

RESPONSE TO FEEDBACK RECEIVED

8 May 2017

Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore

MAS

Monetary Authority of Singapore

8 MAY 2017

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1 Preface

1.1 In April 2016, the Monetary Authority of Singapore (MAS) issued a consultation paper on proposed legislative amendments to enhance the resolution regime for financial institutions (FIs) in Singapore. The consultation closed on 30 May 2016.

1.2 MAS thanks all respondents for their comments. We have carefully considered the feedback received, and will incorporate them, where appropriate, into the enhanced resolution regime. Comments received that are of wider interest, together with our responses, are set out in the following sections of this paper:

Section 2: Recovery and resolution planning

Section 3: Temporary stays on termination rights

Section 4: Statutory bail-in regime

Section 5: Cross-border recognition of resolution actions

Section 6: Creditor safeguards

Section 7: Resolution funding

Section 8: Amendments to MAS (Control and Resolution of Financial Institutions) Regulations 2013

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2 Recovery and Resolution Planning

2.1 The consultation paper proposed legislative amendments to consolidate MAS' powers to set recovery and resolution planning requirements for pertinent FIs¹ that have been notified by MAS. Such pertinent FIs will be required to prepare recovery plans, submit information to MAS for resolution planning, and where necessary, adopt measures to address deficiencies in their recovery plans and remove impediments to orderly resolution.

Home-host cooperation – Leveraging Group Recovery and Resolution Plan (RRP)

2.2 Several respondents sought clarifications on -

- (i) how MAS would liaise with other supervisory and resolution authorities on the review of an FI's recovery plan;
- (ii) how MAS would interact and coordinate with other supervisory and resolution authorities during business as usual and crisis times; and
- (iii) the extent to which an FI may leverage the group's RRP.

2.3 Some respondents suggested that MAS -

- (i) explicitly include in legislation the possibility of adopting a foreign resolution authority's resolution plan in whole or in part, if MAS was satisfied that the Singapore operations were adequately taken into account;
- (ii) clarify in legislation the assessment criteria for an FI's group RRP to satisfy MAS' RRP requirements;
- (iii) establish Crisis Management Groups (CMGs) for locally-incorporated domestic systemically important banks (D-SIBs), to facilitate cross-border communication.

¹ MAS' policy intent is to apply the RRP requirements to FIs regulated by MAS that are assessed to be systemically important or that maintain critical functions in Singapore.

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MAS' Response

2.4 It has always been MAS' practice to ensure a high level of cooperation and understanding with foreign supervisors and resolution authorities, both in the normal course of supervision as well as cross-border crisis management and resolution. This is achieved through various channels, such as through MAS' participation in CMGs and supervisory college meetings hosted by foreign authorities, existing arrangements between home and host authorities on information sharing (such as through Memoranda of Understanding or cross-border crisis management agreements), and bilateral meetings. During times of crisis, MAS expects to step up such engagement with foreign authorities of FIs in distress. For locally incorporated banks that are headquartered in Singapore, MAS organises regular supervisory college meetings and engages key host supervisors to promote understanding of each jurisdiction's crisis management and resolution regimes. MAS leverages the supervisory college platform for supervisors and resolution authorities to discuss issues on recovery and resolution planning.

2.5 MAS had clarified in its response² to the first consultation paper³ that MAS' requirements do not preclude an FI headquartered in a foreign jurisdiction from leveraging on its group RRP, provided that they adequately take into consideration the Singapore operations. MAS will further elaborate the factors to be considered in determining the extent to which an FI may rely on its group RRP in the proposed Guidelines on Recovery and Resolution Planning⁴. Such factors include the adequacy of local governance and oversight, the establishment by the Singapore operations of a monitoring and escalation framework including the identification of quantitative and qualitative triggers, identification of recovery options available to the Singapore operations, communication plan to the stakeholders in Singapore, and implications of group RRP strategy on the Singapore operations.

² Response to Feedback Received on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore issued in April 2016:

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Response%20to%20Consultation%20Feedback%20on%20Enhanced%20Resolution%20Regime.pdf>

³ Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore issued in June 2015:

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/23%20Jun%202015%20Consultation%20on%20Enhancements%20to%20Resolution%20Regime%20for%20FIs%20in%20Singapore.pdf>

⁴ The draft RRP Notice and Guidelines that MAS has consulted on are applicable to banks only. MAS will continue to monitor international developments and consider issuing RRP Notice and Guidelines for other regulated entities at a later stage.

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Implementation timeline

2.6 A few respondents suggested that the timelines set by MAS for the implementation of local recovery plans and for the submission of information required for resolution plans be flexible to coincide with the submission of the FIs' group RRP to home regulators. Some respondents commented that there should be an appropriate transition period to allow FIs sufficient time to prepare and maintain the recovery plans.

MAS' Response

2.7 MAS will accord flexibility to FIs on the implementation of RRP requirements, including taking into account the FIs' implementation plans for group RRPs.

Powers to direct FIs to implement recovery measures

2.8 A respondent suggested that the legislation explicitly state that MAS' proposed powers to direct the pertinent FI to implement recovery measures will only be applied where the FI experiences severe financial distress and fails to take appropriate actions. A respondent also suggested that such recovery arrangements or measures should be defined.

MAS' Response

2.9 An explicit legislation stating the detailed conditions above may limit the effectiveness of MAS' powers in taking swift actions where necessary in the interest of financial stability. FIs can be assured that MAS will engage and work with the distressed FI during the course of the crisis, and such powers to direct the pertinent FI to implement recovery measures will be exercised judiciously, e.g. in instances where the FI has not been responsive or cooperative in executing recovery options to restore its financial health.

2.10 Given the diverse range of stress scenarios that could affect FIs, the corresponding recovery actions that could be taken will depend on the profile and unique circumstances of each FI. It would not be feasible to define the recovery options exhaustively in legislation. Examples of such recovery measures include deleveraging of risky assets, disposal of assets and business lines, capital raising, reduction or cessation of dividends and cost management.

