

UNIDROIT Working Group on Bank Insolvency

Fourth session (hybrid)

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SECRETARIAT'S REPORT

1. This document provides: (i) an update on the work carried out by the Working Group on Bank Insolvency, the three informal Subgroups that were created after the first session of the Working Group, and the Drafting Committee that was established following the third Working Group session; and (ii) a discussion of issues that the Working Group on Bank Insolvency may wish to consider at its fourth session.
2. This document retains an updated version of the Secretariat's Report for the third Working Group session relating to preliminary matters associated with the project (Part I). Part I was updated to reflect developments during and after the third session of the Working Group held on 17-19 October 2022. It contains questions the Working Group may wish to consider relating to general matters (e.g., the format and style of the future Guide and the organisation of future work).
3. This document is accompanied by a confidential, preliminary consolidated draft of the future Guide (Study LXXXIV – W.G. 4 – Doc. 3, hereinafter "Master Copy"), which will be the main object of the deliberations at the fourth Working Group session. In addition, the Working Group received, on a confidential basis, jurisdictions' responses to the survey on bank liquidation frameworks worldwide, as well as a Report with the Analysis of Survey Responses (Study LXXXIV – W.G. 4 – Doc. 4).
4. The Master Copy consists of ten chapters, as follows:
 - (i) Chapter 1. Introduction
 - (ii) Chapter 2. Institutional Arrangements
 - (iii) Chapter 3. Procedural and Operational Aspects
 - (iv) Chapter 4. Preparation
 - (v) Chapter 5. Grounds for opening bank liquidation proceedings
 - (vi) Chapter 6. Tools
 - (vii) Chapter 7. Funding
 - (viii) Chapter 8. Creditor Hierarchy
 - (ix) Chapter 9. Group Dimension
 - (x) Chapter 10. Cross-Border Aspects
5. Part II of this document relates to the content of the Guide, with questions to guide the discussion of the Working Group during the fourth session.

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I. PRELIMINARY MATTERS

A. Background of the Project

1. Since the Global Financial Crisis of 2008, the international community has developed a framework to manage failures of systemic financial institutions in a way that preserves financial stability while minimising the risk of loss to public funds. These efforts resulted in the adoption of the Financial Stability Board's (FSB) '*Key Attributes of Effective Resolution Regimes for Financial Institutions*' (Key Attributes) as a set of international standards which informed the adoption of bank "resolution regimes" in jurisdictions around the world. Despite this significant progress, however, critical gaps remain. In particular, there is no international standard or guidance on bank liquidation frameworks, and accordingly the effectiveness of bank liquidation laws varies substantially across countries. This creates problems in particular when dealing with failures of small and medium-sized banks to which, in some jurisdictions, the resolution framework would not apply. In addition, national insolvency laws still play a key role in the resolution of systemic banks, both as the framework under which parts of a bank in resolution may be wound up and liquidated, and as the counterfactual for the application of the 'no creditor worse off' safeguard.

2. Against this background, in the run-up to the drafting of the Work Programme for 2020-2022, the UNIDROIT Secretariat received two separate but congruent proposals concerning the convergence of rules in the field of bank insolvency, one from the Bank of Italy and one from the European Banking Institute (EBI) (see [UNIDROIT 2019 – C.D. \(98\) 14 rev. 2, Annex 4 and 6 respectively](#)).

3. The Governing Council at its 98th session (Rome, 8-10 May 2019) acknowledged the importance of the topic, admitted the high potential impact of the work to be conducted, and agreed to recommend that the General Assembly include the project on bank insolvency in the 2020-2022 Work Programme with medium priority. The assigned level of priority was merely formal. The Governing Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as further justification of its adequacy as work to be conducted by a global transnational institution (see [UNIDROIT 2019 – C.D. \(98\) 17, para. 261](#)).

4. The Governing Council at its 99th session (Rome, 23-25 September 2020) was informed by the Secretariat that steps had been taken to reinforce the capacity and expertise of the organisation to carry out the project. In particular: (i) the Financial Stability Institute (FSI) of the Bank of International Settlements (BIS) had shown availability to collaborate with UNIDROIT on this project and willingness to provide research expertise and, where needed, contribute to the development of the project with financial resources; and (ii) the process for the creation of an UNIDROIT-Bank of Italy Chair was in an advanced stage (see [UNIDROIT 2020 – C.D. \(99\) B.6, paras. 4-6](#)). The Governing Council took note of the information provided by the Secretariat during the 99th session and agreed with the proposed action plan, leading to the drafting of a feasibility study to be presented to the Governing Council at its 100th session (see [UNIDROIT 2020 – C.D. \(99\) B.21, para. 117](#)).

5. The Governing Council at its 100th session (A) in April/May 2021 was informed that: (i) the UNIDROIT-Bank of Italy Chair had been officially established and a Chair Holder had been recruited; and (ii) a first workshop on bank liquidation would be organised jointly by UNIDROIT and the FSI (see [UNIDROIT 2021 – C.D. \(100\) A.2, paras. 25-27](#)), with a view to analysing and discussing the feasibility of the project.

6. On 7 and 8 June 2021, UNIDROIT and the FSI jointly organised an Exploratory Workshop, which gathered 40 international experts and stakeholders with a view to (i) assessing the need for an international instrument in the area of bank insolvency; (ii) determining the most suitable form of such instrument; and (iii) defining the scope of the project.

7. The Secretariat presented the results of the deliberations of the Exploratory Workshop and of additional analysis at the September session of the 100th UNIDROIT Governing Council ([C.D. \(100\) B.4](#)). On that occasion, the Governing Council agreed to recommend proceeding with this project as a high priority, allowing the Secretariat to establish a Working Group ([C.D. \(100\) B Misc 2, paras. 5- 6](#)).

B. Organisation of the work

Working Group

8. Consistent with UNIDROIT's established working methods, the Working Group on Bank Insolvency is composed of members selected for their expertise in the fields of insolvency law, bank crisis management, resolution and deposit insurance. Experts participate in a personal capacity and represent different legal systems and geographical regions.

9. The Working Group is composed of the following members:

- Ms Stefania Bariatti, (Chair), Professor, University of Milan (Italy), UNIDROIT Governing Council member
- Ms Anna Gelpert, Professor, Georgetown Law (United States)
- Mr Christos Hadjiemmanuil, Professor, University of Piraeus (Greece)
- Mr Matthias Haentjens, Professor, University of Leiden (the Netherlands)
- Mr Marco Lamandini, Professor, University of Bologna (Italy)
- Ms Rosa Lastra, Professor, Queen Mary University of London (United Kingdom)
- Mr Matthias Lehmann, Professor, University of Vienna (Austria)
- Ms Irit Mevorach, Professor, University of Nottingham (United Kingdom)
- Ms Janis Sarra, Professor, University of British Columbia (Canada)
- Mr Reto Schiltknecht, Attorney-at-law (Switzerland)

10. Ms Concetta Brescia Morra (Professor, Roma Tre University) participates in the Working Group as an individual expert observer. Furthermore, Mr David Ramos Muñoz (Associate Professor, University Carlos III of Madrid) and Mr Marco Bodellini (Associate Lecturer, Queen Mary University of London) act as advisors to the UNIDROIT Secretariat for this project.

11. The project is undertaken in cooperation and with the support of the BIS Financial Stability Institute (FSI). UNIDROIT and the FSI have invited a number of international and regional organisations, and public sector stakeholders with expertise in the field of bank liquidation, bank restructuring and deposit insurance to participate as observers in the Working Group. Observers are entitled to participate fully in the Working Group's discussions and are considered an integral part of the working team. Participation of these organisations and stakeholders will ensure that regional perspectives are taken into account in the development and adoption of the instrument. It is also anticipated that the cooperating organisations will assist in the regional promotion, dissemination and implementation of the instrument once it has been adopted. Strong collaboration with existing standard setters in the area is of particular relevance in this project. The following organisations and institutions are part of the Working Group as observers:¹

- Australian Prudential Regulation Authority (APRA)
- Banca d'Italia
- Banco de España and Fondo de Garantía de Depósitos en Entidades de Crédito (Spain)

¹ New Working Group Observers since the third session are: (i) the Bank of England; (ii) the Central Bank of Argentina; (iii) the National Bank of Moldova; and (iv) the Spanish Deposit Insurance Fund.

- Bank of England
- Bank of Ghana
- Banque de France / Autorité de Contrôle Prudentiel et de Résolution (ACPR)
- Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) (Germany)
- Central Bank of Argentina
- Central Bank of Brazil
- Central Bank of Nigeria (CBN) and Nigerian Deposit Insurance Corporation (NDIC)
- Central Bank of Paraguay
- De Nederlandsche Bank (DNB)
- Deposit Insurance Corporation of Japan (DICJ) and the Financial Services Agency of Japan (JFSA)
- European Banking Institute (EBI)
- European Central Bank (ECB)
- European Commission
- Federal Deposit Insurance Corporation (FDIC) (United States)
- Federal Reserve Bank of New York
- Swiss Financial Market Supervisory Authority (FINMA)
- Fondo de Garantías de Instituciones Financieras (Fogafín) and Superintendencia Financiera de Colombia (Colombia)
- Financial Stability Board (FSB)
- Hong Kong Monetary Authority (HKMA)
- International Association of Deposit Insurers (IADI)
- International Insolvency Institute
- International Monetary Fund (IMF)
- National Bank of Belgium
- National Bank of Moldova
- Perbadanan Insurans Deposit Malaysia (PIDM)
- People’s Bank of China (PBC)
- Reserve Bank of India (RBI)
- Single Resolution Board (SRB)
- South African Reserve Bank (SARB)
- United Nations Commission on International Trade Law (UNCITRAL)
- World Bank Group

12. UNIDROIT may involve industry associations and other private sector stakeholders in the work of the Working Group at a later stage, to ensure that the guidance document will address those stakeholders’ needs. The latter may also assist in promoting the implementation and use of the instrument.

