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FINANCIAL SECTOR ASSESSMENT PROGRAM

December 20, 2019

TECHNICAL NOTE

BANK RESOLUTION AND CRISIS MANAGEMENT

Prepared By
Monetary and Capital Markets Department and Legal Department

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program that visited Canada in October 22–November 14, 2018. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at http://www.imf.org/external/np/fsap/fssa.aspx

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Glossary

AMF	Autorité des marchés financiers
BCPS	Basel Core Principles for Effective Supervision
BCBS	Basel Committee for Banking Supervision
BIA	Bankruptcy and Insolvency Act
BIS	Bank for International Settlements
BOC	Bank of Canada
Can$	Canadian Dollar
CAR	Capital Adequacy Ratio
CBCM	Cross-Border Crisis Management
CDIC	Canada Deposit Insurance Corporation
CIPF	Canadian Investment Protection Fund
CMG	Crisis Management Group
CMHC	Canada Mortgage and Housing Corporation
CoAg	Cooperation Agreement
CCAA	Companies' Creditors Arrangement Act
CPA	Canadian Payments Association
CSA	Canadian Securities Administrators
DIS	Deposit Insurance System
DoF	Department of Finance
D-SIB	Domestic Systemically Important Bank
D-SIFI	Domestic Systemically Important Financial Institution
DTI	Deposit Taking Institution
EFC	Eligible Financial Contract
EFF	Extraordinary Financing Framework
ELA	Emergency Liquidity Assistance
FAA	Financial Administration Act
FCAC	Financial Consumer Agency of Canada
FSCO	Financial Services Commission of Ontario
FICOM	Financial Institutions Commission (British Columbia)
FISC	Financial Institutions Supervisory Committee
FIRP	Financial Institution Restructuring Provisions
FMI	Financial Market Infrastructure
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
GIC	Governor in Council

G-SIB	Global Systemically Important Bank
G-SIFI	Global Systemically Important Financial Institution
HoA	Heads of the Agencies
IIROC	Investment Industry Regulatory Organization of Canada
IMPP	Insured Mortgage Purchase Program
KA	Key Attributes of Effective Resolution Regimes for Financial Institutions
MoF	Minister of Finance
MoU	Memorandum of Understanding
NCWO	No Creditor Worse Off
NVCC	Non-Viability Contingent Capital
OSFI	Office of the Superintendent of Financial Institutions
OBA	Open Bank Assistance
P&A	Purchase and Assumption
PRA	Purchase and Sale Agreements
RRP	Recovery and Resolution Plan
RSS	Risk Support Services
SAC	Senior Advisory Committee
SLF	Standing Liquidity Facility
SRC	Systemic Risk Council
TLCA	Trust and Loan Companies Act
TPO	Temporary Public Ownership
WURA	Winding-Up and Restructuring Act

EXECUTIVE SUMMARY[1]

This Technical Note presents the findings and recommendations made in the Financial Sector Assessment Program (FSAP) for Canada in the areas of bank resolution and crisis management. The Technical Note is based on the findings of the mission conducted during October 29–November 14, 2018. The mission had substantive discussions with all the relevant federal authorities, with Autorité des marchés financiers (AMF) in Québec, and with representatives of the Canadian financial sector and of the Canadian legal and accounting professions. At the provincial level, the mission primarily focused on Québec given the existence of a systemically important deposit-taking institution. The mission had access to legal, regulatory, and policy documents, and received comprehensive responses to questionnaires on the subject-matter of this note. The main findings and recommendations are summarized below.

Canada has maintained financial stability for a long period of time. Strong institutional settings, effective supervision, and sound financial sector policies have succeeded in preventing crisis situations. The last bank failure in Canada occurred more than twenty years ago. However, the lack of crisis events does not diminish the need for preparation and for revisions to the existing framework.

The bank resolution regime and crisis management framework are the subjects of continuous improvements. The authorities are mindful of the need to keep up with new developments and best international practices and are incorporating new tools and techniques into the Canadian system. There is ample legislative and regulatory activity, both at the federal level and in Québec.

A substantial part of the financial system is covered by federal crisis management and safety net arrangements that are well-established. By law, the Minister of Finance (MoF) has the mandate of maintaining overall financial stability in Canada. At the federal level, multiple agencies are involved in crisis management and safety net. The Office of the Superintendent of Financial Institutions (OSFI) is the supervisor of federal regulated financial institutions; the Canada Deposit Insurance Corporation (CDIC) is the resolution authority for its member deposit-taking institutions (DTIs) and the federal deposit insurance system (DIS) administrator; the Bank of Canada can provide liquidity support; and the Department of Finance (DOF) supports the MoF in discharging its duties. Each province/territory has its own crisis management and safety net arrangements.

Coordination among the federal agencies is strong, underpinned by inter-agency committees. At the federal level, the Financial Institutions Supervisory Committee (FISC), led by OSFI, deals with institution-specific problems (i.e., early intervention); the CDIC Board handles resolution planning and distressed and failing member DTIs; and the Senior Advisory Committee (SAC) addresses systemic matters, including crisis preparedness and legislative initiatives. The SAC and its permanent

[1] This Technical Note was prepared by José Garrido (IMF, Legal Department) and David Scott (IMF short-term expert) under guidance of Phakawa Jeasakul (FSAP deputy mission chief). The review was conducted as part of the 2019 Canada FSAP led by Ghiath Shabsigh (FSAP mission chief).

sub-committee (sub-SAC) have no written terms of reference and should consider adopting them. Regarding coordination between federal and provincial authorities, the Bank of Canada (BOC) and CDIC have entered into new memorandums of understanding (MoUs) with provincial authorities since the 2014 FSAP, although OSFI has not. There is scope for additional federal-provincial MoUs to be put in place.

The early intervention regime is well-established, but recovery planning should be expanded to cover all DTIs. Early intervention is embedded in the supervisory approach of OSFI and AMF. At the federal level, OSFI and CDIC developed a joint Guide to Intervention to set out coordinated guidelines for the use of their intervention powers. In Québec, AMF has a similar framework. Recovery planning for domestic systemically important banks (D-SIBs) is advanced, and the assessment of recovery planning activities is embedded into OSFI's risk-based supervisory processes. Good progress has been made by Québec's domestic systemically important financial institutions (D-SIFI) in developing its recovery plan. OSFI's recovery planning should be expanded to all DTIs, and its guideline on recovery planning should be published.

The bank resolution regime is generally compliant with international standards, but there are areas for improvement. At the federal level, CDIC enjoys autonomy in the implementation of resolution actions. However, CDIC should have greater operational independence in applying resolution tools as certain decisions currently require authorization of the MoF and the Governor-in-Council.[2] The resolution regime should be strengthened with additional powers (e.g., interference with contracts, write-down of liabilities, and claw-back of remuneration) and extended to cover foreign bank branches and banks' unregulated subsidiaries. The federal bail-in regime was introduced and is only applicable to D-SIBs. Procedures should be put in place to ensure that bail-in can apply to any bank deemed systemic at the time of failure based on the prevailing circumstances. Given the likelihood of compensation to bail-in-able debt holders (at the same ranking as other senior unsecured creditors), the valuation framework for compensation should be further developed to increase certainty about bail-in outcomes. Furthermore, depositor preference should be adopted to facilitate applying certain resolution options (e.g., bridge bank or purchase and assumption transactions) and minimize the DIS's losses. Finally, the federal statute governing bank liquidation—the Winding-Up and Restructuring Act (WURA)—is outdated and should be modernized. At the provincial level, Québec is completing the development of a full resolution regime, and the issues highlighted here are equally relevant for such regime.

There have been important changes to resolution planning. Since the 2014 FSAP, CDIC began requiring the D-SIBs to prepare their own resolution plans based on CDIC's bail-in resolution framework. Impediments to resolution are being addressed and the D-SIBs are on track to meeting CDIC's 2020 deadlines for ensuring resolvability. AMF is making good progress in developing a resolution plan for the D-SIFI, based on a bail-in regime. Resolution planning should be expanded to cover DTIs that perform critical functions (e.g., custody). To ensure the comprehensiveness of

[2] The term "Governor-in-Council" designates the Prime Minister of Canada and the Cabinet.

resolution planning, the FISC should oversee group-wide resolution planning for significant insurance groups with deposit-taking business.

The federal DIS is largely aligned with best practices; provincial DISs vary markedly, especially in coverage. The regulatory framework and the technical ability of CDIC ensure that the federal DIS performs its function of contributing to the confidence in the banking system. Recent changes introduced as a result of the deposit insurance review are positive, although the increased scope of coverage will likely result in a delay in arriving at CDIC's minimum targeted ex-ante funding. The provincial DISs, on the other hand, present very different situations. While Québec's DIS is also largely aligned with best practices, with its coverage harmonized with the federal system, there are other provincial DISs that provide unlimited coverage of deposits. The effects of these differences on competition in normal times and the sources of potential risks, particularly on public finances, during crises have not been assessed.

Funding arrangements for resolution activities are robust at the federal level. CDIC can provide resolution funding using its investment portfolio and its borrowing authority. Beside CDIC's resources, the authorities have enjoyed ample additional funding sources. The BOC can provide liquidity funding to support effective recovery and orderly resolution. Since the 2014 FSAP, the BOC's emergency liquidity assistance (ELA) framework has been revised.[3] Policy changes encompassed replacing solvency as an eligibility criterion with a requirement that the institution has in place a credible recovery and resolution framework, accepting as collateral Canadian-dollar mortgages, and clarifying the eligibility requirements for provincially regulated financial institutions, including the need for a provincial indemnity for residual losses in case of a default on the ELA advance. The MoF can provide loss absorption, recapitalization, and liquidity funding under the arrangements in place at the time of the 2014 FSAP. In Québec, AMF has access to several funding sources to support resolution. AMF should continue to support steps by the Québec government to agree a provincial indemnity for potential BOC's ELA and should seek to formalize its backstop funding arrangement with the Québec finance ministry.

Canada-wide crisis preparedness should be further strengthened. Since the 2014 FSAP, the federal authorities and AMF have taken numerous actions to upgrade their internal contingency plans, a process that is ongoing. Similarly, the authorities have ramped-up their testing and readiness programs. Nevertheless, no single body is in charge of Canada-wide crisis preparedness. To further strengthen the existing arrangement, the SAC should oversee crisis preparedness at the federal level, providing more systematic oversight of the contingency planning and testing/practice activities of its member agencies with the goal of putting in place a comprehensive, integrated plan that is periodically tested and enhanced. The SAC should also act as the federal coordinator with key provincial authorities to carry out contingency planning and testing activities for the whole Canadian financial system.

[3] In the context of Canada, ELA refers to the BOC's Emergency Lending Assistance.

Table 1. Canada: Recommendations on Bank Resolution and Crisis Management		
Recommendation	Priority	Timeframe
Institutional and inter-agency arrangements		
Increase the operational independence of CDIC. (MoF, CDIC) ¶*18,36,45,46,47*	H	NT
Adopt terms of reference for the SAC and the sub-SAC. (MoF) ¶*21*	H	I
Put in place MoUs between the BOC and British Columbia and Ontario authorities. (BOC; British Columbia and Ontario authorities) ¶*25*	M	NT
Put in place MoUs between OSFI and provincial authorities. (OSFI; provincial authorities) ¶*26*	M	NT
Early intervention and recovery planning		
Expanding the recovery planning requirement to all deposit-taking institutions. (OSFI) ¶*39*	M	I
Publish recovery planning guidance. (OSFI) ¶*39*	M	I
Bank resolution and liquidation		
Extend the scope of the resolution regime to subsidiaries and branches of foreign banks. (MoF, CDIC) ¶*50*	M	NT
Introduce powers to terminate contracts, claw back remuneration from directors, write down shares and liabilities, and require changes to improve the resolvability of financial institutions. (MoF, CDIC) ¶*49,51*	M	NT
Further develop the valuation framework for compensation and enhance its transparency. (CDIC) ¶*60-66*	H	I
Recognize the power of the resolution authority to depart from the *pari passu* treatment of creditors for specified reasons and subject to the no creditor worse off safeguard. (MoF, CDIC) ¶*58*	M	NT
Introduce depositor preference. (MoF, CDIC) ¶*52,73,108*	M	NT
Incorporate the same recommendations on the legal framework for bank resolution regarding the scope of the regime, powers, compensation, and depositor preference (Québec government, AMF) ¶*80-86*	H	NT
Overhaul the bank liquidation regime (i.e., the Winding-Up and Restructuring Act). (DoF, Department of Innovation, Science and Economic Development) ¶*67-75, Appendix II*	H	NT
Ensure that resolution plans are in place for all federally regulated financial institutions that provide critical functions. (CDIC, FISC) ¶*97*	H	I
Deposit insurance and resolution funding		
Continue bolstering ex ante resources; continue improving the quality and the granularity of deposit data. (CDIC) ¶*106*	M	NT
Continue increasing the deposit insurance system's resources; consider introducing amendments in line with the federal deposit insurance review. (Québec government, AMF) ¶*113*	M	NT

Table 1. Canada: Recommendations on Bank Resolution and Crisis Management (concluded)

Recommendation	Priority	Timeframe
Deposit insurance and resolution funding		
Eliminate the power to provide open bank assistance without a change of ownership and a restructuring of the distressed deposit-taking institution. (CDIC) ¶*107*	H	NT
Conduct self-assessments against best international practice. (All other provincial authorities except Québec) ¶*112*	M	NT
Conduct an analysis of the effects of the existence of different coverage levels. (MoF, CDIC, provincial authorities) ¶*112*	M	NT
Put in place provincial indemnity of potential emergency liquidity assistance provided by the BOC to systemically important provincially regulated deposit-taking institutions. (BOC; British Columbia, Ontario and Québec authorities) ¶*118*	H	I
Support steps by the Québec government to agree the terms and conditions of a provincial indemnity of potential emergency liquidity assistance provided by the BOC; seek to formalize backstop funding arrangement with the Québec government (AMF) ¶*121*	M	I
Contingency planning and crisis management		
Provide systematic oversight of contingency planning and testing/practice activities of its member agencies; commission development of integrated inter-agency contingency plan. (SAC) ¶*126*	H	I
Act as the federal coordinator with key provincial authorities to carry out contingency planning and testing activities for the whole Canadian financial system. (SAC) ¶*127*	H	NT

Note: Institutions in the parenthesis are the agencies with responsibilities. In terms of priorities, H, M, and L stand for high, medium and low. In terms of timeframe, I, NT, and MT stand for immediate (within one year), near-term (within 2–3 years), and medium-term (within 3–5 years).

INTRODUCTION[4]

A. Scope of the Note

1. This Technical Note analyzes the failure mitigation and resolution regime for deposit-taking institutions (DTIs), as well as arrangements for preparing for and managing a financial crisis. It summarizes the findings of the FSAP mission undertaken during the period October 29–November 14, 2018. The Technical Note focused on federal arrangements as well as those in the province of Québec, home to a significant provincially regulated DTI. It focuses in particular on legal, policy and procedural changes adopted since the 2014 FSAP.[5] It addresses the supervision of recovery planning by DTIs, early intervention in DTIs by the authorities when problems are identified, resolution planning by the resolution authorities, the institutional and legal framework for the resolution and safety net of domestically systemically important bank (D-SIB) and other DTIs, and the authorities' preparedness to deal with a potential system-wide crisis. The Technical Note does not cover non-deposit-taking financial institutions and financial market infrastructures (FMIs). The assessment presented in this Technical Note is based on an analysis of the legal framework and documentation relating to policies and procedures, and on discussions with and representations made by the federal and certain provincial authorities and the private sector. The Technical Note does not represent an assessment of adherence to relevant international standards, especially the Key Attributes of Effective Resolution Regimes for Financial Institutions (KA) and the Core Principles for Effective Deposit Insurance Systems, although those standards serve as a frame of reference for certain recommendations cited in this Technical Note.

B. Financial Sector Landscape

2. Canada's DTI sector is dominated by six federally regulated banks that are formally designated as systemically important. Royal Bank of Canada (RBC) has been designated as a globally systemically important bank (G-SIB) by the Financial Stability Board (FSB) and a D-SIB by OSFI. Five other banks are designated as D-SIBs: Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, and Toronto-Dominion Bank. Together these banks have over 90 percent share of deposits of federally regulated DTIs. The provincially regulated Desjardins Group is designated as a systemically important financial institution (D-SIFI) by Québec's Autorité des marchés financiers (AMF) and is the sixth largest DTI in Canada.[6] In all there are 54 financial groups that encompass one or more of the 83 federally regulated DTIs.[7] The D-SIBs and

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[4] The mission would like to thank the Canadian authorities and private sector actors for their excellent cooperation.

[5] See IMF Country Report No. 14/67, available at https://www.imf.org/external/pubs/ft/scr/2014/cr1467.pdf.

[6] Desjardins Group has a 42 percent share of the mortgage lending market and 47 percent share of the personal deposits market in Québec.

[7] Based on all are banks or trust companies except for the two federally regulated credit unions. The figure in the text does not include foreign bank branches.

the Desjardins Federation[8] are all parent entities in their respective groups which include variously broker/dealers, asset managers, and life and general insurers among their financial services subsidiaries interacting with clients. There are three large federally regulated insurance groups in Canada that have substantial foreign operations and that, while not formally designated as systemically important, exert a significant impact on the economy and are subject to the highest level of supervision. One such insurance group owns a medium-size federal bank.

C. Legal Framework

3. The Canadian legal framework for bank resolution and crisis management is well developed. The framework is composed of federal and provincial legislation. The federal regime includes all the necessary legal building blocks for the resolution regime and crisis management framework for federally regulated financial institutions, whereas the provincial regimes address the general regulation of provincially regulated financial institutions operating in their jurisdictions (particularly, credit unions and securities market intermediaries), including prudential regulation and supervision, resolution, and deposit insurance.

