

Asian bank resolution regimes

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This document is intended as a summary of the matters covered. It is not intended to be comprehensive or to provide legal advice.

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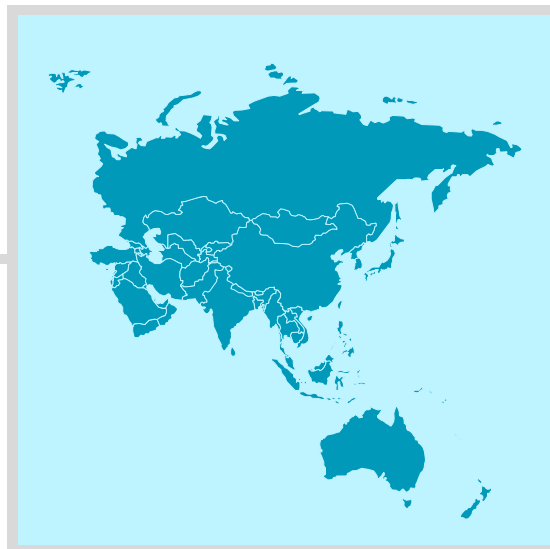
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Asian bank resolution regimes

In the wake of the financial crisis and the failure of Lehman Brothers and a number of other major banks there has been an increased focus on development of effective resolution mechanisms for global, systemically important banks and broker-dealers. The United Kingdom introduced a bank resolution regime through the Banking Act 2009, while the US introduced a regime for resolving "financial companies" (including banks and broker-dealers) through the Dodd Frank Act 2010. In addition, the European Commission has proposed a Recovery and Resolution Directive, which will create a harmonised bank resolution regime across the European Union.

The G20 leaders called at the Pittsburgh, Toronto and Seoul summits for the Financial Stability Board (FSB) to develop principles for effective resolution of systemically important financial institutions (SIFIs). In November 2011 the FSB published its **Key Attributes of Effective Resolution Regimes for Financial Institutions** which calls for G20 jurisdictions to have in place an effective resolution regime giving the resolution authority powers to resolve financial institutions outside of general insolvency proceedings.

The survey covers **Australia, China (PRC), Hong Kong, India, Indonesia, Japan, Korea and Singapore**, and focuses on the insolvency and resolution regimes applicable to banks and broker-dealers, based on a hypothetical group in each jurisdiction made up of a local holding company which is the parent of a local bank, local broker-dealer and local service company, as well as a local branch of a foreign bank. The survey does not cover insolvency or resolution regimes which may apply to other regulated entities (e.g., insurance undertakings).



Clifford Chance, in conjunction with ASIFMA, has conducted a survey of eight key Asian jurisdictions to obtain an overview of the insolvency regimes and resolution powers available in relation to banks in each jurisdiction, as well as other key features of the insolvency and resolution regimes (including depositor preference and treatment of local branches of foreign banks).

The tables in the "summary overview" section set out high level summaries comparing the regimes in the relevant jurisdictions. The high level summaries are followed by individual jurisdiction-by-jurisdiction summaries.

We would like to express our gratitude to all counsel who have contributed their knowledge and expertise to this survey. A list of their contact details can be found at the back of this paper.

* http://www.financialstabilityboard.org/publications/r_111104cc.pdf

Summary overview

Introduction

The first table below (summary overview) sets out a high level summary of the key features of the insolvency and resolution regimes in each of the covered jurisdictions.

- **Special resolution regimes:** we have identified regimes as “special resolution regimes” where they aim to meet the objectives of an effective resolution regime set out in the FSB’s Key Attributes paper (i.e., the regime provides the local resolution authority with effective administrative powers to resolve the bank without placing it into insolvency, and which the local resolution authority could use over a resolution weekend without needing to convene creditors’ meetings or seek a court order).
- **Specialised insolvency regimes:** we have identified insolvency regimes as “specialised insolvency regimes” where the regime has features which are not available under the general insolvency regime, and which are designed to reduce the impact of insolvency on the bank or broker-dealer, its clients and counterparties (e.g., the regime provides additional powers for the relevant regulator to be heard in an insolvency petition hearing, commence insolvency or assume control of the entity, or provides for additional trigger events for commencement of the relevant regime).

The table also identifies some other key features of the local insolvency regimes, including any powers to place local branches of foreign banks into insolvency or resolution proceedings, any liquidation priority given to depositors, requirements for banks to prepare recovery and resolution plans, and any proposed changes to the insolvency or resolution regimes.

The second table below (special resolution regimes) sets out the main features of the special resolution regimes in the relevant jurisdictions in more detail.

The FSB’s Key Attributes paper states that the resolution powers under an effective resolution regime may include powers to remove and replace senior management and directors; operate and resolve the firm, including powers to terminate contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm’s operations; ensure continuity of services; establish a temporary bridge institution to take over and continue operating certain critical functions of a failed firm; and bail-in powers.

The table highlights the key features of each regime, with a particular focus on the bridge bank / asset transfer powers and the bail-in powers.

The second table only covers the jurisdictions which we have identified as having special resolution regimes in place. As a result, it only covers **Australia, Indonesia, Japan, Korea and Singapore**.

