

Bills Committee on Financial Institutions (Resolution) Bill

**List of follow-up actions arising from the discussion
at the meeting on 18 April 2016**

Schedule 3 – Stamp duty exemption for securities transfer instruments

1. According to the Inland Revenue Department, any "sale or purchase" of Hong Kong stock under the securities transfer instruments (i.e. Schedule 3 to the Bill) will be subject to stamp duty under the Stamp Duty Ordinance (Cap. 117), and stamp duty exemption may be granted to the instruments on a case-by-case basis. Members are of the views that the Bill should provide certainty on stamp duty exemption for the securities transfer instruments to facilitate smooth conduct of resolution, especially for carrying out the stabilization options with transfers to a bridge institution and to a temporary public ownership which will involve government ownership. Stamp duty exemption for the instruments will be justified recognizing the purpose of the transfers is to protect financial stability and integrity of the financial system. The Administration is requested to consider and respond to members' views.

Clauses 83 and 84 – Suspension of obligations and excluded obligations

2. Clause 83 enables a resolution authorities ("RAs"), in a Part 5 instrument, to suspend obligations of a within scope financial institution ("FI") to make a payment or delivery arising under a contract to which the FI or its subsidiary is a party. Clause 84 sets out the excluded obligations (e.g. end of year payment and terminal payment) from a suspension under Clause 83. Members are concerned that the provisions may have effect allowing the FI to make payment for the remuneration to senior officers of the FI who have/may have contributed to the non-viability of the FI (e.g. the acts of the officers involved excessive risk taking). The Administration is requested to:

- (a) consider adding relevant provisions in the Bill to address members' concern;
- (b) provide Hong Kong Monetary Authority("HKMA")'s guidelines to authorized institutions ("AIs") on the governance and control arrangements for AIs' remuneration systems, and explain how the guidelines could enable HKMA or an AI to defer payment of variable remuneration to the AI's senior management to address possible subsequent problems on the AI arising from misbehaviour of the AI's senior management;

- (c) clarify the coverage of the excluded obligations "end of year payment" and "terminal payment" in Clause 84(1)(c); and
- (d) consider the need to revise the terms in (c) above to better reflect the remuneration systems in the financial services industry.

Clause 95 – Appointment of appointing person

3. To decide whether any pre-resolution shareholder and pre-resolution creditor of an FI is eligible for compensation under the "no creditor worse off than in liquidation" principle, Clause 96 provides for the appointment of an independent valuer for making a valuation in relation to a failing FI. Clause 95 provides for the appointment by the Financial Secretary ("FS") of a person (i.e. the appointing person) to be responsible for appointing the independent valuer under Clause 96. Some members express concern about the proposal for FS to appoint an appointing person who in turn will be responsible for appointing the independent valuer. They consider that the independent valuer should be appointed by FS direct and FS should take direct responsibility in making such appointment. The Administration is requested to:

- (a) review the relevant provisions to address members' concern; and
- (b) provide information on the appointment mechanisms for independent valuer adopted by overseas jurisdictions in their resolution regimes.

4. Clause 95(6) provides that the resignation of an appointing person would only take effect when the relevant notice is published in the Gazette. However, Clause 95(3) only requires FS to publish a notice in the Gazette on the appointment of an appointing person. It is unclear when the appointment of an appointing person would take effect. The Administration is requested to:

- (a) clarify when the appointment of an appointing person would take effect;
- (b) review the relevant provisions in Clause 95 to remove the ambiguity; and
- (c) review the need of Clause 95(7) on the validity of the acts of an appointing person despite there have been defects in the appointment process.

Drafting issue

5. In the light of comments by the legal adviser to the Bills Committee, the Administration is requested to review the wording of clause 81(5) as the Chinese text "大致上相類" seems to have different meaning from the English text "substantially similar to".

Council Business Division 1
Legislative Council Secretariat
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