4. The responsibility for the federal legislation on resolution and crisis management lies with the Minister of Finance (MoF). The MoF, supported by the Department of Finance (DOF) and the Department of Justice, is responsible for recommending the appropriate statutory and regulatory changes to Parliament and the Governor-in-Council. The MoF is responsible for the general financial sector legislation governing federally regulated financial institutions (Bank Act, Insurance Companies Act, Cooperative Credit Associations Act; Trust and Loan Companies Act). These statutes incorporate sunset clauses that require their renewal by Parliament every five years. These renewals provide the opportunity for reviews of the legal framework to make sure it remains sound and up-to-date with developments in finance and banking. The MoF is also competent over the laws that compose the backbone of the resolution regime and crisis management framework (OSFI Act; Bank Act; BOC Act; CDIC Act; and Winding-Up and Restructuring Act (WURA)).[9] The DOF conducts specific reviews of these laws on an ad-hoc basis, for instance, the Deposit Insurance Review conducted in 2016.[10]

5. Financial sector authorities cooperate in the development of the resolution regime and crisis management framework. The federal agencies that compose the Canadian safety net—Bank of Canada (BOC), Canada Deposit Insurance Corporation (CDIC), Financial Consumer Agency of Canada (FCAC), and Office of the Superintendent of Financial Institutions (OSFI)—are actively involved in the policy and legislative reviews led by the DOF. Because the resolution regime and

[8] Formally: Desjardins du Québec.

[9] However, the MoF is only responsible for Parts II and III of WURA. Part I is the responsibility of the Department of Innovation, Science and Economic Development.

[10] See https://www.fin.gc.ca/activty/consult/dir-ecad-eng.asp (accessed on October 22, 2018). See also Box 2.

resolution powers, in particular, are included in several statutes, the cooperation and coordination of the different federal agencies is essential.

6. Financial sector authorities have increased responsibilities regarding secondary legislation. Secondary legislation includes regulations and by-laws. Regulations are developed by the MoF, with input from the relevant financial sector agencies. By-laws are connected to specific laws and the role of financial sector agencies—CDIC management has authority to draft and propose by-laws to the CDIC's Board of Directors (CDIC Board) for their adoption. The CDIC Board is ultimately responsible for making, amending and repealing the by-laws. Some by-laws require the approval of the MoF, such as CDIC's Differential Premiums By-law or the Exemption from Deposit Insurance By-law.

7. The key elements of the crisis management and resolution framework are included in different federal statutes. The relevant laws are the Financial Administration Act; the BOC Act; the Bank Act; the OSFI Act; the CDIC Act; and the WURA.[11] The laws are summarily described below and are analyzed in the relevant parts of this Technical Note.

- **The Financial Administration Act**[12] includes provisions that allow the MoF, with the authorization of the Governor-in-Council, to borrow funds or enter any contract to "*promote the stability or maintain the efficiency of the financial system in Canada,*" providing a government backstop for resolution.

- **The OSFI Act**[13] provides for the establishment of OSFI, including its mandate to supervise federally regulated financial institutions (including DTIs and insurers, as well as federally incorporated pension plans), and the appointment of the Superintendent.

- **The BOC Act**[14] prescribes the mandate, organization and functions of the central bank. The act is especially relevant for the crisis management framework and resolution regime because it includes the basic legal rules for the central bank's provision of liquidity assistance.

- **The Bank Act**[15] includes the general banking regime, including licensing, corporate governance, securities issued by banks, and parts of the disciplinary regime, including the Superintendent's powers related to the supervision of banks. There are numerous connections between the Bank

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[11] In addition, the federal Bankruptcy and Insolvency Act (BIA) is relevant for the provincial systems, as it provides the insolvency regime for provincially regulated financial institutions.

[12] The Financial Administration Act (R.S.C., 1985, c. F-11): see sections 46(1) and 60(2).

[13] Office of the Superintendent of Financial Institutions Act, R.S.C. 1985, c. 18 (3rd Supp.).

[14] Bank of Canada Act, R.S.C. 1985, c. B-2 (BCA).

[15] Bank Act, 1991, c. 46.

Act, the OSFI Act[16], and the other laws forming the resolution regime.[17] A regulation issued under the Bank Act establishes the disclosure requirements for the financial instruments subject to bail-in—this regulation complements the regulations issued under the CDIC Act. Furthermore, the statute provides for an early intervention principle.

- **The CDIC Act** establishes CDIC as the deposit insurance system (DIS) and resolution authority,[18] and includes the core of the provisions of the resolution regime (resolution requirements, Financial Institutions Restructuring Provisions (FIRP), and other rules relevant for resolution). The legal framework is further developed by regulations (for instance, the regulations on bail-in and compensation) and by-laws[19] (most of the by-laws refer to deposit insurance, but others also cover resolution aspects, such as the by-law on resolution plans). As indicated above, some by-laws require the approval of the MoF.

- **The WURA**[20] regulates the liquidation process for financial institutions. Liquidation is a judicial process—the process is overseen by the court, with an appointed liquidator taking control of the entity, verifying the claims and their ranking, selling the assets, and making distributions to creditors. A regulation issued by the Governor-in-Council under the WURA describes the qualified financial contracts for purposes of the application of the WURA (paragraph 69).[21]

8. A full picture of the Canadian crisis management framework and resolution regime would require considering the provincial legislation. The thirteen Canadian provinces/territories have different legislative regimes and institutional arrangements for crisis management and bank resolution, including separate DISs.[22]

9. Most of the provinces embed their resolution and deposit insurance frameworks in the provincial legislation on credit unions. Provincial legislation tends to follow a similar pattern, whereby provisions related to deposit insurance and resolution are embedded in general statutes regulating financial institutions under the provincial regime (credit unions and *caisses populaires*).

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[16] For instance, section 648(1.1) of the Bank Act recognizes OSFI the power to take control of banks under specified circumstances.

[17] The Trust and Loan Companies Act (TLCA) includes parallel provisions regarding supervision and intervention of these entities by OSFI.

[18] CDIC Act, section 7 (d) (however, CDIC is only designated a resolution authority for its members—effectively excluding other entities, such as foreign bank branches, from the scope of its authority).

[19] Canada Deposit Insurance Corporation Deposit Insurance Policy By-law, SOR/93-516, available at htpp://laws-lois.justice.gc.ca/eng/regulations/SOR-93-516/FullText.html.

[20] R.S.C. 1985, c. W-11.

[21] See Eligible Financial Contract Regulations (Winding-up and Restructuring Act) (SOR/2007-258).

[22] With the exception of Québec, there is limited available information on the provincial crisis management frameworks and resolution regimes.

10. The regime in Québec is more sophisticated and developed. The legal regime for crisis management and resolution in Québec has been recently upgraded. The *Act respecting the Autorité des marchés financiers*[23] and the Deposit Insurance Act of Québec[24] have been amended in line with the changes in the federal system. The reformed laws have been renamed as the Regulation of the Financial Sector Act and the Deposit Institutions and Deposit Protection Act.

INSTITUTIONAL AND INTER-AGENCY ARRANGEMENTS

A. Institutional Arrangements

11. The crisis management framework and bank resolution regime allocate responsibilities to multiple agencies. At the federal level, the system is composed of the DOF, the BOC, CDIC, FCAC, and OSFI. The mandates and competences of these agencies are connected to their roles in crisis management and resolution.

12. The MoF has a broad policy mandate that includes crisis management and resolution matters. According to the Financial Administration Act, the MoF is charged with the "*supervision, control and direction of all matters relating to the financial affairs of Canada not by law assigned to the Treasury Board or to any other minister*" (Article 15). The MoF's mandate means that it occupies the top position in Canada's financial stability architecture. The MoF has broad powers, including entering into any contracts and/or providing credit necessary in order to promote the stability and efficiency of the financial system of Canada. The MoF also has overarching authority over federal financial sector legislation and can direct some agencies, such as CDIC, to take specific action to prevent adverse effects on financial stability.

13. The DOF implements the ministerial policies of the MoF, including the financial stability mandate. The DOF connects the government with the different federal financial sector agencies. The DOF works closely with all of them to achieve the goals of financial stability while respecting their independence in the fulfilment of their own mandates.

14. As the central bank, the BOC has multiple roles in the financial system. The BOC Act does not assign a financial stability mandate to the central bank. However, the BOC has a key role in developing policies for the advancement of the financial system, overseeing systemic aspects of the payment, clearing and settlement systems, including the oversight of systemically important financial market infrastructures (FMIs), and providing liquidity assistance to the financial system, including emergency liquidity assistance (ELA).[25] In the process of recovery and resolution planning with respect to banks, the BOC provides feedback to OSFI or CDIC on sections relating to funding,

[23] Chapter A-33.2, 2004.

[24] Chapter A-26, 2009.

[25] In the context of Canada, ELA refers to the BOC's Emergency Lending Assistance.

liquidity, central bank facilities, asset pledging, and FMIs. The BOC has financial, functional and operational independence from the government. In the discharge of their duties, BOC staff enjoy legal protection.[26]

15. OSFI is the federal prudential supervisory agency. OSFI regulates and supervises a broad range of financial institutions that operate at the federal level, including banks, trust and loan companies, insurance companies, and pension plans. Although the OSFI Act does not assign OSFI a financial stability mandate, in practice, the regulatory and supervisory work of OSFI is guided by the overall objective of maintaining financial stability, consistent with its mandate of preserving the public confidence in the financial system (Art. 3.1 of the OSFI Act). OSFI is responsible for supervision and early intervention of federally regulated DTIs. OSFI is also responsible for the supervision and early intervention of insurance companies, and its responsibilities extend to resolution planning of insurance companies. However, OSFI has not been designated as the resolution authority for insurance companies. OSFI is a government office under the MoF, but it is listed as a "separate agency"[27] and has a high degree of financial, functional and operational independence, although certain decisions need to be taken by the MoF. The MoF presides over OSFI, and the Superintendent is the deputy head of OSFI. The Superintendent is appointed by the Governor-in-Council for a seven-year term and can only be removed for cause. The Superintendent appoints the executive management team and has responsibility over the operations of OSFI. The MoF reports to Parliament on the activities of OSFI, but the Superintendent is accountable for OSFI's actions. Certain legislative intervention powers are exercised by the Superintendent. Staff of OSFI enjoy legal protection for the acts in good faith in discharge of their duties.[28]

16. CDIC is the DIS and resolution authority. CDIC is a federal Crown corporation—a state-owned entity created by Parliament. CDIC has the express mandate of promoting and contributing to the stability of the financial system in Canada. According to the CDIC Act, its mandates are the following: *(i) to provide insurance against the loss of part or all of deposits; (ii) to promote and otherwise contribute to the stability of the financial system in Canada; and (iii) to pursue the two objectives set out above for the benefit of persons having deposits with member institutions and in such a manner as will minimize the exposure of the Corporation to loss;* and *(iv) to act as the resolution authority for its members* (section 7 of the CDIC Act). There is no ranking or priority among these mandates, which must always be read together. The co-existence of these mandates implies that CDIC must perform an analysis of which resolution option would best protect insured depositors and contribute to the stability of the financial system in Canada, while minimizing CDIC's

[26] Section 30.1 of the BOC Act: "*No action lies… for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties that under this Act are intended or authorized to be executed or performed.*"

[27] See Schedule V of the Financial Administration Act.

[28] See Section 39 of the OSFI Act. This provision excludes legal action. It is not clear whether this rule acts in practice as a bar against legal action, of if there is a need to provide for the legal defense and representation of staff. The French version reads as "*immunité judiciaire,*" which is slightly different from the English version ("*no liability*").

exposure to loss, in devising strategies for the resolution of its members.[29] Regarding governance, CDIC is governed by a Board of Directors, composed of five ex officio members representing the four other agencies in the Canadian safety net (Deputy MoF; BOC Governor; Superintendent and a Deputy Superintendent of OSFI; and FCAC Commissioner), and other six members from the private sector, including CDIC Chairperson. CDIC reports to Parliament through the MoF. CDIC Board members and staff enjoy legal protection for acts and decisions taken in good faith in the exercise of their duties under the CDIC Act.[30] There may be only liability for decisions or actions taken in their official capacity that are *ultra vires* or not in good faith. The protection extends to an indemnity for costs and expenses[31] and the possibility to hire independent counsels for litigation.[32]

17. CDIC is responsible for planning and executing the resolution of federally regulated DTIs. The CDIC Act provides CDIC with numerous powers to plan and execute the resolution of its members. CDIC has powers to do all things necessary or incidental to achieve its objectives, including, but not limited to, (i) acquiring assets from a member institution, (ii) making or guaranteeing loans or advances, with or without security, to a member institution; (iii) guaranteeing a deposit or assuming liabilities of a member institution; (iv) entering into an agreement with a provincial government or its agent respecting any matter relating to deposit insurance; (v) making any investment or entering into any transaction needed for the financial management of CDIC; and (vi) paying out deposit insurance to eligible depositors. CDIC plans the resolution of its members by regulating and supervising resolution plans, performing examinations, and working on deposit data standards and funding arrangements.

[29] The CDIC members are federally regulated DTIs and some provincially regulated DTIs where there is an agreement between the DoF and the respective province.

[30] Section 45.1(1) of the CDIC Act provides that CDIC, its directors, officers and employers and any persons acting on the behalf of the CDIC are not liable to any member institution, depositor with, or creditor or shareholder of, any member institution, or to any other person, for any damages, payment, compensation or indemnity that any such member institution, depositor, creditor, shareholder or other person may suffer or claim by reason of anything done or omitted to be done, in good faith, in the exercise, execution or performance—or the purported exercise, execution or performance—of any powers, duties and functions under the CDIC Act.

[31] According to section 119(1) of the Financial Administration Act, the Government of Canada indemnifies present and former directors of Crown corporations—including CDIC—and any person acting as a director or officer of another corporation at CDIC's request, against costs, charges and expenses reasonably incurred in respect of any litigation, provided that the director or officer acted honestly and in good faith with a view to the best interests of the Crown corporation. In the case of criminal or administrative actions or proceedings enforced by monetary penalty the director or officer must also have believed on reasonable grounds that their actions were lawful (see also Indemnification and Advances Regulations for Directors and Officers of Crown Corporations). In addition, CDIC's Corporate By-law provides that a present or former director or officer will not be liable to CDIC for any loss, damage or expense suffered or incurred as a result of the neglect or default of any other present or former director or officer (6.01), or his or her own neglect or default in any case where he or she is entitled to be indemnified pursuant to the Financial Administration Act (6.02). CDIC may advance funds for expenses and cover the difference between the Financial Administration Act coverage and the actual amount of expenses (6.04).

[32] The CDIC Engagement of Independent Counsel Policy provides that the Board of Directors, or any one or more of its Committees, or any individual Director, may, at the expense of CDIC, engage independent counsel and other advisors, as may be considered necessary to fulfill its/his/her responsibilities.

18. CDIC does not enjoy sufficient operational independence to take resolution actions. Although CDIC has financial and functional independence from the government, from an operational point of view, CDIC requires the authorization of the Governor-in-Council, following a recommendation from the MoF, to take the most important resolution actions, those included under the FIRP of the CDIC Act,[33] which include shares of the distressed institution being vested in the CDIC and the overall take-over of the institution, the creation of a bridge institution, or (in the case of a D-SIB) the recapitalization of a bank through the bail-in conversion of its prescribed debt and shares. On the other hand, CDIC can take particular actions such as providing financial assistance to transactions affecting distressed institutions or activating open bank assistance, which are precisely those which may increase moral hazard and may imply a more intensive use of financial resources. As the designated resolution authority, CDIC should enjoy a higher degree of operational independence. CDIC should be able to take resolution actions without the need for an order of the Governor-in-Council. See a more detailed description of the resolution regime in the Section on Bank Resolution and Liquidation.

19. FCAC is the financial consumer protection agency. FCAC is a separate government agency whose mandate is to ensure that federally regulated financial institutions comply with consumer protection measures.[34] FCAC also promotes financial education and raises consumers' awareness of their rights and responsibilities. FCAC participates in cross-agency committees with crisis management functions (see below) and the FCAC Commissioner is a member of the CDIC Board.

20. At the provincial level, AMF is the integrated supervisor in Québec. As an integrated supervisor, AMF does not only oversee DTIs, but also financial markets and securities market intermediaries. AMF is also responsible for the operation of the DIS, and the deposit insurance legislation includes AMF's resolution powers over DTIs. AMF acts as the resolution authority which establishes the resolution plan and implements resolution operations. The implementation of the resolution regime in Québec will require the establishment of a Resolution Board, which will approve resolution plans, order and closure of the resolution operations, and authorize any resolution operation that was not provided for in the plans, maintaining the separation between the supervision and resolution functions of AMF. The Resolution Board will be composed of three members— Québec's Deputy MoF, the President and Chief Executive Officer (CEO) of AMF, and a third member appointed by Québec's MoF.

B. Inter-Agency Arrangements

21. There are three federal coordinating bodies in which the relevant agencies engage—the Financial Institutions Supervisory Committee (FISC), the CDIC Board and the Senior

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[33] These resolution actions imply fundamental changes in the structure and operation of financial institutions, and they have direct effects on the rights of shareholders and creditors.

[34] The legal status of FCAC is the same as OSFI—a separate government agency (Financial Administration Act, schedule V).

Advisory Committee (SAC). The FISC is established under the OSFI Act, is chaired by the OSFI Superintendent and comprises of the BOC Governor, the CDIC President and CEO, the Deputy MoF, and the FCAC Commissioner (collectively, the principals). It has written terms of reference and is the forum in which the situation of problem financial institutions and related events are addressed. The FISC meets at least quarterly, and special meetings can be called by the chair or at the request of any other member. When problems in an institution become acute, the principals engage via the CDIC Board.[35] For broader financial stability and policy matters, the SAC monitors and advises on macroprudential oversight and system-wide crisis prevention. Its membership is the same as the FISC; though the SAC is chaired by the Deputy Minister who is responsible for advising the MoF. The Deputy Minister convenes the SAC quarterly and more often when financial stability events arise. The SAC is supported by a permanent subcommittee (sub-SAC) chaired by an Assistant Deputy Minister.[36] The SAC and sub-SAC do not benefit from written terms of reference; consideration should be given to adopting formal terms of reference. See the Section on Contingency Planning and Crisis Management for related recommendations.

22. OSFI and CDIC have entered in a Strategic Alliance Agreement as a framework to coordinate their activities, to promote consultation and to facilitate the exchange of information. The current agreement of 2011 provides for coordination and information-sharing between CDIC and OSFI when licensing new DTIs, undertaking routine examinations and dealing with problem DTIs, including coordinating the use of the agencies' early intervention powers. An updated agreement is currently being negotiated to reflect recent changes in law, regulation and policy, recent experiences with problem banks and the results of simulation exercises.