Where a jurisdiction does not have a special resolution regime, it may still have other powers to take action in relation to failing banks or broker-dealers, including early intervention powers. For example, Hong Kong has a special manager regime under which the HKMA may appoint a special manager to take over the conduct of the affairs and business of a failing company. These regimes are discussed further in the individual country summaries.

Summary overview

	Special resolution regime for banks?	Specialised insolvency regime for banks?	Regime for winding up local branches of foreign banks?	Deposit guarantee / insurance?	Depositor preference?	RRPs required?	Changes proposed?
Australia *	✓	✓	✓ (winding up, ancillary liquidation)	✓ up to AUD 250,000 (USD 255,000) (ex post funded)	✓ (local deposits in AUD) #	✓	Under consultation
China (PRC) *	✗	✓	✓ (solvent winding up, receivership)	✓ (Government funded)	✓ (local deposits, retail only). But no detailed rules yet	Proposed	Proposed
Hong Kong	✗	✗	✓ (liquidation, scheme of arrangement)	✓ up to HKD 500,000 (USD 64,000) (pre-funded)	✓ (local deposits, retail and wholesale) #	✗	✗
India *	✗	✗	✓ (winding up, suspension of business)	✓ up to INR 100,000 (USD 1,850) (pre-funded)	✓ (local deposits, retail and wholesale) #	✗	Under consideration by regulator
Indonesia *	✓ (for systemically important banks)	✓	✓ (bankruptcy, suspension of payments, liquidation)	✓ up to 2 billion Rupiah (USD 207,000) (pre-funded)	✓ (local deposits, retail and wholesale) #	✗	Draft law
Japan *	✓	✓	✓ (general insolvency regimes, special liquidation)	✓ up to JPY 10,000,000 (USD 105,000) (pre-funded)	✗	✓	Proposed
Korea *	✓	✗	Possibly (liquidation, bankruptcy, rehabilitation, special resolution)	✓ up to KRW 50,000,000 (USD 46,000) (pre-funded)	✗	✗	✗
Singapore	✓	✓	✓ (bank insolvency, winding up, scheme of arrangement, special resolution)	✓ up to SGD 50,000 (USD 40,000) (pre-funded)	✓ (local deposits, retail and wholesale)	✗	Changes to the insolvency law have been recommended but no legislation passed yet

Special resolution regimes (key features)

	Australia	Indonesia	Japan	Korea	Singapore
Legislation	Financial Sector (Business Transfer and Group Restructure) Act 1999	PLPS Regulation No. 5/2006	Deposit Insurance Act (Act No. 34 of 1971)	Act on the Structural Improvement of the Financial Industry	Part VII and VIIA Banking Act
Covered entities	Bank	Systemic banks	Bank	Bank, broker-dealer	Bank
Applicable to local branches?	No (but under consultation)	No	No	Yes	Yes
Resolution authority	APRA	<ul style="list-style-type: none"> ■ Bank Indonesia; and ■ The Co-ordination Committee (Minister of Finance, Banking Supervision Agency, Bank Indonesia, LPS) 	<ul style="list-style-type: none"> ■ DICJ / FSA (Financial Administrator Regime) ■ DICJ / Prime Minister (Capital Injection, Special Financial Aid, Nationalisation) 	FSC	MAS
Conditions for resolution	Where a bank is likely to become unable to meet its obligations or is about to suspend payment	<ul style="list-style-type: none"> ■ Where a bank is experiencing financial difficulties that endanger the continuation of its business, and LPS declares that it cannot be rescued and that its failure will have systemic impact 	<ul style="list-style-type: none"> ■ Financial Administrator Regime: where a systemically important bank will not be able to pay its debts or may suspend payments; ■ Capital Injection: where a systemically important bank is neither a failed institution nor unable to pay its debts; ■ Special Financial Aid / Nationalisation: where a systemically important bank is a failed institution and / or is unable to pay its debts 	Where an entity fails to meet the criteria of financial soundness prescribed by the FSC (these vary depending on the type of financial institution)	Where a bank becomes or is likely to become insolvent or unable to meet its obligations, or where MAS considers it in the public interest to resolve the bank

Special resolution regimes (powers)

	Australia	Indonesia	Japan	Korea	Singapore
Business transfer powers?	Yes (power to transfer all or part of business to another financial institution or other entity)	Yes (power to transfer all or part of business to another bank)	Yes, generally six months after entry into Financial Administration Regime if a successor bank cannot be found	Yes (power to transfer all or part of business to another financial institution or a bridge bank owned by KDIC)	Yes (power for the Minister to transfer all or part of business to another bank)
Bail-in powers?	No express power, but APRA may order that no payments should be made on a bond except with APRA's approval	No	No	No	No
Other powers?	APRA may: <ul style="list-style-type: none"> Order a bank to issue new shares; Appoint a statutory manager with power to raise capital 	LPS may: <ul style="list-style-type: none"> Transfer assets and liabilities; Remove senior management; Transfer shares in the bank; Revoke, terminate or amend contracts which LPS considers detrimental to the bank 	<ul style="list-style-type: none"> FSA may appoint the DICJ as Financial Administrator; DICJ may subscribe for new shares; DICJ may provide financial aid; Nationalisation 	Power to: <ul style="list-style-type: none"> Transfer assets and liabilities; Remove senior management; Take steps to improve financial soundness 	MAS has broad discretion to: <ul style="list-style-type: none"> Direct the bank to take any action or refrain from any act; Appoint a statutory advisor; Assume control of and manage business of bank; Transfer business or shares; Restructure share capital

•**China (PRC):** China has a specialised insolvency regime for PRC Banks and Broker-dealers, under which the CBRC may place a PRC Bank into receivership. For PRC Broker-dealers, the CSRC has the power to impose Internal rectification, Receivership or Administrative reorganisation, as part of which the CSRC may transfer the clients of the failing PRC Broker-dealer to another PRC Broker-dealer.

