

# 《金融機構(處置機制)條例草案》 Financial Institutions (Resolution) Bill

## 《條例草案》概述 Overview of the Bill

Bills Committee  
立法會法案委員會

5 January 2016  
2016年1月5日

## 《條例草案》 The Bill

- ▶ 為實施金融穩定理事會的《主要元素》而制訂  
Designed to implement the Financial Stability Board's Key Attributes
- ▶ 委任保險業監督、金融管理專員和證券及期貨事務監察委員會為處置機制當局  
Appoints the IA, MA and SFC as resolution authorities (RA)
- ▶ 共有15部、239條及9個附表  
Contains 15 Parts, 239 Clauses and 9 Schedules
- ▶ 爭取於本立法年度內通過  
Seeking enactment by end of current legislative session

## 第1部 - 導言

### Part 1 – Preliminary provisions

- ▶ 導言  
Preliminary provisions
- ▶ 第2條：《條例草案》詞彙的釋義，包括處置機制的涵蓋範圍  
Clause 2: Definition of terms used in Bill, including setting scope of regime
- ▶ 第5條：受涵蓋金融機構何時屬不再可持續經營  
Clause 5: When a within scope FI ceases to be viable
- ▶ 第6條：賦予財政司司長剩餘權力，把原本不屬於涵蓋範圍的金融機構納入該範圍內  
Clause 6: Residual power of Financial Secretary (FS) to bring FIs (not initially covered) in scope
- ▶ 第7條：為跨界別集團指定主導處置機制當局  
Clause 7: Designation of lead resolution authority (LRA) for cross-sectoral group

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## 第2部 - 處置機制當局

### Part 2 – Resolution Authorities

- ▶ 第8條：處置目標  
Clause 8: Resolution objectives
- ▶ 第9條：主導處置機制當局的角色  
Clause 9: Role of LRA
- ▶ 第10條：委任“第10條實體”，以協助處置機制當局或主導處置機制當局執行職能  
Clause 10: Appointment of “section 10 entity” to assist RA or LRA in performing functions

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### 第3部 - 關乎處置的權力 (“籌備權力”) Part 3 – Powers related to resolution (“Preparatory powers”)

- ▶ 第1分部：籌備處置(“正常業務運作” 階段)  
**Division 1: Preparing for resolution (“Business-as-usual” stage)**
- ▶ 第12條：處置可行性評估  
Clause 12: Resolvability assessment
- ▶ 第13條：處置規劃  
Clause 13: Resolution planning
- ▶ 第14條：指示排除處置的障礙  
Clause 14: Directions to remove impediments to resolvability
- ▶ 第17條：要求處置可行性覆檢審裁處覆核根據第14條發出的指示  
Clause 17: Appeal to Resolvability Review Tribunal (RRT) regarding directions made under Clause 14
- ▶ 第19條：吸收虧損能力  
Clause 19: Loss-Absorbing Capacity

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### 第3部 - 關乎處置的權力 (“籌備權力”) (續) Part 3 – Powers related to resolution (“Preparatory powers”) (Cont’d)

- ▶ 第2分部：指示  
**Division 2: Directions**
- ▶ 第22條：在符合某些觸發條件的情況下，指示受涵蓋金融機構或關連人士，作出或不得作出指明的行動  
Clause 22: Direction to within scope FI or related person to take or refrain from taking specified actions when certain triggering conditions are met
- ▶ 第3分部：罷免董事  
**Division 3: Removal of directors**
- ▶ 第24條：在符合某些觸發條件的情況下，罷免受涵蓋金融機構或其控股公司的董事  
Clause 24: Removal of directors of within scope FI or its holding company when certain triggering conditions are met

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## 第4部 - 處置之前的階段 (啟動處置)