23. OSFI and CDIC have published a joint Guide to Intervention which sets out coordinated policies for use of their respective early intervention powers. Last written in 2008, the Guide articulates how OSFI and CDIC would respond to deterioration in the financial condition of a bank and envisions four stages of intervention, including imminent insolvency. See the section on early intervention and recovery planning for additional detail.

24. CDIC entered into MoUs with several domestic agencies since the 2014 FSAP. In 2016 it entered into an MoU with the Investment Industry Regulatory Organization of Canada (IIROC)—a national self-regulatory organization responsible for oversight of investment dealers and trading activities on debt and equity marketplaces. In 2017 it signed an MoU with the Canadian Investor Protection Fund (CIPF) which protects customer assets not returned in a member's insolvency. The MoUs seek to improve information sharing in the context of the resolution for brokers-dealers and their parent banks. In 2018 CDIC signed an MoU with AMF to improve collaboration and information

[35] All CDIC member institutions on its watchlist are discussed at quarterly CDIC "pre-board meetings" held between BOC, CDIC, DOF and OSFI staff.

[36] Both the FISC and the SAC are additionally supported by ad-hoc staff level working groups.

sharing specifically related to two banking groups that include a CDIC member and a provincially regulated DTI.[37]

25. The BOC entered into MoUs with three provincial supervisors of credit unions since the 2014 FSAP. These are Québec (i.e., with AMF), Manitoba, and Saskatchewan. Under these MoUs, the authorities share data on provincially regulated financial institutions and expertise on stress testing. The MoUs provide for exchanges of views on matters including recovery and resolution, crisis preparedness and crisis management, financial system risks and vulnerabilities, and regulatory developments. Meetings are held at least annually. The BOC encourages supervisors in other provinces to enter into similar MoUs. Of note, the Financial Institutions Commission of British Columbia (FICOM) and relevant provincial authorities in Ontario do not have MoUs in place with the BOC though they supervise significant deposit-taking cooperative groups. These MoUs should be put in place. See Section on Resolution Funding for related recommendations. MoUs with FICOM and the Financial Services Commission of Ontario (FSCO) would be beneficial in the context of two large cooperative networks that potentially might request BOC's liquidity support in times of severe stress.[38]

26. OSFI has not entered into any new MoUs since the 2014 FSAP and has none in place with the provincial authorities. OSFI does have a cooperation framework in place with AMF, and the parties are working to upgrade it. Nonetheless, there seems scope for assessing whether a more formalized information-sharing and coordination arrangements such as MoU with AMF and other provincial authorities would be useful in the interests of improved federal-provincial coordination. For example, in the recent past, actions taken by a provincial regulator triggered sudden and acute stress in an OSFI-supervised DTI. In view of OSFI's responsibility for resolution planning of federally regulated insurers, there also may be scope for improved coordination with provincial authorities with comparable responsibility, with some D-SIB/D-SIFI groups including both federally and provincially regulated insurers. In general, there would appear to be scope for putting in place MoUs with provincial authorities that oversee entities significant to OSFI's supervised financial groups or where OSFI's actions may be potentially important to provincial authorities.[39] See related recommendations in the Section on Contingency Planning and Crisis Management.

27. There are three principal forums for cooperation and infomation-sharing with foreign authorities with respect to the Canadian G-SIB and the other D-SIBs. These include crisis management groups (CMGs) for core host supervisory and resolution authorities (generally the

[37] The MoU formalizes information exchange processes between AMF and CDIC and covers business continuity and crisis management planning.

[38] In addition, the Heads of Agencies Committee (HoA), chaired by the BOC Governor and including the DOF, OSFI, and four provincial securities regulators (Alberta Securities Commission, AMF, British Columbia Securities Commission, and Ontario Securities Commission, AMF) is a forum that facilitate exchange of information and views, and coordinate actions on issues of mutual concern such as hedge funds and over-the-counter derivatives.

[39] For example, the AMF is the integrated regulatory/supervisor authority in Québec, where OSFI-supervised DTI deposit and lending shares represent more than 40 percent of the market. Given such circumstances, the AMF sees value in entering into a formal MOU with OSFI.

various euro area, U.K. and U.S. authorities), supervisory colleges including a somewhat broader group of host supervisory authorities, and outreach panels for all other interested host supervisory authorities. CMG meetings are held annually with CDIC and OSFI alternating responsibility for hosting all CMG meetings in a given year. The BOC and the DOF also participate. The primary topic alternates between recovery (OSFI) and resolution (CDIC) each year.[40] OSFI convenes supervisory college meetings for each of the D-SIBs on roughly an 18-month cycle which focus on a particular supervisory topic.[41] In addition to key host supervisory authorities, the banks' senior executives and external auditors generally attend. OSFI convenes a half-day outreach panel, on an 18-month cycle, for host supervisory authorities who do not participate in CMGs. CDIC participates in the outreach panels.

28. CDIC, OSFI, the DOF, and the BOC are developing a Cooperation Agreement (CoAg) for the Canadian G-SIB. The framework for a CoAg is established by the FSB. It is intended to govern information sharing, cooperation and coordination in the context of early intervention and resolution. The Canadian G-SIB CoAg is being negotiated with members of the bank's CMG by relevant Canadian authorities.[42]

29. CDIC and OSFI have entered into a number of bilateral and multilateral agreements for information-sharing, cooperation and coordination. OSFI has MoUs in place with over 30 foreign supervisory authorities. All of OSFI's bilateral and multilateral MoUs include language that deals with ongoing supervision/recovery related matters. Similarly, CDIC has signed MoUs with key foreign resolution authorities (i.e., those participating in the OSFI/CDIC-led CMGs); these MoUs govern information sharing, cooperation and coordination in the context of early intervention and resolution.

C. Summary of Recommendations

- Increase the operational independence of CDIC.
- Adopt written terms of reference for the SAC and its permanent subcommittee, sub-SAC.
- OSFI should consider putting in place MoUs with provincial authorities.
- BOC and relevant authorities in British Columbia (i.e., FICOM) and Ontario should enter into MoUs.

[40] The CMG for the Canadian G-SIB operates differently (including more frequent meetings), under procedures formulated by the FSB and may address both recovery and resolution planning at each meeting.

[41] Most recently, the supervision of operational risk.

[42] The Canadian authorities already are parties to two other CoAgs, for a U.K.-based G-SIB and a U.S.-based G-SIB.

EARLY INTERVENTION AND RECOVERY PLANNING

A. Early Intervention

30. The policy of early intervention is embedded in the legal framework for prudential supervision in Canada. The policy of early intervention represents a fundamental part of the statutory mandate of OSFI.[43] The clear legal mandate translates into the possibility of exercising multiple intervention powers, including the power to close a troubled institution.[44] The policy regarding the use of intervention powers is clearly communicated to financial institutions by way of the publication of a joint Guide to Intervention, which nevertheless allows OSFI and CDIC to preserve flexibility in exercising intervention powers that may be necessary in any specific case.

31. OSFI can use a wide range of early intervention powers. The purpose of these powers is to encourage or force financial institutions to take corrective action to address any weaknesses. Among these powers, the following can be highlighted:

- **Conditions or limitations on the activities of the financial institution:** These affect the "order approving the commencement and carrying on of business" and may refer to any aspect of the business of the financial institutions (for instance, prohibitions or restrictions in the program of activities).

- **Capital order:** The Superintendent may direct a financial institution to increase its capital and/or to provide additional liquidity.

- **Direction of compliance:** The Superintendent may direct a financial institution to perform any acts that are necessary to resolve a prudentially unsound situation. The Superintendent may apply to a court to seek enforcement of a direction of compliance.

- **Taking control of the financial institution under specific circumstances**,[45] which include the failure to comply with a capital order, the Superintendent may take control of an institution.

[43] See Section 4 (2) (b) of the OSFI Act, which states that one of the objectives of OSFI is "*to promptly advise the management and board of directors of a financial institution in the event the institution is not in sound financial condition or is not complying with its governing statute law or supervisory requirements under that law and, in such a case, to take, or require the management or board to take, the necessary corrective measures or series of measures to deal with the situation in an expeditious manner*."

[44] These powers are included in the statutes that regulate each class of financial institutions. For DTIs, the relevant statutes are the Bank Act and the Trust and Loan Companies Act (TLCA).

[45] Section 648(1.1) of the Bank Act lists the circumstances allowing the Superintendent to take control. These include the following: (i) the institution has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable; (ii) the assets of the institution are not, in the opinion of the Superintendent, sufficient to give adequate protection to the institution's depositors and creditors; (iii) any asset appearing on the books or records of the institution or held under its administration is not, in the opinion of the Superintendent, satisfactorily accounted for; (iv) the regulatory capital of the institution has, in the opinion of the

(continued)

- **Requesting a winding-up order:** The winding-up order results in the liquidation and, ultimately, the withdrawal of the banking license of the financial institution. See the Section on Bank Resolution and Liquidation for a discussion of the implications of the decision to request the commencement of winding-up.

32. OSFI can generally achieve the desired results through moral suasion. The institutions regulated by OSFI are fully aware of the existence of these powers and, as a result, OSFI does not normally need to use formal intervention action to ensure cooperation from the institutions.

33. CDIC may also take actions at an early stage to encourage member institutions to address their deficiencies or otherwise reduce risk to CDIC. To that end, CDIC may:

- **Escalate concerns** to the other institutions forming the safety net, including OSFI, through FISC.
- **Request to comply:** CDIC can request a member to comply with any obligation established in the DIS.
- **Court order:** If the member does not comply with the request, CDIC may request the court for a restraining or compliance order.
- **Termination of the deposit insurance policy:** CDIC may terminate the deposit insurance policy of a member, which will effectively translate into a prohibition to take new retail deposits in Canada (by way of the modification of the institution's order approving the commencement and carrying on of business by the Superintendent). Demand deposits held on the termination date remain covered by the deposit insurance for a period of two years post-termination, or to maturity for term deposits.
- **Differential insurance premiums:** CDIC maintains a differential premiums system that sends a clear message to a member's board and its senior management about risks that the member brings to the deposit insurance fund, and therewith to build incentives for the member to reduce these risks.
- **Premium surcharges:** CDIC can react to certain prescribed practices that increase risk in the member institution by imposing a surcharge on the deposit insurance premium.

34. The Guide to Intervention describes the stages of distress and the measures that could be adopted. The Guide to Intervention is a published document that outlines the nature, extent and timing of involvement that DTIs can normally expect on the part of OSFI and CDIC as its financial condition deteriorates. The Guide specifies the circumstances that may warrant "staging" an institution together with the intervention options that may be pursued at each stage. Apart from the standard state of "no significant problems/normal activities," the four stages included in the Guide

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Superintendent, reached a level or is eroding in a manner that may detrimentally affect its depositors or creditors; (v) the institution failed to comply with a capital order issued by the Superintendent; (vi) the institution's deposit insurance has been terminated by CDIC; or (vii) in the opinion of the Superintendent, any other state of affairs exists in respect of the institution that may be materially prejudicial to the interests of its depositors or creditors or the owners of any assets under its administration, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Canada or elsewhere in respect of the holding body corporate of the institution.

are the following: (i) early warning; (ii) risk to financial viability or solvency; (iii) future financial viability in serious doubt; and (iv) non-viability/insolvency imminent. The escalation of possible measures goes hand in hand with the deterioration of the institution (see Appendix 1).

35. Early intervention requires seamless coordination between OSFI and CDIC. The Guide to Intervention illustrates the cooperation between OSFI and CDIC, as well as the progressive involvement of CDIC as the situation of an institution deteriorates. From the moment an institution is "staged", the communications and the exchange of information between OSFI and CDIC increase. OSFI will discuss its current or planned intervention activities, including restrictions and financial requirements, the institution's progress in remediating its problems, as well as either initiating or updating its recovery plan. CDIC may place the institution on a watchlist and will discuss its view of the risks presented by the institution and will provide suggestions for supervisory activities and restrictions. OSFI will also request details on the findings of any special or preparatory exams[46] and will wish to discuss CDIC's preliminary resolution plans. In theory, CDIC may provide financial assistance to the institution at stage 3 (future financial viability in serious doubt), if this assistance is consistent with CDIC's objectives. The possibility of providing this assistance should be exceptional, and for this reason, it would be advisable to remove a reference to it in a revised version of the Guide to Intervention. The "Strategic Alliance Agreement" between OSFI and CDIC provides full details of the cooperation between the two agencies in early intervention and the lead-up to resolution. OSFI and CDIC intend to revise this agreement to maintain a high level of cooperation during the resolution of an institution.

36. There is a degree of overlap between early intervention and resolution actions. Although most of the intervention powers of OSFI are applicable to going-concern institutions, there are some powers which fall under the resolution phase, such as taking control of an institution, or requesting the winding-up of an institution, as well as triggering the conversion of non-viability contingent capital (NVCC) for a non-viable institution. It is also noticeable that early intervention may lead to the private sale of the distressed institution, and that CDIC may be able to provide financial assistance (by way of loans or guarantees) to such a sale, provided that such a solution minimizes CDIC's exposure to loss and/or contributes to financial stability.[47] This may mean that CDIC can provide financial assistance to the resolution of a bank through a purchase and assumption (P&A) transaction even without a formal non-viability opinion from OSFI.[48] There seems

[46] CDIC may undertake a special exam in circumstances where the member is experiencing difficulties, and CDIC wishes to quantify the nature and extent of the problem and assess the available resolution options. According to the Deposit Insurance Policy By-Law, a special exam is undertaken pursuant to CDIC's authority under Section 27 of the CDIC Act. Member institutions are obligated to cooperate with CDIC facilitating access and documents for the special exam (Section 25 (2) of the CDIC Deposit Insurance Policy By-law).

[47] Naturally, a sale can also be structured as part of a formal resolution process: see Section 39.12 and 13 of the CDIC Act.

[48] The financial assistance required for a P&A transaction may be significant because of the lack of depositor preference. Since deposits rank at the same level with the rest of unsecured claims, a transfer of assets and deposits can only be done by including also the other unsecured claims (and therefore, increasing the level of financial assistance for the acquirer), or by compensating the creditors left behind in the transfer for the losses they would incur, in comparison to the deposits transferred to the acquirer (see section on bank resolution).

to be excellent cooperation between OSFI and CDIC, but the distribution of powers between the two agencies—and the powers of the MoF—in early intervention/resolution do not seem to be entirely aligned with the mandates of the two agencies. Under subsection 39.1(3) of the CDIC Act, prior to taking control of an institution, the Superintendent would send CDIC a report. This would give CDIC the opportunity to object to the Superintendent's decision to take control. The MoF could, in turn, override the Superintendent's intent to take control (section 648(1)(b) of the Bank Act). In the event that the Superintendent does not take control of the institution (e.g., because the MoF exercised his/her override), the filing of the report under subsection 39.1(3) of the CDIC Act would allow CDIC to recommend to the MoF that resolution actions be carried out. This complex mechanism requires excellent cooperation among all parties. It is likely that there would be agreement amongst FISC members on the appropriate resolution path prior to the Superintendent sending the notice under section 39.1 of the CDIC Act. However, it would be preferable that each agency would be accountable for the exercise of powers in its respective areas of operation—as the supervisor, OSFI should retain the ability of taking control of institutions and requesting their winding-up, but this should be limited to cases not adequately covered by a determination of non-viability. For all cases where the supervisor reaches the conclusion that the entity is not viable, OSFI should communicate the lack of viability to CDIC, so that the resolution authority determines the appropriate course of action regarding the failed institution, including liquidation as one of the options.

37. In Québec, AMF has developed early intervention along the lines of the federal regime. The Intervention Guidelines[49] include an overview of the steps that AMF, as an integrated regulator, could take regarding DTIs experiencing difficulties. The stages of risk are the same as in the federal system, and the measures are similar, with the difference that the DIS and resolution and supervisory functions are all under the umbrella of AMF, but the guidelines distinguish between the actions to be taken in these areas.

B. Recovery Planning

38. OSFI requires D-SIBs as well as certain mid-sized and small DTIs to prepare recovery plans. All D-SIBs must have recovery plans. OSFI uses a range of criteria to determine which other banks must prepare recovery plans. In general, medium-sized and small DTIs in stage 2 or higher must prepare recovery plans. OSFI provides guidance in the form of the 2012 recovery plan principles and a series of technical notes that were developed subsequently. The principles set out expectations for the roles of the Board and senior management, for integration of recovery planning with other enterprise-wide frameworks, processes and practices, and testing of the plans, among other matters. The technical notes deal with key technical aspects of recovery planning applicable in a D-SIB context, with simplified versions provided to smaller banks on the aspects applicable to them. Unlike other OSFI guidance, the recovery plan principles and technical notes have not been published.

[49] See Intervention Guidelines for Québec-Chartered Deposit Institutions Registered under the Deposit Insurance Act, available at; https://lautorite.qc.ca/fileadmin/lautorite/reglementation/assurances-inst-depot/intervention_guidelines_deposit_institution.pdf

39. OSFI should consider expanding its recovery planning requirements to all DTIs and should publish its recovery planning guidance. As a component of its 2012 Liquidity Principles Guideline, OSFI requires that all DTIs have a formal contingency funding plan that sets out strategies for addressing liquidity shortfalls in emergency situations and that is integrated into the firm's liquidity risk stress-testing program.[50] Such plans are an essential component of broader recovery plans. The improvements in risk management reported by banks that have had to prepare recovery plans, which as noted must be integrated into overall enterprise-wide strategic and risk management frameworks, suggests that there would be value in extending a recovery planning requirement to all DTIs, in a proportionate manner. Publishing OSFI's recovery planning guidance would assist DTIs to develop plans consistent with OSFI's expectations.[51]

40. The supervision of recovery planning is now imbedded in OSFI's routine supervisory processes for D-SIBs. OSFI first required plans from D-SIBs in 2011 and have been providing regular feedback, both on an industry-wide and firm-specific basis, through 2014. The first submission of plans by mid-sized DTIs occurred in 2014, and for smaller DTIs in 2015. The assessment of plans for D-SIBs is now integrated into OSFI's well-developed risked-based supervisory framework. Supervisors have been provided guidance in the form of a note on Crisis Management—Recovery Planning Section that specifies matters to be addressed in assessing the bank's crisis preparedness and recovery planning activities and the manner in which to record and explain the supervisors' assessment. The output of this assessment is incorporated into the bank's Risk Matrix which serves to document and consolidate all supervisory findings and yields a composite risk rating for the institution. This integration of recovery plan assessments into the firm's overall composite risk rating is being pursued in mid-sized and small banks as well. The appropriate OSFI lead supervisors and horizontal units should ensure full implementation in due course.[52]

41. CDIC, BOC and host CMG members provide feedback to OSFI on D-SIB and other DTI's recovery plans. CDIC reviews recovery plans of D-SIBs and mid-sized DTIs, largely to support CDIC's resolution planning efforts. BOC reviews D-SIBs' recovery plans with a focus mainly from funding, liquidity, and access to FMI perspectives. The four federal authorities also participate in periodic recovery planning information-sharing meetings which address firm-specific matters for mid-sized and small banks. D-SIBs' recovery plans are reviewed by host authorities in the context of OSFI-led CMG meetings.[53] OSFI-led CMGs typically involve presentations by the banks on different aspects of their recovery plans.