Country summaries

Country summaries

The tables on the following pages set out a high level summary of the key features of the insolvency and resolution regimes in each of the relevant jurisdictions.

The tables set out a summary of the insolvency and resolution regimes applicable to each of a local bank (**Bank**), broker-dealer (**B-D**) and local branch of a foreign bank (**Branch**). They also cover a local holding company for a bank or broker-dealer group (**Hold-co**), for structures where the ultimate parent company is a non-operating holding company, and a local unregulated service company (**Service-co**) which provides services to the Bank, B-D or Branch.

The tables focus particularly on the typical group structures of banks and broker-dealer groups in the relevant jurisdiction, and also set out a summary of any deposit guarantee scheme and depositor preference regime. Where figures are given in local currencies (e.g., for maximum amounts covered by depositor guarantee schemes) we have also provided an indicative equivalent in USD at the exchange rates at the time of publication.

The tables also provide an indication of the scope of the insolvency regimes in the relevant jurisdictions (e.g., can all global creditors of the relevant entity claim in its insolvency, only creditors of the local branch or head office, or only local creditors?), any powers the local resolution authorities may have to recognise foreign insolvency or resolution proceedings, and any proposed changes in the law.

Local group structure and regulation: The Australian Prudential Regulatory Authority (APRA) regulates local banks, local branches of foreign banks and local broker-dealers. It also regulates non-operating holding companies of banks.

Most local banks are established with the operating entity as the holding company. However, a smaller number of banks have adopted non-operating holding company structure. The structure of broker-dealer groups varies.

A number of Australian banks have issued contingent convertible capital or other similar instruments which comply with the requirements of Basel III.

Deposit guarantee scheme: The Financial Claims Scheme (FCS) covers amounts up to AUD 250,000 (USD 255,000) held with Australian banks by depositors (including natural persons, bodies corporate, partnerships etc). The FCS does not cover deposits held in local branches of foreign banks or foreign branches of local banks, and only covers deposits denominated in AUD. The scheme is not pre-funded. The Government initially provides the funds to make any payments under the FCS, and these are recovered from the relevant bank. The scheme does not cover securities.

Depositor preference: In the winding up of an Australian bank, the official liquidator shall pay, in priority to all other debts, any amount due to APRA in relation to amounts paid out under the FCS. Deposits covered by the FCS which were not reimbursed by the FCS rank next ahead of other creditors.

Branch resolution regime: There is currently no special resolution regime available in relation to Australian branches of foreign banks. The only insolvency regime available is winding up under part 5.7 of the Corporations Act. However, the extent of APRA's powers under this regime are currently unclear. Where a foreign ADI (i.e., a bank with an Australian branch) suspends payments or becomes unable to meet its obligations, the assets of the branch will be ringfenced to meet liabilities in Australia in priority to all other liabilities of the foreign bank. APRA will seek to use its powers under the Banking Act to direct the foreign ADI to ringfence the assets of the branch. However, if these directions are not followed, APRA has no power to prevent the transfer of assets out of Australia by appointing a Statutory Manager or otherwise.

Recognition of foreign proceedings: The Cross-Border Insolvency Act 2008 provides for recognition of foreign insolvency proceedings in relation to broker-dealers. The court may recognise any judicial or administrative proceeding where the assets are subject to control or supervision of the foreign court. For all other types of entities, recognition will be governed by the Corporations Act. The Australian courts have the power to recognise foreign insolvency proceedings on the request of a foreign court, or by issuing an ancillary liquidation order on the request of a foreign liquidator.

Proposed changes in law: A Treasury consultation closed on 14 December 2012 on strengthening APRA's current crisis management powers in relation to banks.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Members' voluntary winding up	✓	✗	✓	✓	✓
Creditors' winding up	✗	✗	✓	✓	✓
Winding up under part 5.7 Corporations Act	✓	✓	✓	✓	✓
Voluntary administration	✗	✗	✓	✓	✓
Scheme of arrangement	✓	✗	✓	✓	✓
Receivership	✓	✗	✓	✓	✓
Specialised insolvency regime					
FCS / Banking Act	✓	✗	✗	✗	✗
Special resolution regime					
FS(BRGR) Act	✓	✗	✗	✗	✗
Other powers					
Statutory manager	✓	✗	✗	✗	✗

Experience of use of resolution powers: Counsel is not aware of any cases where bank special resolution powers have been used. The last bank failure where depositors lost money was that of a trading bank, the Primary Producers Bank of Australia, in 1931. Since the 1930s, banking sector problems have been resolved without losses to depositors. In recent decades there have been some notable failures such as the collapse of the State Bank of South Australia and the State Bank of Victoria. However, the losses incurred by these State banks were paid for by the taxpayers of the States concerned. The State governments (as owners) had unconditionally guaranteed all liabilities (not just deposits) of these banks.