Methodology and Timetable

13. Under the guidance of the Chair of the Working Group and UNIDROIT Governing Council Member, Professor Stefania Bariatti, the Working Group undertakes its work in an open, inclusive and collaborative manner. As consistent with UNIDROIT’s practice, the Working Group has not adopted any formal rules of procedure and seeks to make decisions through consensus. Meetings are held in English without translation. Working Group meetings are conducted under Chatham House rules in order to encourage open discussion among all participants in the Working Group.

14. The Working Group meets at least twice a year (for two-three days). Meetings are in principle held at the premises of UNIDROIT in Rome, unless other institutions offer to host a meeting in a different location – as the FSI kindly did for this fourth Working Group session. Remote participation is possible, although experts are expected to attend in person if circumstances permit.

15. The Bank Insolvency Project was a high priority project on the UNIDROIT Work Programme for the period 2020-2022. Given that the project started end-2021, it was not feasible to complete the entire project during that Work Programme. It therefore remained in the Institute's Work Programme for 2023-2025, with the same high priority status.

16. The tentative calendar for the Bank Insolvency project anticipated the preparation of the draft instrument over five in-person sessions in 2021-2023, followed by the adoption by the Governing Council of the complete draft at its 103rd session in 2024. Given the number and complexity of the issues considered by the Working Group, it is proposed to organise at least one additional (sixth) Working Group session.

C. Working Group sessions and Intersessional work

First Working Group session (December 2021)

17. The first session of the Working Group was held at the UNIDROIT premises in Rome and remotely on 13-14 December 2021. The discussions during this session were guided by an Issues Paper ([Study LXXXIV – W.G. 1 – Doc. 2](#)) prepared by the Secretariat in collaboration with the FSI.

18. Regarding the project's scope, the Working Group underlined that bank liquidation regimes should be a seamless complement to resolution frameworks. The scope of the instrument would therefore be defined by exclusion, i.e., it would apply to banks that are outside the scope of a resolution regime, or parts of banks that are liquidated within the context of a resolution process. Consideration was given to using the term 'bank failure management' as an overarching notion, that is, to encompass both bank resolution and bank liquidation proceedings. Further, a first discussion took place on the type of banks that should be covered by the instrument (for instance, whether this should include bank holding companies, investment banks and/or FinTechs). It was also proposed that liquidation proceedings should be understood as referring to a process ending with the disappearance of a legal entity – while not excluding a transfer of certain parts of the business to another entity as a going-concern.

19. Moreover, the Working Group discussed the possible objectives of a bank liquidation regime. To this end, it considered the application to bank liquidation of corporate insolvency's key objective of value maximisation, on the one hand, and a broader public interest objective such as financial stability (the main driver in the context of bank resolution), on the other. Also in the discussion on the grounds for opening insolvency proceedings, a comparison was made between the grounds for initiating corporate insolvency proceedings (balance sheet insolvency and illiquidity) and the triggers for bank resolution (principally, non-viability), which, in light of the special characteristics of banking business, must allow for early action and include forward-looking elements.

20. Other matters examined during the first session include preparatory actions (e.g., the sharing of data between authorities to facilitate a pay-out to insured depositors); institutional arrangements (analysing the possible involvement of courts and administrative authorities in the liquidation process); the ranking of claims (with the Working Group concluding that the instrument should mainly analyse the relative rank of specific claims rather than prescribing an absolute creditor hierarchy); and procedural aspects such as whether individual creditors should have legal standing to file for the insolvency of a bank.

21. For more information, reference is made to the Summary Report of the Working Group's first session ([Study LXXXIV – W.G. 1 – Doc. 3](#)).

Intersessional work (January – March 2022)

22. At its first session, the Working Group decided to establish three thematic Subgroups to advance the work on the project during the intersessional period. Both members and observers were invited by the Secretariat to express their interest in participating in one or more of the Subgroups. The Subgroups would identify issues per subtopic, and start looking at possible solutions. Subgroup topics were not meant to be exhaustive, nor to reflect the final structure of the instrument, but to represent a starting point for the deliberations of the Group.

23. Three Subgroups were set up accordingly:

- **Subgroup 1** on Scope and definitions; Objectives; Institutional models; Procedural and operational aspects of the liquidation procedure. Co-Chairs: Ms Elsie Addo Awadzi (Bank of Ghana) and Ms Ruth Walters (FSI).
- **Subgroup 2** on: Preparation; Grounds for opening liquidation proceedings; Tools; Funding. Co-Chairs: Mr Christos Hadjiemmanuil (University of Piraeus) and Mr Rastko Urbaski (FSI).
- **Subgroup 3** on: Creditor hierarchy; Financial contracts; Banking Groups; Cross-border aspects; Safeguards. Co-Chairs: Ms Anna Gelpern (Georgetown Law) and Ms Irit Mevorach (University of Nottingham).

24. Between January and March 2022, nearly all Working Group members and observers were involved in an intense working schedule established by the Co-Chairs of the Subgroups and supported by the Secretariat. Each of the Subgroups met virtually twice, to discuss the organisation of their work and the subtopics assigned to them, mainly to suggest more precise parameters for each subtopic and to identify different approaches and possible solutions to specific issues. Written input was provided by the Subgroup participants to advance the work. Moreover, the Secretariat organised meetings between the Co-Chairs of the Subgroups to discuss common issues and coordinate the work. The below provides an overview of the meetings held during the first intersessional period:

- Co-Chairs Coordination Meeting – 18 January 2022, 17:00 – 18:00 (CET)
- SG 1 – First Meeting – 24 January 2022, 13:00 – 15:00 (CET)
- SG 2 – First Meeting – 1 February 2022, 12:30 – 13:30 (CET)
- SG 1 – Second Meeting – 2 February 2022, 13:00 – 15:00 (CET)
- SG 3 – First Meeting – 16 February 2022, 17:00- 19:00 (CET)
- Co-Chairs Coordination Meeting – 21 February 2022, 14:00 – 14:45 (CET)
- SG 2 – Second Meeting – 8 March 2022, 13:00 – 14:00 (CET)
- Co-Chairs Coordination Meeting – 15 March 2022, 16:00 – 16:45 (CET)
- SG 3 – Second Meeting – 17 March 2022, 13:45 – 15:15 (CET)

25. The intersessional work conducted by the Subgroups resulted in three comprehensive reports, one for each Subgroup, which were the main object of the deliberations at the second session of the Working Group.

Second Working Group session (April 2022)

26. The second session of the Working Group took place in Rome and online on 11–13 April 2022. The deliberations mainly focused on the Reports prepared by the three Subgroups, accompanied by a Revised Issues Paper with questions to guide the discussion ([Study LXXXIV – W.G. 2 – Doc. 2](#)).

27. Subgroup 1 had prepared a document that encapsulated its discussions and consolidated the written contributions from its members. On matters of scope, the Report discussed whether the future instrument should cover all institutions accepting deposits and granting loans ('functional approach') or be restricted to institutions with a banking license ('institution-focused approach'). On the basis of the arguments and views set out in the Subgroup 1 Report, the Working Group discussed the objectives of insolvency procedures applicable to banks, possible institutional set-ups, and procedural aspects (e.g., legal standing and liability).

28. The Report of Subgroup 2 reflected the discussions and written contributions by subgroup members on the topics of 'preparation', 'grounds for opening insolvency proceedings', 'tools' and 'funding'. During the second session of the Working Group, the Co-Chairs of Subgroup 2 introduced these subtopics by focusing mainly on the areas of agreement within the Subgroup, proposing to continue the discussion on highly technical and/or contentious issues at a later stage. For instance, there was general consensus that the toolkit of the person in charge of the bank liquidation procedure should extend beyond atomistic liquidation, allowing also the transfer of (large parts of) the failing bank's assets and liabilities to another entity. Participants agreed that external funding may be needed to address bank failures and that the deposit insurer should play some role in such matters. Moreover, the Working Group discussed the possible grounds for opening bank liquidation procedures – which, it was agreed, should differ from ordinary corporate insolvency grounds – and the interaction with the revocation of the banking license.

29. The Report of Subgroup 3 had been prepared by small drafting teams and contained a detailed description of the main issues of each subtopic, together with options or recommendations to be considered by the Working Group. On this basis, among others, the Working Group discussed how to treat banking groups in the insolvency process (and related aspects, e.g., intragroup liabilities) and cross-border issues such as coordination, recognition and support. The Working Group also analysed aspects relating to the ranking of claims; arguments for and against the enforceability of close-out netting provisions upon commencement of insolvency proceedings; and safeguards for creditors, such as due process and the protection of legitimate expectations.

30. As a general matter, the Working Group discussed how it would be beneficial to conduct a cross-jurisdictional survey to collect information and data on relevant aspects of, and experiences with, bank liquidation regimes worldwide.

31. For more information, reference is made to the Summary Report of the Working Group's second session ([Study LXXXIV – W.G. 2 – Doc. 3](#)).