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[50] OSFI has increased its focus on contingency funding plans since the 2014 FSAP.

[51] It is noted that the BOC has published its guidance for recovery planning for systemically important FMIs.

[52] Both the Recovery and Resolution Plan (RRP) team and the Risk Support Services (RSS) team are supporting the implementation carried out by the individual institution's supervisory team.

[53] As noted, OSFI and CDIC alternate in leading CMG meetings. CDIC-led meetings focus on resolution planning.

42. AMF requires the Québec D-SIFI to prepare and maintain an up-to-date recovery plan.[54] The group submitted its first plan late 2014. AMF has provided three rounds of feedback. Technical meetings are organized on a regular basis by AMF to follow progress and assess the extent to which its recommendations are implemented.[55] At the direction of AMF, the group undertook an internal simulation to test the execution of certain aspects of the plan in mid-2018, and plan testing is an ongoing requirement. An updated plan will be submitted by end-2018. The plan is shared with the BOC.

C. Summary of Recommendations

- The early intervention framework and the resolution framework should recognize the autonomy of OSFI as the supervisory authority and CDIC as the resolution authority.
- OSFI should consider expanding its recovery planning requirements to all DTIs.
- OSFI should publish its recovery planning guidance.
- OSFI should continue integrating recovery plan assessments into the mid-sized and small banks' overall composite risk ratings.

BANK RESOLUTION AND LIQUIDATION

A. Legal Regime

43. The Canadian system includes provisions applicable to resolution of systemic and non-systemic banks, as well as a special statute for the liquidation of financial entities.[56] The CDIC Act, as amended in 2016 and 2017, includes the provisions that regulate the resolution of both non-systemic and systemic DTIs. There are no separate regimes for systemic and non-systemic banks; instead, the law only prescribes certain rules that are applicable only to D-SIBs.[57] The resolution regime is administrative (as opposed to a judicial regime), and it applies to federally regulated DTIs, but not to branches of foreign banks[58] or to non-regulated subsidiaries of federally regulated

[54] The group is required to prepare a recovery plan due to its being designated by AMF as a D-SIFI in June 2013. The group is the only AMF-regulated entity so designated.

[55] The technical meetings also serve to support resolution planning. See the Section on Resolution Planning below.

[56] In a broad sense, bank resolution includes all mechanisms addressed at the failure of banks. This includes liquidation, and also resolution mechanisms *stricto sensu*, i.e., those that tackle failing institutions without resorting to liquidation (for instance, recapitalization, or creation of a bridge bank).

[57] See Canada Budget Implementation Act 2017, No 1, SC 2017, c 20, which amends the CDIC Act, RSC 1985, c C-3, and the Bank Act, SC 1991, c 46. The designation of the CDIC as the resolution authority was effective in June 2017.

[58] However, branches of foreign banks operating in Canada are prohibited from taking retail deposits (i.e., deposits of less than Can$150,000) and are not eligible to become CDIC members.

institutions.[59] As the reforms are recent and the macrofinancial situation is stable, the new resolution regime has not been tested so far. Apart from the resolution regime, a special statute regulating the liquidation of financial institutions, the WURA, is applicable to banks, branches of foreign banks, and insurance companies. Liquidation is a judicial process, overseen by a superior court.

44. Entry into resolution depends on the determination of non-viability made by the Superintendent. As the prudential supervisor, OSFI is the authority charged with the decision of declaring that an institution is non-viable or that its viability cannot be recovered through the use of OSFI's intervention powers, thus triggering the application of the resolution regime. The Superintendent may form an opinion of non-viability that is provided to the CDIC Board, where:

- the institution is dependent to an excessive extent on loans, advances, guarantees or other financial assistance to sustain its operations;
- the institution has lost the confidence of depositors and the public;
- the institution's regulatory capital is or is about to become substantially deficient; or
- the institution has failed to pay any liability that has become due and payable or will not be able to pay its liabilities as they become due and payable.

The law does not prescribe the analysis or evaluation that must be conducted to arrive at the Superintendent's decision.[60]

45. CDIC is the resolution authority for its member institutions, but some resolution tools require the authorization of the Government. After the Superintendent forms an opinion of non-viability, the CDIC Board can determine the appropriate resolution method, and depending on the resolution method selected, request that the MoF recommends to the Governor-in-Council that it make one or more orders directing CDIC to implement such resolution method, provided that the MoF considers that it would be in the public interest to do so. This means that most of the resolution tools—i.e., those included in the FIRP of the CDIC Act—can only be activated following the procedure described above, irrespective of the size or complexity of the failed institution. Another implication is that the use of most of the resolution measures requires a determination of non-viability and of public interest, but the determination of public interest is external to the resolution authority. Instead, the assessment of the element of public interest could be done by the resolution authority, in consultation with the MoF. CDIC must decide the use of resolution tools in

[59] The resolution regime does not apply to DTIs that have opted out of CDIC membership. OSFI must approve a DTI's request to opt out of CDIC membership.

[60] As illustrated by the early intervention regime, there is close cooperation between OSFI and CDIC. This cooperation also extends to the resolution stage. During the resolution of a bank, sharing of information between OSFI and CDIC continues, although the decision-making shifts to the CDIC Board. In resolution, OSFI's role changes to monitoring the CDIC member institution and reporting on any findings to the MoF and CDIC, rather than undertaking regular prudential supervision (Section 39.193 of the CDIC Act). Information from the institution flows directly to CDIC during its oversight of any resolution operations and is to be shared regularly with OSFI.

accordance with its objectives, which includes the mandates of minimizing exposure to losses and promoting and contributing to financial stability.[61] If there is a conflict between loss minimization and financial stability (i.e., if the resolution option most likely to promote financial stability in Canada is also likely to increase CDIC's exposure to loss), it can be resolved in favor of financial stability by an order of the Governor-in-Council or at the direction of the MoF, after consultation with the BOC, CDIC, and OSFI.

46. CDIC should have more autonomy in taking resolution action. CDIC can take some actions, such as providing financial assistance, without government authorization, but it requires an order from the Governor-in-Council for the adoption of resolution actions, even if these refer to a small institution. CDIC can recommend the resolution approach to be followed, but it does not have the authority to take resolution actions by itself. CDIC should be able to decide on the resolution/liquidation strategy to be adopted, and the government authorization should only be required in specified events (for instance, the need to preserve financial stability, the use of public funds, or other public interest considerations).

47. The resolution toolbox is comprehensive. CDIC can use a series of resolution tools without the need of a Governor-in-Council order. These include providing financial assistance to a distressed institution and requesting the winding-up of the institution. Most of the resolution tools, however, are found in the FIRP, namely:[62]

- Transfer to CDIC of the shares and subordinated debt of the institution (vesting order);
- Appointment of CDIC as receiver of the institution;
- Creation of a bridge bank; and
- Recapitalization though the bail-in of shares and liabilities (only applicable to D-SIBs).

The bail-in tool, as all the other resolution tools, should also be applicable to banks that are classified as systemic at the time of failure.[63]

48. CDIC can implement multiple resolution approaches with the powers afforded by law. The legal system allows for the possibility of providing open bank assistance and of taking banks

[61] There is no regulation, or publicly available information, on the approach that CDIC would follow to arrive at a decision on the use of specific resolution tools. Information published by CDIC indicates that "*Factors such as the size and complexity of the bank, its franchise value, as well as the current availability of any private sector buyer or other options, would be key considerations in deciding which tool to use*" (see http://www.cdic.ca/en/about-cdic/resolution/Pages/tools.aspx).

[62] See Section 39.13 (1) of the CDIC Act. The bridge bank provision was modified, and the bail-in tool was added in the 2017 reform of the CDIC Act.

[63] See KA assessment methodology for the banking sector, KA 11, EC 1.1: *The scope of application of the resolution regime and the circumstances in which it applies are clearly defined in the legal framework. The resolution regime covers any bank that could be systemically significant or critical in the event of failure*.

into temporary public ownership (TPO), without any restrictions. In addition to the general resolution tools listed above, the combination of the different legal rules allows CDIC to exercise a broad range of powers[64] to remove and replace directors and management; assume ownership or take control of the firm to restructure it;[65] operate and resolve the firm, including powers to interfere with contracts (see below); purchase or sell assets; ensure the continuity of essential services (see below); override the rights of shareholders; transfer or sell assets and liabilities to a third party; implement an amalgamation of the institution; and establish a separate asset management vehicle. CDIC can exercise these powers without shareholders' or creditors' consent.

49. However, some resolution powers are not available under the existing resolution regime. Regarding its own powers over member institutions, CDIC does not have the power to claw back the remuneration paid to directors before the entity entered resolution or was liquidated. CDIC does not have the power to terminate contractual relationships, when doing so would be beneficial for interests of the entity in resolution. CDIC does not have the express power of writing down financial instruments (shares, debt securities) as part of the process to implement bail-in. For the relations between holders of NVCC instruments and bail-in-able debt, the Canadian system applies relative priority, rather than absolute priority, but the main issue is that the conversion of NVCC can be done without forcing the shareholders to absorb the losses first, and therefore the original shareholders stand to benefit from the conversion of NVCC and bail-in-able debt.[66] The resolution framework does not recognize the power to require financial institutions to introduce changes in their structure or operations to improve their resolvability.[67]

50. The scope of the resolution regime should be broadened. As CDIC only acts as the resolution authority for its members, the resolution regime does not extend to bank branches of foreign entities, or to non-regulated subsidiaries of banks. The resolution regime should extend to branches of foreign banks, to non-regulated subsidiaries of banks, and to other financial institutions of the same group that are not federally regulated.[68] Maintaining the provision of critical functions by subsidiaries could be achieved through the use of corporate rights of the resolved institution, but this is not always possible. Hence, a legal power to preserve the provision of critical functions is necessary. Including the entities under the scope of the resolution regime would provide total certainty about the continuity of critical functions.

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[64] See KA 3.2.

[65] See Section 39.2(1) of the CDIC Act. In the case that CDIC is vested with the shares of the institution, CDIC may implement the following restructuring transactions: (i) the sale of all or part of the shares or subordinated debt of the institution; (ii) an amalgamation of the institution; (ii) a P&A of the institution; or (iv) any other transaction or series of transactions to restructure the business of the institution.

[66] Of course, if the shares have been vested in CDIC, the lack of a write-down of capital would benefit CDIC, rather than the original shareholders.

[67] See KA 10.

[68] See FSB, *Second Thematic Review on Resolution Regimes*, 2016 (available at http://www.fsb.org/2016/03/second-thematic-review-on-resolution-regimes/).

51. Some adjustments to resolution powers would be beneficial: generally, the resolution powers included in the CDIC Act are in line with best international practice. There are some technical adjustments that would enhance these powers:

- **Power to terminate contracts:** CDIC should be able to terminate contracts as part of its restructuring powers. The termination of a contract could generate a claim for damages. Additional provisions are required to specify the circumstances for the application of the power to terminate contracts and the criteria to assess damages. There should also be an express power to maintain contracts to ensure the provision of critical services, although this may be implicit in the stay of actions.

- **Power to claw-back remuneration from directors:** Those responsible for the failure of a financial institution should be held liable under the relevant legal regime (company law, insolvency law, or financial institutions law); as a minimum, it should be possible to recover the variable remuneration that directors have received in the stage before resolution, as it is likely that such remuneration may have been granted on the basis of inaccurate financial statements, and in any case the subsequent failure of the institution justifies that directors are deprived of this remuneration. The claw-back is also instrumental in reducing moral hazard.

- **Power to write-down shares and liabilities:** for the exercise of bail-in in respect of the hierarchy of claims and interests, it would be necessary to recognize losses—by way of a write-down—before conversion of other instruments is triggered. This is particularly important for the relation between ordinary shareholders and the rest of claimants.

- **Power to require changes to improve the resolvability of institutions:** the resolution authority should have the direct power to require financial institutions to address obstacles to their resolvability by adopting changes to their structure, operations, or other aspects.

52. The implementation of some resolution tools is also affected by the lack of depositor preference. Depositor preference supports the resolution regime by facilitating transactions such as a P&A or a bridge bank by placing depositors in a separate creditor class. It is possible to segregate assets corresponding to the differential treatment of creditors. In the absence of depositor preference, these restructuring operations result in the discriminatory treatment of creditors of the same class and generate potential compensation claims. In liquidation, depositor preference is also necessary to implement a P&A transaction. It minimizes the losses of the DIS, and incentivizes other creditors to monitor the credit institution, promoting market discipline.[69]

53. Resolution is supported by a comprehensive stay and the power to interfere with contracts. A broad stay operates in respect of an institution—including a bridge institution—when

[69] There are several models of depositor preference. In particular, there is a clear distinction between models where all deposits enjoy a preference (general depositor preference) and systems where there is a priority for insured deposits, possibly followed by an inferior preference for uninsured deposits (tiered depositor preference). The analysis of what is the appropriate model of depositor preference for a given system hinges on several factors, but the advantages of introducing depositor preference are those outlined in the main text.

subject to resolution by CDIC. No creditor action may be brought against the institution, and the contracts with the institution cannot be terminated by reason of the entry in resolution of the institution. CDIC can also cure defaults within 60 days of the resolution order to maintain a contractual relationship. The stay may be lifted or shortened in respect of a claim—if it is found equitable or if there would be material prejudice to the claimant—only with the authorization of a superior court.[70] These rules only have limited exceptions to preserve the functioning of payment, clearing and settlement systems. Eligible financial contracts (swaps, derivatives and options) are not subject to the general stay. A limited stay of two business days applies to eligible financial contracts.[71] Although CDIC can interfere with contractual relationships, it does not seem to have the power to terminate contracts with third parties.[72] The rules to ensure the continuity of essential services and functions are not complete. The law does not allow CDIC to require other companies in the institution's group or other unaffiliated companies to provide the necessary services to the institution or to the bridge bank.[73] The law does allow the institution under resolution to maintain its membership and contracts with payment, clearing and settlement systems, thus maintaining critical functions.

Bridge Bank

54. The creation of a bridge bank is recognized as one of the resolution methods. The use of a bridge bank requires that the Governor-in-Council issues an order appointing CDIC as the receiver of the DTI. The receivership order is a condition precedent for the direction to the MoF to incorporate a bridge bank assuming the deposits of the resolved institution. Eligible financial contracts can be transferred to the bridge bank. The bridge bank benefits from a stay for a period of 90 days of actions related to assets or liabilities transferred to it. Bridge banks benefit from comprehensive exemptions from disclosure and other regulatory requirements. The deadline for the existence of the bridge bank is two years, which can be extended by the Governor-in-Council annually, for a maximum period of five years. CDIC can liquidate the institution with the assets and liabilities left behind ("bad bank") or create an asset management vehicle to liquidate the assets that are not transferred to the bridge bank. However, the lack of depositor preference, as indicated above, means that this resolution method may require compensation to the unsecured creditors left behind, as their claims rank *pari passu* with those of depositors.

[70] Section 39.17(1) of the CDIC Act. This is the only point in the whole resolution framework where there is an interaction with the judicial system. All other resolution actions seem invulnerable to judicial review.

[71] CDIC has published guidance on the treatment of eligible financial contracts in resolution: see http://www.cdic.ca/en/financial-community/legislation-bylaws/Documents/guidance-on-exercise-of-EFC-close-out-rights-in-a-resolution-scenario.pdf

[72] See KA 3.2 (iii).

[73] See KA 3.2 (iv). CDIC can require companies in the group to provide services by using its powers as shareholder of the subsidiary (since CDIC will be vested in the shares of the institution or can exercise all its corporate rights as a receiver). Maintaining critical services provided by unaffiliated companies does not seem possible, but companies are not generally allowed to terminate contracts subject to the stay.

Bail-in

55. The law recognizes bail-in recapitalization only for D-SIBs. Since the 2014 FSAP, the key addition to the resolution toolbox for systemic banks is the application of bail-in recapitalization. The bail-in tool has been recently incorporated into the Canadian system after the reform of the CDIC Act and the adoption of the bail-in regulations. These changes were accompanied by the introduction of a total loss-absorbing capacity (TLAC) framework by OSFI applicable to D-SIBs. The TLAC requirement can be met by regulatory capital, including NVCC instruments and eligible bail-in-able debt.[74]

56. The liabilities subject to bail-in are only those issued after entry into force of the bail-in regulations. Bail-in has not been introduced in Canada with retroactive effects. The Canadian D-SIBs will replace existing senior debt with new issuances of debt subject to bail-in. The bail-in regime only affects the liabilities issued in accordance with the recently prescribed regulations, with appropriate disclosure of the regime applicable to them.[75] The liabilities subject to bail-in are long-term (i.e., original maturity longer than 400 days)[76] senior unsecured debt securities that are uninsured, tradeable, and transferable. Bail-in excludes deposits, covered bonds, eligible financial contracts, and most structured notes. The Canadian regime places bail-in-able securities in the same creditor class as all the senior unsecured debt, including insured and uninsured deposits. Regarding investment risks, the Canadian Securities Administrators (CSA) issued a staff notice advising on the investment risks due to bail-in:[77] in the Canadian case, the added risk of bail-in-able securities is the conversion risk, since the ranking of bail-in-able debt is the same of that of the rest of senior unsecured debt, but this added risk warrants additional safeguards for investor protection. Importantly, the regulatory regime avoids the confusion between bail-in-able securities and deposits, by prohibiting the use of the term "deposits" in association with the issuances of debt subject to bail-in.[78]

57. The conversion of debt into shares can only be authorized in conjunction with a vesting order or a receivership order. Bail-in recapitalization will be applied as part of the resolution program for a D-SIB, after the order from the Governor-in-Council giving CDIC temporary control or ownership of the entity. The law does not recognize the specific power to write down

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[74] See the description of the Canadian NVCC regime in the IMF Technical Note on Crisis Management and Bank Resolution Framework corresponding to the previous Canada FSAP in 2014 (IMF Country Report No. 14/67), at 45–46.