The most recent example of a broker-dealer failure was MF Global Australia Limited which was placed into administration on 1 November 2011. On 2 March 2012 the creditors resolved to put MF Global Australia into liquidation. The first distribution to clients was made on 31 October 2012. Other claims are still being settled.

China (PRC)

Local group structure and regulation: A Chinese bank and local branch of a foreign bank will be regulated by the China Banking Regulatory Commission (**CBRC**), and a broker-dealer will be regulated by the China Securities Regulatory Commission (**CSRC**). A hold-co or service-co which does not carry on any regulated activities will require a business licence but will not be regulated by the CBRC or CSRC.

Most Chinese banking groups have a regulated bank as the ultimate holding company of the group (e.g., Bank of China / ICBC). However, there are some groups which have an unregulated entity as the holding company (e.g., CITIC Group).

Chinese banks do not currently issue contingent convertible instruments or other similar forms of capital. However, the People's Bank of China (**PBOC**) is considering permitting this as part of implementation of Basel III and on 29 November 2012 the CBRC issued guidance aimed at encouraging banks to issue such instruments.

Deposit guarantee scheme: There is a general protection scheme for PRC resident retail depositors of Chinese banks and clients of securities dealers. The regime does not expressly exclude application to branches of foreign banks, but it remains unclear how this would work in practice. Under this regime, the government will purchase the lawful principal and interest of retail deposits and any securities trading settlement funds in full. There is currently no deposit insurance scheme, although draft regulations establishing such a scheme are being prepared. Until this scheme is established, the government will purchase retail deposits of failed banks. There is a securities investor protection scheme funded by contributions from the Shanghai and Shenzhen stock exchanges and securities companies. Securities investors will be reimbursed in full and the protection scheme will participate in the insolvency proceedings as an unsecured creditor.

Depositor preference: There is a depositor preference regime, but it has not yet been implemented in the PRC. As a result, it is unclear how it would apply in practice. The principal and interest of retail deposits is paid in priority to other bankruptcy claims, but after (i) liquidation expenses and (ii) salaries and wages owed to employees. It is currently unclear whether the regime would apply to deposits placed with a local branch of a foreign bank.

Branch resolution regime: There is no special resolution regime available in relation to Chinese branches of foreign banks. The only insolvency regime available would be solvent winding up. However, it is possible that the CBRC may place the branch into receivership (although this has not been tested in practice).

Recognition of foreign proceedings: Creditors would need to apply to the PRC courts for recognition. It is extremely rare for a foreign judgment to be recognised and enforced in the PRC even where there are strong arguments for recognition.

Proposed changes in law: There are proposals to develop a regime for the bankruptcy of financial institutions in China, but no clear timetable yet for implementation.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Solvent winding up	✓	✓	✓	✓	✓
Insolvent liquidation	✓	✗	✓	✓	✓
Reorganisation	✓	✗	✓	✓	✓
Compromise	✗	✗	✗	✓	✓
Specialised insolvency regime					
Compulsory liquidation	✓	✗	✓	✗	✗
Special insolvency	✓	✗	✓	✗	✗
Special resolution regime					
N/A					
Other powers					
Internal rectification, receivership and administrative reorganisation	✓	✓	✓	✗	✗

Experience of use of resolution powers: On 21 June 1998, PBOC announced that Hainan Development Bank could not pay its debts when they fell due. PBOC set up a liquidation committee to start liquidation proceedings. ICBC was appointed as receiver to ensure that individual depositors (both domestic and overseas) would be paid. The liquidation proceedings have not yet been completed.

On 18 October 2004, CSRC ordered Minfa Securities Co., Ltd to be put under the receivership of China Oriental Asset Management Company. Fuzhou Intermediate Court declared the company bankrupt on 28 October 2009. The resolution process was completed by the end of 2011 having paid out around RMB 11.3 billion to creditors.

Local group structure and regulation: The Hong Kong Monetary Authority (**HKMA**) regulates banks and branches of foreign banks. The Securities and Futures Commission (**SFC**) regulates broker-dealers, as well as banks and branches of foreign banks (to the extent they carry on broker-dealer type activities). Most banking groups will have a bank as the ultimate parent entity, rather than an unregulated holding company. There is no typical structure for broker-dealer groups. The ultimate parent may be a bank or a non-operating holding company. At least one Hong Kong incorporated bank has issued contingent convertible capital, and counsel is aware that other institutions are considering issuing similar instruments.

Deposit guarantee scheme: The Hong Kong Deposit Protection Scheme (**DPS**) guarantees deposits placed with fully licensed banks which are members of the DPS up to a value of HKD 500,000 (*USD 64,000*) per depositor per bank under the Deposit Protection Schemes Ordinance (**DPSO**). The DPS guarantees both personal and corporate deposits with some limited exclusions (e.g., deposits placed by licensed banks are not protected). Restricted licence banks and deposit-taking companies are not members of DPS and so deposits held with them are not protected.

The DPS has a standing funding facility from a fund established by statute to enable it to raise funds to compensate depositors. It is pre-funded and in June 2012 had net assets in excess of HKD 1.5 billion (*USD 200 million*). The DPS does not cover structured deposits, offshore deposits, bearer form deposits or time deposits with a maturity longer than five years. Other non-deposit financial products are also not protected.