Intersessional work (May – September 2022)

32. Pursuant to the mandate received at the second session of the Working Group, the Secretariat continued to provide support to the Working Group members and observers for the organisation of intersessional meetings to advance the understanding of certain issues and/or the preparation of draft documents.

33. The Co-Chairs of Subgroup 1, in cooperation with the Secretariat, drew up a draft workplan for the second intersessional period that was circulated to all Subgroup 1 participants for comments. The outline set out issues to be covered for each of the four topic areas assigned to Subgroup 1, based on the discussions at the second Working Group session and the specific mandates that were given to Subgroup 1. Subgroup 1 members were invited to express their interest in taking part in one or more drafting teams. On that basis, four drafting teams were constituted. These teams developed text on the Subgroup 1 topics during July and August. The contributions of the four teams were consolidated into a draft Report that was circulated to all Subgroup 1 members for review. The draft Subgroup 1 Report was discussed during a virtual meeting on 22 September 2022 and members of Subgroup 1 were able to submit written comments by 23 September 2022.

34. The Co-Chairs of Subgroup 2, in cooperation with the Secretariat, drew up a draft outline with issues to be covered by Subgroup 2 that was circulated to all Subgroup 2 participants. The Co-Chairs organised four thematic (virtual) meetings to discuss specific aspects in the remit of Subgroup 2 that had been suggested by the Working Group (e.g., moratoria and clawback powers) or that merited further discussion following the second Working Group session. The inputs provided by members of Subgroup 2 during the thematic meetings were integrated in an updated version of the Report of Subgroup 2 for the second Working Group session.

35. The Co-Chairs of Subgroup 3 invited the drafting teams that had been established during the first intersessional period to update and further develop the Subgroup 3 Report in line with the discussions and outcome of the second session of the Working Group. The drafts of the four drafting teams² were consolidated by the Secretariat, submitted to all Subgroup 3 members for review and discussed during a meeting on 29 August 2022. The members of Subgroup 3 had the opportunity to submit written comments by 14 September 2022, following which the drafting teams revised their drafts and the Secretariat streamlined the consolidated report. The result of this process was the Report of Subgroup 3 as circulated to the Working Group for its third session.

36. The below provides an overview of the meetings held during the second intersessional period:

- Co-Chairs Coordination Meeting – 7 June 2022, 18:30 – 19:15 (CEST)
- SG 3 Meeting – 29 August 2022, 14:00 – 15:30 (CEST)
- SG 2 – First Meeting – 30 August 2022, 13:00 – 15:00 (CEST)
- SG 2 – Second Meeting – 1 September 2022, 13:00 – 15:00 (CEST)
- SG 2 – Third Meeting – 8 September 2022, 13:00 – 15:00 (CEST)
- SG 2 – Fourth Meeting – 9 September 2022, 13:00 – 15:00 (CEST)
- SG 1 Meeting – 22 September 2022, 13:00 – 15:00 (CEST)

37. The Reports of the three Subgroups were the main object for deliberation by the Working Group at its third session. The Secretariat, in coordination with the Subgroup Co-Chairs, added questions to the Working Group in each of the three Subgroup Reports to guide the discussion.

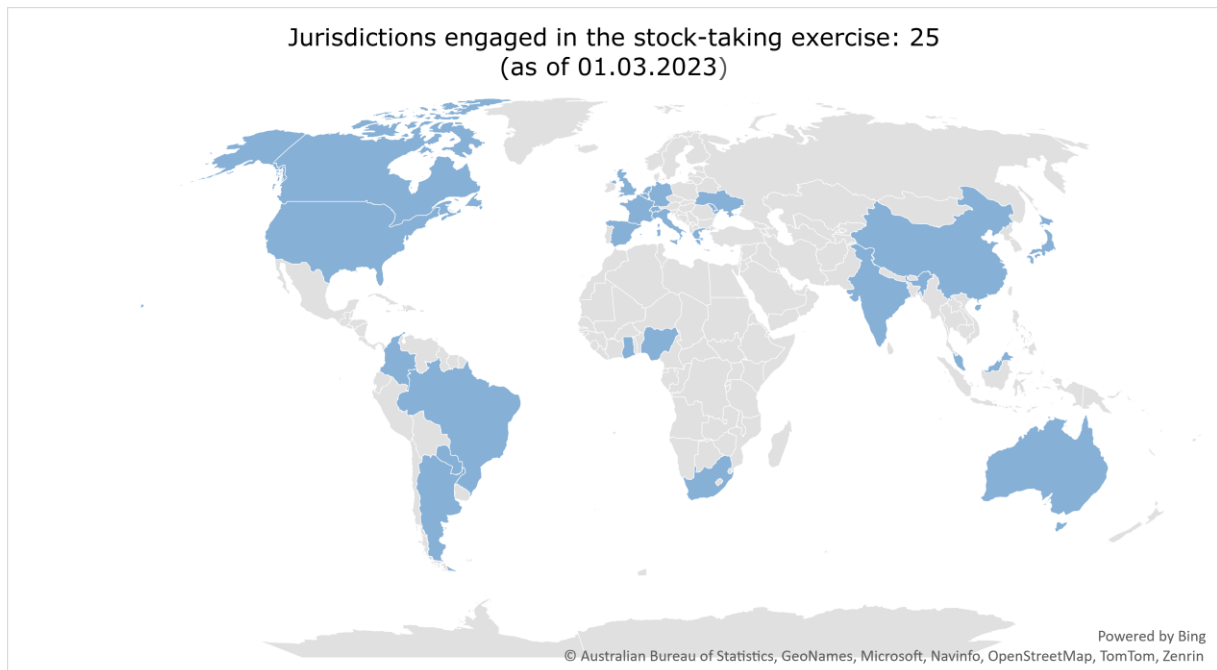
Stock-taking exercise

38. At its second session, the Working Group agreed to conduct a stock-taking exercise to gather information on bank liquidation regimes across the world. This would ensure that the Group had a comprehensive overview of different possible approaches to the various subtopics, and their potential strengths and weaknesses, which could be considered when drafting the instrument.

39. To this end, the Secretariat in cooperation with the three Subgroups drew up a survey consisting of approximately 65 questions covering all the subtopics considered by the Working Group so far. In addition, the survey contained questions concerning the characteristics of jurisdictions' banking sector and it invited jurisdictions to provide examples of actual bank failures and how they were dealt with under the applicable regime.

² The Subgroup 3 drafting teams on cross-border aspects and safeguards were merged, in line with the preference expressed by the Working Group at its second session to consider safeguards in their specific context.

40. The Secretariat received confirmation from experts in 25 jurisdictions³ that they were willing to participate in the stock-taking exercise.



41. Before the third Working Group session, responses from 13 jurisdictions had been received. By 17 March 2023, a total number of 21 survey submissions had been received.

Third Working Group session (October 2022)

42. The third session of the Working Group was hosted by the SRB in Brussels and online from 17-19 October 2022. The deliberations focused mainly on the (confidential) Reports prepared by the three Subgroups, which included questions for discussion by the Working Group. Furthermore, the Working Group considered the Secretariat's Report for the third session ([Study LXXXIV – W.G. 3 – Doc. 2](#)) and participants received, on a confidential basis, the survey submissions received by 28 September 2022.

43. Subgroup 1 had prepared a report which reflected the input received from the drafting teams under Subgroup 1 in the second intersessional period, edited by the Co-Chairs and the UNIDROIT Secretariat. The Subgroup 1 Report introduced a first set of draft definitions, which included those developed by Subgroup 3. The report also contained a deeper analysis of options as to the scope of bank liquidation frameworks. 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. Furthermore, the Subgroup 1 Report contained a detailed analysis of objectives and similar considerations that may be relevant for bank liquidation frameworks and ways to balance those. The Working Group was in favour of referring to a set of key objectives in the introductory chapter of the Guide. The Subgroup 1 Report also identified institutional requirements for a successful liquidation procedure, highlighting that administrative authorities should be involved in the process, and provided an initial text on possible remedies. The section of the Subgroup 1 Report on Procedural and

³ Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, France, Germany, Ghana, Greece, India, Italy, Japan, Malaysia, Moldova, the Netherlands, Nigeria, Paraguay, South Africa, Spain, Switzerland, Ukraine, the United Kingdom, the United States. For some of these jurisdictions, the work on the survey commenced after the third Working Group session.

Operational Aspects indicated issues that Subgroup 1 proposed to cover, relating to: (i) the liquidator; (ii) the creditors; and (iii) the bank's management, with which the Working Group agreed.

44. The Report of Subgroup 2 was prepared by the representatives of the FSI and the UNIDROIT Secretariat, on the basis of the four Subgroup 2 meetings in the second intersessional period. The Report discussed aspects of (i) Preparation; (ii) Grounds for Opening Liquidation Proceedings; (iii) Tools and Powers; and (iv) Funding. The Working Group agreed with the proposal to maintain 'Preparation' as a separate chapter in the future Guide. The guidance in that chapter should not pertain to banking supervision. Rather, with reference to existing standards where relevant, it would outline 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. The Report also focused on issues such as: the identification of grounds and challenges associated with defining or specifying forward-looking assessments and the concept of non-viability; the discretion available to relevant authorities; and the interaction between failure management processes and license withdrawal. On this basis, the Working Group discussed the relevance of a margin of appreciation and agreed to refrain from defining the concept of non-viability as a standalone ground for intervention. Some support was voiced for including a discussion of practices involving voluntary liquidation. The Subgroup 2 Report also outlined issues related to the use of transfer tools for managing bank failures and aspects of funding (in particular, the role of the deposit insurer in providing funding when a transfer strategy is pursued).

