

## Financial Market Infrastructure (FMI) Regulatory Reforms

FMI Reform Proposals	Recommendations in documents
<p>Implement a crisis management regime which will allow the Reserve Bank Australia (RBA) as the resolution authority to manage a failure at a clearing and settlement (CS) facility, while ensuring its continued operation.</p> <p>This will comprise a suite of powers including the ability to issue directions, appoint a statutory manager, transfer ownership of the CS facility to another entity, stay exercises of contractual rights and impose moratoriums on the commencement of certain litigation actions and confidentiality requirements, in addition to temporary funding arrangements.</p>	<p><u>Recommendation 1 – Financial Market Infrastructure Regulatory Reforms: Council of Financial Regulators (CFR) Advice to Government 2020 extract (page 4)</u></p> <p>Introduce a resolution regime to allow a resolution authority to act to manage distress at clearing and settlement facilities.</p> <ul style="list-style-type: none"> <li>• Information gathering</li> <li>• Obligation to notify the resolution authority</li> <li>• Resolution planning and resolvability</li> <li>• Conditions for resolution</li> <li>• Resolution powers (directions, statutory management, transfer), statutory protections and supporting arrangements (stay, moratorium, confidentiality, funding)</li> <li>• Cross-border powers</li> </ul> <p><u>Recommendation 5 – 2014 Financial System Inquiry (page 79)</u></p> <p>Complete the existing processes for strengthening crisis management powers that have been on hold ...</p> <p><u>Table 1 Recommendation and [46] – 2019 International Monetary Fund (IMF) Financial Sector Assessment Program report</u></p> <p>Finalise the resolution regime for FMIs in line with the Financial Stability Board (FSB) Key Attributes (page 8)</p> <p>The authorities should prioritise finalisation of the special resolution regime for FMIs. [46]</p> <p><u>Table 1 recommendations – 2019 IMF Financial Sector Assessment Program Technical Note - Supervision, Oversight, And Resolution Planning Of Financial Market Infrastructures (page 7)</u></p> <ul style="list-style-type: none"> <li>• Finalise the proposed special resolution regime for FMIs</li> <li>• Address challenges related to current and potential FMI structure(s), and FMI-specific, FMI group, FMI linkages and inter-dependency factors</li> </ul>

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	<ul style="list-style-type: none"> <li>• Include broad directions powers in the Australian resolution regime to conduct resolvability assessments and improve FMI resolvability ex ante. Ensure a streamlined and timely process for the issuance of directions</li> <li>• Include broad powers in the Australian resolution regime to appoint a statutory manager to resolve a distressed, failing or failed FMI</li> </ul> <p>The government should prioritise finalisation of its special resolution regime for domestic FMIs, since it currently lacks the necessary framework and tools to resolve an FMI. [Page 6]</p>
<p>Transfer to the Australian Securities and Investments Commission (ASIC) and, where relevant, the RBA powers that are currently delegated by the Minister to ASIC. These powers include licensing, operating rule changes, exemptions, information, directions, and compensation regimes for financial markets.</p>	<p><u>Recommendation 2 – Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 11)</u></p> <p>Transfer to ASIC and, where relevant, the RBA powers that are currently delegated by the Minister to ASIC.</p> <p>The powers to be transferred from the Minister are:</p> <ul style="list-style-type: none"> <li>• Licensing</li> <li>• Operating rule changes</li> <li>• Exemptions</li> <li>• Information</li> <li>• Directions</li> <li>• Compensation schemes for financial markets</li> </ul> <p><u>Table 1 recommendation – 2019 IMF Financial Sector Assessment Program report (page 8)</u></p> <p>Strengthen independence of RBA and ASIC for supervisory oversight...</p> <p><u>Table 1 recommendation – 2019 IMF Financial Sector Assessment Program Technical Note - Supervision, Oversight, And Resolution Planning Of Financial Market Infrastructures extract (Page 7)</u></p> <p>Strengthen legal basis of direction powers for supervision of CS facilities, with independence from the Minister...</p>

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<p>Clarify the circumstances where a licence can be suspended or cancelled. A licence held by an Australian Market Licensee (AML), Clearing and Settlement Facility Licensee (CSFL), Benchmark Administrator Licensee (BAL) or Derivative Trade Repository Licensee (DTRL) may be cancelled or suspended, where: an entity has not commenced the activity for which a licence was granted within three years; or an entity did not carry out a licensed activity for a period of 12 months.</p>	<p><u><a href="#">Recommendation 3 – Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 12)</a></u></p> <p>Clarify the circumstances where a licence can be suspended or cancelled.</p>
<p>Amend the arrangements under which an overseas market operator or overseas clearing and settlement facility operator is required to be licensed or exempt.</p>	<p><u><a href="#">Recommendation 4 – Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 12)</a></u></p> <p>Amend the arrangements under which an overseas market operator or overseas clearing and settlement facility operator is required to be licensed or exempt.</p>
<p>Provide ASIC with the power to impose limits on the scope and level of activity that a licensed overseas AML or Overseas CSFL is permitted to undertake as an overseas licensee.</p>	<p><u><a href="#">Recommendation 5 – Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 13)</a></u></p> <p>Provide ASIC with the power to impose limits on the scope and level of activity that a licensed overseas AML or Overseas CSFL is permitted to undertake as an overseas licensee.</p>
<p>Domestic clearing and settlement facility licences to only be available to operators that are domestically incorporated. Holders of a domestic clearing and settlement facility licence would be required to be domestically incorporated.</p>	<p><u><a href="#">Recommendation 6 – Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 14)</a></u></p> <p>Domestic clearing and settlement facility licences to only be available to operators that are domestically incorporated.</p>

