Resolution Regime for Financial Market Infrastructures: Response to Consultation

A Report by the
Council of Financial Regulators

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1. Introduction and Background

In February 2015, the Australian Government, acting on the advice of the Council of Financial Regulators (CFR) — made up of the Reserve Bank of Australia (RBA), the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the Australian Treasury — released a consultation paper seeking stakeholder views on legislative proposals to establish a special resolution regime for clearing and settlement (CS) facilities and trade repositories, together referred to as financial market infrastructures (FMIs).[1] Some of the legislative proposals in the paper also extend to domestically incorporated holders of a domestic market licence.[2]

The key features of the legislative proposals set out in the government's consultation paper are summarised below. The proposals are aligned with the Financial Stability Board's (FSB's) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the Key Attributes), including an Annex that addresses how the general principles set out in the Key Attributes can be adapted in designing resolution regimes for FMIs (FMI Annex).[3]

- *Institutional scope, objectives and resolution authority.* The FMI resolution regime would extend to operators of CS facilities that are incorporated in Australia and hold a domestic CS facility licence,[4] as well as trade repositories that are incorporated and licensed in Australia. The RBA would act as resolution authority for CS facilities, and ASIC as resolution authority for trade repositories. An overarching objective for the RBA in taking resolution actions in relation to CS facilities would be to maintain overall stability in the financial system, with an additional common key objective for both resolution authorities to maintain the continuity of CS facility and trade repository services that are critical to the smooth functioning of the financial system. These objectives would be complemented by a set of considerations for the resolution authorities in choosing between resolution actions, covering matters such as maintenance of market confidence and integrity, protection of public funds, and minimisation of the costs of resolution to creditors and shareholders.
  - A complementary proposal would require all systemically important CS facilities that are strongly connected to the Australian financial system or real economy to be operated by an entity that is incorporated in Australia and holds a domestic CS facility licence.
- *Resolution powers.* The objectives of the resolution authority may be best pursued by taking actions in accordance with an FMI's own operating rules, including the allocation of uncovered losses. These actions would be supported by a range of powers available to the resolution authority. The powers proposed for the resolution authority in relation to FMIs are:
  - *Statutory management*. The power to appoint an individual, company or the resolution authority itself to temporarily administer a distressed FMI in a manner consistent with the objectives of the resolution regime. The statutory manager would assume the powers of the FMI's board, including carrying out recovery measures and other actions in accordance with the FMI's rulebook. The exercise of powers by the statutory manager would be overseen by the resolution authority.

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1 The government's consultation paper is available at <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Resolution-regime-for-financial-market-infrastructures>.

2 Reference to a 'domestic market licence' means an Australian market licence granted under section 795B(1) of the *Corporations Act 2001*.

3 The Key Attributes and FMI Annex are available at <http://www.financialstabilityboard.org/2014/10/r_141015/>.

4 Reference to a 'domestic CS facility licence' means an Australian CS facility licence granted under section 824B(1) of the Corporations Act.

- *Moratorium on payments to general creditors*. The power to suspend an FMI's payment obligations to general creditors. This would exclude payments made in relation to core FMI activities (such as margin payments and settlement of securities transactions).
- *Transfer of operations to a third party or bridge institution*. The power to compulsorily transfer all or part of an FMI's operations to a willing third-party purchaser, or a temporary bridge institution established by public authorities. A transfer to the latter would be intended as an interim step towards a return to private sector ownership under new governance arrangements.
- *Temporary stay on early termination rights*. The power to impose a temporary stay of up to 48 hours on termination rights (with respect to future obligations) that may be triggered solely by an FMI's entry into resolution. It is also expected that FMIs would ensure that such termination rights were not included in their rules or contracts with critical third-party suppliers.

