

December 1, 2014

Comments on “Cross-border recognition of resolution action”
issued by the Financial Stability Board

Japanese Bankers Association

We, the Japanese Bankers Association (JBA), would like to express our gratitude for this opportunity to comment on *Cross-border recognition of resolution action* released on September 29, 2014 by the Financial Stability Board (the “FSB”).

We respectfully expect that the following comments will contribute to your further discussion on this issue.

<General Comments>

We pay our respect to a FSB’s series of intensive discussions made as part of its initiatives to enhance the effectiveness of cross-border resolution with a view to avoiding systemic risk arising from failure of financial institutions and are generally in support of proposals made in the Consultative Document.

Since the promotion of public awareness on a series of initiatives to enhance cross-border resolution provided in the Consultative Document would contribute to an increase in public confidence in the stability of financial system, it is respectfully requested to proactively promote the awareness of public including investors that legal certainty of statutory bail-in in cross-border resolution is ensured through this initiative.

With respect to temporary stay on the exercise of early termination rights proposed in the Consultative Document, there is also a concern that financial institutions that do not adopt the protocol issued by the International Swaps and Derivatives Association (ISDA) which supports the cross-border implementation may trigger financial crisis. It is therefore requested to encourage broader financial institutions as well as G18 (18 major global financial institutions which have agreed to the adoption of the protocol) to adopt the protocol, and to promote the adoption of the protocol with a fair and transparent process so as to ensure no disadvantage is caused to those financial institutions adopting the protocol ahead of others.

The following discusses our responses to individual questions raised in the Consultative Document.

[Specific Comments] (Our responses to the questions)

Question 1

Are the elements of cross-border recognition frameworks identified in the report appropriate? What additional elements, if any, should jurisdictions consider including in their legal frameworks?

(Response)

In general, the elements of cross-border recognition frameworks identified in the Consultative Document are considered to be appropriate. The following requests however should be considered.

(Requests)

As one of “1.2 Elements of cross-border recognition frameworks”, the report specifies “3. The legal framework should clearly identify the grounds for granting recognition of foreign resolution proceedings or adopting measures to support foreign resolution actions.” This element provides three cases that grant jurisdictions of the ability to refuse the recognition of foreign resolution measures ((i) would have adverse effects on local financial stability; (ii) contravene local public policy; and (iii) would have material fiscal implications). These cases however should be described in a more limited and specific manner. In particular, the expressions of (i) and (iii) are too ambiguous that these cases may allow jurisdictions to determine to refuse the recognition of foreign resolution measures only for the purpose of protecting creditors in its home jurisdiction, even if it is not appropriate to do so.

We also propose to develop a procedure for refusing the recognition of foreign resolution measures. For example, if a jurisdiction refuses the recognition of foreign resolution proceedings, such a refusing jurisdiction is required to disclose the appropriateness of grounds for refusal. Or a framework needs to be developed to carry out ex-post verification for the appropriateness of refusing the recognition of foreign resolution proceedings, which would promote the prevention of inappropriate refusal of the recognition.

We expect that an internationally-aligned guideline is established for developing cross-border recognition frameworks.

Question 2

Do you agree that foreign resolution actions can be given effect in different ways, either through recognition procedures or by way of supportive measures taken by domestic authority under its domestic resolution regime? Do you agree with the report's analysis of these approaches?

(Response)

In general, we support the proposal to give effect foreign resolution actions either through "recognition procedures" or "supportive measures". The following requests however should be considered.

(Request)

It is requested to provide an explicit basic policy through international discussions in order to clearly distinguish between areas that can be addressed through "recognition procedures" and those that can be addressed by "supportive measures".

The above request is made on the grounds that resolvability of respective financial institutions may be undermined if the scope of "recognition procedures" and "supportive measures" is ambiguous. Establishing a basic policy would help reinforce the legal certainty and predictability under the applicable legal framework.

Question 3

Do you agree that achieving cross-border enforceability of (i) temporary restrictions or stays on early termination rights in financial contracts and (ii) 'bail-in' of debt instruments that are governed by the laws of a jurisdiction other than that of the issuing entity is a critical prerequisite for the effective implementation of resolution strategies for global systemically important financial institutions (G-SIFIs)? Is the effective cross-border implementation of any other resolution actions sufficiently relevant for the resolvability of firms that the FSB should specifically consider ways of achieving their cross-border enforceability?

(Response)

We support that (i) and (ii) are critical prerequisites for the effective implementation of resolution strategies for G-SIFIs.

For (i), however, it is necessary to promote the adoption of the new protocol currently being developed by the ISDA with a fair and transparent process. In particular, qualitative and quantitative impact analyses should be carried out for the adoption of this protocol to ensure financial institutions which have adopted the

protocol ahead of others may not suffer disadvantages. If any adverse impact would be identified, measures should be taken to eliminate such adverse impact.