### Part 4 – Moving to resolution (Initiation)

- ▶ 第25條：啟動處置的三項關連條件  
Clause 25: Three conjunctive conditions for initiating resolution
- ▶ 第26條：考慮處置行動對其他集團實體以及對其他司法管轄區金融穩定的影響  
Clause 26: Consideration of impact of resolution on other group entities and financial stability in other jurisdictions
- ▶ 第27條：處置機制當局在啟動處置前，必須先諮詢財政司司長  
Clause 27: RA to consult FS as prerequisite
- ▶ 第28條：如從控權公司的層面着手更為有效，便可向控權公司採取處置行動  
Clause 28: Resolution at holding company level if more effective
- ▶ 第29條：在指明的情況下，處置相聯營運實體  
Clause 29: Resolution of Affiliated Operational Entity (AOE) in specific circumstances
- ▶ 第30條：在啟動處置前發出意向書  
Clause 30: Issue of letter of mindedness before initiation of resolution
- ▶ 第31條：強制縮減資本票據(適用於認可機構)  
Clause 31: Mandatory reduction of capital instruments (for authorized institutions)

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## 第5部 - 處置機制 Part 5 – Resolution

### ▶ 第1分部：穩定措施 Division 1: Stabilization options

- ▶ 第33條：五項穩定措施  
Clause 33: Five stabilization options
- ▶ 第75條：受保障安排(財經事務及庫務局局長有權訂立規例)  
Clause 75: Protected Arrangements (Rule-making power for Secretary for Financial Services and the Treasury (SFST))
- ▶ 第76至78條：認可(授權)/發牌規定延遲適用  
Clauses 76–78: Deferral of authorization / licensing requirements

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## 第5部 - 處置機制(續)

### Part 5 – Resolution (Cont'd)

▶ 第2分部：有權指示持續提供不可或缺的服務

Division 2: Power to direct continued performance of essential services

- ▶ 第79條：有權指示受涵蓋金融機構向受讓人提供不可或缺的服務

Clause 79: Power to direct provision of essential services by a within scope FI to a transferee

- ▶ 第81條：有權指示相聯營運實體繼續提供不可或缺的服務

Clause 81: Power to direct an AOE to continue provision of essential services

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## 第5部 - 處置機制(續)

### Part 5 – Resolution (Cont'd)

▶ 第3分部：暫停義務

Division 3: Suspension of obligations

- ▶ 第83條：暫停根據合約產生的付款或交付義務

Clause 83: Temporary suspension of obligations to make payment or delivery arising under a contract

▶ 第4分部：違責事件條文

Division 4: Default event provisions

- ▶ 第90條：暫時擱置提前終止權，以免出現大規模結清合約的情況，使關鍵金融服務或會因而不能持續運作

Clause 90: Imposition of temporary stay of early termination rights to prevent mass close-out of contracts which could jeopardize continuity of critical financial services

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## 第6部 - 補償 Part 6 – Compensation

- 第96條：委任獨立估值師  
Clause 96: Appointment of independent valuer
- 第98條：處置補償審裁處撤銷獨立估值師的委任  
Clause 98: Revocation of appointment of independent valuer by Resolution Compensation Tribunal (RCT)
  - ▶ 第102條：獲付補償的資格 (“任何債權人所得不會遜於清盤程序” 原則)  
Clause 102: Eligibility for compensation (“NCWOL” principle)
  - ▶ 第103條：獨立估值師所須評定的事宜  
Clause 103: Assessments by independent valuer
  - ▶ 第105條：有關估值 / 補償的規例 (賦予財經事務及庫務局局長訂立規例的權力)  
Clause 105: Regulations on valuation/compensation (Rule making power for SFST)
  - ▶ 第107條：向處置補償審裁處提出上訴，申請覆核獨立估值師的決定  
Clause 107: Appeal to RCT to review decision of independent valuer

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## 第7部 - 審裁處 Part 7 – Tribunals

- ▶ 第110條：設立處置可行性覆檢審裁處  
Clause 110: Establishes the RRT
- ▶ 第126條：設立處置補償審裁處  
Clause 126: Establishes the RCT
- ▶ 附表8及9：進一步訂明兩個審裁處的委任事宜及程序  
Schedules 8 and 9: Further specify appointments to, and procedures of, the two Tribunals

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## 第8部 - 退扣報酬

### Part 8 – Clawback of remuneration

- ▶ 第143條：向法庭提出申請，要求針對被處置金融機構的某高級人員(不論是否仍然在職)作出退扣令  
 Clause 143: Application to Court for clawback against officer (current or former) of FI in resolution
- ▶ 第144條：固定及浮動報酬都可受退扣令規限  
 Clause 144: Fixed and variable remuneration may be subject to clawback

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## 第9部 - 延遲遵守《證券及期貨條例》的某些披露規定