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Powers to direct FIs to remove impediments to resolution

2.11 A respondent suggested that the measures that MAS may require FIs to take to remove impediments to orderly resolution should be defined. A respondent also suggested to state in the legislation that MAS would consider the proportionality of the changes required when issuing directions requiring changes to the FI's business practices, legal, operational or financial structure to improve resolvability.

MAS' Response

2.12 The measures that MAS may require FIs to take to remove impediments to orderly resolution will vary, depending on the unique circumstances and resolution strategy of each FI. Such measures include requiring an FI to set up a holding company or service companies to ensure the continuity of critical functions in resolution, or to make changes to its practices, organisation and structure.

2.13 MAS' powers to direct FIs to remove impediments to orderly resolution will be applied in a proportionate manner based on the FI's systemic importance, taking into account the FI's size, interconnectedness, substitutability and complexity. While this will not be explicitly provided for in the legislation, FIs can be assured that MAS will discuss such issues with the FI and home and key host authorities, where applicable, as part of the resolution planning process, and will take into account the business efficacies and operational considerations of the FI when requiring such measures to be taken.

Implementation of safeguards

2.14 Some respondents noted that in relation to MAS' power to issue wide-ranging directions or requirements under the proposed legislation, there are no safeguards to guide the exercise of the powers. The respondents suggested to put in place – (i) a provision providing a reasonable amount of time for FIs to propose their own measures to address the impediments to orderly resolution before a direction from the resolution authority is issued, (ii) an expressly stated intent that directions would not be issued independently for cross-border FIs, and (iii) a process to lodge an appeal against a disproportionate direction.

MAS' Response

2.15 With regard to (i), MAS has been engaging FIs closely to enhance their recovery plans and to take measures to improve resolvability within reasonable timelines. The

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proposed “Guidelines on Recovery and Resolution Planning”⁵ will also clarify that MAS will engage an FI on how it can enhance resolvability before issuing a direction.

2.16 With regard to (ii), in line with international practice, MAS will engage and cooperate with foreign resolution authorities to work towards a coordinated resolution for a cross-border financial group, taking into consideration MAS’ aim of maintaining financial stability. MAS will engage the FI as well as the home authority, where necessary, prior to issuing directions on the FIs.

2.17 With regard to (iii), MAS has proposed powers to require FIs that have been notified by MAS to remove any impediment to the implementation of its recovery plan as well as to take measures to address or remove impediments to resolvability and orderly resolution. It is MAS’ practice to engage FIs prior to issuing supervisory directions, and MAS will maintain this approach in engaging FIs on recovery and resolution planning. Nonetheless, balancing the need for swift action in the interest of timely resolution and financial stability and FIs’ desire for assurance that this power will be exercised judiciously, MAS will provide for a right of appeal. FIs that feel aggrieved by such directions can appeal to the Minister-in-Charge of MAS, whose decision will be final. Such appeals will be permitted where a direction has significant impact on the FI, such as where the direction requires the FI to make material changes to its legal or financial structures.

Notice and Guidelines on Recovery and Resolution Planning

Definition of terms used in the draft Notice and Guidelines

2.18 Several respondents sought clarification on the definition of terms used in the draft Notice and Guidelines, as well as the scope of the information requirements.

MAS’ Response

2.19 Where necessary, MAS will provide clarifications in the Notice and Guidelines based on the feedback received. MAS will also work with FIs individually to clarify the granularity of the requirements for their respective RRP submissions to MAS.

⁵ The draft RRP Notice and Guidelines that MAS has consulted on are applicable to banks only. MAS will continue to monitor international developments and consider issuing RRP Notice and Guidelines for other regulated entities at a later stage.

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Critical vs. non-critical non-financial contracts

2.20 Under the draft Guidelines, FIs are required to maintain up-to-date details on non-financial contracts pertaining to their critical functions and critical shared services. One respondent suggested to confine the scope of non-financial contracts to those that pertain to processes that are deemed critical to critical functions and shared services.

MAS' Response

2.21 MAS' policy intent is to ensure that critical functions and critical shared services will continue to function in times of resolution. MAS will work with FIs, where necessary, to ascertain the relevant scope of non-financial contracts to achieve this objective.

Greater transparency on resolution triggers

2.22 Another respondent sought greater transparency on MAS' approach to resolution triggers and highlighted that the Financial Stability Board (FSB) had also noted the importance of greater clarity on conditions for entry into resolution in Regulations so that home and host authorities can coordinate effectively.

MAS' Response

2.23 Entry into resolution will be considered when an FI is failing or is likely to fail, and normal insolvency proceedings could cause financial instability. In such a situation, there is no reasonable prospect that private sector or supervisory actions taken outside of resolution could, within a timely period, restore the financial viability of the FI or enable it to once again satisfy other conditions set for the carrying on of regulated activities. Resolution may also be necessary in the public interest or to support resolution actions initiated by the home authority of a cross-border group. Section 50 of the MAS Act describes the general conditions that MAS considers in determining whether to exercise resolution powers.

RRP for the industry

2.24 One respondent asked if MAS would set out the RRP expectations for other sectors by issuing Notices and Guidelines similar to those applicable to banks.

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MAS' Response

2.25 MAS is currently monitoring international developments and intends to set out RRP expectations for other sectors at a later juncture. Where necessary, MAS will also consider issuing Notices and Guidelines.

Data Maintenance

2.26 One respondent asked if the expectation for banks to maintain systems which can produce data in a timely manner is related to the overall enhancement of systems required under the Basel Committee's Principles for Effective Risk Data Aggregation and Risk Reporting (BCBS 239), currently applicable to all D-SIB banks.

