Resolution Reform*[1]

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Although bail-outs helped contain the financial crisis in 2008, making bail-outs the norm would undermine the public finances and sow the seeds for future crises. To prevent this, policymakers are reforming resolution at both the global and European level. This will assure that banks can fail without significant disruption to financial markets or the economy at large with shareholders and creditors, not taxpayers, bearing the cost. That in turn will improve market discipline and reinforce regulatory and supervisory measures to enhance financial stability.

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Introduction

Resolution reform will change the business of banking. Instead of bail-out, bail-in will become the norm. This will assure that investors, not taxpayers, bear the cost of bank failures. That in turn will force banks to revise their strategies and refine their business models.

Within the EU, resolution reform will go hand in hand with banking union. The Banking Recovery and Resolution Directive (BRRD) sets the framework for the EU as a whole, whilst the Single Resolution Mechanism (SRM) implements the regime within the Member States that are part of the banking union.

* The views expressed in this article are those of the author(s) and do not necessarily reflect the offical view ot the Magyar Nemzeti Bank.
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1 This article represents a synopsis of the arguments made in the author's recent book (Huertas 2014). In a number of instances, the wording in this article is identical with that used in the book.

Resolution reform is part of the global agenda to sustain financial stability

The financial crisis of 2008 took the world to the edge of economic abyss. In response, governments agreed to take “whatever measures are necessary to ensure the stability of the financial system” (PFUE 2008). Governments and central banks channelled assistance amounting to over €10 trillion to the banking system via equity injections, credit guarantees, asset purchases and various other means. Together with massive monetary and fiscal stimulus, this rapid intervention by authorities across the world averted what might otherwise have become a Great(er) Depression.

But governments, central banks and supervisors also quickly realised that continuing such support was unsustainable. To maintain financial stability, they took steps to make banks less likely to fail, as well as steps to make banks resolvable, or “safe to fail”.

Under the first heading (“less likely to fail”), the authorities strengthened regulation and sharpened supervision. Basel III increased capital requirements and introduced a global liquidity standard for the first time. The EU implemented this via CRD IV and banks are moving rapidly to meet the increased requirements.

At the individual bank (micro) level, supervision has become more pro-active and more forward-looking, with an increasing reliance on stress testing and recovery planning as a means to assure that bank can operate safely even in an adverse environment. In the EU this has taken institutional form: under the Single Supervision Mechanism (SSM) the European Central Bank (ECB) has taken responsibility for supervision of banks within the Eurozone. For the 120 largest banks (including practically all those banks with cross-border establishments) the ECB will exercise direct supervision, starting with a rigorous “entrance exam,” namely the asset quality review (AQR), combined with the stress test coordinated with the European Banking Authority (EBA).

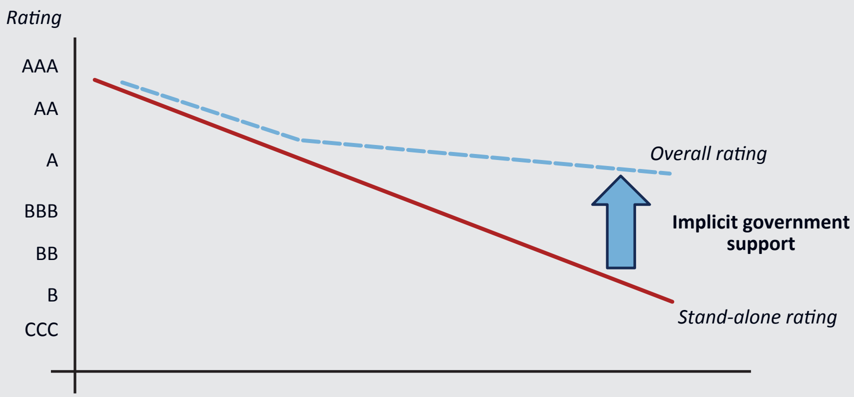
At the macro-level, systemic risk boards have started to look at the system as a whole and to exercise macro-prudential supervision. At EU level the European Systemic Risk Board (ESRB) exercises this function. Member States have also initiated similar bodies (e.g. the Financial Policy Committee in the UK).

