

**2. Bank (Recovery and Resolution) Bill 2020 –
First Reading approved**

Mr Henderson to move:

That the Bank (Recovery and Resolution) Bill 2020 be read a first time.

The President: We move to Item 2, and that is the First Reading of the Bank (Recovery and Resolution) Bill.

I call on the mover, Mr Henderson, to move, please.

Mr Henderson: Gura mie eu, Eaghtyrane.

The Bank (Recovery and Resolution) Bill 2020 establishes a framework for the recovery and resolution of banks and for connected purposes. This will provide a range of options to deal with a failing bank, so that the financial burden can be absorbed by the bank itself and by its shareholders and creditors. This will result in a change from the current bail-out position, where costs are absorbed by taxpayers, to a situation in which there are no losses for taxpayers.

The aims of such a regime are to ensure the continuation of critical banking functions, to protect covered depositors and client assets, to avoid negative effects on financial and economic stability and to minimise reliance on public financial support to failing banks. In addition, it aims to provide for speed and transparency and as much predictability as possible through legal and procedural clarity and advanced planning for orderly resolution.

The Bill is based on international standards that were set out by the Financial Stability Board, a body established by the G20 governments following the global financial crisis of 2008. These standards led to the development of bank recovery and resolution regimes in many countries, such as the United Kingdom, the Eurozone member states and Jersey. The regime being proposed for the Isle of Man via this Bill is tailored to the Isle of Man's needs where appropriate. This regime ensures that the Island will have the necessary procedures in place both to plan for the possibility of a future bank failure and the powers to intervene appropriately in such a situation.

The Bill is divided into 14 Parts, comprising 171 clauses and one Schedule.

The Bill's main aim is to introduce a range of options to deal with a failing bank that will not lead to losses for taxpayers. It applies to all banks that are licensed in the Island. The Bill also provides for an improved position for depositors and the Depositors' Compensation Scheme (DCS) in the event of a bank's liquidation.

The resolution authority for the Isle of Man will be the Isle of Man Financial Services Authority, which I shall call 'the FSA'. The Bill requires regulations to prescribe how that body will keep its functions as a resolution authority operationally separate from its functions as a regulatory supervisor. Such regulations are currently being drafted and will require Tynwald approval before the Act comes into operation.

Additionally, the Bill requires that there must be a structural separation of functions between those staff undertaking the resolution authority's functions versus the supervisory functions. This will also be addressed within the regulations just mentioned.

Members may wonder about the alternative of establishing a separate body to act as the resolution authority, possibly a Statutory Board. This idea was considered, but was rejected because the proposed single body arrangement is common in other jurisdictions and the cost of maintaining a separate body that may rarely be used is uneconomic for a small jurisdiction such as the Isle of Man. Also our Bill has been constructed in consultation with other relevant authorities, for consistency purposes.

Eaghtyrane, the Bill addresses the recovery and resolution of banks, as well as the resourcing and funding of the resolution authority. In this respect, firstly it allows the authority to require banks to maintain appropriate recovery plans which must not anticipate public financial support.

Recovery plans outline a bank's proposals for how it will address scenarios of severe macro-economic and financial stress. The plans must be reviewed periodically by the authority.

Secondly, the Bill requires the resolution authority to prepare suitable resolution plans for each bank that is incorporated in the Island. As distinct from a bank's own recovery plan, the resolution plans must outline the resolution actions that the authority would take in certain situations and must be discussed with relevant resolution authorities overseas, for example where the Manx bank is part of a group headquartered elsewhere. These plans will be developed with appropriate input from the banks concerned, which may be required to assist in producing the plan. An overview of each resolution plan must be shared with the bank concerned. Resolution plans must not anticipate any public financial support.

The Bill requires that the resolution authority must act fairly, without discrimination and in the public interest. The Bill also requires it to observe resolution objectives, including ensuring continuity of critical banking services, protecting financial stability in the Isle of Man and protecting public funds.

Part 5 of the Bill establishes a Bank Resolution Fund to handle funds in a resolution action and lists moneys that must be paid into the fund. The resolution authority is required to control, manage and administer the fund in accordance with this Act and any regulations which may be made in future by the Treasury, which will be subject to Tynwald approval.

Although the Bill provides that Treasury may be called on to provide initial funding, the Bill further requires the resolution authority to seek to recover sums paid out, initially from the recipient bank and afterwards from other banks in the Island, over a period of 10 years. Unless varied by Treasury, the maximum sum that may be paid out by the fund is limited to £60 million. Banks may also be levied to fund the administration costs of the resolution authority on an ongoing basis.