MAS' Response

2.27 The Basel Committee had noted in its paper that upgraded risk data aggregation and risk reporting practices will allow banks to comply effectively with data reporting requirements relating to recovery and resolution planning. MAS agrees that the expectation for banks to maintain systems which can produce risk data in a timely manner is relevant to the strengthening of banks' risk data aggregation capabilities under BCBS 239. MAS therefore expects banks to have in place strong risk data aggregation capabilities and robust internal risk reporting practices, which will enhance banks' decision-making processes and improve their resolvability.

Data Submission

2.28 Some respondents raised their concerns on duplication of data submitted to home and host authorities, and potential confidentiality issues if information requirements were to go beyond the Singapore operations.

MAS' Response

2.29 MAS acknowledges that there is potential for duplication of information submitted to home and host authorities. However, the information requirements set out in the Notice and Guidelines are pertinent and relevant to the Singapore entity and are necessary to facilitate the recovery and resolution planning process for the Singapore entity. The FI should be prepared to provide the required information. MAS will also work with relevant home authorities where group-related information is required.

3 Temporary Stays on Termination Rights

Contractual recognition provisions

3.1 The consultation paper proposed legislative amendments which would empower MAS to require pertinent FIs to insert contractual recognition clauses into specified contracts, the effect of which is that the parties to the contract agree to be bound by MAS' statutory stay powers even if the contract is governed by foreign law.

3.2 In light of various jurisdictions having likewise implemented resolution regimes with contractual requirements to recognise the resolution authority's statutory stay powers, one respondent urged MAS to coordinate the application of such contractual requirements with other global regulators and to allow mutual recognition of contracts governed under other regimes, so as to save the industry effort of re-documentation which could be costly and extensive. In particular, the respondent raised the example of the UK where all European Economic Area law governed agreements are deemed to be acceptable. The respondent also urged MAS to make it clear that the contractual requirement will not apply to contracts governed by Singapore law.

3.3 Other respondents also urged that a consultation with market participants be carried out on any proposed Regulations for contractual recognition of stays.

MAS' Response

3.4 MAS intends to cooperate and work closely with the relevant home and host authorities in the event of a group-wide resolution of a cross-border FI. Contractual recognition clauses will be applied to all specified contracts which are governed by foreign law. There is no need for contractual recognition in respect of contracts governed by Singapore law since the Singapore resolution framework will apply.

3.5 MAS intends to consult the industry on the contractual recognition provisions prior to implementation.

Features of the stay

Multiple stays and extension of stay

3.6 Some respondents commented that the drafting of the stays provision should expressly provide that the operative period of the stay cannot be extended and that multiple stays cannot be imposed. There was also concern that MAS may be able to

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impose further stays in respect of the same contract after the expiry of the initial stay, and may use these powers to impose multiple consecutive stays resulting in a duration which extends beyond two business days.

MAS' Response

3.7 It is not MAS' intention to impose multiple stays in respect of the same contract, or to extend the duration of the stay. MAS will adhere to the maximum duration of the stay as set out in legislation.

Start date of the stay

3.8 Some respondents commented that the imposition of the stay should be expressly limited to the time at which MAS first exercises its resolution powers under the MAS Act, such that MAS may not impose the stay when the resolution process is well underway or when the resolution process has ceased. One respondent suggested that there be a limit on the period in which the stay can be imposed, and it should be clear that once resolution has ceased, MAS will no longer have the power to impose a stay.

MAS' Response

3.9 Imposition of the stay is discretionary and MAS does not intend to expressly limit the exercise of the stay power to a specific point in time. Flexibility is required to enable MAS to implement a stay at the juncture necessary for carrying out a resolution measure. MAS will only impose the stay in connection with a resolution measure and such powers will not be invoked in isolation. The legislation will provide that MAS may impose the stay in relation to a contract where one of the parties is a pertinent FI that is the subject or proposed subject of a resolution measure.

Scope and application of temporary stay

3.10 Some respondents requested clarity on the application and scope of MAS' stay powers, especially in the light of other international regimes. They highlighted that the UK regime is broader in application and scope, and includes, in particular, a disapplication of

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certain early termination rights⁶ in line with the wording of Key Attribute 4.2 of the FSB's Key Attributes of Effective Resolution Regimes (KAs).

MAS' Response

3.11 MAS will expand the earlier proposed scope of the stay to provide for the disapplication of early termination rights triggered by a resolution measure. In addition, the scope of the temporary stay will cover termination rights under a contract except for rights that are exercisable due to a breach of a basic substantive obligation⁷.

Duration of Temporary Stays for Non-financial Contracts

3.12 Some respondents questioned the effectiveness of a temporary stay of two days for the purpose of operational continuity, given the longer time needed to re-negotiate non-financial contracts. One respondent requested MAS to consider having explicit powers to direct the continued performance of services.

MAS' Response

3.13 The proposed statutory powers for the temporary stays on non-financial contracts are not intended to cater to the re-negotiation of contracts with service providers. The intent of the temporary stays is to allow a resolution authority time to implement resolution measures, for example, establishing a bridge institution and facilitating transfers of critical non-financial contracts from the resolved FI to the bridge institution, hence minimising disruption to the continuity of critical shared services and critical functions. Following the transfer, the bridge institution and service providers are legally obligated and expected to meet the substantive terms and conditions of the service contracts, including continued payments to service providers. Given that the healthy bridge institution replaces the distressed FI as the contracting party, the incentive for service providers to terminate the contracts is minimised.

3.14 The proposed statutory powers to impose temporary stays for non-financial contracts complement MAS' existing resolution toolkit to ensure operational continuity. MAS already has powers to direct significant associated entities of the FI in resolution to

⁶ Section 48Z of the UK Banking Act provides that resolution measures or any event directly linked to a resolution measure is "to be disregarded" in determining whether a default event provision applies.

⁷ Obligations provided by the contract for payment, delivery or the provision of collateral.

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continue to provide critical services⁸. MAS also expects systemically important FIs to work towards strengthening the contractual provisions within their contracts for critical shared services and critical functions to achieve operational continuity in resolution.

