



## **The Hong Kong Federation of Insurers' Comments on The Financial Institutions (Resolution) Bill**

The Hong Kong Federation of Insurers (HKFI) currently represents 88 general insurance companies and 45 life insurance companies in Hong Kong. Together they contribute more than 90% of the gross premiums written in the Hong Kong market.

There is already an elaborate protection and regulatory system in place to oversee insurers' solvency in Hong Kong. This includes company management oversight by fit and proper persons, independent company audit, the Appointed Actuary system, oversight and guidelines of the Office of the Commissioner of Insurance (OCI), solvency capital requirements of the OCI, additional capital margins above those minimum capital requirements, policyholders protection fund (proposed), and finally company liquidation procedures (and the priority given to policyholders in that process).

We agree that appropriate resolution of Financial Institutions (FIs) would better protect the interests of policyholders. Having said that, we would also reiterate that insurance is evidently different from banking and other FIs; we cover this in more detail later in the submission. Due care should be taken to ensure insurance companies and our industry would not be inadvertently affected by this well-intentioned Bill.

The HKFI would like to share our observations/views as follows:

### General

- ♦ We are pleased to note that the Bill has clearly defined the resolution objectives, which promotes, and seeks to maintain, the stability and effective working of the financial system of Hong Kong (s.8).
- ♦ It echoes with our first and utmost concern, i.e., the new regime should not damage the competitiveness and continued development of Hong Kong as a regional finance hub. On the contrary, the Bills should seek opportunities to enhance Hong Kong's competitiveness in the financial arena.

### Scope

- ♦ We maintain that insurance is different from banking and other financial institutions in particular in relation to interconnectedness and contagion. This lower systemic risk needs to be recognised by having a different level of supervision for insurers which is commensurate with the risk insurers pose of the financial system. We have yet to see adequate explanation and evidence of how a pure insurance company (with no banking activities) could endanger the whole financial system of a country.

- ♦ We are disappointed to learn that the remit of the regime does not only extend to the relevant financial institutions but also their holding companies (s.28). We strongly believe that the independent nature of limited companies should be respected as a cornerstone of Hong Kong's business environment.

### Governance

- ♦ The resolution powers are generally appropriate with sufficiently wide and flexible options and appropriate checks and balances. Nevertheless the power of the Financial Secretary (FS) in including FIs in the regime should be exercised with due care in order not to interfere with the free market (s.6).
- ♦ Even though the exercise of such power of designation is subject to prior consultation with the Resolution Authority (RA), the FI of concern will only be given a written notice when the RA is minded to initiate the resolution (s.30(2)(a)) and may not have sufficient time to reasonably adjust its business operation in view of the resolution. Such far-fetching powers of FS should be avoided for want of clarity and fairness to the potential FI of concern. We therefore believe that it is essential that companies facing such designation should be informed in advance – not least because it allows them to appeal or adjust their business model to the satisfaction of the FS. This process would enable issues (which would otherwise have caused resolution procedures to be instigated) to be successfully navigated by that FI.
- ♦ Designating our regulator, i.e. the Insurance Authority or the newly established Independent Insurance Authority, to decide the factors for considering local systemic importance is suitable and sensible.
- ♦ We are pleased to note that Financial Institutions would be given the right to appeal against an RA's decision, though only in limited circumstances, through the Resolvability Review Tribunal (s.109 - 124) and Resolution Compensation Tribunal (s.125 – 141). Schedules 8 and 9 provide details of the formation of these Tribunals. We opined that the ordinary/panel members of the Tribunal panel should include representative(s) from the related industry/people who have profound knowledge on the related industry to provide a more balanced view.
- ♦ We would like to contribute to the drafting of the Code of practice (s.194) and related guidelines/guidance notes. As such, we would expect to be consulted when such documents are drafted in the future.

### Resolution Powers

- ♦ Out of the five stabilization options (s.33), we disagree with both forced acquisition and overriding existing contractual terms (ss.33(2)(a) transfer to a purchaser). We believe that temporary public ownership (ss.33(2)(e) transfer to a TPO company) and bridging and voluntary transfer of impaired FIs to non-impaired FIs (ss.33(2)(b) transfer to a bridge institution) is sufficient protection for Hong Kong.

- ♦ We note that under Part 8 - Clawback of Remuneration, after initiating the resolution of a FI, the RA may apply to court for a clawback order against an officer of that institution. The order may apply to fixed or variable remuneration received by that officer in the past 3 years before the start of the resolution or even longer. We found that the clawback being applied to the fixed remuneration too draconian as it could severely affect the livelihood of the person concerned. We suggest narrowing down the application of clawback to the variable component and in intentional or reckless situations only.
- ♦ Part 13 recognizes Foreign Resolution Actions. We believe that such recognition should be industry-specific than generic. That is to say, in the context of insurers, foreign resolution measures for cross border recognition should be limited to the treatment of the insurance corporate and the provision should make explicit that it does not apply at the insurance fund level.
- ♦ S14(2) confers power for RA to direct removal of impediments which resemble powers to trigger organizational restructuring. We strongly believe that the RA should not have the power to override existing contracts as this damage the standing of Hong Kong as a jurisdiction where such contracts are respected. Given that insurance company is highly industry-specific and should retain utmost flexibility within the existing laws and regulations to decide how best to structure their operations. Such power of direction exercised by the RA should therefore be confined to be exercisable in extreme circumstances with utmost transparency. Such powers should be within the existing laws and regulations of the ICO and the OCI/IIA. In addition, before such power of triggering organizational restructuring is exercised, the FI of concern should be given an opportunity to make representations with RA's commitment to duly consider the same. This should be clearly stated in the Bill or any subsidiary legislation/code of practice to be issued in the future.

### Funding

- ♦ We are of the view that it is not fair to call on viable within scope insurers to pay for the resolution costs of a non-viable peer. As such, we do not support the currently proposed Resolution Funding Arrangements (s.178) which is a post event levy model and could introduce more systemic risk, not less. In any case, funding levies should never compromise the competitiveness of Hong Kong as a financial hub. Finally, we already have the proposed Policyholders Protection Fund to deal with losses of customers.
- ♦ We support the regulations (s.179) which stipulates the Financial Secretary to consult the sector likely to be affected by the levy before making a levy decision and the final rate of levy to be prescribed by the Legislative Council (s.180).