



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

EN

**UNIDROIT Working Group on Bank
Insolvency**

Third session (hybrid)
Brussels, 17 - 19 October 2022

UNIDROIT 2022
Study LXXXIV – W.G. 3 – Doc. 6
English only
December 2022

SUMMARY REPORT
OF THE THIRD SESSION
(17 - 19 October 2022)

TABLE OF CONTENTS

Item 1:	Opening of the session and welcome	3
Item 2:	Adoption of the agenda and organisation of the session	3
Item 3:	Adoption of the Summary Report of the second session (Study LXXXIV – W.G. 2 - Doc. 3)	3
Item 4:	Update on intersessional work and developments since the second Working Group session (Study LXXXIV – W.G. 3 - Doc. 2)	3
Item 5:	Consideration of work in progress	5
	a) Report of Subgroup 1 for the third session (Study LXXXIV – W.G. 3 – Doc. 3)	5
	b) Report of Subgroup 2 for the third session (Study LXXXIV – W.G. 3 – Doc. 4)	10
	c) Report of Subgroup 3 for the third session (Study LXXXIV – W.G. 3 – Doc. 5)	13
	d) Other matters identified by the Secretariat (Study LXXXIV – W.G. 3 – Doc. 2)	18
Item 6:	Organisation of future work	19
Items 7 and 8:	Any other business. Closing of the session	19
Annex I	List of participants	20
Annex II	Annotated draft agenda	26

1. The third session of the Working Group on Bank Insolvency (the Working Group) took place on 17, 18 and 19 October 2022 and was hosted by the Single Resolution Board (SRB) in Brussels, Belgium. Online participation was possible for those who were unable to attend the session in person.
2. The Working Group was attended by 10 Working Group members and 31 observers, including representatives from international and transnational organisations, central banks, deposit insurance corporations and resolution authorities, as well as members of the Financial Stability Institute (FSI) and the UNIDROIT Secretariat (the list of participants is available in [Annex I](#)).

Item 1: Opening of the session and welcome

3. *The Chair* opened the session and welcomed all participants, noting that she was pleased to see many colleagues in person. She had noticed that a lot of work had been carried out during the intersessional period and thanked all the experts for their contributions. *The UNIDROIT Secretary-General* joined the Chair in thanking all participants for their valuable contributions to the project, highlighting the progress achieved to date.
4. *The Chair* invited the Chair of the SRB, Ms Elke König, to take the floor.
5. *The Chair of the SRB* welcomed the Working Group to Brussels and highlighted the importance of the project. She noted that several topics under discussion by the Working Group were also being discussed at European Union (EU) level in the context of the review of the European crisis management and deposit insurance framework, and suggested that the work be coordinated as far as possible. She referred to the practical challenges of having different national insolvency laws, which were relevant as counterfactual for bank resolution under the EU framework, and expressed the hope that the Working Group would find adequate solutions for effectively dealing with the failure of small- and medium-sized banks.
6. *The Chair and the Secretary-General* sincerely thanked the SRB for hosting the session.

Item 2: Adoption of the agenda and organisation of the session

7. *The Chair* introduced the annotated draft agenda and the organisation of the session. *The Working Group adopted the draft agenda (UNIDROIT 2022 – Study LXXXIV – W.G.3 – Doc. 1, available in Annex II) and agreed with the proposed organisation of the session.*

Item 3: Adoption of the Summary Report of the Second session (Study LXXXIV – W.G. 2 – Doc. 3)

8. *The Chair* noted that the Secretariat had shared the Summary Report of the Second session with all participants. *The Working Group adopted the Summary Report (UNIDROIT 2022 – Study LXXXIV – W.G. 2 – Doc. 3).*

Item 4: Update on intersessional work and developments since the second Working Group session (Study LXXXIV – W.G. 3 – Doc. 2)

9. Upon invitation by the Chair, a member of the UNIDROIT Secretariat welcomed several new observers to the Working Group: the Central Bank of Paraguay, the Financial Services Agency of Japan and Ms Kateryna Yashchenko (Ukraine). She also welcomed new FINMA representatives (Switzerland) to the meeting.
10. She then provided an update on the progress made in the second intersessional period, consisting of: (i) work conducted by the three Subgroups; and (ii) a stock-taking exercise. Regarding the work conducted by the Subgroups, she explained that four drafting teams had been created

within Subgroup 1, which had each drafted a section of the Subgroup 1 Report for the third session based on an outline provided by the UNIDROIT Secretariat and the FSI. A virtual meeting of Subgroup 1 had been organised to discuss the draft Subgroup 1 Report and the members of Subgroup 1 had been provided the opportunity to submit written comments. Subgroup 2 had held four virtual intersessional meetings. The inputs from these meetings had been integrated into an updated version of the Subgroup 2 Report for the second session. As regards Subgroup 3, the already existing drafting teams had continued to work on the Subgroup 3 topics in line with the outcome of the second Working Group session. A virtual meeting had been held end-August, following which participants had been invited to provide written feedback to the draft Subgroup 3 Report. She concluded that excellent progress had been made by the Subgroups during the last months and expressed her gratitude to the Co-Chairs of the Subgroups and to the experts who had contributed to this work.

11. Regarding the stock-taking exercise, she recalled that the Working Group at its second session had agreed to collect information and data on relevant aspects of, and experiences with, bank liquidation regimes worldwide. To this end, the Secretariat, in cooperation with the three Subgroups, had prepared a comprehensive survey. She indicated that experts in 21 jurisdictions had expressed willingness to take part in the stock-taking exercise, and that survey responses had already been received from 13 jurisdictions.

Stock-taking exercise

12. *The Chair* drew the attention of the Working Group to the questions in the Secretariat's Report on the next steps for the stock-taking exercise (Study LXXXIV – W.G. 3 - Doc. 2, p. 10-11).

13. Following a brief discussion, *the Working Group agreed with the approach suggested by the Secretariat to: (i) ask the three Subgroups to analyse the survey responses pertaining to their respective subtopics during the next intersessional period; and (ii) reflect the analysis of the survey responses in the relevant sections of each chapter of the future instrument.*

14. Regarding the question how the survey results should be reflected in the final instrument, *the Working Group agreed to refer to jurisdictions in the first analysis of the survey responses – for use of the Working Group only – while postponing any definitive decision on the matter to a later stage. Survey respondents were invited to inform the Secretariat of their preference when submitting their answers.*

15. Furthermore, *the Working Group agreed to seek input from additional jurisdictions.*

Target audience and format

16. *The Chair* invited the Secretariat to elaborate on the proposed format and target audience of the future instrument.

17. *A member of the UNIDROIT Secretariat* explained that, in light of the mandate given by the UNIDROIT Governing Council, options for consideration by the Working Group included the development of a Legal Guide, a Legislative Guide, or a set of Principles. Based on the direction of the work so far, it was suggested that the instrument take the form of a Legislative Guide, aimed at assisting lawmakers seeking to reform or refine their bank liquidation frameworks. *The Secretary-General* added that a Legislative Guide generally contained more comparative analyses of the law and practices in different jurisdictions, while a set of Principles tended to be more prescriptive.

18. *Many participants* expressed support for the development of a Legislative Guide. It was noted that this would be in line with the approach taken so far, namely to develop guidance that would help countries make their bank liquidation frameworks more effective. The participants appreciated the clear aim and target audience of a Legislative Guide, and the possibility it would give to provide concrete guidance, while leaving flexibility to legislators to translate such guidance into their domestic legal frameworks.

19. *One participant* wondered whether a Legislative Guide would be suitable for this subject-matter, noting that such instruments seemed to focus on private law matters while this project also concerned matters of regulatory law and policy. It was clarified that the term 'Legislative Guide' may be more common in the area of private law but that the aim and structure of such instrument would fit well with the focus of this project.