[75] Bank Recapitalization (Bail-In) Issuance Regulations, SOR/2018-58.

[76] A debt security subject to bail-in whose residual maturity is less than 400 days will be subject to bail-in. The exclusion from bail-in only benefits instruments designed as short-term debt, not longer-term debt instruments in their final phase before maturity.

[77] CSA Staff Notice 46-309, August 23, 2018.

[78] In the past, issuances of senior unsecured debt were frequently referred to as "deposit notes". The Federal regime (and the draft regulations in Québec) prohibits the use of the word "deposit" in connection with securities subject to bail-in.

shares or liabilities, or to depart from the equal treatment of creditors of the same class in applying bail-in. The bail-in regime will operate as follows:

- CDIC acquires the shares of the institution (by virtue of a vesting order) or the control of the institution (as a receiver).

- The conversion of NVCC instruments into common shares is a prerequisite for the conversion of bail-in-able debt. NVCC instruments includes subordinated debt and preference shares whose conversion is triggered by a determination of non-viability by the Superintendent or if the institution receives a capital injection from the federal or provincial governments. As NVCC instruments rank below unsecured debt, its conversion needs to be triggered before any bail-in-able debt is converted into common shares. The conversion of NVCC instruments operates according to the conversion rates included in the relevant contracts and supporting documents.

- After the conversion of NVCC instruments, CDIC will determine the conversion of debt subject to bail-in in accordance with the conversion regulations, which require CDIC to take into consideration regulatory capital requirements.[79] The respect of the ranking of claims implies that debt subject to bail-in is only converted after the junior liabilities (subordinated debt and preference shares) have been converted into common shares. CDIC can freely establish the conversion rate, with the only condition that the conversion rate needs to be more favorable than the conversion rate applied to NVCC instruments. CDIC is also free to determine the percentage of bail-in-able debt that will be subject to conversion and can operate the conversion in one or several steps. Because CDIC does not have the power to write down shares or liabilities, the original shares will be diluted, but not cancelled (unless the vesting order expressly provides for the cancellation of shares). CDIC can determine the degree of dilution of the original shares and former NVCC holders by setting the conversion rate for the bail-in-able debt.

- As a result of the conversion of NVCC instruments and bail-in-able debt, the regulatory capital of the institution is restored. It is possible that CDIC still holds shares in the institution, if the original share capital was vested in CDIC. CDIC can sell or cancel the shares that it would still hold after the two consecutive dilutions (NVCC instruments and bail-in-able debt). In such a case, CDIC would have control of the institution but would not be the owner of the shares. It would be preferable for CDIC to have the power of writing down the existing shares, so that losses are absorbed before the conversions of NVCC instruments and of bail-in-able debt are triggered.

58. The hierarchy of claims is not applied in an absolute way. The original shareholders are diluted twice (first with the conversion of NVCC instruments, and then with the conversion of bail-in-able debt). NVCC holders receive common shares according to conversion terms that are less favorable than those applicable to more senior ranking bail-in-able debt holders. In this regard, the

[79] Bank Recapitalization (Bail-In) Conversion Regulations, SOR/2018-57.

priority of claims is applied in a "relative" fashion and operates a certain subordination of the different classes of claims. What is missing from the framework is the express power to write down the value of the shares to absorb losses, before any conversion of other liabilities is activated.[80] Those affected by bail-in will only be entitled to compensation from CDIC in accordance with the rules prescribed in the law and regulations (see below). In addition, the regime deviates from the FSB's KA in that it does not allow the resolution authority to depart from the *pari passu* treatment of creditors, if necessary, to contain the potential systemic impact of a firm's failure or to maximize the value for the benefit of all creditors as a whole (KA 5.1), subject to the "no creditor worse off" (NCWO) safeguard.

Judicial Review and Safeguards

59. Resolution actions are adopted without the intervention of the court. The orders of the Governor-in-Council are final and not subject to review (Section 39.13(6) of the CDIC Act). Actions taken by CDIC in implementation of a resolution order are immediately executed without the need to resort to the court. Shareholders and other affected parties cannot challenge the resolution actions before the court. The only exception refers to the stay in resolution, as affected parties have the possibility of applying to a superior court to have the stay shortened or lifted in cases of material prejudice or other equitable grounds.[81] Aside from this provision, the language in the CDIC Act excludes judicial review of resolution actions altogether. An absolute exclusion of judicial review in the statute will not impede the court from exercising judicial review in accordance with their inherent jurisdiction.[82] The standard for judicial review of resolution actions would be demanding, requiring that actions are undertaken for a private purpose or outside the mandate of an authority.

60. Shareholders, creditors, and other affected parties could receive compensation for damages. Since judicial review of resolution actions is generally excluded, the only possibility of addressing the interests of aggrieved parties is through compensation. It is problematic that this is presented just as possibility that the authorities have to address issues in the application of the resolution regime, rather than recognized as an actionable right to the parties adversely affected by resolution. CDIC itself is in charge of determining the amount of compensation, if any (Section 39.23(1) of the CDIC Act).

61. The compensation afforded by CDIC is strictly connected with the NCWO principle. Persons will only be entitled to compensation if they are in a worse position than they would be if the institution had been liquidated under the WURA. This standard applies to creditors, as well as shareholders, by comparing their position in resolution with the outcome of a hypothetical

[80] See J. Zhou et al., *From Bail-out to Bail-in: Mandatory Debt Restructuring of Systemic Financial Institutions*, IMF SDN 12/03.

[81] See Section 39.17 of the CDIC Act, which specifies that a superior court is the forum. The rule does not describe the appropriate procedural method, but it is understood that the general rules of procedure would apply.

[82] See J. M. Hendry, "Some Problems on Canadian Administrative Law", 2 *Ottawa L. Rev*. 71 (1967); G. L. Peiris, "Statutory Exclusion of Judicial Review in Australian, Canadian and New Zealand Law" [1982] *Public Law*, 449.

liquidation. Due to the differences between going-concern value in resolution, and the reduced value of a piece-meal liquidation of assets under the WURA, the prospects of compensation are limited.[83] The NCWO standard, in any case, may not be adequate for compensation of other actions (for instance, initiating resolution action without proper grounds or interfering with rights of parties to a contract, where that power exists).

62. Compensation has been designed as a general mechanism. CDIC can offer compensation to affected parties in the form a monetary payment or in shares. Compensation could potentially be awarded to creditors or shareholders affected by any or multiple resolution tools (for instance a P&A, or a bridge bank). Compensation is not available for those who acquired their interest in shares or liabilities of the institution after resolution started,[84] thus deterring speculation.

63. The regulations specify certain aspects of the compensation mechanism. Compensation requires a comparison between the resolution value and the hypothetical liquidation value that creditors (or shareholders) would have received.[85] Parties claiming compensation cannot compare their situation to that of other claimholders.[86] The regulations specify that the points of reference for this comparison will be the following:

- Liquidation value is determined at the moment "immediately before" the Governor-in-Council order directing the restructuring of the institution if a winding-up order for the institution had occurred at that time;
- Resolution value is determined at the moment when CDIC stops exercising control over the resolved institution (i.e., the moment when CDIC "exits" temporary control or ownership of the institution).

64. Some areas of the compensation process are not determined. There is no specified period for the conduct of valuations and the formulation of a compensation offer by CDIC. The regulations do not indicate whether there will be independent valuations, how they would be conducted, or what the acceptable valuation methodologies would be.

[83] The framework also requires that in the liquidation counterfactual, it cannot be assumed that the entity receives any kind of public financial assistance or support.

[84] Resolution starts at the moment a FIRP order is made, in accordance with the legal framework for resolution.

[85] The test for holders of NVCC instruments is different than other persons entitled to claim compensation. It is as follows: compensation = liquidation value – resolution value – estimate of losses attributable to contractual conversion. This is to ensure that those persons are compensated only for actions taken by CDIC during the resolution and not for the conversion of their instruments into shares, given they agreed to the conversion risk when purchasing these instruments.

[86] This is an important element in the Canadian system. Since the category of senior unsecured claims includes a variety of claimants, from insured depositors to holder of debt subject to bail-in, parties are not entitled to claim compensation based on a comparison with what other claimants have received, even if placed at the same level of the creditors' hierarchy.

65. The compensation mechanism can be reinforced with the intervention of an external assessor. After conducting its own analysis within a reasonable period after exiting the institution, CDIC will make a compensation offer to the affected parties—this may include a determination by CDIC that the compensation is zero.[87] Parties can accept or reject the offer.[88] If creditors or shareholders representing 10 percent or more of an affected class object to the offer made by CDIC, the Governor-in-Council will appoint an assessor (a federal judge) to assess CDIC's offer of compensation and determine the appropriate compensation.[89] The assessor will analyze the reasonableness of the compensation offered by CDIC and the factors and information used to determine the compensation. The compensation decision, whether rendered by CDIC or an assessor, is final and not reviewable.[90]

66. The scope of the compensation mechanism should be clarified, and all aspects of its operation should be transparent. The Canadian system excludes generally the judicial review of resolution actions and only recognizes compensation as the remedy for aggrieved parties. However, not all damages to parties can be assessed by the metrics of the NCWO principle. For this reason, there should be recognition that other potential compensation claims may exist and CDIC will have to establish the methods to compensate those potential damages. Regarding the operation of compensation itself, it would be important that CDIC discloses details on the applicable valuation framework that underpins the compensation mechanism.[91]

Bank Liquidation

67. The alternative to resolution is the special liquidation regime. The special liquidation regime included in the WURA[92] is a judicial process that applies to financial institutions, including branches of foreign banks. The original WURA was adopted in 1882. The current version of the act was adopted in 1985 and has been amended several times, but the statute is outdated and in need of a deeper revision (see Appendix 2).

68. There are several paths to the commencement of a bank liquidation under the WURA. The Superintendent may request the Attorney General to submit a winding-up petition after taking

[87] CDIC will provide a notice to each affected shareholder and creditor with an offer of compensation. A summary of the notice (for each class of claimants) will be published in the Canada Gazette and on the website of the financial institution.

[88] Persons entitled to claim compensation will have 45 days from the date of publication in the Canada Gazette to notify CDIC if they accept or reject CDIC's offer of compensation. If a person does not notify CDIC within the 45 days, they are deemed to have accepted the offer. If a person accepts CDIC's offer, or fails to respond to the offer, they will no longer have any claim against CDIC or the financial institution.

[89]See Compensation Regulations, SOR/2018-59. The assessor is a judge, but acts within the CDIC Act framework, and not act in his/her judicial capacity.

[90] In this regard, it is relevant to mention that the Canadian constitutional framework does not include protection of property rights (see *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982).

[91] See FSB, *Principles on Bail-In Execution,* 2018, available at http://www.fsb.org/2018/06/principles-on-bail-in-execution-2/

[92] Winding-up and Restructuring Act, RSC 1985, c W-11.

control in the circumstances specified in the Bank Act (see above the Section on Early Intervention). CDIC can also submit a winding-up petition to the court if the institution is insolvent (according to the WURA commencement standards). For the purposes of commencing a liquidation procedure, CDIC is deemed to be a creditor by law. CDIC may also be required to submit a liquidation petition as part of a resolution scheme under the CDIC Act (for instance, after transferring assets and deposits to a bridge bank). Creditors or shareholders of the institution itself can also request the opening of winding-up proceedings. Some of the rules in this part of the law are particularly outdated, such as the requirement of a default of a debt of "at least 200 Canadian dollars" (Section 4 of the WURA).

69. There are no specific criteria for the use of liquidation versus other alternatives. Before submitting a winding-up petition, there should be consultations between the FISC partners, but it is not clear how the Superintendent would decide between the alternative of commencing liquidation or making a declaration of non-viability that triggers resolution. The MoF has a fundamental role given the powers to override the decision of taking control by OSFI and to direct CDIC to trigger its resolution powers. It would be preferable that the supervisory authority and the resolution authority enjoy autonomy in deciding the proper course of action.

70. The liquidation regime follows the traditional approach of insolvency proceedings. Liquidation under the WURA is a judicial process. The court appoints a liquidator to verify claims, collect the assets, proceed to their sale, and distribute payments among the creditors.[93] The liquidation proceedings also include a comprehensive stay of creditor actions, including contract termination, with the exception of eligible financial contracts.[94] In addition, liquidation proceedings include avoidance actions for fraudulent and preferential transactions, and recovery of unlawful dividends distributed to shareholders. CDIC has the ability to act as a liquidator; however, in practice private professionals would be appointed as liquidators.

71. Liquidation triggers a deposit insurance payout. The opening of the winding-up proceedings will trigger the payout to depositors of their eligible deposits. CDIC has the *possibility* of paying out depositors from the moment OSFI takes control of a member institution, and this possibility becomes an obligation at the moment the winding-up proceedings are initiated. CDIC is subrogated in the rights of depositors against the insolvent institution. Because there is no depositor preference, it is not possible to implement a P&A transaction in liquidation as an alternative to a depositor payout.

[93] For a comparison between the Canadian liquidation regime and a selected sample of other countries, see Baudino et al., "How to manage failures of non-systemic banks? A review of country practices," 2018, available at https://www.bis.org/fsi/publ/insights10.htm.

[94] Eligible financial contracts can be closed out and enforced irrespective of the stay in the insolvency proceedings (see Section 22(11) of the WURA). The characteristics of eligible financial contracts are defined by the eligible financial contracts regulations (WURA), SOR/2007-258.

72. The institution subject to WURA proceedings ceases banking operations. The banking license of the institution is not withdrawn until the end of the proceedings, but the bank cannot conduct operations while it is being liquidated, except as otherwise permitted by the court.

73. Creditors will receive payments according to the ranking of claims. Distributions to creditors and shareholders in the liquidation proceedings are done in accordance with the ranking of claims established in the Bank Act and the WURA (see Box 1).[95] The ranking of claims does not include any preference for deposits (insured or uninsured). Assistance provided by CDIC in the run-up to insolvency would benefit from the Crown priority. There is no discrimination of creditors based on their nationality or location.

Box 1. Ranking of Claims in the Liquidation of Banks

1. Federal and provincial deemed trust and "requirement to pay" claims with express pre-eminence over private security interests, and real property liens for municipal taxes and utilities charges
2. Secured claims, to the value of the security; statutory liens and deemed trusts
3. Claims secured by statutory liens, deemed trusts and requirements to pay which do not have express pre-eminence over private security interests
4. The costs and expenses of the liquidation (WURA)
5. Priority payment items such as certified cheques, bank drafts and money orders (Canadian Payments Act).
6. Non-subordinated unsecured Federal Crown claims, including CDIC claims other than subrogated depositor claimant (Bank Act).
7. Non-subrogated unsecured Provincial Crown claims (Bank Act).
8. Unpaid wages and salaries accrued in the 3 months prior to winding-up (WURA).
9. All other non-subordinated unsecured claims, including uninsured deposits, CDIC as subrogated depositor claimant, trade creditors, judgment creditors and covered bond liabilities. (this class of claimants also includes bail-in-able debt)
10. Subordinated unsecured claims.
11. Fines and penalties.
12. Preferred shares according to their terms.
13. Common shares.

74. The liquidation legislation is functional but outdated, although the high quality of the judiciary contributes to the solution of practical problems. There are numerous issues that would need to be revised in the WURA (see Appendix 2). These include aspects such as the commencement of liquidation; the appointment, remuneration, and powers of the liquidator; the stay of creditor actions; the effects on winding-up on executory contracts; the submission and verification of claims; the ranking of claims; the liquidation operations; the avoidance of antecedent

[95] The lack of a single provision establishing a hierarchy of claims complicates the interpretation of the relationships among priorities. A different creditor hierarchy applies to Trust and Loan Companies because of their distinct legal structure (see Section 422(1) of the Trust and Loan Companies Act (TLCA).

transactions; and limited cross-border insolvency provisions. However, in the few recent cases where the WURA has been applied,[96] the professionals acting as liquidators and the judiciary have managed to find practical solutions to important practical challenges.

75. The reform of the bank liquidation regime is long overdue. The WURA is an outdated piece of legislation that presents numerous defects. Rather than amending some of its provisions, it would be advisable to undertake a full reform of the statute. Ideally, the WURA should provide as much flexibility as the Bankruptcy and Insolvency Act (BIA), and it could also be enhanced to perform its function of liquidating financial institutions by recognizing the special position of the financial supervisor and of CDIC (for instance, in terms of appointment or selection of the liquidator, and reporting duties of the liquidator). The changes in the law should aim at reducing costs and increasing of recoveries by providing maximum flexibility for the sale of assets and any other solution that maximizes the value of the assets of the estate. The law should also include cross-border insolvency provisions to allow for the recognition of foreign proceedings.

Cross-Border Aspects of the Resolution Regime

76. The Canadian legal framework for resolution does not include cross-border elements. An enabling framework for cross-border cooperation represents an important part of the resolution regime.[97] The Canadian authorities rely on the use of MoUs; and can enter CoAgs and participate in CMGs to exchange information and coordinate for resolution. Beyond this approach, the legal framework does not consider the cross-border aspects of resolution action.

77. In particular, the resolution authority does not have a mandate to consider the cross-border effects of resolution actions. The effects in other financial systems of the resolution action taken in Canada regarding an institution with international operations could be considered as a factor, but there is no legal requirement to include those considerations in the analysis. There is no requirement to communicate with the home authorities of an institution before taking unilateral resolution actions. In general, the law does not include provisions that would allow for recognition of or cooperation with foreign resolution actions.[98]

78. Resolution actions taken by foreign authorities may be recognized in Canada by order of the Canadian courts. For example, Canadian courts could recognize the appointment of an administrator of a foreign bank, in application of the resolution regime applicable to such foreign bank. However, this approach may suffice to the extent that the foreign authority exercises the corporate rights of the foreign entity, but recognition of resolution measures and support of

[96] The most recent case is the liquidation of the Canadian branch of the German bank "Maple Bank" in 2016.

