

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

適用於香港金融機構的  
有效處置機制  
An effective resolution regime for financial  
institutions in Hong Kong

Bills Committee  
立法會法案委員會  
5 January 2016  
2016年1月5日

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金融危機的教訓  
Lessons from the financial crisis

- 自二零零七年以來，歐盟國家和美國面對嚴重的金融危機，一如亞洲在九十年代那樣  
EU countries, US faced severe financial crises from 2007 onward, as Asia had in prior decade
- 各國須採取前所未有的果斷行動，挽救金融機構：  
Swift and unprecedented response required to bail out financial institutions (FIs):
  - 英國政府注資1,330億英鎊挽救陷入財困的銀行，其中要者如北岩銀行、萊斯銀行和蘇格蘭皇家銀行  
The UK Government committed a cash outlay of GBP 133bn to bail out troubled banks, notably Northern Rock, Lloyds and RBS
  - 美國政府則推行問題資產救助計劃，從中撥款約4,000億美元，向美國國際集團、摩根大通和花旗集團等金融機構注資  
In the US approximately USD 400bn of state funds disbursed under the Troubled Asset Relief Program, including capital injections in AIG, JPMorgan and Citigroup

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## 金融危機的教訓

### Lessons from the financial crisis

- 各國不得不採取這些由納稅人資助的挽救行動，原因如下：  
These taxpayer funded bail-outs were necessary because:
  - 很多金融機構規模太大，相互之間關係密切，一旦倒閉，便會對金融體系、經濟以至整體社會的穩定構成重大風險  
Many FIs were so large and interconnected that their failure posed significant risks to the stability of the financial system, the economy and society more broadly
  - 其他金融機構也會直接地(即承擔實際風險)及間接地(即信心問題)受連鎖風險影響  
Contagion risks posed to other FIs via direct (i.e. actual exposures) and indirect (i.e. confidence) channels
  - 現行的清盤制度並非以確保持續執行關鍵金融功能為目的  
Existing insolvency regimes not designed to ensure continued operation of critical functions
  - 缺乏跨境協調和合作的安排  
Inadequate provision for cross-border coordination and cooperation

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## 國際標準應運而生

### International standards emerge

- 二十國集團領導人因應金融危機，要求金融穩定理事會謀求對策，以應付金融機構“大到不能倒”的現象  
In response to crisis, G-20 leaders mandated the Financial Stability Board (FSB) to address the 'Too Big to Fail' (TBTF) phenomenon
- 金融穩定理事會的成員地區都承諾設立有效的處置機制：  
FSB member jurisdictions committed to establish effective resolution regimes:
  - 提供穩健的替代方案，以安全的方式處置金融機構，使其得以持續執行關鍵金融功能，並保障公帑  
Robust alternatives under which FIs can be safely resolved protecting continuity of critical financial functions and public funds
  - 金融穩定理事會所制訂的處置標準：《有效的金融機構處置機制主要元素》(《主要元素》)  
FSB sets standards for resolution under “Key Attributes of Effective Resolution Regimes for Financial Institutions” (Key Attributes)

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## 國際標準應運而生 International standards emerge

- 《主要元素》規定：  
Key Attributes require:
  - 主管當局有權在無須徵得受影響各方同意的情況下介入，以穩定瀕臨倒閉的金融機構或其業務的主要部分，從而確保關鍵金融功能的持續性  
Authorities to have powers to intervene and stabilise failing FIs, or key parts of their business, to secure continuity of critical financial functions without consent of affected parties
  - 金融機構倒閉所涉及的處置成本應由金融機構及其股東和債權人承擔，而非由納稅人支付  
Costs of resolution to be borne by FI and its shareholders and creditors, not taxpayers
  - 推行改革(減低金融機構倒閉所帶來的影響)，以配合為減低金融機構倒閉的可能性而設的改革措施(例如《巴塞爾協定三》)  
Reforms (reducing impact of failure) complementary to those designed to reduce the probability of failure (e.g. Basel III)

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## 實施安排 Implementation

- 金融穩定理事會期望成員地區(包括香港)實施《主要元素》  
FSB expects member jurisdictions, including Hong Kong, to implement the Key Attributes
- 結束“大到不能倒”的現象：  
Put an end to TBTF:
  - 改變公眾認為政府會力保具系統重要性金融機構的看法.....  
Remove perception of Government guarantee of systemic FIs...
  - .....不再不公平地補貼金融機構，以免助長罔顧後果的行為和引起道德風險  
...and therefore unfair subsidy that rewards reckless behaviour and creates moral hazard
- 推行改革的過程進展良好，尤以最受這次金融危機影響的地區為然  
Progress in securing reforms well underway, particularly in jurisdictions most affected by the crisis