20. Two specific points were raised during the discussion. First, *some participants* asked whether the adoption of the guidance by jurisdictions would be monitored, whether countries would be assessed against the instrument and whether the intention was to update the Legislative Guide regularly. It was clarified that the instrument would not be drafted with the aim of becoming a standard against which to assess countries' compliance and that the possible need for updating or expanding the guidance would be assessed at a later stage.

21. Second, *several participants* suggested including an overview of concrete principles, recommendations or similar at the beginning of the Guide, followed by chapters with comprehensive explanations on each subtopic.

22. *The Working Group agreed that the primary addressees of the future instrument would be legislators and policy makers seeking to reform or refine their bank liquidation regime. It was agreed that the instrument would take the form of a Legislative Guide that would contain, for each subtopic: (i) an introduction and explanations regarding the main issues; (ii) a comparative analysis of approaches in different jurisdictions; (iii) an analysis of different options; (iv) a box with principles or recommendations, where possible. Once a first draft of the instrument was developed, the Working Group would decide whether the guidance in the chapters should be accompanied by a set of key principles or recommendations at the beginning of the instrument.*

Item 5: Consideration of work in progress

23. *The Chair* drew the attention of the Working Group to the next item on the agenda and invited the Co-Chairs of the Subgroups to introduce the Subgroup Reports for the third session.

a) Report of Subgroup 1 for the third session

1. Definitions

24. *One of the Chairs of Subgroup 1* introduced the section with draft definitions in the Subgroup 1 Report, noting that the subgroup had sought to identify terms such as "bank", "bank failure management", "bank liquidation proceedings", "resolution", "dual-track regime" and "single-track regime". In addition, the Secretariat had integrated in the Subgroup 1 Report the draft definitions that had been developed by Subgroup 3, in order to provide the Working Group with the full overview of the draft definitions developed so far. She invited the Working Group to signal: (i) any major objections to the draft definitions; and (ii) any additional terms that should be defined as a matter of priority during the next intersessional period.

25. In the ensuing discussion, *several participants* suggested clarifying that the definitions had been developed for the purposes of the instrument and were not meant to be applicable beyond that, taking into consideration that some terms may have different meanings across jurisdictions.

26. Some specific drafting suggestions were made with regard to the proposed definitions of "Bank"; "Banking group"; "Bank liquidation proceedings"; "Contractual subordination"; "Competent authority"; "Eligible deposits"; "Financial contracts"; "Host jurisdiction"; "Liquidation agreement"; "Liquidation professional"; "Liquidation representative"; "Liquidation solution" and "Resolution".

27. Regarding possible additional terms to be defined with priority, the Working Group considered defining "non-viability", but *several participants* were against the inclusion of such definition.

28. With respect to the terminology to be used for the proceedings that were at the heart of the instrument, options discussed were “bank insolvency proceedings”, “bank liquidation proceedings”, “orderly exit of banks”, or developing a new term for the purposes of the future Guide specifically.

29. *The Working Group agreed to clarify in the instrument that the Glossary contained descriptions for key terms used in the Guide, which were only meant to provide orientation to the reader of the Guide. The Working Group agreed with the suggested changes to the section on definitions, which was expected to be further developed and revisited over time. The Working Group did not reach an agreement on the terminology for the proceedings the Guide would focus on.*

2. Scope

2.1 Relationship with the FSB Key Attributes

30. Following a question whether the instrument should provide guidance on the restructuring of small and medium-sized banks, the Working Group discussed the relationship between the future Legislative Guide and the FSB Key Attributes.

31. *Some participants* were initially cautious about what they perceived to be an expansion of the scope of the project. They underlined the need to avoid overlap, noting that some jurisdictions applied the Key Attributes also to smaller entities.

32. *Several other participants* considered that the intention of the project had been from the outset to provide guidance on how to effectively deal with small and medium-sized banks in distress, and that such guidance would include elaborating on how the Key Attributes would need to be adapted to meet the specific characteristics of smaller banks.

33. It was suggested to clearly explain the relationship with the Key Attributes in the final instrument, referring to them whenever the Legislative Guide would build on their content, and articulating the main differences between resolution within the meaning of the Key Attributes and the framework in the Guide.

34. *The Working Group agreed that the Legislative Guide should include an articulate description on the relationship with the FSB Key Attributes, in order to clarify the scope and aim of the Legislative Guide – which would focus on smaller banks in financial distress to which the Key Attributes could not feasibly be applied and parts of banks that would be wound down following a resolution process according to the Key Attributes. It was agreed that the Guide should explicitly engage with the Key Attributes and, where relevant, adapt particular provisions of the Key Attributes to meet the specificities of market exit of smaller banks.*

2.2 Regulatory, Functional and Ambulatory approach

35. *One of the Chairs of Subgroup 1* recalled that the Working Group had previously considered two approaches with regard to scope: (i) a functional approach, according to which the regime in the Guide would apply to all entities performing specified activities; or (ii) a regulatory approach, whereby the scope would be restricted to licensed banks and other institutions licensed to accept deposits and grant loans. During the second Working Group meeting, some consensus had been reached on the merits of a flexible approach, whereby the instrument would focus on traditional, licensed banks while leaving flexibility for jurisdictions to apply the instrument to other licensed entities. Subgroup 1 had sought to elaborate on each of the possible approaches and had formulated questions for the Working Group regarding the exact meaning of a flexible approach. She indicated that Subgroup 1 favoured an approach whereby the instrument would recommend jurisdictions to follow a regulatory approach, with flexibility to exclude certain categories of licensed banks if deemed appropriate and, on the other hand, include new categories of entities that were included in the regulatory perimeter in certain jurisdictions.

36. *The Working Group* generally supported the essentially regulatory approach proposed by Subgroup 1. It was noted that such approach would provide certainty and clarity, while granting flexibility to jurisdictions to tailor the scope to the specificities of their financial sector as necessary. It was recalled that the instrument should cover the full spectrum of smaller licensed banks and deposit-taking institutions, irrespective of their corporate structure.

37. *Some participants* expressed the view that the instrument should allow or even encourage jurisdictions to apply the framework to non-bank entities with bank-like characteristics, or in any case not prohibit jurisdictions to do so. *Other participants* agreed in principle, but noted that the work so far had concentrated on traditional banks and that this had important consequences for key aspects of the framework (e.g., for the part on funding). They suggested clarifying in the instrument that the framework had been designed for banks specifically, even if jurisdictions could choose to apply it, *mutatis mutandis*, to other regulated entities that were prone to the same risks.

38. Finally, it was suggested to consider whether to include specific categories of banks in the recommended scope of the framework: (i) digital banks; (ii) retail versus wholesale banks; and (iii) Islamic banks. *Several participants* expressed support for addressing the specificities of Islamic banks in the instrument, although it was noted that special expertise would be required to do so.

39. *The Working Group* supported the proposal of Subgroup 1 to recommend an essentially regulatory approach to the scope of application of the bank liquidation framework, which would still allow jurisdictions to adapt the scope to the specifics of their financial sector. Moreover, it was agreed to further consider the option of addressing the specificities of Islamic banking in the instrument.

2.3 Parent companies

40. *The Chair* turned to the section of the Subgroup 1 Report on 'Parent companies' and invited the participants to express their views on the extent to which non-bank parent companies should fall within the scope of the proposed framework.

41. It was noted that the issue overlapped with the topic of Banking groups, that was dealt with by Subgroup 3. There was general agreement that jurisdictions should be able to apply certain parts of the regime to parent companies, to the extent this would be needed for an effective failure management process. Reference was made to guidance on aspects such as advance planning, the ranking of intra-group claims, intra-group financial support, and the centralisation and coordination of proceedings.

