

**IFPHK's Response to the Financial Services and the Treasury  
Bureau on an Effective Resolution Regime for Financial  
Institutions in Hong Kong**

**April 2014**

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## **Institute of Financial Planners of Hong Kong (IFPHK) - Profile**





### **Background**

IFPHK was established in June 2000 as a non-profit organization for the fast-growing financial industry. It aims to be recognized in the region as the premier professional body representing those financial planners that uphold the highest standards for the benefit of the public.

The IFPHK is the sole licensing body in Hong Kong authorized by Financial Planning Standards Board Limited to grant the much-coveted and internationally-recognized CFP<sup>CM</sup> Certification and AFP<sup>TM</sup> Certification to qualified financial planning professionals in Hong Kong and Macau.

It represents more than 6,800 financial planning practitioners in Hong Kong from such diverse professional backgrounds as banking, insurance, independent financial advisory, stockbroking, accounting, and legal services.

Currently there are more than 147,000 CFP certificants in 25 countries/regions; the majority of these professionals are in the U.S., Canada, China, Australia and Japan, with more than 4,800 CFP certificants in Hong Kong.

CFP<sup>CM</sup>, CERTIFIED FINANCIAL PLANNER<sup>CM</sup>,  ,  CERTIFIED FINANCIAL PLANNER<sup>TM</sup> , AFP<sup>TM</sup>, ASSOCIATE FINANCIAL PLANNER<sup>TM</sup>,  **AFP**® and  ASSOCIATE FINANCIAL PLANNER® are certification marks and/or trademarks owned outside the U.S. by Financial Planning Standards Board Ltd. The Institute of Financial Planners of Hong Kong is the marks licensing authority for the CFP marks and AFP marks in Hong Kong and Macau, through agreement with FPSB.

### **IFPHK's interest in this consultation**

During the financial crisis the absence of an orderly resolution regime forced some countries to provide extraordinary support to a number of systemically important financial institutions (“SIFIs”) that were considered “too big to fail”. Although Hong Kong is not the host jurisdiction to any of the failed financial institutions, the collapse of Lehman Brothers and the accompanying Minibond Saga created negative market sentiment, and greatly affected consumer confidence.

The reputation of the financial planning industry has once again been unfairly tarnished after the financial crisis due to varying standards of sales practice and professionalism. To help rebuild consumer trust, IFPHK is striving to promote professionalism within the financial planning industry. We have made considerable effort in revamping our certification programs and are more advanced than other FPSB affiliates in terms of introducing new certification programs to address the needs of the industry. In June 2011, we introduced Associate Financial Planner certification in order to attract a broader selection of applicants to the industry. With respect to the growing concerns on ethical and compliance behavior, IFPHK has made it a mandatory requirement for practitioners to have two CPD hours on ethics and compliance every year. This requirement means a shift from just simply counting CPD hours to an approach in which the content of CPD really matters. To encourage and recognize organizations that have invested in promoting financial planning education, IFPHK also introduced a financial education award in 2012.

In light of the above, IFPHK has a vested interest in the Consultation Paper and wishes to express its views on the proposed changes.

**IFPHK's representation**

IFPHK was founded by 30 members ('Founding Members') in order to raise the standards of financial planners and highlight the importance of sound financial planning advice.

IFPHK currently has 47 Corporate Members including banks, independent financial advisors, insurance companies, and securities brokerages. With our Corporate Members providing a full spectrum of the client services and products, IFPHK is well positioned to understand the needs, concerns and aspirations of the financial planning community.

## Executive Summary

The global financial crisis demonstrated the urgent need to improve resolution regimes so as to enable authorities to resolve failing financial institutions (FIs) quickly without destabilizing the financial system or exposing taxpayers to loss from solvency support. The Financial Stability Board (“FSB”) published the *Key Attributes of Effective Resolution Regimes* (“Key Attributes”) demonstrating the core elements of effective resolution should any financial institution deemed to be systemically significant or critical. A special resolution regime can contribute to overall financial stability by improving the trade-off between the need to stabilize the banking system with tangible short-term fiscal costs and the longer term intangible cost of negative market sentiment. In the absence of robust resolution regimes, the fiscal cost of supporting individual banks has surged and expectations of bailouts have increase, with the attendant costs for longer-term stability of the financial system. It is expected that the G20 countries will undertake more explicit measures to harmonize their systems with the Key Attributes. The US, UK and EU are already making headway in improving their resolution regimes<sup>1</sup>. Hong Kong is behind the curve when compared to other major jurisdictions in implementing Key Attributes, and thus it is an appropriate time to set forward proposals of a new resolution regime.

Although financial planners are not directly affected by the proposed resolution regime, many financial planners work in financial groups that are classified as G-SIFI and therefore need to be aware of any policy changes at group level.

This initial consultation paper only sets out the principles and framework of the resolution regime. Many complicated technical issues will be proposed in the second stage consultation paper due in the latter part of the year. In general, IFPHK supports the principles and the framework of the new resolution regime. Hong Kong, as an international financial centre and host country to many Systemically Important Financial Institutions (“SIFI”), should establish a resolution regime which aligns with international best practices and corresponds with the model of other major financial centers. The Resolution Regime should cover financial institutions that are perceived critical to financial stability of Hong Kong and whose failure could threaten the financial system of Hong Kong. Thus IFPHK agrees that all types of Authorized Institutions, all Financial Market Infrastructures, certain Licensed Corporations and certain insurers should be included in the proposal. Branches of foreign firms should also fall under the scope of Resolution Regime with the possibility to extend the coverage to locally-incorporated holding companies and certain unregulated operational affiliates that provide essential supporting services to financial institutions.

IFPHK agrees it is not necessary to setup a single resolution authority at this stage, but to assign the responsibilities to existing regulators who would act as resolution authorities for financial institutions under their respective purviews. However, the possibility of establishment of a unified cross-sector resolution authority in the future shall not be dismissed. IFPHK also concurs that the resolution regime would only trigger when a financial institution is assessed to be non-viable and there is no reasonable prospect of other actions being able to bring it back to “normal” within a reasonable timeframe. Also, the resolution will contain risks posed to financial stability and secure continuity for critical financial services.

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<sup>1</sup> The Dodd-Frank Act passed into law by the US in July 2010 contained the Orderly Liquidation Authority, which are rules on resolution regime for nonbank financial institutions including bank holding companies, broker-dealers, and insurance companies. In addition, the UK established a special resolution regime for banks under its Banking Act 2009. In the EU, the European Commission proposed in June 2012 an EU directive aimed at providing an EU-level mechanism for coordinating resolution regimes for banks and investment banks.

