Cross-border Crisis Management and Resolution Framework

Voice of India

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Lesson from 2008 Crisis

Growing complexity and interconnectedness compromised the ability of home and host authorities to deal with TBTF or TCTF

India's early experience - BCCI

- BCCI a foreign bank incorporated in Grand Cayman Islands
- Finding viability problems, placed under receivership by home authorities in 1991
- Had a single branch presence in India, which was advised by its head office to suspend all payments and transactions
- RBI advises the branch to safeguard the interests of the depositors and applies to an Indian court for receivership under Banking laws
- Court approves sale of the branch under bidding process provided the buyer assumes full liabilities

Sample this complexity ……….

- A $2+ trillion financial group
- active in 171 countries,
- with 550 clearance and settlement systems, and
- more than 2,435 majority-owned subsidiaries
- We call it a G-SIFI
  - Without simplifying its corporate structure, how can it possibly be resolved in an orderly manner?
  - In general, SIFIs have 2.5 times more subs than non- financial corporations of comparable size
    - And a higher proportion in tax havens
    - Regulatory arbitrage and tax avoidance seem clear motives

Thus Coordination Issues challenge us..

"Banks are international in life, but national in death"

Mervin King, Governor Bank of England, 2008

- A long recognized challenge in cross-border resolutions came in sharp focus during 2008-10, that:
  - Supervisory and resolution authorities have national mandates and powers
  - No or inadequate international-bank resolution framework
  - Many national resolution framework themselves have serious inadequacies

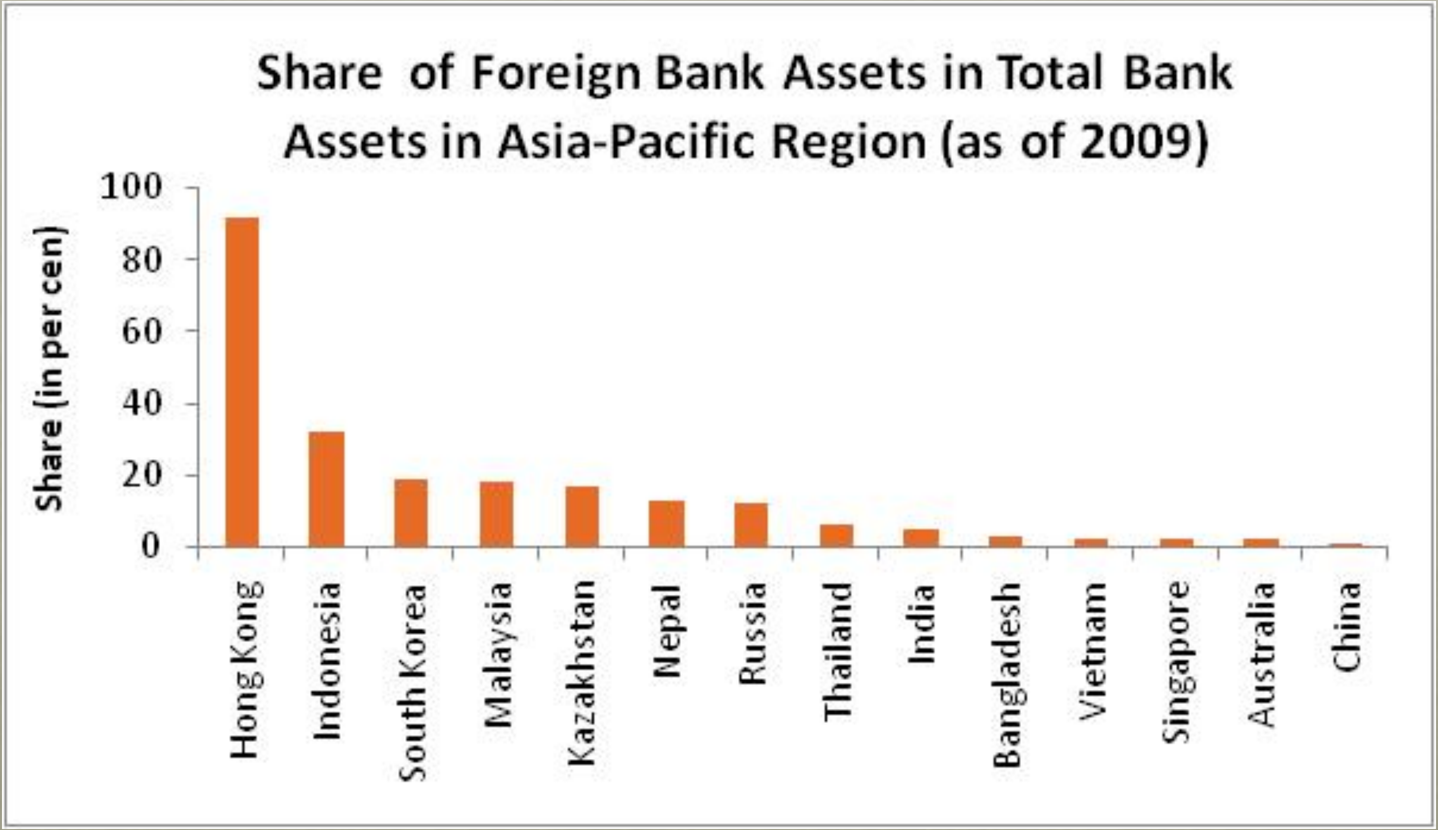
What do we need and what is amiss?

