutions *and* other insured depository institutions (IDI) that are not systemically important. ***Resolution of an IDI:*** With respect to the resolution of an IDI under the Federal Deposit Insurance Act, the legal framework provides clear criteria that specify when the FDIC can be appointed receiver for an IDI. Triggering events are many, and include (but not limited to): • assets are less than the institution's obligations; • substantial dissipation of assets due to any violation of any statute or regulation, or any unsafe or unsound practice; • an unsafe or unsound condition to transact business; • any willful violation of a cease-and-desist order; • any concealment of the institution's books, papers, records, or assets; • any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, weaken the institution's condition or otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund; • the institution, by resolution of its board of directors or its shareholders or members, consents to the appointment; • the institution is undercapitalized under the prompt corrective action scheme of 12 U.S.C. § 1831o and (i) has no reasonable prospect of becoming adequately capitalized; (ii) fails to become adequately capitalized when required to do so under section 1831o; (iii) fails to submit a capital restoration plan acceptable to its Federal supervisor within the time prescribed under section 1831o; or (iv) materially fails to implement a capital restoration plan submitted and accepted under section 1831o; • the institution is critically undercapitalized or otherwise has substantially insufficient capital; and • the institution has been found guilty of a money laundering offense under applicable U.S. law.[73] ***Resolution of Foreign Branches:*** Branches of foreign banks operating in the United States must have either a State or Federal license. Accordingly, a branch of a foreign bank is resolved by its chartering authority.

[73] FDI Act, 12 U.S.C. § 1821(c)(5).

Jurisdiction	Conditions for Entry into Resolution or Use of Resolution Powers
	Resolution of a systemically important financial company: In order for the FDIC to be appointed receiver under Title II of the Dodd-Frank Act[74] for a failed or failing systemically important financial company, a recommendation, a determination and, in certain circumstances, an expedited judicial review process must transpire. Upon a 2/3 vote by both the Federal Reserve Board and the Board of Directors of the FDIC (or a 2/3 vote by the Federal Reserve Board and the SEC in the case of a broker or dealer or a financial company in which the largest domestic subsidiary is a broker or dealer, or a 2/3 vote by the Federal Reserve Board and the approval of the Director of FIO in the case of an insurance company or a financial company in which the largest domestic subsidiary is an insurance company), a written recommendation is delivered to the Treasury Secretary.[75] Upon receipt of such recommendations, the Secretary, in consultation with the President of the United States, may then make a systemic risk determination based upon the following criteria: • the financial company is in default or in danger of default[76]; • the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States; • no viable private sector alternative is available to prevent the default of the financial company; • any effect on creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under Title II is appropriate, given the impact that such actions would have on financial stability in the United States; • any exercise of the orderly liquidation authority would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the exercise of such authority in mitigating (i) potential adverse effects on the financial system, (ii) the cost to the Treasury, and (iii) the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company; • a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and • the company satisfies the definition of a financial company.[77] Following such a determination, and subject to limited judicial review,[78] the FDIC is appointed receiver and can exercise its Title II resolution authorities.

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Question 25.

[74] 12 U.S.C. § 5383.
[75] Requirements for the written recommendation contained in: Section 203(a)(2) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(2).
[76] Criteria for a financial company being considered in default or in danger of default contained in: Section 203(a)(4) of the Dodd-Frank Act, 12 U.S.C. § 5383(a)(4).
[77] Section 203(b) of the Dodd-Frank Act, 12 U.S.C. § 5383(b).
[78] Section 202(a) of the Dodd-Frank Act, 12 U.S.C. § 5382(a).