IFPHK supports the adoption of a full menu of resolution options which will include compulsory transfer of business to a third party buyer or bridge institution, statutory bail-in power, or temporary public ownership. The resolution authority shall also have specific powers which will include the suspension of “early termination rights” and transfer to an asset management vehicle. Whilst IFPHK endorses the menu of resolution options, we consider that detailed operation of the resolution options, especially statutory bail-in, should be set out clearly in the legislation. Other powers available to the resolution authority include the ability of the resolution authorities to require financial institutions to make themselves more resolvable.

Since the resolution authority has been assigned a fairly broad power, safeguards are required to provide market participants, shareholders and creditors with certainty. Hence, it is sensible to include safeguards such as a compensation mechanism for creditor, protection measure of client assets, and protection of certain financial arrangement. To ensure resolutions can be carried out smoothly, staff of the resolution authority and directors and officers of financial institutions shall be protected from civil liability for actions and omissions taken “in good faith” in the performance of resolution functions.

The Key Attributes are a new international standard and hence the resolution regime should be able to support the resolution of financial institutions with cross-border operation. Cross-border co-ordination and information sharing is important as Hong Kong is a host country for a many branches and subsidiaries of foreign financial groups.

The implementation will require significant local legislative change which may impact shareholders’ rights, creditors’ rights, early termination rights, SFO, Banking Ordinance, and more. Thus, it is important to study and analyze the impact before concrete proposals are put forward. Since a lot of difficult technical issues associated with the proposed Resolution Regime will be dealt with at the second stage of the consultation<sup>2</sup>, IFPHK is concerned that more time may be required for the industry to digest and discuss the proposed legislative change. Therefore it is doubtful whether it can meet the schedule of 2015.

Lastly, IFPHK would like to remind all parties that resolution regimes alone are not sufficient to guarantee financial stability. Successful financial stability frameworks rest on a range of interlocking measures, including heightened prudential control of systemically important institutions. Also, proper resolution planning is essential to ensure effectiveness of the framework. Hence it is necessary to improve ability during ‘normal’ times to predict the feasibility for orderly resolution and gain the sufficient understanding of market participants should the situation change for the worse.

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<sup>2</sup> Complicated issues will be developed and proposed in the second stage consultation. These issues include the details of bail-in powers, how counterparty rights will be affected, how the interplay between existing corporate insolvency proceedings, the calculation of compensation for creditors adversely affected by resolution, funding model, etc.

## **The FSTB Consultation**

The Financial Services and the Treasury Bureau (“FSTB”) together with the Hong Kong Monetary Authority (“HKMA”), the Securities and Futures Commission (“SFC”) and the Insurance Authority (“IA”) published a consultation paper in January seeking industry comments on proposals for a resolution regime for certain banks, securities and futures companies, insurers and financial market infrastructure in Hong Kong (the “Consultation Paper”). The 3 month consultation period ended on 6 April 2014.

The proposals are based upon the Financial Stability Board (“FSB”)’s publication “Key Attributes of Effective Resolution Regimes for Financial Institutions” (“Key Attributes”). Certain policy issues will require further development and a second stage consultation will be undertaken to seek comments on issues such as the structure and functioning of certain resolution options, certain rights of creditors, interface between existing corporate insolvency proceedings and the calculation of compensation for creditors.

The 141-page Consultation Paper contains 34 questions in 8 chapters. Chapters of the Consultation Paper are as follows:

### **Chapter 1 – Introduction**

### **Chapter 2 – International Requirements and Implementation**

### **Chapter 3 – Existing Framework in Hong Kong**

### **Chapter 4 – Scope of Proposed Resolution Regime**

*Question 1:*

*Do you agree that a common framework for resolution through a single regime (albeit with some sector-specific provisions) offers advantages over establishing different regimes for FIs operating in different sectors of the financial system? If not, please explain the advantages of separate regimes and how it can be ensured that these operate together effectively in the resolution of cross-sectoral groups.*

*Question 2:*

*Do you agree that it is appropriate for all LBs to be within the scope of the regime (given it would only be used where a non-viable LB also posed a threat to financial stability)? If not, what other approaches to the setting of the scope of the regime, which ensures that all relevant LBs are covered, should be considered?*

*Question 3:*

*Do you agree that it is appropriate for all RLBs and DTCs to be within the scope of the regime (given it would only be used where a non-viable RLB or DTC posed a threat to financial stability)? If not, what other approaches, which would ensure that all relevant RLBs and DTCs are covered, should be considered?*

*Question 4:*

*Do you agree that it would be appropriate to extend the scope of the proposed resolution regime to FMIs which are designated to be overseen by the MA under the CSSO (other than those which are owned and operated by the MA) and those that are recognized as clearing houses under the SFO?*

*Question 5:*

*Do you agree that it is appropriate to set the scope of the regime to extend to some LCs?*

*Question 6:*

*If so, and in order to capture those LCs which could be critical or systemic, should the scope be set with reference to the regulated activities undertaken by LCs? Are the regulated activities identified in paragraph 144 those that are most relevant? Is there a case for further narrowing the scope through the use of a minimum size threshold?*

*Question 7:*

*Do you agree that the scope should extend to LCs which are branches or subsidiaries of G-SIFIs? Do you see a need for the scope to extend to LCs which are part of wider financial services groups, other than G-SIFIs whether those operate only locally or cross-border?*

*Question 8:*

*Do you agree that it would be appropriate to extend the scope of the proposed resolution regime to the local operations of insurers designated as G-SIFIs and/or IAIGs as well as those insurers which it is assessed could be critical or systemically important locally were they to fail?*

*Question 9:*

*Do you agree the branches of foreign FIs should be within the scope of the local resolution regime such that the powers made available might be used to: (i) facilitate resolution being undertaken by a home authority; or (ii) support local resolution?*

*Question 10:*

*Do you see any particular issues that need to be taken into consideration in ensuring that the regime can be deployed effectively in relation to branches of foreign FIs where necessary?*

*Question 11:*

*Do you agree that extending the scope of the proposed resolution regime to cover locally-incorporated holding companies is appropriate such that the powers available might be used where, and to the extent, appropriate to support resolution of one or more FIs?*

*Question 12:*

*Do you have any initial views on whether it is appropriate to extend the scope of the regime to affiliates operational entities to help ensure that they can continue to provide critical services to any FIs which are being resolved?*

