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Resolution Project Workshop on Global Systemically Important Financial Institutions
Hoover Institution, Stanford, CA

PARTICIPANTS

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ISSUES DISCUSSED

Members of the Resolution Project met to discuss next steps for Chapter 14 and future work on the resolution of financial institutions with international operations.

Since the publication of *Bankruptcy* Not *Bailout: A Special Chapter 14*, many have expressed interest in working with the Resolution Project to learn more about the proposal and options for enacting it. The FDIC hopes to minimize recourse to Dodd-Frank's Title II and has asked the Resolution Project to brief officials on how Chapter 14 may help to achieve this goal. The group will meet with the FDIC in February and decided that a future forum with other non-governmental groups may be useful to support collaboration related to international work, particularly in light of thought-provoking ideas that some such groups have promoted recently.

Chapter 14 has been well received. The group discussed at length the few suggestions that some have made. The primary issues meriting additional deliberation are: how to secure immediate DIP funding under a Chapter 14 resolution, and whether OLF might be used; how Chapter 14 would handle derivative stays, cross-guarantees, and risk transfers; and the application of Chapter 14 to complex firm structures like archipelagos. The group agreed to work on each of these topics and to bring a set of additional suggestions to the February meeting with the FDIC.

Workshop participants next turned to a discussion of how to approach complex international firms, such as archipelagos, whose subsidiaries are themselves systemically important financial institutions (SIFIs) in more than one country.

The group began by noting the many unaddressed challenges that would arise during an effort to resolve a SIFI with subsidiaries outside its national home. Significant value will most likely be lost when individual governments vie to defend the interests of their domestic constituencies, whether the process is managed by one government that fails to safeguard the interests of foreign creditors or by multiple governments acting simultaneously. In a wide-ranging discussion, participants noted their concerns about issues including domestic depositor preference and ring-fencing, liquidity support, cash management during a failure, lack of transparency in default management plans, varying adjudication of assets depending on the country in which each sits, and tenuous support for bail-ins.

Governments are generally failing to develop substantive solutions to these problems and appear likely to fill voids in statutory authority with bootstrap approvals. For instance, participants noted that, though Chapter 15 of the U.S. bankruptcy code takes steps in the right direction, it is entirely procedural. Furthermore, the U.S. has so far failed to specify how it will implement Title II and, though the FDIC is negotiating a web of bilateral supervisory agreements, these will fail to create the overarching infrastructure needed. Finally, the Bank of England and FDIC have shied from stating who will be responsible for which unhealthy subsidiaries if a financial institution with significant operations in both London and New York were to fail.

Participants decided to focus initial attention on bilateral U.S.-U.K. matters, both because the FDIC's recent "heat map" of global financial activity underscores that New York and London remain the most prominent centers of such activity and because the U.S. and U.K. governments' strong relations give them better prospects of developing a coordinated approach.

A lengthy discussion of U.K. restructuring, resolution, and bail-in authority ensued, including recent changes under the Banking Act of 2009 and those areas in which E.U. rather than U.K. law controls. The group agreed that more work is needed to map the respective U.K. and U.S. landscapes and to determine where conflicts will most likely arise, including regarding issues such as depositor preference, ring-fencing, and the convoluted incentive structures for corporations choosing where to locate assets.

Given the amount of material to be covered, participants agreed to begin research which might lead to a third book. Though only in preliminary planning stages, the book may include some or all of the following topics: the U.K. resolution landscape, problems with Chapter 15 in the U.S. bankruptcy code, conflicts to be solved in the U.S.-U.K. context, a case-study of a hypothetical U.S firm with a U.K. subsidiary or vice versa, how to address international clearinghouse resolution specifically, how a bilateral treaty on mutual recognition would work, and alternatives to a treaty. Such alternatives could include executive supervisory agreements, harmonization of particular aspects of national bankruptcy codes--perhaps including a Chapter 14 analogue in the U.K.--G7 statements, private determination of resolution jurisdiction via contracting, an international convention, and other formal and informal options.

The meeting concluded with a division of labor among participants to consider each of these topics more fully before meeting again in February 2013.