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UNIDROIT Working Group on Bank Insolvency

Second session (hybrid)
Rome, 11-13 April 2022

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SUMMARY REPORT

OF THE SECOND SESSION

(11-13 April 2022)

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1. The second session of the Working Group on Bank Insolvency (the Working Group) took place in a hybrid format between 11 and 13 April 2022. The Working Group was attended by 9 Working Group members and 31 observers, including representatives from international and transnational organisations, central banks, deposit insurance corporations and resolution authorities, as well as members of the Financial Stability Institute (FSI) and the UNIDROIT Secretariat (the list of participants is available in Annex I).

Item 1: Opening of the session and welcome

2. *The UNIDROIT Secretary-General* opened the session and welcomed all participants to the second session of the Working Group. He noted that an impressive amount of intersessional work had been carried out during the past months and thanked all members and observers who had contributed to this outstanding achievement.

Item 2: Adoption of the agenda and organisation of the session

3. The Chair introduced the annotated draft agenda and the organisation of the session. *The Working Group adopted the draft agenda as proposed (UNIDROIT 2022 – Study 84 – W.G.2 – Doc. 1, available in Annex II) and agreed with the proposed organisation of the session.*

Item 3: Adoption of the Summary Report of the first session (Study LXXXIV – W.G. 1 - Doc. 3)

4. The Chair noted that the Secretariat had shared the Summary Report of the first session with all participants. *The Working Group adopted the Summary Report (UNIDROIT 2021 – Study 84 – W.G.1 – Doc. 3).*

Item 4: Update on intersessional work and developments since the first Working Group session (Revised Issues Paper, Study LXXXIV – W.G. 2 - Doc. 2)

5. *The Secretary-General* acknowledged the participation of new institutional observers: the National Bank of Belgium, the Colombian *Fondo de Garantías de Instituciones Financieras* (Fogafín) and the *Superintendencia Financiera de Colombia* had joined the Working Group after the first session. Furthermore, Professor Concetta Brescia Morra from the University of Roma Tre was welcomed as an individual expert observer.

6. *A member of the Secretariat* referred to Doc. 2, which contained an updated version of the Issues Paper that had been presented and discussed at the first Working Group session. In relation to the intersessional work, she recalled that three thematic Subgroups had been created: (i) Subgroup 1 on Scope and definitions, Objectives, Institutional models, and Procedural and operational aspects; (ii) Subgroup 2 on Preparation, Grounds for opening liquidation proceedings, Tools and Funding; and (iii) Subgroup 3 on Creditor hierarchy, Financial contracts, Banking Groups, Cross-border aspects and Safeguards. The Subgroups had set up an intense working schedule, which had resulted in the three Reports presented for consideration at the second session of the Working Group.

Item 5: Consideration of work in progress

7. *The Chair* opened the discussion on the work carried out by the Subgroups in the intersessional period, thanking them for their tremendous job.

8. *A member of the Secretariat* indicated that it was proposed to conduct a stock-taking exercise within the Working Group during the next intersessional period, to gather information on bank liquidation regimes across the world. This would ensure that the Group had a comprehensive overview of different possible approaches with respect to the various subtopics, and their potential strengths and weaknesses, which could be considered and reflected in the final instrument. *The Working Group agreed with the Secretariat's proposal to conduct a cross-jurisdictional survey within the Working Group on relevant aspects of, and experiences with, bank liquidation regimes worldwide.*

a) Report of Subgroup 1

9. *The Co-Chairs of Subgroup 1* explained that the participants in Subgroup 1 had been invited to express interest in one or more of the four subtopics assigned to the Subgroup and to provide written input accordingly. The Report of Subgroup 1 synthesised those inputs for each subtopic, highlighting both areas of agreement and unresolved issues. *The Co-Chairs* thanked the subgroup members for the rich input and superb cooperation.

