

Bills Committee on Financial Institutions (Resolution) Bill**Response to Matters Raised by Members at the Meeting
on 15 February 2016**

This paper sets out the Government's response to the matters raised by Members in relation to the Financial Institutions (Resolution) Bill (the Bill) at the meeting on 15 February 2016.

Within scope financial institutions

The Administration is requested to provide the following supplementary information:

- (a) a list of global systemically important banks (G-SIBs);
- (b) a list of global systemically important insurers (G-SIIs);
- (c) a list of non-bank non-insurer global systemically important financial institutions (NBNI G-SIFIs); and
- (d) a list of financial market infrastructures (FMIs).

2. In November 2011, the Financial Stability Board (FSB) published an integrated set of policy measures to address the systemic and moral hazard risks associated with systemically important financial institutions (SIFIs) (2011 Report).¹ SIFIs are financial institutions whose distress or disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity. Global SIFIs (G-SIFIs) are SIFIs posing such risks on a global scale.

3. To date, assessment methodologies and policies have been developed for two types of G-SIFI, namely G-SIBs and G-SIIs:

- (a) The FSB identifies and designates G-SIBs using a methodology developed by the Basel Committee on Banking Supervision (BCBS). The 2015 list of G-SIBs was updated using end-2014 data and the updated assessment methodology published by the

¹ FSB, Policy Measures to Address Systemically Important Financial Institutions, <http://www.fsb.org/wp-content/uploads/Policy-Measures-to-Address-Systemically-Important-Financial-Institutions.pdf>

BCBS in July 2013². FSB indicated in the 2011 Report that the group of G-SIBs would be updated annually based on new data and published by the FSB each November.

- (b) The FSB identifies and designates G-SIBs based on the initial assessment methodology³ developed by the International Association of Insurance Supervisors (IAIS). The 2015 list of G-SIBs was updated using end-2014 data. The group of G-SIBs would be updated annually based on new data and published by the FSB each November.

G-SIBs

4. The 30 G-SIBs designated by the FSB in its November 2015 publication “2015 update of list of global systemically important banks”⁴ are listed in alphabetical order below:

- (a) Agricultural Bank of China
- (b) Bank of America
- (c) Bank of China
- (d) Bank of New York Mellon
- (e) Barclays
- (f) BNP Paribas
- (g) China Construction Bank
- (h) Citigroup
- (i) Credit Suisse
- (j) Deutsche Bank
- (k) Goldman Sachs
- (l) Groupe BPCE
- (m) Groupe Cr dit Agricole
- (n) HSBC
- (o) Industrial and Commercial Bank of China Limited
- (p) ING Bank
- (q) JP Morgan Chase
- (r) Mitsubishi UFJ FG
- (s) Mizuho FG

² BCBS, Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement, July 2013, <http://www.bis.org/publ/bcbs255.pdf>

³ IAIS, Global Systemically Important Insurers: Initial Assessment Methodology, July 2013, <http://iaisweb.org/index.cfm?event=openFile&nodeId=34257>

⁴ <http://www.fsb.org/wp-content/uploads/2015-update-of-list-of-global-systemically-important-banks-G-SIBs.pdf>

- (t) Morgan Stanley
- (u) Nordea
- (v) Royal Bank of Scotland
- (w) Santander
- (x) Société Générale
- (y) Standard Chartered
- (z) State Street
- (aa) Sumitomo Mitsui FG
- (bb) UBS
- (cc) Unicredit Group
- (dd) Wells Fargo

29 of the 30 G-SIBs have operations in Hong Kong while Nordea has no presence in Hong Kong.

G-SIIs

5. The nine G-SIIs designated by the FSB in its November 2015 publication “2015 update of list of global systemically important insurers”⁵ are listed in alphabetical order below:

- (a) Aegon N.V.
- (b) Allianz SE
- (c) American International Group, Inc.
- (d) Aviva plc
- (e) Axa S.A.
- (f) MetLife, Inc.
- (g) Ping An Insurance (Group) Company of China, Ltd.
- (h) Prudential Financial, Inc.
- (i) Prudential plc

Eight of the nine G-SIIs have insurance business in Hong Kong (via local branches and/or subsidiaries) while Prudential Financial, Inc. has no presence in Hong Kong.