Under the second heading (“safe to fail”), the authorities had to take more fundamental measures. During the crisis governments resorted to bail-out in order to avoid the costs to the economy at large that would have resulted had they simply put banks through normal bankruptcy procedures (as would have been required under the laws prevailing at the start of the crisis).

But bail-out is a policy that is too costly to continue. There are three drawbacks:

1. *Bail-outs promote risk taking*. If the market expects the government to bail out a bank, the market will not necessarily discipline the bank. If the market expects the government to be able and willing to bail out banks when they fail to meet threshold requirements for minimum capital and/or liquidity, then such banks can borrow at lower cost than they would be able to do strictly on the basis of their stand-alone rating (see Figure 1). This encourages risk-taking at the bank, creating what economists term "moral hazard". This increase in risk-taking may make the bank more likely to fail. Thus, bailing out banks could potentially sow the seeds of the next crisis.

Chart 1
Implicit government support raises overall rating



2. *Bail-outs undermine the public finances.* The prospect that a government could be called upon to provide assistance on a massive scale poses the threat that investors will simply transfer their poor regard of a bank to the government of the jurisdiction in which the bank is headquartered. If a government backs its banks, the government's credit will suffer as the condition of its banks deteriorates (Tucker, 2012). Indeed, in the peripheral Euro-zone countries, governments are hostage to the health of the banks in their jurisdiction. Should they have to rescue the banks, fiscal deficits would soar and the credit of the government would deteriorate – Ireland is Exhibit A for this.

3. *Bail-outs distort competition*. Banks likely to be bailed out receive an undue competitive advantage relative to institutions that are not likely to be bailed out. Banks likely to be bailed out can borrow at lower cost. This differential is effectively a subsidy to weak banks in jurisdictions with strong governments (see Figure 2).

Chart 2
Bail-outs benefit weak banks with strong government
Impact on banks overall credit rating of implied sovereign support

		Bank's stand-alone condition			
		Weak		Strong	
Government's credit condition	Weak	○	Impact limited as government is too weak to be a source of strenght	○	Impact zero and possibly negative as bank is stronger credit than the sovereign
	Strong	↑	Impact positive as strong government can prop up weak bank	○	Impact limited as bank already has strong credit ratingt

This is particularly problematic within a single market environment, such as the EU. Left unchecked, a policy of too big to fail would differentially advantage banks headquartered in large Member States with strong credit ratings, for such Member States would have a greater capacity to come to the assistance of any bank that became troubled.

At the Pittsburgh summit in September 2009 G-20 leaders mandated the Financial Stability Board (FSB) to address the issue of too big to fail. In particular the G-20 (2009) decided that systemically important financial firms should develop internationally-consistent firm-specific contingency and resolution plans. Our authorities should establish crisis management groups for the major cross-border firms and a legal framework for crisis intervention as well as improve information sharing in times of stress. We should develop resolution tools and frameworks for the effective resolution of financial groups to help mitigate the disruption of financial institution failures and reduce moral hazard in the future.

The FSB establishes key attributes for resolution regimes

Building on work undertaken by the Basel Committee (BCBS 2009) and in various national jurisdictions, the FSB has developed what amounts to a global special resolution regime for banks. This is intended

to make feasible the resolution of financial institutions without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation (FSB 2011a).

An institution is therefore resolvable, if three conditions are met:

1. The institution can be readily recapitalised without recourse to taxpayer money;

2. The institution in resolution can continue to conduct normal transactions with customers, ideally from the opening of business on the business day following the initiation of the resolution; and

3. The resolution process itself does not significantly disrupt financial markets or the economy at large.

To meet these criteria, a resolution regime has to possess a number of key attributes (FSB 2011b). First of all, the regime must have the proper scope: it must cover not only banks, but also banking groups, including parent holding companies and non-bank affiliates.

Second, the resolution regime must create or designate a resolution authority. The resolution authority should be a public body with operational independence, sound governance and transparent processes. It should have responsibility for implementing the resolution of the failed bank in line with the provisions of the resolution statute, in the same sense that an administrator or insolvency practitioner takes responsibility for a non-financial corporation upon the commencement of bankruptcy proceedings.