Scope and definitions

10. *One of the Chairs of Subgroup 1* explained that the Subgroup had decided to defer concentrated work on definitions until a more advanced stage of the project was reached. Nevertheless, use was made fairly consistently in the Subgroup 1 Report of the term 'liquidation proceedings' to describe the process the instrument will focus on. Furthermore, the Report contained illustrative definitions of 'bank'. It was underscored that any final definition of 'bank' would also depend on the scope of the bank liquidation regime.

11. The Working Group discussed whether it would be more appropriate to use the terminology 'bank liquidation proceedings' or 'bank insolvency proceedings' in the future instrument. Some participants considered that the term 'insolvency' could be confusing since it may refer both to a process and to the condition of an entity. It was argued that this may lead to issues in scenarios where a bank is not technically insolvent (since the grounds for opening proceedings may be wider than balance sheet insolvency). Others expressed the view that, on the contrary, it would be confusing to use 'liquidation' since this may be perceived to refer to atomistic liquidation procedures only.

12. Several participants argued that either of the terms could be used in the future instrument, as long as their meaning would be clearly explained. It was also discussed that 'liquidation' and 'insolvency' are both used in existing international instruments.

13. *The Working Group decided to postpone detailed discussions on definitions to a later stage of the project, while continuing to use 'bank liquidation proceedings' or more neutral terminology for the time being.*

14. *One of the Chairs of Subgroup 1* explained that the Subgroup had considered two possible approaches with regard to scope: (i) a functional approach, according to which the bank liquidation regime would apply to all entities performing specified activities; or (ii) a regulatory approach, where the scope would be restricted to licensed banks and other institutions licensed to accept deposits and grant loans. Arguments in favour of the regulatory (or 'institution-focused') approach included that the regulatory perimeter already reflects policy decisions about which entities merit a special regime; it would ensure that the relevant authorities have access to the necessary data; and it would ensure a continuum between supervision, early intervention and failure management. A key challenge of the functional approach would be that it would require clear definitions of concepts that are difficult to define given differences in national legal frameworks.

15. In the ensuing discussion, it was explained that the future instrument would contain guidance for jurisdictions on how they might establish the scope of their bank liquidation regimes, with a discussion of advantages and disadvantages of different approaches.

16. The Working Group discussed the fact that the banking sector is undergoing rapid changes and that discussions on the regulatory and resolution treatment of entities such as FinTechs and shadow banks are ongoing. Against this background, the Working Group generally favoured a broad and flexible approach that would ensure that the instrument is future-proof, without pre-empting ongoing policy discussions.

17. It was generally accepted that the scope of the future instrument should include licensed deposit-taking institutions. Participants were generally cautious about applying the bank liquidation regime to non-licensed entities retrospectively, although it was acknowledged that there may be instances where such approach could be justified, especially if combined with appropriate procedural safeguards. It was clarified that the instrument would not in any way interfere with the division of tasks among authorities within jurisdictions.

18. *The Chair concluded that the Working Group had reached some consensus on the merits of a flexible approach, whereby the instrument would focus on traditional banks while leaving flexibility for jurisdictions to apply the instrument to other entities, provided that such entities were included in their regulatory perimeter and had a license.*

19. The Working Group also discussed whether the instrument should apply to (non-bank) parent companies. *There was broad agreement that it should be possible to apply certain aspects of the bank liquidation regime to parent companies, however the topic would merit further analysis, taking into account also the work on banking groups.*

Objectives

20. *One of the Chairs of Subgroup 1* introduced the next item, noting that the objectives of a bank liquidation regime are closely intertwined with other subtopics, such as the ability to depart from the *pari passu* treatment of creditors and funding. There was broad agreement within Subgroup 1 that value maximisation and depositor protection are key objectives. Subgroup 1 had also considered whether financial stability should be identified as an objective or be included in the future instrument in a different way.

21. The Working Group discussed the role of financial stability in bank liquidation proceedings. Several arguments were brought forward to support a strong role for financial stability, including that it could be seen as a *raison d'être* of banking regulation and supervision and that it may be needed as an objective to manage trade-offs and justify certain actions. On the other hand, it was argued that the inclusion of financial stability as an objective could create unnecessary confusion with the resolution framework and that it may not be justified in bank liquidation proceedings to depart from objectives that serve the interests of direct stakeholders.

