

Consultation on rules on contractual stays on termination rights in financial contracts for authorized institutions under Financial Institutions (Resolution) Ordinance launched

The following is issued on behalf of the Hong Kong Monetary Authority:

The Hong Kong Monetary Authority (HKMA) today (January 22) launched a two-month public consultation on proposals for making rules relating to contractual stays on termination rights in financial contracts for authorized institutions under the Financial Institutions (Resolution) Ordinance (Cap. 628) (the Ordinance).

The Ordinance, which came into effect in 2017, establishes a cross-sectoral resolution regime for financial institutions that is in line with international standards. It confers on the Monetary Authority, as the resolution authority for the banking sector entities in Hong Kong including all authorized institutions, statutory responsibilities and powers to enable it to manage the failure of an authorized institution in an orderly manner that avoids disruption to financial stability, while seeking to protect public funds.

Disorderly termination of contracts by counterparties of a financial institution in a resolution would cause significant contagion effect to the financial markets, posing wider risks to the stability and effective working of the financial system. To address these risks, the Ordinance contains a provision that provides a resolution authority with the power to suspend (i.e. "stay") for a specified period the termination right of a counterparty to a qualifying contract under certain circumstances. For ensuring the effective implementation of this provision, a resolution authority may make rules that impose a requirement for contractual recognition of the temporary stay power under the Ordinance.

The consultation launched today sets out detailed proposals for the stay rules the Monetary Authority intends to make, which will require the entities subject to the rules to adopt appropriate provisions in certain financial contracts to the effect that the parties to the contracts agree to be bound by a temporary stay that may be imposed by the Monetary Authority under the Ordinance. The proposals are designed to be aligned with the relevant principles set by the Financial Stability Board. In drawing up the proposals, the HKMA has taken these principles into account, and made reference to the approaches adopted in key jurisdictions.

Subject to the outcome of the public consultation, the intention is to introduce the rules as subsidiary legislation under the Ordinance into the Legislative Council for negative vetting in the 2020/2021 legislative session.

The [consultation paper](#) can be downloaded from the HKMA's website. Interested parties are invited to send their written comments by mail to Consultation on Contractual Stays, Resolution Office, Hong Kong Monetary Authority, 55th Floor, Two International Finance Centre, 8 Finance Street, Central, Hong Kong, or by e-mail to resolution@hkma.gov.hk on or before March 22, 2020.