[97] See KA 7.

[98] The law does refer to the exceptional possibility of recognition of foreign resolution action (see Section 45.12 of the CDIC Act: "*Except with the consent of the Attorney General of Canada, no judgment, order or other relief given in a proceeding outside Canada in respect of an order made under subsection 39.13(1) shall be recognized or enforceable in any manner in Canada.*"

resolution measures by Canadian courts and authorities could collide with public interest considerations.

79. The liquidation regime does not include cross-border insolvency provisions. There are no rules for the recognition of foreign insolvency proceedings in the WURA. As recent experience has shown, even the liquidation of a small foreign entity, with minimal presence in Canada, may require an independent liquidation proceeding.

Provincial Resolution Regimes

80. The federal resolution regime coexists with the regimes applicable to the resolution of provincial institutions. The resolution of provincial DTIs is the responsibility of the provincial authorities. The provincial DISs can provide financial assistance to distressed institutions, including financing P&A transactions.

81. Most of the provincial resolution regimes are simple and offer limited resolution tools. This is due to the prevalence of small institutions and, with few exceptions, the absence of systemic institutions. Provincial authorities can use the federal insolvency regime to liquidate and restructure DTIs within their jurisdictions. The federal commercial insolvency legislation is applicable to the failure of provincial institutions. Paradoxically, the general federal legislation (the BIA[99] and the Companies' Creditors Arrangement Act[100]) is more modern and efficient than the specialized federal legislation for the insolvency of banks (the WURA).

82. Québec has developed a sophisticated resolution regime, in alignment with the federal one. The existence of a designated D-SIFI requires the use of more advanced resolution tools, as in the federal regime. For this reason, Bill 141, adopted in June 2018, has amended the financial legislation of Québec, which is now embodied in the Deposit Institutions and Deposit Protection Act; the Regulation of the Financial Sector Act, and the relevant sections of the Financial Services Cooperatives Act.

83. The reforms in Québec envisage the exercise of resolution powers by AMF. As an integrated financial regulator, AMF is also the resolution authority, but the powers to trigger and close resolution operations will be exercised by the Resolution Board, which is in the process of being established.

84. The resolution powers of AMF are similar to those introduced in the federal legislation. The amendments adopted in 2018 allow AMF to exercise the same broad range of powers included in the federal regime for federally regulated financial institutions, with the addition

[99] RSC 1985, c. B-3.

[100] RSC 1985, c. C-36.

of the power to demutualize[101] cooperative financial entities.[102] Given the preeminence of a financial cooperative group as the only D-SIFI in Québec, that provision is essential for the credibility of the resolution regime. As in the federal system, the law establishes that the exercise of resolution powers is not subject to judicial authorization or review, and the only remedy available to aggrieved parties is compensation, as determined by AMF.

85. AMF can appoint a receiver to take control of a DTI. Under Québec legislation, AMF can appoint a receiver and request the liquidation of the entity according to the winding-up regime included in the provincial legislation, which is complemented by the federal WURA.

86. AMF is working on the completion of the resolution regime, including the bail-in and compensation regulations. AMF is working on the development of the TLAC framework, which is aligned with the federal TLAC framework, and on the regulations for the bail-in regime, including the compensation regulation and a regulation for the transfer of eligible financial contracts in resolution. These draft guidelines and regulations have been subject to public consultation.[103] The bail-in regime requires the consideration of how to demutualize the D-SIFI (a financial cooperative group) and operate bail-in. It is important that there is a clear understanding of how bail-in would operate, including the sequence of events, since this will have to be adequately described in the disclosure statements of the future debt securities which will subject to bail-in.

B. Resolution Planning

87. D-SIBs have been responsible for preparing their own resolution plans since 2016. CDIC initiated D-SIB resolution planning in 2012. By 2015 it had developed three generations of plans. After settling on the bail-in framework described above as the preferred resolution option for all D-SIBs, the banks were tasked with validating that they can implement this resolution strategy by preparing their own resolution plans in accordance with the framework. CDIC provided guidance on its expectations for plan content in February 2016, and the banks submitted their first plans in December of that year. There is now a regular cycle of updated plan submissions near year-end with provision of feedback by CDIC to the banks in the following spring.

88. CDIC published a consultation paper on new D-SIB Resolution Planning By-Law Requirements in February 2018. This by-law has formalized CDIC's existing guidance and practices, specifying requirements for development, submission and maintenance of resolution plans, and notifications to CDIC of any material changes that affect the plans. Plans must contain (i)

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[101] The demutualisation would be carried out after exercising the bail-in power. See the notice relating to the bail-in power: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/assurances-inst-depot/2019/20190321-avis-recapitalisation-interne-loi-assurance-depots_an.pdf.

[102] AMF chairs the technical committee on Resolution Issues for Financial Cooperatives within the International Association of Deposit Insurance (IADI). This technical committee is studying the possibility of adapting the use of bank resolution tools, including the bail-in tool, to financial cooperatives.

[103] See https://lautorite.qc.ca/en/professionals/regulations-and-obligations/public-consultations/topic/deposit-institutions/ongoing/1/#consultation_1242. The consultation opened on October 25, 2018.

a strategy that sets out how CDIC can carry out a resolution that supports the continuity of critical functions, (ii) an assessment of how the strategy minimizes reliance on public sector financial assistance, and (iii) a work plan that describes the remedial actions to be taken by the D-SIB to address the relevant deficiencies or impediments to resolution. CDIC's expectation is that D-SIBs will have addressed any material deficiencies or impediments to implementing the plans such that CDIC is able to consider the banks resolvable by March 2020.

89. CDIC has a written framework to guide its assessment of D-SIBs' resolution plans. Key areas addressed by the assessment framework are legal structure, quantity and location of loss absorbing capacity, access to liquidity, and operational continuity and resiliency. The assessment process comprises of a completeness assessment and a qualitative assessment in terms of CDIC's guidance for the content of resolution plans. Each D-SIB's resolution plan contains a work plan listing the outstanding material impediments to plan implementation, the incremental steps that the bank will take to resolve these impediments, and the projected timing of implementation of remedial actions.

90. There is no regulatory prescription for the internal distribution of bail-in-able debt. Neither OSFI or CDIC specifies how loss-absorbing capacity should be distributed within a group. In its review of resolution plans CDIC will assess banks' internal distribution of debt in the context of potential losses at material legal entities and assess by which mechanisms losses can be pushed-up to the parent bank and/or capital can be pushed down in order to ensure the continued operation of the material entity. It is not anticipated that D-SIB subsidiaries will issue debt to the market, rather only internally within the group.

91. Ensuring adequate funding in resolution is critical for effective D-SIB resolution. Banks in resolution may lose access to market funding for an extended period. D-SIB resolution plans must demonstrate that the bank could maintain adequate funding during resolution and must specify how funding can be stabilized. Plans must also demonstrate how any reliance on public sector funding (e.g., ELA from the BOC) would be limited in amount and temporary in duration.[104]

92. D-SIBs have issued bail-in-able debt.[105] This has involved public issuances in Canada and the United States, and private placements in Canada and Europe, by all D-SIBs since September 23, 2018. For issuances governed by foreign laws the banks must provide a legal opinion addressing the enforceability of the bail-in contractual provisions in the relevant jurisdiction. Based on the maturity profile and anticipated rollover of D-SIBs' outstanding senior debt as well as the banks' funding plans, it is expected that D-SIBs will meet the TLAC requirements by OSFI's November 2021 target date.[106]

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[104] The provision of ELA is at the BOC's discretion. Recent changes to BOC's regime allow for it to be provided in the context of facilitating resolution of banks. See the Section on Deposit Insurance and Resolution Funding.

[105] The bail-in regime and the TLAC guidance became effective in September 2018. Senior debt outstanding prior then is not subject to bail-in and cannot count towards TLAC requirements.

[106] The D-SIBs financial year-end is October 31.

93. CDIC and the D-SIBs are on track to meet the 2020 resolvability target. As noted, CDIC expects all D-SIBs to have resolved, or have an acceptable plan to resolve, material impediments to resolution by March 2020. CDIC has identified outstanding impediments and is working with the banks and other bodies such as the BOC[107] to overcome them. CDIC has a team of 14 managers/staff engaged in tasks geared toward ensuring the resolvability of all D-SIBs by the target date.

94. CDIC extended resolution planning to mid-sized banks in 2015.[108] CDIC prepares resolution plans for six such banks and has formed a preliminary view of preferred and fallback resolution strategies and impediments to those resolution options. CDIC does not inform each bank of its preferred and fallback resolution strategies. CDIC provides input to OSFI on recovery plans with an eye to the ability to implement such resolution strategies. With the D-SIB resolution planning reaching completion, CDIC intends to increase its focus on mid-sized bank resolution planning and steps to improve their resolvability.

95. Some mid-sized banks have broad-based commercial banking operations in a regional market, giving rise to a question regarding the relevance of regional financial stability in the context of CDIC's choice of a resolution option. As noted, CDIC must consider its mandates of minimizing its exposure to loss and promoting and preserving financial stability, among other considerations. It is not prescribed whether the scope of this assessment might appropriately involve a single region or province. To guide CDIC Board in making this assessment, CDIC is developing financial stability indicators. This work should be completed and should contemplate financial stability in a regional and provincial context, as it might affect overall financial stability in Canada.

96. For smaller banks, CDIC undertakes the risk-based approach to resolution planning. All members institutions are subject to an annual CDIC risk assessment. Resolution planning is undertaken at least for banks on CDIC's watch list and for certain others that might prospectively be placed on the list. Generally, special examinations of these members are utilized to provide information regarding CDIC loss exposures in failure and to help assess the cost of deposit insurance payout compared to other resolution options. As noted, OSFI takes a similar risk-based approach to requiring recovery plans from smaller banks, but it is recommended to require recovery plans for all DTIs. CDIC resolution planners should be aware of the progress made in the preparation of recovery plans at the request of OSFI to make a determination whether to initiate resolution planning.

97. Not all federally regulated financial institutions that perform functions critical for the economy and/or financial system are subject to CDIC resolution planning. Certain federally regulated financial institutions perform critical functions, such as custody, but are not significant DTIs and thus would not be subject to *ex ante* CDIC resolution planning. There is no framework in place for designating a resolution authority for significant insurance-led groups, even where

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[107] For example, with respect to ensuring access to FMIs by banks in resolution.

[108] Member institutions with Can$10 billion or more in consolidated assets.

federally regulated DTIs form part of the group, and thus no assigned responsibility for group-wide resolution planning. There should be a systematic framework in place applicable to all federally regulated financial institutions for assessing whether they perform critical functions, for ensuring that responsibility for developing resolution plans has been assigned, and for ensuring that up-to-date resolution plans are in place. Consideration could be given to assigning this responsibility to the FISC.

98. There are adequate mechanisms in place to ensure that the BOC, the DOF, and OSFI are kept informed of, and engaged as appropriate in, CDIC resolution planning. CDIC staff provide regular updates on resolution plans and the status of resolution planning to the CDIC Board on which the other agencies are the members. As OSFI is responsible for enforcing TLAC requirements that support the execution of CDIC's D-SIB resolution strategies, there is regular engagement between the two bodies and both OSFI and CDIC will regularly receive TLAC-related data from D-SIBs. The BOC provides feedback to CDIC on aspects relating to funding, liquidity, central bank facilities, asset pledging and FMIs.

99. CDIC is well advanced in preparing to be able to execute bail-in. It has developed playbooks for aspects of the bail-in regime. It has published detailed information on the bail-in regime and how it would work in practice. It has consulted with professional firms regarding (i) the valuations that will be required to support resolution action and potential compensation decisions and (ii) the mechanics of converting debt instruments into equity in Canada and foreign jurisdictions. D-SIBs are also responsible for addressing bail-in execution in their resolution plans to ensure the bank is operationally prepared to support the execution of the bail-in tool. CDIC also has developed playbooks for other resolution actions. See the Section on Contingency Planning and Crisis Management for additional detail.

100. After the designation of Desjardins Group as a D-SIFI in 2013, AMF is developing its resolution planning framework. The framework is modeled on the OSFI's TLAC regime and CDIC's resolution planning guidance and bail-in regime.[109] A draft of AMF's TLAC guideline has been developed. AMF's TLAC guideline establishes a risk-based TLAC ratio and a TLAC leverage ratio at the level set by OSFI. The guidelines will be effective when the resolution regulations come into force on the first quarter of 2019. AMF initiated resolution planning, initially with the support of third-party experts. The first iteration was tested via a table-top exercise and scope for improvement identified. The second iteration of the plan is anticipated to be completed by the end of the financial year 2018-2019.[110] The plan includes measures to accommodate the current cooperative ownership structure in resolution. AMF currently has a team of 10 staff engaged in resolution planning and is developing a resolution manual. AMF should continue to devote the resources necessary to complete it resolution regime and to ensure the resolvability of the D-SIFI.

[109] As noted, AMF entered into a MoU with CDIC, in part to exchange technical expertise in resolution planning.

[110] Unlike CDIC, AMF does not envision requiring the group to prepare its own resolution plan.

C. Summary of Recommendations

- Enhance the autonomy of CDIC in taking resolution actions.
- Extend the scope of the resolution regime to branches of foreign banks, non-regulated subsidiaries of national banks, and to other financial institutions of the same group that are not federally regulated.
- Introduce in the resolution toolbox the powers to terminate contracts, to claw-back remuneration from directors, to write down shares and liabilities, and to require changes to improve the resolvability of financial institutions.
- Clarify the scope of the compensation regime and enhance its transparency, especially regarding valuation.
- Introduce depositor preference.
- Introduce and use the write-down power to avoid that shareholders would benefit from the resolution efforts undertaken by CDIC.
- Recognize the power of the resolution authority to depart from the *pari passu* treatment of creditors for specified reasons, and subject to the NCWO safeguard.
- Introduce cross-border rules in the resolution and liquidation regimes.
- The same recommendations on the legal framework for bank resolution are applicable to Québec law.
- Overhaul the liquidation regime (WURA).
- Complete the development of factors to be considered in assessing financial stability implications of its resolution actions, including in a provincial and regional context.
- Ensure that resolution plans are in place for the federally regulated financial institutions that provide critical functions to the economy or financial system.
- AMF should adopt the TLAC guideline and complete the resolution regime by adopting the bail-in, eligible financial contracts and compensation regulations. The bail-in regime and disclosures should explain clearly the sequence of events in case of resolution.
- AMF should continue to devote the resources necessary to ensure the resolvability of the D-SIFI.

DEPOSIT INSURANCE AND RESOLUTION FUNDING

A. Depositor Protection and Payout

101. The federal DIS is well established. CDIC is in charge of the federal DIS, which has been operating since 1967, and largely complies with best international practices. Members of the DIS include banks, as well as federally regulated credit unions and other designated entities such as cooperative credit associations.[111]

102. The DIS is pre-funded. Member institutions pay premiums in two semi-annual installments, based on the volume of insured deposits. Premium rates are determined through a differential premium system that classifies the member institutions according to qualitative and quantitative criteria into one of four risk categories.[112] The Governor-in-Council, on the advice of the MoF, can set aside the requirement that CDIC pursues its objectives in a manner that will minimize its exposure to loss. In the event of such an action, CDIC can also collect special premiums from member institutions, or a class of institutions, in order to cover the loss incurred as a result of pursuing its objectives in a manner that does not minimize its exposure to loss (Section 7.3 of the CDIC Act)—i.e., pursuant to a Governor-in-Council order exempting CDIC from its objective to minimize its exposure to loss.

103. CDIC uses two methodologies to assess its required ex ante funding. CDIC uses *discretionary analysis*, considering the profile of its membership and determining the ability of a specific level of funding to address the hypothetical failure of member institutions. CDIC also uses *loss estimation*, which utilizes statistical techniques to estimate multiple hypothetical loss scenarios, to calibrate funding levels. CDIC regularly tests its model assumptions to evaluate how changes in probability of default and loss given default could affect its required funding. CDIC maintains *ex ante* funding that is composed of the provision for insurance losses and retained earnings. The current target for ex ante funding is a minimum of 100 basis points of insured deposits. The balance of CDIC's ex ante funding at Can$4.5 billion is 57 basis points of insured deposits as of June 30, 2018. CDIC regularly conducts reviews of its funding target and premium rates to ensure the DIS remains well funded.

104. The coverage of deposit insurance is adequate. Eligible deposits are protected up to a maximum of Can$100,000 per depositor per category, and per member institution. CDIC provides insurance to *all* depositors, regardless of nationality or location, but coverage is limited to deposits *payable in Canada*. There are no excluded persons.

[111] However, there are currently no federal cooperative credit associations.

[112] The current rates, determined in accordance with the Differential Premiums By-Law, are 7.5 basis points of insured deposits for category 1; 15 basis points for category 2; 30 basis points for category 3; and 33.3 basis points for category 4.

105. The range of eligible deposits is set to be expanded. As a result of the deposit insurance review (see Box 2), the legal provisions that define eligible deposits have been modified to include deposits for terms longer than 5 years (which were previously excluded) and deposits in foreign currency. Other legal amendments have simplified the categories of eligible deposits. These legal amendments are not in force, and CDIC needs to adopt supporting by-laws. The increased coverage of deposit insurance will likely result in a delay on arriving at CDIC's minimum funding target, but the process of building up the resources of the DIS should continue.

106. CDIC collects data on its members and makes preparations to ensure timely repayment of deposits. CDIC requires members to maintain data standards to ensure timely reimbursement of deposits in the event of failure,[113] and conducts testing of the data and system capabilities of member institutions. CDIC can conduct preparatory exams of the books and records of institutions with a view to determine eligible deposits and produce a deposit insurance payout determination. CDIC is working on improvements to the quality and granularity of the data it gathers. The existence of different types of deposits may have an impact on the sensitivity of institutions to negative events (for instance, there is a different behavior of brokered deposits). Gathering information on the different types of deposits would be extremely helpful for crisis preparedness.