## **Chapter 5 – Governance Arrangements**

*Question 13:*

*Do you agree that the conditions proposed for initiating resolution are appropriate in that they will support the use of the regime in relevant circumstances?*



Question 14:

*In particular, do you agree that it is appropriate that the first condition recognizes that non-viability could arise on financial and non-financial grounds (noting that resolution could occur only if the second financial stability condition is also met)?*

Question 15:

*Are the objectives which it is proposed should be set for resolution suitable to guide the delivery of desired outcomes?*

Question 16:

*Do you agree that, in line with their existing statutory responsibilities and supervisory intervention powers, the MA, SFC and IA should be appointed to act as resolution authorities for the FIs under their respective purviews?*

## **Chapter 6 – Resolution Powers**

Question 17:

*Do you have any views on how a resolution option allowing compulsory transfer of all or part of a failing FI's business could most effectively be structured and used?*

Question 18:

*Do you have any views on how a resolution option allowing compulsory transfer of part of a failing FI's business to a bridge institution could most effectively be structured and used?*

Question 19:

*Do you have any views on the factors which should be taken into account in drawing up proposals for the provision of a bail-in option for the resolution regime in Hong Kong?*

Question 20:

*Do you agree that there is a case for including a TPO option in the proposed regime?*

Question 21:

*Do you have any views on when it would be appropriate to make temporary use of an AMV in order to manage the residual parts of an FI in resolution?*

Question 22:

*Do you have any views on how best to provide for a stay of early termination rights where these might otherwise be exercisable on the grounds of an FI entering resolution or as a result of the use of certain resolution options?*

Question 23:

*Do you have any views on how best to provide the supervisory or resolution authorities with powers to require that FIs remove substantial barriers to resolution?*

Question 24:

*Is the proposed approach to ensuring that third parties cannot act to pre-empt the resolution of non-viable FI (including by means of a petition to initiate a winding-up) appropriate?*

Question 25:

*Do you have any views on how provision might be made to ensure that the residual part of an FI could be called on to temporarily support a transfer of business to another FI or bridge institution (in the manner described in paragraph 266)?*

Question 26:

*Do you attach any priority to pursuing reforms designed to ensure that the claims of protected parties (particularly those of depositors and investors) can be transferred out of liquidation proceedings, alongside those reforms being pursued to establish an effective resolution regime?*

## **Chapter 7 – Safeguards and Funding**

Question 27:

*Do you agree that a compensation mechanism is a necessary safeguard to ensure that shareholders and creditors are no worse off under resolution than they would have been in liquidation? Do you have any views on the factors which should be taken into account in designing such a compensation mechanism?*

Question 28:

*Do you consider that any adjustments are needed to the existing framework for protecting client assets for the purposes of resolution?*

Question 29:

*What types of “financial arrangements” do you consider as important to protect in resolution? Why is it important that those arrangements be protected?*

Question 30

*Do you agree that, in order to ensure resolution can be effected as swiftly as needed, there should be protection from civil liability for: (a) officers, employees and agents of the resolution authority, and (b) directors and officers of FIs acting in compliance with the instructions of the resolution authority, limited to cases where these parties are acting in good faith?*

Question 31:

*What provisions should be made under the regime to fund resolution, with a view to ensuring that any call on public funds is no more than temporary?*

## **Chapter 8 – Cross-border coordination and Information Sharing**

Question 32:

*Do you agree that it is important that the resolution regime in Hong Kong supports, and is seen to support, cooperative and coordinate approaches to the resolution of cross-border groups given Hong Kong's status as a major financial centre playing host to a significant number of global financial services groups?*

*Question 33:*

*Do you agree that the model outlined in paragraphs 331 to 333 to support and give effect to resolution actions being carried out by a foreign home resolution authority would be effective in supporting coordinated approaches to resolution where it is in the interests of Hong Kong to do so?*

*Question 34:*

*Do you consider that the powers proposed regarding information sharing strike an appropriate balance in terms of facilitating information sharing for resolution in both in a domestic and cross-border context whilst also ensuring that all reasonable steps are taken to preserve confidentiality?*

The views expressed in this submission paper are not necessarily summaries of the views taken from the industry, but may have undergone more independent and critical analysis and consideration by IFPHK as a professional body. As a result, not all the views collected by IFPHK are recorded in this submission paper and neither have all the views expressed in this submission paper been directly endorsed by those industry representatives or members consulted.

### **IFPHK's Submission**

Globalization and financial market integration has increased rapidly in the past decade. This has been illustrated by the recent financial crisis where problems originating in one country quickly spread across the globe. It is also evident from the financial crisis that there was no framework for achieving cross-border resolution of systemically important financial institutions ("SIFIs") which were perceived to be "too big to fail". To resolve a failing FI, governments are often presented with just two choices. The first is corporate bankruptcy as was the case for Lehman Brothers. The second is an injection of public funds as was the case for AIG. Both approaches are costly to the public and pose significant moral hazard risk.

Because of the global contagion witnessed during the most recent financial crisis, there have been calls for better coordination between regulators from different jurisdictions, and for an increase in the convergence of financial regulation. In light of the above, the Financial Stability Board ("FSB") proposed new global standards for the resolution of financial institutions in its report, "Key Attributes of Effective Resolution Regimes for Financial Institutions" ("Key Attributes"). The Key Attributes were approved by G20 leaders in November 2011. The FSB began working toward the global convergence of resolution regimes in August 2012 with a peer review of each G20 country's resolution regime using the Key Attributes as a benchmark<sup>3</sup>. The FSB announced its initial peer review in April 2013 ("Peer Review").

Like many other jurisdictions there is currently no single resolution regime in Hong Kong. The Peer Review revealed that Hong Kong has sector-specific powers to restructure and/or wind up banks and insurers. However, Hong Kong still lacks a resolution regime that incorporates the Key Attributes as suggested by the FSB. (The peer review results on existing resolution of Hong Kong are summarized in Appendix 1). Hong Kong was not deeply hit by the Global Financial Crisis and it is not the home country of any G-SIFI. However, it is obvious to IFPHK that existing laws do not give authorities sufficient power to deal with non-viable FIs without hurting financial stability or wasting public funds<sup>4</sup>.

### **Common Resolution Regime**

The purpose of establishing a special resolution regime is to avoid the choice between "disorderly bankruptcy" and injection of public funds", thus improving efficiency by containing both fiscal costs and systemic impact.<sup>5</sup> Absence of special resolution frameworks not only encumbers crisis management; it may also have longer-term effects on financial stability<sup>6</sup>.

