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Confidential

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The Hon'ble Mr. Bhupender Yadav M.P.
Chairman
Parliament Joint Committee Financial Resolution and Deposit Insurance Bill 2017
Room No. 339 Third Floor, Parliament House Annexe
New Delhi 110001

Dear Mr. Yadav,
We are writing to place our objections to the Financial Resolution and Deposit Insurance Bill 2017 [FRDI]. As a national trade union centre we are concerned for our membership as also all working people in this country as the aforementioned bill will place the stressed financial sector at grave risk further undermining our perilous economic stability.

The FRDI is a piecemeal attempt at reform of the financial institutions without addressing the structural problems of the financial sector. The FRDI visualises structural reform of the financial sector through a framework of liquidation and not through a mechanism that will put in place measures that are preventive, ameliorative and remedial to bring financial institutions back to good health.

It is widely recognised that today the crisis of the financial institutions, especially the public sector banks, is caused as much by the elected Executive more than by any other interests involved in managing these institutions. In particular the crisis of non-performing assets of public sector banks has been caused by interference of successive governments on individual loan decisions made by the banks which includes whom to lend to and how to deal with a bad borrower. This problem exists because of the lack of autonomy, from the Executive, of public sector banks.

In the first instance the resolution to the problem calls for two, again widely accepted, solutions. First it calls upon the Union Government to recapitalise public sector banks and second to ensure demonstrable and robust autonomy of these institutions.

Rather than putting in place these necessary and urgent remedial measures, the Union Government has moved the FRDI and is pressing for its immediate legislation.

The FRDI in fact does just the reverse of what is prudent. First, by putting financial institutions on a 'restoration', 'resolution' and 'liquidation' fast track the Union Government has absolved itself of the responsibility of recapitalisation. Second, in place of autonomy, the Union Government is seeking to take over powers of parliament, abrogate for itself rights (of depositors) currently protected by parliament, eliminate judicial scrutiny and undermine robust regulatory institutions including the Reserve Bank of India and others through an entirely Executive appointed all powerful Resolution Corporation [RC] that will, under the FRDI, enjoy the power to make rules, take decisions based on such rules and put in place penal action when these rules are not abided with.

The Unions Government has also deviated from the recommendations of the Financial Sector Legislative Reforms Commission that recommended a single regulator for each part of the financial system. The FRDI

creates problems of multiple and overlapping regulators that are likely to give way to more distortions within the financial system. The FRDI also ignores the recommendations of the Reserve Bank of India High Level Working Group in particular with reference to Systemically Important Financial Institutions [SIFIs] that are without doubt critical to the stability of the financial system and therefore the economy.

Importantly, the FRDI grants the RC enormous power of creating criteria within the financial system of Specified Service Providers [SSP] and the performance classification of such SSPs. These powers in the absence of accountability and oversight can be subject not just to significant errors of judgement but also could result in discriminatory practices between types of SSP including based on ownership.

We present below our objections to key operative clauses of the FRDI Bill 2017:

Clause 4: the composition of the RC ensures that the RC will be controlled directly by the Executive in so far as it will appoint 7 out of 11 members. The 7 appointed by the Executive includes the Chairmen and the whole-time Members. The appointments to the RC will be made by a committee chaired by the Cabinet Secretary that is not subject to even oversight by parliament.

Clause 10: provides the RC with a hit and run working style and ensures it will not be held accountable to 'defect's in its constitution and defect in appointing a 'member' or in the event of 'irregularity of procedure not affecting the merits of the case' effectively leaving regulation of the entire financial system to Executive fiat.

Clause 26(2), 38(2), 140: treats all SIFI's that are classified as being of 'low' or 'moderate' risk as if they are permanently under 'material' and 'imminent' levels of risk. The power to define what is a SIFI is vested directly with the central government. These clauses read together effectively give the Executive the power to take over the direct, day to day, control of any financial institution that they so choose to do. This would not only aggravate the lack of autonomy of a SIFI but, it would also delay decision making and response time and serve as a disincentive for growth.

Clause 36(5): provides absolute power to the RC for defining 'objective criteria for classifying'... 'risk' wherein the regulator will merely enjoy advisory powers.

Clause 36(5) and (6): gives the RC unlimited powers to define types of SSPs and then define separate risk classification criteria for each of these categories. This allows the RC to even create separate categories of SSPs based on ownership leaving room open to the RC to discriminate on the basis of ownership. With the history of public sector institutions, especially banks, carrying the government's burden on many counts this leaves open the possibility to obtain delegated powers for the Executive to discriminate against public sector financial institutions.

Clause 36(1), 37, 38(1): creates multiple bodies that regulate SSPs wherein the regulator both specifies and regulates SSPs in the category of 'low' and 'moderate' risk while the RC shall have the power to specify and take into 'resolution' a SSP which it holds to be in 'material' 'imminent' and 'critical' state. The RC enjoys the power to override the regulators' classification of an SSP as being at 'material' risk. This creates the severe problem of multiple, contradictory and overlapping jurisdiction which will contribute to delays and litigation that will defy the principle stated objective of the Bill.

Clause 36(8): provides for complete confidentiality of risk classification of SSPs unless and until they are declared at being at a 'critical' level of risk. This goes against all law, provision and norm of transparency. It will deny bank depositors, insurance policy holders all other creditors of banks, insurance companies and other financial institutions, especially working people, the right to know the state of the institution in which they are placing their savings and financial security. Furthermore, in so far as it will create a system wherein government and non-government shareholders of the SSPs will have differential access to information, it is bad in law.

Clause 22 (2) and 29 (1): takes away the power reposed with parliament to fix both the premium amount , for deposit insurance payable by insured SSPs and the amount legislatively guaranteed to depositors presently under the Deposit Insurance and Credit Guarantee Act 1961.

Clauses 48-57: provide the RC with extensive delegated powers to restructure individual SSPs without any, besides at best consultative, role for the regulatory authority. These clauses provide no mechanism of scrutiny and oversight. Read with clause 10 it allows the Executive appointed RC which enjoys untrammeled and unquestioned powers including the right to engage in 'irregularity of procedure not affecting the merits of the case'. It provides for recapitalisation of SSPs by invoking a 'bail-in' which goes beyond the limits of Financial Sector Legislative Reforms Commission by including the yet to specified uninsured extent of depositor balances that may be converted into equity, written off, etc. Furthermore while recommending the creation of a Financial Regulatory Authority the RBI's High Level Working Group had recommended that 'bail-ins' be employed exclusively for SIFIs.

Clause 48(5): the scheme of resolution of a SSP shall be tabled in parliament making a mockery of parliamentary powers and prerogative when all existing legislative powers have been abrogated by the Executive with no over sight what so ever.

Clause 42(2)(b), 43(3)(b)(iii), 49(i), 58(3)(c) and 60(1): variously refer to denial of bonus, denial of emoluments, change in service conditions and summary termination of 'employees' under various states of 'resolution' of a SSP. Such provisions provide the RC with excessive power with no accountability for ensuring fairness or justice. It could also pave the way for victimisation. The law needs to clearly and unambiguously define all levels of employees and ensure that denial of any right or benefit or of termination is initiated from the top of the management pyramid starting with members of the board of directors of the SSP which is where responsibility of non-performance rests.

We request the Hon'ble Joint Committee to grant us an audience so that we may present our detailed objections to the bill.

We also call upon the Hon'ble Joint Committee to reject the bill in its current form and call upon the Union Government to put out a white paper detailing comprehensive financial sector reform along with adequate fiscal support for public sector financial institutions for wider discussion in the public domain before moving legislation in parliament.

Yours truly,

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