Statutory powers to stay rights of reinsurers to terminate or not reinstate coverage relating to periods after the commencement of resolution

3.15 One respondent commented that MAS should clarify the maximum duration of the temporary stay on any party's right to terminate a reinsurance contract.

MAS' Response

3.16 MAS is taking time to study this issue further given that there is little international consensus on the appropriate duration of stays on reinsurance contracts that is necessary for an effective resolution of insurers. MAS will consult on its proposal before prescribing the maximum duration for the stays on reinsurance contracts in Regulations.

4 Statutory Bail-In Regime

Scope of the bail-in regime

4.1 The consultation paper proposed a new Division in Part IVB of the MAS Act that will empower MAS to write down or convert into equity, all or part of unsecured subordinated debt and unsecured subordinated loans issued or contracted after the effective date of the bail-in regime. The proposed amendments will also empower MAS to bail in contingent convertible instruments and contractual bail-in instruments whose terms have not been triggered prior to entry into resolution, and which are issued or contracted after the effective date of the bail-in regime. The classes of FIs that will be subject to the statutory bail-in regime will be prescribed in Regulations. For the time being, the regime will be applied to Singapore-incorporated banks and bank holding companies.

⁸ Provisions in Part IVB of the MAS Act empower MAS to issue directions to regulated and non-regulated entities of a financial group to ensure continuity of critical services.

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Instruments within the scope of MAS' bail-in powers

4.2 A number of respondents supported MAS' proposal to apply the bail-in powers to unsecured subordinated debt and unsecured subordinated loans. Some other respondents expressed concern that the narrow scope of bail-in would not provide for sufficient loss-absorbing capacity, thus exposing tax payers, other FIs (through having to contribute larger amounts to the resolution fund), or the wider economy to bear the remaining losses. A respondent sought clarification on how senior debt would be treated.

MAS' Response

4.3 MAS will maintain the scope of bail-in instruments to unsecured subordinated debt and unsecured subordinated loans. Senior debt⁹ will not be within the scope of MAS' bail-in powers. This strikes an appropriate balance between ensuring that banks have sufficient loss-absorbing capacity, and minimising the risk of contagion to the financial system and broader economy in the event of a bail-in. Singapore-incorporated banks are subject to high capital and prudential standards, and banks' resilience and resolvability should be assessed based on their total loss-absorbing capacity, including their capital adequacy and provisions, and not solely on the amounts of their bail-in-able liabilities.

Explicit exclusions from the scope of the bail-in regime

4.4 Some respondents commented that the following instruments should be excluded in legislation from the scope of MAS' bail-in powers – obligations to clearing houses, payment and settlement systems and depositories, and assets placed with a bank by a financial market infrastructure (FMI)¹⁰ that represent margin, collateral, security, guaranty fund contributions, assessment amount contributions or fidelity fund contributions.

⁹ Senior debt instruments that are contingently convertible into equity, or which contain contractual bail-in clauses, are nonetheless within the scope of MAS' bail-in regime.

¹⁰ FMIs, under the CPMI-IOSCO Principles for Financial Market Infrastructures, refer to payment systems (PS), central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs) and trade repositories (TRs).

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MAS' Response

4.5 MAS intends to apply the bail-in powers to unsecured subordinated debt and unsecured subordinated loans¹¹ of Singapore-incorporated banks and bank holding companies. This will be set out in Regulations which will be consulted on at a later date. Liabilities that are not listed within the scope of bail-in¹² will be excluded from the scope of the statutory bail-in regime.

Partially secured subordinated debt

4.6 A respondent requested clarity on whether, for partially secured subordinated instruments, the unsecured portion would be within the scope of MAS' bail-in powers.

MAS' Response

4.7 For subordinated instruments that are only partially secured, only the unsecured portion will be within the scope of MAS' bail-in powers.

Liabilities arising from master framework agreement

4.8 A respondent asked for clarity on how liabilities arising from a master framework agreement or from agreements (e.g. a medium-term note programme) pre-dating the effective date of the bail-in regime would be treated.

¹¹ The proposed powers will also cover any equity instrument that is not in the form of share capital, as well as contingent convertible instruments and contractual bail-in instruments whose terms have not been triggered prior to resolution.

¹² The following will effectively be excluded from the scope of MAS' bail-in regime:

- i. unsubordinated obligations towards clearing houses, depositories and payment and settlement systems;
- ii. cash deposits and non-cash assets placed by an FMI with a bank, where these deposits or non-cash assets represent margin, collateral, security, guaranty fund contributions, assessment amount contributions or fidelity fund contributions;
- iii. client assets;
- iv. liabilities owed to employees;
- v. contingent liabilities;
- vi. deposit insurance liabilities;
- vii. tax obligations; and
- viii. the secured portions of liabilities.

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MAS' Response

4.9 Only instruments or liabilities that are issued or contracted after the commencement of the MAS (Amendment) Act 2017 will be within the scope of MAS' bail-in regime. This is regardless of whether they arise from a master framework agreement or other agreement that pre-dates the effective date of the bail-in regime.

Contingent convertible and contractual bail-in instruments and intra-group subordinated debt

4.10 A respondent asked whether the following would be within the scope of MAS' bail-in regime:

- (i) senior debt instruments which are contingently convertible into equity;
- (ii) senior debt instruments which contain contractual terms allowing them to be bailed in by foreign resolution authorities; and
- (iii) intra-group subordinated loans.

MAS' Response

4.11 Consistent with the FSB KAs, contingent convertible instruments and contractual bail-in instruments whose terms have not been triggered prior to resolution will be within the scope of MAS' statutory bail-in regime, regardless of whether the instruments are ranked as subordinated or senior. For the latter, instruments which contain contractual terms allowing MAS to bail them in will be within the scope of MAS' statutory bail-in regime, while those that contain terms allowing bail-in by foreign resolution authorities only will not. Intra-group subordinated loans will be within the scope of MAS' statutory bail-in regime.