To keep abreast of international development of special resolution regimes, **IFPHK supports the establishment of a single resolution regime through the passage of a single ordinance**. Although the regulatory approach in Hong Kong is classified as an institutional approach with functional characteristics<sup>7</sup>,

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<sup>3</sup> Kei Kodachi, "Japan's Orderly Resolution Regime for Financial Firms – A New Scheme Provided for Under the Revised DIA", Nomura Journal of Capital Markets Autumn 2013 Vol.5 No.2

<sup>4</sup> Hong Kong leads Asia with creditor bail-in resolution regime, GlobalCapital

<sup>5</sup> Martin Cihak, Erlend W Nier, "The need for special resolution regimes for financial institutions", VOX

<sup>6</sup> Martin Cihak, Erlend W Nier, "The need for special resolution regimes for financial institutions", VOX

<sup>7</sup> Institutional structure of financial regulation: international perspectives and local issues in Hong Kong and Mainland China, Financial regulation in Hong Kong: a securities regulation perspective, Dr. Eddy Fong, Chairman of Securities and Futures Commission, Hong Kong.

where the legal status determines which regulator is tasked with overseeing which activity, establishing a common framework with a single regime could have a number of advantages. These include better support resolution of any of the significant number of FIs which are part of wider financial services groups operating across multiple sectors of the local finance sector.

**Scope of Resolution Regime**

It is important to set an appropriate scope of the resolution regime. When considering the scope, IFPHK agrees to the need to take into account those factors as stipulated in the Consultation Paper<sup>8</sup>. Banks and other financial institutions play a special role in a country’s economy. Properly performing financial services are fundamental to the functioning of the economy through activities such as the provision of credit, the processing of payments, and, more broadly, the provision of financial infrastructure services. They also play an important part in the transmission mechanism of monetary policy<sup>9</sup>. Taking into account their impact on the financial stability of Hong Kong should they fail, IFPHK believes it is sensible to include the following types of FIs to the proposed single resolution regime:

Type of FIs	IFPHK comments
Banks	<ul style="list-style-type: none"> <li>• Of the 29 global systemically important banks (G-SIBs) which the FSB identified, 28 operate in Hong Kong.</li> <li>• Although Restricted Licensed Banks (“RLBs”) or Deposit Taking Companies (“DTCs”) may be less liable to pose risk to financial stability on failure, about one third of RLBs and DTCs operate in Hong Kong as are part of wider financial services groups.</li> <li>• <b>It is critical to cover all types of Authorized Institutions (AIs) in the proposed Resolution Regime and should include Licensed banks, RLBs and DTCs.</b></li> </ul>
Financial Market Infrastructures (FMI)	<ul style="list-style-type: none"> <li>• The FMIs play a critical role in supporting payments, clearing and settlement. FMIs undertaking the clearing and settlement of funds or securities which are identified as being material to the monetary or financial stability of Hong Kong or to the functioning of Hong Kong as an international financial centre.</li> <li>• In light of the risks that their failure could pose, there is now broad consensus internationally that it is a priority to ensure that all FMIs which play a critical role in financial markets should be brought within the scope of an effective resolution regime.</li> <li>• <b>IFPHK concurs with the proposals to include all FMIs in the proposed Resolution Regime.</b> FMIs include those that are designated to be overseen by the HKMA under the Clearing and Settlement Systems Ordinance and all recognized clearing houses under the Securities and Futures Ordinance (“SFO”).</li> </ul>
Market intermediaries	<ul style="list-style-type: none"> <li>• The recent financial crisis confirmed that some market intermediaries, in</li> </ul>

<sup>8</sup> These factors include 1. The extent to which FIs within each of the key sectors of the local financial system are likely to provide critical financial services or might otherwise pose a risk to financial stability in Hong Kong. 2. How far there is a case for including FIs operating in Hong Kong within the scope of the local regime, to help contain risks that their, or their group’s, failure might otherwise pose to financial stability in other jurisdiction.3. The current degree of international consensus on how to implement the key attributes

<sup>9</sup> Martin Cihak, Erlend W Nier, “The need for special resolution regimes for financial institutions”, VOX

Type of FIs	IFPHK comments
	<p>particular those that are large and complex (e.g. Lehman Brothers), may generate systemic risk on failure due to the critical financial services that they provide and via contagion to other FIs and FMIs.</p> <ul style="list-style-type: none"> <li>• Most market intermediaries are required to obtain licenses as licensed corporations (LCs) in Hong Kong under the SFC regime. It appears that the likelihood of any individual LCs would pose systemic risk in Hong Kong is very small. Thus <b>IFPHK agrees that not all LCs need to be covered under the scope of the resolution regime.</b></li> <li>• There are two tests proposed to determine whether an LC will be subjected to the resolution regime. The first is that the LC exceeds a minimum size threshold. The second test is that the LC is a branch or subsidiary of a global systemically important financial institution (G-SIFI). <b>IFPHK is broadly in agreement with the principles of the two tests.</b></li> <li>• However, IFPHK has concerns about the details of the test. It is straightforward to identify branches or subsidiaries of G-SIFI, but it is unclear of what is the minimum size threshold that warrants a LC to be covered by the Resolution Regime. Thus, IFPHK wishes the Government to elaborate on the indicative criteria of the minimum size threshold in the next consultation.</li> </ul>
Insurers	<ul style="list-style-type: none"> <li>• Insurers provide financial services which allow individuals and companies to pool risks. The FSB has designated 9 insurance groups as being global systemically important insurers (G-SIIs). Eight of the G-SIIs still operate in Hong Kong.</li> <li>• The insurance sector in Hong Kong is relatively sizeable and diverse. As Asia's insurance hub, Hong Kong has attracted many of the world's top insurance companies. As of March 2012 Hong Kong had 162 authorized insurers, about half of which were incorporated overseas. There were 2,374 insurance agencies, 35,639 individual agents and 27,542 responsible officers or technical representatives<sup>10</sup>. Aside from the large number of agents, the insurance market in Hong Kong consists of many small brokers, some with fewer than 10 staff. There were 593 authorized insurance brokers as at 30 June 2012 with 8,305 persons registered as chief executives or technical representatives of these authorized brokers<sup>11</sup>.</li> <li>• It appears there are few local insurers with sufficient scale and complexity to be critical or pose wider systemic risk locally on failure.</li> <li>• Thus, <b>IFPHK agrees that it is necessary to cover local operations of G-SIIs and internationally active insurance groups with presence in Hong Kong.</b> IFPHK also agrees to include insurers which are assessed could be systemically significant or critical locally were they to fail, but the assessment criteria should be clear and straightforward to the industry. The Government may need to set out the details of the assessment criteria in the next round of consultation.</li> </ul>