Box 2. The Deposit Insurance Review

The Canadian financial system was resilient during the global financial crisis, and modifications to the deposit insurance framework were not needed to maintain confidence in the financial system. Since the crisis, the global banking landscape has changed significantly, including the introduction of financial regulatory reforms aimed at reducing the probability of a future financial crisis. For this reason, Budget 2014 announced the launch of a comprehensive review of Canada's deposit insurance framework to ensure that it provides adequate protection for the savings of Canadians.

The analysis undertaken for the deposit insurance review, including analysis of data from CDIC member institutions, has helped to determine how well the DIS is meeting the needs of Canadians. The findings suggest that deposit insurance coverage is largely adequate and meeting its primary objectives. The current framework:

- Provides sufficient coverage for the savings of Canadians. Approximately 97 percent of all deposit accounts are fully covered under the current framework.
- Supports depositor confidence and financial stability. CDIC surveys indicate depositor confidence in the safety of Canada's banking system remains high (80 percent). In addition, there have been no member failures since 1996.
- Promotes efficient and competitive financial services. Deposit insurance coverage is provided to all eligible deposits in the same manner at every CDIC member institution.

The review indicates that major changes to the framework are not required and that the current Can$100,000 limit remains appropriate. The analysis undertaken for the review indicates that raising the deposit insurance limit would not enhance protection to the savings of the vast majority of individuals in Canada, whose deposit accounts are currently covered under the framework. In line with international best practices, Canada's framework covers the large majority of depositors but leaves a substantial amount of deposits exposed to the possibility of loss in the event of a bank failure.

[113] Sections 11(1) (f.1) and (f.2) of the CDIC Act; see also CDIC Data and System Requirements By-law.

Box 2. The Deposit Insurance Review (concluded)

The review concluded with the proposal of amendments to the existing framework:

- Removing travelers' cheques, which are no longer issued by member institutions, as an eligible deposit;
- Eliminating the five-year term limit on deposits, as longer-term products are now available;
- Extending coverage to foreign-currency deposits, which are widely used in Canada;
- Removing the separate deposit insurance category for mortgage tax accounts, given their declining use (coverage will still be available for these amounts under the personal or joint categories);
- Creating two new deposit insurance categories for Registered Education Savings Plans (RESPs) and Registered Disability Savings Plans (RDSPs) which are currently covered under the trust category, simplifying the deposit insurance framework.

These changes were introduced by amendments to the CDIC Act in the *Budget Implementation Act, 2018, No.1* which received royal assent on June 21, 2018. An update of the relevant regulations by CDIC is necessary before these legal provisions become effective.

Use of Deposit Insurance Funds

107. CDIC can use deposit insurance funds to support resolution actions. According to the law, CDIC may do all things necessary or incidental to the objectives of the Corporation (Section 10.1 of the CDIC Act). As CDIC is both the DIS and the resolution authority, there is a clear integration of depositor protection and resolution actions, especially in the use of deposit insurance funds for resolution activities. CDIC may use deposit insurance funds for a deposit payout or to support the resolution of the entity through an assisted sale, funding of a bridge bank, or other forms of financial assistance to bank in resolution, including a direct recapitalization. CDIC can also use deposit insurance funds to cover the costs of liquidation of the entity. CDIC can also provide open bank assistance without connection to a specific resolution action; this may represent a subsidy to the shareholders of the entity and create moral hazard, even if it has the potential to minimize the losses of the DIS. Financial support to entities should require changes in ownership and restructuring of the entity. Open bank assistance should generally be avoided, except if there are risks to financial stability, in which case the financial support should come from the fiscal authorities.[114]

108. CDIC absorbs losses with the use of its own resources. CDIC can absorb losses with its provisions for insurance losses and retained earnings. Losses can be recouped by future premiums to be paid from member institutions. CDIC has a mandate to minimize its exposure to losses, but the Governor-in-Council may, on the advice of the MoF, exempt CDIC from the loss minimization requirement in the case where strict adherence to that mandate would have an adverse effect on the stability of the financial system in Canada or public confidence in that stability. In such an event, any resulting losses that are in addition to what CDIC would have normally incurred, are recoverable through special premiums from its members or from a subset of members. The introduction of

[114] See Croituru, Dobler and Molin, *Resolution Funding: Who Pays When Financial Institutions Fail?*, IMF. Technical Notes and Manuals, 18/01, 2018.

depositor preference (whether general or limited to the insured deposits) would reduce the potential losses of CDIC in the event of the insolvency of its members. Naturally, the introduction of depositor preference would require first a study of the potential impact on banks' funding costs and structures to determine which type of depositor preference to introduce and the safeguards that may be required (for instance, on encumbrance of assets).

109. CDIC has access to several sources of liquidity. CDIC can fund its resolution activities through access to three main sources of liquidity:

- **Investment portfolio.** CDIC has an investment portfolio (currently Can$4.5 billion) which can be used to fund resolution actions and payouts of insured deposits. The portfolio comprises debt securities issued or guaranteed by Government of Canada or provincial governments.

- **Legislated borrowing.** CDIC has access to a legislated borrowing limit that is adjusted each year based on the growth of insured deposits. The current limit is Can$23 billion. The borrowing can be activated, after Ministerial approval, through a standby credit facility with the MoF or through access to the capital markets. Borrowing by CDIC under section 60.2 of the Financial Administration Act is exempt from the calculation of the borrowing limit for CDIC. This effectively addresses the need for extraordinary access to funding.

- **Parliamentary Appropriation Act.** If the combination of the investment portfolio and the legislated borrowing authority is insufficient, the Government may request an increase to CDIC's legislative borrowing authority via a Parliamentary Appropriation Act. This mechanism should follow appropriate parliamentary procedure, which may involve a significant amount of time until funds are made available to CDIC.[115]

110. CDIC's own resources, bolstered by its borrowing capacity, can cover a variety of situations requiring a payout. The available funds (including the current borrowing capacity) can fund a payout of the insured deposits of 48 CDIC members individually and the aggregate insured deposits of 41 members. This means CDIC can cover the failure of all member entities individually, except the D-SIBs (for which a deposit payout is not a resolution strategy).

Provincial Deposit Insurance Systems

111. The ten Canadian provinces have separate DISs. In the case of Québec, the deposit insurance framework is included in a self-standing law, the Deposit Institutions and Deposit Protection Act. The other provinces have incorporated DISs in their financial legislation for credit unions.

[115] Requesting a Parliamentary Appropriation Act would require the CDIC Board's approval. The request must be made to the MoF who, at his or her discretion, would put forward the request to Parliament. From then on, parliamentary procedure must be followed to obtain legislative approval.

112. The coverage of provincial DISs is uneven. Coverage ranges in the different provincial schemes, but all of them provide a higher coverage than the federal system, except Québec, which offers the same coverage as the federal system (Table 2). The differences in coverage, and, especially the unlimited coverage in some provinces may generate uneven competition and moral hazard. The small size of provincial financial systems, however, could be taken as a prima facie indicator that the distortive effects are not significant. In any case, the federal and provincial authorities should conduct an analysis of the effects of the existence of different coverage levels and its effects on the federal system and engage in a dialogue geared toward a progressive convergence of DISs. The analysis should focus on the effects of the coverage differences on competition, financing of the DISs, and potential effects in a crisis situation. In addition, provincial DISs should conduct self-assessments of their systems against best international practices.[116]

Table 2. Canada: Coverage of Provincial Deposit Insurance Systems

British Columbia	Unlimited
Alberta	Unlimited
Saskatchewan	Unlimited
Manitoba	Unlimited
Ontario	Can$250,000; unlimited for registered deposits
New Brunswick	Can$250,000
Nova Scotia	Can$250,000
PEI	Can$125,000; unlimited for registered deposits
Québec	Can$100,000
Newfoundland and Labrador	Can$250,000

113. The DIS in Québec is well developed. AMF is responsible for the DIS in Québec. Since the 2014 FSAP, the authorities have introduced numerous improvements in the deposit insurance framework, and the regime is largely compliant with the IADI core principles. The system does not have a formal funding target, but the authorities are making progress in setting the target, and the resources of the fund have been strengthened. Out of five institutions insured by AMF, the current deposit fund balance can cover the full value of insured deposits held by three of them, and almost enough to cover the fourth (more than 90 percent) if taken individually. As for the fifth institution (Desjardins Group), which represents the vast majority of insured deposits, a reimbursement is not expected since the institution would be subject to a resolution action. The coverage of deposit insurance in Québec is harmonized with the federal coverage. The changes introduced in the federal system as a consequence of the deposit insurance review should be also introduced in Québec law to preserve the same level of protection.

[116] This recommendation does not extend to Québec, which has conducted its self-assessment against the IADI core principles.

B. Other Resolution Funding

114. Canada has a broad range of additional official funding support instruments. In addition to CDIC's powers and funding options described above, support can be provided by the BOC and the MoF. BOC can provide liquidity funding before, during and subsequent to resolution action. The MoF can provide loss absorption, recapitalization and liquidity funding. Since the 2014 FSAP, the BOC has revised its ELA framework, and the authorities have developed an inter-agency framework to guide liquidity assistance to D-SIBs and to mid-sized and smaller banks.

115. The BOC can provide ELA to support the recovery or resolution of eligible DTIs. Its policies and procedures for ELA are published on its website. Legislation requires federally and provincially regulated financial institution must be members of Payments Canada[117] to be eligible for ELA. Other eligibility conditions are described in the BOC's ELA policy, which has been revised since the 2014 FSAP. The changes adopted in December 2015 include: (i) replacing the solvency requirement as an eligibility criterion with a requirement that the institution has in place a credible recovery and resolution framework; (ii) expanding the instruments that can be offered as collateral to include, in addition to non-mortgage loan portfolio (already deemed eligible), Canadian-dollar mortgages; and (iii) clarifying the eligibility requirements for provincially regulated institutions, including a requirement of provincial indemnity. No ELA has been granted since the 2014 FSAP.

116. The BOC has criteria in place for assessing the credibility of a recovery and resolution framework. The framework is deemed credible if it provides a high degree of confidence that the institution can be returned to long-term viability or be resolved in an orderly manner without systemic disruption. The framework should: (i) seek to maintain continuity of functions critical to financial stability; (ii) identify recovery and resolution strategies that can be readily implemented to address extreme stress events; (iii) provide for coordination and information-sharing with relevant authorities; and (iv) ensure sufficient funding and liquidity arrangements are in place such that ELA is used only after private funding sources are no longer available at reasonable cost. The existence of formal recovery or resolution plans is not necessarily required in order for the framework to be credible.[118] The credibility of the framework is assessed ex ante as well as at the time of an ELA request.

117. New provisions allow for use of mortgages as collateral for ELA. The BOC is willing to take a broader range of collateral for ELA than it accepts under the Standing Liquidity Facility (SLF). In addition to collateral such as Canadian-dollar non-mortgage loans and less-liquid securities such as collateralized own-name securities (e.g., self-securitized loans), the BOC's ELA policy was revised in 2015 to allow it to accept Canadian-dollar mortgages as collateral. This change is estimated to have roughly doubled the amount of available ELA collateral for D-SIBs. Given the legal complexities

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[117] Formerly the Canadian Payments Association.

[118] For instance, in the case of DTIs without formal recovery and resolution plans, the BOC can assess the credibility of the institutions' recovery and resolution framework based on elements such as the institution's contingency funding plan.

and costs of acquiring a first-priority security interest on mortgages and of processing, administering and liquidating the collateral should the borrowing bank default, use of mortgages as collateral is consider a last resort. The BOC also has made clear that it retains the right to accept only mortgages for which it can manage the associated financial, legal, and operational risks. See Technical Note on Systemic Liquidity.

118. Provincially regulated financial institutions, including the Québec D-SIFI, may also be eligible for ELA, subject to two additional criteria. In addition to being members of the Payments Canada and having a credible recovery and resolution framework, to be eligible for ELA, provincially regulated financial institutions must be deemed by the BOC to be important to broader financial system stability. The BOC assesses several factors, including whether stress from a provincial cooperative system is materially contributing to adverse financial conditions, is severely impairing economic activity in the region, and is spreading or has the ability to spread through national cooperative frameworks and infrastructures. Another eligibility criterion is a requirement that the province indemnify the BOC from any losses it might incur should the institution were to default. Given the significant cooperative networks operating in British Columbia, Ontario, and Québec, these provinces should put in place indemnity arrangements with the BOC.

119. Provisions for extraordinary support from the MoF adopted in 2009 remain in place. As described in the 2014 FSAP, the MoF, with Governor-in-Council authorization, can enter into any contracts and provide credit that is necessary to promote the stability of the financial system. The MoF also can acquire securities, including shares, in federally regulated financial institutions to promote financial stability. The MoF can set the terms and conditions of its support. As noted above, the MoF, with the approval of the Governor-in-Council, can provide in effect unlimited funding to CDIC to support resolution actions.

120. The federal authorities recently formulated a framework for liquidity funding in resolution. Under a project initiated by the sub-SAC, a framework was developed by the BOC, CDIC, the DOF, and OSFI that addresses potential liquidity funding of one or more financial institutions of various sizes. The framework sets out the range of powers among the agencies to provide liquidity, highlight their statutory purposes, and set out practical considerations in terms of sequencing the use of the powers in the context of different resolution actions.

121. AMF has access to several sources of funding to support resolution. These include ELA to a DTI from the BOC, funds from AMF's DIS, backup funding from the Québec government, and borrowing from CDIC. As described above, the BOC's ELA may be available to provincially regulated financial institutions subject to, among other conditions, a provincial indemnity. Such an indemnity agreement between the Québec Government and the BOC should be put in place.[119] AMF can obtain funding from the DIS for loss absorption, recapitalization and liquidity funding under an arrangement agreed between AMF and the Caisse de dépôt et placement du Québec (CDPQ).[120] The

[119] As noted, another condition for ELA is that a credible recovery and resolution framework be in place. The 2018 MoU entered into by AMF and the BOC enables AMF to share recovery and resolution plans with the BOC.

[120] The CDPQ manages portfolio investment of the DIS under an investment policy set by AMF.

DIS currently has funds of around Can$740 million. AMF, via the DIS, has access to emergency backup funding from Québec's finance minister, who may make advances to AMF, under conditions that are subject to government authorization, in an amount required to exercise its resolution and deposit insurance powers. There is no agreed line-of-credit or other documentation to formalize this potential support. Finally, under a 1969 agreement, AMF can request loans from CDIC to meet the short-term cash requirements of its operations. AMF should continue to support steps by the Québec government to agree the terms and conditions of a provincial indemnity of potential BOC's ELA and should seek to formalize to the extent possible its backstop funding arrangement with Québec's finance ministry.

C. Summary of Recommendations

- CDIC should complete its work in updating all the relevant regulations to changes introduced based on the deposit insurance review.
- CDIC should continue bolstering its own *ex ante* funding resources.
- CDIC should continue improving the quality and the granularity of deposits data.
- CDIC should not be able to provide open bank assistance without a change of ownership and a restructuring of the distressed DTI.
- AMF should continue increasing its resources, and the Québec authorities should consider introducing amendments in line with those enacted after the deposit insurance review.
- The other provincial authorities should conduct a self-assessment of their DISs against best international practices.
- The federal and provincial authorities should conduct an analysis of the effects of the existence of different coverage levels of the DISs.
- Provincial indemnities of potential BOC ELA to systemically important provincially regulated DTIs should be put in place.
- AMF should continue to support steps by the Québec government to agree the terms and conditions of a provincial indemnity for potential BOC's ELA and should seek to formalize to the extent possible its backstop funding arrangement with Québec's finance ministry.

CONTIGENCY PLANNING AND CRISIS MANAGEMENT

A. Key Issues

122. The effectiveness and efficiency with which the federal and provincial authorities individually and collectively deal with distress and crisis situations is enhanced by having formal contingency plans in place. Developing formal plans for the exercise of the authorities' responsibilities and powers, and ensuring that they are known, practically available and useful to management and staff, is fundamental to the preparedness of each authority. Having in place an integrated national-level plan built upon the individual authorities' plans is equally important. Regular testing of plans and practicing their implementation provide a mechanism for promoting awareness and knowledge of plans to key actors and for enhancing plans and keeping them up-to-date.

123. Since the 2014 FSAP the federal authorities and AMF have taken numerous actions to upgrade their internal contingency plans, a process that is ongoing. These actions have been motivated in part by legal, regulatory and policy developments and by recent experiences with distressed DTIs. OSFI is reviewing and updating documents such as its Taking Control Playbook and Problem Situation Binder with the intent to streamline and update existing materials. CDIC has a range of plans in place which take the form of playbooks setting out procedural steps for implementing CDIC's powers, such as insured deposit payouts and assisted acquisitions. The playbooks associated with the new bail-in regime are being completed, and earlier playbooks, addressing for example the use of bridge banks, will be updated.[121] The BOC has developed a playbook for the provision of ELA to federally regulated financial institutions under its revised policy framework. The four federal authorities recently developed the inter-agency liquidity funding framework for federally regulated DTIs as noted above. A working group on crisis communications has been formed to develop a protocol on coordinated communication strategies. Both are initiatives of the sub-SAC, which as noted is chaired by an Assistant Deputy Minister. The ongoing work of the authorities in completing and enhancing their contingency plans should be continued. AMF has developed a crisis management plan which describes the procedures and actions to be applied, notably in case of recovery and resolution situations.

124. Similarly, the authorities have ramped up their testing and readiness programs. CDIC has an extensive program of exercises which are planned on a three-year horizon. Twelve simulations have been conducted since the 2014 FSAP, ranging from internal exercises to test aspects of CDIC's preparedness to execute payouts and assisted transactions, to the CDIC-led inter-agency exercise with the BOC and OSFI simulating the failure of a mid-sized bank. In addition, two inter-agency table-top exercises have been conducted with senior and working-level staff of the BOC, the DOF and OSFI. CDIC also conducted a table-top exercise for its Board, which includes the

[121] In addition, since the 2014 FSAP, CDIC implemented detailed deposit data standards for the information needed to initiate payouts within seven days.

heads of the other agencies, focused on the resolution of a mid-sized bank and related crisis communications.[122] In late 2017, the BOC conducted a simulation with large banks to test their ability to request an ELA advance as well as the BOC's ability to process the collateral and deliver ELA funds to the banks. Lessons learned are, in part, feeding back into changes in procedures and legal documentation as well as the ELA playbook. Going forward, the BOC envisions external testing with DTIs at a regular frequency.[123] OSFI launched an operational readiness and training program in 2016. In 2017 it conducted an exercise involving multiple OSFI units and simulating the failure of a mid-sized bank. The following exercise was held in January 2019. The DOF does not have its own testing and readiness program but participates in some of the exercises initiated by CDIC. The testing and readiness activities of the authorities should be continued. OSFI might give consideration to establishing a formal three-year program similar to the approach adopted by CDIC.