Eaghtyrane, liquidation of a failing bank will always remain an option and the resolution authority must always consider winding up a bank before it applies any stabilisation tools. However, sometimes the resolution objectives and the public interest may be better served through the resolution than the liquidation of a bank. As each scenario will be different, sometimes a liquidation may be better for the affected parties and sometimes a resolution using one of the various stabilisation tools in this Bill will be the better option.

To address the option of a liquidation, the Bill contains a modified bank winding-up procedure, which interacts with companies law and the Depositors' Compensation Scheme.

The Schedule makes consequential changes to the Preferential Payments Act 1908, including, firstly, providing 'super-preference' for expenses incurred in respect of a bank resolution action, which aims to recover any Government funding which may have been provided.

Secondly, the changes will provide improved protection for depositors in a bank insolvency or resolution by adding new levels of priority for deposit amounts above the limits of DCS compensation. These changes will interact with the new concept of bail-in, which charges costs of a bank's resolution to shareholders and creditors instead of to taxpayers, who pay the costs in a bail-out. Collectively, the changes minimise the possibility of compensation claims to the Bank Resolution Fund by shareholders and creditors in the event that they are bailed-in under the provisions contained in the Bill.

The Bill permits certain debt claims to be reduced and converted into equity so that the failing bank can be recapitalised. Typically, a bailed-in creditor will receive equity shares in the recapitalised bank, but will likely incur some degree of financial loss on their original claim.

In the event that it was decided a bail-in was necessary to ensure a bank could continue to provide critical services, the Bill provides for a strict order in which bail-in could be imposed. In that event, certain types of liabilities, or creditors, are exempt from bail-in, such as deposits covered by the DCS.

It is vital that certain types of creditor, such as the DCS, do not experience a loss and that is why they are exempted from bail-in. In addition, the Bill also provides the authority with a level

of discretion to exempt certain other liabilities in the interests of maintaining financial stability and to reduce any impact on the national economy.

The Bill was developed following a significant period of engagement involving the Treasury, the FSA, licensed banks in the Island and their professional advisers. There has also been ongoing engagement with resolution authorities in other relevant jurisdictions. This helped shape the Bill's policies, and the banking industry on the Island is fully supportive of the introduction of this legislation.

The draft Bill was also subject to a full public consultation and six responses were received, which were generally supportive of the Bill's objectives. Some responses commented on specific aspects of the Bill but the majority of the Bill attracted no specific comments.

Eaghtyrane, the introduction of this Bill will ensure that the Isle of Man's framework for dealing with failing banks will meet today's international expectations, which will be capable of external assessment by global standard-setting organisations such as the IMF. In addition, the Bill provides for the accountability of the resolution authority to Treasury and to Tynwald by requiring that a comprehensive report be prepared in the event that a resolution action is ever undertaken. Most importantly, both the Treasury and the FSA believe that the Bill will ensure better protection for consumers in the event of a bank failure.

Eaghtyrane, I beg to move that the Bank (Recovery and Resolution) Bill 2020 be read a first time.

The President: Thank you, Mr Henderson.

Before we move on, can I ask you to check whether you are logged in on two devices? We were getting a bit of feedback just now. If you are logged in on two devices, you may need to mute the speaker on the one you are not using. If you would just check that, please, we will avoid feedback.

Mr Henderson: Thank you, Eaghtyrane.

I am not sure where that is coming from. I am only using my PC at the minute; I am not logged on to any other device at all.

The President: All right, thank you very much.

Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I am happy to second the First Reading of this Bill today having had a good opportunity to consider its purposes and to examine its content and approach. In particular, I would like to acknowledge what I believe to be the robust process that has been adopted, involving substantial experience and technical expertise to shape the Bill to ensure the Island can develop its own suitable bank recovery and resolution regime.

I would like to thank the mover of the Bill in another place, as well as Mr Henderson, for the several opportunities to consider and raise questions on the Bill. I am supportive of the aims of this Bill as outlined by the mover, in particular the core aim to provide a framework to deal with any failing bank by creating an approach in line with accepted international expectations.

With that, Mr President, I beg to second.

The President: Thank you, Hon. Member.

Does any other Hon. Member wish to speak at this stage?

In that case, we shall move to a vote. The question is that the Bank (Recovery and Resolution) Bill be read for the first time. I put that to Council. If there is any dissent, please indicate now. The ayes have it. The ayes have it. The motion is carried.