Resolution regimes should mandate that resolution authorities have the objectives outlined above. Resolution authorities should also coordinate and cooperate with one another, both within and across jurisdictions, under the overall guidance of the group resolution authority.

Third, the resolution regime should define the point at which resolution begins. This should be "when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so" (FSB 2011b, p. 7). Generally this will be a point where the bank is still balance sheet solvent: forbearance is discouraged; prompt corrective action, encouraged. This prevents the bank from gambling for resurrection, reduces the loss that creditors are likely to incur and raises the probability that bail-in of investor obligations will be sufficient to recapitalise the bank.

Once resolution begins, the resolution authority should be able to employ, singly or in combination, a full array of resolution tools, including the "bail-in" of liabilities issued by the bank and/or its parent holding company.

Fourth, the resolution regime should assure that the entry into resolution does not itself trigger default in qualified financial contracts such as repurchase agreements and derivative contracts. At a minimum there should be a stay on such contracts pending their assumption by the bank in resolution (as long as the bank continues to meet payments to counterparties when due). Such an arrangement avoids the losses that would result, both at the failed firm and across the market generally, if counterparties to the failed bank were to conduct a fire sale of the collateral posted by the failed bank.

Fifth, the resolution regime should assure that losses are allocated in accordance with the creditor hierarchy. To the extent that a creditor suffers losses greater than it would have suffered under liquidation, the regime should assure that the investor receives compensation for the difference, a principle called “no creditor worse off than under liquidation” (NCWOL).

Sixth, the resolution regime should assure that mechanisms are in place to avoid reliance on taxpayer support. Where public authorities provide temporary financing to facilitate resolution, provision should be made to recover from the industry any losses the authorities might incur. The resolution regime should also set the basis for such a fund, including the purposes for which such a fund might be used, who should be liable for contributions to the fund, whether funding should be ex ante or ex post, how such a fund would interact with the deposit guarantee scheme and any bank levy, how such a fund should be structured and what claims, if any, does the resolution fund have on the estate of the failed bank.

Seventh, resolution regimes should make provision to facilitate cross-border cooperation among resolution authorities. To accomplish such cooperation (including the sharing of information) authorities should form institution-specific Crisis Management Groups (CMGs) that would draw up institution-specific cooperation agreements outlining how they would handle the resolution of the institution in question, if it were to reach the point of non-viability. The CMG would also be responsible for assessing the institution’s resolvability and making recommendations to remove barriers to resolution.

Eighth, resolution regimes should require – as a minimum – that systemically important financial institutions submit recovery plans as well as the information that resolution authorities require in order to develop resolution plans.

The EU is implementing the Key Attributes

In the EU the Banking Recovery and Resolution Directive (BRRD) sets the framework that will enable all EU Member States to implement the FSB Key Attributes. In particular, the BRRD will establish a statutory bail-in regime. The EU has also put the finishing touches to banking union for the Eurozone. This creates a Single Resolution Mechanism (SRM) to supplement the Single Supervision Mechanism (SSM).