45. The Subgroup 3 Report reflected the inputs received from the drafting teams established under Subgroup 3, edited by the Secretariat. The Subgroup 3 drafting teams had tried as far as possible to draft the input as draft guidance rather than as a discussion of issues. Regarding treatment of financial contracts in bank liquidation proceedings, the Working Group agreed, in principle, 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 also agreed that it would be important to consult the industry on this, and to conduct further analysis. Regarding the creditor hierarchy, it was 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. Moreover, the drafting team would consider suggestions made during the third session on aspects such as the use of transfer tools, the treatment of temporary settlement accounts, and the treatment of secured creditors. On Banking Groups, the Working Group discussed the distinction between advance group liquidation planning and the need for coordination and implementation of measures after the opening of liquidation proceedings. Different views were expressed about the proposals of Subgroup 3 regarding group-level liquidation approaches. On Cross-border aspects and safeguards, the Working Group generally agreed with the Subgroup's draft recommendations on issues related to cooperation and coordination in a cross-border context; recognition, assistance and relief; and safeguards.

46. As a general matter, the Working Group considered that the three Subgroups could usefully analyse the responses to the survey, so that these could be considered in the next iteration of drafting. In addition, the Working Group agreed that a Drafting Committee should be established and tasked with the preparation of a preliminary draft of the Guide based on the discussions and input collected so far.

47. For more information, reference is made to the Summary Report of the Working Group's third session ([Study LXXXIV – W.G. 3 – Doc. 6](#)).

Intersessional work (November 2022 – March 2023)

48. Pursuant to the mandate received at the third session of the Working Group, the intersessional work in the period November 2022 to March 2023 consisted of:

- (a) an analysis of survey responses by teams within the three Subgroups; and
- (b) the development of a preliminary draft of the Guide by a Drafting Committee established in accordance with that mandate.

(a) Analysis of survey responses

49. The Secretariat shared the responses to the survey (those received before 30 November 2022) with the Subgroups, having organised the answers by subtopic to facilitate analysis. Teams within the Subgroups produced a first analysis of the survey results pertaining to each subtopic. The analyses of the survey answers concerning Subgroup 3 topics were shared within Subgroup 3 on 17 January 2023, for comments by 30 January 2023. The draft survey analyses concerning Subgroup 1 topics were shared with the Subgroup 1 participants on 31 January 2023, while Subgroup 2 received the survey analyses on 8 February 2023.

(b) Drafting Committee

50. The Secretariat invited selected experts to be part of the Drafting Committee and received a positive answer from: Mr Marco Bodellini; Ms Anna Gelpert; Mr Christos Gortsos; Mr Christos Hadjiemmanuil; Mr Marco Lamandini; Ms Rosa Lastra; Mr Stephan Madaus; Ms Irit Mevorach; Mr David Ramos Muñoz; Ms Janis Sarra. The representatives of the IMF and the World Bank agreed to participate in the Drafting Committee as reviewers.

51. The Drafting Committee met twice (virtually):

- First Meeting of the Drafting Committee – 12 January 2023, 17:00 – 18:00 (CET)
- Second Meeting of the Drafting Committee – 20 February 2023, 17:00 - 18:30 (CET)

52. During the first meeting, the Drafting Committee mainly allocated the work, ensuring that at least two experts would work on each chapter, which would be submitted to the relevant reviewer(s). Following the first meeting, the Secretariat shared a drafting example, to guide the work of the Drafting Committee. In addition, the members of the Drafting Committee received the analyses of the survey responses produced by the three Subgroups.⁴ During the second meeting, the Drafting Committee discussed the state of play of the various draft chapters and common issues, such as terminology, the format of recommendations and ways to reflect the results of the stock-taking exercise in the drafts.

53. The draft Chapters prepared by the members of the Drafting Committee were shared with the reviewers for feedback, and subsequently edited and streamlined by the UNIDROIT Secretariat and the FSI, which integrated the drafts into a preliminary draft of the Legislative Guide.

Next sessions of the Working Group and intersessional work

54. The Secretariat suggests that the next Working Group session be held in October 2023, at the premises of UNIDROIT in Rome. After that, it is proposed to organise at least two more sessions.

55. The continuation of the very fruitful intersessional work is highly encouraged. For the next intersessional period, the Secretariat suggests: (i) inviting Working Group participants to submit

⁴ See par. 49 above. The Secretariat also shared with the Drafting Committee the survey responses from experts in Malaysia, Moldova and Switzerland, which were received after the cut-off date for the analysis by the three Subgroups.

written feedback on the Master Copy and the Report with the Analysis of Survey Responses; (ii) organising at least one virtual meeting per Subgroup, to discuss specific issues regarding the draft Chapters within their remit and the written feedback received; (iii) mandating the Drafting Committee to further develop the Master Copy based on the discussions during the fourth Working Group session and the subsequent written procedure.

Questions and suggestions for the Working Group:

- Do members have views on the date for the next Working Group meeting (tentatively scheduled for 16-18 October 2023)?
- Does the Working Group agree with the proposed approach for the next intersessional period?

D. General matters concerning the instrument

Relationship with existing international instruments

56. The future instrument will focus on the key aspects of liquidation procedures applicable to banks, for which there is currently a lack of international guidance. There are several international instruments that are relevant when developing the instrument. The terminology and concepts used in the future instrument would be harmonised with those of existing instruments to the extent possible, and uniformity and consistency with their provisions ought to be ensured, while avoiding overlap in scope.

57. The publication *Orderly and Effective Insolvency Procedures: Key Issues* (1999) of the IMF's Legal Department outlines the key issues that arise in the design and application of orderly and effective insolvency procedures, including an analysis of the major policy choices that countries need to address when designing an insolvency system, a discussion of the advantages and disadvantages of these choices, and a number of specific recommendations.

58. The joint IMF-World Bank publication *An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency* (2009) discusses the principal features of the framework that countries may put in place in order to deal effectively with cases of bank insolvency. The IMF's *Resolution of Cross-Border Banks—A Proposed Framework for Enhanced Coordination* (2010) advocates a framework for enhanced cross-border coordination regarding the resolution of international financial groups.

59. The *Core Principles for Effective Banking Supervision* (adopted originally in 1997, revised in 2012) of the Basel Committee on Banking Supervision (BCBS) are the *de facto* minimum standard for sound prudential regulation and supervision of banks and banking systems. Amongst others, it requires supervisors to cooperate with relevant authorities regarding the orderly resolution of a problem bank situation (Core Principle 11). The *Report and Recommendations of the Cross-Border Bank Resolution Group* (2010) of the BCBS sets out ten recommendations to address the challenges arising in the resolution of a cross-border bank, on the basis of a stocktaking exercise of legal and policy frameworks and lessons learned from the financial crisis.

60. The *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes, adopted originally in 2011) of the Financial Stability Board (FSB) were developed after the 2008 Global Financial Crisis as an international standard and aim to enable authorities to resolve institutions that are systemic in failure in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining continuity of their vital economic functions. The 2011 Key Attributes were complemented by general and sector-specific guidance in 2014, incorporated as Annexes to the Key Attributes. In addition, the FSB *Principles for Cross-border Effectiveness of Resolution Actions* (2015) set out statutory and contractual mechanisms that jurisdictions should consider including in their legal

frameworks to give cross-border effect to resolution actions in accordance with the *Key Attributes*. The FSB *Key Attributes Assessment Methodology for the Banking Sector* (2016) sets out essential criteria to guide the assessment of the compliance of a jurisdiction's bank resolution framework with the *Key Attributes*, and is used by the IMF and World Bank in assessments of jurisdictions' resolution frameworks in the context of the Financial Sector Assessment Program (FSAP).

61. The *Core Principles for Effective Deposit Insurance Systems* (Core Principles, revised 2014) of the International Association of Deposit Insurers (IADI) are intended as a framework supporting effective deposit insurance practices by jurisdictions across the world. Jurisdictions can use the *Core Principles* as a benchmark for assessing the quality of their deposit insurance systems, for identifying gaps in their deposit insurance practices and measures to address them. The *Core Principles* are also used by the IMF and the World Bank to assess the effectiveness of jurisdictions' deposit insurance systems and practices within the FSAP.

62. UNCITRAL has developed a number of international instruments in the area of business insolvency law. The *UNCITRAL Model law on Cross-Border Insolvency* (MLCBI, 1997) is designed to assist States to address cross-border business insolvency proceedings more effectively. It focuses on authorising and encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws. In particular, it concentrates on the following elements identified as key to the conduct of cross-border insolvency cases: access, recognition, relief (assistance), cooperation among courts and insolvency representatives and coordination of concurrent proceedings.

63. The *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* (2009) refers to actual cases to provide information for practitioners and judges on practical aspects of cooperation and communication in cross-border insolvency cases. Further, the *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (adopted in 2011 and updated in 2013 and 2022), offers general guidance on the issues a judge might need to consider, based on the intentions of those who developed the MLCBI and the experiences of those who have used it in practice.