Fully Harmonized	Current Reality
Identical objectives	Set in national statutes and vary widely
Identical scope	Differs widely across regulators
Identical powers	Powers based on national statute, bankruptcy law and deposit insurance
Identical risk preferences	Objectives typically have a domestic focus
Identical approach	Different emphasis on inspection, prudential standards, etc.
Skills and willingness to use powers	Skills vary widely as do enforcement traditions

The Guidance on Cross-border cooperation has come a long way

- Core Principles for Effective Banking Supervision (1996, 2006 and 2012)
  - (3 – Cooperation and collaboration, 13-Home host relationships)
- Core Principles for Effective Deposit Insurance Systems (2009)
  - (6- relationship with other safety net participants, 7 – Cross border issues)
- Insurance Core Principles (2011)
  - (26- cross border cooperation and coordination on crisis management)
- FSB - Key Attributes of Effective Resolution Regimes for Financial Institutions (2011)
  - (7-Legal empowerment, 8-CMG and 9- Institution specific cooperation agreements)

Foreign Bank Presence in Asia



Source: Claessens, Stijn and Neeltje van Horen (2010), Foriegn Banks: Trends, Impact and Financial Stability, IMF Working Paper, WP/12/10.

Cannot afford to wait to appreciate the relevance of Cross-border Co-operation

- Roll out Key Attributes: It is beneficial for all jurisdictions, not only those hosting G-SIFIs
- Inversely, principles and approaches for G-SIFIs are relevant for all groups with cross-border operations
- Also relevant for domestic financial groups involving multiple supervisors and entities subject to different legal provisions, especially for resolution
- Failure of banks based within or outside the region have resulted in complex cross-border resolution issues, eg. Bank of Credit and Commerce International
- Foreign-owned banks have a significant presence in all countries in the region

Principles and Priorities – Voice of India

- Robust national resolution frameworks are a precondition for effective cross-border resolution
- Coordination will be easier if national resolution frameworks are aligned on common principles or standards
- An enhanced coordination framework is required for SIFIs—including domestic and regional SIFIs
- There are distinct benefits of reducing complexity and interconnectedness of cross-border groups
- International coordination and cooperation is the key in addressing the cross-border resolutions

India Setting

- None of Indian banks or other financial institutions qualify as G-SIFIs
- 15 out of 29 G-SIBs identified in November 2013 have operational presence in India in the form of branches
- Foreign insurance companies have presence in India but in the form of joint ventures
- Share of international assets as a percentage of total consolidated assets of such financial institutions is very low

India Steps

Recommendations of a high-level group on setting up of Financial Resolution Authority (FRA):

- the proposed legislation for resolution regime for financial institutions should enable the resolution authority to achieve cooperative solution with foreign resolution authorities
- the resolution framework in India should enable the resolution authority to share non-public information of Indian financial institutions with foreign home/host resolution authorities on reciprocal basis and subject to confidentiality requirements and protection for sensitivity
- the supervisory colleges could be used as an information sharing platform for crisis resolution also
- in the situation of an Indian financial institution becoming a G-SIFI in future, the FRA may be empowered to form CMGs and COAGs

Structural Changes towards reducing complexities

- Foreign Bank in India
  - 33 banks with 388 branches
  - Growing global and interconnectedness and absence of effective cross border resolution regimes triggers the debate
- India has since enabled foreign banks operating in India to convert into subsidiaries
- Post 2010 banks not yet carrying banking business through subsidiaries if legislation gives preference to home depositors, do not have adequate disclosures, have complex structures, central bank not satisfied with supervisory arrangements, banks are widely held, etc.

Subsidiarisation

Benefits perceived

- Separate legal entity with its own capital base and BoD
- Ring-fenced capital and assets in the host country
- Certainty on applicability of laws
- Effective control of local regulator
- Ease of resolution process

Non Operative Financial Holding Company

- All new banks permitted to be incorporated in India must be set up by a NOFHC – facilitating a hub-spoke model for diversification
- Stops the path for step-down subsidiaries checking the origination of complex structures
- A typical NOFHC can have equity and debt convertible to equity, serving as bail-inable instrument

Steps towards Cross Border Co-operation – MoUs with Cross Border Supervisors

- India has entered into MoUs with 19 jurisdictions for supervisory coordination and information sharing.
- Proposals in respect of 28 overseas supervisors are in various stages of reaching a mutually agreeable format for MoU.

Key Ingredients of the MOUs

- Formal but not legally binding
- Information sharing on the health of supervised entities
- Cooperation between the supervisors during onsite examinations
- Frequent meetings between the supervisors
- Coordination on cross border crisis management
- MOUs donot override the laws of the land of the either supervisor

India assumes responsibility for home banks's overseas operations

- India has established supervisory colleges for major financial entities in India, viz., State Bank of India, Bank of Baroda, Bank of India and ICICI Bank Ltd., in view of their overseas operations spread across several supervisory jurisdictions
- Similar colleges have been setup in insurance sector
- Supervisory colleges
  - enhance information exchange
  - improve understanding of the risk profile of an international banking group
  - facilitate more effective supervision of internationally active banks
  - serve as a forum on broader issues such as discussions and planning of supervisory assessments

Thank You