

Bills Committee on Financial Institutions (Resolution) Bill

**List of follow-up actions arising from the discussion
at the meeting on 16 May 2016**

Schedule 3 – Stamp duty exemption for securities transfer instruments

1. Members note that the Administration plans to develop appropriate amendments to the enacted Financial Institutions (Resolution) Ordinance in a future legislative exercise to effect the stamp duty exemption policy in the context of the resolution legislative framework. The Administration is requested to give the above undertaking during the resumption of the Second Reading debate on the Bill.

Part 8 – Clawback of Remuneration

Effect of the Limitation Ordinance to clawback of remuneration

2. Section 4(1)(d) and section 4(5) of the Limitation Ordinance (Cap. 347) ("LO") respectively provide that actions to recover any sum, or any penalty or forfeiture, or sum by way of penalty or forfeiture, which are recoverable by virtue of any Ordinance or imperial enactment shall not be brought after the expiration of 6 years and 2 years from the date on which the cause of action accrued. In the light of comments from members and the legal adviser to the Bills Committee, the Administration is requested to clarify whether the resolution authorities ("RAs") would be subject to the time limit under section 4(1)(d) or section 4(5) of LO when applying to the Court for a clawback order against an officer or former officer of a within scope financial institution ("FI").

The need to consider the financial circumstances of the officer in making a clawback order

3. Clause 143(3)(b) provides that the Court "must" take into account the financial circumstances of the officer in determining the extent to which the officer's remuneration would be covered by the clawback order. Given that the term "financial circumstances" is not defined and the factors to be considered by the Court are not set out in the Bill, members are concerned that the officer may abuse the provision by exaggerating his/her financial hardship, family burden, etc. so that the Court would reduce the amount of remuneration to be subject to the clawback order. The Administration is requested to:

- (a) review the relevant provisions to address members' concern;
- (b) re-consider deleting clause 143(3)(b) from the Bill;
- (c) consider setting out in the provision the principles such as fairness, justice and equity the Court should take into account in determining the clawback order; and

- (d) consider the views of the legal adviser to the Bills Committee to provide in clause 143(3)(b) that the Court may consider the financial circumstances of the officer if it considers doing so is appropriate and equitable (在合適及公平的情況下原訟法庭可考慮該人員的財務狀況).

Proposed power for RAs to retain the remuneration of the officers of FIs for a certain period

4. Some members have expressed grave concern about whether a clawback order would be enforceable especially when the officers are expatriates who may leave Hong Kong shortly after initiation of resolution of an FI. There is a proposal to empower the RAs to retain the remuneration of the officers for a certain period. While the amount of remuneration subject to retention may be relatively small, the proposal would send a clear message to the market that reckless and negligent behaviours of the officers causing the failure of the FI should not be tolerated. The Administration is requested to:

- (a) consider empowering RAs to retain the remuneration of the officers, in particular the variable remuneration (e.g. bonus), for a certain period after initiation of resolution of an FI;
- (b) clarify whether during resolution planning RAs can direct an FI to develop measures for retaining/deferring the payment of remuneration to the officers when resolution of the FI is initiated; and
- (c) consider adding provisions in the Bill to require RAs to consult the relevant regulators shortly after initiation of resolution of an FI on the need to give directions to the FI for retaining the remuneration of the officers.

Clause 171 – Official secrecy

5. While members note that clause 171(3)(a) and (f) provides disclosure gateway for RAs and the Financial Secretary ("FS") to make public statements concerning the resolution of FIs, some members are concerned that such disclosure would be restrictive. The Administration is requested to consider providing explicitly in clause 171 for FS to make public statements or answer enquiries regarding the resolution of an FI taking into account public interest concern and the need to maintain financial stability.