64. The *UNCITRAL Legislative Guide on Insolvency Law* (presently consisting of five parts adopted at different time points between 2004 and 2021) provides a comprehensive statement of the key objectives and principles that should be reflected in a State's business insolvency law. It is intended to inform and assist insolvency law reform around the world. Parts one and two (adopted in 2004) address key objectives, the structure and core provisions of an effective and efficient insolvency law. Part three (2010) addresses the treatment of enterprise groups in insolvency, both nationally and internationally. Part four treats directors' obligations in the period approaching insolvency (2013), including obligations of directors of enterprise group members (added in 2019). Part five, added most recently (2021), aims at assisting States with establishing a simplified insolvency regime to address the insolvency of individual entrepreneurs and micro and small businesses of an essentially individual or family nature with intermingled business and personal debts (collectively referred to as MSEs). Special considerations arising from the insolvency of banks are not specifically addressed in the *Legislative Guide*. UNCITRAL is currently conducting work on the topics of applicable law in insolvency proceedings and civil assets tracing and recovery in insolvency proceedings.

65. The *UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments* (MLIJ, 2018) was adopted to assist States in establishing a framework of provisions for recognising and enforcing insolvency-related judgments, and the *Guide to Enactment* to provide background and explanatory information.

66. The *UNCITRAL Model Law on Enterprise Group Insolvency* (MLEGI, 2019) was designed to equip States with modern legislation addressing the domestic and cross-border insolvency of enterprise groups, complementing the MLCBI and part three of the *UNCITRAL Legislative Guide*. The MLEGI focuses on insolvency proceedings relating to multiple debtors that are members of the same

enterprise group, which may be located in one or more jurisdictions. The UNCITRAL Model Laws explicitly allow jurisdictions to exclude banks from their scope.

67. The *World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes* (ICR Principles, originally developed in 2001) are a distillation of international best practice on design aspects of corporate insolvency and creditor/debtor systems, emphasising contextual, integrated solutions and the policy choices involved in developing those solutions. The ICR Principles were revised several times; most recently (in 2021) to help policymakers build and improve the insolvency and bankruptcy systems that support micro, small and medium enterprises (MSMEs). The *Insolvency and Creditor Rights Standard* (ICR Standard, 2011), based on the ICR Principles and the UNCITRAL *Legislative Guide*, is designed as a tool to assist countries in their efforts to evaluate and improve insolvency and creditor/debtor regimes. Lastly, the World Bank *Study on Out-of-Court Debt Restructuring* (2011) offers an overview of out-of-court restructuring techniques as forming a continuum to address the problem of corporate distress.

Target audience

68. As consistent with all UNIDROIT instruments, the future instrument should be relevant for countries irrespective of their legal tradition and would aim to help countries make their bank liquidation frameworks more effective. To this end, during its third session, the Working Group agreed that the primary addressees of the future instrument would be legislators and policymakers seeking to reform or refine their bank liquidation regime.

Format and structure

69. The Working Group was mandated to develop a soft law guidance document on bank liquidation proceedings, with a focus on smaller banks. Following the Exploratory Workshop that was jointly organised by the Secretariat and the FSI in June 2021, the Secretariat proposed to the Governing Council at its 100th session (September 2021) that the instrument could take the form of a Legal or Legislative Guide, or similar (e.g., Principles or Best Practices).⁵ An analysis of the different systems for bank liquidation would be conducted and, on that basis, the Working Group would proceed to identify international best practices and/or recommendations where appropriate (see [UNIDROIT 2021 – C.D. \(100\) B4](#)). A more precise determination of the type and format of instrument was left to the discretion of the Working Group.

70. During the third Working Group session, 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.

71. The draft structure for the instrument was updated in line with the outcome of the discussions in the third Working Group session (see [Annex 2](#)).

Questions for the Working Group:

- *As agreed in the third Working Group session, the Drafting Committee included relevant aspects of the analysis of survey responses in each chapter of the Master Copy.*

⁵ There was general agreement that it would not be appropriate or feasible to draft a binding international instrument, nor a legislative instrument structured as a comprehensive code such as a Model Law.

The Working Group is invited to discuss whether and to what extent the Legislative Guide in its final form should include references to jurisdictions' laws and practices as a useful complement to the analysis and principles set out in the Guide.

In principle, several approaches may be considered:

- (i) not including any references to individual jurisdictions' laws and practices (i.e., using the survey results only as background information to identify issues and solutions);*
- (ii) including country references in the Guide only where this is helpful to illustrate approaches or solutions envisaged in the Guide;*
- (iii) providing an overview of jurisdictions' current laws and practices in each chapter.*

To avoid the Guide becoming inaccurate as jurisdictions' frameworks may change over time, the Secretariat proposes that the third option should be excluded.

- *If it is decided to include references to existing laws and practices, could and should the names of jurisdictions be mentioned?*
- *Similarly, should the Guide refer to case studies of actual bank failures (for an overview, please see the input provided by survey respondents in Study LXXXIV – W.G. 4 – Doc. 4)? Or should these cases be used as background information when drafting the Guide, or as illustrations to specific approaches or solutions recommended in the Guide?*
- *The Working Group is invited to consider the updated draft structure for the future instrument and to propose any additional content that should be included as well as any rearrangement of chapters as appropriate.*

For instance, during the third Working Group session it was discussed that guidance on voluntary liquidation may be useful. In which chapter should such guidance be provided?

- *Should the guidance in the chapters be accompanied by a set of recommendations at the beginning of the instrument?*

Title

72. Depending on the terminology to be used in the instrument, the title of the Guide could, e.g., be the 'UNIDROIT Legislative Guide on Bank Liquidation', the 'UNIDROIT Legislative Guide on Effective Bank Liquidation Regimes' or similar. The Governing Council's endorsement would be sought for this title.

Question for the Working Group:

- *The Working Group is invited to reflect on a working title for the Legislative Guide.*

Terminology and translations

73. One of the challenges of uniform law is how to ensure that the instrument adopt a terminology which is sufficiently technical and precise, but also as neutral as possible as regards specific legal systems and accessible to users with different legal and linguistic backgrounds (or at least capable of translation into different languages). This is particularly important in the case of instruments aimed at providing guidance to national legislators.

74. It is envisaged that the Guide will contain a Glossary of terms and definitions. The Working Group agreed that there should be consistency, as far as possible and appropriate, with the terminology used in other UNIDROIT instruments and that used in relevant international standards and instruments developed by other organisations (in particular, those of UNCITRAL, the FSB and IADI as

mentioned in the section '*Relationship with existing international instruments*' above) bearing in mind, however, the different scope of the present project.

75. Draft Chapter 1 of the Guide contains a draft Glossary. The Working Group is invited to reflect on the draft definitions as part of the discussion on Chapter 1.

76. Furthermore, while the Working Group's only working language is English, consistent with UNIDROIT's practice the final instrument will be approved in two language versions: English and French. Bearing this in mind, thought should be given to the best way to ensure that a consistent text is developed in both languages by the time of approval of the instrument.

II. CONTENT OF THE LEGISLATIVE GUIDE

77. The Master Copy as developed by the Drafting Committee, and edited by the FSI and UNIDROIT Secretariat, presents a first preliminary draft of the future Legislative Guide.

Recommendation for the Working Group:

- *When discussing the draft chapters, the Working Group is invited to focus specifically on:*
 - (i) *how the instrument may usefully provide guidance on the legal design of bank liquidation frameworks, i.e., by developing concrete guidance related to legislative drafting, to ensure that the chapters serve the Guide's legislative purpose; and*
 - (ii) *aspects for which existing international standards are relevant, and how the chapters could refer to those and build on them, while avoiding overlap.*

A. Chapter I. Introduction

78. **Glossary:** Based on the Working Group's discussion on the draft definitions that were presented at its third session, the draft definitions have been revised for consideration by the Working Group at its fourth session.

Questions for the Working Group:

- *The Working Group is invited to express views on any definition, but views are particularly welcome on the following draft definitions.*
- The revised definition of '**bank**', which has two elements: (i) the entity is classified and authorised as a deposit-taking institution for regulatory purposes and (ii) in that capacity, it accepts deposits *and* grants loans. These two elements were also part of the definition as previously proposed by Subgroup 1.⁶ During the third session, it was suggested to seek alignment with existing definitions of 'bank' in international instruments which, it was noted, may be limited to accepting deposits or repayable funds from the public (without referring to the granting of loans).⁷ Following discussions in the Drafting Committee, it was suggested to keep the reference to the granting of loans as part of the definition. The principal reason for this is to reflect

⁶ '*Bank*': an institution authorised or licensed under the applicable regulatory framework to: (a) accept deposits from the public, and (b) grant loans (and credit) on their own account (see Subgroup 1 Report for the Third Session).

⁷ See, e.g., IADI Core Principles: "any entity which accepts deposits or repayable funds from the public and is classified under the jurisdiction's legal framework as a deposit-taking institution"; FSB Key Attributes Assessment Methodology: "any financial institution that takes deposits or repayable funds from the public and is classified under the jurisdiction's legal framework as a deposit-taking institution, or the holding company of such a financial institution."

banks' characteristic role as intermediaries between depositors and borrowers and to differentiate them from other types of financial institution that do one but not the other.

- Should the definitions of '**home jurisdiction**' and '**group home jurisdiction**' be combined, as suggested in the alternative under point (t)?
- The revised definition of '**host jurisdiction**'. This has been simplified by deleting the references to jurisdictions where a bank has assets or creditors (not connected with a subsidiary or branch) or where local courts or authorities may need to recognise or give effect to foreign liquidation measures affecting e.g., local creditors. The rationale for this change is that the issue of cross-border effectiveness is different from the concept of host jurisdiction as used, e.g., in international standards for prudential regulation and supervision and for resolution.

79. **Scope of a bank liquidation framework:** The discussion in Section E aims to give effect to the 'regulatory approach' agreed at the third Working Group meeting, by mapping the scope of the instrument to entities that are regulated as banks within a given jurisdiction.

