

**Consumer Council's Views on
Financial Institutions (Resolution) Bill**

12 January 2016

1. The Consumer Council (the Council) is pleased to submit its views to the Legislative Council Bills Committee regarding the legislative proposals of establishing a resolution regime (the regime) for financial institutions (FIs) in Hong Kong.

Scope of the Regime

2. The Council notes that the Bill will provide the Financial Secretary (FS) with a designation power to subsequently bring FIs, both regulated and unregulated, that are not initially covered by the regime within scope if, in future, it should become apparent that systemic disruption could result from their being non-viable.

3. As stated in its previous submissions¹, the Council is of the view that, any FI – be it a bank or non-bank, a securities or investment firm, an insurance company, or a holding company – whether or not it is now subject to any regulatory oversight should be covered by the proposed regime if its failure poses systemic risk in Hong Kong. The Council therefore welcomes and supports the current proposal.

4. The Council also suggests that to enhance public confidence of the regime, the scope of the regime should be monitored and reviewed on a regular and ongoing basis, with clear and prompt disclosure to the public of any change in the scope.

Resolution Objectives

5. The Council is pleased to note in the current legislative proposals, the stated objectives of the regime have included the protection of depositors or insurance policy holders of a within scope FI and client assets to no less an extent that they would be protected on a winding up of the FI. Moreover, the Council considers the objective of containing the costs of resolution and protection of public money vital so as for securing a least-cost resolution.

Resolution Authority (RA)

6. The Council proposed previously a single resolution regime with the Financial Services and the Treasury Bureau to take the lead to avoid the inefficiencies that could arise in the attempts to seek a resolution of cross-sectoral groups and competing claims by coordinating the resolution process under a common plan.

7. The Council understands that under the current Bill, the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance

¹ The Consumer Council, "Submission on Proposals for a Resolution Regime for Financial Institutions in Hong Kong", April 2014, and "Submission on the Second Consultation Paper for an Effective Resolution Regime for Financial Institutions in Hong Kong", April 2015.

Authority will be designated as the RA for 'within scope FIs' operating under their respective purviews. The Council also notes that where an FI is part of a cross-sector group, a Lead Resolution Authority (LRA) will be designated by the Financial Secretary (FS) in advance based on an assessment of the relative systemic importance. The Council accepts the current proposal but reiterates the importance of efficiency and consistency in securing the resolution objectives.

Safeguards

8. The Council supports that a compensation mechanism be provided to safeguard pre-resolution creditors and pre-resolution shareholders to receive payment of compensation should their valued outcome in resolution is worse than would have been the case had the FI otherwise entered into winding-up proceedings.

9. The Council also appreciates the provision of dedicated avenues of appeal to shareholders, creditors and FIs, through the establishment of the Resolution Compensation Tribunal and the Resolvability Review Tribunal.

Funding

10. Regarding the resolution funding arrangements, the Council supports that any call for public fund should be on a temporary basis and any resolution costs should be included in the resolution package to be considered by the RA or the LRA.

Cross-border Recognition

11. As noted in the current proposal, a statutory recognition framework will be provided in the Bill enabling an RA, after consultation with the FS, to recognize all or part of a foreign resolution action so that it would have legal effect in Hong Kong. Whilst it is important to strengthen international resolution processes, the Council supports that the RA must not make a recognition instrument if it is of the opinion that the recognition would disadvantage Hong Kong creditors or Hong Kong shareholders relative to their counterparts elsewhere.

Consumer Council