Bills Committee on Financial Institutions (Resolution) Bill

Response to Matters Raised by Members at the Meeting on 5 January 2016

This paper sets out the Government's response to the matters raised by Members in relation to the Financial Institutions (Resolution) Bill ("the Bill") at the meeting on 5 January 2016.

Clawback of remuneration - the proposed Part 8 of the Bill

Comparing the clawback provisions on the remuneration of officers/former officers of a within scope financial institution (FI) under the proposed resolution regime with those proposed/implemented by other FSB member jurisdictions, including the items of remuneration to be subject to clawback, the controlled period, the matters/conditions to be taken into account by the court in determining the application of a clawback, and exemption of a clawback

2. The Financial Stability Board (FSB)'s Key Attributes of Effective Resolution Regimes for Financial Institutions are not specific in their requirements as regards clawback, stating that:

"3.2 Resolution authorities should have at their disposal a broad range of resolution powers, which should include powers to do the following:

(i) Remove and replace the senior management and directors and recover monies from responsible persons, including claw-back of variable remuneration."…..

3. The Government, in developing Part 8 of the Bill, considered the approaches adopted in other jurisdictions and sought to adopt a "middle ground" : 3 year clawback period (extendable by a further 3 years in cases of dishonesty); including both fixed and variable (bonus) remuneration; covering directors, senior managers and key risk takers; and using a court based system (a statutory remedy sought by a resolution authority (RA) in the public interest from the court (which can impartially

assess the role of a given officer in the failure of an FI)) . Given that the Bill is focussed on addressing the impact of failure of systemically important FIs, the triggers for clawback are proposed to link to actions or omissions that caused or materially contributed to the FI ceasing, or being likely to cease, to be viable where the action/omission is done/made intentionally, recklessly or negligently.

4. Information relating to clawback approaches in other jurisdictions is set out at the Annex. Whilst the approaches in the US and Singapore are directly tied to resolution, the regime in the UK is for broader purposes and it is the firm which seeks clawback rather than the regulator or the RA.

5. Although not specifically related to resolution, the Monetary Authority (MA) sets expectations on the key elements required for authorized institutions' (AIs) remuneration systems in its Supervisory Policy Manual (SPM) module "Guideline on a Sound Remuneration System" which reflects the FSB's Principles for Sound Compensation Practices issued in 2009. Amongst other things, the SPM module covers deferment of variable remuneration. AIs are expected to subject portions of variable remuneration to minimum vesting periods and pre-defined vesting conditions. Where such conditions are not met then the unvested variable remuneration should be foregone (i.e. clawed-back by the AI). Relevant conditions triggering clawback would include the performance (financial condition) of the AI. The provisions of the SPM module are focussed upon the architecture and processes surrounding AIs' remuneration schemes and the MA itself currently does not have direct power to intervene to claw back remuneration. The MA does however take into account the potential risks that may arise from an AI's remuneration system as part of its supervisory process and results of the MA's supervisory assessment will feed through into its supervisory actions.

The sanctions under the existing regulatory regimes for officers/former officers of an FI who had caused the FI to cease to be viable due to their misconduct/misbehaviour in the performance of their functions

6. There is currently no specific power available under the Banking

Ordinance (BO) (Cap.155) empowering the MA to sanction an officer/former officer of an AI for any general misconduct/misbehaviour in the performance of their functions which had caused an AI to cease to be viable. There are, however, provisions creating offences for officers in relation to false entries in books and records and receiving benefit or advantage for providing advances, loans etc., activities which might be associated with and contribute to an AI's non-viability.

7. Mechanisms are also available to prevent former officers (who are deemed unfit) from being employed in the banking sector again. The BO would empower the MA to prevent a former officer from resuming a role in the banking sector on the grounds that an action or omission of the officer, which has led to an AI ceasing to be viable, was not befitting of a "fit and proper" person (section 71(2)(a) of the BO (Chief Executive Officer or director of an AI) or section 71C(2)(a)(i) of the BO (executive officer of a registered institution)).

8. In addition, the directors, the chief executive and managers (as defined under the BO) of an AI may be liable and commit an offence where the AI contravenes certain requirements under the BO. However, it should be noted that such contraventions are not specifically linked to "resolution" nor do they arise as a result of "causing an AI to cease to be viable".