Depositor preference: In the winding up of a bank in Hong Kong (including local branches of foreign banks), priority is given to depositors over other unsecured creditors, up to an amount of HKD 500,000 (*USD 64,000*) per depositor.

Branch resolution regime: There is no special resolution regime available in relation to Hong Kong branches of foreign banks. The only insolvency regime available to a Hong Kong branch would be compulsory or provisional liquidation, or a scheme of arrangement. However, the Hong Kong Monetary Authority (**HKMA**) or Securities and Futures Commission (**SFC**) would have the power to commence administrative proceedings such as appointment of a special manager.

Recognition of foreign regimes: The HK regulatory authorities may seek to co-ordinate any action they take with their counterparts in other jurisdictions (subject to overriding domestic concerns). However, there are no statutory provisions that govern the recognition of foreign insolvencies. Consequently, separate liquidation proceedings need to be commenced in Hong Kong – generally referred to as "concurrent liquidation".

Proposed changes in law: The introduction of a corporate rescue procedure has been debated in Hong Kong since the mid 1990s and legislators have also proposed to introduce a prohibition on insolvent trading. However, no implementing legislation has yet been drafted.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Members' voluntary liquidation	✓	✗	✓	✓	✓
Creditors' voluntary liquidation	✗	✗	✓	✓	✓
Special voluntary liquidation	✓	✗	✓	✓	✓
Compulsory / provisional liquidation	✓	✓	✓	✓	✓
Scheme of arrangement / receivership	✓	✓	✓	✓	✓
Specialised insolvency regime					
N/A					
Special resolution regime					
N/A					
Other powers					
Special manager	✓	✓	✗	✗	✗
SFC restriction notice	✓	✓	✓	✗	✗
Injunction / appointment of administrator	✓	✓	✓	✗	✗

Experience of use of resolution powers: During the 1997 Asian financial crisis and in the 2008 global financial crisis, Hong Kong witnessed the failure of Hong Kong incorporated subsidiaries of financial institutions (e.g. Peregrine Fixed Income Limited and Lehman Brothers Hong Kong subsidiaries). Both Peregrine and the Lehman entities were placed into compulsory liquidation and are still the process of being wound up.

Following the collapse of BCCI in July 1991, the Hong Kong government began the legislative process to establish a depositor protection scheme, which was finally enacted under the DPSO in 2010.

Local group structure and regulation: Indian banks and local branches of foreign banks are regulated by the Reserve Bank of India (RBI). Broker-dealers in relation to Indian government securities are regulated by RBI. All other broker-dealers are regulated by the Securities and Exchange Board of India (SEBI).

Most banking groups in India have the bank or operating company as the ultimate parent. However, some broker-dealer groups have an unregulated holding company as the ultimate parent. Banks do not currently issue contingent convertible instruments or other similar forms of capital. However, they will be able to count these instruments towards their Additional Tier 1 capital from 2013 onwards as part of implementation of Basel III.

Deposit guarantee scheme: The Deposit Guarantee Scheme is operated by the Deposit Guarantee Corporation, and covers amounts up to INR 100,000 (USD 1,850) held with commercial banks (including local banks and local branches of foreign banks) and co-operative banks by natural persons, sole proprietorships and some partnerships (but not limited liability partnerships or companies). The scheme is funded from fees paid semi-annually by commercial and co-operative banks. The scheme does not cover securities. In 2011/2012 the revenue surplus of the scheme was around USD 1.09 billion.

Depositor preference: In the winding up of an Indian bank or local branch of a foreign bank, the official liquidator shall pay, in priority to all other debts, every depositor with a savings account the sum of INR 250 (USD 5) or the balance on his account, whichever is lower, and thereafter pay every other depositor INR 250 (USD 5) or the balance on his account, whichever is lower. This preference is limited to accounts maintained with the bank in India. The Deposit Guarantee Scheme is not a preferred creditor and would rank pari passu with other unsecured claims.

Branch resolution regime: There is no special resolution regime available in relation to Indian branches of foreign banks. The only insolvency regime available to an Indian branch would be winding up by the court. However, the foreign bank or the Reserve Bank of India (RBI) may also apply to the court to suspend the business of the bank in India if the bank is temporarily unable to meet its obligations.

Recognition of foreign proceedings: The courts have the authority to recognise and give effect to foreign insolvency proceedings in relation to an entity with a branch in India. The courts have the power to recognise both court-based foreign regimes and also regimes which are governed by administrative authorities rather than by the courts. However, in the past local branches have been ring fenced and foreign insolvency proceedings have not been recognised.

Proposed changes in law: There have been no public announcements of any planned changes in insolvency or resolution law. However, counsel is aware that the RBI is considering changes (especially for SIFIs).

Regime #	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Members' voluntary winding up	x	x	✓	✓	✓
Creditors' voluntary winding up	x	x	✓	✓	✓
Winding up by the Court	✓*	✓	✓	✓	✓
Scheme of arrangement	✓*	x	✓	✓	✓
Specialised insolvency regime					
N/A					
Special resolution regime					
N/A					
Other powers					
Suspension of business	✓	✓	x	x	x

* Not available to Government Banks

Experience of use of resolution powers: There have been no major insolvencies of Indian incorporated banks in the last 30 years. Where an Indian bank has encountered difficulties in the past, the central government has (on the recommendation of RBI) issued an order of moratorium under Section 45(2) of the Banking Act (suspension of business) to stay the commencement or continuation of all or any actions and proceedings against the bank. The RBI then typically prepares a scheme for the merger of the troubled bank with another bank (normally a government-owned bank).