42. *Several participants* considered that such 'inclusive' approach should apply not only to parent companies, but also to other non-bank affiliates within the group. It was suggested to clarify in the Guide to what extent the framework could apply to different group entities.

43. *The Working Group* agreed that jurisdictions should be allowed to apply at least parts of the bank liquidation regime to non-bank parent companies to manage the failure of their controlled banks effectively. Sections of the instrument that could be relevant or applicable to non-bank parent companies and other non-bank affiliates included those on advance planning, subordination, intra-group financial assistance and centralisation and coordination of proceedings.

3. Objectives

44. *One of the Chairs of Subgroup 1* noted that, in previous sessions, the Working Group had considered value maximisation and depositor protection to be key objectives of a bank liquidation regime. Subgroup 1 had deepened the analysis of these objectives and had formulated questions for the Working Group to clarify the scope and implications of a depositor protection objective in practice. Furthermore, she recalled that the Working Group had previously agreed to consider financial stability as a relevant consideration in bank liquidation proceedings. The Subgroup 1 Report contained various options on how to frame financial stability in the instrument. The Report also

elaborated on possible additional guiding principles and contained text on the legal principle of *pari passu* treatment of creditors of the same class. Finally, Subgroup 1 had identified possible ways of balancing the objectives, guiding principles and financial stability considerations.

45. The Working Group discussed the rationale for, and implications of, identifying objectives in the Legislative Guide. *Some participants* were cautious about spelling out objectives for liquidators to comply with. *Other participants* suggested including the objectives that an effective bank liquidation framework should aim to achieve in an introductory section to the Guide, to explain the aim of the framework and guide legislators when reforming or refining their bank liquidation laws.

46. Against this background, the discussion moved to the proposed objectives and their meaning. It was suggested to explain in the Guide how financial stability was a rationale for bank-specific liquidation laws, given the special nature of banks as compared to ordinary companies. It was also noted that a financial stability objective underpinning the framework would likely be consistent with the mandate of relevant administrative authorities such as banking supervisors. *Some participants* considered that a financial stability objective would also justify the continuity of services in certain scenarios. On the other hand, it was recalled that including financial stability as an explicit liquidation objective would make it challenging to distinguish between resolution and liquidation in a dual-track regime. Finally, it was suggested to clarify the meaning of financial stability in the instrument.

47. Regarding depositor protection, views within the Working Group remained divided. *Some participants* were against including this as a distinct objective of the framework. Arguments included that depositor protection would already be captured under a financial stability objective, that it could be misunderstood as favouring depositor preference, and that its meaning may be unclear or superfluous in jurisdictions where a deposit insurance scheme (DIS) existed. *Other participants* were in favour of retaining depositor protection as a distinct objective of bank liquidation frameworks. They argued that depositor protection and financial stability were both essential to maintain trust in the banking sector and to underpin the transfer tool. Moreover, it was raised that the meaning of depositor protection was broader than the existence of a DIS. As for the scope of depositor protection, the participants who expressed a view on this issue were in favour of limiting the scope to insured depositors, to avoid moral hazard and seek alignment with existing standards.

48. The participants did not challenge the traditional insolvency objective of value maximisation. Lastly, the importance of the need to reduce fiscal implications was underlined.

49. *The Working Group was generally in favour of referring to a set of key objectives of bank liquidation frameworks in the Guide, preferably in the introductory chapter to guide legislators when reforming or refining their bank liquidation laws. One objective would be value maximisation, in line with general insolvency law. Given the special nature of banks, the Working Group was generally in favour of adding financial stability as an objective motivating the need for, and design of, bank-specific insolvency frameworks. Furthermore, the Working Group recognised the relevance of depositor protection, but did not reach agreement on whether this should be a self-standing objective of bank liquidation laws and, if so, what it would precisely entail in practice. Separately, the Working Group agreed to include a principle on the need to minimise costs for taxpayers in the instrument.*

4. Institutional models

4.1 Administrative, court-based and hybrid models

50. *A member of Subgroup 1* introduced the section of the Subgroup 1 Report on institutional models. She explained that the drafting team had first identified some general requirements (e.g., expertise, independence) that would help to achieve an orderly exit of the failing bank from the market. Subsequently, an analysis of the advantages of a predominantly administrative model was provided. The Report also identified ways to overcome potential drawbacks of court-based regimes (e.g., specialised judges; encouraging strong cooperation with administrative authorities; adopting measures to ensure a speedy process). Finally, the various steps of a standard insolvency process

were described in a table, accompanied by considerations on institutional arrangements for each of those steps.

51. *A member of the Secretariat* added that the input from the stock-taking exercise was expected to be very useful for this part of the Guide, since there seemed to be a variety of possible institutional models.

52. *The participants* were in agreement that the instrument should not prescribe a specific model, but leave it to jurisdictions to choose the most appropriate institutional arrangements considering factors such as their legal tradition. They expressed support for the proposal of Subgroup 1 to formulate principles recommending certain general requirements such as speed, smooth cooperation with relevant authorities, independence and accountability.

53. *Most participants* considered that the Subgroup 1 Report had rightly expressed a preference for a predominantly administrative model, given challenges experiences with court-based models and the knowledge and expertise needed especially in the earlier stages of the process. However, *some participants* reasoned that a primarily court-based model could work as effectively, depending on factors such as the specialisation of liquidators, cooperation with the banking supervisor and centralisation of bank liquidation procedures in a specific court.

54. Finally, some suggestions were made regarding the table with steps of the liquidation process concerning the type of tools, cooperation with the deposit insurer and revocation of the banking license and charter.

55. *The Working Group expressed support for the approach taken by Subgroup 1, that is, not to prescribe a specific institutional model in the instrument but instead: (i) identifying general requirements for an effective liquidation process; (ii) expressing a preference for a primarily administrative model, highlighting the relevance of the involvement of administrative authorities especially in the initial phases; (iii) recognising that adequate solutions may be adopted to facilitate the effectiveness of primarily court-based models; (iv) identifying the steps that were generally taken in a bank liquidation process, with considerations on the institutional arrangements in each step. It was agreed to further develop the text and deepen the analysis based on the survey responses.*

4.2 Remedies

56. *The Chair* invited the Working Group to provide feedback on the 'Remedies' section in the Subgroup 1 Report.

57. It was suggested that the draft guidance be expanded and nuanced, distinguishing between legal actions against: (i) the initiation of liquidation proceedings; and (ii) steps taken during the liquidation process, and between: (i) decisions of an administrative authority; and (ii) those of a liquidator (other than an administrative authority). If the legal challenge concerned actions or omissions during the liquidation process, compensation is likely to be an appropriate remedy. In the case of a challenge of a transfer of assets and liabilities, it might be necessary to consider the grounds for a refusal to reverse the transaction. Other suggestions were to reflect on possible legal actions concerning a valuation carried out prior to the application of a transfer tool and possible legal actions by the debtor (i.e., the bank itself).

58. The survey responses were expected to be useful for the next iteration of the draft, although one participant noted that current laws and practices should not necessarily guide the direction of possible recommendations on remedies.

59. *The Working Group agreed to further develop draft guidance on remedies: (i) distinguishing between legal challenges concerning the opening of bank liquidation proceedings, on the one hand, and challenges concerning actions during the liquidation process, on the other, and between administrative actions that are subject to judicial review and non-administrative actions that are*

subject to other appeal processes; (ii) distinguishing between the possible involvement of different types of courts and their standard of review; (iii) expanding on the justifications for recommending to limit the remedies for certain measures to compensation; and (iv) expanding on possible legal actions by the bank itself and on actions directed against a possible valuation.