Question for the Working Group:

- *Does Section E provide the right amount of flexibility for jurisdictions to tailor the scope of a national framework by excluding certain categories of licensed banks or by extending it to certain other regulated entities that carry on bank-like activities?*

80. **Objectives of a bank liquidation framework:** Section F outlines the possible objectives, as discussed during the third meeting of the Working Group, but does not attempt to prescribe whether and how they should be incorporated in a jurisdiction's framework.

Questions for the Working Group:

- *Is it useful to explain the different ways in which objectives may be reflected: i.e., as identified, underlying objectives that guide the design of a regime to facilitate specific outcomes; as an objective for the conduct of a liquidation derived from the mandate of the competent liquidation authority; and as an explicit statutory objective for the liquidator?*
- *Should the table summarising the objectives in the frameworks of surveyed jurisdictions be retained?*

B. Chapter II. Institutional Arrangements

81. Considering the useful input from the survey about existing institutional arrangements across jurisdictions, draft Chapter II distinguishes broadly between: (i) administrative-led models; and (ii) court-led models with administrative involvement, recognising the 'hybrid' character thereof.

Question for the Working Group:

- *Does the Working Group agree with distinguishing between these two broad categories of institutional models?*

82. During the third session of the Working Group, it was agreed *inter alia* that the Guide would express a preference for an administrative model, and would identify general institutional requirements for an effective bank liquidation process. Accordingly, Section C sets out nine key factors that may help facilitate a smooth and effective conduct of bank liquidation proceedings and inform

the choice and design of institutional models, with considerations on the suitability of administrative and judicial involvement for each factor.

Question for the Working Group:

- *The Working Group is invited to discuss the factors, and the considerations on institutional arrangements in Section C. Should any additional factors or considerations be added?*

83. The draft Recommendations on Institutional Arrangements distinguish between: (i) general recommendations (irrespective of the institutional model); (ii) recommendations for jurisdictions with an administrative model; and (iii) recommendations for jurisdictions that retain a court-led model with administrative involvement.

Questions for the Working Group:

- *Should the Recommendations be preceded by Key Considerations, as per the current draft?*
- *Could additional concrete legislative guidance be provided for any of the models?*

C. Chapter III. Procedural and Operational Aspects

84. **Section B. The bank liquidator.** Subsection 5 discusses the legal protection to be conferred by the legal framework on the person(s) in charge of the bank liquidation process.

Questions for the Working Group:

- *With regard to administrative authorities: Should the Guide recommend that existing provisions on legal protection of these authorities should also cover their involvement in bank liquidation proceedings (as currently provided in Chapter 2 and replicated in Chapter 3) or should it provide a substantive recommendation on legal protection, in line with international standards? Should the same standard of legal protection apply to the administrative authority and to its staff?*
- *With regard to private bodies appointed as liquidator: Should the standard of legal protection be the same as for administrative authorities? Should such protection be extended also to experts appointed by the competent liquidation authority, especially private experts requested to carry out a valuation of the non-viable bank?*
- *Does the Guide adequately set out the relevant considerations for deciding the appropriate standard of immunity for persons in charge of a bank liquidation process? Are there other considerations that should be included?*
- *Should the Guide specify the types of actions from which the liquidator should be protected or should the applicable standard of immunity apply in all cases?*
- *Should the Guide recommend mandatory professional liability insurance for liquidators, if available in the relevant jurisdiction?*

85. **Section C. Creditor involvement.**

Questions for the Working Group:

- *Subsection 1: Should the level of, and the mechanisms for, creditor involvement in bank liquidation proceedings be similar to those under business insolvency law (e.g., ad hoc meetings of creditors, formation of a creditor committee, and/or appointment*

of a creditor representative). If not, what would be relevant considerations or justifications for a different level of creditor involvement?

- *Should a bank liquidation regime permit or require the approval or veto of creditors for certain actions (e.g., substitution of the liquidator, approval of remuneration)?*
- *Subsection 3: The draft discusses two options for the role of creditors in opening bank liquidation proceedings: (i) granting the right to petition for the opening of bank liquidation proceedings exclusively to administrative authorities (excluding such right for creditors); or (ii) subjecting the rights of creditors to petition for the opening of bank liquidation proceedings to appropriate safeguards. The latter is in line with the draft Recommendation in Chapter 2 that "The Law should grant the administrative authority the right to petition for the opening of bank liquidation proceedings. Should other persons also have such right, the Law could specify that the administrative authority's approval is needed before liquidation proceedings may be opened."*

The Working Group is invited to discuss whether safeguards such as regarding confidentiality and the prior approval of the administrative authority would be sufficient to prevent destabilising effects from a creditor's petition to a court to open bank liquidation proceedings. An alternative option for consideration by the Working Group would be to modify the right of creditors, so that they would only have the right to request the relevant banking authority to assess the grounds for opening liquidation proceedings.

86. **Section D. Duties of the bank's management in the period approaching liquidation.**

Question for the Working Group:

- *This Section discusses a requirement for the bank's management to timely inform the supervisor of the bank's approaching non-viability and accompanying sanctions in case of non-compliance. Should the Guide also discuss/provide legislative guidance on other possible consequences for the bank's management (e.g., regarding their eligibility to function as bank manager etc.)?*

D. Chapter IV. Preparation

87. During the third Working Group session, it was 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.

Questions for the Working Group:

- *Section C 'Advance planning' refers to liquidation planning but also to resolution planning. The Working Group is invited to discuss to what extent descriptions concerning resolution planning should be kept in the Legislative Guide in its final form. Furthermore, the Box in Section C provides background information derived from the survey responses. Should such Box ultimately be kept?*
- *Does the Working Group agree with distinguishing between: (i) regular ex-ante planning; and (ii) contingency planning (if a bank's failure is likely and certain preparatory actions will need to be taken)?*

- *Could more concrete guidance be provided in Section D 'Interaction between pre-liquidation measures and liquidation'?*

In particular: (i) does the introductory part of Section D, which contains text on early supervisory intervention, provide appropriate background information in line with existing standards; (ii) how could the text about the interaction between a person appointed to take control of the bank before liquidation, the supervisor and the liquidator be translated into concrete legislative guidance⁸; (iii) what guidance should the Guide provide on the possibility of involving a temporary administrator as liquidator (e.g., should it recommend that the legal framework should at least not prevent the appointment of the temporary administrator as liquidator, to the extent that the competences and other qualifications would allow this); (iv) are there other pre-liquidation measures that should be considered in this part of the Guide, e.g., because they are useful to address asset stripping risks in the period before liquidation?

- *The Working Group is invited to discuss whether any legislative guidance could and should be provided on pre-liquidation moratoria⁹ (Section E).*
- *With regard to Section F 'Valuation' (see also Chapter VI), the Working Group may wish to discuss to what extent useful practices or lessons could be drawn from general insolvency law.*
- *With regard to Section G 'Cooperation between stakeholders', the Working Group is invited to discuss: (i) possible arrangements for cooperation between banking authorities and courts, (e.g., based on useful experiences in jurisdictions with court-led models); (ii) whether the Guide should provide guidance on cooperation between supervisory and liquidation functions, if these are combined within the same administrative authority; (iii) whether the 'early' notification by the banking supervisor to the competent administrative liquidation authority could be specified and substantiated by reference to existing standards; (iv) what concrete guidance on cooperation could be offered if liquidation proceedings follow a resolution process?*
- *Regarding Section H 'Confidentiality', given that the administrative authorities that may be involved in bank liquidation proceedings will already be subject to confidentiality rules, should the Guide recommend jurisdictions to assess whether existing legal provisions on confidentiality appropriately safeguard secrecy on the one hand, while enabling the authorities to use this information in the discharge of their functions and exercise of their powers, including in relation to liquidation, if assigned to them, on the other hand?*

Should the Guide recommend, e.g.: (i) that existing confidentiality requirements should not legally impede the banking supervisor to engage with potential acquirers or third party experts, subject to adequate safeguards; and (ii) that confidentiality requirements should not impede effective coordination between relevant administrative authorities, while appropriate safeguards should be in place for sharing non-public information with other persons?

⁸ For instance, could the Guide specify how coordination and information sharing between a temporary administrator, where appointed, and an (intended) liquidator should be ensured? Would a specific legal basis be required or might this already be covered by general cooperation provisions? Should the Guide recommend that the legal framework should not include a legal impediment to cooperation? Could legislative guidance be provided on the coordination between the banking supervisor and the liquidator in this context? Would it be sufficient to refer to existing standards, recognising that legal frameworks compliant with such standards would already provide sufficient basis for coordination among respective administrative authorities?

⁹ The Working Group and the Drafting Committee may wish to consider, e.g., the IMF's Technical Note on Bank Resolution and Crisis Management for the euro area (July 2018) (see par. 54 and Box 7).

- *The Working Group is invited to discuss the extent and content of possible legislative recommendations on Preparation.*

E. Chapter V. Grounds for opening bank liquidation proceedings

88. During the third Working Group session, some discussion took place on the discretion of administrative authorities. Draft Chapter V contains a concise section C on this aspect.