In 2004, the central government imposed such a moratorium on GTB. This was followed by a scheme of amalgamation under which GTB was merged with Oriental Bank of Commerce (a bank owned by the central government). The scheme allowed for payment of depositors in full and other creditors as and when amounts became available. The former shareholders of GTB will only receive funds if there are surplus assets after accounting for all liabilities over the period of the scheme (12 years).

Local group structure and regulation: Indonesian banks and local branches of foreign banks are regulated by the Indonesian Central Bank (**Bank Indonesia**), and broker-dealers are regulated by the Financial Services Authority or *Otoritas Jasa Keuangan* (formerly BAPEPAM-LK). Bank Indonesia also has supervisory powers over local holding companies of Indonesian banks.

Most banking groups in Indonesia have the bank or operating company as the ultimate parent, and counsel is not aware of any banking groups where the ultimate parent is a local holding company. Similarly, most broker-dealers are ultimately owned by a local bank. Commercial banks do currently issue contingent convertible instruments, and banking financial institutions which hold more than 40% of a commercial bank are required to invest in these instruments.

Deposit guarantee scheme: The deposit guarantee scheme is operated by the Deposit Insurance Corporation (**LPS**), and covers amounts up to 2 billion Rupiah (*USD 207,000*) held with Indonesian commercial banks (including local banks and branches of foreign banks, but not foreign branches of local banks) by any depositors. The scheme is funded from initial participation contributions paid by participating banks when they join the scheme, as well as fees paid semi-annually by commercial banks. The scheme does not cover securities.

Depositor preference: In the winding up of an Indonesian bank or a local branch of a foreign bank, the official liquidator shall pay, in priority to all debts, the full amount of any payment made by the deposit insurance scheme to depositors. The claims of depositors ineligible for the deposit insurance scheme or in excess of the deposit insurance scheme limit rank behind the deposit insurance scheme, but ahead of general unsecured creditors. The depositor preference extends to both retail and wholesale deposits.

Branch resolution regime: There is no special resolution regime available in relation to Indonesian branches of foreign banks. The only proceedings that would be available are general insolvency proceedings.

Recognition of foreign proceedings: Indonesian courts do not recognise bankruptcy / insolvency or suspension of payments / rescue proceedings in other jurisdictions, and Indonesia is not party to any treaties on reciprocal recognition and enforcement of foreign court judgments. A foreign court judgment may be adduced in evidence, but the Indonesian court will not be bound by this judgment in any respect.

Proposed changes in law: There is a draft law on financial safety nets, which should provide powers for the authorities to take steps to prevent systemic risk by resolving failing financial institutions (bank and non-bank). The draft law was finalised in 2008, but was rejected by the House of Representatives. There is no indication of when (or if) it may be adopted and come into force.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Bankruptcy proceeding	✓	✓	✓	✓	✓
Suspension of payments	✓	✓	✓	✓	✓
Voluntary liquidation	✓	✓	✓	✓	✓
Compulsory liquidation	✓	✓	✓	✓	✓
Specialised insolvency regime					
Liquidation of commercial bank	✓	✓	x	x	x
Special resolution regime					
Systemic bank resolution regime	✓	x	x	x	x
Other powers					
N/A					

Experience of use of resolution powers: Bank Century was placed under intensive supervision by Bank Indonesia in 2005, and in 2008 it became a "bank under special supervision" of Bank Indonesia. Shortly after, it was declared a failed bank with systemic impact, and the management of Bank Century was taken over by LPS. LPS decided to rescue Bank Century, so it has kept its banking licence and continues to operate under the new name of Bank Mutiara.

The only commercial bank which has been placed into liquidation recently was Bank Ibi. Bank Ibi's banking licence was revoked in 2009. The liquidation process is still not complete.

Local group structure and regulation: The Financial Services Agency (**FSA**) regulates all Japanese banks, local branches of foreign banks and Japanese broker-dealers. It also has supervisory authority over certain holding companies of banks and broker-dealers. The ultimate holding company of a Japanese bank or broker-dealer is typically an unregulated holding company rather than an operating company. Counsel is not aware that any local bank has issued contingent convertible or similar capital instruments.

Deposit guarantee scheme: The Deposit Insurance Regime, operated and administered by the Deposit Insurance Corporation of Japan (**DICJ**), insures deposits placed with banks and some other types of financial institution, but not local branches of foreign banks or broker dealers. Foreign currency deposits are also not covered.

Deposits used for payment and settlement purposes with no interest being accrued are insured for the full amount of the deposit. Any other deposit will be covered up to JPY 10,000,000 (*USD 105,000*) together with interest accrued thereon. The DICJ also plays a leading role in the initiation and management of resolution and insolvency processes for insured institutions. There is also an Investor Protection Fund Regime which covers customers of Japanese Type 1 broker-dealers for claims up to JPY 10,000,000 (*USD 105,000*) per person.

