

Operational Independence of the Monetary Authority as Resolution Authority (RA-1)

Purpose

This chapter of the Code of Practice (“Code”) describes the operational independence of the Monetary Authority (“MA”) as a resolution authority. The Code is issued by the MA as a resolution authority pursuant to section 196 of the Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”).

In the aftermath of the global financial crisis that began in 2008 and in view of the resulting international policy response, the Government decided that securing an effective cross-sector resolution regime for financial institutions (“FI”) was necessary to further strengthen the resilience of the local financial system to any future FI failure or market wide stress events. To this end, the Financial Institutions (Resolution) Ordinance (“FIRO”)¹ is designed to meet international standards set out by the Financial Stability Board (“FSB”)’s *Key Attributes of Effective Resolution Regimes for Financial Institutions*² (“Key Attributes”), which aim to address the problem of firms that are “too big to fail”.

The Key Attributes state that jurisdictions should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime.³ With respect to the banking sector, under the FIRO, the MA is the resolution authority for authorized institutions (“AIs”).⁴

¹ The FIRO was enacted by the Legislative Council on 22 June 2016 and came into effect on 7 July 2017. The FIRO is an ordinance to establish a regime for the orderly resolution of FIs with a view to avoiding or mitigating the risks otherwise posed by their non-viability to the stability and effective working of the financial system of Hong Kong, including to the continued performance of the critical financial functions; for that purpose to, amongst other things, confer powers on the Insurance Authority, the Monetary Authority and the Securities and Futures Commission as resolution authorities.

² The Financial Stability Board published the Key Attributes in 2011 which were designed to make the orderly resolution of financial institutions both feasible and credible. The Key Attributes were updated and reissued in October 2014. For further information, see: <http://www.fsb.org/what-we-do/policy-development/effective-resolution-regimes-and-policies/key-attributes-of-effective-resolution-regimes-for-financial-institutions/>

³ See Key Attribute 2.1.

⁴ AIs are as defined in section 2(1) of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong). Also note that the MA is also the resolution authority for settlement institutions and system operators of designated clearing and settlement systems under the Payment Systems and Stored Value Facilities Ordinance (Chapter 584 of the Laws of Hong Kong) (other than those which are wholly owned and operated by the Government).

Part 1. Operational Independence of the MA's Resolution Functions

- 1.1 The Key Attributes set out a number of attributes that a resolution authority should have, one of which is that a resolution authority should have “operational independence” consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources. It should have the expertise, resources and the operational capacity to, amongst other things, conduct resolution planning in preparation for the risk of possible future failure and to implement resolution measures with respect to large and complex firms.⁵
- 1.2 The *Key Attributes Assessment Methodology for the Banking Sector*⁶ further elaborates that the requirement for a resolution authority to be operationally independent does not mean it can have no functions other than resolution. An authority that carries out resolution functions may also carry out other functions, such as supervision or deposit insurance, provided that adequate governance arrangements are in place to manage any perceived or actual conflicts of interests that may arise from combining those functions within a single authority.⁷
- 1.3 Structural independence
 - 1.3.1 On 1 April 2017 a Resolution Office (“RO”), headed by a Commissioner, was established within the HKMA⁸ and is responsible for supporting the MA in the discharge of his functions as a resolution authority under the FIRO.⁹
 - 1.3.2 To ensure operational independence, apart from the establishment of the RO as a separate office within the HKMA, the RO has a dedicated team of staff working independently from other parts of the HKMA and reporting to the Commissioner, who in turn reports directly to the MA as a resolution authority under the FIRO. The reporting line of the RO is shown in the HKMA's Organisational Chart.¹⁰
- 1.4 Internal coordination and decision-making mechanism
 - 1.4.1 The MA recognises the importance of a clear internal coordination and decision-making mechanism within the HKMA to ensure that suitably informed decisions can be taken swiftly and independently from other functions of the MA, thus minimising the potential for conflicts of interest. Internal coordination

⁵ See Key Attribute 2.5.

⁶ It was published by the FSB in October 2016 and sets out the essential criteria to guide the assessment of the compliance of a jurisdiction's bank resolution frameworks with the Key Attributes:
<http://www.fsb.org/wp-content/uploads/Key-Attributes-Assessment-Methodology-for-the-Banking-Sector.pdf>

⁷ See EN 2(d) of the Key Attributes Assessment Methodology for the Banking Sector.

⁸ HKMA is an institution established to assist the MA in the discharge of his functions under various ordinances.

⁹ See the HKMA's press release on the “Establishment of the Resolution Office and Senior Staff Appointments at the Hong Kong Monetary Authority” of 17 March 2017:
<http://www.hkma.gov.hk/eng/key-information/press-releases/2017/20170317-3.shtml>

¹⁰ See: http://www.hkma.gov.hk/media/eng/doc/about-the-hkma/the-hkma/organisation-chart/org_chart.pdf

frameworks will help ensure that key decisions, where conflicts of interest may arise, will be taken independently from other functions of the MA on a sufficiently informed basis.

1.4.2 In the discharge of the functions under the FIRO, there is a need for the MA acting through the RO to have close coordination with AIs. For instance, in the course of business as usual (“BAU”) resolution planning as well as crisis management, the MA through the RO will work directly with AIs. In particular, the Key Attributes recognise the need for a resolution authority to have unimpeded access to firms where that is material for this purpose.¹¹ To achieve this, the RO also coordinates closely with other departments of the HKMA, and there are appropriate gateways in various ordinances, including in the BO and the FIRO, for the sharing of information within the HKMA. In addition, the MA as resolution authority also has explicit information gathering powers which can be deployed, for example, to support effective resolution planning and resolvability assessment, as well as policy work in making the resolution regime operational.

Part 2. Accountability and transparency

2.1 The Key Attributes also specify that a resolution authority must be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures.¹² Under the FIRO, after the deployment of a stabilization option, a resolution authority must then meet certain reporting requirements subsequently which are designed to provide further information on, amongst other things, the activities and outcomes related to the deployment of the particular stabilization option. The FIRO establishes regular financial, amongst other matters, reporting requirements in relation to the deployment of a bridge institution, an asset management vehicle and a temporary public ownership company.

2.2 In BAU, to enhance transparency and accountability of the MA’s resolution functions, the MA will publish further guidance and policies in the Code of Practice issued under section 196 of the FIRO relating to how he will conduct his functions as a resolution authority.¹³ In addition, a key priority for the MA as a resolution authority will be the development of further rules, regulations and standards as envisaged under the FIRO for the banking sector. For example, to assist resolution planning for AIs the MA will, where appropriate, define resolution standards which AIs will need to meet in order for the preferred resolution strategy to be feasible and for the relevant AI to be considered resolvable by the MA.¹⁴

2.3 At an international level, reviews are being conducted from time to time by international bodies, like the FSB and the International Monetary Fund, on the regulatory regimes of various jurisdictions, including Hong Kong. Such reviews will typically cover,

¹¹ See Key Attribute 2.7.

¹² See Key Attribute 2.5.

¹³ See, for example, the Code of Practice chapter on “The HKMA’s approach to resolution planning”, (RA-2).

¹⁴ See, for example, the Code of Practice chapter on “Resolution Planning - Core Information Requirements” for AIs (CI-1).

amongst other matters, the resolution regime of the assessed jurisdiction and will serve to, amongst other things, evaluate the timeliness and the effectiveness in the implementation of international regulatory standards and policies by the assessed jurisdiction.