9. Under the Securities and Futures Ordinance (SFO) (Cap. 571), the Securities and Futures Commission (SFC) may take a number of different actions against officers of licensed and registered intermediaries who engage in crime or misconduct. None of these powers are specifically designed to be used to claw back remuneration or when the intermediary has become non-viable, though they may be used in circumstances arising from that situation.

10. Under Part IX of the SFO, the SFC may discipline officers of a licensed or registered intermediary including in relation to licensed corporations (LCs), licensed representatives and responsible officers; in relation to registered institutions, executive officers and relevant individuals; and in relation to both types of entities and people involved in their management. Sanctions may be imposed for not being fit and

proper (e.g. being dishonest, incompetent, inefficient, lacking integrity or being financially unreliable) or having engaged in "misconduct" (as defined in section 193 of the SFO) which includes any breach of the SFO. Sanctions include fines of up to the higher of $10 million or three times the profit made or loss avoided as a result of each breach, suspending or revoking a regulatory approval needed in order to conduct regulated activities or orders banning people from engaging in such activity for a specified period, and reprimands (public or private criticisms).

11. The SFC may prosecute officers of licensed or registered intermediaries for offences under the SFO and a few other ordinances. Penalties vary with the offence but range up to a maximum of 3 years prison and/or a $1 million fine for summary prosecutions and 10 years prison and/or $10 million for prosecutions on indictment. Offences that officers of failing FIs may commit that the SFC may prosecute include fraud involving SFC regulated products (section 300), issuing false or misleading information concerning securities or futures contracts (sections 107, 298 and 384), and insider dealing if the FI is listed (section 291).

12. The SFC may also bring civil proceedings for market misconduct (e.g. insider dealing and issuing false or misleading information concerning securities or futures contracts (sections 270 and 277) under Part XIII of the SFO in the Market Misconduct Tribunal (MMT)). The MMT may impose a variety of civil orders such as disgorgement of profit made or loss avoiding arising from the market misconduct, banning the person from being involved in the management of corporations for up to 5 years, banning the person from trading SFC regulated financial products for up to 5 years, orders not to engage in specified market misconduct again, and orders to pay the costs of the MMT, legal and investigatory costs of the SFC.

13. In addition, the SFC may bring civil action in the MMT under Part XIVA of the SFO against officers of an FI that is listed for failing to disclose inside information as soon as practical (e.g. information that the FI is failing). The MMT may, under Part XIVA of the SFO, impose a range of orders similar to those available to the MMT under Part XIII of the SFO except for disgorgement of profit made or loss avoided but it

may also impose fines of up to $8 million.

14. Lastly, the SFC may bring other civil actions. Under section 214, SFC may disqualify directors of listed FIs for fraud, oppression of the minority shareholders or other misconduct (which may include breaches of their fiduciary duties and the listing rules) for up to 15 years and also order financial compensation to the FI for damage such fraud, oppression or other misconduct caused. Under section 213, SFC may require officers of FIs who have contravened the SFO to compensate those involved in transactions affected by such contraventions or make them subject to other preventative or remedial orders (e.g. injunctions ordering them to do or not do certain things).

15. As for the insurance sector, at present, the Insurance Authority is empowered to impose intervention requirements on authorized insurers under the Insurance Companies Ordinance (Cap. 41). However, there is no specific provision providing sanctions for any officers/former officers of an authorized insurer who has caused the insurer to be non-viable due to their misconduct or misbehavior in the performance of their functions.

16. The Insurance Companies (Amendment) Ordinance 2015 (ICAO) provides that controllers, directors and key persons in control functions are liable for the offence which was committed by an authorized insurer with their consent or connivance, or was attributable to any neglect or omission on them. The new independent Insurance Authority is empowered under the ICAO to take disciplinary actions against an authorized insurer and impose pecuniary penalty on these officers or former officers as a result of any offence under ICAO committed as aforesaid. However, these offences are neither specifically linked to "resolution" nor arise as a result of "causing an authorized insurer to cease to be viable".

17. The proposed clawback provisions under Part 8 of the Bill supplement the authorities' ability to impose financial sanctions on officers of within scope FIs, enabling their imposition specifically on those who have acted or omitted to act, intentionally, negligently or recklessly, in a way that caused, or materially contributed to, a within scope FI ceasing to be viable.