Institutions within the scope of MAS' bail-in powers

4.12 A number of respondents supported MAS' proposal for the statutory bail-in regime to be applied to Singapore-incorporated banks and bank holding companies for the time being. One respondent suggested that MAS expressly exclude clearing houses from the scope of MAS' bail-in powers.

4.13 Another respondent commented that MAS should not need to exercise its bail-in powers independently on a foreign bank's subsidiary in Singapore as MAS can rely on

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resolution measures taken by the home resolution authority of the foreign bank. In addition, if MAS bails in debt issued by the subsidiary to its parent, the parent bank would suffer losses and this could potentially undermine the resolution of the group.

MAS' Response

4.14 The statutory bail-in regime will be applied to Singapore-incorporated banks and bank holding companies at this time. MAS will continue to monitor international developments on bail-in regimes for non-bank FIs such as clearing houses.

4.15 MAS seeks to cooperate closely with the relevant home and host authorities in the event of a group-wide resolution of a cross-border FI. Nevertheless, MAS must retain the flexibility to take resolution action on foreign bank subsidiaries incorporated in Singapore, in the event that they are at risk of a failure which would pose a threat to public interest or to the stability of Singapore's financial system or wider economy.

Contractual bail-in provisions

4.16 The consultation paper proposed legislative amendments which would empower MAS to require banks to insert contractual bail-in clauses into liabilities which fall within the scope of MAS' statutory bail-in powers but which are governed by foreign laws, to allow MAS to write down or convert these liabilities into equity.

4.17 Given that cross-border FIs may already be subject to resolution requirements at the group level, some respondents urged MAS to rely on mutual recognition of resolution actions between global regulators, to simplify the need for contractual bail-in clauses.

4.18 Other respondents asked MAS to consider allowing flexibility in applying the contractual bail-in requirements, for instance by waiving the requirements in certain circumstances.

4.19 One respondent asked for further guidance on how the contractual bail-in clauses should be drafted.

MAS' Response

4.20 MAS will cooperate and work closely with the relevant home and host authorities in the event of a group-wide resolution of a cross-border FI, to support effective cross-border resolution actions. Nevertheless, the contractual bail-in clauses are necessary to provide a greater degree of legal certainty that liabilities which fall within the scope of MAS' statutory bail-in powers, but which are governed by foreign laws, will be bail-in-able.

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Singapore-incorporated banks and bank holding companies will be required to insert contractual recognition clauses¹³ into their instruments which are within the scope of bail-in but which are governed under foreign laws. The FSB recognises that contractual bail-in clauses can help support the cross-border enforceability of resolution actions¹⁴, and contractual bail-in requirements have been applied in the resolution regimes of other jurisdictions including the UK, Hong Kong and the EU (under the Bank Recovery and Resolution Directive).

4.21 Singapore-incorporated banks and bank holding companies should ensure that the contractual bail-in clauses incorporated into their liabilities make clear that (i) the liability may be subject to write-down or conversion by MAS under Singapore's bail-in regime and the terms of the bail-in under the contract will be determined by MAS; and (ii) where an instrument contains contractual mechanisms for conversion or write-down upon certain defined triggers outside of resolution (e.g. where the bank's capital ratio falls below a particular level), these contractual triggers are distinct from the exercise of bail-in by MAS and there may be circumstances where both may be applied consecutively.

Circumstances where bail-in will be exercised

4.22 One respondent suggested to include the requirement that a bail-in must be intended to achieve the long-term viability or financial soundness of the distressed FI. Other respondents requested clarity on the factors that would trigger MAS' decision to exercise bail-in powers.

MAS' Response

4.23 The primary purpose of exercising bail-in or any other resolution tool should be to prevent or minimise disruptions to financial stability by resolving distressed FIs in an orderly manner. In determining whether to exercise resolution powers on an FI, MAS must have regard to whether the failure of the FI would have a widespread adverse effect on the financial system or economy of Singapore, whether it is in the public interest to do so, and any other matter considered relevant, as currently set out under section 30AAL of the MAS Act. The use of bail-in powers would generally be linked to MAS' assessment of a

¹³ This requirement does not apply to issuances out of foreign subsidiaries of locally-incorporated banks.

¹⁴ The FSB's "Principles for Cross-border Effectiveness of Resolution Actions" states that the inclusion of contractual bail-in recognition clauses in debt instruments governed by the laws of a jurisdiction other than the home jurisdiction of the issuing entity can help support the cross-border enforceability of bail-in actions taken by the home resolution authority in relation to the issuing entity.

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bank's viability, taking into consideration the factors set out in MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore. MAS may determine that bail-in powers are to be exercised if MAS is of the opinion that (i) the FI's available assets do not or are unlikely to support payment of its liabilities as they become due and payable, (ii) the bank is or is likely to become insolvent, (iii) the bank is carrying on its business in a manner likely to be detrimental to the interests of its depositors or its creditors, (iv) the bank has contravened any of the provisions in the Banking Act, (v) the bank has failed to comply with any condition attached to its license, or (vi) it is in the public interest to do so.

Creditor Hierarchy

4.24 One respondent sought clarification on whether shares that arise from the conversion of debt to equity in a bail-in would rank higher in the creditor hierarchy than the shares that existed before the bail-in.

MAS' Response

4.25 Shares that arise from the conversion of debt to equity in a bail-in will rank *pari passu* with shares that existed before the bail-in action took place.

Equity conversion under statutory bail-in

4.26 The consultation paper proposed to prescribe in legislation that, in the event of a bail-in, all shareholders' voting rights would be suspended until the Minister has assessed whether any new shareholders, arising from the conversion of creditor claims into shares, can become significant shareholders, if they trigger the relevant shareholding thresholds. This was to ensure that only fit and proper persons can exercise voting rights attached to significant stakes in the FI under resolution. The paper also proposed legislative amendments to the effect that, if MAS or the Minister are not satisfied that a shareholder is a fit and proper person to be a significant shareholder in the FI, the shareholder would be required to take steps to ensure that he ceases to be a significant shareholder, failing which he would be liable to a fine not exceeding \$125,000, or to imprisonment for a term not exceeding 3 years, or to both.