NBNI G-SIFIs

6. Since November 2011, the FSB, jointly with the International Organization of Securities Commissions (IOSCO), has been developing the assessment methodologies for identifying NBNI G-SIFIs. The second consultative document “Assessment Methodologies for

⁵ <http://www.fsb.org/wp-content/uploads/FSB-communication-G-SIIs-Final-version.pdf>

Identifying NBNI G-SIFIs”⁶ was published on 4 March 2015. While the consultative document proposed specific methodologies to determine entities that should be assessed as to the systemic implications of their distress or disorderly failure, it did not propose any specific entities for designation, nor any policy measures that would apply to any NBNI G-SIFIs.

7. In July 2015, the FSB announced that it would wait to finalise the assessment methodologies for NBNI G-SIFIs pending the completion of the current FSB work on financial stability risks from asset management activities. The FSB planned to develop relevant policy recommendations as necessary by spring 2016. The FSB will then, jointly with IOSCO, conduct further analysis and finalise the NBNI G-SIFI asset management assessment methodology.

FMIs

8. In the Bill, the scope of the proposed resolution regime is established through the term “within scope financial institution”, which means a “banking sector entity”, a “securities and futures sector entity”, or an “insurance sector entity”. The definitions of “banking sector entity” and “securities sector entity” bring certain FMIs within scope:

- (a) “Banking sector entity” includes, inter alia, a settlement institution / system operator of a clearing and settlement system designated under the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) (PSSVFO) (excluding a settlement institution / system operator that is wholly owned and operated by the Government); and
- (b) “Securities and futures sector entity” includes, inter alia, a recognized clearing house, as defined by section 37(1) of the Securities and Futures Ordinance (SFO) (Cap. 571).

9. In other words, the scope of the proposed resolution regime extends to all clearing and settlement systems which are designated to be overseen by the Monetary Authority under the PSSVFO (other than those that are wholly owned and operated by the Government) and those FMIs that are recognised as clearing houses under the SFO.

10. Currently, the following clearing and settlement systems are

⁶ <http://www.fsb.org/wp-content/uploads/2nd-Con-Doc-on-NBNI-G-SIFI-methodologies.pdf>

designated under the PSSVFO:

- (a) Hong Kong Dollar Clearing House Automated Transfer System (Hong Kong dollar CHATS);
- (b) Central Moneymarkets Unit (CMU);
- (c) US Dollar Clearing House Automated Transfer System (US dollar CHATS);
- (d) Euro Clearing House Automated Transfer System (Euro CHATS);
- (e) Renminbi Clearing House Automated Transfer System (Renminbi CHATS); and
- (f) Continuous Linked Settlement System (CLS).

11. Other than the Hong Kong dollar CHATS and the CMU which are wholly owned and operated by the Government, (c) to (f) above are within the scope of the proposed resolution regime.

12. At present, there are four clearing houses that are recognized under the SFO and therefore under the scope of the proposed resolution regime:

- (a) Hong Kong Securities Clearing Company Ltd. (HKSCC);
- (b) HKFE Clearing Corporation Ltd. (HKCC);
- (c) The SEHK Options Clearing House Ltd. (SEOCH); and
- (d) OTC Clearing Hong Kong Limited (OTC Clear).

General power of resolution authority

Clause 11 of the Bill confers a general power on a resolution authority to do anything that is necessary for it to do in the performance of its functions under the Ordinance. Some members are concerned that the clause would provide wide power to a resolution authority. The Administration is requested to provide information on similar provisions adopted by overseas jurisdictions in their resolution regimes, and similar provisions in other local legislation.

13. It is worth noting that as a matter of statutory interpretation, the general power under Clause 11 will only be exercised by the resolution authority within the boundaries of the performance of the functions under the Bill.

