

Bills Committee on Financial Institutions (Resolution) Bill

**List of follow-up actions arising from the discussion
at the meeting on 15 March 2016**

Transfer under a Part 5 instrument

1. Clause 33(3) of the Bill provides that the value of any consideration due to the transferor in respect of any transfer under a Part 5 instrument must be "fair and reasonable" in the circumstances. Clauses 35 and 36 set out the requirement for a resolution authority ("RA") to make a valuation before applying a stabilization option to, or making a capital reduction instrument in respect of, a within scope financial institution ("FI"); and how the valuation is to be made. The Administration is requested to consider stating explicitly in clause 33(3) that the "fair and reasonable" consideration in the circumstances is subject to the valuation made under clauses 35 and 36, so as to enhance the clarity of the provisions.

Business reorganization plan

2. Clause 63(1) of the Bill requires an RA to include in the bail-in instrument that "one or more directors of the FI" have to prepare and submit to the RA a business reorganization plan in respect of the FI. Clause 63(3) further provides that "a person" may submit or re-submit a business reorganization plan to the RA for approval. It is unclear whether the "person" referred to in clause 63(3) is the "one or more directors of the FI". To better reflect the legislative intent, the Administration is requested to consider replacing "a person" in clause 63(3) with "one or more directors of the FI".

Drafting issues

3. In the light of members' concerns, the Administration has agreed to:
- (a) review the Chinese rendition "內部財務調整文書" for the term "bail-in instruments" to better reflect its meaning in the context of the Bill. The Administration is also requested to provide information on the Chinese renditions adopted by the Mainland and Taiwan for "bail-in instruments" and make reference to such renditions in reviewing the term; and
 - (b) consider providing the long form of TPO (i.e. temporary public ownership) in the definition of "TPO company" in clause 2 of the Bill.

4. In the light of comments by the legal adviser to the Bills Committee, the Administration is requested to:

- (a) review the Chinese text of clause 35(2) as the phrase "如作出估值的時間，早於處置機制當局 ..." seems to have different emphasis from the English text; and
- (b) review the Chinese text of clause 58(6)(a) to simplify the drafting as the first sentence (i.e. 顧及根據第 35(1)條作出的估值) may overlap with the second sentence (i.e. 顧及該項估值的出發點).

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