5. Procedural and operational aspects

60. *A member of Subgroup 1* explained that this section of the Report considered aspects relating to: (i) the liquidator; (ii) the creditors; and (iii) the bank's management. The section on the liquidator covered issues such as the selection process and criteria for the appointment of a liquidator; remuneration; transparency and accountability; personal liability and legal protection. Considering the special nature of banks and the role of the banking supervisor, a question was to what extent and how creditors should be involved in bank liquidation proceedings. The section on the role of the bank's management built on the discussion during the second Working Group session regarding possible notification obligations for directors in the period approaching liquidation.

61. Support was expressed for the proposal to formulate principles on the selection and remuneration of liquidators, transparency, accountability and legal protection for the person managing the liquidation process. It was also discussed that guidance on the involvement of creditors was important, with *one participant* noting that the establishment of a creditors' committee may be beneficial for smaller banks, depending on the circumstances.

62. *The Working Group agreed with the key aspects to be covered under 'Procedural and operational aspects' as proposed by Subgroup 1. It was agreed to further develop the content of this section and formulate possible recommendations for consideration by the Working Group at its next session.*

b) Report of Subgroup 2 for the third session

6. Preparation

63. Upon invitation by the Chair, *one of the Co-Chairs of Subgroup 2* introduced the report of that subgroup, recalling that Subgroup 2 had not pursued the idea of discussing a planning requirement for authorities and focused on preparation as a practical matter of a transfer strategy. Considering the link with the application of specific tools, the Working Group was invited to decide whether preparation should be covered in a distinct chapter of the instrument or as part of a broader discussion of transfer strategies. Subgroup 2 generally expressed a preference for retaining preparation as a separate chapter. In any case, a discussion of practices pursued by authorities to prepare transfer-based strategies seemed merited. Lastly, Subgroup 2 was seeking guidance from the Working Group as to whether, and if so, how to discuss the possible appointment of a temporary administrator or similar in the instrument.

64. Initial remarks by *participants* generally favoured a separate chapter on 'Preparation'. Views were more diverse regarding temporary administration. *The participants* discussed that temporary administration can be part of both supervision and failure management, and that the merits of the tool may be different depending on that context. Moreover, the governance and mandates for temporary administration may differ, ranging from purely monitoring mandates to those with quasi-managerial powers or replacing the management of the bank. *Some participants* cautioned against discussing the merits of temporary administration as a primarily supervisory tool, noting that existing standards already included this in the supervisory toolbox, while *other participants* pointed out that supervision and crisis management should be seen as a seamless process, which made it necessary to elaborate on the interaction between supervisory measures and liquidation (e.g., to prevent asset-stripping).

65. *The Secretary-General* clarified that the Legislative Guide would not venture into purely supervisory matters. That said, it should read as a standalone instrument and could not completely disregard the supervisory stages prior to failure intervention. A way to resolve this would be by acknowledging the diversity of approaches while referring to the relevant standard(s) in that area. Another comment, also from the Secretariat, clarified that Subgroup 2 did not suggest a policy discussion on the merits of temporary administration as a supervisory power, but rather sought to discuss whether benefits may be derived in crisis management if and to the extent a temporary administration was in place prior to the failure management procedure.

66. This shifted the focus on information gathering. It was discussed that information can be gathered in various ways, including directly through supervision, intensified if needed, or onsite inspections. The function of legislation in such a context would be to remove possible barriers to information gathering.

67. *The participants* also noted that a crisis was by definition a situation of ambiguity, including ambiguity as to whether or not the failing entity can be restored to viability, with implications for the rights of involved parties to seek a market-based solution. Building on this observation, *one of the Co-Chairs* proposed that the Legislative Guide may differentiate between best legislative practices, which would include removing barriers to information gathering in a crisis, and practices that authorities pursue in a crisis. This approach would allow to describe those practices in a way that does not interfere with existing supervisory standards.

68. Participants also discussed confidentiality in the preparatory phase and cooperation across authorities. *The Chair* suggested reflecting on the different possible 'triggers' to start preparation for failure management, for example an onsite inspection or market information. *Other participants* pointed to the difficult balance between confidentiality and market transparency. As regards cooperation, it was suggested to refer to relevant existing standards in the Legislative Guide, such as IADI Core Principle 4.

69. *The Working Group agreed to maintain 'Preparation' as a distinct chapter in the future Guide. The guidance in that chapter would not pertain to banking supervision, but would refer to existing standards where relevant and to successful practices of authorities in the phases prior to the opening of a bank failure management process, with a view to providing a range of options (and possibly recommendations) that would facilitate a smooth continuum between supervision and failure management.*

7. Grounds

70. *A member of Subgroup 2* introduced the topic by saying that the subgroup had structured its work by focusing on three separate issues: (i) the identification of grounds, and the challenges associated with defining or specifying forward-looking assessments, and the concept of non-viability specifically; (ii) the role of discretion or a margin of appreciation for relevant authorities; and (iii) the interaction between initiating a failure management procedure and license withdrawal. While Subgroup 2 had reached some agreement that authorities should have a considerable margin of appreciation when establishing grounds for intervention, more guidance on the specification of grounds and on issues around license withdrawal would be welcome.

71. The discussion first centred on the concept of non-viability. *Several participants* expressed scepticism that the Legislative Guide could, or should, provide a definition of that concept, and various arguments were brought forward in support of such position. A separate part of the discussion was dedicated to issues around solvent, but illiquid (or otherwise failing or problematic) firms. *The participants* also considered the option of voluntary liquidation and the transformation of the firm into a non-regulated entity.

72. In that regard, *the Secretary-General* encouraged the Working Group to discuss how voluntary liquidation could be part of the failure management process, which resonated with *several*

participants who argued that standard corporate procedures did not apply easily to such scenarios. Relevant guidance could consist of a description of practices across jurisdictions.

73. As regards aligning, in dual-track regimes, the conditions for resolution and liquidation, various arguments were brought forward: *Several participants* argued in favour of aligning such conditions, partly on the grounds to avoid 'limbo' situations, partly because of the cascade of decision-making. Some participants pointed to the tension that exists between the call for aligning conditions and refraining from specifying non-viability, at least as long as non-viability (howsoever defined) was a condition for resolution. A way to resolve this tension was by adopting the concept of a default framework, which should be opened as soon as all other options were exhausted. *One participant* maintained that, in dual-track regimes, conditions for resolution and liquidation grounds should not be aligned.

74. *The participants* largely supported the notion that authorities should have a margin of appreciation, even if this notion was not discussed in great detail. Proposals were made to discuss this issue in the context of judicial review of authorities' crisis intervention decisions, and to link the discussion to the Key Attributes Assessment Methodology for the Banking Sector.

75. *In summary, broad support was given to authorities' margin of appreciation. The Working Group also largely supported refraining from attempts to specify or define the concept of non-viability as a standalone ground for intervention. Lastly, some support was voiced in favour of including, at least by way of a stocktake, a discussion of practices involving voluntary liquidation.*

8. Tools and powers

76. *One of the Chairs of Subgroup 2* opened the discussion by recalling the agreement, both within Subgroup 2 and at Working Group level, that the guidance on the transfer tool was to be developed further. On that basis, he pointed to a number of issues, including (i) whether the transfer tool derived from general powers attributed to the person in charge of liquidation or required explicit legal provisions; (ii) that the transfer tool can be common to both insolvency and special resolution regimes, but its use may differ depending on the objectives of the regime; (iii) whether there is a need to constrain authorities' discretion when using the transfer tool. Moreover, *the Co-Chair* raised questions as to whether a moratorium power should be recommended, whether mandatory provisions on valuation should be included, and what the extent of clawback powers should be.