Cross-border resolution

Under the proposed resolution regime, host jurisdictions are required to support the group-wide resolution plan carried out by the home jurisdiction to facilitate cross-border resolution

18. Under the proposed resolution regime an RA in Hong Kong (as a host jurisdiction) is not required to support a group-wide resolution carried out by a home jurisdiction but is rather afforded discretion to do so subject to being satisfied that certain conditions have, or have not, been met. The powers under the proposed regime may also be exercised independently of a group-wide resolution in respect of FIs in Hong Kong provided that they are within the scope of the regime and the triggering conditions are met. A coordinated cross-border resolution which enables the constituent parts of an integrated cross-border group to continue as a going concern may benefit home and host jurisdictions alike and hence it is important that the local resolution regime provides flexibility for a local RA to cooperate with its counterparts overseas.

Whether the ring-fence mechanism (i.e. the regulator can ring-fence the assets of the Hong Kong FI to prevent the assets from being transferred to the parent company or other branches in overseas jurisdictions) available under the existing regulatory regimes will still be applicable with implementation of the proposed resolution regime

19. The proposed resolution regime will not remove or constrain any of the supervisory intervention powers currently available to the regulators (including any powers of direction with regard to asset transfer). Instead, the proposed regime introduces additional powers to better equip the administrative authorities (i.e. the RAs) to take action to protect financial stability, e.g. through securing the continuity of critical financial functions in Hong Kong, in the case of failure of a systemically important FI.

20. Where the three conjunctive conditions for resolution are met, the powers under the proposed regime can be used either “independently” in respect of a Hong Kong FI within the scope of the regime (irrespective of

whether it is a subsidiary or a branch of an overseas institution) or in support of a coordinated cross-border resolution of a financial group.

21. In deciding how to use the powers under the regime, the relevant authorities will consider in the case of a cross-border financial group whether a coordinated approach will serve to meet the resolution objectives in Hong Kong. If it will not, then an RA cannot recognise a foreign resolution action, but the RA can use the powers under the Bill to act independently (assuming the three conjunctive conditions for initiating resolution have been met locally).

22. Given that cross-border financial groups tend to be relatively highly integrated, it may well be the case that a coordinated cross-border resolution of a financial group will result in less value-destruction as the group will continue as a "going concern" (with no sudden fire sales of assets – depressing market prices) and retain its "franchise value", whilst continuing the provision of critical financial services to the public, and the economy more broadly. It is therefore critical to provide flexibility in the local regime for the local RAs to act in coordination and cooperation with those overseas.

23. As regards the insurance sector, all life insurers are required to maintain sufficient assets in a separate account for their liabilities attributable to life business. The Insurance Authority is empowered to impose intervention such that authorized insurers are not allowed to transfer or channel funds to their related companies without the consent of the Insurance Authority should there be grounds for him to do so. This regulatory tool on ring fencing of assets still exists on the implementation of the Bill. As regards cross-border resolution, the aforesaid conditions should be met before RAs would recognise resolution actions to be effected by the home regulator of the non-viable FIs.

24. In cases where losses occur in the Hong Kong entity of a cross-border financial group, there may be significant benefit to Hong Kong in a coordinated approach to dealing with the group.

How the RA can ensure that the interest of creditors, shareholders and customers of the Hong Kong FI concerned will be properly protected in a group-wide resolution plan

25. Resolution planning is designed to ensure that authorities are in a position to credibly deploy the resolution tools in the regime. The resolution planning process does not affect the resolution objectives set out in the Bill and to which an RA must have regard in carrying out its functions. These include maintenance of financial stability; protection of deposits, insurance policies and client assets; and containing costs (clause 8(1)). Furthermore, under the Bill (clause 185(6)), an RA must not recognize and give effect to an overseas resolution action if to do so would have an adverse effect on financial stability in Hong Kong, would not deliver outcomes consistent with the resolution objectives or would disadvantage local creditors or shareholders relative to other creditors or shareholders of the institution concerned. An RA must also, under the Bill (clause 187), not recognize an overseas resolution action unless it is satisfied that an arrangement is in place under which the eligibility of any Hong Kong shareholder or Hong Kong creditor to claim compensation is broadly consistent with the eligibility for the "no creditor worse off than in liquidation" compensation provided under the Bill (clause 102).