125. AMF has a written crisis contingency plan in place as well as a testing program. The plan presents the main steps involved in exercising AMF's powers and responsibilities, including with respect to a possible resolution of the designated D-SIFI. The plans are being further developed to address AMF's new resolution powers. AMF tests plans using table-top and simulation exercises. It recently simulated the insolvency of a life insurance company that is also a DTI, tested its insured deposit payout system, and simulated the resolution of the D-SIFI. AMF's contingency planning and testing program should continue to be pursued.

126. The SAC should oversee federal-level contingency planning and testing activities. At present SAC members have internal contingency plans of varying scopes and characteristics but there is no comprehensive, integrated, inter-agency contingency plan at the federal level. The goals of greater SAC oversight would be (i) to have in place such a national inter-agency contingency plan, (ii) to ensure the complementarity and consistency of the individual authorities' plans with the national plan, (iii) to maintain awareness of the various testing programs of SAC members and provide endorsement of inter-agency exercises, and (iv) to ensure routine and consistent reporting of and follow-up on the results of relevant intra- and inter-agency exercises (e.g., lessons learned, implementation of planned follow-up actions). The SAC might delegate these responsibilities to the sub-SAC.[124] The sub-SAC could be tasked to develop the inter-agency plan. The recently agreed inter-agency liquidity framework might provide a model for the broader national inter-agency plan.[125] The sub-SAC would periodically review the adequacy of the members' contingency plans relevant to the inter-agency plan and make suggestions for enhancements to the authorities' plans if indicated. The sub-SAC could also be tasked with monitoring and ensuring consistent reporting and follow-up on testing activities relevant to the national plan. This would serve to ensure visibility

[122] CDIC also has tested its operational capacity to execute repo transactions with the BOC to generate cash secured by its securities portfolio, and to access funds under its line of credit with the DOF involving both BOC and DOF staff. Both tests involved actual money transfers to CDIC.

[123] In addition, the BOC undertakes an extensive program of exercises with respect to FMIs. Also, it is a member of the Joint Operational Resiliency Management Committee, a private-public partnership for identifying system-wide operational risks and proposing solutions, which undertakes crisis simulations involving FMIs.

[124] As noted in the Section on Institutional Arrangements, the sub-SAC has no formal terms of reference at present.

[125] The inter-agency plan might take the form of an overlay or guided roadmap to the individual authorities' plans.

on the entirety of relevant activities by SAC members and the chair. Some form of regular communication to the MoF should be envisioned, including a regularly updated summary of the national inter-agency contingency plan.

127. The SAC should act as the federal coordinator with key provincial authorities to carry out contingency planning and testing activities for the whole Canadian financial system. An early task in this regard should be to review the adequacy of the current constellation of bilateral MOUs entered into between federal and provincial authorities in the context of the national inter-agency contingency plan.[126] A subsequent task would be to work collectively with key provincial authorities to assess respective federal and provincial contingency plans and to ensure that appropriate federal-provincial communications and information-sharing, as well as any required joint analysis and decision-making, is reflected in the plans. Eventually, the range of joint federal-provincial testing activities could be expanded. A key goal would be to ensure that in the event of a systemic crisis in Canada the federal and provincial authorities share relevant information, act collaboratively and speak with one voice.[127]

B. Summary of Recommendations

- The ongoing work of the authorities in completing and enhancing their contingency plans and implementing testing and readiness programs should be continued.
- OSFI should give consideration to establishing a formal three-year program of testing and readiness activities similar to the approach adopted by CDIC.
- The SAC should provide more systematic oversight of the contingency planning and the testing/practice activities of its member authorities and commission development of integrated inter-agency contingency plan.
- The SAC should act as the federal coordinator with key provincial authorities to carry out contingency planning and testing activities for the whole Canadian financial system.

[126] AMF already has a well-developed contingency plan and testing/practice framework in place, and FICOM is in the process of developing one.

[127] It is recognized that BOC already engages in such exercises with certain provinces.

Appendix I. The Guide to Intervention

The Guide to Intervention for federally regulated DTIs describes the framework and types of involvement of OSFI and CDIC in situations that require supervisory action at an early stage to minimize losses to depositors (according to OSFI's mandate) and minimize the exposure of CDIC to loss (according to CDIC's mandate). The Guide to Intervention is flexible and does not prescribe a defined set of actions for each situation.

Situation	OSFI	Inter-agency	CDIC
No significant problems	• Regular supervisory activities	• Regular exchange of information between OSFI and CDIC	• Ordinary monitoring
Stage 1: Early warning	• Send letter to management • Escalate monitoring • Request to increase capital • Impose business restrictions	• Information on staging from OSFI to CDIC	• May place institution on Watchlist • May conduct special examination and levy special surcharge
Stage 2: Risk to financial viability or solvency	• Perform more frequent supervisory reviews • Revise business plan • Increase audit • Prepare contingency plan for taking control of the institution	• OSFI informs CDIC of results from supervisory analysis • OSFI and CDIC commence contingency planning	• Report to institution, if in breach of CDIC by-laws • Conduct preparatory examination • Submit application to court for compliance with the DIS
Stage 3: Future financial viability in serious doubt	• Direct external specialists to assess specific areas • Increase business restrictions • Expand contingency planning • Communicate with management on resolution options	• Increased discussions between OSFI and CDIC • Regular meetings of the FISC and the sub-FISC	• May provide financial support (if it minimizes exposure to loss)
Stage 4: Non-viability/insolvency imminent	• Take temporary control (unless MoF overrides) • Request Attorney General to request commencement of winding-up	• Regular FISC meetings • OSFI may report non-viability of institution to CDIC, to commence resolution	• Cancel deposit insurance • Initiate resolution after receipt of non-viability report from OSFI and order by the Governor-in-Council, after recommendation of the MoF

Appendix II. Issues in the Winding-Up and Restructuring Act (WURA)

The WURA is the special federal legislation for the liquidation of banks and other financial institutions. An analysis of its provisions reveals a series of shortcomings in the statute, as outlined in the table below. There are no comments refer to Part III (restructuring of insurance companies), but that part should also be analyzed and revisited in the context of a general reform of the WURA. The table presents a non-exhaustive list of examples of issues of the WURA. A full reform of the law, as outlined in this Technical Note, would produce better results than the introduction of amendments in the legal text

Section	Issue	Comment/Recommendation
3	The commencement criteria are multifarious and many of them are outdated (e.g., sale of chattels or land to defraud creditors)	Commencement criterion should be updated to a cash-flow test; in addition to the statutory trigger of a non-viability declaration
4; 11(b)	The presumption of insolvency is triggered when a creditor is not paid a sum exceeding 200 Canadian dollars. A shareholder is entitled to file if it holds 500 Canadian dollars of stock -or five shares.	Request by private creditors should be restricted – presumption should be eliminated. Similarly, the shareholder request should be eliminated.
6; 10.1	One of the cases for application for insolvency is connected to the control of the institution by OSFI	Application should normally be submitted by CDIC, unless there are other grounds that justify a petition
10(d)	The court may make a winding up order when the capital of the company is impaired to the extent of 25 percent	Eliminate this rule—it bears no relation to supervisory rules.
19; 35.1(b)	Cessation of business in winding up, unless the liquidator requests continuation and the court authorizes it.	The regime is the same as in corporate law, whereas it should take into account the peculiarities of banking: regime for withdrawal of license and definition of permissible activities during the liquidation
20	Transfer of shares void after winding up commencement	There are no reasons to maintain this rule
23	The liquidator needs to be a qualified trustee. CDIC may act as liquidator.	Liquidator for banks could be required special qualifications
26	Appointment of the liquidator by the court requires previous notice to creditors and shareholders	It would be preferable to allow the resolution authority to propose the appointment of a liquidator from a pre-selected list
35	Powers of the liquidator: the liquidator may continue operations for the benefit of winding-up, and can request financing providing assets as collateral	The resolution authority could provide directions on the liquidation strategy (including sales of portfolios and sales of blocks of assets), and authorize and provide financing for liquidation operations, under judicial control

Section	Issue	Comment/Recommendation
42(1)	Remuneration of the liquidator to be set by the court	A remuneration regime should establish incentives for prompt action by the liquidator, rewarding higher rates of recovery. The creditors should decide on the remuneration.
65-66	Compromise: the law allows a compromise between the company and its creditors (the rules for the compromise are minimal).	The compromise does not fit well in a liquidation statute—creditors should decide on a liquidation plan, which may include sales of parts of the business, but not a reorganization of the entity.
71(1)	Proof of claims	The law ignores the existence of deposit insurance—the claims of the deposit insurer should not be subject to the same regime of verification. The information from the supervisor and the resolution authority should be integrated in the list of claims
73(1)	The recognition of set-off is extremely broad and does not take into account the position of CDIC	CDIC should not be exposed to set-off as a result of the payment of insured deposits
74	Time for sending in claims. The court may set a date to send claims	A date for sending claims should always be determined, and the consequences of not sending the claims in time should be specified in the law.
75(1)	The liquidator may give notice in writing to creditors	The liquidator should use modern technology to notify creditors, and notification should not be at the liquidator's discretion
76(1)	The law is not entirely clear about the regime applicable to distributions	Rules for distributions should be flexible, allowing the liquidator to make payments after a certain dividend can be satisfied. The liquidator should create reserves for disputed claims.
94; 95(1)	The ranking of claims is incomplete. It needs to be integrated with provisions from other laws.	A full ranking of claims should be introduced in the law. This ranking could recognize depositor preference.
95(2); 158.1(2)	Interest: the law states that creditors can receive full payment and five percent interest from the commencement of winding up.	This rule can generate a windfall for creditors (liquidation of a solvent branch of a foreign bank). Interest should be subordinated to principal claims (including from a foreign proceeding) and the rate should not be fixed in the law.
96-102	Avoidance actions—the regime is archaic, not suitable for the operations of financial institutions. In some cases, as with fraudulent transactions (s. 99), there is no time limit and a court could potentially avoid transactions executed many years before the commencement of winding-up.	The regime of avoidance actions should combine predictability, preservation of valid financial transactions, and repression of conduct that contributed to the insolvency, or favored the interests of related persons or creditors to the expense of other creditors.

Section	Issue	Comment/Recommendation
102.2; 124	The law recognizes the possibility of recovering from directors the amount for improperly declared dividends or repurchase of shares. The law also recognizes an action for "misapplication" of funds.	The liability of directors should be extended to cover a wider range of improper conduct
107	Appeal: the law recognizes an appeal to the Supreme Court of Canada when the amount involved exceeds two thousand Canadian dollars	Appeal to the Supreme Court should be restricted
132	The law allows the court to have regard to the "wishes of creditors, contributories, shareholders"	The rights of parties should be defined in the law
138	Unclaimed dividends—the regime in the law is complicated, with several stages.	The rules for unclaimed deposits should be the same applicable in general law for unclaimed sums of money.
157; 158	Insolvency of foreign bank branches—only claims related to the business in Canada can be proven. Likewise, section 158 only allows set-off with claims related to the business in Canada.	The rules isolate assets in favor of the creditors of the branch, impeding international cooperation.

Appendix III. Status of Main Recommendations From the 2014 FSAP

2014 FSAP recommendations	Status
Coordination	
Provide a clear mandate to an entity (i) to carry out macro-prudential oversight with participation broad enough to allow a complete view of systemic risks, and with powers to collect all necessary data for systemic risk analysis and (ii) to carry out system-wide crisis preparedness	From a financial stability and policy perspective, the Senior Advisory Committee (SAC) monitors and advises on macroprudential oversight matters and system-wide crisis prevention measures. Its membership is the same as the Financial Institutions Supervisory Committee (FISC), i.e., the Office of the Superintendent of Financial Institutions (OSFI), the Department of Finance (DOF), the Bank of Canada, the Canada Deposit Insurance Corporation (CDIC), and the Financial Consumer Agency of Canada (FCAC). The FISC is a legislated committee, whereas the SAC has no statutory recognition.
Perform regular system-wide crisis simulation exercises	CDIC has conducted numerous simulation exercises with other federal safety net agencies. For example, two table-top exercises have been conducted with senior and working-level staff of the BOC, the DOF and OSFI in March 2014 and March 2016. In March 2018, CDIC conducted a table top exercise for its Board of Directors which includes heads of federal safety net agencies as ex-officio members. This session focused on a hypothetical resolution of a mid-sized member institution and crisis communication. Further tabletop simulations are planned with other agencies in November 2018, and with the CDIC Board in March 2019. CDIC has also been part of inter-agency working level simulations with the DOF and the BOC to test its ability to access funds. For example, recently CDIC participated in a simulation with the DOF and the BOC to test processes under the Crown Corporation Borrowing program, and with the BOC to test processes associated with a repurchase facility. In addition, CDIC conducts internal simulation exercises on a regular basis to test the operational readiness of organizational processes in crisis situations.
Enhance cross-sectoral coordination in the supervision and resolution of groups which span both federal and provincially regulated areas; give priority to communication and cooperation on systemically important institutions (federal and provincial)	CDIC has signed MOUs with domestic regulators at both the federal and provincial level. MOUs were signed with both the Investment Industry Regulatory Organization (IIROC) and the Canadian Investment Protection Fund (CIPF) in 2016 and 2017, respectively, improving sharing of information relating to crisis management and resolution for connected firms (brokers-dealers and their parent CDIC member banks). Meetings subsequently took place with these organizations to discuss key assumptions and actions necessary to facilitate cooperation between the regulators in the event of a D-SIB resolution. CDIC has strengthened its relationship with provincial deposit insurers via more frequent communication/consultation and contact at federal-provincial forums and International

2014 FSAP recommendations	Status
	Association of Deposit Insurers (IADI) events. In addition, CDIC signed an MOU with Autorité des marchés financiers (AMF) in 2018 to improve general collaboration and sharing of information specifically related to National Bank of Canada and Desjardins Group for resolution, and crisis situations.
Provincial Safety Nets	
AMF: Enhance early intervention powers; increase ex-ante funding of deposit insurance fund and introduce a capitalization target and a single customer view system; establish a crisis intervention framework.	AMF has broad intervention powers, in line with the federal system. The deposit insurance fund continues increasing its resources, although it does not have a formalized target. The deposit insurance fund is working towards a single customer view system. The crisis intervention framework has been overhauled with the 2018 reform, along the lines of the federal system.
Other provincial authorities: Undertake a self-assessment of the adequacy of safety nets and pursue necessary enhancements to ensure: well-funded local deposit insurance schemes, broad resolution frameworks, and operationalized contingency planning.	No self-assessments have been conducted, to the best of the mission's knowledge.
All: Review and update, where necessary, cooperation agreements and contingent operational arrangements with federal authorities.	Since the 2014 FSAP three provincial cooperative system regulators (Manitoba, Québec and Saskatchewan) entered into MoUs with the BOC. In 2018 AMF entered into an MoU with CDIC. Further progress in such efforts are essential.
All: Introduce a more uniform approach on coverage levels of provincial deposit insurance schemes.	The divergences of coverage between the provincial systems and the federal system (plus Québec) continue existing.
Resolution Powers	
Improve autonomy of CDIC in activating some resolution tools	CDIC continues to require government authorization to initiate resolution action by way of the Financial Institution Restructuring Provisions (FIRP) in the CDIC Act.
Enhance the CDIC's resolution powers in line with the Key Attributes, including the power to bail-in for D-SIBs	Since the 2014 FSAP, bail-in has been introduced in the federal regime (the regulations entered into force in September 2018). CDIC does not have to power to write down financial instruments, to claw back remuneration from directors and executives, and to require changes to firms' structure and operations to improve resolvability. The legal framework does not include provisions to address cross-border resolution issues.
Introduce legal requirements for the preparation of resolution plans and powers to change a firm's structure in order to enhance resolvability.	Until 2016, CDIC was preparing resolution plans. Since then, the D-SIBS have been preparing their own resolution plans. In 2017 CDIC was granted formal by-law making authority to require D-SIBs to prepare resolution plans. This by-law is currently under development and is anticipated to come into force in 2019. CDIC does not have the power to require changes to firms' structure and operations to improve resolvability.

2014 FSAP recommendations	Status
Consider introducing some form of depositor preference	The authorities reviewed the deposit insurance framework but decided against the introduction of depositor preference.
Deposit Insurance	
Bolster the ex-ante resources of CDIC	The resources of CDIC have increased to 57 basis points of insured deposits (as of June 30, 2018) compared to 42 basis points in 2013/2014. The changes in coverage will likely delay achieving the target of 100 basis point minimum *ex ante* funding target. CDIC's statutory borrowing authority is up to Can$23 billion (as of December 31, 2017). An amendment in Parliament would remove from the calculation of the borrowing cap any amounts lent by the government under the Financial Administration Act.
Improve data collection and analysis of depositors' profiles	Legislative changes from the Deposit Insurance Review for foreign-currency deposits and trust deposits will add further detail to these types of accounts. Consultations with member institutions are planned to explore data options helpful to support electronic payments and depositor authentication. More work is needed to produce more granular data on deposits (e.g., identifying brokered deposits).
Simplify the rules for complex deposit products	The CDIC Act was amended in 2018 to change the coverage framework. The new rules entail a simplification of the framework, by removing products such as travelers' cheques, eliminating the five-year term limit for deposits, and clarifying record-keeping requirements for trust deposits, among other changes These amendments are not in force yet, as they require the update of CDIC regulatory instruments.
Emergency Liquidity Assistance	
Remove the legal restriction which prohibits the BOC from taking mortgages as collateral when providing liquidity assistance	In 2017, the Bank of Canada Act was amended to allow the use of mortgages as collateral for emergency liquidity assistance (ELA).