77. In the first part of the discussion, *the participants* focused on whether the inclusion of a transfer tool in a framework that is distinct from a special resolution regime could risk blurring the lines between such regime and general insolvency law. Most interventions argued against this. A major difference between these types of regime was not seen as being in the availability of tools, but how the objectives of the regime informed their use. Another difference that participants pointed out was the difference in available funding. On that basis, the participants were in favour of a transfer tool irrespective of the underlying framework.

78. The discussion then turned to discretionary elements in the use of transfer powers and whether there was a need to constrain them. *Several participants* questioned the usefulness of the concept, arguing that any constraints automatically followed from the objectives of the framework within which a transfer tool was used. *Some participants* pointed out that what might be considered discretion in using the transfer tool was effectively framed by the safeguards of the underlying regime.

79. *One participant* noted that discretion points to the various decisions that authorities need to take when determining a failure management strategy, which included the selection of a tool, the details of its use and the implications that the strategy has for creditors' rights. As regards the latter, *the participants* discussed the role of the *pari passu* principle in the context of the transfer tool.

80. Finally, *the participants* discussed the scope of liabilities that may be included in a transfer. While deposits were mostly seen as being within scope, no arguments were made in favour of

excluding certain liabilities from transfer. Participants noted that in a bank failure (and contrary to business insolvency), third parties may be primarily interested in acquiring liabilities, which are a stable source of funding and are of value to acquirers for purposes of regulatory liquidity requirements. This may be of particular relevance given the focus of the future Guide on small and midsize banks and their deposit-based funding model. One participant noted that damage claims may need to be considered separately.

9. Funding

81. *One of the Chairs of Subgroup 2* introduced the topic by pointing to two distinct aspects of funding: liquidity funding and solvency funding. He noted that, as regards the first, agreement had been reached at subgroup level to leave this out of scope, as it related to central bank policy, rather than to issues to be addressed by a Legislative Guide. Moreover, from a practical perspective, liquidity needs would typically be taken care of by the acquiring third party. As regards solvency funding (understood as funding needed to meet the mismatch between transferred assets and transferred liabilities), he noted that Subgroup 2 had reached agreement that deposit insurers are a legitimate source of funding. It was noted, however, that a policy debate was ongoing as to how much funding deposit insurers should be able, or be obligated, to provide. This included the discussion on how opportunity costs of deposit insurers should be addressed.

82. The discussion on funding was brief, given time limitations. While no objection was raised to the notion that deposit insurers should be considered a legitimate source of funding, *some participants* cautioned that care was needed not to pre-empt the ongoing policy debate, including at IADI level, regarding available quantities of funding. To illustrate this, reference was made to the significant divergences across jurisdictions in that regard. *One participant* mentioned that constraints placed on the amount of funding that deposit insurers may, or should, provide should not be framed in purely negative terms. *The Co-Chair* concluded that this was in line with the approach taken in this project, which was to develop a Legislative Guide as a structured repository of concepts and their trade-offs, as opposed to duplicating (or interfering) with established international standards.

83. The discussion also briefly touched on the issue of whether the purchase price negotiated with an acquirer had a bearing on valuation requirements. While *some participants* cautioned against dropping the valuation requirement altogether, some sympathy was expressed in favour of making the negotiated purchase price the starting point to determine funding needs, and to avoid burdening authorities' bargaining power by requiring them to benchmark their negotiated purchase price against administrative valuations.

c) Report of Subgroup 3 for the third session

10. Financial contracts

84. *A member of Subgroup 3* recalled that most financial contracts were based on models that contained close-out netting clauses. Existing international standards had historically promoted the enforceability of such clauses also upon commencement of insolvency proceedings. The Key Attributes had introduced a special regime. Specifically, the entry into resolution should not be considered a trigger event, provided the obligations under the contract continued to be performed, and a power was introduced for resolution authorities to temporarily stay acceleration or early termination rights. While the drafting team considered that this regime was not applicable in bankruptcy proceedings, it would not preclude introducing a short stay in bank liquidation proceedings with a view to facilitate the effective deployment of certain tools. It was noted that the World Bank Principles were open to the possibility of a short stay for a defined period of time beyond bank resolution, for specifically identified financial contracts.

85. Against this background, the drafting team proposed recommending a power for the person managing the bank liquidation process to order a temporary stay of close-out netting, where the

operation of close-out netting would undermine the efficiency of specific liquidation tools. Such stay should be limited in time, whereby a period of maximum two business days would seem reasonable.

86. In the ensuing discussion, support was expressed for the proposal of Subgroup 3. It was discussed that a stay would facilitate the effective application of the transfer tool, and that the proposed approach was in line with the Key Attributes and modern best practices in business insolvency law.

87. Some discussion took place on how the substantive obligations under the contract could continue to be met, considering that the opening of bank liquidation proceedings would lead to an automatic moratorium and that there may be liquidity issues. A related question was whether the initiation of the bank insolvency proceedings under the framework would or should qualify as an event of default, which would allow a counterparty to accelerate or terminate a financial contract.

88. Regarding the period of time for the stay, it was discussed that a balance should be struck between feasibly deploying a certain tool and preserving the interests of market participants, whereby a stay of about two days seemed a suitable compromise. It was suggested to seek alignment with the Key Attributes concerning the wording and conditions for the stay. Other suggestions made were to integrate the section on financial contracts in the chapter on Tools, to shorten the explanatory text and to consult the industry on this matter in the future.

89. *The Working Group agreed with the proposal of Subgroup 3 recommending a power for the person in charge of a bank liquidation process to order a temporary stay of close-out netting, where the operation of close-out netting would undermine the efficiency of specific liquidation tools. It was suggested to: (i) reflect on whether the opening of bank insolvency proceedings should qualify as an event of default; (ii) align the wording and conditions for the temporary stay with the Key Attributes; (iii) focus in the explanatory section on the most recent international instruments addressing this matter; and (iv) reflect on how the substantive obligations under the financial contract could continue to be performed during the stay.*

11. Creditor hierarchy

11.1 General principles and ranking of deposits

90. A member of Subgroup 3 introduced the topic, focusing first on the proposals regarding depositor treatment and general principles of ranking. He explained that the draft recommendations on general principles of ranking as proposed by Subgroup 3 were in line with existing international guidance. Among others, they stipulated that the *pari passu* treatment of creditors should in principle be respected and that exceptions should be justified and clearly stipulated in the law.

91. He explained that the Guide would not recommend a specific ranking of depositors. Rather, it was suggested that lawmakers adopt an approach that would allow the effective application of transfer-based strategies, considering the interplay between the ranking of depositors, rules on the use of DIS funding and the *pari passu* principle. To this end, Subgroup 3 had formulated four options for consideration by legislators, covering general deposit preference, no deposit preference, tiered and insured deposit preference, and a possible exception to the *pari passu* principle.

92. *The Chair* opened the floor for comments. Aspects raised by the participants included the possible impact of State aid rules in certain jurisdictions; the distinction between the use of DIS funding for pre-insolvency measures and for the transfer tool in bank liquidation proceedings; the importance of enabling transfer-based strategies; and the position of depositors that would be left behind under such strategy.

93. The discussion then turned to the four options proposed by the drafting team. The Working Group generally expressed support for the options and suggested deepening the analysis for each of them. With regard to option 1, it was suggested to distinguish between general depositor preference

and tiered depositor preference given the importance of the relative treatment of different categories of depositors. Regarding option 3 (concerning tiered or insured depositor preference), the importance of being able to transfer a wide range of liabilities to an acquirer was emphasised, for which DIS funding would be required.