Both these regimes are funded by fees paid annually by insured institutions. For 2011, the total paid by insured institutions was around JPY 700 billion (*USD 7.3 billion*) and DICJ reserves were around JPY 420 billion (*USD 4.3 billion*)

Depositor preference: Japan has no depositor preference regime, and unsecured deposits would rank *pari passu* with other unsecured claims.

Branch resolution regime: There is no special resolution regime available in relation to Japanese branches of foreign banks. However, the assets in Japan of a foreign bank may be liquidated to meet the claims of creditors in Japan.

Recognition of foreign proceedings: The Act on Recognition and Assistance for Foreign Insolvency Proceedings (**ARAFIP**) enables the Japanese courts to recognise court-based foreign insolvency proceedings which are equivalent to Bankruptcy, Civil Rehabilitation, Corporate Reorganisation or Special Liquidation.

The foreign bankruptcy trustee or a debtor may apply to the Tokyo District Court for recognition. Once the proceedings have been recognised, the Court may issue certain orders to facilitate the implementation of the foreign insolvency proceedings in relation to assets of the relevant entity in Japan.

Proposed changes in law: On 28 January 2013, the Financial System Council published a report on the reform of resolution regimes for financial institutions, based on the FSB's Key Attributes. Draft laws are expected to be submitted to the Diet in April 2013 and to enter into force in 2014.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Bankruptcy	✓	✓	✓	✓	✓
Civil rehabilitation	✓	✓	✓	✓	✓
Corporate reorganisation	✓	✓	✓	✓	✓
Special liquidation	✓	✓	✓	✓	✓
Specialised insolvency regime					
Amended bankruptcy	✓	✗	✓	✗	✗
Amended civil rehabilitation	✓	✗	✓	✗	✗
Amended corporate reorganisation	✓	✗	✓	✗	✗
Special liquidation for foreign bank branches	✗	✓	✗	✗	✗
Special resolution regime					
Financial administrator regime	✓	✗	✗	✗	✗
Capital injection / financial aid / nationalisation regimes	✓	✗	✗	✗	✗
Other powers					
N/A					

Experience of use of resolution powers: On 15 September 2008, the FSA issued an administrative order to Lehman Brothers Japan, Inc (**LBJ**) requiring it to hold sufficient assets in Japan to meet its liabilities. This was followed by an order for LBJ to suspend its business. On 16 September LBJ filed for commencement of civil rehabilitation proceedings. The Tokyo District Court issued the commencement order three days later. Civil rehabilitation is normally used to rehabilitate a company. However, the company is also permitted to dispose of its assets and be liquidated even under civil rehabilitation proceedings. LBJ disposed of its assets to Nomura Holdings on 29 September 2008 and was dissolved the same day. The proceeds of the sale were distributed to creditors.

Local group structure and regulation: The Financial Services Commission (FSC) regulates all Korean banks, branches of foreign banks, broker-dealers and Korean financial holding companies (holding companies of financial institutions including banks and broker-dealers). Following the enactment of the Financial Holding Companies Act 2000, the ultimate parent companies of the majority of Korean bank groups and many Korean broker-dealer groups are now non-operating holding companies, although some of the major broker-dealer groups still have a regulated operating company as their ultimate parent. Korean banks do not currently issue contingent convertible instruments or other similar forms of capital. However, the FSC is considering permitting this in connection with implementation of Basel III.

Deposit guarantee scheme: The Korea Deposit Insurance Corporation (KDIC) guarantees all deposits (retail and wholesale) held with financial institutions including local banks, local branches of foreign banks and broker-dealers up to a value of KRW 50,000,000 (USD 46,000) per insolvent institution. It may also cover deposits placed with foreign branches of Korean banks where these are not covered by the deposit guarantee scheme of the relevant jurisdiction. The scheme is funded by annual premiums paid by the insured institutions. The scheme does not cover securities.

The KDIC may also play a part in the resolution process. It has the power to designate an institution as an “insolvent financial institution”, which may prompt the FSC to take action to resolve the institution. The KDIC may also assist the FSC in implementing resolution procedures by providing financial assistance to firms which intend to take over an insolvent financial institution (or to acquire its assets and liabilities).

Depositor preference: Korea has no depositor preference regime, and unsecured deposits and the KDIC would rank pari passu with other unsecured claims. However, where a Korean branch of a foreign entity is liquidated under Korean law, Korean creditors or foreign creditors with an address or domicile in Korea have priority over the assets, capital stock, reserves and other surplus of the local branch.

Branch resolution regime: The Financial Services Commission (FSC) has a broad range of resolution powers under the ASIFI Special Resolution Regime that it may exercise in relation to a Korean branch of a foreign bank. See box opposite in relation to other regimes.

Recognition of foreign regimes: Korean courts have the authority to recognise foreign court-based insolvency regimes that are analogous to domestic regimes. However, they do not have the power to recognise foreign regimes which are governed by administrative authorities rather than by the courts.