26. Thus resolution planning (clause 13) will take place within the boundaries set by the Bill. In terms of the operation of the planning process, it is the case that for any group resolution plan to operate credibly, both home and relevant host authorities must be incentivised to "play their part". This means that in drawing up a group resolution plan, home authorities must provide host authorities with assurance that financial stability and continuity of critical services will be suitably protected in host jurisdictions by the proposed plan and that creditors and shareholders in host jurisdictions will not be treated less fairly than those in other jurisdictions. In the absence of such assurance, host authorities will not acquiesce in, or agree to, a group resolution plan as it will not serve their local resolution objectives.

27. Once a strategy and plan have been developed and agreed, it would normally be presumed that it would be followed should non-viability subsequently occur within the group. However, in agreeing to a

presumptive strategy and plan, the local RAs would not be "ceding" or fettering their powers to act independently under the local regime should it transpire that, at the time an FI actually becomes non-viable, the presumptive plan will not work as envisaged or that it will not (in the prevailing circumstances) deliver stability and fair treatment of creditors/shareholders locally. The home authority will be aware of the host's ability to use its powers independently and hence should be incentivised to allay host authorities' concerns in order to ensure the successful operation of the integrated group plan rather than risk a series of fragmented, inconsistent approaches jurisdiction by jurisdiction ultimately preventing the group remaining a going concern. The powers provided in the Bill should therefore serve to improve the "negotiating" position of Hong Kong as a "host" in the course of resolution planning/execution.

28. One example of this may be apparent in the recent FSB Standard on Total Loss Absorbing Capacity. This makes provision for loss absorbing capacity to be "pre-positioned" at locations within cross-border groups. This might take the form of a subordinated loan from parent to subsidiary with joint triggers for the relevant home/host authorities to write-off the loan, thereby in effect passing losses up from subsidiary to parent.

29. If the resolution plan envisages a group resolution with, say, a bail-in at the parent company level, there would be no need for the use of resolution tools on the subsidiary. If the subsidiary had incurred losses the home and the host could jointly trigger the write-off of the loan, moving the losses to the parent level where they would be taken into account in the loss absorption and recapitalization to be achieved at parent level by the bail-in. However, if in a given case the home authority was reticent to activate the joint trigger to write-off the intra-group subordinated loan, it would be aware that the host could then use its own resolution regime (assuming the relevant conditions are met) and its own bail-in power to write-off not only the intra-group subordinated loan but also other liabilities of the subsidiary or convert them into equity, thereby potentially changing the ownership structure of the subsidiary which could in turn disrupt the group resolution to the detriment of the parent.

Whether the Hong Kong FI, which remains financially sound and viable, will be required to go into compulsory liquidation if its parent company, being a cross-border group, enters into liquidation. Under such circumstances, whether the RA would initiate the proposed resolution regime to protect the interest of the creditors, shareholders, and customers of the Hong Kong FI concerned even if the conditions for initiating resolution are not met

30. A Hong Kong incorporated FI, which remains financially sound and viable, would not necessarily be required to go into compulsory liquidation if its parent company overseas enters liquidation.

31. In the event of commencement of liquidation at parent company level, the shares held by the parent in the local FI would be an asset of the parent, which the liquidator appointed to the parent company would seek to dispose of for the benefit of the creditors of the parent company.

32. Conceivably, if the liquidator were able, very swiftly, to identify a purchaser that is regarded by the local Hong Kong regulator as fit and proper to be the controller of the Hong Kong FI, then a share sale could be effected.

33. If such a share sale cannot be swiftly achieved, the relevant regulator of the Hong Kong FI will consider the use of its supervisory intervention powers, for the purpose of protecting depositors, policyholders and client assets etc. given that the controller of the local FI is in liquidation and hence arguably no longer fit and proper. These may include, in the case of AIs under the BO, issuing directions to the local AI requiring it to take such specified action as the regulator considers necessary or the appointment of a Manager to manage some or all the affairs, business or property of the institution. In the case of LCs, such intervention powers may include (i) an imposition of restriction notices (e.g. powers to restrict an intermediary business or dealing with client property or property of the business or to require assets of a specified amount and type to be kept in Hong Kong under sections 204-206 of SFO); (ii) an application to wind up any corporation if appropriate (under section 212 of SFO); and/or (iii) an application to the court for various preventative or restorative orders (for powers to restrain dealing with property under section 213 of SFO).

The ability to exercise these powers is unaffected by the Bill.