- *Safeguards and funding arrangements.* The legislative proposals provide a right to compensation from the Commonwealth should participants or other stakeholders be left worse off in resolution than they would have been had the FMI entered general insolvency. The proposals also include an immunity from liability for the resolution authority, statutory manager and others acting in compliance with the directions of the resolution authority. It is envisaged that in some resolution scenarios, there could be a need to draw on public funds. In such cases, the government would seek to recover any expenditure from participants and shareholders of the FMI.
- *International cooperation and supporting requirements.* The proposals recognise that Australian authorities should also have the capacity to take limited action in support of resolution actions by overseas authorities in respect of overseas-based FMIs and financial markets that are licensed to operate in Australia. The proposals also address several matters required to support the practical implementation of the resolution regime, although they are not expected to require specific legislation. These matters include the development and maintenance of recovery and resolution plans, and assessments of the feasibility of resolution plans for each FMI.
- *Directions powers.* The legislative proposals set out a range of enhancements to the powers of regulators and resolution authorities to give directions to FMIs and financial markets. These powers, primarily designed to support the successful implementation of recovery and resolution actions, also develop some more general recommendations made by the CFR in 2012.[5] They would introduce a streamlined process for the timely issuance of directions, and also strengthen sanctions for a failure to comply, including criminal sanctions. Among the recommendations, it is proposed that the RBA be granted the power to issue directions to CS facilities on its own behalf in respect of matters relevant to its financial stability responsibilities. In addition, it is proposed that ASIC and the RBA would each be granted the power to issue directions to support an FMI's recovery actions and its own resolution actions. These powers would extend to ASIC's regulatory role in respect of financial markets (as recommended by the CFR in 2012). Resolution-related directions powers would extend to related entities of an FMI that provided critical services or funding to the FMI under *ex ante* legal agreements.

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[5] See CFR (2012), 'Review of Financial Market Infrastructure Regulation: Letter to the Deputy Prime Minister and Treasurer', February. Available at <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2012/CFRWG%20on%20Financial%20Market%20Infrastructure%20Regulation/Key%20Documents/CoFR_Letter_to_Deputy_PM.ashx>.

Internationally, while a number of jurisdictions have taken steps towards implementation of FMI resolution regimes (including the United Kingdom and Hong Kong), most jurisdictions are still in the early stages of implementing guidance set out in the FMI Annex to the Key Attributes. The progress of international authorities in implementing FMI resolution, and any gaps in existing practices or guidance, will be examined as part of a broader work plan focused on central counterparties (CCPs) led by the FSB in cooperation with the Committee on Payments and Market Infrastructures, International Organization of Securities Commissions and Basel Committee on Banking Supervision. This work is intended to promote CCP resilience, recovery planning and resolvability, with the FSB leading work on CCP resolution.

The CFR has considered feedback received from consultation on the initial proposals on FMI resolution summarised above, as well as continuing developments internationally. The remainder of this report summarises the key feedback from stakeholders and sets out the CFR's views on how this feedback should be addressed in developing draft legislation to establish an Australian FMI resolution regime. Stakeholders are invited to comment on these views.

2. Overview of Consultation Responses

The government received eight written submissions from stakeholders, including all major currently licensed FMIs and relevant industry associations. In addition to the written submissions, the CFR agencies hosted meetings with several key stakeholders. Feedback from consultation revealed strong support for the establishment of a special resolution regime for FMIs. Stakeholders agreed that it was essential that authorities had sufficient powers, supported by legislation, to prevent the disorderly failure of an FMI, particularly in the case of CS facilities. This was seen as a complement to existing work by FMIs themselves to develop plans to recover from any threat to their continued viability. A number of respondents explicitly agreed that the resolution framework should be consistent with the Key Attributes and align with emerging international practice in this area where possible. The FSB's work on CCP resolution should provide additional insights into the direction of international implementation.

While stakeholders universally supported the principle of establishing an FMI resolution regime, the consultation responses provided feedback in a number of key areas related to the design and scope of the regime.

- *Additional loss absorbency*. Although not explicitly proposed in the consultation paper, the CFR agencies together with stakeholders discussed options to address losses that could not be successfully allocated under a CS facility's (in particular a CCP's) own recovery plan. Stakeholders strongly advocated that the allocation of losses by a resolution authority should be consistent with a CCP's recovery plan wherever possible, so as to provide certainty to participants. It was nevertheless accepted that in some cases the resolution authority may need additional tools – for instance, where some additional loss allocation by the resolution authority could prevent the disruption associated with complete termination of contracts if this was the sole remaining option available under the CCP's recovery plan.
- *Business transfer powers*. Stakeholders noted practical barriers to the use of powers to transfer the operations of a CCP to a third-party purchaser or bridge institution, including the potential for a partial transfer to break netting sets or separate collateral from positions, as well as difficulties in transferring licences, netting approvals and operational links. Stakeholders also expressed concern that compensation arrangements were not adequate to address the possibility that the resolution authority could break netting sets or separate collateral from related obligations in the exercise of transfer powers.
- *Temporary stay on early termination rights*. A number of stakeholders raised concerns regarding the possibility of a resolution authority extending a stay on participant rights to trigger early termination against a CCP beyond 48 hours, citing the uncertainty that such a power could create, the implications for participants in managing their risks in relation to the CCP, and inconsistency with international practice.
- *Application to overseas CS facility licensees*. While stakeholders generally supported the proposal to limit the scope of the resolution regime to domestically incorporated FMIs, one stakeholder argued that authorities would need a reserve power over overseas CS facility licensees to address the situation in which offshore resolution authorities acted or failed to act in a way that adversely affected Australian interests. Another respondent argued that courts should be required to consider the impact of foreign resolution or insolvency proceedings on Australian financial stability. Other stakeholders noted that the *Cross-border Insolvency Act 2008* is designed to support cross-border recognition of standard insolvency regimes, with special resolution regimes for authorised deposit-taking institutions (ADIs) and insurers specifically out of scope. Some argued that additional powers may be required to ensure the successful