22. *There was broad agreement that there would be merit in including financial stability in the final instrument as a relevant consideration. The Working Group decided to provide Subgroup 1 with a mandate to identify possible trade-offs and to analyse how financial stability should be balanced against the objectives in such cases. It was proposed to consider the concept of financial stability in the future work on definitions and to further specify the concept of depositor protection.*

Institutional models

23. *One of the Chairs of Subgroup 1* introduced the subgroup's work on institutional models, noting that this topic could benefit from empirical input about different institutional set-ups by means of the proposed cross-jurisdictional survey. It was recognised that the choice of a model is not a binary question since systems are generally neither fully court-based nor fully administrative. The Working

Group was invited to discuss how the future instrument should address the topic of institutional models, and to provide guidance on whether judicial review would best be dealt with under Institutional models (Subgroup 1) or under Safeguards (Subgroup 3).

24. The Working Group discussed that the future instrument should be flexible but at the same time provide guidance and identify best practices with respect to institutional models. Therefore, the benefits of a predominantly administrative model could be highlighted, without being prescriptive. It was discussed that the instrument should recognise that the choice of one model over another is linked to jurisdiction-specific features, such as the efficiency, capacity and expertise of courts and administrative authorities.

25. Regarding the functional, outcomes-based approach as agreed in the first session of the Working Group, it was discussed that there would be merit in distinguishing between decision-making and execution, and that the involvement of an administrative authority would be particularly relevant in the initial phase of the process and for the application of certain tools. Furthermore, the relative advantages of administrative- and court-based systems from a cross-border perspective were discussed.

26. *The Working Group decided to provide Subgroup 1 with a mandate to further analyse the merits and drawbacks of administrative and court-based models, conduct a thorough analysis of different hybrid models and develop outcomes-based solutions for jurisdictions that are not able to adopt a predominantly administrative system.*

27. The Working Group also considered whether a private entity could be involved in the liquidation process. On the one hand, it was noted that private bodies can have public interest objectives. On the other hand, it was argued that there may be constitutional constraints in tasking private entities with public functions in certain jurisdictions.

28. Lastly, several participants considered that it would be preferable to discuss judicial review mainly in the context of Institutional models (Subgroup 1).

Procedural and operational aspects

29. *One of the Chairs of Subgroup 1* explained that limited work had been done on procedural and operational aspects of the liquidation procedure, with a focus on whether persons other than the relevant administrative authorities should be able to apply for the opening of bank liquidation proceedings. *A member of the Secretariat* added that Subgroup 2 had also considered this topic and that both Subgroups seemed to be in favour of recommending a proper involvement of the relevant authorities if jurisdictions grant creditors to apply for the insolvency of a bank.

30. *A member of Subgroup 1* added that the Report also contained an initial analysis on the possible involvement of a deposit insurer in the liquidation proceedings and on the legal protection of the person(s) in charge of the liquidation proceedings.

31. The Working Group discussed the fact that creditors have the right to file for a bank's liquidation in certain court-based jurisdictions, although in practice the supervisor or resolution authority would likely initiate the process. *It was suggested that the future instrument recommend that the relevant authorities be heard in case jurisdictions allow creditors of a bank to file an application for insolvency.*

32. The discussion turned to the role of the bank's management in the period up to the initiation of liquidation proceedings. *Participants were generally in favour of granting the bank's management the right to file for insolvency, noting that it would be in a position to detect problems with the bank's financial condition at an early stage. In addition, the Working Group agreed to analyse the merits of a duty for the bank's management to notify the supervisory authority of the deteriorating situation of the bank in a timely manner, possibly combined with sanctions for non-compliance*.

33. The question in the Revised Issues Paper whether any liability standard of persons managing the liquidation process should be aligned with existing standards was answered in the affirmative.