Annex C-5: Resolution Trigger Points

Jurisdiction	A financial institution subject to resolution requirements is in default or in danger of default	No viable private sector alternative exists to prevent the default	The financial institution's failure and its resolution (through traditional bankruptcy or relevant insolvency process) would have a serious adverse effect on financial stability	Other (specify)
Belize	X		X	
Bolivia	X		X	
Brazil	X	X	X	
Cayman Islands	X	X	X	
Chile	X	X	X	
Colombia	X	X	X	
Dominican Republic	X		X	
Ecuador	X			When the entity is considered unsustainable because it presents one of the grounds for a forced liquidation, previously detailed.
El Salvador	X	X	X	Illegal practices, poor risk management, solvency or liquidity problems in subsidiaries, solvency problems of relevant shareholders.
Guatemala	X		X	
Haiti	No Response	No Response	No Response	No Response
Honduras	X	X	X	
Mexico	X		X	
Nicaragua	X		X	
Paraguay	X	X		
Peru	X	X	X	
Spain	X	X	X	
St Kitts and Nevis			X	
Trinidad and Tobago	X	X	X	The distressed member could have surpassed a specific set of criteria outlined in an approved and agreed Exit Policy and before the bank is insolvent.
Uruguay				Resolution is triggered when CAR falls under 50% of total required.
U.S.	X	X	X	

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Question 27.

Annex C-6: Bank Resolution Powers

Jurisdiction	Control and Operate Bank	Remove/Replace Management	Require continued services of group companies	Transfer ownership	Bridge bank	Establish asset management vehicle	Write down uninsured creditor claims	Impose temporary stay
Belize	X	X		X	X	X		
Bolivia	X	X		X		X		
Brazil	X	X		X				
Cayman Islands		X						
Chile	X	X		X				
Colombia	X	X		X	X	X	X	
Dominican Republic	X	X		X	X	X	X	X
Ecuador	X	X				X		
El Salvador		X	X			X		
Guatemala		X				X		
Haiti	X	X		X			X	X
Honduras	X	X	X	X	X	X	X	X
Mexico	X	X	X	X	X	X		X
Nicaragua	X	X		X	X		X	X
Paraguay	X	X					X	
Peru	X	X		X	X			X
Spain	X	X	X	X	X	X	X	X
St Kitts and Nevis	X	X		X	X			
Trinidad and Tobago	X	X		X	X	X		
Uruguay	X	X		X		X		
U.S.	X	X	X	X	X	X	X	X

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Questions 29, 30, 37, 43, 47, 49, 56, and 65.

Annex C-7: Recovery Plans

Jurisdiction	Provision to develop/maintain recovery plans	Scope	Frequency of updates	Plans shared with other FSN participants
Belize	The Domestic Banks and Financial Institutions Act, 2012	All Banks	Annually	No
Bolivia	No Requirement			No
Brazil	Resolution 4,502, dated 30 June 2016	D-SIBs or other banks identified as potentially systemic or critical in failure at the discretion of the Central Bank.	At least annually, or whenever there are material changes to the plan.	Not initially, they may be in the future.
Cayman Islands	SOGs issued on Business Continuity. Guidance contains recommendations on how licensees should operate and represent a measure against which the Authority will assess compliance by licensees.	Applied to all licensees.		No
Chile	No Requirement			
Colombia	The recovery plans have their legal grounds in Art. 113 subparagraph 6 of the EOSF and in Art. 2.1.1.2.5 of 2555/10 Decree.	Recovery plans can be required the SFC to all banks under its supervision, regardless of its systemic relevance.	Must be adjusted within 5 days, if requested by SFC.	Yes
Dominican Republic	Articles 59 and 60 of the Monetary and Financial Law (No. 183-02), and the Instructions Manual on Recovery Plans, put into effect by Circular SB: 004/11 dated November 24, 2011.	All supervised financial intermediation entities.	Maximum six (6) months.	No
Ecuador	No Requirement			
El Salvador	Based on its authority, the Superintendence is developing guidelines to require these recovery plans.	It applies to all banks by application of the Banking Law and the Supervision and Regulation of the Financial System Law.	The regulation is under development.	No
Guatemala	Based on its authority, the Superintendence of Banks has required recovery plans (note No. 757-2017).	All banks and financial institutions	Annually (first time July 2018)	No
Haiti	Banking law of 2012	All types of banks	Frequency is not clearly state, and it is the responsibility of the senior management to do so.	No response
Honduras	No Requirement			