Proposed changes in law: There are no changes in insolvency or resolution law currently planned.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Voluntary dissolution and liquidation	✓	✓	✓	✓	✓
Compulsory liquidation	✓	?	✓	✓	✓
Bankruptcy proceedings	✓	?	✓	✓	✓
Rehabilitation proceedings	✓	?	✓	✓	✓
Specialised insolvency regime					
N/A					
Special resolution regime					
ASIFI Special Resolution Regime	✓	✓	✓	✓	*
Other powers					
N/A					

Experience of use of resolution powers: A number of Korean banks and broker-dealers experienced financial distress during the Asian financial crisis in the 1990s. Most of these banks and broker-dealers were successfully resolved using the ASIFI Special Resolution Regime and were taken over by more solvent domestic financial institutions or foreign financial groups by way of merger, business transfer or contract transfer. The period of time for resolution varied widely, ranging from several months to several years.

Treatment of Korean branches of foreign banks: It is unclear whether a local branch of a foreign bank, which is not a separate legal person under Korean law, may file an application for proceedings under the general insolvency regimes. A branch of a foreign bank may apply for voluntary dissolution and liquidation, but would require the prior approval of the FSC. If the branch was in financial distress, it is likely that the FSC would refuse the application and refer the branch for resolution under the ASIFI Special Resolution Regime. In the case of the other regimes, the law is unclear. The courts may allow the application, but there is no precedent.

Local group structure and regulation: The Monetary Authority of Singapore (**MAS**) regulates all Singaporean banks, branches of foreign banks and financial holding companies if MAS considers the latter to affect monetary stability and credit and exchange conditions in Singapore, the development of Singapore as a financial centre or the financial situation of Singapore generally. MAS also licenses and regulates broker dealers. MAS is currently reviewing whether to introduce a regulatory framework for financial holding companies which do not carry out any activities in Singapore but merely hold as subsidiary a Singapore incorporated bank or insurance company. Several major Singapore banks have issued contingent convertible capital instruments.

Deposit guarantee scheme: The Deposit Insurance Scheme (**DI Scheme**) guarantees insured deposits placed with scheme members up to a value of SGD 50,000 (*USD 40,000*). Every full bank with a valid MAS licence (including local branches of foreign banks which meet this definition) automatically becomes a member of the DI Scheme and is required to fund the scheme by paying an annual premium to the Deposit Insurance Fund (**DI Fund**). The DI Scheme does not cover structured deposits or any deposits made by another bank or a person who carries on business activities outside Singapore which, if conducted within Singapore, would require a banking licence. The DI Scheme only covers deposits in Singapore dollars.

Depositor preference: In the event of a winding up of a bank or local branch of a foreign bank, priority will be given to the following liabilities in Singapore: (i) any premium contributions due and payable to the DI Fund; (ii) liabilities in respect of insured deposits under the DI Scheme up to the amount of compensation paid or payable out of the DI Fund; (iii) non-bank customer deposits. The preference covers both retail and wholesale deposits in any currency, but does not extend to deposits placed with foreign branches of Singaporean banks. The assets of that bank or branch in Singapore shall be ring-fenced so they are available to meet all liabilities incurred in Singapore.

Branch resolution regime: In general the insolvency and resolution proceedings available to a Singapore bank will also be available to a Singapore branch of a foreign bank, with the exception of voluntary winding up and judicial management.

Recognition of foreign regimes: Singapore is not currently party to UNCITRAL and so is not obliged to recognise foreign insolvency regimes. The Singapore courts may only assist foreign courts or foreign liquidators if their actions or rulings are consistent with the domestic Singapore insolvency framework, which includes adherence to Singapore's ring-fencing provisions regarding the assets of insolvent banks.

Proposed changes in law: The MAS (Amendment) Bill and Financial Institutions (Miscellaneous Amendments) Bill will (when in force) expand the resolution regime to cover other financial institutions and material non-operating entities in a financial group and give additional powers to MAS. The Singapore Government has also indicated that it will consolidate and refine Singapore's bankruptcy and insolvency legislation into an omnibus insolvency act. No draft legislation has been introduced to date.

Regime	Bank	Branch	B-D	Hold-co	Service-co
General insolvency regime					
Compulsory winding up	✓	✓	✓	✓	✓
Compulsory winding up of unregistered co.	✗	✓	✗	✗	✗
Voluntary winding up	✓	✗	✓	✓	✓
Scheme of arrangement	✓	✓	✓	✓	✓
Receivers and managers	✓	✓	✓	✓	✓
Judicial management	✓	✗	✓	✓	✓
Specialised insolvency regime					
Bank insolvency	✓	✓	✗	✗	✗
Special resolution regime					
Special Resolution Regime	✓	✓	✗	✗	✗
Other powers					
N/A					

Experience of use of resolution powers: In November 2011, Provisional Liquidators were appointed for MF Global Singapore Pte Limited (**MF Global**). In May 2012, the sole shareholder of MF Global Singapore Pte Limited passed a special resolution for the voluntary winding up of the company and appointed joint and several Liquidators. This was a creditors' voluntary liquidation. The liquidation is currently ongoing.

In March 2012, Lehman Brothers Singapore Pte Ltd (**LBSPL**) and Lehman Brothers Pte Ltd (**LBPL**) were placed in members' voluntary liquidation. The liquidations of both LBSPL and LBPL are currently ongoing.

In February 1995, the High Court appointed interim judicial managers of Baring Futures (Singapore) Pte Ltd (**BFS**) on the application of SIMEX, now known as The Singapore Exchange Ltd on the basis that BFS – a SIMEX clearing member – was or would be unable to pay its debts. BFS was subsequently liquidated.

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