<sup>10</sup> Statistics from Office of Commissioner of Insurance ("OCI")

<sup>11</sup> Statistics from Office of Commissioner of Insurance ("OCI")

Type of FIs	IFPHK comments
Branch of overseas FIs	<ul style="list-style-type: none"> <li>Key Attribute suggests that branches of foreign firms should be within the scope of the resolution regime of both home and host jurisdiction. Bringing the branches of foreign FIs into the scope of host regimes will mean that host authorities can act to support resolution being carried out by a home authority. <b>It is clear to IFPHK that Branch of foreign FIs which are G-SIs should be part of the scope of Hong Kong Resolution Regime.</b></li> </ul>

It is also proposed to cover locally-incorporated holding companies of in-scope FIs as well as certain unregulated operational affiliates where the affiliate provides essential supporting services to the FI. **IFPHK has no major comments on the proposals to include holding companies and unregulated operational affiliates of FIs.** It is our view that regardless of size and legal entities of a company, if it fails or the “domino effect” of its failure will have significant impacts to the financial stability of Hong Kong economy, these entities shall put under the proposed Resolution Regime.

### **Conditions for initiating resolution**

The resolution regime needs to specify a regulatory threshold so that when the condition is fulfilled the resolution authority is entitled to take control of the failing institutions and to commence the restructuring and resolution process. The proposed threshold conditions prior to a Resolution Authority (“RA”) to initiate a resolution are that:

1. Non-viability condition

The FI is, or is expected to become, no longer viable in that it is, or is expected to become, unable to satisfy one or more of the conditions set in relation to the regulated activities it carries out and there is no reasonable prospect that private sector or supervisory action outside of resolution will result in the institution satisfying the relevant condition(s).

2. Financial stability condition

Not all FIs meeting the first non-viability condition will need to be resolved. Accordingly, it appears appropriate to set a second financial stability condition such that resolution of a non-viable FI will only be initiated where it will better serve to secure continuity for critical financial services, including payment, clearing and settlement functions, and to promote and maintain the general stability and effective working of financial system as compared with liquidation.

There are a number of ways in which a triggering condition can be defined. In the US the mandatory threshold is defined as a leverage ratio that is below 2%. The threshold is mandatory in the sense that the resolution authorities are required by law to take action if the threshold is breached. Other countries take a softer approach. The resolution regime introduced through the 2009 Banking Act in the UK applies a threshold which subject to a “likely to fail” test. The relevant criteria include the “adequacy of the firm’s resources”. In Canada, the institution needs to be deemed no longer “viable”. Excessive dependence on financial assistance, lack of depositor confidence and capital deficiencies are introduced as indicative<sup>12</sup>. Both approaches have their advantages and disadvantages. Setting a condition instead of a hard limit allows the

<sup>12</sup> Martin Cihak and Erlend Nier, “The need for special resolution – regimes for financial intuitions – the case of the European Union”, 2012

authorities to have a fuller appraisal of the situation and take into account all relevant factors before making a decision. IFPHK is in favor of the approach taken by the UK and Canada. Thus, **IFPHK thinks that the two-stage test that is stipulated in the Consultation Paper is reasonable.** Nevertheless, IFPHK acknowledges it is essential that these conditions shall be clearly spelt out in the legislation to prevent uncertainty when they are to be activated.

### **Resolution objectives**

The purpose of an orderly resolution regime under the Key Attributes is to (1) avoid severe systemic disruptions, (2) avoid taxpayer exposure to loss, and (3) protect vital economic functions through mechanisms that make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation<sup>13</sup>.

**IFPHK considers the proposed resolution objectives in the Consultation Paper fair** if the objectives are to:

- Promote and seek to maintain the general stability and effective working of the financial system in Hong Kong, including by securing continued provision of critical financial system, including payment, clearing and settlement functions;
- Seek an appropriate degree of protection for depositors, investors and policyholders; and
- Subject to pursuing the two resolution objectives above, seek to contain the costs of resolution and, in doing so, protect public funds.

### **Resolution authority**

Key attribute says that each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime. The resolution authority should play a central role in assessing whether the conditions set for the use of the resolution regime have been met and in initiating resolution accordingly. Several different models for allocating responsibility to public authorities can be identified. The one which is most common in other FSB member jurisdictions is to allocate responsibility to one or more prudential regulators. It is proposed that HKMA, SFC and IA would act as resolution authorities for FIs under their respective purviews. A lead resolution authority will coordinate resolution where a failing FI operates across multiple sectors. **IFPHK thinks it is appropriate to allocate the resolution responsibilities to existing supervisory regulators as they are independent and have sufficient knowledge on the operation of the FIs they supervise.**

Notwithstanding of the above, IFPHK would like to remind the Government that the drawback of a decentralized regulatory approach is the potential for inconsistency in the application of rules and regulations by disparate regulators, as well as any challenges associated with interagency coordination<sup>14</sup>. Given the board powers of the Resolution Authority, it is desirable to consult a higher authority prior to exercising any resolution options. Although the Consultation Paper did not specify who the high authority is; IFPHK recommends it should be either the Chief Executive of Hong Kong S.A.R. or the Financial Secretary. IFPHK believes it is fundamental for a higher authority to ensure proportionality and transparency in the operation of the Resolution Regime in order to avoid suspicion that the regulators have given themselves overly wide, arbitrary powers over the markets.

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<sup>13</sup> Kei Kodachi, "Japan's Orderly Resolution Regime for Financial Firms – A New Scheme Provided for Under the Revised DIA", Nomura Journal of Capital Markets Autumn 2013 Vol.5 No.2

<sup>14</sup> Group of Thirty, The Structure of financial supervision, approaches and challenges in a global marketplace, October 6, 2008



At present it is not necessary to setup an independent authority dedicated for administrating the Resolution Regime like the Orderly Liquidation Authority in the US. Yet, IFPHK believes that the establishment of a single resolution authority should not be totally dismissed and may need to be considered in the future. We suggest the Government studies the model of the new resolution regime proposals of Japan. The Resolution by the Council for Financial Crises is chaired by the Prime Minister and falls under the oversight of the Deposit Insurance Corporation of Japan (DICJ), with the DICJ providing liquidity and if necessary, recapitalization and funding assistance. The new resolution regime is triggered when the Prime Minister deems that not acting would risk extreme turmoil in Japan's financial markets and other aspects of its financial system, and he confirms them as necessary (Special Confirmation) following deliberation of the Council for Financial Crises<sup>15</sup>.