implementation of actions taken by an offshore resolution authority in relation to Australian assets or operations of an overseas-based CS facility.

- *Market operators and trade repositories*. Stakeholders supported the proposal to exclude market operators from most elements of the resolution regime. A number of stakeholders questioned the rationale for extending the resolution regime to trade repositories, since most did not regard trade reporting to be a systemically important activity.

Some stakeholders also raised several issues that were less widely commented upon.

- Some questioned the appropriateness of directions powers extending to related entities or third parties that provide critical services to an FMI in resolution.
- Stakeholders made a number of queries regarding the mechanics of statutory management:
  - whether it was necessary to suspend (or automatically suspend) shareholder rights during statutory management given the inability of shareholders to influence management of an FMI under statutory management
  - the criteria for selecting a statutory manager
  - the need to clarify the application of netting protections under the *Payment Systems and Netting Act 1998* (PSNA) to statutory management, by recognising statutory management as a form of external administration.
- Some questioned the usefulness of some proposed powers, such as a payments moratorium that excludes clearing- and settlement-related payments and arrangements for the orderly wind-down of non-critical FMIs.
- Stakeholders questioned whether it is appropriate for a material adverse change in information sharing arrangements between Australian authorities and an offshore licensed FMI or market operator's home regulator to constitute grounds for cancelling or suspending the FMI's or market operator's licence.
- One stakeholder queried the proposal to remove the separate directions power of the Minister and replace it with the power to resolve potential conflicts between directions issued by ASIC and the RBA.

A number of stakeholders also commented on the proposals to enhance legislative provisions to impose location requirements on overseas CS facilities. Some expressed concern that the threshold for requiring an overseas-based provider of clearing and settlement services to incorporate domestically was not sufficiently clear, and that this was an unnecessary barrier to competition.

3. Response to Feedback

The CFR has considered feedback received from consultation on the initial proposals on FMI resolution summarised in Section 1. This section sets out the CFR's views on how this feedback should be addressed in developing draft legislation to establish an Australian FMI resolution regime.

3.1 Additional loss absorbency

Of the FMIs currently operating in Australia, only CCPs assume credit risk as principal in the performance of their critical FMI functions. For this reason, CCPs are required to have a set of tools that allows them to comprehensively address any losses suffered on the default of one or more participants that cannot be absorbed by prefunded financial resources (such as margin and the CCP's default fund).[6] These tools, which typically involve the allocation of any uncovered losses to participants, are set out in a CCP's operating rules and the sequence of use of such tools to address uncovered losses is documented as part of the CCP's recovery plan. This ensures that the allocation of losses to participants in such circumstances is transparent to participants and part of their contractual relationship with the CCP.

It is appropriate that pre-agreed loss allocation rules are respected to the extent possible and the CFR proposes to explicitly recognise this via an additional matter for the resolution authority's consideration when determining its choice of resolution powers.[7]

Although CCP loss allocation arrangements are designed to be comprehensive, there may be circumstances in which these tools cannot be successfully executed or can only be executed in a way that would lead to adverse stability outcomes.