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## 實施安排

### Implementation

- 根據香港的自我評估和金融穩定理事會的同業專題評審，本港現行的監管和監察機制與《主要元素》的要求存在落差  
Self-assessments and thematic peer review by FSB revealed gaps in existing regulatory and supervisory toolkits in Hong Kong against Key Attributes
- 有必要立法改革，以提高香港金融體系抵禦衝擊的能力.....  
Legislative reform required to enhance the resilience of the financial system in Hong Kong...
- .....並提升香港的國際金融中心地位  
... and enhance Hong Kong's status as an international financial centre (IFC)
  - 在金融穩定理事會列為具全球系統重要性的30家銀行中，29家在港設有業務；另在金融穩定理事會列為具全球系統重要性的9家保險人中，8家在港設有業務  
Hong Kong is host to 29 of 30 banks and 8 of 9 insurers determined by FSB to be globally systemic
- 《條例草案》旨在使香港可以實施《主要元素》  
The Bill is designed to implement the Key Attributes in Hong Kong

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## 處置機制的涵蓋範圍

### Scope of the regime

- 機制旨在把一旦倒閉便可能會對金融體系造成重大或關鍵影響的金融機構納入涵蓋範圍  
Designed to cover those FIs that could be systemically significant or critical on failure
- 涵蓋所有認可機構、某些金融市場基建、某些持牌法團和某些獲授權保險人，也可能涵蓋認可交易所  
Includes all authorized institutions, certain financial market infrastructure, certain licensed corporations, certain authorized insurers and, potentially, recognized exchange companies
- 把受涵蓋金融機構的控權公司和相聯營運實體一併涵蓋在內  
Holding companies and affiliated operational entities of within scope FIs
- 訂有指定權，日後可把其他被辨定為具系統重要性的金融機構納入涵蓋範圍  
Designation power for other FIs identified in future as systemically important

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## 處置機制當局和處置目標

### Resolution authority and objectives

- 處置機制當局  
Resolution authority (RA)
  - 金融管理專員、證券及期貨事務監察委員會和保險業監督，分別負責歸其監管的受涵蓋金融機構  
Each of the MA, SFC and IA for within scope FIs within their respective purviews
  - 主導處置機制當局負責協調跨界別集團的處置工作  
Lead resolution authority to co-ordinate resolution of cross-sectoral groups
- 處置目標  
Objectives
  - 維持金融穩定(包括持續執行關鍵金融功能)  
Maintenance of financial stability (including continued performance of critical financial functions)
  - 保障存款、保險單和客戶資產，保障程度不低於假若有關機構清盤，該等存款、保險單和客戶資產會受保障的程度  
Protection of deposits, insurance policies and client assets to no less an extent than on a winding-up
  - 力求控制處置成本，從而保障公帑  
Seek to contain the costs of resolution and, in so doing, protect public money

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## 啟動處置的條件

### Conditions for initiating resolution

- 以下關連條件就啟動處置行動訂下高門檻：  
Conjunctive conditions for initiating resolution set high threshold for action:
  - 條件1：有關金融機構不再可持續經營，或相當可能不再可持續經營  
Condition 1: FI has ceased, or is likely to cease, to be viable
  - 條件2：無合理機會出現屬私營範疇的任何行動，會令有關金融機構恢復可持續經營的情況  
Condition 2: No reasonable prospect that private sector action would result in recovery
  - 條件3：有關金融機構不可持續經營，對香港金融體系的穩定及有效運作構成風險，而實行處置會避免或減低該等風險  
Condition 3: Non-viability of FI poses risks to the stability and effective working of financial system in Hong Kong and resolution will avoid or mitigate those risks
- 須諮詢財政司司長  
Requirement for consultation with Financial Secretary
- 處置機制當局可考慮處置行動對其他集團實體的影響，以及對其他司法管轄區金融穩定造成的衝擊  
RA may consider impact of resolution on other group entities and financial stability in other jurisdictions