### Part 9 – Deferral of certain disclosure requirements (under SFO)

- ▶ 第148條：把上市法團須遵守披露內幕消息的規定的時間暫時延遲  
 Clause 148: Defer requirements for listed corporations to disclose inside information temporarily
- ▶ 第149條：把須遵守就披露指明的股份或債權證權益或股份淡倉的時間暫時延遲  
 Clause 149: Defer requirements to disclose specified interests in shares or debentures or short positions in shares temporarily
- ▶ 第150條：處置機制當局可指示認可交易所暫停或不暫停上市法團的證券交易  
 Clause 150: RA may direct recognized exchange company to suspend or not to suspend dealings of listed corporations' securities
- ▶ 第151條：因《證券及期貨條例》或其他規定而負有的某些義務會自動暫停  
 Clause 151: Automatic suspension of certain obligations arising under SFO or other requirements.

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## 第10部 - 搜集資料、查閱及調查的權力 Part 10 – Information gathering, inspection and investigation powers

- ▶ 第156條(搜集資料)：有權要求實體提供指明的資料或交出紀錄或文件  
Clause 156 (Information gathering): Power to require entities to provide specified information or produce records or documents
- ▶ 第158條(查閱)：有權進入業務處所，並查閱任何紀錄或文件  
Clause 158 (Inspection): Power of entry and inspection
- ▶ 第161條(調查)：調查員如有合理理由相信某人管有相關的資料、文件或紀錄，有權要求該人交出紀錄或文件或與其會面  
Clause 161 (Investigation): Powers for an investigator to require production of records or documents or attendance from persons that investigator has reasonable cause to believe to be in possession of relevant information, records or document

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## 第11部 - 保密規定 Part 11 – Confidentiality requirements

- ▶ 第171至173條：施加保密規定，並訂明合法披露資料的具體情況  
Clauses 171–173: Impose confidentiality requirements and provide specific disclosure gateways

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## 第12部 - 為處置提供資金的安排

### Part 12 - Resolution Funding Arrangements

- ▶ 第175條：處置機制當局或財政司司長向金融機構(或其控權公司)追討費用  
Clause 175: Recovery of costs by RA or FS from FI (or its holding company) in resolution
- ▶ 第176條：處置資金的運用及處置機制當局在運用處置資金前須顧及的事宜(包括被處置金融機構的資源)  
Clause 176: Use of resolution funding and matters to which RA must have regard before using resolution funds (including resources of FI in resolution)
- ▶ 第178條：可被徵收處置徵費的實體  
Clause 178: Entities on which resolution levy may be imposed
- ▶ 第179條：關乎徵費事宜的規例(賦予財政司司長訂立規例的權力)  
Clause 179: Regulations relating to imposition of levy (Rule-making power for FS)
- ▶ 第180條：立法會可訂明徵費率  
Clause 180: Legislative Council to prescribe rate of levy

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## 第13部 - 跨境處置行動

### Part 13 - Cross-border resolution actions

- ▶ 第185條：“確認”另一司法管轄區所採取的處置行動  
Clause 185: “Recognition” of resolution action taken in another jurisdiction
- ▶ 第186條：確認的效力  
Clause 186: Effect of recognition
- ▶ 第189條：“支援”另一司法管轄區所採取的處置行動(但該處置行動須與本地的處置目標相符，而在本地啟動處置的條件也已符合)  
Clause 189: “Support” of resolution action of another jurisdiction (provided that it would be consistent with the local resolution objectives and local conditions being met)

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## 第14部 - 雜項條文

### Part 14 – Miscellaneous provisions

- ▶ 第190條：向處置機制當局發出通知，以及訂明(為期最長七天)暫時不得提出清盤呈請的限制  
 Clause 190: Notification to RA and temporary restriction on presenting winding up petition (for seven days maximum)
- ▶ 第194條：就處置機制當局職能的執行事宜發出的《實務守則》  
 Clause 194: Issuance of code of practice about performance of RA functions
- ▶ 第197條：豁免民事法律責任  
 Clause 197: Immunity from civil liability
- ▶ 第201條：財政司司長可訂立規例，修訂附表1及附表5  
 Clause 201: FS may make regulations to amend Schedules 1 and 5

- 完 -  
 - Ends -

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Q&A

問答

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