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<p>Provide ASIC with the power to declare a financial market to be a prescribed financial market. Declarations by ASIC would be in the form of a disallowable legislative instrument.</p>	<p><u>Recommendation 7 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 14)</u></p> <p>Provide ASIC with the power to declare a financial market to be a prescribed financial market.</p>
<p>Provide ASIC with a power to declare a body to be a 'widely held market body'. Declarations by ASIC would be in the form of a disallowable legislative instrument.</p>	<p><u>Recommendation 8 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 15)</u></p> <p>Provide ASIC with a power to declare a body to be a 'widely held market body'.</p>
<p>Allow the Minister to approve increases in voting power in ASX Limited above 15 per cent under the widely held market body provisions. For a person to have more than 15 per cent voting power in ASX Limited, ministerial approval, rather than a change to regulation, would be required.</p>	<p><u>Recommendation 9 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 15)</u></p> <p>Allow the Minister to approve increases in voting power in ASX Limited above 15 per cent under the widely held market body provisions.</p> <p><u>Recommendation 44 Financial System Inquiry 2014</u></p> <p>Remove market ownership restrictions from the Corporations Act 2001 once the current reforms to cross-border regulation of financial market infrastructure are complete.</p>
<p>Implement a fit and proper standard for those involved in Licensed Entities. A fit and proper standard that applies to individuals 'involved in' a Licensed Entity should encapsulate attributes like competence, experience, knowledge, diligence, honesty and judgement. Under existing legislation, ASIC has a disqualification power in respect of those involved in a Licensed Entity. ASIC's powers in respect of those 'involved in' a</p>	<p><u>Recommendation 10 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 16)</u></p> <p>Implement a fit and proper standard for those involved in Licensed Entities.</p>

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<p>Licensed Entity should also include the adoption of a fit and proper standard.</p>	
<p>Require ASIC approval for a person to hold more than 15 per cent voting power in a Licensed Entity that is incorporated in Australia. ASIC's consent would be required for a person to hold more than 15 per cent voting power in a licensee that is incorporated in Australia. ASIC must give consent if it has no reason to consider that the revised ownership structure will impede the ability of the licensee to meet its obligations under the Corporations Act. The review would take place before the proposed change in control transaction is permitted to occur and a time limit on the review period would apply.</p>	<p><u><a href="#">Recommendation 11 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 17)</a></u></p> <p>Require ASIC approval for a person to hold more than 15 per cent voting power in a Licensed Entity that is incorporated in Australia</p>
<p>Provide ASIC with the power to make rules for the purpose of promoting the fair and effective provision of clearing and settlement services. ASIC will be given the power to make rules for Domestic CSFLs to promote fair and effective provision of clearing and settlement services.</p>	<p><u><a href="#">Recommendation 12 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 17)</a></u></p> <p>Provide ASIC with the power to make rules for the purpose of promoting the fair and effective provision of clearing and settlement services.</p>
<p>Provide the Regulators with a power to obtain a report from an expert on specified matters. Give ASIC the power to obtain a report from an expert on specified matters in relation to Licensed Entities, and give the RBA a corresponding power in relation to CSFLs.</p>	<p><u><a href="#">Recommendation 13 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 18)</a></u></p> <p>Provide the Regulators with a power to obtain a report from an expert on specified matters.</p>

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<p>Provide the Regulators with directions powers that are aligned with their respective mandates. This includes ASIC's power to give a direction to a CSFL to take an action to comply with the Financial Stability Standards (FSS), or to reduce systemic risk, be transferred to the RBA. Also, the RBA be given a new power to give a direction to a Domestic CSFL to take specific actions if the RBA reasonably considers that the action is required to support financial stability.</p>	<p><u><a href="#">Recommendation 14 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 18)</a></u></p> <p>Provide the Regulators with directions powers that are aligned with their respective mandates.</p> <p><u><a href="#">Table 1 recommendation IMF Financial Sector Assessment Program Technical Note - Supervision, Oversight, And Resolution Planning Of Financial Market Infrastructures extract (page 7)</a></u></p> <p>Strengthen the legal basis of direction powers for supervision of CS facilities, with...own powers for the RBA</p>
<p>Remove the qualification on the obligation of CSFLs to comply with the FSS, and on the RBA's proposed directions power to take action to comply with the FSS. The qualification on the obligation of a CSFL to comply with the FSS, that compliance is necessary only to the extent 'reasonably practicable', be removed.</p>	<p><u><a href="#">Recommendation 15 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 19)</a></u></p> <p>Remove the qualification on the obligation of CSFLs to comply with the FSS, and on the RBA's proposed directions power to take action to comply with the FSS.</p>
<p>Streamline ASIC's existing directions power and remove the time limit on the period a direction may remain in place. This will streamline ASIC's power to give a direction to AMLs, CSFLs and DTRLs to remove the two-step process currently required before ASIC can issue a direction. Remove the time limit for which directions can have effect so that a direction can remain in place for as long as is required.</p>	<p><u><a href="#">Recommendation 16 - Financial Market Infrastructure Regulatory Reforms: CFR Advice to Government extract (page 20)</a></u></p> <p>Streamline ASIC's existing directions power and remove the time limit on the period a direction may remain in place</p>