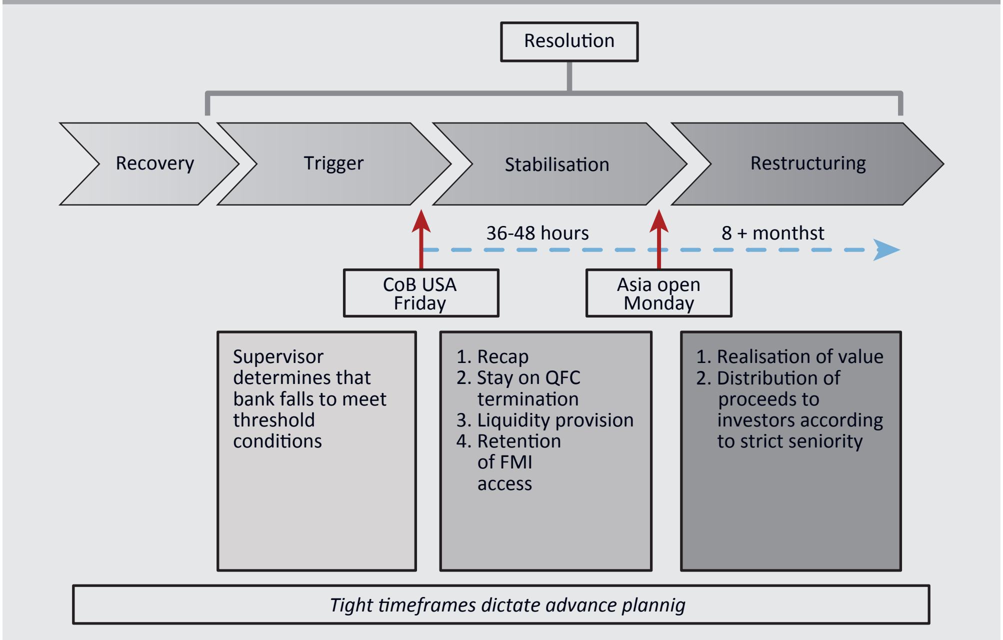
The challenge now facing authorities and banks in Member States is how to translate these legislative initiatives into concrete institutional and operational arrangements so that a failing bank could actually be resolved without cost to the taxpayer and without significant disruption to financial markets or the economy at large. This work will include the development of binding technical standards to fill out some key details in the BRRD as well as procedures for the operation of the SRM and other resolution authorities within the EU.

The resolution process involves three stages: (1) pulling the trigger, (2) stabilising and (3) restructuring the bank-in-resolution (see Figure 3).

Pulling the trigger. Resolution regimes generally allocate to the supervisor the responsibility to "pull the trigger" (i.e. make the determination that the bank should enter resolution). Where the resolution authority differs from the supervisory authority, the resolution authority generally has the right to provide its opinion (particularly with respect to the availability of a private sector solution). The SRM goes a step further and gives the resolution authority an independent right to pull the trigger.

As a practical matter, pulling the trigger should be a short and certain process. Steps requiring judicial review or prior approval should be kept to a minimum, so that the authorities can move immediately to the stabilisation phase. If continuity of critical

Chart 3
Resolution has three stages



economic functions is to be maintained, stabilisation has to be achieved as a practical matter within the very narrow window between the close of business one day and the opening of business the following business day. This interval has at most thirty-six to forty-eight hours (if resolution is initiated at the close of business on Friday). It is simply impractical to use large portions of that short interval in review procedures. For the resolution authority to stabilise the bank-in-resolution, it must be free to act quickly.

Procedural requirements can impede resolution. This is especially the case under the BRRD, where the directive envisions a period of up to 24 hours during which various parties may object to the resolution plan being proposed. To assure resolution proceeds smoothly, considerable advance planning is required. This includes lining up whatever approvals are required as well as identifying and dealing with objections that participants in the process might raise.

Stabilising the bank-in-resolution. Once the supervisor has pulled the trigger the resolution process moves on to its next and most critical phase: stabilisation. In the case of a bank, this means above all five things: (i) recapitalising the failed bank, (ii) assuring that the bank has adequate liquidity when it reopens for business, (iii) assuring that the bank retains or renews all relevant authorisations in the jurisdictions in which it does business, (iv) assuring that the bank retains access to relevant financial market infrastructures, and (v) the authorities' communicating effectively with each other, with depositors, creditors and investors of the failed bank and with the public at large.

Recapitalising the failed bank. The first step toward stabilising the bank-in-resolution is the most important. This is to recapitalise the failed bank. Without such a recapitalisation, resolution will fail, at least for a G-SIB. That is likely to disrupt financial markets and damage the economy at large.

For resolution to succeed, recapitalisation of the failed bank must be done without recourse to public money. For systemically important banks recapitalization of the bank is likely to succeed if and only if the resources for recapitalisation are already in the bank. This will be the case if enough of the bank's liabilities can be "bailed-in," i.e. written down or converted into equity of the bank.

For bail-in to work effectively within the time frame relevant for preservation of continuity, a number of conditions have to hold: (i) the resolution authority has to have the statutory authority to implement bail-in immediately; (ii) bail-in has to respect the creditor hierarchy; (iii) bail-in of investor instruments should be sufficient to recapitalise the bank (see below); and (iv) bail-in of investor instruments should not trigger cross default clauses (see below).

