Canada Deposit Insurance Corporation

Société d'assurance-dépôts du Canada

Forced sale – Financial Institution Restructuring Provisions (FIRP)

Canada

Table of contents

Forced sale – Financial Institution Restructuring Provisions (FIRP)

The *CDIC Act* has an "institution restructuring" provision (also known as Financial Institution Restructuring Provisions or FIRP) whereby the Governor in Council (GIC) may, on the recommendation of the Minister, order that the shares and subordinated debt of a failing CDIC member institution be vested in CDIC, or that CDIC be appointed as the member's receiver, so that a transaction or a series of transactions can be carried out to restructure the member's business.

FIRP context

Where a member institution is non-viable in the opinion of the Superintendent of Financial Institutions and there exists a willing buyer, CDIC can take control of that member institution for a short period of time to complete its sale, amalgamation, or restructuring without shareholder approval.

CDIC's key objective in using a forced sale or FIRP is to ensure a continuation of critical banking operations until a private sector transaction is complete.

FIRP steps

The steps leading to a FIRP:

- The Superintendent of Financial Institutions concludes that a member institution is not viable and reports this to CDIC's board.
- CDIC's board reviews the various options and recommends the best resolution approach for the failing bank to the Minister of Finance.
- The Minister of Finance recommends a resolution approach to the Governor in Council (GIC), i.e., the federal Cabinet.
- The GIC makes an order authorizing the resolution approach.

In formulating its FIRP request, CDIC considers whether: (a) a restructuring transaction is likely to be quickly carried out; and (b) any such transaction would be consistent with CDIC's mandate as set out in its statutory objects.

The GIC, in turn, may make orders for one or both of two forms of FIRP:

- In a Share FIRP, the shares and subordinated debt of the member institution specified in the order are vested in CDIC, and it becomes the sole shareholder.
- In an Asset FIRP, CDIC is appointed receiver in respect of the member institution.

FIRP scope

CDIC's ability to take control of and operate a member institution does not extend directly to subsidiaries of the member institution if those subsidiaries are not also CDIC members, nor do CDIC's resolution powers apply to holding companies of CDIC member institutions that are not themselves member institutions. However, CDIC can transfer, or cause to have transferred, the shares and assets of direct and indirect subsidiaries, subject to regulatory and other third-party approval.

Share FIRP

In a Share FIRP, CDIC has temporary share ownership and control of the member institution. CDIC can transfer the shares to an acquirer or agree for the member institution to be amalgamated with another institution. Before any such transaction occurs, CDIC may restructure the member institution, replace the board of directors and senior management, or take any other measure it deems necessary to stabilize the institution's operations.

When the shares of a member institution are vested in CDIC, it is the sole shareholder and exercises all shareholder powers. CDIC can also exercise the powers of directors and officers.

During CDIC's temporary control, a separate workout company can be created to purchase "impaired" assets and to assume certain liabilities of the member institution. These assets and liabilities are transferred to the workout company under the terms of a Purchase & Assumption Agreement. The workout company may be a CIDC subsidiary.

Asset FIRP

In an Asset FIRP, CDIC has broad powers, including the ability to temporarily take possession and control of the assets, sell assets, arrange for liabilities to be assumed, and carry on the business of the financial institution.

Its temporary control is to stabilize the institution and complete the transaction. CDIC assumes all the powers and duties of the institution's directors and officers and all the powers, privileges and voting and approval rights of its shareholders.

Existing shareholders (and sub-debt holders) continue to own shares (and sub debt) in the financial institution. Like with a Share FIRP, CDIC has the power to transfer the financial institution's assets and liabilities to a workout company. CDIC may also leave some part of the failing member institution's business behind in a stub entity to be liquidated while other parts of the failing member institution's business are acquired by a third-party.

FIRP duration

Given that a FIRP is only intended as a mechanism to force a restructuring transaction, CDIC control is terminated upon completion of the transaction, or series of transactions, or when the statutory period expires (12 months, to a maximum of 18 months with extensions).

When CDIC believes that no transaction or series of transactions can be substantially completed before the end of the period, it applies for a winding-up order for the member institution under the *Winding-up and Restructuring Act*.

Stays

When a forced sale is ordered, the *CDIC Act* imposes a general stay of proceedings that overrides contractual rights under Canadian law, like the protections afforded to receivers and trustees in bankruptcy under insolvency legislation. The stay is to allow sufficient time to stabilize the situation. Generally speaking, all legal proceedings and general contract termination and enforcement rights are temporarily stayed in a FIRP scenario, subject to certain exceptions for eligible financial contracts (or EFCs) and the obligations of Payments Canada members.