

Press Release

Bill to establish resolution regime for financial institutions gazetted

Friday, November 20, 2015

The Government published in the Gazette today (November 20) the Financial Institutions (Resolution) Bill, which seeks to establish a cross-sector resolution regime for global systemically important financial institutions (FIs) with a view to avoiding or mitigating the risks otherwise posed by their non-viability to the stability and effective working of the financial system of Hong Kong and to the continued performance of critical financial functions.

The Secretary for Financial Services and the Treasury, Professor K C Chan, said, "The Bill has established an effective resolution regime for financial institutions in Hong Kong, so as to be in line with the latest international standards set by the Financial Stability Board (FSB). The establishment of the regime will bolster the resilience of Hong Kong's financial system and enhance Hong Kong's position as an international financial centre by enabling the effective resolution of non-viable systemically important FIs while minimising the need for recourse to public funds."

The major proposals under the Bill include:

(1) Scope:

All authorised institutions, certain securities firms and insurers, certain financial market infrastructures and exchanges, holding companies and affiliated operational entities (AOEs) of within-scope FIs and local branches of foreign FIs.

(2) Resolution Authority (RA):

The existing financial regulators, namely the Monetary Authority, the Securities and Futures Commission and the Insurance Authority, are proposed to be the resolution authorities for the banking, securities and futures and insurance sectors respectively. Where an FI is part of a cross-sector group, the Financial Secretary (FS) may designate a Lead Resolution Authority to co-ordinate the resolution planning for, and if necessary the resolution of, the within-scope FIs in that cross-sector group.

(3) Preparatory powers under the resolution authority:

These include powers to (a) gather or obtain information from a within-scope FI or group company; (b) undertake resolution planning and perform resolvability assessments and direct FIs or their holding companies to address identified impediments to resolvability; (c) impose, through a rule-making power, requirements relating to the loss-absorbing capacity of within-scope FIs; (d) give directions to a within-scope FI or a group company of the FI, their directors, chief executive officer (CEO) or deputy chief executive officer (DCEO), in the run-up to resolution; and (e) remove one or more directors, the CEO or DCEO of the failing FI or its holding company in the run-up to resolution.

(4) Stabilisation options:

The five proposed stabilisation options are as follows: (a) transfer of some or all of the failing FI's business to a purchaser; (b) transfer of some or all of the failing FI's business to a bridge institution; (c) transfer of assets, rights or liabilities of the failing FI to an Asset Management Vehicle; (d) statutory bail-in (i.e. write-off or conversion into shares) of liabilities of the failing FI to absorb losses and recapitalise the failing FI; and (e) transfer of the failing FI to temporary public ownership.

(5) General resolution powers:

A range of general resolution powers provided to the RA to support the effective application of stabilisation options includes powers to: (a) impose a temporary (not longer than two days) stay of early termination rights; (b) temporarily prohibit the filing of a winding-up petition to the court; (c) issue directions to a residual FI or AOE requiring them to provide services essential to support any business of the non-viable FI; (d) temporarily (for no longer than two days) suspend obligations (moratorium) on payments to certain creditors and impose a stay on creditor actions (e.g. to attach assets); (e) operate and manage an FI in resolution; (f) claw back remuneration from certain senior management of an FI in resolution through the courts; (g) temporarily defer certain authorisation requirements in certain circumstances; and (h) temporarily defer certain disclosure requirements under the Securities

and Futures Ordinance for a listed entity that is, or is a group company of, a within-scope FI (and the RA is of the opinion that the within-scope FI is likely to meet the conditions for resolution).

(6) Safeguards:

These include (a) compensation according to the "no creditor worse off than in liquidation" (NCWOL) principle, and (b) establishing the Resolution Compensation Tribunal to handle appeals against NCWOL valuation.

(7) Temporary funding:

A resolution authority may deploy temporary public funding support to facilitate the orderly resolution of a failed FI. Any such funding provided must be subsequently recouped. To recover any losses incurred from the industry in resolving a failed FI, once resolution is completed, only within-scope FIs operating in the same sector as the FI in resolution will be levied. However, in the case of financial market infrastructures and exchanges, a "user pays" levy is proposed to be adopted. A regulation-making power is provided in the Bill for the FS to specify how precisely a levy would be imposed in a specific resolution case. In making such regulations, the FS would be required to consult the relevant industry sector, the RA and the general public, and seek the approval of the Legislative Council.

(8) Cross-border recognition:

The Bill provides a statutory recognition framework enabling an RA, after assessing that no grounds for refusal existed and consultation with the FS, to recognise all or part of a foreign resolution action so that it would have legal effect in Hong Kong. On the whole, an RA may use its own powers available under the local resolution framework to support a foreign resolution action where the conditions for initiating resolution have been met by a within-scope FI and to do so would be consistent with the resolution objectives.

Following the global financial crisis in 2007-08, various reform initiatives have been pursued by governments around the world to enhance the resilience and stability of the global financial system. Establishment of effective resolution regimes is one of the measures, which aims to provide

authorities with powers to resolve non-viable FIs to prevent disruption to critical financial services and impact on the financial stability, whilst protecting taxpayers and minimising the effect of their failure in tandem.

The Government conducted two stages of public consultations on establishing an effective resolution regime for financial institutions in Hong Kong in 2014 and in 2015. The vast majority of respondents were supportive of the importance of establishing an effective local resolution regime; their comments on detailed operation of the regime have been considered. The Government released the consultation response in October this year. It summarises the respondents' views on the proposals, and sets out the Government's responses along with its refined policy positions on certain aspects of the proposed resolution regime.

The Bill will be introduced into the Legislative Council for first reading on December 2.

Ends