Assuring adequate liquidity. Recapitalising the bank-in-resolution through bail-in of investor obligations is necessary but not sufficient to stabilise the bank-in-resolution. Continuity of operation can only be assured, if the bank-in-resolution has access to adequate liquidity.

The framework for such a liquidity facility should be put in place well in advance, and should be aligned with the overall resolution strategy for the institution (see international cooperation below). It should assure that such a facility is (i) "super-senior" (i.e. have a first claim on any income the bank may generate and have priority in liquidation over all unsecured creditors) and (ii) collateralised by a charge over the unencumbered assets of the bank in resolution, including without limitation the investments of the parent bank in its subsidiaries. In addition, the framework should make clear how losses, if any, would be allocated, including recourse to resolution fund(s).

Assuring authorisations are maintained. The entry of the bank into resolution should not result in the revocation of the bank's license and a requirement for the bank-in-resolution to reapply for a license. Instead, a process should be in place to treat the entry into resolution as a change in control process, with control passing from the owner of the bank to the resolution authority and pre-approval of the resolution authority as "fit and proper" to run the bank in resolution.

Assuring access to financial market infrastructures. The resolution authority should also assure that the bank-in-resolution continues to have access to financial market infrastructures (FMIs), such as payment systems, securities settlement systems and central counterparties. If the bank-in-resolution is to function normally upon reopening for business on Monday, it will certainly need access to FMIs. Otherwise, it will not be able to make or receive payments, settle securities transactions or conduct derivative transactions.

To assure that continuity is in fact preserved, the resolution regimes for banks should be coordinated with those for the FMIs. In particular, the FMI should not be allowed to exclude a bank from the FMI solely on the basis that the bank has gone into resolution. Provided the bank-in-resolution has continued to make payments as due to the FMI (i.e. there has been no default on a cash obligation by the bank), the FMI should delay excluding the bank-in-resolution from the FMI as well as delay initiating loss allocation mechanisms within the FMI (the "waterfall") for a period to allow the resolution authority to indicate that it has (a) recapitalised the bank and (b) assured adequate liquidity for the bank. With such assurance the FMI can keep in force the membership of the bank in the FMI. That will not only facilitate the resolution of the failed bank, but help assure that the FMI remains robust.

Assuring effective communication. Last but by no means least, the resolution authority has to assure that communication is effective: between the bank-in-resolution and the authorities; between the bank-in-resolution and its clients and counterparties; between the bank-in-resolution and the FMIs to which it belongs as well as among the authorities. However, communication also has to strike a delicate balance between the need to keep material matters confidential until the authorities have reached a decision with the requirement to disclose broadly to all investors the instant a decision has been reached.

Restructuring the bank-in-resolution. Stabilising the bank-in-resolution is the first and most important step toward assuring that the failure of the bank will not significantly disrupt financial markets or the economy at large. But stabilisation is not the end of the story. The resolution authority must then proceed to restructure the bank-in-resolution.

The goal of the resolution authority in the restructuring phase is to work itself out of a job: either to sell the bank to a third party, to return the bank to the private sector or to wind the bank down. This has to be done in a manner that maximises the value of the bank in resolution whilst respecting the creditor hierarchy.

Resolvability: what remains to be done?

In translating the "architect's sketch" of resolution painted above into detailed blueprints for how specific G-SIB could actually be resolved, policymakers and banks have identified and are dealing with three issues, or barriers to resolution, namely (i) how to handle qualified financial contracts; (ii) how to assure banks have adequate amounts of reserve, or back-up capital ("gone-concern loss-absorbing capacity [GLAC]) available to be bailed in, if the bank enters resolution; and (iii) how to assure the bank-in-resolution has access to adequate liquidity. With solutions to these issues, it should be possible to develop institution-specific resolution plans.

Qualified financial contracts. Certain obligations, known as qualified financial contracts (QFCs), may pose a barrier to resolution (Gracie, 2014). Upon an event of default, the claim under a QFC becomes immediately due and payable (it is exempt from the stay on payments to creditors). If the claim is not repaid, the holder of such obligations has the right to liquidate any collateral that the bank may have pledged to it and to use the proceeds of such sale to satisfy the obligation.