14. Clause 11 under the Bill draws on existing drafting practice in

Hong Kong legislation, in which recent examples of such “general powers” can be found in the Insurance Companies Ordinance (Cap. 41) (ICO), the Electronic Health Record Sharing System Ordinance (Cap.625) (EHRSSO) and the Property Management Services Bill (PMSB). Please see the Annex for further information.

15. While the inclusion of the provision under clause 11 is consistent with existing drafting practice in Hong Kong, such “general power” clauses are also not uncommon in other jurisdictions’ resolution legislation as shown in the Annex. The information included in the Annex as regards overseas jurisdictions is based on the Government’s reading of the publicly available legislation in each such jurisdiction.

Drafting issue

In the light of a member’s comment, the Administration has agreed to review the Chinese rendition “解除” (e.g. replacing it by “履行”) for the English expression “discharge” in clause 5(1)(b) of the Bill to better reflect the meaning of "discharge the obligations" in that context.

16. We confirm that we will move relevant Committee Stage Amendments to replace “解除” with “履行” for clause 5(1)(b), the definition of “所有權轉讓安排” in clause 74 and the definition of “抵押安排” in section 1 of Schedule 5.

**Financial Services and the Treasury Bureau (Financial Services Branch)
Hong Kong Monetary Authority
Securities and Futures Commission
Office of the Commissioner of Insurance
February 2016**

Comparison table of general powers in local legislation and overseas jurisdictions

Jurisdiction	Relevant legislation	Examples
Hong Kong	The Bill; the ICO, the EHRSSO and the PMSB	<p><u>The Bill</u>: Clause 11 sets out a general power conferred on the resolution authority “to do all things necessary or expedient to be done for, or in connection with, or incidental to, the performance of its functions under this Ordinance”.</p> <p><u>ICO</u>: Under section 4B(1) of the ICO, the Authority may do anything that is necessary for, or incidental or conducive to, performing any of its functions.</p> <p><u>EHRSSO</u>: Under section 49(2) the Commissioner for the Electronic Health Record may do anything necessary for, or incidental or conducive to, the performance of a function of the Commissioner.</p> <p><u>PMSB</u>: Under clause 42, the Property Management Services Authority may do anything it considers appropriate for it to do for, or in relation to, the performance of its functions.</p>
United States	Dodd-Frank Act, codified as US Code Title 12 Banks and Banking (“12 USC”)	The Federal Deposit Insurance Corporation, as resolution authority, may exercise all powers and authorities specifically granted to receivers under 12 USC 5390, and such incidental powers as shall be necessary to carry out such powers. (12 USC 5390(a)(1)(K)).

Singapore	Monetary Authority of Singapore Act (MAS Act)	In Singapore certain resolution powers (including the power to transfer shares/assets etc.) have been incorporated into the MAS Act. Under the MAS Act, the MAS as resolution authority may do generally all such things that are not inconsistent with the exercise of its powers or the discharge of its duties under the MAS Act and as may be commonly done by “bankers”. (MAS Act Section 23(1)(r)).
European Union (EU)	Bank Recovery and Resolution Directive (BRRD)	Under the BRRD, EU member states are required to ensure that their resolution authorities have the necessary powers to apply resolution tools to institutions that meet the conditions for resolution. (BRRD Article 37(1)).
United Kingdom (UK)	UK Banking Act 2009 (UKBA)	<p>Although there is no “standalone” “general power” in the UKBA, it is provided in the UKBA that each of the instruments by which stabilization options are deployed may “make other provision for the purposes of, or in connection with” the transfer of securities, or property, rights or liabilities or any special bail-in provision made by that or another instrument (share transfer s.15(1)(b), property transfer s.33(1)(b), resolution s.12A(3)(b)).</p> <p>Furthermore, an additional power conferred on the Treasury enables it to make amendments to the law by order (including retrospectively) to enable the resolution powers under the UKBA to be used effectively, having regard to the resolution objectives. Such an order may be made: (a) for the general purposes of the exercise of resolution powers; (b) to facilitate a particular proposed or possible use of a power; or (c) in connection with a particular exercise of a power. (section 75).</p>