34. Further issues which participants felt needed to be considered as the work progresses were the role of deposit insurers in the proceedings, the role of central banks in relation to liquidity, the liability regime for persons conducting a valuation of the bank, and the possible merits of a general moratoria.

b) Report of Subgroup 3

35. *The Co-Chairs of Subgroup 3* explained that the Subgroup 3 Report had been prepared by small drafting teams for each subtopic. They thanked the drafting teams for the tremendous amount of work done in a short period of time.

Groups

36. *A member of Subgroup 3* explained that the drafting team had considered the approaches in relation to groups in corporate insolvency law, on the one hand, and in resolution, on the other hand. The Subgroup 3 Report contained several key issues for consideration by the Working Group, such as to what extent the future instrument should recommend possible group-level solutions – ranging from procedural coordination to substantive consolidation – the possible merits of group insolvency planning, and how to define the parameters of a 'group'.

37. The Working Group observed that the concept of 'group' in prudential regulatory laws tends to differ from definitions under corporate insolvency laws. Several participants underlined the need to bridge between the two frameworks.

38. Arguments were exchanged in favour and against advance group insolvency planning. *Participants generally considered that proportionality is crucial and that, while prior planning would in principle be beneficial, the costs of an advance planning requirement in relation to non-systemic banking groups may not weigh up to the benefits*. It was underlined that the future instrument should also be designed in such a way as to facilitate effective solutions in the absence of prior plans. Furthermore, it was discussed that it may be useful to consider networks other than groups, such as institutional protection schemes.

39. Moreover, the Working Group discussed the merits of possible group-level solutions, such as preserving group synergies upon commencement of liquidation proceedings for purposes of value maximisation, and the interconnection with other aspects such as the grounds for opening liquidation proceedings. *Participants were generally cautious and recognised that the topic would merit further analysis, although procedural consolidation was considered beneficial*.

Cross-border aspects

40. To introduce this discussion, *one of the Chairs of Subgroup 3* noted that small and medium-sized banks may have assets, branches and/or subsidiaries in different jurisdictions, which may lead to issues in liquidation. Subgroup 3 proposed formulating concrete recommendations to address such matters. The Working Group was invited to consider to what extent the framework for cross-border corporate insolvency could or should be applicable in bank liquidation proceedings and what the focus of possible recommendations should be (e.g., cooperation, recognition of foreign proceedings, relief for giving effect to liquidation tools, non-discrimination and safeguards). It was noted parts of the work on safeguards might be moved to the cross-border section.

41. The Working Group discussed the current challenges in cross-border scenarios, for instance concerning the recognition of foreign proceedings, support measures, cross-border coordination and the treatment of branches in liquidation.

42. *It agreed to provide Subgroup 3 with a mandate to develop concrete recommendations on the aspects described in paragraph 93, question 2 of the Revised Issues Paper.* It was discussed that it may be possible to build on existing international standards to some extent, adding more granularity where appropriate. It was also noted that questions on cross-border topics would be included in the cross-jurisdictional survey to conducted within the Working Group.

Creditor hierarchy

43. *Two members of Subgroup 3* elaborated on the elements analysed in the Subgroup 3 Report in relation to creditor hierarchy, including general principles on ranking (such as the *pari passu* principle), the main pros and cons of depositor preference and different categories of depositor preference (insured, general and tiered depositor preference), the treatment of liabilities with deposit-like features such as stablecoins, the treatment of secured claims, and matters relating to contractual, statutory and equitable subordination.

44. The Working Group discussed whether it should be possible to deviate from the *pari passu* treatment of creditors in bank liquidation proceedings, with arguments going in both directions. Some argued that deviations should be allowed on an *ad hoc* basis accompanied by appropriate safeguards while others argued that it would be challenging to justify deviations from the *pari passu* principle in the absence of a public interest.

45. *Regarding the ranking of deposits, the Working Group agreed that the future instrument should describe the different types of depositor preference and the implications of each approach, especially for the application of liquidation tools*. For instance, it was discussed that a super priority for insured depositors and the subrogating deposit insurer would limit the funding options to facilitate a transfer of assets and liabilities, although this also depends on other factors such as the least cost principle. It was further noted that a super priority ranking is not needed to protect insured depositors since they would receive a pay out from the deposit insurer.

