

## Financial Institutions (Resolution) Bill

### Debate and voting arrangements

**Objective of the Bill:** To establish a regime to confer powers on the Insurance Authority, the Monetary Authority and the Securities and Futures Commission (“SFC”) for the orderly resolution of non-viable financial institutions.

<b>First debate</b>	<b>: Clauses with no amendment</b>	– Clauses 1, 3, 4, 6 to 18, 20, 21, 23, 25, 26, 31, 34, 36, 38 to 46, 48 to 56, 66, 67, 68, 70 to 73, 76 to 80, 82 to 87, 90, 92, 93, 94, 96 to 101, 105 to 113, 115 to 120, 122, 124 to 129, 131 to 137, 139, 141, 142, 145 to 150, 152 to 162, 164 to 170, 173 to 185, 187, 188, 189, 192, 193, 195 to 198, 200 to 203, 205, 206, 208 to 211, 213, 214, 215, 219, 220, 222 to 226 and 228 to 238
<b>Voting</b>	<b>:</b>	To vote on the above clauses standing part of the Bill
<b>Second debate</b>	<b>: Clauses with amendments proposed by the Secretary for Financial Services and the Treasury (“SFST”)</b>	– Clauses 2, 5, 19, 22, 24, 27 to 30, 32, 33, 35, 37 and 47, the heading of Subdivision 5 of Division 1 of Part 5, clauses 57 to 65, 69, 74, 75, 81, 88, 89, 91, 95, 102, 103, 104, 114, 121, 123, 130, 138, 140, 143, 144, 151, 163, 171, 172, 186, 190, 191, 194, 199, 204, 207, 212, 216, 217, 218, 221, 227 and 239
Joint debate on the original clauses and the amendments thereto.		
<b>Debate theme: Amendments to the above clauses of the Bill on various matters</b>		
<u>Clarifying provisions to facilitate implementation of the resolution regime</u>		
<b>Clause 2</b>		
<ul style="list-style-type: none"> <li>– To amend the definitions of “chief executive officer (‘CEO’)” and “deputy chief executive officer (‘DCEO’)” in clause 2(1) to clarify that under certain circumstances when part of the business of an entity is not under the management of CEO or DCEO but is directly managed by the board of directors or by another person appointed by the board; and</li> <li>– to amend the definition of “non-Hong Kong resolution action” in clause 2(1) to ensure that a non-Hong Kong resolution authority may seek recognition by a Hong Kong resolution authority of the exercise of certain powers that could be exercised under a Part 5 instrument of the Bill.</li> </ul>		

**Clause 22**

- To amend clause 22(2)(a) to expand the power of a resolution authority under clause 22 for issuing direction to a financial institution or related person.

**Clauses 27, 227 and 239**

- To amend clause 27 to provide for effective coordination of the use of supervisory powers and resolution powers under the relevant ordinances to facilitate effective implementation of the Financial Institutions (Resolution) Ordinance (“the Ordinance”); and to make corresponding amendments to clauses 227 and 239 by deleting “Insurance Companies Ordinance” and substituting “Insurance Ordinance”, and changing the Chinese name of “Insurance Authority” from “保險業監督” to “保險業監管局”.

**Clause 37**

- To amend clause 37(2)(b) to avoid a situation in which it is difficult to appoint an entity under section 10 of the Bill to assist in making valuation, in light of the practical difficulties of identifying fully each and every current and former shareholder and creditor of a financial institution.

**Clause 95**

- The amendment seeks to specify that the Financial Secretary ("FS")'s appointment of an appointing person (who is responsible for appointment of an independent valuer) takes effect upon gazettal of the notice of appointment.

**Clauses 121 and 138**

- To add paragraph (ba) after clause 121(b) and amend clause 138(e) to provide that the Chief Justice may make rules to regulate the grant of leave to appeal and application for the hearing of appeals.

**Clauses 123 and 140**

- To amend clauses 123(3) and 140(3) to provide that the Court of Appeal may make any order to costs that it considers appropriate; and where it allows an appeal, or varies or sets aside a determination of the Tribunal, include in any such order any costs to be paid by the respondent to the appellant incurred in relation to the Tribunal proceedings.