4.27 A respondent gave feedback that the penalties for shareholders who fail to take steps to ensure that they cease to be significant shareholders are onerous, as the shareholders were put in such a position through compulsion (through the bail-in action taken by MAS) and not by choice.

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4.28 Other respondents commented that the suspension of shareholders' voting rights should not extend for an unduly long period.

MAS' Response

4.29 Taking the industry's feedback into consideration, MAS will remove the imprisonment penalty for shareholders who fail to comply with a direction to cease being a significant shareholder. The MAS Act will provide that shareholders who have been directed by the Minister to dispose of their holdings will not be able to exercise the voting rights attached to those holdings.

4.30 On the period of suspension of all shareholders' voting rights to allow time for assessing the fitness and propriety of new significant shareholders arising from the bail-in, the duration of the period will depend on the specific circumstances of each resolution. MAS will, as far as possible, minimise the period of suspension of shareholders' voting rights.

5 Cross-Border Recognition of Resolution Actions

Conditions for Recognition

5.1 In addition to specific conditions which have to be satisfied for a cross-border recognition to be granted under the proposed statutory regime, we had proposed to allow MAS to prescribe, in Regulations, any other matter that must be fulfilled before a determination to recognise a foreign resolution can be made. A few respondents provided feedback that such a provision may give rise to uncertainty of MAS' determination to recognise a foreign resolution and widens the scope of conditions for MAS' refusal to recognise beyond those recommended by the FSB.

MAS' Response

5.2 MAS intends to retain the proposed provision to enable MAS to respond quickly to international developments that may require additional conditions to be fulfilled before recognising a foreign resolution. MAS will carry out a public consultation before prescribing by Regulations any other matter under the proposed provision. MAS intends to prescribe additional conditions only if this is in line with international standards.

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Refusal to recognise

5.3 A few respondents gave feedback that MAS should inform the industry when a foreign resolution is refused recognition in Singapore. The current drafting only requires a public notification when there is recognition of all or part of the foreign resolution action.

MAS' Response

5.4 MAS does not intend to require public notification if MAS refuses to recognise a foreign resolution as no action needs to be taken by MAS or the relevant FI as a result of MAS' refusal to recognise.

Guidance on the interpretation of the conditions

5.5 A few respondents requested guidance on the interpretation of the terms used in the conditions for recognition, specifically, the terms "widespread adverse effect", "inequitable treatment of any Singapore creditor relative to a foreign creditor", "national interest", "public interest" and "material fiscal implications".

MAS' Response

5.6 The terms relate to considerations to be determined by MAS, and not by an FI, for recognising a foreign resolution. Further, the proposed conditions for recognition are in line with the FSB's Principles for Cross-Border Effectiveness of Resolution Actions. Hence, MAS does not consider it necessary to issue industry guidance on the interpretation of these terms.

6 Creditor Safeguards

6.1 The consultation paper proposed a new Division in Part IVB of the MAS Act to provide that creditors and shareholders who do not receive under the resolution of an FI at least what they would have received had the FI been liquidated, will be eligible for compensation of the difference. This may be referred to as the "no creditor worse off than in liquidation" (NCWOL) safeguard. After resolution action has been taken in relation to an FI, the Minister would appoint a valuer to assess if any creditor or shareholder of the FI was made worse off in resolution than in liquidation.

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Triggers of Creditor Compensation

6.2 The consultation paper proposed that eligibility for creditor compensation would be triggered:

- (i) where MAS exercises powers to effect (a) a compulsory transfer of business, (b) a compulsory transfer of shares, (c) a compulsory restructuring of share capital, or (d) bail-in; or
- (ii) where MAS recognises a resolution action of a foreign jurisdiction on a Singapore entity, which is equivalent to MAS' powers set out in (a) to (d) above.

6.3 Several respondents suggested that eligibility for creditor compensation should be triggered when MAS exercises any resolution power or recognises any foreign resolution action. In addition, respondents suggested that the creditor compensation framework should provide for compensation when safeguards on protection of set-off and netting arrangements are breached.

MAS' Response

6.4 The objective of the creditor compensation framework is to provide the NCWOL safeguard when MAS exercises resolution powers that directly affect shareholders' or creditors' property permanently. The proposed scope of triggers for creditor compensation is sufficient to address this objective. Safeguards on protection of set-off and netting arrangements will be respected when MAS exercises its resolution powers.

Creditors Eligible for Compensation in a Foreign Jurisdiction

6.5 The consultation paper proposed that where MAS has recognised a resolution action by a foreign resolution authority on a Singapore entity, creditors and shareholders of the Singapore entity who are eligible to claim compensation under a similar arrangement in the foreign jurisdiction would not be eligible to claim compensation under Singapore's compensation framework.

6.6 One respondent suggested not excluding creditors and shareholders who are eligible to claim compensation in a foreign jurisdiction, as such creditors and shareholders may still be worse off than they would have been in liquidation under Singapore's winding up proceedings, even after claiming compensation under the foreign framework.

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MAS' Response

6.7 MAS will provide a rebuttable presumption in legislation that creditors and shareholders who are eligible to claim compensation in a foreign jurisdiction are not worse off in resolution than in a liquidation. Creditors and shareholders may rebut the presumption. A valuation done by a valuer appointed under MAS' creditor compensation framework will form the basis for assessing whether any creditor or shareholder of the Singapore entity who is eligible to claim compensation in a foreign jurisdiction is worse off in resolution than in liquidation under Singapore's winding up proceedings. The eligible claim amount awarded under the foreign compensation framework will be counted toward what the creditor or shareholder has already received.

Valuation Principles

6.8 The consultation paper proposed legislative amendments that would empower MAS to prescribe in Regulations the valuation principles that the valuer would be required to apply.