The two principal types of qualified financial contracts are repurchase agreements and derivative contracts. Together these instruments account for a significant share of a bank's balance sheet, particularly for banks with heavy involvement in trading activities. The obstacle to resolution stems from the fact that the non-defaulting counterparty (NDC) has the right to sell the securities upon an event of default by the bank-in-resolution. When selling the securities, the NDC is primarily interested in getting a price that will generate proceeds sufficient to repay its claim. Beyond that point any proceeds belong to the bank-in-resolution. As a result, the NDC may be inclined to accept offers for the securities that effectively give up much if not all of the haircut.

The loss of the haircut has two effects – first, it increases the loss that the bank-in-resolution has to incur and increases the probability that bail-in will have to extend beyond investor obligations to unsecured customer obligations such as deposits. That would compromise continuity. Second, the sale of the securities pledged under QFCs is a source of contagion from the bank-in-resolution to financial markets and potentially to the economy as a whole. If the sale results in the loss of the haircut, it may imply a decline in the market price and a fall in income and capital at all the institutions in the market that hold such securities in their trading (mark-to-market) book or use such securities as a reference point to value other assets.

In the case of derivative contracts this effect is amplified, for the close-out calculation that establishes the claim of the NDC on the bank-in resolution is based on the NDC's replacement cost. In other words, the NDC makes the calculation not at the mid-market rate that the bank-in-resolution had used to value its contracts but at the end of the bid-offer spread that favours the NDC. This increases the amount due to the NDC, and this large(r) amount becomes immediately due and payable upon an event of default by the bank-in-resolution.

To avoid these problems, resolution regimes envision placing a stay on the ability of lenders under repurchase agreements and counterparties to derivative contracts to exercise their rights of termination. The purpose of the stay is to allow the resolution authority to arrange for the bank-in-resolution to be in the position to meet its obligations under the contracts. Either the bank-in-resolution is recapitalised via bail-in, or the resolution authority transfers the contracts to a bridge bank that will continue in operation.

This is at best a partial solution. The stay may not be enforceable in foreign jurisdictions or for transactions concluded under foreign law. Nor does the stay alone cure the complications that arise, if a bank's parent holding company has guaranteed the performance of the bank subsidiary under such contracts. In such cases, the entry of the parent holding company into resolution or bankruptcy can trigger termination of repurchase agreements and/or derivative contracts under the cross-default provisions usually found in such contracts. This gives rise to the adverse effects described above and may obviate the so-called single point of entry approach to resolution (see below).

Perhaps the simplest way to overcome the barriers to resolution posed by qualified financial contracts is to limit the right to terminate to the actual failure by the bank-in-resolution to meet a cash obligation due in full and on time. In any event, steps should be taken to eliminate the ability to terminate contracts at the bank level unless there is a default at the bank level. The entry of a parent holding company into resolution or bankruptcy should not trigger cross-default provisions in qualified financial contracts at the bank level.

Gone-concern loss-absorbing capacity. For bail-in to be effective as a resolution tool, measures need to be taken to assure that banks are likely to have enough "back-up" capital in place to absorb loss, if the bank enters resolution. The FSB is trying to hammer out an agreement that will do just that. This will require banks to maintain a minimum amount of gone-concern loss-absorbing capacity (GLAC). Once written down or converted into CET1 capital, the bank's GLAC should be sufficient to restore its CET1 ratio to the required minimum.

The open questions are what should count toward the GLAC requirement and where the GLAC should be issued. Some contend that excess CET1 capital should count as GLAC, on the theory that resolution should be initiated at a point where the bank is at or above the minimum requirement (4.5 percent of RWA). Others counter that by the time a bank gets to resolution, practically all the bank's CET1 capital (and certainly any excess CET1) is likely to have evaporated. If the first view is to prevail, measures (such as assuring prudent and prompt valuation) may have to be introduced to assure that the authorities avoid forbearance and trigger resolution promptly.

