

**Bills Committee on Financial Institutions (Resolution) Bill**

**List of follow-up actions arising from the discussion  
at the meeting on 31 March 2016**

Schedule 3 – Securities transfer instruments

1. Section 4(1) of Part 1 of Schedule 3 to the Bill provides that a transfer of securities contained in a securities transfer instrument takes effect by operation of the Financial Institutions (Resolution) Ordinance ("the Ordinance"). It is noted that under the Stamp Duty Ordinance (Cap. 117), the sale and purchase of any Hong Kong stock is subject to stamp duty. The Administration is requested to clarify –

- (a) whether a transfer of Hong Kong stock made under Schedule 3 of the Ordinance is subject to stamp duty; and
- (b) if stamp duty is required to be paid, the rationale and justifications for imposing stamp duty on such a transfer which does not involve genuine trading of a stock.

Schedules 3 and 4 – Effect of a transfer instrument

2. According to section 4(3) of Part 1 of Schedule 3 and section 4(3) of Part 1 of Schedule 4 to the Bill, a securities or property transfer instrument takes effect despite any restrictions (including a restriction requiring the sanction of the Court, or the approval of a regulatory body, for a transfer) arising under contract or legislation or in any other way. Some members are concerned about the overriding power of the provisions, in particular the power to override the sanction of the court and the restrictions imposed by legislation. The Administration is requested to: (a) review the provisions to address the above concern; (b) provide information on similar provisions adopted by overseas jurisdictions in their resolution regimes; and (c) explain under what circumstances the resolution authority would exercise such overriding power.

Schedules 3 and 4 – Removal of directors etc.

3. Section 7(1) of Part 1 of Schedule 3 and section 9(1) of Part 1 of Schedule 4 to the Bill respectively specify that a securities transfer instrument or a property transfer instrument may revoke the appointment of a person as a director, chief executive officer or deputy chief executive officer of a

prescribed entity. However, sections 7(2) and 9(2) of Schedules 3 and 4 explicitly provide that the revocation of appointment does not terminate, or affect the rights of any party to, a contract of employment or services with the prescribed entity. Members express grave concern that the provisions may protect the employment of the directors or senior officers of the failing financial institution ("FI") whose actions or omissions may have directly caused the non-viability of FI concerned. The Administration is requested to: (a) review the provisions to address members' concern; and (b) provide information on similar provisions adopted by overseas jurisdictions in their resolution regimes.

#### Schedule 5 – Excluded liabilities

4. Clause 58(4) of the Bill provides that a power to make a bail-in provision may not be exercised in respect of any excluded liability. Excluded liabilities are defined in section 2 of Schedule 5 to the Bill to include, among others, any liability that is secured (i.e. section 2(1) of Schedule 5). Some members are concerned about the broad scope of section 2(1). The Administration is requested to consider specifying clearly in section 2(1) the kinds of secured liabilities that would be excluded from bail-in.

#### Drafting issue

5. In the light of members' concerns, the Administration has agreed to:
- (a) consider revising the Chinese rendition "內部財務調整文書" for the term "bail-in instruments" (e.g. replacing "調整" by "重整") to better reflect the urgency and seriousness of the situation where "bail-in instruments" will be made; and
  - (b) consider the need to set out clearly in the Chinese text of the Bill the concept of "內部財務調整文書" noting that there is no Chinese equivalent for the term in the Mainland and Taiwan.