6.9 Several respondents requested clarification on whether the valuation of the compensation amount would be based on a liquidation of the FI only under Singapore's winding up proceedings, or possibly under foreign winding up proceedings. Respondents also requested clarification on whether valuation of the compensation amount would be based only on direct losses arising from MAS' exercise of resolution powers.

MAS' Response

6.10 The valuation of compensation amounts under Singapore's creditor compensation framework will be based on Singapore's winding-up proceedings, including the creditor hierarchy applicable to the FI under Singapore law.

6.11 The valuation of the amount to be paid to a creditor or shareholder of the Singapore entity in resolution will be based only on direct losses arising from MAS' exercise of resolution powers. If this amount is less than the valuation of what the creditor or shareholder would have received in liquidation under Singapore's winding up proceedings, the eligible creditor or shareholder will be compensated for the difference.

Appeals Procedure

6.12 The consultation paper proposed legislative amendments to provide creditors and shareholders of an FI that has undergone resolution the right to appeal to the court

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on the valuer's decision on their eligibility for compensation or their compensation amount.

6.13 Several respondents suggested that the legislation provide that the decision of the court on any appeal be final, in the interest of a cost-effective and efficient appeal process.

MAS' Response

6.14 There will be a right to appeal to the High Court at first instance. Thereafter, an aggrieved party may further appeal to the Court of Appeal with respect to the decision of the High Court.

7 Resolution Funding

Constitution and Funding of the Resolution Fund

7.1 A respondent sought clarification on how the resolution fund would be constituted, and enquired about the source of funding for the fund.

MAS' Response

7.2 The resolution fund will be constituted under the MAS Act. MAS will provide the initial temporary liquidity loan to the resolution fund to support timely implementation of resolution measures. Ex post levies on the industry will subsequently be imposed to recover the cost incurred.

Pre-conditions to triggering use of the Resolution Fund

7.3 As a pre-condition to the use of moneys in the resolution fund, it was proposed that MAS shall have regard to whether appropriate losses have been imposed on shareholders and unsecured creditors of the FI under resolution.

7.4 A respondent opined that the bail-in regime should be the primary mechanism for absorbing losses in a resolution event. Accordingly, the resolution fund should be activated only when the shareholders and unsecured creditors of the FI under resolution have been written down in full. In contrast, another respondent was of the view that the losses imposed on unsecured creditors and shareholders should be capped at the amount of losses they would be subject to under liquidation.

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7.5 A respondent suggested that pre-conditions to the use of the resolution fund should be extended to require consideration of (i) whether the provision of temporary funding is necessary to foster financial stability; and (ii) whether such funding will permit the implementation of the most appropriate resolution option.

MAS' Response

7.6 MAS has carefully considered the feedback from all respondents, including the views of respondents to our first consultation published in June 2015. We note that internationally, there is no consensus on the amount of losses to be imposed on shareholders and creditors before resolution funding may be extended. Introducing a minimum loss absorption requirement would constrain the ability of the resolution authority to respond nimbly in a crisis. MAS will thus retain the discretion to determine the appropriate level of losses for each specific resolution event. We would, however, like to assure respondents that the intention remains to tap on the resolution fund only after losses have been imposed on shareholders and unsecured subordinated creditors to the fullest extent possible or appropriate.

7.7 On the suggestion to introduce additional pre-conditions, we would like to clarify that the use of the resolution fund will be predicated on, among others, MAS' exercise of its resolution powers in relation to the FI. Due consideration of the impact on financial stability and the appropriateness of the resolution tool is already encapsulated in MAS' decision to exercise our resolution powers. As such, we will not be imposing additional pre-conditions.

Use of the Resolution Fund

7.8 Two respondents suggested not to tap on the resolution fund for purposes of recapitalising FIs. One respondent asked if the resolution fund would be used to meet the cost of resolving Singapore branches of foreign banks.

MAS' Response

7.9 MAS has carefully considered the feedback from the respondents. In line with the resolution regimes of other jurisdictions, MAS will not preclude the use of the resolution fund for recapitalisation of FIs. However, MAS will be circumspect in the use of the resolution fund for recapitalisation purposes, and that the resolution fund will be used for this purpose only after losses have been imposed on shareholders and unsecured subordinated creditors to the fullest extent possible or appropriate.

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7.10 The resolution fund is intended to support the exercise of MAS' resolution powers so as to safeguard financial stability in Singapore. This includes using the fund to resolve a systemically important Singapore branch of a foreign FI or one that maintains critical functions in Singapore. The use of the fund in this situation is not unreasonable as the resultant orderly resolution of the Singapore branch of the foreign FI would preserve Singapore's financial stability and maintain market confidence. This consequently benefits the industry as a whole.

Ex Post Levies

7.11 Two respondents enquired about the proposed ex post levies framework and asked about the basis on which MAS would assess and compute levies. One respondent noted the inclusion of financial condition of the contributor as a factor in the determination of ex post levies, and questioned if this would add uncertainty to the calculation and may inadvertently penalise financially healthy institutions. As such, the respondent suggested that MAS could give credit for an FI's loss absorbing capacity. Two respondents further encouraged MAS to provide objective and transparent standards for the calculation of ex post levies, with one respondent suggesting that MAS could define the factors in greater detail in subsidiary legislation.

MAS' Response

7.12 MAS will consult publicly on our ex post levies computation framework at a later stage. We will also set out the computation framework in subsidiary legislation thereafter.

7.13 MAS notes the concerns raised by respondents on unfair penalisation of healthy FIs, and would like to assure the industry that the ex post levies framework will be calibrated such that the specific circumstances of each FI and each sector are carefully considered. The framework is not intended to unfairly penalise financially healthy FIs.

Appeal process for the calculation of ex post levies

7.14 A respondent suggested that MAS consider introducing an appeal process by which FIs may make representations to MAS on the amount of ex post levies that they are subjected to.

MAS' Response

7.15 MAS will consider incorporating express provisions relating to an appeal process at a later stage, together with our formulation of the ex post levies framework.

