

Bills Committee on Financial Institutions (Resolution) Bill

**Clause-by-clause Examination
Draft Committee Stage Amendments – Third Batch**

Following members' deliberation of the Financial Institutions (Resolution) Bill (the Bill) at the Bills Committee meetings, the Government will propose some Committee Stage Amendments (CSAs) to amend the Bill. This paper sets out the third batch of the proposed draft CSAs at **Annex**.

2. Members are invited to examine the Bill with the draft CSAs marked on the relevant clauses in the **Annex**. The rationale behind each of these draft CSAs is provided in the footnotes. These draft CSAs are subject to revisions if necessary.

**Financial Services and the Treasury Bureau (Financial Services
Branch)
Hong Kong Monetary Authority
Securities and Futures Commission
Office of the Commissioner of Insurance
May 2016**

Financial Institutions (Resolution) Bill

Draft Committee Stage Amendments – Third Batch

Amendment Proposed

(1) Clause 22

(2) However, a resolution authority may only give a direction by a notice under subsection (1) if—

~~(a) it is of the opinion that giving the direction will assist in meeting the resolution objectives; and~~

(a) it is of the opinion that giving the direction—

(i) will assist in meeting the resolution objectives; or

(ii) will facilitate the exercise of a power conferred by this Ordinance on the resolution authority or the Court; and

(b) the notice gives the reason for that opinion.¹

(2) Clause 27

~~**27. Financial Secretary to be consulted**~~

~~A resolution authority must consult the Financial Secretary before initiating the resolution of an entity.~~

27. Requirements for consultation and for liaising with regulatory bodies

(1) Before initiating the resolution of an entity, the resolution authority –

¹ This draft CSA is proposed to expand the direction power under clause 22 such that a resolution authority may issue a direction under that clause where it is of the opinion that: (a) the direction will assist in meeting the resolution objectives; or (b) that the direction will facilitate the exercise of a power conferred on a resolution authority or the Court under the Bill. The background of this CSA has been explained at paragraph 8 of the Government's response to issues raised at the meetings on 16 May 2016 (LC Paper No. CB(1)944/15-16(01)).

- (a) must consult the Financial Secretary; and
- (b) must liaise, as the resolution authority considers appropriate, with the Insurance Authority, the Monetary Authority or the Securities and Futures Commission for the purpose of securing coordination between the exercise of any specified power and the exercise of powers under this Ordinance with a view to facilitating the effective implementation of this Ordinance.

(2) In this section, a reference to the exercise of any specified power is a reference to the exercise by the Insurance Authority, the Monetary Authority or the Securities and Futures Commission, in a capacity other than as a resolution authority, of any power under the specified Ordinance that, if exercised, would have the effect of facilitating the effective implementation of this Ordinance.

(3) In this section –

specified Ordinance (《指明條例》) –

- (a) in relation to the Insurance Authority, means the Insurance Companies Ordinance (Cap. 41);
- (b) in relation to the Monetary Authority, means the Banking Ordinance (Cap. 155);
- (c) in relation to the Securities and Futures Commission, means the Securities and Futures Ordinance (Cap. 571).²

² This draft CSA is proposed to provide for the effective coordination of the use of supervisory powers and resolution powers under the relevant ordinances to facilitate the effective implementation of the Financial Institutions (Resolution) Ordinance. The background of this CSA has been explained at paragraph 13 of the Government's response to issues raised at the meetings on 16 May 2016 (LC Paper No. CB(1)944/15-16(01)). Consequential amendments to change the "Insurance Companies Ordinance" to "Insurance Ordinance" and the Chinese name of

(3) Clause 143(1)

(1) A resolution authority may, at any time after it has initiated the resolution of a within scope financial institution, apply to the Court for a clawback order against an officer of that institution.

(1A) An application under subsection (1) is not subject to any period of limitation prescribed by the Limitation Ordinance (Cap. 347).³

(4) Clause 143(3)

(3) If the Court decides to make a clawback order against an officer, it must, in determining the extent to which the remuneration of the officer is to be covered by that order, take into account—

—~~(a)~~ the extent to which the act or omission of the officer contributed to the financial institution ceasing, or being likely to cease, to be viable; ~~and~~

~~(b) the financial circumstances of the officer, as far as practicable.~~

~~(4) The Court is not prevented from making a clawback order only because it has been unable to find out the financial circumstances of the officer.~~⁴

(5) Clause 171

(3) Subsection (1) does not apply to the disclosure of information—

(a) as necessary for performing any function under this Ordinance or for carrying any provision of this Ordinance into effect;

“Insurance Authority” from “保險業監督” to “保險業監管局” will be made at clause 227 and 239, as well as by adding a new clause after clause 229 accordingly.

³ This draft CSA is proposed to give effect to our intention that any period of limitation prescribed by the Limitation Ordinance (Cap. 347) does not apply to an application to the Court for a clawback order. The background of this CSA has been explained at paragraphs 3-4 of the Government’s response to issues raised at the meetings on 16 May 2016 (Paper No. LC Paper No. CB(1)944/15-16(01)).

⁴ This draft CSA is proposed to remove the requirement imposed on the Court to consider the financial circumstances of an officer in the making of a clawback order. This will not however prevent the Court from considering such factors and circumstances as it deems relevant in making a clawback order. The background of this CSA has been explained at paragraph 5 of the Government’s response to issues raised at the meetings on 16 May 2016 (LC Paper No. CB(1)944/15-16(01)).

(ab) by a resolution authority if, in the opinion of the resolution authority, the disclosure is necessary in the interests of promoting and maintaining the stability and effective working of the financial system of Hong Kong;

...

(7) If information is disclosed in any of the circumstances mentioned in subsection (3)(a) to (j), the following persons must not disclose the information, or any part of it, to any other person except with the consent of the resolution authority—

- (a) the person to whom the information is disclosed;
- (b) any other person obtaining or receiving the information, whether directly or indirectly, from the person mentioned in paragraph (a).

(7A) However, subsection (7) does not require the Financial Secretary, as a person to whom that subsection applies, to obtain the consent of the resolution authority before disclosing to any other person any information covered by that subsection if, in the opinion of the Financial Secretary, the disclosure is necessary in the interests of promoting and maintaining the stability and effective working of the financial system of Hong Kong.⁵

⁵ This draft CSA is proposed to provide the resolution authorities with a gateway to disclose information that has come into their knowledge through the performance of functions under the Bill where they are of the opinion that disclosure is required in the interest of promoting and maintaining the stability and effective working of the financial system of Hong Kong. A further amendment provides for the FS to disclose information disclosed to him under the Bill if of the opinion that disclosure is required in the interest of promoting and maintaining the stability and effective working of the financial system of Hong Kong (and without any additional conditions being imposed by a resolution authority). The background of this CSA has been explained at paragraph 16 of the Government's response to issues raised at the meetings on 16 May 2016 (LC Paper No. CB(1)944/15-16(01)).