34. However, past experience suggests that the local FI would suffer a loss of confidence once its customers and counterparties become aware of the problems at parent company level. In such circumstances, a natural reaction for customers and counterparties of an FI may be to withdraw funds from, and cease business with, the local Hong Kong institution, as there will inevitably be doubt surrounding, and confusion as to, the financial strength and viability of that institution, given the condition of its parent.

35. In the case of a bank, for example, even if it would otherwise be balance sheet solvent (in the sense of assets exceeding liabilities), a sudden run and curtailment of access to funding would likely quickly render the bank non-viable as it will not be able to liquidate assets fast enough (under fire sale conditions depressing market pricing) to meet its now immediate obligations. Thus appointment of a liquidator at parent company level could provoke such contagion at the local level so as to render the local institution "likely to become" non-viable and if the institution had no reasonable prospect of recovery and was considered systemically important in Hong Kong at the time, the use of powers under the Bill could be triggered. If the entity was not considered to be systemically important, resolution could not be initiated under the Bill but the regulators' supervisory intervention powers referred to above (issue of directions, appointment of a Manager etc.) would remain operable and ultimately the entity could be liquidated.

36. As resolution regimes are focussed on the orderly resolution of FIs that are considered to have systemic consequences if they fail, it is worth noting that a home RA for a parent company which is systemically important is highly unlikely to allow the parent to go into liquidation. To secure continuity of the critical services which the parent provides, the home authorities will rather resolve it in an orderly fashion using the powers under their resolution regime or, in the absence of a credible resolution regime, judging by the experience of the crisis, bail it out with public monies.

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

Comparison of clawback provisions in select jurisdictions

	Hong Kong	United Kingdom ("UK")	United States	Singapore
Relevant legislation/ subsidiary legislation/ code, etc.	• Financial Institutions (Resolution) Bill ("**FIRB**")	**Note:** ***Unlike Hong Kong (and the majority of comparable jurisdictions) where clawback powers are explicitly provided for under the resolution regime, the clawback rules described in this column are not part of the UK resolution regime but rather reforms implementing the European Union ("EU") Capital Requirements Directives (CRD) requirements. Hence, such rules are not limited to the resolution context and the requirements are on the firm rather than on the RA specifically.*** • EU CRD IV • Financial Services and Markets Act 2000 ("**Act**") • PRA Rulebook: CRR Firms: Remuneration Instrument 2015 ("**RI**")	• Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Act**") • Orderly Liquidation Authority, Part 380, 12 C.F.R. Ch. III (2012) ("**Rules**")	• Monetary Authority of Singapore Act ("**Act**")
Decision-making	• The court (*FIRB, clause 143*)	• The firm	• The court *(§ 380.7(a), the Rules*)	• The court (*section 30AAQ(1), the Act*)
Clawback - Recovered by whom/ Returned	• Repaid or returned to the RA which must pay that returned remuneration into the resolution	• Recovered by the firm (*RI 15.23*)	• Recovered by Federal Deposit Insurance Corporation (FDIC), as receiver of the failed financial	• Repaid or returned to the FI (*section 30AAQ(1)(a), the Act*)

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to whom	funding account (*FIRB, clauses 145(2) and 145(3)*)		company (*section 210(s)(1), the Act; § 380.7(a), the Rules*)	
What forms of remuneration	• Received and deferred fixed and variable remuneration (*FIRB, clause 144(1)*). • The terms "fixed remuneration" and "variable remuneration" are defined under clause 2 of the FIRB	• Vested variable remuneration (*RI 15.23*)	• Any compensation (*section 210(s)(1), the Act; § 380.7(a), the Rules*) • The term ''compensation'' means any direct or indirect financial remuneration received from the failed financial company, including salary; bonuses; incentives; benefits; severance pay; deferred compensation; golden parachute benefits; benefits derived from an employment contract, or other compensation or benefit arrangement; perquisites; stock option plans; post-employment benefits; profits realized from a sale of securities in the company; or any cash or noncash payments or benefits granted to or for the benefit of the senior executive or director (*§ 380.1, the Rules*)	• Clawback - any salary, remuneration or other benefits received by a director or executive officer from the FI during the 2-year period • Malus – a director or executive officer shall cease to be entitled to receive any deferred salary, remuneration or other benefits that the FI had agreed to pay to him during the 2-year period • Any deferred salary, remuneration or other benefits to be paid by the FI to a director or executive officer be reduced by such amount as the court thinks just • an order combining (a) and (b), or (a) and (c) (*section 30AAQ(1), the Act*)

