

Minutes of the Banking Liaison Panel 21 July 2011

1. Stephen Evans (Treasury) chaired the meeting.

Apologies

2. Apologies were received from Catherine Burton and Richard Heis (Association of Recovery Professionals). Alex Kuczynski (FSCS) sent his apologies, James Darbyshire (FSCS alternate) attended.

Minutes from the previous meeting

3. The minutes of the meeting of 3 March 2011 were approved.

Update on the European Commission's Crisis Management Framework

4. The Panel noted that the European Commission were likely to publish legislative proposals in late September, probably in the form of a draft directive.

Resolution tools for investment firms and financial holding companies

5. The Panel considered how best resolution tools for investment firms and financial holding companies could be implemented if they were required by the European Commission.
6. The Panel discussed the legal and practical implications of applying resolution powers designed for deposit takers to investment firms and noted that the complexities of the international regulatory framework potentially posed challenges in the application of resolution tools. Issues covered in the discussion included –
 - suggestions that expansion of resolution tools to non-deposit taking firms should be limited to systemically important financial institutions (SIFIs), while the design of the toolkit should aim to avoid tenuous litigation, mitigate financial instability and ensure continuity of services;
 - concerns about any added complexities that might arise from the forthcoming Independent Commission on Banking (ICB) report in September;
 - limitations in the Special Resolution Regime (SRR) and insolvency law when dealing with SIFIs, including the transfer and liquidation of assets and securities that do not belong to an investment bank but are held and managed by the institution; and
 - whether the capturing of financial holding companies within the scope of a resolution regime would pose any additional risks in the event of resolution. For example, whether any additional safeguards should be in place to protect against incidental effects to other subsidiaries.

Bail-in tools and depositor preference

7. The Treasury sought views from the Panel regarding contractual and statutory bail tools, and depositor preference during bank insolvency, which might be included within the forthcoming European Commission's proposals. In the discussion, the following points were made –
- the concept of bail-in was initially introduced as a going concern option to ensure an institution's viability, and the Panel discussed how the tool could be adopted at the point of non-viability for gone concern institutions;
 - the design of both contractual and statutory bail-in products would require clearly defined target levels before being exercised, but the Panel also noted that there would be issues with netting arrangements for bond holders in different jurisdictions;
 - UK banks were concerned that if bail-in tools were introduced, it might increase borrowing costs for them;
 - further analysis of statutory and contractual bail-in might be needed to assess the economic impacts of introducing these tools before adopting them;
 - the Panel noted that the scope of securities to be bailed in would need assessing, and it would be expected that some securities should be made exempt; and
 - the Panel observed that the proposals to introduce these tools would be more acceptable to industry if they were agreed internationally, at European or Financial Stability Board (FSB) level.
8. On depositor preference, the Panel noted that the policy may have a significant impact on senior creditors by placing them lower in the creditor hierarchy, which may ultimately lead to higher borrowing costs for banks. The Panel also discussed the implications for the Financial Services Compensation Scheme's (FSCS) involvement during depositor payout.

Small companies carve-out from partial property transfer arrangement

9. The conclusions of the Banking Liaison Panel Working Group on Small Companies and the Safeguards Order were circulated in advance of the meeting. These addressed a long-standing concern among the Panel that the exception to the protections in The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (as amended) (the "Safeguards Order") for "retail deposits" and "retail liabilities" would disadvantage small companies in relation to their set-off and netting arrangements, and increase the difficulties that they would experience in the event of the failure of their bank.
10. The Working Group concluded that the work banks were doing pursuant to the Compensation Handbook and in relation to "living wills" would enable them to identify all the accounts of particular customers or corporate groups more easily and therefore eligible

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claimants could be identified quicker. The Working Group endorsed this as the simplest solution to providing legal certainty and recognising the different needs of businesses and individuals.

11. The Panel discussed the importance of being able to distinguish between a bank's individual clients from their business accounts, quickly and accurately during a resolution and the evidence that this would be feasible in practice.
12. The Panel noted that EU proposals could result in all companies becoming FSCS eligible claimants – a move which, if the exception was not limited, would wholly negate the purpose of the Safeguards Order in relation to set-off and netting unless it is amended.
13. The Panel concluded that further work was needed and agreed to consider the proposals again at a future meeting.