- Legal or practical barriers may prevent a CCP from successfully executing an otherwise comprehensive recovery plan. For instance, notwithstanding statutory protections, the management and board of a CCP could take the view that executing particular recovery actions carries unacceptable risks (reputational or legal). In many cases, directions could be used to address this situation, but this may not always be the case.[8] Alternatively, recovery actions may have external dependencies, such as reliance on *ex post* funding from participants or third parties.
- Even where a CCP is able to execute recovery measures to fully allocate losses and restore its matched book, it may not be desirable on stability grounds for these measures to be enacted. Recovery measures could lead to adverse stability outcomes if they transmitted liquidity or solvency stress likely to trigger the default of one or more remaining participants. Alternatively, where a CCP is unable to return to a matched book it may be forced to decide between continuation of loss allocation tools such as the haircutting of outgoing payments to participants (payment haircutting) for an extended period, and the termination of all its remaining open contracts. While payment haircutting is an acceptable tool when used over a short period, extended use risks undermining the credibility of the CCP in its role as guarantor of replacement cost risk. On the other hand, complete contract termination would either effectively close the CCP's clearing service, or (at a minimum) require all participants to rapidly re-establish positions in highly stressed conditions.

6 The ASX CCPs implemented additional loss allocation tools on 1 October 2015 to meet this recently introduced requirement.
7 A statutory manager could implement loss allocation measures contained in the CCP's rules.
8 For example, directions alone may not suffice if directors have already taken steps to appoint an external administrator to the CCP.

This potential limitation to CCP loss allocation arrangements has been recognised internationally, with the potential role of additional prefunded financial resources in resolution under consideration by an FMI Cross-border Crisis Management Group (fmiCBCM) recently established by the Financial Stability Board.[9]

The CFR therefore sees a case for an additional layer of loss absorbency that could be used by the resolution authority to address situations where standard loss allocation tools available to a CCP under its rules governing recovery cannot be used in a manner consistent with maintaining financial stability. The use of this power would be subject to the requirement that the resolution authority take into consideration the arrangements for loss allocation in the CCP's rule book where this is possible and consistent with financial stability. The CFR proposes that the Bank, as resolution authority for CS facilities, be granted a broad statutory power to allocate a residual loss in a manner consistent with the allocation of losses in insolvency. Such a power could, for example, be used to apply losses to any unsecured claims on a CCP that would be exposed to loss in insolvency. The CFR is also considering the possibility of an additional loss allocation power reserved for resolution that could be written into the rule books of CCPs subject to the resolution regime, and will continue to explore this option. A dual rule- and statute-based power for additional loss absorbency would balance three key objectives:

- *Transparency*. A rule-based power would be transparent to participants, since it would form part of their contractual relationship with the CCP. A more broadly stated power in statute may not provide the same transparency to participants if it is less clear how it would be applied in the case of a particular CCP. Transparency would be underpinned by the statutory objective that the resolution authority apply loss allocation in accordance with the CCP's rules wherever possible.
- *Avoiding compensation claims*. Stakeholders noted that the exercise of a statutory power to allocate losses to participants without a contractual basis could expose the government to compensation claims and recommended that this be contemplated in the CCP's rule book.
- *Flexibility*. Although a rule-based power would have advantages in terms of transparency and avoiding compensation claims, it may lack the flexibility needed to address unanticipated situations in a manner consistent with maintaining financial stability. A broader statute-based power could be used to supplement rule-based powers in such cases.

The CFR would continue to review arrangements for additional loss allocation in resolution in light of the international work on this topic led by the fmiCBCM over the coming period.

3.2 Business transfer powers

While stakeholders noted practical barriers to the use of transfer powers, the CFR believes that these powers should remain part of the proposed FMI resolution regime. In the case of a CCP, there may be situations in which transfer of the core business to a bridge entity would assist a subsequent sale to a third party or a change in governance (such as mutualisation). In such cases it might be possible for business transfer powers to be used in such a way that some liabilities were left behind in the original entity while transferring the core clearing business intact.

For instance, this strategy could be useful where the threat to viability comes from losses that are unrelated to a participant default, meaning that the core business can be transferred while leaving such losses behind.

9 This work is part of a broader international work plan to promote CCP resilience, recovery and resolvability. See FSB, Basel Committee on Banking Supervision, Committee on Payments and Market Infrastructures and International Organization of Securities Commissions (2015), 'Progress Report on the CCP Workplan', September, available at <http://www.financialstabilityboard.org/2015/09/progress-report-on-the-ccp-workplan/>.

