

(Reform) too big to fail? Hong Kong resolution regime and regulations take effect on 7 July 2017

The Financial Institutions (Resolution) Ordinance (FIRO) and the Financial Institutions (Resolution) (Protected Arrangements) Regulation (Protected Arrangements Regulation) are both set to become effective on 7 July 2017.

Overview

FIRO provides, for the first time in Hong Kong, a comprehensive menu of options for the resolution of failing financial institutions and is a key plank in reforms aimed at maintaining Hong Kong's reputation as a leading financial centre.

Hong Kong

With the existing regulators (the Hong Kong Monetary Authority, the Securities and Futures Commission and the Insurance Authority) empowered to take on the role of resolution authority, FIRO provides them with a range of tools to implement and execute the resolution of a failing within scope financial institution.

The powers extend from requiring within scope financial institutions to pro-actively plan for resolution, removing impediments to resolution, navigating resolution and recognising international resolution actions taken by resolution authorities outside Hong Kong ([see our previous briefings](#)).

FIRO also provides for regulations on certain key areas to be made separately.

The Protected Arrangements Regulation sets out the arrangements for the protection of key financial contracts through resolution (including clearing and settlement systems arrangements, netting arrangements, secured arrangements, structured finance arrangements and title transfer arrangements) and the necessary constraints on the ability of the resolution authorities to deal with such contracts in order to give certainty as to the economic effect of those arrangements. It is also expected that the resolution authorities will issue guidance and codes of practice ahead of the implementation of FIRO.

Ahead of 7 July 2017, within scope financial institutions will need to carefully but quickly update their current resolution and recovery plans to ensure both that descriptions of Hong Kong's legal and regulatory landscape remain correct and that any resolution plan appropriately reflects the approach and tools provided in FIRO.

Whilst discussions between many within scope financial institutions and their resolution authority in Hong Kong have been ongoing for some time, the implementation of FIRO is likely to bring renewed focus and scrutiny on this area in Hong Kong over the coming months.

Key issues

- The new resolution regime and regulations on protected arrangements change the whole landscape in Hong Kong for the recovery and resolution of within scope financial institutions.
- Financial institutions will need to revisit their current resolution plans ahead of the implementation date.
- Protected arrangements regulations provide for the protection of specified financial arrangements through resolution, safeguarding their economic effect.
- Further rules relating to liabilities subject to bail-in remain outstanding.

The commencement notice can be found [here](#), FIRO [here](#) and the Protected Arrangements Regulation [here](#)

Singapore

The new regime and regulations are consistent with enhanced regulator focus across Asia Pacific on resolution and recovery planning.

On 8 May 2017, the [Monetary Authority of Singapore \(Amendment\) Bill 2017](#) was introduced for its first reading in Parliament.

The Bill sets out proposed legislative amendments to enhance the resolution regime for financial institutions in Singapore, following the Monetary Authority of Singapore (MAS)'s [public consultation published in April 2016](#).

Key provisions in the Bill include MAS's powers to impose requirements relating to recovery and resolution planning, temporary stays on termination rights, a statutory bail-in regime, cross-border recognition of resolution acts, a creditor compensation framework and resolution funding arrangements.

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