**Clauses 143 and 144**

- Clause 143(1) of the Bill provides that a resolution authority may, at any time after it has initiated the resolution of a financial institution, apply to the Court for a clawback order against an officer of that institution. The amendments seek to amend clause 143 to clarify that any period of limitation prescribed by the Limitation Ordinance (Cap. 347) does not apply to an application for a clawback order, and the Court does not have to consider the financial circumstances of an officer in making a clawback order; and
- to amend clause 144 to set out explicitly that a clawback order made under the Bill terminates any liability under the Employment Ordinance (Cap. 57) or an agreement mentioned in clause 144(1)(b) to give to the officer the remuneration covered by the order.

**Clause 171**

- To amend clause 171(2) to provide that the members, employees or agents of, or consultants or advisors to, an entity under clause 10 of the Bill to assist a resolution authority or an independent valuer are also covered by the secrecy requirements under clause 171(1); and
- to amend clause 171(3) to provide for the resolution authorities to disclose information that has come into their knowledge where the disclosure is required in the interest of promoting and maintaining the stability and effective working of the financial system of Hong Kong. In addition, to add clause 171(7A) to provide for FS to disclose those information without the consent of the relevant resolution authority.

**Clause 190**

- To amend clause 190(1) to provide for a requirement for the petitioner to attach a draft petition to a notice given to the resolution authority under clause 190(1)(a), and the petitioner must file a petition with the Court within 14 days after occurrence of certain specified circumstances to ensure that the presentation of a winding up petition against the financial institution will be made within a reasonable period.

**Clauses 194 and 199**

- To add clauses 194(3) and (4) to expand clause 194 under the Bill to enable resolution authorities to issue codes of practice about any matter relating to the functions given to them, including providing guidance on the operation of any provision of the Bill; and
- to amend clause 199 to clarify that the relevant code of practice is not subsidiary legislation.

**Clauses 204, 207, 212 and 221**

- To amend section 2(1) of the Insurance Companies Ordinance (Cap. 41) in clause 204, and Schedule 2 to the Electronic Transactions Ordinance (Cap. 553), to expand the definition of the Resolvability Review Tribunal (“RRT”) and the Resolution Compensation Tribunal (“RCT”); and
- to make corresponding amendments to section 2(1) of the Banking Ordinance (Cap. 155) (“BO”) in clause 207, and section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) in clause 221.

**Clauses 216**

- To amend section 378 of the Securities and Futures Ordinance (Cap. 571) (“SFO”) to enable SFC to disclose information to RRT and RCT as and when necessary, and to align the provisions in SFO which enable disclosure of information to a resolution authority or to a resolution authority in a place other than Hong Kong with those under BO and the Insurance Companies Ordinance (Cap. 41); and to make related amendments.

**Clause 217**

- To amend Part 1 of Schedule 1 to SFO in clause 217 to add to SFO the definitions which appear in new clauses 212A and 216A and the amendments to clause 216.

**Clause 218**

- To amend clause 218(3) to achieve the effect of new clause 212A below.

**Explicitly stating the policy intent****Clause 19**

- To amend clause 19(4) to provide for an offence for an entity's failure to comply with a requirement applicable to it under the loss-absorbing capacity requirement rules to notify, or to provide particulars to, a resolution authority about a "notifiable matter"; and
- to add clause 19(4A) and make corresponding amendments to clauses 19(5), (6) and (7) to provide for an offence for an entity's failure to take remedial action for a contravention of the above requirement rules.

**Clause 24**

- To amend clause 24(8) to clarify that revocation of a person's appointment to a post as a director, chief executive officer or deputy chief executive officer of a financial institution by a resolution authority would not of itself affect the person's rights under the employment contract.

**Clause 88**

- The amendment provides that where a temporary stay is imposed by a resolution authority, as long as the key obligations under a qualifying contract (i.e. payment and delivery obligations and provision of collateral) continue to be performed, then a counterparty does not have the right to trigger a termination right that might otherwise arise because certain other obligations (e.g. triggers relating to the financial condition of the financial institution) are temporarily not being performed.

**Clause 89**

- The amendment seeks to specify that although the application of a crisis prevention measure to a qualifying entity does not of itself trigger a default event provision in a contract entered into by that qualifying entity or an entity that is a member of the same group of companies as the qualifying entity, clause 89 no longer applies if the other substantive obligations under the contract are not performed.