Also in the case of a CCP, transfer to a bridge entity could also be used to leave behind the distressed clearing service and transfer a separate (segregated) clearing service within the same entity that has not suffered loss. This approach could, for example, be used to facilitate an orderly wind-down of the distressed clearing service if this service was considered non-critical. The transfer of a segregated clearing service would avoid the breaking of netting sets or separation of collateral from positions. While other practical obstacles to business transfer would remain, these can at least partly be addressed via legislation to enable the transfer or rapid issuance of licences and netting approvals, while resolvability assessments could consider how operational links could be transferred or re-established. Indeed, similar issues are being considered in the context of ADI resolution. If a means of addressing these obstacles can be found, a business transfer power could provide a useful backstop to the statutory management regime.

In response to stakeholder concern that compensation arrangements alone were not adequate to address the possibility that the resolution authority could break netting sets or separate collateral from related obligations, the CFR proposes to include explicit safeguards in the regime to ensure that the integrity of netting and collateral arrangements would be preserved in the event of any transfer.

3.3 Stay on early termination

A right to early termination is currently required in order for participants to attract favourable netting treatment in prudential regulation for their exposures to CCPs. If this right was exercisable solely by reason of a CCP's entry into resolution, this could undermine the objectives of maintaining financial stability and continuing the provision of critical functions, by enabling the disorderly exit of participants. The CFR is examining whether this could be addressed by a provision modelled on section 15C of the *Banking Act 1959*, which would not permit early termination rights to be triggered by resolution actions alone. This work would need to take into consideration planned changes to the operation of section 15C to address an inconsistency with the protection of netting arrangements under the PSNA. In examining how this proposal might be implemented, the CFR agencies would seek to ensure that this proposal did not disincentivise participation in central clearing due to adverse netting treatment for centrally cleared trades.

3.4 Powers over overseas CS facility licensees

The CFR believes that there is merit in stakeholder feedback that Australian authorities should have sufficient powers to intervene in the resolution of overseas-licensed CS facilities, particularly in the case of CCPs. The government's February 2015 consultation paper noted that Australian authorities should have sufficient powers over overseas-based licensees to support a resolution carried out by a foreign authority. A power for the resolution authority to direct how Australian-based assets and, where applicable, liabilities and operations of an offshore CCP are dealt with in the event of resolution may be required in order to minimise the risk that a court would fail to recognise actions of the offshore resolution authority.

The CFR also sees a case for considering whether the scope of powers to intervene in the resolution of offshore CS facilities should be extended to address the situation in which offshore resolution authorities acted or failed to act in a way that adversely affected Australian interests. It is hoped that work underway internationally to establish cross-border crisis management arrangements for FMIs that are systemically important in multiple jurisdictions will minimise the risk that an offshore resolution authority would act without regard to Australian interests. However, if this risk nevertheless crystallised, powers for the resolution authority over Australian-based assets, liabilities and operations of an offshore FMI would provide Australian authorities with heightened influence over the cross-border resolution process. This is consistent with Key Attribute 7.3, which contemplates powers for a local resolution authority to support a foreign resolution or, in exceptional cases, take measures on its own initiative to preserve local financial stability.

An extension in the scope of this power might need to overcome a number of practical issues. Since it would contemplate the potential for Australian and offshore authorities to attempt conflicting actions, it will be necessary to consider possible conflicts of law in developing legislative provisions to implement these powers. The appropriate triggers for use of this power, and the assets, liabilities and operations to which it could extend, would need to be appropriately defined. It will also be necessary to consider any relevant international developments in the approach to managing the cross-border resolution of FMIs. The CFR intends to further discuss these practical issues with stakeholders over the coming period.

3.5 Market operators and trade repositories

The CFR believes that the originally proposed scope of application to market operators and trade repositories remain appropriate, and therefore intends to proceed on this basis. While some stakeholders questioned the application of the resolution regime to trade repositories, the limited application of the regime to domestically incorporated trade repositories that are identified as systemically important should be sufficient to address this concern. While the CFR supports the application of the full range of resolution powers only to domestically incorporated trade repositories, it acknowledges that the approach to resolution for overseas entities seeking licensing as trade repositories could be clarified further. In particular, when considering an application from an overseas entity for an Australian derivative trade repository licence, ASIC would consider whether the trade repository's home jurisdiction has a recovery and resolution regime that is sufficiently equivalent to the regime in Australia. This would be necessary to determine whether the home jurisdiction has requirements equivalent to Rule 2.4.11 of the *ASIC Derivative Trade Repository Rules 2013* on recovery and resolution.[10] If so, ASIC would consider granting an overseas trade repository an exemption from this Rule.