46. Participants were generally cautious about addressing the ranking of runnable liabilities, such as stablecoins, in the future instrument, given that the characterisation, treatment and regulation of stablecoins is still under discussion. Support was expressed for covering subordination, including equitable subordination, in the future instrument.

Financial contracts

47. *A member of Subgroup 3* explained that the key issue regarding financial contracts was whether close-out netting should be possible in bank liquidation proceedings (as is generally the case in corporate insolvency proceedings), or whether a temporary suspension of netting rights would be appropriate (as is possible in the resolution context). Subgroup 3 proposed to collect information on the scope and length of the resolution stay in different jurisdictions through the cross-jurisdictional survey. Other issues considered by Subgroup 3 included whether the future instrument should consider mechanisms for the valuation of derivatives and whether non-centrally cleared derivatives should be treated different from centrally cleared derivatives.

48. *Participants considered that, as a general principle, close-out netting should be possible upon commencement of liquidation proceedings for banks*. The Working Group discussed whether a limited exception to this general principle should be possible. Several participants were cautious about introducing a stay in the context of liquidation proceedings for banks, highlighting the differences with resolution regimes and noting that it may be challenging from a cross-border and funding perspective. On the other hand, it was noted that it may be preferable to align the approach for all banks and that the World Bank Principles allow a temporary stay also in corporate insolvency proceedings. In the discussion that followed*, there was broad agreement that a short stay should be allowed only if this is needed for the effective application of the transfer tool*.

49. The Working Group discussed that it may not be necessary to include a definition of 'financial contract' in the future instrument or to introduce a possible principle of mutuality. Furthermore, it was discussed that the valuation of derivatives could be seen as matter of contract determination.

50. *The Working Group agreed to provide Subgroup 2 with a mandate to analyse possible clawback powers in relation to transactions in the 'twilight zone'.*

Safeguards

51. *A member of Subgroup 3* introduced the topic, explaining that the drafting team had distinguished between four categories of safeguards: (i) public policy safeguards; (ii) due process and procedural fairness; (iii) protection of creditors' legitimate expectations; (iv) protection of financial stability. Each of these categories was considered in the Subgroup 3 Report both in the context of purely domestic proceedings and in cross-border proceedings. In cross-border corporate insolvency proceedings, public policy safeguards often refer to the ability of the court to refuse recognition of a foreign proceeding where the action is manifestly contrary to public policy. The Working Group was invited to consider whether the same test should apply in bank insolvency proceedings. As regards due process and procedural fairness, one of the questions was whether the grounds for refusal should be limited to the right of local authorities to receive notice and be heard in foreign proceedings. The protection of creditors' legitimate expectations was linked to the discussion on whether there should be a safeguard similar to NCWO. Finally, it was suggested that the Working Group consider whether the protection of financial stability would justify unequal but equitable treatment of creditors, particularly where there are no unencumbered remaining assets.

52. As an organisational matter, the Working Group discussed that the future instrument could discuss safeguards in their specific context (e.g., safeguards relating to cross-border proceedings in the section on cross-border aspects; etc.).

53. The Working Group observed that the proposed safeguards would be relevant both for administrative-based and court-led bank liquidation proceedings. *Participants generally agreed that a public policy exception should be available in cross-border liquidation proceedings and Subgroup 3 was asked to develop a granular proposal for such safeguard*.

54. Regarding judicial review, it was noted that the design of the review process is connected with the objectives of the liquidation proceedings (for instance, the amount of discretion of authorities is connected to the relevance of public interest considerations) and that there is a need to balance the role of the court with powers of banking supervisors and other administrative authorities.