94. Regarding option 4 (concerning the *pari passu* principle), it was suggested to distinguish between situations in which: (i) some creditors were better off and others were worse off; and (ii) some creditors were better off while no creditors were worse off. The Working Group agreed that the latter situation – which could arise if the application of the transfer tool would lead to an increase in the insolvency estate – would not cause issues. Building on this distinction, it was suggested to differentiate also between: (i) the ‘transfer phase’, during which a transfer tool may be used whereby some creditors may be treated better than others; and (ii) the ‘distribution phase’, when the proceeds of the liquidation process (including possible additional value deriving from the use of the transfer tool) would be distributed among creditors. As a final remark on option 4, it was suggested that the conditions that would allow possible deviations from the *pari passu* principle should be clearly set given the relevance thereof for market players.

95. Lastly, it was suggested to further reflect on the treatment of temporary settlement accounts.

96. *The Working Group agreed to further develop the options on depositor ranking for consideration by legislators, addressing separately: (i) general depositor preference; (ii) no depositor preference; and (iii) insured or tiered depositor preference. Furthermore, the Working Group agreed that some creditors could be treated better to achieve the liquidation objectives as long as no creditors were worse off. The possibility of transferring deposits that did not benefit from a preferred ranking would be further explored and guidance would be provided in the instrument, whereby a distinction would be made between the transfer phase and the distribution phase. The drafting team would also consider the suggestions regarding the importance of the transfer tool; explanations on the use of DIS funding in different phases; and the treatment of temporary settlement accounts.*

11.2 Treatment of secured claims and subordination

97. *A member of Subgroup 3 made introductory remarks. Regarding the treatment of secured creditors, he explained that the proposal was to follow existing international standards in the area of business insolvency law. The draft recommended that, in line with international guidance, the priorities resulting from the security interest in debt instruments should be enforced. Should there be a *lex specialis* for financial collateral arrangements, such specialities should be respected under the bank liquidation regime.*

98. Regarding subordination, the draft distinguished between different types of subordination. With regard to contractual subordination, the draft recommended that bank liquidation laws enforce subordination agreements and, where appropriate, include an express recognition of the enforceability of subordination clauses in the context of bank liquidation. Statutory subordination should be respected as well, which would include debt issued by banks to fulfil loss absorption requirements. Equitable subordination was understood in the draft to encompass cases where an authority had the power to change the priority of claims due to fraud or similar wrongdoing and the subordination of related parties’ claims. Regarding related parties’ claims, it was proposed to describe different options in the final instrument without recommending a specific approach.

99. During the discussion, it was observed that it was already ensured in many jurisdictions that secured creditors such as bondholders enjoyed absolute priority over their collateral. It was suggested to explain the risks of not upholding such priority in the Guide. Regarding equitable subordination, the participants agreed that the terminology should be revisited to avoid confusion with existing concepts in certain jurisdictions. In addition, the scope of a possible power of courts or authorities to grant a different treatment to certain claims (including related parties’ claims) should be clarified.

100. Furthermore, the Working Group discussed whether the Guide should provide definitions for different types of subordination and, if so, to what extent definitions in existing international standards should be taken into consideration.

101. *The Working Group agreed with the proposal of Subgroup 3 to align the recommendations on the treatment of secured creditors with existing standards, while expanding on the risks of not granting secured creditors (e.g., bondholders) priority over collateral. Furthermore, it was agreed to revisit the term 'equitable subordination' and to clarify the scope of possible powers of the court or administrative authorities to grant a different priority to certain claims under specific circumstances.*

12. Banking groups

102. *A member of Subgroup 3 introduced the topic. He explained that, in line with the outcome of the second Working Group session, the drafting team proposed permitting and encouraging the adoption of ex-ante group-level liquidation plans, without making this a legal requirement. Similarly, the adoption of ex post group-level liquidation plans was encouraged with a view to promoting coordination between the liquidators of various group entities and preserving value. The draft also covered the possibility of providing intra-group financial assistance in liquidation, subject to specific criteria and with adjustments for networks other than corporate banking groups (e.g., cooperatives and institutional protection schemes). Furthermore, the draft contained recommendations that aimed at establishing exemptions from general company and insolvency law provisions (e.g., on avoidance, subordination and liability) to facilitate group-level strategies. From a procedural perspective, the draft recommended bank insolvency laws to facilitate the opening of a single liquidation procedure for a banking group, or to facilitate coordination among different proceedings for group entities.*

103. *One of the Chairs of Subgroup 3 emphasised the importance of the work on banking groups, noting that small and medium-sized banks were often part of a group and that specific rules for such groups seemed to be lacking or differed across jurisdictions, given the lack of detailed international guidance.*

104. *The Chair opened the floor for comments.*

12.1 Group planning

105. *The participants expressed support for encouraging ex-ante group-level liquidation planning, noting that it would help to gain a thorough understanding of the functioning of the group, the interrelationships and the applicable legal framework(s). At the same time, it was acknowledged that advance planning was time-consuming and should not be a legal requirement.*

106. *Specific aspects discussed by the Working Group included the timing for ex-ante planning (either as part of a regular planning cycle or on an ad hoc basis); transparency towards the market; and possible specific considerations to be taken into account for listed banking groups.*

107. *With regard to ex post group liquidation planning, some participants expressed doubts whether this would be effective since the application of certain tools would need to be planned already before the opening of the liquidation proceedings. The drafting team explained that ex post group-level liquidation plans – which would be drawn up by the liquidator(s) of group entities – were meant to ensure coordination in the liquidation of different group entities, especially if a group-level solution was considered. For example, an ex post group-level plan could explain how the group-level solution was expected to maximise value and benefit the various entities.*

108. *Finally, some discussion took place on the terminology used in the draft recommendations. Several participants suggested to reserve the term 'planning' for ex-ante planning only. In the ex post phase, it was proposed to refer to 'liquidation solutions', in line with the approach taken in the section on 'Cross-border aspects' in the Subgroup 3 Report.*

109. *The Working Group agreed with the guidance developed by Subgroup 3 encouraging group liquidation planning. It was agreed to reserve the term 'liquidation planning' to the phase prior to the opening of liquidation proceedings, while the term 'liquidation solution' would be used to describe the coordination and implementation of measures after the opening of the liquidation process. Furthermore, the drafting team would consider the suggestions made regarding transparency and possible special considerations regarding listed banking groups.*

12.2 Group-level solutions

110. *The Chair opened the floor for feedback on the section on group-level liquidation solutions.*

111. Different views were expressed within the Working Group on the feasibility of group-level solutions. *Some participants expressed caution, noting that creditors had rights vis-à-vis a specific legal entity, that banking groups may include entities that were not subject to supervision, and that it may be challenging to achieve a group liquidation solution if not all group entities would meet the conditions for liquidation. Furthermore, one participant doubted whether the conditions for intra-group financial support as had been proposed in the Subgroup 3 Report could be met if a parent company was already insolvent. Some concern was also expressed with regard to the proposed exemption from claw-back provisions to facilitate intra-group financial support during liquidation.*

112. *The drafting team clarified that the proposed exemptions such as those concerning claw-back rules would only be permitted if the intra-group support measures were envisaged and validated ex-ante, and provided that specific conditions were met. The claw-back provisions would thereby essentially be 'replaced' by a series of ex-ante safeguards in situations where this was expected to be a win-win situation for all stakeholders involved.*

113. *Several participants expressed support for the proposed recommendations. While they recognised that it seemed counterintuitive for a distressed entity to provide financial support to other group entities, they indicated that there were situations in which such intra-group support measures could be beneficial for the group as a whole. With regard to clawback, it was argued that the proposed exemptions may be justified by the circumstance that the group-level solution was envisaged ex-ante, with the involvement of the banking supervisor.*

114. *The drafting team added that exemptions for certain intra-group support measures from the general rules on intra-group subordination would facilitate group solutions and provide clarity.*

115. It was suggested to take inspiration from existing instruments where useful and to reflect on the role of the banking supervisor going forward. It was also proposed to reflect on possible fiduciary duties that the management of group entities may have under corporate law.