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## 籌備權力

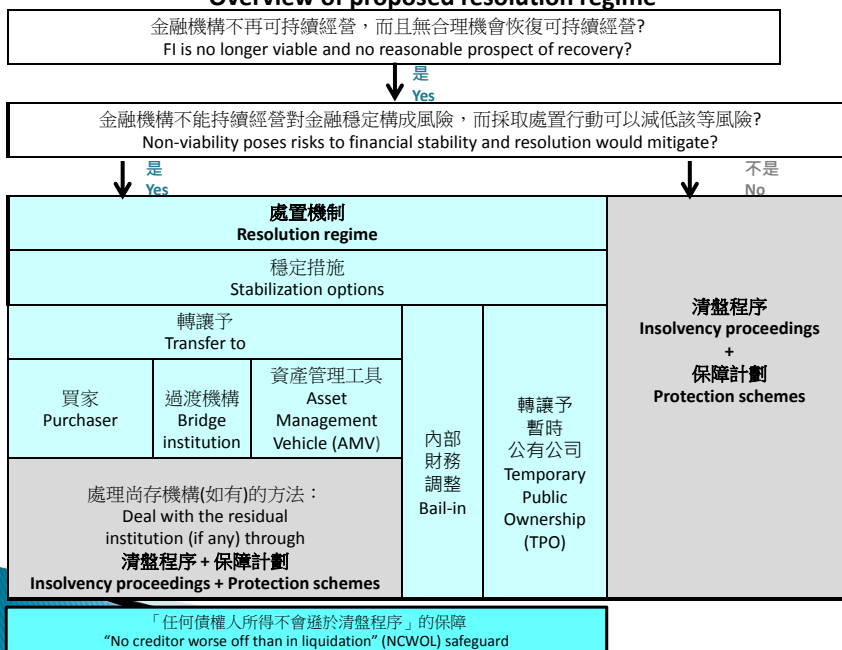
### Preparatory powers

- 如有必要，可在“正常業務運作”的環境下行使權力，為應付金融機構倒閉做好準備，以及提升處置機制當局的執行能力  
'Business as usual' powers to plan for action in event of failure and enhance RA's ability to act, if necessary
- 處置規劃：  
Resolution planning:
  - 按相稱原則搜集和分析資料，以支援處置機制當局制訂處置策略及計劃  
Proportionate gathering of information and analysis to support RA in developing resolution strategies and plans
- 處置可行性評估：  
Resolvability assessment:
  - 用以識別因金融機構的架構、作業手法等因素而對處置策略及計劃造成的障礙  
Framework for identification of impediments to those strategies and plans due to FI's structure, practices etc.
- 排除障礙：  
Removal of impediments:
  - 在不抵觸某些保障措施的情況下，於事前指示有關金融機構排除該等障礙  
Direct, ex ante, the removal of such impediments subject to certain safeguards

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### 擬議處置機制概覽

#### Overview of proposed resolution regime



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## 穩定措施

### Stabilization options

- 處置機制當局選擇並實施適當的穩定措施  
Appropriate stabilization option(s) selected and implemented by RA
- 以預先規劃為依據，包括制訂處置策略和在事前排除障礙  
Informed by advance planning, including development of resolution strategy and ex ante removal of impediments
- 不論實施哪一項穩定措施，關鍵金融功能都得以持續  
Under each option, critical financial functions would be continued
- 賦予處置機制當局有效執行穩定措施所需的“一般權力”  
Range of ‘general powers’ needed to support the effective exercise of the option(s)

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## 穩定措施

### Stabilization options

- 措施一：轉讓予商業買家  
Option 1: transfer to commercial purchaser
  - 強制把有關金融機構的股份或若干資產和債務轉讓予財政穩健的商業買家  
Shares or certain assets and liabilities compulsorily transferred to financially sound commercial purchaser
  - 視為較可取的措施，但未必適用於所有情況  
Preferred option but may not be possible in all circumstances
- 措施二：轉讓予過渡機構  
Option 2: transfer to a bridge institution
  - 強制把有關金融機構的股份或若干資產和債務轉讓予由政府擁有的過渡機構  
Shares or certain assets and liabilities compulsorily transferred to a bridge institution owned by Government
  - 短期措施，確保在把有關轉售至私營範疇前，關鍵金融功能不會中斷  
Short-term solution to preserve continuity of critical financial functions ahead of return to private sector

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## 穩定措施

### Stabilization options

- 措施三：內部財務調整  
Option 3: bail-in
  - 股東及某些債權人所持股份或債權需強制撇帳 / 轉換成股本（包括其他形式或類別），以吸收虧損和重組有關金融機構的資本  
Shareholders and certain creditors subject to compulsory write-off/conversion to equities (including those belong to another form or class) to absorb losses and recapitalise FI
  - 若干負債(例如受保障存款)獲豁免在內部財務調整的範圍之外  
Certain liabilities, such as protected deposits, are excluded from bail-in
- 措施四：轉讓予資產管理工具  
Option 4: transfer to an AMV
  - 強制把有關金融機構的若干資產和負債轉讓予由政府擁有的資產管理工具  
Certain assets and liabilities compulsorily transferred to an AMV owned by Government
  - 資產即時變現可能會對金融市場構成負面影響，此舉的目的就是在這種情況下先持有有關機構的資產，再有秩序地加以處置  
Intent is to hold assets, for orderly disposal, where circumstances are such that immediate liquidation could adversely affect financial markets