Questions for the Working Group:

- *The Working Group is invited to discuss whether, and if so how, the Guide should discuss the discretion and margin of appreciation of administrative authorities. For instance, would it be sufficient to note that authorities will enjoy a margin of appreciation when qualifying factual elements to assess whether a condition described in the grounds for opening bank liquidation proceedings is met (e.g., whether a violation of regulatory requirements is 'grave' or not)?*
- *Should guidance be provided on whether the legislation should provide only discretionary grounds for opening bank liquidation proceedings, or a combination of discretionary and mandatory grounds?*

89. During the last session, the Working Group discussed a possible (extraordinary) scenario in which a bank would no longer meet the requirements for a continued authorisation as a bank, based on non-financial grounds, but may arguably not need to enter into bank liquidation proceedings. Draft Chapter V discusses such scenario in Section D 'Interaction with license revocation'.

Recommendations for the Working Group:

- *The Working Group is invited to discuss whether, and if so how, the Guide should discuss such scenario.*
- *Section D contains a Box with extensive information from the survey about the interaction between license revocation and liquidation across jurisdictions. This may be useful for the discussion during the fourth session, however, it is suggested not to include such extensive information in the Legislative Guide in its final form.¹⁰*

90. Draft Chapter V does not yet contain a set of key recommendations for legislators or policymakers.

Recommendation and questions for the Working Group:

- *The Working Group is invited to identify possible recommendations on Grounds for opening liquidation proceedings, to guide the work of the Drafting Committee during the next intersessional period.*

For example, and in line with discussions during previous sessions, should the Guide recommend that: (i) the banking license be withdrawn simultaneously with, or as soon as possible after, the commencement of bank liquidation proceedings; (ii) the grounds for opening bank liquidation proceedings should be aligned with the triggers for resolution; (iii) authorities should be able to transition from resolution to liquidation where the prospects for a successful resolution procedure are deemed to be weak; (iv) a partial transfer of assets and liabilities should lead to the liquidation of the residual entity (while recognising that a continued provision

¹⁰ The same applies to the Box in Section E.

of services to the acquirer, for a limited period of time, may be needed, if this is in the interest of resolution or liquidation objectives).

F. Chapter VI. Tools

91. The focus of this draft Chapter is on the possibility of transferring a non-viable bank's assets and liabilities to an acquiring entity. It discusses: (i) why bank liquidation frameworks should enable competent liquidation authorities to transfer (part of) a non-viable bank's business to an acquiring entity ('sale as a going concern'), as opposed to a 'piecemeal' liquidation (Section A); (ii) different types of transfers, the role of transfers in 'single-track' and 'dual-track' regimes, financial considerations and legal prerequisites that may facilitate transfer transactions (Section B); (iii) procedural aspects and safeguards for the use of transfer tools (Section C); and (v) options of transferring of assets and liabilities to a bridge bank or asset management company (Section D). The next iteration of this Chapter would cover piecemeal liquidation as well, including provision that might be needed for liquidation of a residual entity within a resolution.

92. Section A. The need for transfer-based tools

Recommendations for the Working Group:

- *Modern business insolvency laws may already provide the possibility of selling an insolvent enterprise as a going concern (e.g., 'pre-pack' sales). The Working Group is invited to discuss how the Legislative Guide could build on such existing options in liquidation proceedings.*
- *Under corporate law, there may be mechanisms that allow the transfer of assets and liabilities as a bulk, without the consent of third parties and without the need for perfecting transfers for each and every item transferred. The Working Group is invited to discuss whether and to what extent the Guide could build on such mechanisms.*
- *The last paragraph of Section A refers to input from the survey about different types of tools/transactions, which may be useful for the discussion during the fourth session. In line with the general question on how to reflect survey results in the Guide, the Working Group is invited to decide whether these references should be kept in the next version of the Legislative Guide.*

93. Section B. Transfer-based tools in bank liquidation: nature and applicability

Questions for the Working Group:

- *Subsection 1 explains that share deals would be expected to play at most a marginal role in bank liquidation proceedings. Against this background, to what extent should the Guide discuss this option? Should coverage be limited to explanations why share deals are unlikely to be useful in bank liquidation (or should concrete guidance nevertheless be provided)?*
- *The draft Chapter takes a comprehensive approach and discusses, in addition to the possibility to arrange a transfer to another entity, also other types of transactions (e.g., mergers, de-mergers, spin-offs, securitisations). Should the Guide specifically address these or should it focus on the 'Purchase & Assumption' tool?*

If other transactions should be covered, what guidance could/should be provided (e.g., with regard to the ownership structure of new entities in a spin-off, loss allocation in case of a merger, etc.)? Should any distinction be made between the availability of such options in administrative and court-led models?

- *The draft Recommendations provide that provisions should be in place to enable a swift and effective implementation of a transfer strategy. Should this be addressed here, or in other Chapters? For instance, the relevance of legal certainty and irreversibility of the outcome of the transfer is currently covered in Chapter 2 (the part on remedies).*

94. **Section C. Sale as a going concern: process and safeguards**

- *Subsection 2 discusses a possibility whereby the failing bank would retain its license, for a limited period of time, after the opening of liquidation proceedings. The Working Group is invited to discuss whether and if so, in what circumstances, there would be a need for a non-viable bank to retain its license following the opening of liquidation proceedings and what guidance, if any, the Guide should include on this.*

Are there any operations that would be needed for the execution of the transfer that the bank is prevented from carrying out without a banking license?

- *Subsection 4 discusses the bidding process and the need for the relevant authority to be able to share information with potential acquirers during such process, subject to strict confidentiality requirements. Should the Guide cover, and provide legislative guidance, on any additional aspects relevant for this process?*
- *Subsection 5 discusses the role of a valuation in bank liquidation proceedings. The Working Group is invited to discuss whether existing guidance on valuations - both in general insolvency frameworks¹¹ and in bank resolution frameworks - could be helpful to further develop this section (e.g., regarding the timing of a valuation, who is to conduct it, and the methodology).*

95. **Section D. Other transfer-based tools: bridge bank and asset management company**

- *To what extent should the Guide provide guidance on asset management companies?*

The Working Group is invited to discuss, in particular: (i) to what extent the bank in liquidation could itself perform a role similar to that of an asset management company, after a transfer of assets and liabilities to an acquirer; and (ii) funding options for a possible AMC, considering that there is unlikely to be any public interest in using public funds in the liquidation of an individual bank that is not systemic in failure.

- *The Working Group is invited to discuss the draft recommendations at the end of Sections B and D. Do these draft recommendations cover the key aspects to be addressed concerning 'tools and powers' in a legislative framework covering bank liquidation proceedings?*

96. **Section E. Financial contracts**

- *The Working Group is invited to discuss the content of this Section. Should any additional safeguards be provided for a possible temporary stay in bank liquidation proceedings in the context of a transfer?*

G. Chapter VII. Funding

97. This draft Chapter contains a preliminary draft text covering: (i) explanations as to why external funding may be needed; (ii) the use of deposit insurance funds in transfer transactions, in

¹¹ For instance, the Working Group may wish to consider the guidance provided in the UNCITRAL Legislative Guide on Insolvency Law, Part Two, on the valuation of encumbered assets (see paragraphs 66 to 69).

line with the IADI Core Principles (e.g., covering aspects of governance, and safeguards to contain the use of deposit insurance resources); (iii) the design of DIS financing (e.g., cash contributions, guarantees or loss-sharing agreements); (iv) loss allocation; and (v) public funding. Draft Chapter VII does not yet contain a box with recommendations for legislators or policymakers.

Recommendation and questions for the Working Group:

- *The Working Group is invited to identify possible recommendations on Funding, to guide the work of the Drafting Committee during the next intersessional period.*

For instance, should the Guide recommend that the legal framework:

(i) allows the use of DIS financing during liquidation (e.g., in some countries, the deposit insurer is 'pay-box' only or the legislation allows DIS financing only in a resolution context, whereas it is silent on the availability of such financing during bank liquidation proceedings, other than for a payout of insured depositors); (ii) recognises subrogation rights of the deposit insurer, not only in case of a payout but also in case DIS funds are used to facilitate a transfer transaction?

The Working Group is invited to take into consideration IADI Core Principle 9, which allows the deposit insurer to authorise the use of its funds for resolution of member institutions "other than liquidation".

- *What guidance could the instrument provide on the legal design of financing options in the absence of a DIS, or where the deposit insurer has a paybox mandate only?*
- *The focus of draft Chapter 6 is on solvency support. To what extent should it address liquidity support? For instance, should it merely acknowledge that liquidity will likely be less of an issue in bank liquidation proceedings as compared to resolution (e.g., as discussed during the third Working Group session, in case of a transfer transaction, liquidity needs would typically be taken care of by the acquiring party)?*

H. Chapter VIII. Creditor Hierarchy

98. During the last Working Group sessions, it was agreed to develop options on depositor ranking for consideration by legislators. The advantages and disadvantages of the various options are described in Section C.

Question for the Working Group:

- *The Working Group is invited to express its views on: (i) the description of general advantages and disadvantages of depositor preference; (ii) the explanations concerning the relationship between the ranking of deposit claims, on the one hand, and the contribution of the deposit insurer to funding transfer transactions, on the other hand; (iii) the content and level of detail of the options for depositor ranking; and (iv) the draft Recommendations on the ranking of bank deposits.*

99. Section D contains a preliminary draft text on the treatment of temporary settlement accounts, e-money and runnable liabilities in bank liquidation proceedings, considering the results of the survey.

Question for the Working Group:

- *The Working Group is invited to discuss to what extent and how the Guide should address these types of accounts/liabilities.*

100. During the third session, the Working Group discussed how the Guide could usefully underline the relevance of protecting secured creditors, such as covered bondholders, in bank liquidation proceedings. Section E contains a preliminary draft text on the treatment of covered bondholders and central banks.