Jurisdiction	Provision to develop/maintain recovery plans	Scope	Frequency of updates	Plans shared with other FSN participants
Mexico	Law and regulation. In particular, the LIC (article 119) and the single rulebook for banks (articles 172 Bis 37 to 172 Bis 39, and Annex 69).	To all commercial banks operating in Mexico.	Recovery plans should be updated by March every year or whenever material changes on the bank take place or when considered necessary by the CNBV.	Yes
Nicaragua	No Requirement			
Paraguay	No Requirement			
Peru	No Requirement			
Spain	11/2015 Law	All entities or financial groups	Annually, or more frequently if a significant change occurs	Yes
St Kitts and Nevis	The Banking Act gives the ECCB power to request information from the licensed financial institutions that it needs to carry out its regulatory and supervisory functions	The requirement applies to all banks	Plans are to be continually reviewed and updated to mirror the risks faced by the financial institutions	No
Trinidad and Tobago	No Requirement			
Uruguay	No Requirement			
U.S.	Supervision and Regulation Letters 12-17 and 14-8	U.S. G-SIBs	At least annually	Yes

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Questions 82, 83, 84, 86, 87, and 89.

Annex C-8: Resolution Plans

Jurisdiction	Resolution plans are required (Q 91)	Resolution plans set out in legally binding rules (Q 96)	Cross-border resolutions plans (Q 97)	Host RA shares resolution plan with Home RA (Q 98)	Domestic group resolution plans (Q 99)
Belize	Yes	No	Yes	Yes	No
Bolivia	No	Yes	No	No	No
Brazil	No				
Cayman Islands	Yes	No	Yes	Yes	No
Chile	No	No	No	No	No
Colombia	No	No	No	Yes	No
Dominican Republic	Yes	No		Yes	
Ecuador	Yes	Yes		Yes	No
El Salvador	No	No	No	No	No
Guatemala	No		No		
Haiti	Yes	No	No		
Honduras	Yes	Yes	No	Yes	Yes
Mexico	Yes	Yes		Yes	No
Nicaragua	No				
Paraguay	No	No	No	Yes	
Peru	No				
Spain	Yes	Yes	Yes	Yes	Yes
St Kitts and Nevis	No	No	No	Yes	No
Trinidad and Tobago	No	No	Yes	Yes	No
Uruguay	No		No		
U.S.	No	No	Yes	Yes	Yes

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Questions 91, 96, 97, 98, and 99.

Annex C-9: Resolvability Assessment

Jurisdiction	Source of requirement for authorities to undertake resolvability assessments	Scope	Frequency of Assessments	Methodology in Place	Methodology Publically Available	Planned Introduction
Belize	No Requirement					
Bolivia	No Requirement					
Brazil	No Requirement					Yes
Cayman Islands	No Requirement					
Chile	No Requirement					Yes
Colombia	No Requirement					Yes
Dominican Republic	No Requirement					
Ecuador	No Requirement					
El Salvador	No Requirement					No
Guatemala	No Requirement					
Haiti	No Requirement					
Honduras	Financial System Law, Title Seven, "Of Preventive Actions and Recovery Plans."	It applies to all financial institutions.	As required by the Supervisory Authority.	Yes	No	
Mexico	No Requirement					
Nicaragua	No Requirement					
Paraguay	No Requirement					Yes
Peru	No Requirement					
Spain	11/2015 Law, Chap. III, Section 2 RD 1012/2015, Chapter III, Section 2	All	The preventive resolution authority reviews it every 12 months	No	No	
St Kitts and Nevis	No Requirement					
Trinidad and Tobago	No Requirement					
Uruguay	No Requirement					
U.S.	No Requirement. However, U.S. authorities undertake resolvability assessments for the largest financial firms, including U.S. G-SIBS, in the context of crisis management group meetings.			Yes	Yes	

Source: Working Together Towards Effective DIS and Resolution Framework in the Americas Survey Questions 101, 102, 103, 104, 105, 107, and 114.