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## 穩定措施

### Stabilization options

- 措施五：暫時公有化  
Option 5: TPO
  - 最後一着是強制把有關金融機構的股份轉讓予由政府擁有  
As a last resort, shares of the FI could be compulsorily transferred to Government ownership
  - 《主要元素》並無強制要求，不過，如設定這項措施的話，便須設立向整個業界追討相關費用的機制  
Not mandated by Key Attributes, but if available must have mechanism to recover costs from wider industry

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## 保障措施 Safeguards

- 為受處置行動影響者設立充足的保障措施  
Significant safeguards for those affected by resolution action
- 「任何債權人所得不會遜於清盤程序」：  
NCWOL:
  - 股東和債權人在處置中所得待遇，如遜於在清盤中會所得的待遇，便有權獲得補償  
Shareholders and creditors entitled to compensation should they receive less favourable treatment in resolution than they would have received in liquidation
- 受保障安排：  
Protected arrangements:
  - 規定須保障某些金融安排(包括抵銷安排和淨額結算安排)的經濟效益  
Requirements to safeguard economic effect of certain financial arrangements, including set-off and netting

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## 保障措施 Safeguards

- 上訴機制：  
Appeal mechanisms:
  - 設有特定上訴機制，可就與處置有關的某些關鍵決定提出上訴  
Provision of specific appeal mechanisms to challenge certain key decisions related to resolution
  - 提出司法覆核的權利不受影響  
Right to seek judicial review unaffected
- 豁免民事法律責任：  
Protection from civil liability:
  - 執行或協助他人執行《條例草案》所訂職能的人士，以及按處置機制當局的指示行事的董事 / 高級人員，均可獲豁免民事法律責任  
Persons performing, or assisting in performing, functions under the Bill and directors/officers acting under direction from RA receive protection from civil liability

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## 跨境合作

### Cross-border cooperation

- 立法建議容許處置機制當局與境外有關當局合作  
Proposed legislation allows RA to cooperate with relevant foreign authorities
- 我們明白，對總公司所在地及業務所在地而言，以協調及合作方式執行處置行動，成效更佳  
Recognises that coordinated and cooperative approaches should deliver better outcomes for both home and host jurisdictions
- 在某些情況下，如相關司法管轄區的處置機制當局協調行動，本港便可能無須執行穩定措施  
Exercise of stabilization option locally could be avoided in some cases through coordinated action among resolution authorities in relevant jurisdictions
- 處置規劃將會決定哪個策略較可取  
Resolution planning will determine the preferred strategy
- 在某些情況下，處置機制當局仍可獨立地採取處置行動  
RA retains flexibility to act independently in certain circumstances

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## 為處置提供資金

### Funding resolution

- 目標在於減低因具系統重要性金融機構倒閉而要動用公帑的風險  
Objective is to reduce risks posed to public funds by failure of systemically important FIs
- 處置成本由有關金融機構的股東和債權人承擔  
Costs of resolution to fall on shareholders and creditors of the FI
- 恢復市場紀律，減低金融機構日後倒閉的風險  
Restores market discipline, making future failures less likely
- 假若處置成本超出可加於有關金融機構股東和債權人的水平，可向金融業的部分界別徵費  
In the event costs of resolution exceed those that can be imposed on shareholders and creditors of the FI, levy can be imposed on parts of financial sector

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## 總結

### Conclusions

- 有必要設立處置機制，以確保關鍵金融功能的持續性，並處理“大到不能倒”的現象  
Resolution regime needed to preserve continuity of critical financial functions and address the TBTF phenomenon
- 在採納相關國際標準一事上，香港如落後於其他主要司法管轄區，會削弱本港的國際金融中心地位  
Falling behind other major jurisdictions in adopting international standards could impair Hong Kong's status as an IFC
- 假如本地處置機制無法為跨境處置行動提供可靠支援，香港將面臨海外金融機構可能遷移或縮減在港業務規模的風險  
Risk that foreign FIs may relocate from, or reduce their presence in, HK if local regime cannot reliably support cross-border resolution

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⇒ Presentation on Overview of the Bill

⇒ 《條例草案》概述簡報

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