116. *The Working Group did not reach consensus on the proposals of Subgroup 3 regarding group-level solutions. The drafting team was asked to continue developing the text, seeking alignment where appropriate with existing standards and adding explanations on the scenarios that were envisaged and on the conditions for intra-group financial support.*

13. Cross-border aspects and safeguards

117. *One of the Chairs of Subgroup 3 recalled that international guidance on cross-border aspects of bank liquidation proceedings was lacking. In line with the mandate provided by the Working Group at its second session, the drafting team had developed concrete recommendations on this topic. The draft guidance considered both single entities and cross-border groups or similar networks. The main issues covered were: (i) cooperation and coordination in a cross-border context; (ii) recognition, assistance and relief; and (iii) safeguards. The recommendations on cooperation and cooperation included aspects such as the enforceability of ex-ante group liquidation plans; the sharing of information; and the centralisation of liquidation proceedings where efficient. The recommendations on recognition covered foreign proceedings and specific measures, and identified various forms of*

relief. The subsection on safeguards contained recommendations that aimed to ensure the process was fair and efficient, and that local interests were safeguarded. It also suggested grounds for a host jurisdiction to refuse recognition, assistance or support to a home jurisdiction.

118. The Working Group generally expressed support for the recommendations suggested by Subgroup 3. Suggestions made by the participants were to streamline the guidance in the sections on 'Banking groups' and 'Cross-border aspects'; to consider cross-border situations whereby a bank had debtors in foreign jurisdictions; to take into account aspects of consolidated supervision; and to develop guidance on the non-discrimination of foreign depositors and other creditors.

119. *The drafting team* agreed and explained that the draft guidance already took into account the consolidated supervision of banking groups in the definitions. Furthermore, the draft contained a general non-discrimination principle, and the discrimination of creditors was also considered in the grounds to refuse recognition, support or cooperation.

120. Some concern was expressed with regard to favouring the centralisation of liquidation proceedings, noting that there may be significant differences between the frameworks of the jurisdictions involved. *The drafting team* explained that this was addressed in the draft, which recommended the centralisation of proceedings where this was considered the most efficient and optimal solution in the circumstances, but also stated that host authorities should retain the power to institute parallel proceedings where this was more efficient and to take measures on their own initiative where the home jurisdiction did not act or acted in a manner contrary to the safeguards.

121. A question was raised as to why the draft recommendations on safeguards seemed to focus mostly on home jurisdictions safeguarding the interests of stakeholders in host jurisdictions, even if one of the recommendations was formulated reciprocally. *The drafting team* explained that the reciprocal recommendation was meant to generally encourage the authorities on both sides to think beyond borders. Encouraging especially home jurisdictions to consider the cross-border effects of their actions was hoped to limit the invocation of public policy grounds for refusal by the host jurisdiction.

122. Finally, it was discussed that general rules of private international law could be useful to determine the location of the assets of a bank.

123. *The Working Group generally agreed with the draft recommendations on Cross-border aspects proposed by Subgroup 3. It was agreed to add a reference to "debtors" in the definition of "host jurisdiction" and in the main text of the instrument describing the scope of cross-border situations. It was also agreed to align the sections on Banking groups and Cross-border aspects.*

d) Other matters identified by the Secretariat

124. *The Chair* invited the Secretariat to introduce any remaining items in the Secretariat's Report (Study LXXXIV – W.G. 3 - Doc. 2).

125. *A member of the Secretariat* explained that the remaining items concerned the title and structure of the future instrument. Regarding the title, she proposed reflecting on an appropriate name for the Legislative Guide once the work on terminology had further advanced. *The Working Group agreed to postpone the decision on the title of the instrument until an agreement had been reached on the terminology to be used for the bank failure management process in the instrument.*

126. Regarding the structure of the instrument, she referred to the table on p. 15-18 of the Secretariat's Report, noting that the proposed structure was largely based on the Reports of the three Subgroups. The Secretariat would update the structure following the suggestions made during the session. *The Secretary-General* added that the first three Chapters could be merged into a single introductory Chapter. *The Working Group agreed with the draft structure of the future instrument proposed by the Secretariat, with the amendments discussed during the session.*

Item 6: Organisation of future work

127. *The Chair and the Secretariat* summarised that the Working Group had agreed on the following next steps: (i) to retain the three Subgroups, primarily for the analysis of survey responses; (ii) to establish a Drafting Committee, which would be tasked with the preparation of a first draft of the Guide; and (iii) to organise virtual intersessional meetings on specific issues, if needed.

128. The participants in the stock-taking exercise who had not yet submitted their survey responses were invited to do so as soon as possible. The Secretariat would consider the suggestions that had been made during the session regarding the possible participation of experts from additional jurisdictions. Furthermore, the Secretariat would seek to involve experts on Islamic banking in the Working Group at a next stage of the project.

129. *A representative of the FSI* announced that the next Working Group session would be hosted by the FSI in Basel (Switzerland). The Secretariat would communicate the dates for the next session, envisaged for end-March or early-April 2023.

Items 7 and 8: Any other business. Closing of the session

130. In the absence of any other business, *the Chair and the Secretariat of UNIDROIT and the FSI* thanked all the experts for their participation and valuable contributions to the session.

131. All the participants expressed their sincere gratitude to the SRB for the warm welcome and excellent organisation of the session.

ANNEX I**LIST OF PARTICIPANTS****MEMBERS**

Ms Stefania BARIATTI <i>Chair</i>	Professor University of Milan
Ms Anna GELPERN	Professor Georgetown Law Washington DC
Mr Christos HADJIEMMANUIL	Professor University of Piraeus
Mr Matthias HAENTJENS	Professor University of Leiden
Mr Marco LAMANDINI	Professor University of Bologna
Ms Rosa LASTRA	Professor Queen Mary University of London
Mr Matthias LEHMANN	Professor University of Vienna
Ms Irit MEVORACH	Professor University of Nottingham
Ms Janis SARRA	Professor Peter A. Allard School of Law University of British Columbia
Mr Reto SCHILTKNECHT	Doctor of Laws (LL.D.), Attorney-at-Law, Lecturer at the University of St. Gallen and Research Associate at the University of Zurich Switzerland

INSTITUTIONAL OBSERVERS

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA) (<i>Excused</i>)	Mr Greg NEWTON
BANCA D'ITALIA	Ms Alessandra DE ALDISIO Director in Regulations and Macprudential Analysis Directorate
	Mr Michele COSSA Lawyer

	Mr Romualdo CANINI
BANCO DE ESPAÑA	Ms Lucia PIAZZA Head of Unit, Legal Department
ACPR / BANQUE DE FRANCE	Ms Elodie BATAILLE Senior Expert Bank Resolution
	Ms Camélia DRAGAN Senior Expert Bank Resolution
	Ms Marion GOYENETECHE Deputy Head of Private and Financial Law Division Legal Affairs Directorate
	Ms Solène GOBIN Legal Affairs Directorate
BANK OF GHANA	Ms Elsie ADDO AWADZI Second Deputy Governor
	Ms Abia MAWULOLO MASOPERH Director, Legal Department
BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGS-AUFSICHT (BaFin)	Ms Anne SCHWALL Lawyer
	Ms Nicole STEPHAN Lawyer
CENTRAL BANK OF BRAZIL	Ms Vivian GRASSI SAMPAIO Deputy-Head, Department of Resolution and Sanctioning Action
CENTRAL BANK OF NIGERIA (Excused)	Mr Sirajuddin Kofo SALAM-ALADA Head of Legal Services
	Ms Omotunde M OKE
	Ms Onyinye N OKORIE
CENTRAL BANK OF PARAGUAY (BCP)	Ms Irene Cristina ESCRIBÁ SAKODA Intendant, Research and Regulations (Banking Supervision)
DEPOSIT INSURANCE CORPORATION OF JAPAN (DICJ)	Mr Hidenori MITSUI Governor
	Mr Ryuichi SHOGAN Deputy Governor