### **Resolution power**

Once the conditions for initiating resolution have been met, the resolution authority will need to decide what form the resolution should take. In order to make a resolution regime effective, the resolution authority must be equipped with a set of tools that go beyond the "default options" of liquidation and capital support. The options are able to be deployed either individually or in combination. It is intended that resolution authorities should be able to decide which of the resolution options to draw upon, and how to deploy them, taking into account the specific circumstances of each case, and being guided by an assessment of what approach will fulfill the objectives set for resolution. The list of options suggested in the Consultation Paper is discussed here:

#### *Compulsory transfer of business to a third party buyer or a bridge institution*

**IFPHK thinks it is a desirable option if a resolution authority is able to bring about an orderly resolution by selling and transferring a failing FI in its entirety, or some or all of its business, to another FI which is willing and able to continue it.** To achieve this, the resolution authority would be empowered to carry out the transfer without needing the consent of the shareholders or other affected parties and without needing to comply with all otherwise applicable procedural requirements under the applicable law which include requirements under the Securities & Futures Ordinance ("SFO"), Listing Rules and Takeover Code.

Moreover, there is broad consensus internationally, and the Key Attributes require, that **regimes should allow for the transfer of some of a failing FI's business to a temporary bridge institution.** Use of a bridge institution can allow the resolution authority time to find a more permanent solution. Where a bridge institution is used to support the bail-in of certain unsecured creditors, it is important that the resolution authority remains in control until the point at which a viable FI emerges which can then exit the resolution process. Deciding what to transfer to a bridge institution, a resolution authority would, taking into account the objectives set for resolution. It may transfer, at a minimum, those parts of the failing FI's business which support the provision of critical financial service.

#### *Statutory bail-in*

The Key Attributes says that it should be possible to carry out bail-in. It is intended that a statutory bail-in option should enable the resolution authority to impose a restructuring of the failing FI's liabilities in order to restore its viability such that it might continue to provide critical financial services. To this end, the resolution authority should equip with the following powers to:

- Override rights of shareholders of the failing institution

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<sup>15</sup> Kei Kodachi, "Japan's Orderly Resolution Regime for Financial Firms – A New Scheme Provided for Under the Revised DIA", Nomura Journal of Capital Markets Autumn 2013 Vol.5 No.2

- Transfer or sell assets and liabilities, legal rights and obligations, including deposit liabilities and ownership in shares to a solvent third party
- Carry out bail-in within resolution
- Impose a moratorium with a suspension of payments to unsecured creditors
- Affect the closure and orderly liquidation of the whole or part of a failing institution with timely payout or transfer of insured deposit.<sup>16</sup>

There is considerable debate within the international communities on the merit of statutory bail-in even though it has been strongly recommended by the FSB. One of the arguments against the use of the bail-in power is that it puts strains on both the stricken institution's funding and others' funding, increasing the cost of replacing maturing debt, in particular in stress times when investor confidence is fragile<sup>17</sup>. Also, the bail-in is not tested internationally and the practical issues of its implementation are still unknown.

The proposal of bail-in capital will be of material interest to issuers and purchasers<sup>18</sup>. Bail-in capital also affects every current creditor of a FI, as instruments available for bail-in will be the claims of creditors<sup>19</sup>. **IFPHK has no strong view on the inclusion of the bail-in power if such an option is implemented in other major jurisdictions.** If the bail-in power is listed on the menu, it is critical to conduct broader and deeper research on its impact. The Consultation Paper notes that international developments will be observed and proposals on the implementation of bail-in power will be set out in the second stage consultation later in 2014

#### Temporary public ownership ("TPO")

Regimes in several key jurisdictions include an option under which failing FIs can be taken into temporary public ownership ("TPO"). The advantage of TPO is to ensure that losses can be imposed on shareholders and perhaps certain unsecured creditors. Furthermore, in taking full control of an FI under a TPO approach, a government, or resolution authority, would be better placed to identify and implement a more permanent solution, such as some form of restructuring ahead of returning the FI to the private sector. It is particularly useful if the financial market is highly concentrated and there are limited options for a sale to private bidders. **IFPHK considers it is acceptable to include TPO in the menu of resolution options given that such an option is regarded as "last resort"**. If a TPO option is made available under the regime it will be important to set a higher threshold for its use, to ensure that it is only used as a "last resort" in case where the risks posed to financial stability are very significant. Also, it is important to ensure that former shareholders take the first loss and do not benefit from the assistance provided by the public<sup>20</sup>.

#### Transfer to an asset management vehicle (AMV)

In a majority of cases it will be appropriate for residual parts of a failing FI to be dealt with by means of insolvency proceedings. However, delivery on the objectives set for resolution may require that some of the residual parts of a failing FI's business be managed for a period of time in an asset management vehicle (AMV) until they can be sold on or wound up over an appropriate timeframe. **IFPHK has no further comment on empowering the resolution authority to effect a partial sale of assets and liabilities to an AMV**, but care needs to be taken to ensure that the transfer occurs at a fair price, which may be difficult to determine in stressed market conditions.

<sup>16</sup> Mark O'Byrne, "Bail-in regimes – The Key Attributes and Who is Driving? (Part IV)", December 9, 2013

<sup>17</sup> Martin Cihak and Erlend Nier, "The need for special resolution – regimes for financial institutions – the case of the European Union", 2012

<sup>18</sup> What restrictions will there be on how the capital is issued, how will any bail-in work and how will this affect pricing and the market for such instruments.

<sup>19</sup> Clifford Chance, "Too big to fail? Hong Kong consults on financial institution resolution regime, but it is just the start, 20 January 2014.

<sup>20</sup> Martin Cihak and Erlend Nier, "The need for special resolution – regimes for financial institutions – the case of the European Union", 2012

### Early termination rights

The ability of the resolution authority to carry out an orderly resolution could be undermined if the initiation of the resolution process and exercise of the relevant powers were to trigger contractual acceleration, termination or other close-out rights, which known as “early termination rights”. Key Attribute requires that provision be made in respect of the local resolution regime such that entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligation under the contract continue to be performed. Consistent with Key Attribute, **it appears appropriate to empower regulatory authorities to impose a temporary stay on the exercise of early termination rights**. Detailed proposals on the most complex issues on the operation of the suspension of the early termination rights will be reserved in the next stage of consultation.

