

**4. BILL FOR SECOND READING**

**4.1. Bank (Recovery and Resolution) Bill 2020 –  
Second Reading approved**

Mr Shimmins to move:

*That the Bank (Recovery and Resolution) Bill 2020 be read for a second time.*

**The Speaker:** Item 4, Bills for Second Reading. The Item is Bank (Recovery and Resolution) Bill 2020 and I call on Mr Shimmins to move.

**Mr Shimmins:** Thank you, Mr Speaker.

The Bank (Recovery and Resolution) Bill 2020 establishes a framework for the recovery and resolution of banks and for connected purposes.

The Bill is divided into 14 parts, comprising 171 clauses and one Schedule. Recognising the length of the Bill, it is proposed that the clauses stage be split over two sittings of the House.

The primary aim of the Bill is to introduce a legal framework that will provide a range of options to deal with a failing bank. Learning from the financial crisis of 2008, the Bill provides new mechanisms for a failing bank to be either resolved or wound-up in an orderly fashion, without losses falling upon the taxpayer. This is in line with relevant international standards, most notably those which have been introduced already in the United Kingdom and the European Union.

The Bill applies to banks licensed in the Island and is linked to a definition in the Financial Services Act 2008. Class 1(3) Representative Office Banks, which do not engage in deposit-taking activities, may be excluded by order.

The Bill provides that the resolution authority for the Isle of Man is the Isle of Man Financial Services Authority. Regulations will prescribe how that body will keep its functions as a resolution authority operationally separate from its functions as a regulatory supervisor.

Mr Speaker, the Bill addresses both the recovery and resolution of banks and also the resourcing and funding of the resolution authority. In respect of any potential recovery and resolution action, banks to which the Bill applies may be required to maintain appropriate recovery plans.

In addition, the resolution authority is also obliged to draw up suitable resolution plans for each bank incorporated in the Island in respect of potential action. Such plans are required to exclude consideration of any public financial support, so that the burden of any bank failure falls primarily on the shareholders and creditors of the bank and not on Isle of Man taxpayers.

The actions of the resolution authority must be fair and non-discriminatory, as well as justifiable in the public interest. In that respect, the resolution authority will be compelled to act in line with the specified resolution objectives including ensuring continuity of critical banking services, protecting financial stability in the Isle of Man and protecting public funds.

Any resolution action must be in line with 10 specified principles. Such principles include that shareholders and creditors must bear the first losses; that deposits within the scope of the Depositors' Compensation Scheme coverage must be protected; and that the overall costs of a resolution action must be minimised.

In respect of funding, the Bill establishes a 'bank resolution fund' to gather monies to be used in a resolution action. Funds required in the event of a resolution action may initially be provided by the Treasury but any monies would be fully recovered from the failing bank's remaining assets; or, if there is any shortfall, other banks on the Island may be levied to recoup this over a 10-year period. In addition, banks may also be levied to fund the ongoing administration costs of the resolution authority.

Mr Speaker, liquidation of a failing bank always remains an option. To support this, the Bill contains a modified bank winding-up procedure, including its interaction with Companies Law and the Depositors' Compensation Scheme. The Schedule addresses consequential changes to the Preferential Payments Act 1908 with the main change providing a 'super-preference' for any expenses incurred in respect of bank resolution action.

Mr Speaker, such safeguards ensure the best possible outcome for the full recovery of any Government funding which may be provided.

Pre-drafting consultation has been undertaken on the policies underpinning the Bill and extensive engagement with the banks and their professional advisers has taken place. The draft Bill was also subject to a further full public consultation

Both the Treasury and the Financial Services Authority believe that consumers will be better protected from the impact of a potential bank failure through the introduction of this Bill. The Bill also ensures that banking regulation in the Island meets the standards which have been established internationally in the wake of the financial crisis.

Mr Speaker, I beg to move that the Bank (Recovery and Resolution) Bill 2020 be read the second time.

**The Speaker:** Hon. Member for Ayre and Michael, Mr Cannan.

**Mr Cannan:** I beg to second and reserve my remarks.

**The Speaker:** Mr Hooper, Hon. Member for Ramsey.

**Mr Hooper:** Thank you very much, Mr Speaker.

I would just firstly like to say, I have raised a few technical points on this Bill that Treasury are engaging in with me, and I would like to thank Treasury and the officers in Treasury for that. I am looking forward to getting a response on that.