	Mr Hidemitsu OTSUKA Deputy Governor
DE NEDERLANDSCHE BANK	Mr Tjark DE WAARD Legal Officer in the Legal Services
	Ms Yael DIAMANT Legal Officer in the Legal Services
EUROPEAN CENTRAL BANK (ECB)	Mr Asen LEFTEROV Senior Legal Counsel Directorate General Legal Services
EUROPEAN COMMISSION	Ms Rossitza PETKOVA DG Financial Stability, Financial Services and Capital Markets Union
EUROPEAN BANKING INSTITUTE (EBI)	Mr Rolf SETHE Chair for Private, Commercial and Business Law, Head University Research Priority Program (URPP) Financial Market Regulation University of Zurich
<i>(Excused)</i>	Mr Christos GORTSOS President of the Academic Board
<i>(Excused)</i>	Ms Juana PULGAR EZQUERRA Professor Universidad Complutense Madrid
FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) UNITED STATES OF AMERICA <i>FDIC staff</i>	Ms Joanne FUNGAROLI Senior Advisor, International Policy, CISR
FEDERAL RESERVE BANK OF NEW YORK UNITED STATES OF AMERICA <i>(Excused)</i>	Ms Lisa KRAIDIN Counsel
FINANCIAL SERVICES AGENCY OF JAPAN (J-FSA)	Mr Tomoaki HAYASHI Deputy Head of RRP Office
	Mr Masakazu KUMAKURA Deputy Director Banking Business Division I
SWISS FINANCIAL MARKET SUPERVISORY AUTHORITY FINMA	Mr Christian REITH Crisis Management & Legal Expertise, Recovery and Resolution Division
	Mr Julien DAYER Crisis Management & Legal Expertise, Recovery and Resolution Division

FINANCIAL STABILITY BOARD (FSB) <i>(Excused)</i>	Ms Eva HÜPKES Head of Regulatory and Supervisory Policies
FONDO DE GARANTÍAS DE INSTITUCIONES FINANCIERAS (Fogafín) COLOMBIA	Ms María DEL PILAR GALINDO VERGARA Deputy Director Resolution Mechanisms
	Ms Amanda GARCÍA Head of Resolution and Liquidations
HONG KONG MONETARY AUTHORITY <i>(Excused)</i>	Mr Stefan GANNON Special Adviser to Chief Executive
	Ms Olivia CHENG Senior Manager, Banking Review and Development Unit
INTERNATIONAL ASSOCIATION OF DEPOSIT INSURERS (IADI)	Mr Bert VAN ROOSEBEKE Senior Policy and Research Advisor
INTERNATIONAL INSOLVENCY INSTITUTE	Mr Stephan MADAUS Professor Martin Luther University
<i>(Excused)</i>	Ms Shelley C. CHAPMAN Judge, US Bankruptcy Court for the Southern District of New York
INTERNATIONAL MONETARY FUND (IMF)	Mr Alessandro GULLO Assistant General Counsel Legal Department
	Mr Ender EMRE Senior Counsel Legal Department
ISTITUTO PER LA VIGILANZA SULLE ASSICURAZIONI (IVASS)	Ms Monica MARCUCCI General Counsel
NATIONAL BANK OF BELGIUM (NBB) / BANQUE NATIONALE DE BELGIQUE	Mr Thomas HÜRNER Legal Advisor Legal Department
NIGERIA DEPOSIT INSURANCE CORPORATION (NDIC)	Mr Mohammed M. LAWAL Assistant Director Insurance & Surveillance Department
	Mr David N. YISA Deputy Director (Legal)
PEOPLE'S BANK OF CHINA	Ms Wei JING Director, Legal Department
	Ms Cheng JUNXIU

	Section Chief, Legal Department
PERBADANAN INSURANS DEPOSIT MALAYSIA (PIDM)	Ms Cheryl-Ann CHAN Head Reimbursement, Run-off and Liquidation
	Mr Pong Kai MUN Specialist on Intervention and Resolution
RESERVE BANK OF INDIA (RBI)	Mr Deepak GOGIA Deputy General Manager
SINGLE RESOLUTION BOARD (SRB)	Mr Karl-Philipp WOJCIK General Counsel
	Mr Samy HARRAZ Head of Strategy and International Relations
	Mr Joan RIUS Legal Expert
	Ms Maria TSOUKALA Policy Expert
	Mr Nicola COSTA Team Leader Strategy and International Relations
SOUTH AFRICAN RESERVE BANK (SARB)	Mr Jacques BOTES Divisional Head, Resolution Planning, Financial Stability Department
SUPERINTENDENCIA FINANCIERA DE COLOMBIA (SFC)	Ms Dora Sofía MORALES SOTO Advisor - Group of resolution mechanisms and plans
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Ms Samira MUSAYEVA Legal Officer, Secretary, Working Group V (Insolvency Law) International Trade Law Division
	Mr Benjamin HERISSET Legal Officer, International Trade Law Division
	Ms Maria-Angeliki GIANNAKOU Associate Legal Officer, International Trade Law Division
WORLD BANK GROUP	Mr Danilo PALERMO Senior Financial Sector Specialist

BIS FINANCIAL STABILITY INSTITUTE (FSI)

Mr Rastko VRBASKI Senior Advisor

Ms Ruth WALTERS Senior Advisor

* * * *

INDIVIDUAL OBSERVERS

Ms Concetta BRESCIA MORRA
(Excused) Professor
University Roma Tre

Mr Hideki KANDA
(Excused) Professor, Gakushuin University,
Member UNIDROIT Governing Council

Mr Hossein NABILOU
(Excused) Assistant Professor of Law & Finance
University of Amsterdam

Ms Kateryna YASHCHENKO
Ph.D. candidate, National University of Kyiv-
Mohyla Academy; Associate Counsel, European
Bank for Reconstruction and Development

* * * *

UNIDROIT SECRETARIAT

Mr Ignacio TIRADO Secretary-General

Ms Anna VENEZIANO Deputy Secretary-General

Ms Myrte THIJSEN Legal Officer

Mr David RAMOS MUÑOZ Associate Professor, University Carlos III of
Madrid
Advisor to the UNIDROIT Secretariat

Mr Marco BODELLINI Associate Lecturer, Queen Mary University of
London
Advisor to the UNIDROIT Secretariat

Mr Jeremy CUMMINGS Lawyer, Auxlaw (Australia)

Mr Bill Clifford AKAKWENZIRE Intern

Ms Rebekka FORSTER Intern

Ms Kavya LALCHANDANI Intern

ANNEX II**ANNOTATED DRAFT AGENDA**

1. Opening of the session and welcome
2. Adoption of the agenda and organisation of the session
3. Adoption of the Summary Report of the Second session (Study LXXXIV – W.G. 2 - Doc. 3)
4. Update on intersessional work and developments since the second Working Group session (Study LXXXIV – W.G. 3 - Doc. 2)
5. Consideration of work in progress
 - (a) Report of Subgroup 1 for the third session (Study LXXXIV - W.G. 3 - Doc. 3)
 - (b) Report of Subgroup 2 for the third session (Study LXXXIV - W.G. 3 - Doc. 4)
 - (c) Report of Subgroup 3 for the third session (Study LXXXIV - W.G. 3 - Doc. 5)
 - (d) Other matters identified by the Secretariat (Study LXXXIV – W.G. 3 – Doc. 2)
6. Organisation of future work
7. Any other business
8. Closing of the session