Question for the Working Group:

- *The Working Group is invited to discuss whether the Drafting Committee should be provided with a mandate to further analyse these aspects and, where possible, develop recommendations.*

I. Chapter IX. Group Dimension

101. Following the discussions in the third session, the Drafting Committee revised the text of the draft chapter on banking groups, also building on the survey results (which confirm that specific rules on the treatment of banking groups in liquidation are generally lacking).

Question for the Working Group:

- *The Working Group is invited to consider the revised text, and to provide feedback on the content and level of detail of the draft Recommendations, and accompanying text, on:*
 - (iii) *ex-ante group liquidation planning and ex-post group liquidation solutions;*
 - (iv) *procedural coordination in liquidation proceedings concerning banking groups;*
 - (v) *intra-group financial assistance;*
 - (vi) *cooperative groups and similar networks.*
- *The Working Group is invited to discuss whether guidance should be provided on possible exceptions to anti-avoidance rules, claw-back provisions, and subordination of intra-group financing and asset transfers.¹² Discussion during the third Working Group session showed divergent views on this.*

J. Chapter X. Cross-Border Aspects

102. Following the discussions in the third session, the Drafting Committee revised the text of the draft chapter on cross-border aspects, also building on the survey results, which confirm that jurisdictions often lack a reliable and comprehensive framework for cross-border recognition of bank liquidation proceedings.

Question for the Working Group:

- *The Working Group is invited to consider the revised text, and to provide feedback on the content and level of details of the draft Recommendations, and accompanying text.*
- *Are there any other aspects that would merit to be addressed in this chapter of the Guide?*

¹² Should the Working Group decide that such guidance should be developed, it may wish to take into consideration relevant guidance in existing standards – especially, the UNCITRAL Legislative Guide on Insolvency Law, Part Three (which contains, *inter alia*, guidance on enterprise group transactions and avoidance) and Part IV (on directors' obligations in the period approaching insolvency, including in enterprise groups), as well as provisions on intragroup financial support in certain bank resolution frameworks.

ANNEX I**ADDITIONAL RESOURCES**UNIDROIT Instruments

UNIDROIT, Principles on the Operation of Close-Out Netting Provisions (2013)

<https://www.unidroit.org/wp-content/uploads/2021/06/netting-English.pdf>

UNCITRAL Instruments

UNCITRAL, UNCITRAL Legislative Guide on Insolvency Law (2004-2021)

https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law

UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency (1997) with Guide to Enactment (2013)

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf>.

UNCITRAL, UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment (2019)

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11346_mloegi.pdf.

UNCITRAL, UNCITRAL Model law on Recognition and Enforcement of Insolvency-Related Judgments (2018)

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml_recognition_gte_e.pdf

UNCITRAL, UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (revised 2022)

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlcbi_judicial_perspective_2021_advance_copy.pdf

UNCITRAL, UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009)

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/practice_guide_ebook_eng.pdf

Other International Documents

Basel Committee on Banking Supervision (BCBS), Core Principles for effective banking supervision, revised (2012) and integrated into the consolidated Basel Framework (version 2019)

https://www.bis.org/basel_framework/chapter/BCP/01.htm?inforce=20191215&published=20191215

BCBS, Report and Recommendations of its Cross-Border Bank Resolution Group (2010)

<https://www.bis.org/publ/bcbs169.pdf>

FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions, revised (2014)

https://www.fsb.org/wp-content/uploads/r_141015.pdf

FSB, Key Attributes Assessment Methodology for the Banking Sector (2016)

<https://www.fsb.org/wp-content/uploads/Key-Attributes-Assessment-Methodology-for-the-Banking-Sector.pdf>

FSB, Principles for Cross-border Effectiveness of Resolution Actions (2015)

<https://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf>

FSI Insights No 10, How to manage failures of non-systemic banks? A review of country practices (2018)

<https://www.bis.org/fsi/publ/insights10.pdf>

FSI, Insights No 45, Counting the cost of payout: constraints for deposit insurers in funding bank failure management (2022)

<https://www.bis.org/fsi/publ/insights45.pdf>

IADI, Core Principles for Effective Deposit Insurance Systems, revised (2014)

<https://www.iadi.org/en/assets/File/Core%20Principles/cprevised2014nov.pdf>

IADI Brief No 4, Depositor Preference and Implications for Deposit Insurance (2020)

<https://www.iadi.org/en/news/iadi-brief-on-depositor-preference-and-implications-for-deposit-insurance/>

IADI, Ways to Resolve a Financial Cooperative while Keeping the Cooperative Structure (2021)

<https://www.iadi.org/en/assets/File/Papers/Approved%20Guidance%20Papers/IADI%20Guidance%20Paper%20Ways%20to%20resolve%20a%20financial%20cooperative%20while%20keeping%20the%20cooperative%20structure.pdf>

IMF, Orderly and Effective Insolvency Procedures: Key Issues (1999)

<https://www.elibrary.imf.org/view/books/071/05062-9781557758200-en/05062-9781557758200-en-book.xml>

IMF, Resolution of Cross-Border Banks—A Proposed Framework for Enhanced Coordination (2010)

<https://www.imf.org/external/np/pp/eng/2010/061110.pdf>

IMF Technical Guidance Note, The Case for Depositor Preference (2020)

<https://www.imf.org/en/Publications/TNM/Issues/2020/12/22/The-Case-for-Depositor-Preference-49766>

IMF and the World Bank, An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency (2009)

<https://www.imf.org/external/np/pp/eng/2009/041709.pdf>

World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes, revised (2021)

<https://openknowledge.worldbank.org/bitstream/handle/10986/35506/Principles-for-Effective-Insolvency-and-Creditor-and-Debtor-Regimes.pdf?sequence=1&isAllowed=y>

World Bank, Study on Out-of-Court Debt Restructuring (2011)

<https://documents1.worldbank.org/curated/en/417551468159322109/pdf/662320PUB0EPI00turing09780821389836.pdf>

ANNEX II**Updated Draft Structure of the Guide**

103. The below draft structure for the Guide was prepared for the Drafting Committee based on the discussions during the third Working Group session. The text included under the Chapter titles in form of bullet points is not proposed as headings, but merely as a prompt for the contents.

Heading	Contents
Chapter 1. Introduction Preliminary Remarks Glossary Scope Objectives	<ul style="list-style-type: none"> • Background and aim of the instrument • Existence of different legal frameworks (single v dual track regimes) • Definitions • Relationship with existing international instruments and bank resolution (<i>FSB Key Attributes</i>) • Entities covered by the instrument • Key objectives • Balancing objectives
Chapter 2. Institutional models	<ul style="list-style-type: none"> • Relationship with jurisdiction-specific features • A predominantly administrative model • A predominantly court-based model • Hybrid models • Arrangements to facilitate smooth cooperation between courts and administrative authorities • Phases of the liquidation process and desired outcomes or priorities for each phase • Involvement of particular administrative authorities • Judicial review in administrative models • Rights of appeal in court-based models
Chapter 3. Procedural and operational aspects	<ul style="list-style-type: none"> • Legal standing to file for insolvency • The person in charge of the liquidation procedure (selection and appointment, supervision, remuneration, accountability, transparency, legal protection) • Creditor involvement and procedural safeguards • Role of the bank's management
Chapter 4. Preparation	<ul style="list-style-type: none"> • Introduction and proportionality • Advance planning • Cooperation and information exchange with the banking supervisor • Interaction between pre-liquidation measures and liquidation • Cooperation with the bank • Cooperation with the deposit insurer

Chapter 5. Grounds for opening liquidation proceedings	<ul style="list-style-type: none"> • General considerations (e.g., concerning the relation with grounds for corporate insolvency and alignment with resolution triggers) • Financial grounds • Non-financial (regulatory) grounds • License revocation • Liquidation as part of a resolution process
Chapter 6. Tools	<ul style="list-style-type: none"> • Introduction • General principles (proportionality; no hierarchy of tools; relationship with existing practices) • General moratoria • Atomistic liquidation • Transfer to a private acquirer <ul style="list-style-type: none"> ○ Preparation and timing (valuation, marketing, contractual information, confidentiality) ○ Legal prerequisites ○ Procedure ○ Specific considerations (assets and liabilities, shares) ○ Factors that affect the effective application of the transfer tool ○ Safeguards • Other tools • Clawback • Financial contracts
Chapter 7. Funding	<ul style="list-style-type: none"> • Need for external funding • Sources of private or market-based funding • Purposes of funding (pay-out, transfer) • Constraints on the use of deposit insurance funds • Burden-sharing • Public funding
Chapter 8. Creditor hierarchy	<ul style="list-style-type: none"> • Introduction and general principles on ranking • Bank deposits • Secured creditors • Subordinated claims
Chapter 9. Group dimension	<ul style="list-style-type: none"> • General principles and group liquidation planning • Procedural coordination • Upstreaming and down-streaming of losses and funds • Cooperative groups and other structures (e.g., institutional protection schemes) • Exceptions in a group context

	<ul style="list-style-type: none">• (Group-level restructuring agreements)
Chapter 10. Cross-border aspects	<ul style="list-style-type: none">• Cooperation and allocation of competences between home and host authorities• Recognition of foreign proceedings and actions; recognition and giving effect to specific measures; parallel proceedings• Safeguards or grounds for refusing recognition/support/cooperation, non-discriminatory treatment of creditors
Chapter 11. / Annexe Case studies	<ul style="list-style-type: none">• <i>Relevant examples of actual bank failures</i>