The first thing I would like to know really is: we have seen quite a few changes in the banking industry on the Island and internationally in the last few years, and there are quite a few references throughout the Bill to the Depositors' Compensation Scheme (DCS). So just in light of some of these changes, in light of this Bill and the way that it will interact with the scheme, I would be grateful if the mover of the Bill could provide a brief comment on how much progress has been made in respect of updating the DCS itself? I am just curious as to how any changes to that scheme may or may not interact with some of the stipulations in this Bill.

I am slightly concerned by the way this Bill sets out the appeals and oversight mechanism. The enforcement powers that are being given to the FSA in this Bill actually mirror the enforcement powers they already have under the Financial Services Act. But if the FSA uses those powers under the Financial Services Act it would seem that the appeal is to a tribunal, whereas in this Bill the appeal bypasses the tribunal and goes straight to the court. Again, I get that, I understand why you would do that in respect of the crisis measures in the Bill. I am a little bit less clear on why you would do that in respect of the preparatory and resolution measures that are not going to be exercised at short notice or exercised immediately. So I am not quite clear on why you want to skip out the tribunal as an appeal mechanism, other than for simplicity of drafting purposes. It does not seem like a good reason to be doing that.

I am also a little bit concerned about some of the regulation-making powers in the Bill. So, for example, the power to raise a levy on banks being given to the FSA in this Bill; that only needs the Tynwald affirmative process. I have had a look through the Financial Services Act and the only levying powers I can see in that Act actually belong to Treasury, not to the FSA. The FSA has powers to prescribe fees but not to raise a levy. So this looks to be an entirely new power being granted to the Financial Services Authority in its role as the resolution authority.

From my perspective, I would like to suggest that the ability to levy a new tax charge, duty or levy really should rest with Tynwald and require Tynwald approval, and we should not be delegating that power down to a Statutory Board.

The last thing I would like to say is in respect of the borrowing powers that are set out in the Act. I appreciate Statutory Boards have the power to borrow. This Act, however, sets out some very specific circumstances in which you would probably expect the resolution authority to be borrowing in respect of the resolution fund, for example, and also the ongoing funding of the FSA itself. I just would have thought that when you were talking about constraining the borrowing powers in those specific circumstances that there would be at the very least a requirement for Treasury concurrence – Treasury consultation, Treasury oversight – of some of those borrowing powers rather than simply the ability of the FSA to go away and do as it sees fit.

So I would appreciate some comment from the hon. mover on that as well.

Thank you, Mr Speaker.

**The Speaker:** Mover to reply, Mr Shimmins.

**Mr Shimmins:** Thank you, Mr Speaker; and I very much welcome the engagement from the Hon. Member from Ramsey on this important Bill.

He raised four points and I think the first of those points was the Depositors' Compensation Scheme. I would just remind Hon. Members that the Treasury carried out a consultation on potential changes to the DCS in 2017 and we gained useful feedback at that time.

More recently, the Treasury has also joined an international forum of deposit compensation schemes and that has given us access to best practice across other jurisdictions. It is our intention, once we have introduced the bank recovery and resolution framework, that we will commence work on bringing aspects of our DCS regulations up to international standards.

We are also currently in the early stages of engaging with banks over what some of these changes will mean for them. But I would stress the ongoing work by the Treasury on the DCS will not impact on the progress of this Bill and it is our intention to proceed in an orderly fashion.

In terms of his second point which was I think in relation to dispute resolution and the tribunal versus court action from banks. It is the Treasury's view really that irresolvable disputes on less minor matters are considered unlikely, and hence only a court appeal covers the whole Bill. I would remind Hon. Members it is large banking groups and organisations that we are dealing with in this case.

In terms of the third point, which was the question about should Tynwald not approve any levy? I take on board Mr Hooper's comments on that and certainly that is something we can consider. What I would say, though, is the lesson from the last financial crisis in 2008 is that you need to move quickly. I certainly would not wish to see the recovery and resolution of a bank in any way delayed by the need to obtain Tynwald approval for a levy. I do not think that would be a good situation to encounter.

In terms of the borrowing powers of the Financial Services Authority, again I take on board the points that Mr Hooper makes. The powers are really in line with what international best practice is, in terms of that access to speedy resolution. I would suggest that because of the make-up of our banking sector we do envisage that to be unlikely at the outset, but we will certainly give Mr Hooper's points further consideration and continue to have a constructive dialogue with him.

On that basis, Mr Speaker, I beg to move.

**The Speaker:** The question I put to the House, then, is that the Bank (Recovery and Resolution) Bill 2020 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business on our Order Paper today. The House will stand adjourned until Tuesday 3rd March at 10 o'clock in our own Chamber.

Thank you.

*The House adjourned at 11.24 a.m.*