10 The *ASIC Derivative Trade Repository Rules 2013* are available at <http://www.comlaw.gov.au/Details/F2013L01344>.

3.6 Threshold for domestic incorporation

The CFR considered the issue of thresholds for domestic incorporation of CS facility licensees when developing its policy for ensuring appropriate regulatory influence over cross-border CS facilities and when providing guidance on how that policy applies in the context of specific markets.[11] On both occasions the CFR concluded that *ex ante* quantitative thresholds to trigger domestic location did not allow for sufficient flexibility to balance multiple relevant factors or take account of the prevailing circumstances of a particular market. Nevertheless, the CFR will give further thought as to how the legislation could clarify the factors that would be considered in imposing a location requirement and how they might be weighed in reaching a judgement. In addition to the qualitative guidance on how domestic incorporation thresholds might apply in different markets, the regulators have already signalled their openness to providing more detailed guidance on thresholds to potential entrants on a bilateral basis.

3.7 Other matters

The CFR proposes that other matters raised in consultation be addressed as set out below.

- The proposal to extend directions powers to related entities that provide critical services to an FMI in resolution should remain in order to underpin the resolution of an FMI group, but there is not a sufficiently strong justification to extend this power to contractual arrangements with third parties.
- In respect of statutory management:
  - it is not necessary to suspend shareholder rights during statutory management given the powers to override the demands of shareholders that will be available to the statutory manager under the proposed resolution regime
  - the process for selecting a statutory manager will be considered as part of a broader resolution planning process to be undertaken by CFR agencies
  - the PSNA should recognise statutory management as a form of external administration in order to ensure that netting protections continue to apply.
- While a payments moratorium that excludes clearing- and settlement-related payments may have limited application in many instances, it is worth retaining to provide flexibility in addressing obligations to general creditors while stabilising an FMI in resolution.
- Arrangements for the orderly wind-down of the operator of a non-critical FMI may be crucial to avoid financial or reputational contagion risks where such an FMI is part of a group that also includes systemically important FMIs. Orderly wind-down also minimises the impact of a non-critical FMI's failure on participants and end users, for example by allowing participants to make an orderly transition to a competing FMI. Proposed powers of direction over the external administrator of a non-critical FMI could be used to achieve such an orderly wind-down. In some cases, these arrangements could be used in combination with other powers; for example, to wind down remaining non-critical services following a business transfer (see Section 3.2).
- Since Australian authorities are at least partly dependent on the home regulator and resolution authority of an offshore licensed CS facility or market operator, or an overseas-established trade repository licensee, in ensuring that the impact of the licensee's activities on Australian financial

11 The CFR's policy on ensuring appropriate regulatory influence over cross-border CS facilities is available at <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/cross-border-clearing>; the guidance applying this policy to specific markets is available at <http://www.cfr.gov.au/publications/cfr-publications/2014/application-of-the-regulatory-influence-framework-for-cross-border-central-counterparties/index.html>.

stability and market conduct is appropriately managed, it is appropriate that a material adverse change in information sharing arrangements between Australian authorities and the offshore regulator constitutes grounds for cancelling or suspending the FMI's or market operator's licence. Suspension or cancellation would not be automatic, since authorities may consider that other arrangements, such as the provision of additional information directly from the licensee, were sufficient to meet the objectives of the *Corporations Act 2001*.

- The proposal to remove the separate directions power of the Minister and replace it with the power to resolve potential conflicts between directions issued by ASIC and the RBA remains appropriate. Three independent and overlapping directions powers in respect of CS facilities would create unnecessary duplication and could confuse the roles of regulators and the Minister.

4. Next Steps

The CFR is advising the government on the development of draft legislation that reflects the proposals set out in the government's February 2015 consultation paper and this response to consultation. The draft legislation will incorporate changes to the Corporations Act to implement the proposed new approach to assessing whether an overseas CS facility must be either licensed or exempted in Australia, since the resolution regime for CS facilities would build on the licensing regime.[12] Development of this draft legislation is expected to proceed alongside legislative changes to enhance crisis management powers for APRA in respect of the entities that it regulates.

Stakeholders will be given the opportunity to comment on draft legislation to establish the proposed FMI resolution regime in due course.

12 These proposals are described in the paper 'Overseas Clearing and Settlement Facilities: The Australian Licensing Regime – Response to Consultation', available at <http://www.cfr.gov.au/publications/cfr-publications/2015/ocsf-aus-licensing-regime/>.