55. Caution was expressed with regard to a possible NCWO test in cross-border proceedings, noting that this should not lead to a change in the applicable law. Moreover, it was suggested to further analyse the extent to which creditors and shareholders should have a right to participate in the liquidation process, which would require a balancing between considerations such as transparency, confidentiality and efficiency. Finally, the Working Group considered the cost implications of the different types of safeguards.

c) Report of Subgroup 2

Tools

56. The *Co-Chair of Subgroup 2* reported that a consensus has emerged in the subgroup on the usefulness of the transfer tool (sale of business, P&A) and that the intention of the subgroup was to elaborate in detail the preconditions for application and actual use of that tool. The subgroup would also seek to leverage practical experiences in jurisdictions where the tool is frequently used, while detaching itself from more specific features of individual frameworks, such as whether they are single-stream (for example, US) or dual-stream (for example, EU). *The Co-Chair* also reported about

discussions on other tools, including bridge banks and asset management vehicles. While there is less agreement on those, Subgroup 2 agreed that a hierarchy of tools is not being considered as a matter of legal principle.

57. Participants welcomed the approach of Subgroup 2 and raised some aspects of the transfer tool, for example its use by means of a share deal. There was universal agreement that no hierarchy of tools should be established as a legal principle. Some discussion was held on how to position other tools, including bridge banks and asset management companies, within the toolkit presented in the instrument. Participants expressed various views. Some participants saw merit in a substantial discussion of those tools, especially as they may come to be more often used in the future, while others pointed to their potential drawbacks, especially in terms of governance.

58. *The Secretary-General and the Co-Chairs of Subgroup 2 summarised that there is merit in a discussion of various tools, pointing to their respective pros and cons depending on the circumstances in which they are applied, especially in relation to small and midsize banks and bearing in mind the principle of proportionality*.

59. A separate part of the discussion was about the need of preparatory action in respect of transfer tools. A participant raised concerns that preparatory action, which is similar to early intervention if it involves a temporary administrator or onsite agent, may be procyclical. Other participants, however, insisted that preparatory action is a practical necessity, that cooperation between supervisory and crisis management functions is key as a crisis intensifies and that procyclicality is manageable.

60. A comment was made that many frameworks, including some corporate insolvency frameworks, include the possibility to use transfer tools and asset management vehicles. Responding to that observation, *the Co-Chair of Subgroup 2* opined that the instrument should not be construed as abrogating functionally equivalent practices simply because they are labelled differently, but rather as a reaffirmation of such practices. Rather, these practices should inform recommendations, especially given that there is substantial experience on the clawback risk associated with transfer tools, in particular if structured as an asset deal.

Funding

61. *The Co-Chair of Subgroup 2* reported that the subgroup agreed on the need to identify a source of external funding, that deposit insurers are central in that regard, and that their support should be subject to certain constraints. The idea of a least cost criterion was also considered by the subgroup, although views on how to articulate that idea in more detail differed. Given these difficulties, *the Co-Chair* proposed that the policy objectives that drive the need to constrain funding support, governance and risk of depletion, should guide the discussion.

62. A participant pointed to IADI Core Principle 9, which details the role and constraints of deposit insurers' support, as the relevant international standard, commenting that defining a universally acceptable methodology for the least cost test would be challenging, especially as institutional arrangements and mandates of deposit insurers differ widely across countries. Other participants raised the more general issue of how the instrument should treat topics for which an international standards already exists.

63. Responding to that issue, *the Secretary-General* and *the Co-Chairs of Subgroup 2* suggested a two level approach. On a prescriptive level, all recommendations contained in the instrument have to be consistent with existing international standards, allowing for the possibility to complement them. On an empirical level, the instrument may describe existing policy choices and differing approaches of implementing international standards, making it an international repository of practices in the area of bank insolvency.

Grounds for opening insolvency proceedings

64. A *member of Subgroup 2* introduced the discussion by describing the range of issues discussed in the subgroup: the alignment of conditions for various streams of crisis management procedures, the role of regulatory requirements, the need for a negative condition, and revocation of the banking license.

65. The discussion touched on all these issues, albeit in different ways. A negative condition was not widely seen as substantively necessary, and considered more a burden of proof issue against supervisory overreach. A conceptual distinction was proposed between conditions that enable authorities to revoke the license on grounds of illicit behaviour and those that allow for a crisis management procedure, but other participants opined that, ultimately, those conditions may converge inasmuch as a bank found to engage in illicit behaviour stands to lose the market confidence that is needed to remain viable. *Thus, the concept of non-viability was widely considered key. Subgroup 2 was therefore encouraged to focus on this concept, collect empirical data on how it is treated in various jurisdictions, and find ways to make this concept applicable for both legislators and practitioners*.