A consensus is also needed on what other instruments should or should *not* count as GLAC. Some contend that any liability legally subject to bail-in (including uninsured deposits) should count as GLAC. Others maintain that GLAC should be a subset of the instruments subject to bail-in, namely those that investors can expect to be bailed in, if the bank reaches the point of non-viability. At a minimum therefore GLAC would include (in addition to any excess equity that counts toward the definition) the full amount of Additional Tier I and Tier II capital (since this is subject to conversion or write down at the point of non-viability). Extending GLAC beyond subordinated instruments qualifying as Tier II capital may imply either compromising the creditor hierarchy (if senior debt is bailed in ahead of instruments pari passu with such debt) or compromising continuity (if deposits are bailed in alongside the senior debt). Although granting deposits preference partially addresses the problem (effectively this transforms senior debt into a 'mezzanine' obligation), for GLAC to be fully effective in assuring continuity the bank has to have issued instruments subject to immediate bail-in in sufficient quantity to recapitalise the failed bank completely, even if the bank's equity is fully exhausted.

As to where GLAC should be issued, some contend that it is sufficient for the parent holding to issue GLAC, while others argue that GLAC should be "pre-positioned," i.e. that the operating bank subsidiary should be the issuer. If the first approach is adopted, questions will arise as to how the operating bank that had incurred the loss will be recapitalised. Conversion of the GLAC (e.g. subordinated debt) issued by the parent into equity in the parent doesn't change the picture at the subsidiary bank level (where the critical economic functions are actually performed). Unless the parent has cash or assets that it can and actually does inject into the failed bank subsidiary as new CET1 capital, the operating bank will not be recapitalised. As a consequence, continuity cannot be assured. There remains a significant probability of disruption in the financial markets and of damage to the economy at large.

Adequate access to liquidity. Presuming policymakers reach agreement on GLAC, the next step is to decide on how to assure that the bank-in-resolution has adequate access to liquidity, so that it can meet the demands for cash that are likely to materialise as soon as it opens its doors for business in Asia on the Monday following its "resolution week-end".

Finalising the requirements for GLAC should help to open the door to using normal central bank facilities, such as the discount window, to provide liquidity to the bank-in-resolution. The conversion or write-down of GLAC should assure that the bank is solvent and go a long way toward assuring that the bank is viable. Actually getting cash from the central bank(s) or alternative liquidity providers then becomes a question of how much and what type of collateral the bank can pledge to the liquidity providers in question.

Finalise institution-specific resolution plans. The final task is for the authorities to complete institution-specific resolution plans for each of the global systemically important banks (G-SIBs). This task falls to the G-SIB's crisis management group (CMG). This consists of the relevant authorities (supervisor, central bank, resolution authority) in each of the jurisdictions in which the group has a material subsidiary or systemically important branch. Each CMG should draw up a plan for its respective G-SIB that outlines how, once the trigger to resolution has been pulled, the CMG would conduct the resolution. Such a plan would tackle the issues outlined above as well as establish the basis on which the authorities would cooperate with one another to assure financial stability.

This would result in what might be called "constructive certainty," so that the market, the bank and its investors would know in advance the general principles under which whether the authorities would resolve the bank (if it did fail at some point in the future). Specifically, the authorities should indicate whether they anticipate resolving an institution under:

- *a single point of entry approach* in which the home country resolution authority effectively acts as a dealer/manager of a global syndicate of the resolution authorities from the principal jurisdictions in which the failed entity had done business; or
- *a multiple point of entry approach* in which each of the group's subsidiaries would be resolved separately.

Such "constructive certainty" would underline to investors that they would be at risk in the event the bank fails as well as enable them to form an estimate of the recoveries they might make over time. That in turn should align pricing and risk of instruments counting toward GLAC. This will promote efficiency, as riskier banks will have to pay more to attract investors into instruments such as subordinated debt.

Taken together, the steps outlined above would in fact complete the design job for a new resolution regime. But the job will not be fully complete, until the new resolution regime passes what might be called a "use test," i.e. until a major bank enters resolution and the new regime demonstrates that the bank is indeed "safe to fail". Such a use test may however be some considerable way into the future, for stronger regulation and sharper supervision are making banks less likely to fail. But, if the time does come when a major bank has to be resolved, the authorities will be able to implement a regime that ends "too big to fail" and begins "safe to fail".

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