### Measures to improve resolvability

Some FIs are not adequately resolvable, implying that they would continue to pose risks to financial stability and public funds were they to fail. Key Attribute says that to improve a firm’s resolvability, supervisory authorities or resolution authorities should have formal power to replace the management of a failing institution. Actions that the authorities may seek to restrict also include dividend payments to existing shareholders. When managers act in the interests of shareholders, they may face incentives to shift value away from creditors and towards shareholders. These powers would be exercisable well before any threat to the viability of an FI has been identified.

Reference shall be made to proposals of other countries. The EU’s Recovery and Resolution Directive attempts to introduce a special management regime as a mechanism for early intervention. When special management is invoked prior to resolution being triggered, the special administrator chosen by the regulator acts in place of management to take the steps needed to put the financial institution back on a sound footing. In the U.S., the Dodd-Frank Act has given the Federal Reserve fairly broad power to improve resolvability. The FDIC in the US can perform due diligence and choose potential acquiring financial institution before appointing a receiver. Additionally, the Dodd-Frank Act provides for an early remediation requirement, which enables even earlier intervention than is possible with prompt corrective actions based on capital requirements.<sup>21</sup> In light of the above, **IFPHK agrees the resolution authority should take measures to improve resolvability of an institution but the extent and limits of these powers shall be properly set out in the legislation, and proper checks-and-balances shall be in place to avoid the abusive use of powers.**

### Relationship with existing corporate insolvency proceedings

The proposals stipulated in the consultation Paper are not intended to have any material effect on the use of existing insolvency procedures. However, the resolution authority should be able to act without delay to carry out the resolution in those cases where resolution is deemed appropriate. **It is proposed that any person intending to petition for the winding-up of an FI within the scope of the regime should be required to notify the resolution authority before winding-up proceedings can commence.** The resolution authority would then be permitted a set period of time to decide whether to instead initiate resolution.

In some other jurisdiction provisions have been made to ensure that **the residual entity can be called on to temporarily support business transferred to a commercial acquirer or bridge institution**. This support

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<sup>21</sup> Kei Kodachi, “Japan’s Orderly Resolution Regime for Financial Firms – A New Scheme Provided for Under the Revised DIA”, Nomura Journal of Capital Markets Autumn 2013 Vol.5 No.2

could take the form of allowing for adjustments to assets and liabilities transferred, as well as on-going provision of essential services and facilities, ahead of any formal restructuring or winding up of the residual FI.

The existing statutory framework does not provide for a transfer of deposits or client assets out of liquidation. The Key Attributes say that liquidation procedures and protection schemes should secure an appropriate degree of protection for depositors, investors and insurance policyholders. The Consultation Paper notes that the ability to transfer deposits and client assets out of liquidation is considered desirable because, where it can be achieved sufficiently quickly, it could mean that the FI's customers have close to uninterrupted access to these resources. The resolution decrees it is better to protect the depositors, investors and policyholders, as some or all of the business of a failing FI will be stabilized, restructured and continued. Current protections in place for some of these creditors, such as the Deposit Protection Scheme, would continue to apply in a resolution.

### **Safeguard and funding**

Resolution authorities will have extensive resolution powers and because these powers may be exercised in a very short space of time, safeguards are required to provide market participants, shareholders and creditors with a greater degree of certainty about how the failure and resolution of an FI may affect them<sup>22</sup>.

### **Compensation mechanism**

It is intended that, as far as possible, **resolution powers should be exercised by resolution authorities in a way which respects the hierarchy of creditors in liquidation, in order to reduce uncertainty about outcomes in a resolution.** Consistent with the Key Attributes, IFPHK concurs with the Consultation Paper that **the proposed resolution regime should provide for the flexibility to depart from the general principle of equal treatment for creditors of the same class in some cases.** Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime (which refers to as “No Creditor Worse Off Than In Liquidation (“NCWOL”) safeguard). The authorities therefore intend to give careful consideration as to how a compensation mechanism for parties affected by resolution could be structured most effectively, to meet the requirements of the Key Attributes. **It is recognized that the compensation mechanism will need to be suitably independent and provide affected parties with a right of appeal.** Consideration will be given to model where an independent valuer is appointed and affected parties are given the right to appeal a valuation. The proposals of the compensation model will be put forward in the second stage of consultation.

### **Protection of client assets**

Key Attribute says that the legal framework governing the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures. This is considered to be a necessary precondition to help ensure that client assets held directly or indirectly by an FI entering resolution can be either rapidly returned to investors or transferred to an acquiring FI or bridge institution so as to be able to provide uninterrupted access to the asset as well as any associated financial services. Under the SFO, client assets are defined, and they are currently safeguarded by the regulations. Hence, it is not currently proposed that changes be made to the existing framework for protecting client assets. **IFPHK has no further comment at this stage. However, during the course of the law amendment process some adjustments on the proposals may be deemed necessary.**

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<sup>22</sup> Royce Miller, “Recovery and resolution planning: public consultation on a resolution regime for financial institutions in Hong Kong”, Freshfields Bruckhaus Deringer, January 2014.

### Financial arrangement

Certain financial arrangements may be undermined by resolution. **Consideration is being given to identifying those “financial arrangements” in use in Hong Kong which may need to be protected.** The type of arrangements that could be protected under the Resolution Regime are secured or collateralized debts, set-off and netting arrangements, title transfer arrangements and arrangements within trading, clearing and settlement systems designed to minimized the effect of a participant’s default. It is noted that beyond those financial arrangements identified for protection, it is unlikely that the resolution authority would choose to set off assets and liabilities relating to an individual customer where these arise simply because the customers relies on an FI for a range of financial services<sup>23</sup>.

### Protection from civil liability

#### *(a) Officers, employees and agents of the resolution authority*

Key Attribute says that the resolution authority should have the capacity to exercise the resolution powers with the necessary speed and flexibility, subject to constitutionally protected legal remedies and due process. Key Attribute requires that the resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings. **It is proposed that protection from civil liability be provided to the resolution authority and its officers, employees and agents for anything done by, or decreed upon these parties to implement it.** The proposed immunity would be restricted to actions and omissions taken “in good faith” in the performance of resolution functions. IFPHK agrees with the proposal as it is consistent with current immunity by staffs of regulators. Further consideration will be given to the need to extend immunity to foreign resolution authorities or their officers who provide information or take actions in support of Hong Kong proceedings, subject to the existence of an acceptable degree of reciprocity as assessed by the resolution authority in Hong Kong.

