

**Bills Committee on the Financial Institutions (Resolution) Bill
Response to matters raised by the Assistant Legal Adviser**

Further to LC Paper No. CB(1)545/15-16(01), we set out the Government's response to two outstanding issues in relation to the Financial Institutions (Resolution) Bill (the Bill) raised by the Assistant Legal Adviser of the Legislative Council Secretariat in the letter dated 4 January 2016. We will respond to the question on clause 104(3) of the Bill in due course.

Under clause 83(5), a creditor of a within scope FI may not, without the written consent of the resolution authority concerned, commence or continue any action to attach any assets of, or obtain the payment of money or delivery of any other property by, such FI. Please clarify if such restriction would be applicable to a scenario that a "writ of execution" (e.g. a writ of fieri facias, a writ of delivery, a writ of possession or a writ of sequestration) against the FI's assets has already issued and sealed by the relevant court under Order 46 of the Rules of the High Court (Cap. 4A) or the Rules of the District Court (Cap. 336H) but the actual delivery or possession of the assets concerned has not yet taken place. If this is the case, please consider if it is necessary to expressly provide for such scenario under clause 83.

2. The suspension of obligations that may be imposed by a resolution authority under clause 83 of the Bill could be applicable to the scenario suggested in the question, where a "writ of execution" against a financial institution (FI)'s assets has already been issued and sealed by the relevant court, but the actual delivery or taking possession of the assets concerned has not yet occurred. It is noted that the power to suspend under clause 83 is discretionary, as securing continuity of the provision of critical financial services would in many cases argue against the imposition of any moratorium or suspension of obligations. Should a suspension be exercised under clause 83, it would not overturn any order of the court as its effect is merely a temporary suspension of payment or delivery, the duration of which is limited to no more than two business days (see clause 83(4)).

What measures (legislative or administrative) will be taken by the Administration and the relevant resolution authorities to protect the interests of the pre-resolution employees of such FIs?

3. We have made certain legislative provisions in the Bill to protect

the interests of employees in resolution, for example:

- (i) section 7(4) of Schedule 4 empowering the resolution authority to include provision about continuity of employment in a property transfer instrument;
- (ii) exclusion of a number of employee benefits from the application of bail-in. The excluded liabilities are listed in section 2 of Schedule 5 to the Bill: (a) liabilities owed to employees or former employees in respect of “wages” and certain other specified benefits (section 2(n) of Schedule 5); and (b) liabilities owed in relation to an “occupational retirement scheme” in respect of an employee or former employee, except for liabilities owed in relation to a right arising out of the exercise of a discretion (section 2(o) of Schedule 5); and
- (iii) as a pre-resolution creditor, an employee would be eligible for “no creditor worse off than in liquidation” (NCWOL) compensation if, as assessed by an independent valuer, any were due (clause 102).

4. In respect of administrative measures, the resolution authority can, as part of its operating procedures, ensure as timely an engagement as possible with employees and employee representatives whilst recognising that a certain degree of confidentiality would need to be maintained ahead of resolution action being taken (in order not to create uncertainty in the market or further damage market confidence). Furthermore, the resolution authority could maintain close liaison with the Labour Department (LD) and inform LD in as timely a manner as possible of any resolution action that is likely to take the form of a partial property transfer, and which could result in some employees remaining contracted with a residual FI, so that prompt assistance including advice on making applications for ex-gratia payment from the Protection of Wages on Insolvency Fund could be rendered to the affected employees in the event of a subsequent winding up of the residual FI.

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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