

Banking Reform Team

BY EMAIL ONLY

(Banking.reform@hm-treasury.gsi.gov.uk)

Your ref:
Our ref:
Direct line: 020 7637 6501
e-mail: Steven.chown@insolvency.gsi.gov.uk
Date: September 2008

Dear Sirs

Financial stability and depositor protection: special resolution regime

Thank you for including the Insolvency Service in your consultation. Many of the questions contained within the consultation document do not have a bearing on insolvency law and practice and our response therefore only covers those questions that are related to this area, as follows –

Chapter 3

3.23) Should the residual company have control over key infrastructure required by the parts of the bank transferred to the bridge bank, the special bank administration procedure (“SBAP”) may be necessary for the former to ensure the continued trading (and success of the process) of the latter.

3.24) If similar issues regarding infrastructure are likely to occur regardless of whether the rest of the bank is transferred to a bridge bank or a private sector institution, the availability of the SBAP in both could be a welcome flexibility.

3.25) Having specific objectives would be a factor in common with other special regimes. The office-holder’s position would be difficult if he/she had no objectives to work towards.

3.27) Only allowing a SBAP in these narrowly-prescribed circumstances gives legislative certainty over when this, very far-reaching and powerful, procedure can be used.

3.29) All existing special regimes are commenced by the court. Given that special regimes subjugate the interests of creditors for public policy reasons,



the involvement of the court confers legitimacy and transparency to the procedure.

3.30) We believe that the special bank administrator should be an officer of the court, as with other insolvency regimes both special and 'normal'. As the bank liquidator appointed following a bank insolvency order (Chapter 4) is proposed to be an officer of the court, it would be consistent for a bank special administrator to also hold that position.

3.32) The powers available to the special bank administrator should enable him or her to execute the objectives of the SBAP and they should be tailored to this effect. Care should be taken to avoid authorising unnecessary powers, the use of which may divert resources from the central objective of the SBAP.

3.34) Yes.

3.35) Given the creditors' interests are not central to the objectives of the special bank administration, it is appropriate that someone, other than creditors, consider, modify and approve the special bank administrator's proposals.

3.36) As with the answer to the preceding question – the creditors' interests are not at the heart of this procedure, so the functions of the creditors' committee should be carried out by another body.

3.37) Yes, as to do otherwise would undermine the reasons for having a special administration regime.

3.38) Yes.

3.39) Insolvency set-off is a very complicated area and it is essential that key stakeholders are consulted regarding any proposed alteration to the usual statutory priority. We agree that set-off should be dealt with in the secondary legislation.

3.40) Yes.

3.41) Having a number of different exit procedures would grant welcome flexibility to the procedure.

Chapter 4

4.2) CI47, table of applications – s239 IA86 is to be applied with some modifications; s238 is to be applied but does not have the same modifications. We think that s238 needs to be subject to the same modifications as s239.

4.3) CI66 The Bank of England are withdrawing from offering retail banking services to government departments, including the Secretary of State's ISA. It is planned that the ISA will no longer need to be held at the Bank and this clause will need to be altered. You should also consider whether you need an equivalent to s403(2) Insolvency Act 1986 in this Bill, or whether the

existing s403(2) can be relied upon (as you are plugging into the ISA itself with the draft clause) to transfer excess amounts relating to estates of insolvent banks into the ISIA.

4.4) CI45(8)(b) – this subparagraph substitutes certain requirements in the circumstances given in the chapeau but does not state what they are to be substituted with.

Additional points on draft clauses –

CI43(1)(b) – would such a payment be an expense of the procedure?

CI50 – an office-holder also vacates office on his death – is it your intention to include this vacation in the secondary legislation?

CI60 – what would the court have to consider when granting its approval for a CVL, as this is a matter for the company at its meeting, following its notification of this course of action with the FSA?

Financial stability and depositor protection: Further consultation

The Insolvency Service has no comment on the second HM Treasury consultation in this area, as it does not affect insolvency law and practice.

Yours faithfully

Steven Chown
Senior Policy Advisor