

**金融機構(處置機制)條例(第628章)：**  
**生效公告及受保障安排規例**

**Financial Institutions (Resolution) Ordinance (Cap. 628):**  
**Commencement Notice and**  
**Protected Arrangements Regulation**

立法會小組委員會會議: 2017年6月2日  
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背景

**BACKGROUND**

# 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
- 由於正常清盤程序並不適用於管理具系統重要性金融機構的倒閉，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”) due to unsuitability of normal insolvency proceedings to manage systemically important FI failure
- 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與金融穩定理事會所制訂的《有效的金融機構處置機制主要元素》(「《主要元素》」)訂明的標準相符的有效的處置機制。《主要元素》訂明有關當局就處理具系統重要性金融機構的倒閉而需具備的權力。  
FSB member jurisdictions committed, amongst other things, to establish effective resolution regimes consistent with standards set by the FSB’s *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“Key Attributes”) which set out those powers that authorities should have to be able to deal with the failure of a systemically important FI

**《2017 年〈金融機構(處置機制)條例〉  
(生效日期)公告》  
FINANCIAL INSTITUTIONS (RESOLUTION)  
ORDINANCE (COMMENCEMENT)  
NOTICE 2017**

# 《2017 年〈金融機構(處置機制)條例〉(生效日期)公告》

## FIRO Commencement Notice

- 《金融機構（處置機制）條例》(第628章)(「《處置條例》」)於2016年6月由立法會通過，為受涵蓋的金融機構設立一個跨界別的處置機制，提供法律基礎。其目的是符合金融穩定理事會《主要元素》中所載的國際標準，以提供處置不可持續經營的具系統重要性金融機構所須的權力

The Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”) was enacted by LegCo in June 2016, establishing the legal basis for a cross-sector resolution regime for within scope FIs that is designed to meet the international standards set by the FSB’s Key Attributes, so as to provide the necessary powers to a resolution authority (“RA”) to effect the orderly resolution of a failed systemically important FI

- 我們建議在《金融機構(處置機制)(受保障安排)規例》(「《受保障安排規例》」)的先訂立後審議的程序完成後，隨即讓《處置條例》的主要條文於2017年7月7日生效

7 July 2017 proposed as commencement date for the main provisions of the FIRO shortly after completion of the negative vetting procedure for the Financial Institutions (Resolution) (Protected Arrangements) Regulation (“PAR”)

- 條例生效以：(i)加強香港金融體系的抵禦能力和香港作為主要國際金融中心的地位，以及(ii)遵守金融穩定理事會《主要元素》中所載的國際標準

Commencement to: (i) enhance the resilience of Hong Kong’s financial system and Hong Kong’s position as a major international financial centre, and (ii) comply with international standards set by the FSB’s Key Attributes

**《金融機構(處置機制)(受保障安排)規例》**  
**FINANCIAL INSTITUTIONS (RESOLUTION)**  
**(PROTECTED ARRANGEMENTS)**  
**REGULATION**

# 背景

## Background

- 根據《處置條例》第75條，財經事務及庫務局局長可以附屬法例形式制訂規例，以保障若干金融安排(「受保障安排」)於處置行動中的經濟效益  
Under section 75 of the FIRO, the Secretary for Financial Services and Treasury may make regulations, as subsidiary legislation, to safeguard the economic effect of certain financial arrangements (“protected arrangements”) in resolution
- 根據《處置條例》第74條，六大類別獲識別為「受保障安排」的金融安排為：  
Six types of financial arrangements identified as protected arrangements under section 74 of FIRO:
  - (a) 結算及交收系統安排 (clearing and settlement systems arrangements) ;
  - (b) 淨額結算安排(netting arrangements) ;
  - (c) 抵押保證安排(secured arrangements) ;
  - (d) 抵銷安排(set-off arrangements) ;
  - (e) 結構式金融安排(structured finance arrangements) ;
  - (f) 所有權轉讓安排(title transfer arrangements)
- 《受保障安排規例》攸關重要，是因為金融市場參與者倚賴該等受保障安排，作為風險緩減工具(如抵銷/淨額結算)及資金來源(如有抵押貸款)  
PAR important because financial market participants rely on such protected arrangements as risk mitigation tools (e.g. set-off/netting) and as financing sources (e.g. secured lending)