**Clause 91**

- The amendment seeks to clarify that following any transfer of contracts subject to a temporary stay, the early termination rights of the counterparty may only be exercised if the event giving rise to the termination right has been triggered by the acquirer.

**Clause 104**

- The amendment seeks to clarify that the correction of a clerical mistake, or error arising from an accidental slip or omission by an independent valuer, should not be capable of affecting the valuation decision or the level of compensation payable as a result of the decision.

Improvement to the drafting of provisions**Clauses 2, 5, 19, 28, 29, 30, 32, 33, 35 and 47, the heading of Subdivision 5 of Division 1 of Part 5, clauses 57 to 65, 69, 74, 75, 81, 91, 102, 103, 114, 130, 151, 163, 172, 186 and 191**

- The amendments seek to improve the drafting of the provisions including clarifying their meaning and aligning the Chinese and English texts.

**Voting** : To vote on the above amendments together, and then the original clauses or the clauses as amended standing part of the Bill

**Third debate** : New clauses proposed by – Clauses 110A, 126A, 212A, SFST 216A and 229A

**Debate theme: Addition of new clauses on various matters****New clauses 110A and 126A**

- New clause 110A specifies that the Chief Executive may establish additional RRT should he consider appropriate; and
- to add a similar provision in new clause 126A to establish additional RCT.

**New clauses 212A and 216A**

- New clause 212A, together with the amendment to clause 218(3), seeks to enable SFC to delegate certain functions under Part III of SFO on the application of a stabilization option to a specified entity, to facilitate the chief executive officer of SFC to perform related functions in a resolution situation; and
- to add new clause 216A to provide for a disclosure gateway in respect of Over-the-Counter derivative information that has come into the knowledge of the Monetary Authority, through performance of its related functions under SFO, to RRT, RCT and, in specific circumstances, to a resolution authority or to a resolution authority in a place other than Hong Kong.

**New clause 229A**

- To make an amendment consequential to the above amendments to clauses 27, 227 and 239.

**Voting** : To vote on the addition of the above new clauses

<b>Fourth debate</b>	<b>: Schedules with no amendment</b>	<b>– Schedules 1 and 7</b>
<b>Voting</b>	<b>: To vote on the above Schedules standing part of the Bill</b>	
<b>Fifth debate</b>	<b>: Schedules with amendments proposed by SFST</b>	<b>– Schedules 2 to 6, 8 and 9</b>
<b>Debate theme: Amendments to the Schedules</b>		
<p><b>Schedule 2</b></p> <ul style="list-style-type: none"> <li>– To amend section 4 of Schedule 2 to avoid a similar situation as in clause 37(2) above in which it is difficult to appoint an independent valuer.</li> </ul> <p><b>Schedules 3, 4, 5 and 6</b></p> <ul style="list-style-type: none"> <li>– To amend section 7(2) of Schedule 3, section 9(2) of Schedule 4, and section 6(2) of Schedule 6 to clarify that any revocation of a person's appointment to a post as a director, chief executive officer or deputy chief executive officer of a financial institution by a resolution authority would not of itself affect the person's rights under the employment contract;</li> <li>– to amend section 4(3) of Schedule 3, section 4(3) of Schedule 4 and section 3(2) of Schedule 6 to clarify that any persons affected by acts of a resolution authority may seek judicial review of those acts;</li> <li>– to amend section 2 of Schedule 5 to exclude from bail-in liabilities arising from participation in, and owed to the system, its operator or participants, those clearing and settlement systems already considered systemically important and hence designated or recognized under the relevant ordinances, namely the Payment Systems and Stored Value Facilities Ordinance and SFO, as well as to make corresponding technical amendment to section 1 of Schedule 5 by introducing a definition of clearing participant into the Schedule; and</li> <li>– to make textual amendments to the relevant sections of Schedules 5 and 6.</li> </ul> <p><b>Schedules 8 and 9</b></p> <ul style="list-style-type: none"> <li>– To amend the numbering of subsections in section 10(6)(a) of Schedule 8 and section 10(6)(a) of Schedule 9.</li> </ul>		
<b>Voting</b>	<b>: To vote on the amendments together, and then vote on the original Schedules or the Schedules as amended standing part of the Bill</b>	

**Secretary for Financial Services and the Treasury's amendments**  
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