#### *(b) Directors and officers of FIs*

The Consultation Paper states that it is intended that directors and officers of a failed FI undergoing resolution should be protected from civil liability in relation to actions taken in good faith to comply with the decisions or instructions of the resolution authority.

### Funding arrangement

A funding arrangement is necessary to provide a mechanism for the recovery of the net costs arising in any resolution from surviving FIs, once it is apparent precisely how much needs to be recouped. The Consultation Paper does not propose that the existing Deposit Protection Scheme and Investment Compensation Fund, and the upcoming Policyholders’ Protection Fund should be used as a source of resolution funding. The Consultation Paper notes that there is increasing discussion internationally on the merits of establishing resolution funds that are built up through levies on FIs and which can be used to contribute towards the cost of resolution. In Japan, when there are costs involved in implementing crisis measures for a financial firm that has been subject to Special Confirmation, financial firms will be charged a special levy, and thus costs are covered by the industry ex post.

Lessons learned from international experience show that the final cost of a given failure can be difficult to predict, and can vary widely in each case. The value may not materialize until after the failure of the insurer.

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<sup>23</sup> Royce Miller, “Recovery and resolution planning: public consultation on a resolution regime for financial institutions in Hong Kong”, Freshfields Bruckhaus Deringer, January 2014.

This makes determining the level of potential exposure of a failure problematic, and therefore there is no perfect funding model where one size fits all. IFPHK expects that more concrete proposals will be put forward in second stage consultation.

#### **Cross border coordination and information sharing**

According to FSB's Peer Review, there are legal provisions that mandate or strongly encourage cross-border cooperation of resolution authority. Nonetheless, the legal framework for cross-border cooperation still does not fully incorporate Key Attributes. IFPHK feels that cross-border coordination is particular significance to Hong Kong as it is a host country for a significant number of branches and subsidiaries of foreign financial groups. **IFPHK supports the proposals to deploy the Hong Kong resolution regime to support and give effect to a group-wide resolution** given that there is a proper assessment on the group-wide resolution such that it is likely to deliver outcomes that are consistent with the objectives set for resolution in Hong Kong.

**IFPHK also supports other enhancements to cross-border coordination** which include measures to support and give effect to resolution actions being carried out by a foreign home resolution authority and information sharing in relation to resolution with the expectation that Hong Kong creditors will not be disadvantaged by the resolution and the resolution actions met with the objective of Hong Kong Resolution Regime. More safeguards shall be given to cross-border information transfer. There should be a requirement that disclosure of the information is conditional upon the recipient authority being subject to adequate confidentiality safeguards and, additionally, the Hong Kong resolution authority also could impose conditions restricting onward disclosure of the information by the recipient authority.

Because cooperation among authorities in and outside of Hong Kong is essential to the resolution process of G-SIFI, IFPHK thinks that the FSTB needs to strengthen its ties with those authorities with a responsibility for G-SIFIs, while also becoming more involved in the G-SIFIs' recovery and resolution planning process.

## Conclusion

The resolution regime is a key part of the broader financial stability framework. Prudential supervision has close links to the resolution regime. An effective resolution regime helps to make supervision more effective, and effective supervision helps to identify and prevent problems in financial institutions even before a resolution is needed. A strong resolution regime also needs to be complemented by robust deposit insurance mechanism<sup>24</sup>. The proposal is a responds to international calls for the orderly resolution of financial institutions, particularly the cross-border resolution of SIFIs but there is several issues remain for the future in regards to achieving orderly resolution that is both timely and smoothly. It is expected that the G20 countries will, under increasing scrutiny, harmonize their systems with the Key Attributes via the FSB's peer review process. Hong Kong is left with no choice but to adopt the international practice.

The Consultation Paper is the first stage of the consultation process. The current Consultation Paper sets out the principles and framework of the proposed Resolution Regime. Details and specific issues on the implementation and practical arrangements will be put forward in the second stage of the consultation.

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<sup>24</sup> Martin

## Appendix 1

### (a) Specific powers to restructure and/or wind up financial institutions

#### Banks

Sector-specific powers to restructure and/or wind up banks?	Main legal foundation	Specific powers that apply only to systemically important banks?	Do powers to restructure and/or wine up apply to:		
			Financial Holding Companies	Significant Non-regulated Entities in Groups	Branches of Foreign Banks
Y	Banking Ordinance	N	N	N	Y

#### Insurance

Sector-specific powers to restructure and/or wind up insurers?	Type of insurer covered	Main legal foundation	Specific powers that apply only to systemically important insurers?	Do powers to restructure and/or wine up apply to:		
				Financial Holding Companies	Significant Non-regulated Entities in Groups	Branches of Foreign insurers
Y	Authorized insurers	Insurance Companies Ordinance	N	N	N	Y

#### FMI

Sector-specific powers to restructure and/or wind up FMIs?	Type of insurer covered	Main legal foundation	Specific powers that apply only to systemically important insurers?	Do powers to restructure and/or wine up apply to:		
				Financial Holding Companies	Significant Non-regulated Entities in Groups	Branches of Foreign insurers
N	-	-	-	-	-	-

### (b) Safeguards

Is the resolution authority required to respect hierarchy of creditor claims?	Is it possible to depart from equal treatment of creditors of same class?	Is there compensation for creditors suffering greater loss in resolution than liquidation?	Is there statutory provision in the resolution regime for resolution decisions to be reversible in court?	Is financial compensation available as a remedy for a resolution decision?
Y	N	N	N	N



(c) Funding of institutions in resolution

<b>Funding arrangements for resolution</b>				<b>Is there a mechanism for public funds cost recovery?</b>
<b>Privately funded resolution fund</b>	<b>Publicly funded resolution fund</b>	<b>Privately funded protection fund</b>	<b>Are there restrictions on the use of protection funds to finance resolution?</b>	
N	N	N	N/A	N

(d) Legal Framework for Cross-border Cooperation

<b>Is there a requirement to consider the impact of resolution actions on financial stability in other jurisdictions?</b>	<b>Are there legal provisions or policies that mandate or strongly encourage cross-border cooperation of resolution authority?</b>	<b>Are there mechanisms through which resolution actions by a foreign authority can promptly be given legal effect?</b>	<b>Are there provisions that trigger automatic actions due to official intervention, resolution or insolvency proceedings in other jurisdictions?</b>	<b>Is there differential treatment of depositors, policy holders and other creditors by location of claim or jurisdiction in which claim is payable?</b>
N	Y	N	N	N