

**Subcommittee on Financial Institutions (Resolution) (Protected Arrangements) (Regulation) and Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017**

**Response to the issues raised at the Subcommittee meeting on 20 June 2017**

This note sets out the Government's response to the issues raised at the Subcommittee ("SC") meeting on 20 June 2017.

2. Given the importance of providing a measure of protection to bank depositors, the Financial Institutions (Resolution) Ordinance (Cap. 628) ("FIRO") establishes a statutory resolution objective "to seek to protect deposits...of a within scope financial institution to no less an extent than they would be protected under [the Deposit Protection Scheme] on a winding up of the financial institution" (section 8(1)(b)). Other specific protections provided for depositors under the FIRO are listed in paragraphs 3 and 4 of LC Paper No. CB(1)1111/16-17(02) <sup>1</sup>.

3. A SC member has raised the concern that the FIRO makes no explicit provision that a resolution authority ("RA"), in effecting a transfer of "protected deposits" of a failed Deposit Protection Scheme ("DPS") member<sup>2</sup>, must transfer those deposits to another entity<sup>3</sup> that is authorized under the Banking Ordinance (Cap. 155) ("BO") and also a member of the DPS. The member's concern is that there would otherwise be a potential failure to achieve continuity of DPS coverage as a result of the transfer of the "protected deposits".

4. It should be noted that existing statutory protections would remain applicable to any transfer of deposits, including the restriction under section 12(1) of the BO which clearly provides that no deposit-taking business can be carried on in Hong Kong except by an authorized

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<sup>1</sup> See: [http://www.legco.gov.hk/yr16-17/english/hc/sub\\_leg/sc12/papers/sc1220170602cb1-1111-2-e.pdf](http://www.legco.gov.hk/yr16-17/english/hc/sub_leg/sc12/papers/sc1220170602cb1-1111-2-e.pdf).

<sup>2</sup> There are three types of authorized institution, namely (a) licensed banks; (b) restricted licence banks ("RLBs"); and (c) deposit-taking companies ("DTCs"). Only licensed banks are members of the DPS. RLBs and DTCs may only accept deposits of certain minimum high-values and are not primarily engaged in retail banking.

<sup>3</sup> Be that a third-party purchaser or a bridge institution.

institution (“AI”). Any entity that contravenes this statutory restriction is criminally liable under section 12(6) of the BO. In light of the aforesaid provisions, the Monetary Authority (“MA”) as RA, acting responsibly and rationally in accordance with the resolution objective in section 8(1)(b) of the FIRO, will not and cannot transfer that business to an entity that is not an AI because this will be going blatantly against the restriction of section 12(1) of the BO. A member was concerned that the “transfer of protected deposits” is not the same as “taking of deposits” and sections 12(1) and (6) of the BO may not be applicable. Our understanding of the legal position is that sections 12(1) and (6) of the BO is applicable to the “deposit-taking business” which clearly covers deposits transferred by an RA under the FIRO.

5. Practically speaking, in the event that an RA transfers the deposit book of a licensed bank that has met the conditions for resolution, given the restrictions under section 12(1) of the BO and the limitations of deposits that may be taken by an RLB or DTC, the transferee will have to be a licensed bank, and as such the transfer would achieve continuity of DPS coverage.

6. It is recognised that section 13(1) of the BO provides that the Financial Secretary (“FS”) may exempt any person or class of persons from section 12(1) of the BO. However, from the perspective of the MA as RA, it is not the policy intention to request that such an exemption be granted in a resolution case. In addition, since depositor protection is one of the important objectives of the BO (the Long Title), the FS would in any case have due regard to making sure that the “protected deposits” in a resolution case would be transferred to a licensed bank and hence a DPS member. The policy intent is to achieve continuity of DPS protection for “protected deposits” transferred from a failed DPS Member to an acquirer.

7. In light of the Member’s concern, the **Government commits to undertaking a review, as part of a future FIRO amendment exercise, to identify any statutory amendments which are necessary to address the concern raised and reflect the above position with greater statutory certainty.**

**Financial Services and the Treasury Bureau  
Hong Kong Monetary Authority  
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