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Comparison of clawback provisions in select jurisdictions

	Hong Kong	United Kingdom ("UK")	United States	Singapore
Grounds for applying clawback arrangements	The Court may make a clawback order against an officer if satisfied that— • the officer, in performing his or her functions, acted or omitted to act in a way that caused, or materially contributed to, the FI ceasing, or being likely to cease, to be viable; and • the act was done, or the omission was made, intentionally, recklessly or negligently. (*FIRB, clause 143(2)*)	A firm must make all reasonable efforts to recover an appropriate amount corresponding to some or all vested variable remuneration where either of the following circumstances arise during the period in which clawback applies (including any part of such period occurring after the relevant employment has ceased): • There is reasonable evidence of employee misbehaviour or material error; or • The firm or the relevant business unit suffers a material failure of risk management. (*RI 15.23*)	• A senior executive or director shall be deemed to be "substantially responsible" for the financial company's failure if he/she: (1) Failed to conduct his/her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances; and (2) As a result, individually or collectively, caused a loss to the financial company that materially contributed to its failure under the facts and circumstances. (*§ 380.7(a), the Rules*) • Rebuttable presumptions - It shall be presumed that a senior executive or director is substantially responsible if: (1) He/she served as the chairman, CEO, president, CFO, or in any other similar role if in this role he/she had responsibility for the strategic, policy-making, or company-wide operational decisions; (2) He/she is adjudged liable by a court or tribunal of competent	It appears to the Monetary Authority of Singapore ("MAS") that a director or executive officer has: • failed to discharge the duties of his office; • misapplied or retained any money or property of the FI; • become liable or accountable for any money or property of the FI; or • been guilty of any misfeasance or breach of trust or duty in relation to the FI (*section 30AAQ(1), the Act*)

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Comparison of clawback provisions in select jurisdictions

	Hong Kong	United Kingdom ("UK")	United States	Singapore
			jurisdiction for having breached his/her duty of loyalty to the failed financial company; or (3) He/she was removed from the board or management. (*§ 380.7(b), the Rules*)	
Other consideration	If the court decides to make a clawback order, in determining the extent to which an officer's remuneration is to be covered by a clawback order, the court must take into account: • the extent to which the act or omission of the officer contributed to the FI ceasing, or being likely to cease, to be viable; and • the financial circumstances of the officer, as far as practicable (*FIRB, clause 143(3)*)	• A proportionate approach for clawback – firms must take into account all relevant factors (e.g. the proximity of the employee to the failure of risk management in question and the employee's level of responsibility) in deciding whether and to what extent it is reasonable to seek recovery of the vested variable remuneration (*RI 15.23*)	• In seeking to recover compensation, the FDIC shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery (*section 210(s)(2), the Act*)	N/A
Period	• The "controlled period" is defined as the period of 3 years… immediately preceding the date on which the resolution of the FI was initiated (*FIRB, clause 142*)	• Variable remuneration is subject to clawback for a period of at least 7 years from the date on which it is awarded (*RI 15.20.3*)	• Compensation received during the 2-year period preceding the date on which the FDIC was appointed as the receiver of the failed financial company (*section 210(s)(1), the Act;*	• 2 years immediately preceding the date on which the MAS began to exercise its resolution powers (*section 30AAQ(3), the Act*) • Where it appears to the MAS

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Comparison of clawback provisions in select jurisdictions

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	• The Court may, on an application made by the RA, extend the controlled period applicable to the officer by a further period of up to 3 years if satisfied that any act or omission on the part of the officer that caused, or materially contributed to, the FI ceasing, or being likely to cease, to be viable was dishonest (*FIRB, clause 143(5)*)	• In the case of a material risk taker who performs a PRA senior management function, the firm can extend the period during which variable remuneration is subject to clawback to at least 10 years from the date on which it is awarded if there is an outstanding investigation underway which the firm considers could potentially lead to the application of clawback were it not for the expiry of the clawback period. (*RI 15.20.4*). • Please see *RI 3* for the definition of "*material risk taker*".	*§ 380.7(b), the Rules*) • No time limit in the case of fraud (*section 210(s)(1), the Act; § 380.7(b), the Rules*)	that a director or executive officer has acted recklessly, fraudulently or dishonestly in relation to the FI, it may apply to the court to extend the length of the 2-year period (*section 30AAQ(2), the Act*)