

Credible Living Wills Under the U.S. Regulatory Framework

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The release of two rules on resolution planning by the FDIC last week means that the basic contours of the U.S. regulatory framework for resolution plans are now known. On September 13, 2011, the FDIC approved a final rule on resolution plans under Section 165(d) of the Dodd-Frank Act, which must still also be approved by the Federal Reserve, and an interim final rule requiring insured depository institutions with \$50 billion or more in total assets to submit insured depository institution-specific resolution plans.

Generally, the FDIC and the Federal Reserve have agreed on an integrated single plan approach to the resolution plans, and the two resolution plan rules are intended to work in tandem. Though the earliest resolution plans will be due by July 1, 2012, the FDIC and the Federal Reserve have adopted an approach of staggered initial submissions to allow some firms to submit their resolution plans later than others based on a test linked to the size of nonbank assets. Moreover, resolution plans will be built on an iterative, tailored approach, recognizing that plans will develop over time and in successive submissions, and that plans will vary depending on the size and complexity of the covered company or covered insured depository institution.

This memo describes key themes in both rulemakings, as well as key differences between the resolution plan rules as previously proposed and the rules as approved by the FDIC.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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