The last frontier: protecting critical functions across borders

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Disclaimer
Resolution Objectives

**Corporate**
- Maximise value
- Preserve market discipline
- Treat stakeholders equitably

**Financial**
- Preserve domestic financial stability
- Ensure continuity of critical functions
- Protect customers

**Cross-border financial**
- Preserve international financial stability
- Ensure continuity of cross border functions
- Respect sovereignty
Trend towards special resolution

- Court-centred proceedings or not known
- Special resolution regimes (based on World Bank data base on bank regulation and supervision 2008)
- Recent (2009/2010) and planned reforms in financial resolution
Achievements to date

• Recent or immanent reforms of national resolution regimes:
  – Canada (2009)
  – Germany (2010)
  – Switzerland (2004/2010)
  – UK (2009)
  – European Union (2010)
  – ...
Protect functions, not institutions

- Resolution tools to safeguard critical functions
  - Bridge bank
  - Full / partial transfer powers *uno actu*
  - Power to override creditors’ rights (e.g., consent, early termination) subject to safeguards
Challenges

• Resolution powers
  – Are entity-centric, but functions span multiple entities
  – Are national in reach, but firms are global scope
  – Could trigger contagion
Addressing the challenges

Three steps:
(1) Align firms' structures with functional operations
(2) Recognize cross-border measures that ensure continuity of functions and protect stakeholders ("functional universality")
(3) Remove impediments to private sector work-outs
Streamline structure

- Identify essential business lines and functions
- Make (legal) form follow function
- Address fiscal, legal and regulatory incentives that lead firms to set up separate entities
Resolution of global LCFI
„functional universality“

Critical Cross-Border Functions

- Home resolution authority assumes temporary control (e.g., transfer to bridge)
- Ensures full protection of all (home/host) counterparties
- Host refrains from protective measures, closure, contract termination, etc.
- Continuity (eventual sale or orderly wind down)

Other Operations

- Domestic resolution authorities assume control
- Protection of local counterparties according to local rules
- Cross-border cooperation based on comity
- Liquidation
In the further quest for continuity

- ...place responsibility for preserving functions back on the firm
- ...encourage governance reforms that permit and promote early action
- ...reduce corporate law impediments to resolution through private law devices