66. There was wide agreement that balance sheet insolvency is not a necessary precondition to initiate crisis management procedures for banks, but some discussion took place on the potential relevance of this concept in terms of dissolving a legal entity following the use of other tools (in particular, a transfer of assets and liabilities). Specifically, *the Secretary-General* raised the issue of whether shareholders risk being expropriated if the concept is entirely abandoned. Participants raised various aspects, among which the need to preserve a legal entity upon transfer of its business as long as it is a service provider for that business or the possibility of dissolving the entity and transferring any surplus to shareholders.

67. Participants agreed that a major issue relates to the vagueness of many criteria and the concomitant need to exercise, but also constrain, discretionary powers. A significant contribution of the project would be to provide guidance to how discretionary powers can be exercised in situations of distress.

Preparation

68. A *member of Subgroup 2* briefly introduced the topic by stating that subgroup members agreed that some preparation is needed to implement a transfer measure. Beyond that, a consensus had not yet emerged among subgroup members, either in respect of the role and requirements of preparation or in respect of valuation at the point of entry. *The Co-Chair of Subgroup 2* suggested that, for reasons of practicality and scope, preparation and broader advance planning should not be discussed as a standalone topic, but rather as a subsection within a broader discussion of the transfer tool. This was welcomed by several participants. One participants also suggested that the entire pre-insolvency phase could be treated as an overarching topic.

Item 6: Organisation of future work

69. *The Chair* and *the Secretariat* noted that the third session of the Working Group would be held on 17, 18 and 19 October 2022 and would be kindly hosted by the Single Resolution Board in Brussels. It was hoped that the third session could be organised as an in-person meeting.

70. *The Secretary-General* indicated that the Secretariat would continue to provide support to the Working Group members and observers for the organisation of intersessional Subgroup meetings to advance the work.

Items 7 and 8: Any other business. Closing of the session

71. In the absence of any other business, *the Chair* thanked all participants for their valuable contributions and a most fruitful discussion, and declared the session closed.

ANNEX I

LIST OF PARTICIPANTS

MEMBERS

Ms Stefania BARIATTI *Chair*	Professor University of Milan
Ms Anna GELPERN	Professor Georgetown University
Mr Christos HADJIEMMANUIL	Professor University of Piraeus
Mr Matthias HAENTJENS	Professor University of Leiden
Mr Marco LAMANDINI	Professor University of Bologna
Ms Rosa LASTRA	Professor Queen Mary University of London
Mr Matthias LEHMANN	Professor University of Vienna
Ms Irit MEVORACH	Professor University of Nottingham
Ms Janis SARRA	Professor University of British Columbia
Mr Reto SCHILTKNECHT *(Excused)*	Doctor of Laws (LL.D.), Attorney-at-Law, Lecturer at the University of St. Gallen and Research Associate at the University of Zurich Switzerland

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AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)	Ms Alison VO-PHUOC Advisor
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	Ms Atsushi SAITO Executive Advisor to the Governor Legal Affairs Department
	Ms Naomi KATO Director Legal Affairs Department
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	Mr Mateusz KRAUZE DG Financial Stability, Financial Services and Capital Markets Union
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ANNEX II

ANNOTATED DRAFT AGENDA

1. Opening of the session and welcome

2. Adoption of the agenda and organisation of the session

3. Adoption of the Summary Report of the First session (Study LXXXIV – W.G. 1 - Doc. 3)

4. Update on intersessional work and developments since the first Working Group session (Revised Issues Paper, Study LXXXIV – W.G. 2 - Doc. 2)

5. Consideration of work in progress
   (a) Report of Subgroup 1
   (b) Report of Subgroup 2
   (c) Report of Subgroup 3
   (d) Other matters identified in the Revised Issues Paper

6. Organisation of future work

7. Any other business

8. Closing of the session