# 《受保障安排規例》

## PAR

- 《受保障安排規例》，旨在確保處置機制當局在行使處置權力時，須保障「受保障安排」於處置行動中的經濟效益

PAR designed such that an RA should exercise resolution powers in a manner that safeguards the economic effect of a protected arrangement in resolution

- 在以下情況中，受保障安排的經濟效益被削弱的風險最有可能發生：(i) 處置機制當局進行局部財產轉讓時，把某實體的部分而非全部資產、權利及負債轉讓予第三方；或(ii) 進行內部財務重整時，負債在沒有計及在書面協議下可被抵銷或進行淨額結算的相連資產或權利的情況下，被減記及／或轉換

The risk of the economic effect of a protected arrangement being undermined is most likely to occur: (i) where a partial property transfer (“PPT”) is made by an RA through which some, but not all, of an entity’s assets, rights and liabilities are transferred to a third party; or (ii) on bail-in, where liabilities are written down and / or converted without taking into account linked assets or rights entitled to be set off or netted under documented agreements

- 有關《受保障安排規例》的建議做法大致仿效了英國採用的做法，以及歐洲聯盟的《銀行恢復及處置指令》所採取的方法

The proposed approach to the PAR is largely modelled on that adopted by the United Kingdom and that required by the European Union’s Bank Recovery and Resolution Directive

# 《受保障安排規例》(續)

## PAR(cont'd)

- 《受保障安排規例》中所採用的方法，是為分別為各類受保障安排提供適度的保障，並從若干安排下的有關保障中剔除特定的權利及負債項目，以期：  
PAR provides appropriate degree of protection for each type of protected arrangement, with specific “carve-outs” for certain rights and liabilities under certain arrangements, designed to provide:
  - (a) 為金融市場參與者提供信心，關鍵風險緩減措施及資金安排會在明確和可以預知的情況下得到保障；及  
confidence for financial market participants that critical risk mitigation and funding techniques will be protected with certainty and predictability; and
  - (b) 賦予處置機制當局適當程度的靈活性，行使處置權力，以達致有秩序處置  
an appropriate degree of flexibility for RA to exercise resolution powers, in order to achieve orderly resolution
- 《受保障安排規例》亦指明，若處置機制當局在非故意情況下，導致屬某受保障安排的一部分的資產、權利或負債被以不符合《受保障安排規例》的目標的方式處理時，所帶來的適當後果  
PAR also provides for appropriate consequences in the event that inadvertent action by an RA results in assets, rights or liabilities that are part of a protected arrangement being treated inconsistently with the objectives of the PAR

# 就《受保障安排規例》進行的公眾諮詢

## Public Consultation on PAR

- 財經事務及庫務局，連同香港金融管理局、保險業監督及證券及期貨事務監察委員會，已就擬議的《受保障安排規例》聯合進行了為期兩個月的公眾諮詢(由2016年11月22日起至2017年1月21日止)

The Financial Services and the Treasury Bureau, the Hong Kong Monetary Authority, the Insurance Authority and the Securities and Futures Commission jointly conducted a two-month public consultation (from 22 November 2016 to 21 January 2017) on the proposed PAR

- 在諮詢期間，我們曾與主要持份者會面，並共收到11份意見書，分別來自業內公會、專業團體及金融市場基建

We engaged with key stakeholders during the consultation period, and received 11 submissions from industry associations, professional bodies and financial market infrastructures

- 回應者大致同意於諮詢文件中提出有關《受保障安排規例》的建議做法，並提出具建設性及技術性的意見，以提高規例的有效性

Respondents generally agreed with the approach to the PAR proposed in the consultation paper, whilst providing constructive, technical comments to enhance its efficacy