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***Scope of Recovery Mechanism for Capital Market Infrastructures
(CMIs)¹⁵***

7.16 Two respondents suggested to exclude CMIs from the resolution funding regime. One respondent opined that it will not be viable for other CMIs to contribute to the cost of resolution of a failing CMI, as this may further threaten financial stability.

MAS' Response

7.17 MAS notes the concerns raised by respondents. As set out in our previous response in Apr 2016, MAS will consult on the scope of participants to be subject to ex post levies for the resolution fund at a later stage.

8 Amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 (MAS Regulations)

8.1 The consultation paper proposed amendments to the MAS Regulations to provide broad protection to ensure that set-off and netting arrangements will not be affected by the exercise of resolution powers under the MAS Act, in particular where there is a transfer of part but not the whole of the business of a pertinent FI. The consultation paper proposed to protect certain financial contracts such as derivatives and commodities contracts. A few respondents sought clarification on whether the safeguards would apply beyond the exercise of transfer powers.

8.2 One respondent commented that more generally, in addition to the financial contracts that the MAS Regulations were proposed to apply to, the MAS Regulations should also be extended to protect the set-off and netting arrangements in payment systems that are designated systems under the Payment and Settlement Systems (Finality and Netting) Act (FNA) as such arrangements are currently protected under FNA during an insolvency.

8.3 Other respondents proposed that the moratorium provisions that apply when MAS' exercises its resolution powers on a pertinent FI should not void transactions

¹⁵ CMIs are approved holding companies, approved exchanges, approved clearing houses, depositories and licensed trade repositories regulated under the Securities and Futures Act.

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processed by the FI or affect an FMI's ability to enforce security when applying collateral posted by the pertinent FI.

MAS' Response

8.4 It is not MAS' intent, in the exercise of resolution powers over pertinent FIs, to defeat or otherwise affect the preservation of set-off and netting arrangements. In respect of the scope of MAS Regulations, MAS agrees with the feedback and will extend the scope to include designated systems under the FNA, to ensure that there is certainty to set-off and netting arrangements under designated systems during the partial transfer of business of a pertinent FI that participates in designated systems.

8.5 We also agree with respondents that an FMI should be able to enforce the use of collateral posted by a pertinent FI. MAS will provide in the MAS Regulations for an FMI's rules governing settlement and enforcement of pertinent FI's security to take precedence over the application of a moratorium so that the settlement of a pertinent FI's transaction and any use of collateral would not be voided.

MONETARY AUTHORITY OF SINGAPORE

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Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED
ENHANCEMENTS TO RESOLUTION REGIME FOR FINANCIAL INSTITUTIONS
IN SINGAPORE**

1. Australian Securities Exchange
2. The Bank of Tokyo-Mitsubishi UFJ, Ltd., Singapore Branch
3. Clifford Chance Pte Ltd with The Asia Securities Industry & Financial Markets Association
4. CLS Bank International
5. DBS Bank Ltd
6. Deutsche Bank AG
7. Friends Provident International Limited (Singapore Branch)
8. ICE Clear Singapore Pte Ltd
9. International Swaps and Derivatives Association, Inc.
10. KPMG Singapore Pte Ltd
11. LCH.Clearnet Group Limited
12. Linklaters Singapore Pte Ltd
13. Singapore Exchange Bond Trading Limited
14. Singapore Exchange Limited
15. Standard Chartered Bank Singapore Limited
16. Thomson Reuters and Reuters Transaction Services Ltd
17. Wong Partnership LLP

Note: This list only includes the names of respondents who did not request that their identity be kept confidential.

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Annex B

FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED LEGISLATIVE AMENDMENTS TO ENHANCE THE RESOLUTION REGIME FOR FINANCIAL INSTITUTIONS IN SINGAPORE

Note: The table below only includes submissions for which respondents did not request confidentiality.

S/N	Respondent	Full Response from Respondent
1	Australian Securities Exchange	<p>General comments:</p> <p>ASX strongly supports the introduction of an FMI crisis management regime which will ensure that Singapore maintains its reputation for safe and well-regulated markets.</p> <p>The Australian Government is also finalising an FMI resolution regime to provide regulators with the necessary tools for managing the ongoing viability of critical market infrastructure in situations of major financial distress.</p> <p>ASX understands that the proposed Singapore resolution regime is unlikely to apply to ASX affiliated trading and clearing and settlement facilities that provide services to Singapore-based participants.</p> <p>ASX's clearing (ASX Clear and ASX Clear (Futures)) and settlement (ASX Settlement and Austraclear) facilities are not 'recognised' or 'approved' facilities for the purposes of the Singaporean regulatory framework. These facilities largely offer services denominated in Australian and New Zealand dollars and none denominated in Singaporean dollars. As such, these facilities would not appear to qualify as systemically significant financial market infrastructure (FMI) in Singapore.</p> <p>ASX does not offer specific comments on the draft legislative amendments to enhance the resolution framework other than to note that they appear to be consistent with the Principles for Financial Market Infrastructures (PFMI) and supplemental guidance on recovery issued by CPMI-IOSCO.</p> <p>ASX does offer one suggestion (see Q5 below) with regards to the practical application of the resolution regime in the case of foreign-based FMI operating in Singapore. We have advocated a similar policy position to the Australian and New Zealand authorities when</p>

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S/N	Respondent	Full Response from Respondent
		<p>they conducted their own public consultation on resolution arrangements.</p> <p>There would be some benefit in having a consistent approach across different jurisdictions in the region.</p> <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>No comment.</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p>No comment.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p>No comment.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p>No comment.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>While Singapore's resolution authorities should, wherever possible, act to achieve a cooperative solution with foreign resolution authorities, they should retain the ability, if needed, to take measures on their own initiative where the foreign home authority is not taking action, or acts in a manner that does not take sufficient account of Singapore's national interests (i.e. protecting Singapore's financial system stability or equal treatment of Singapore-based creditors or investors).</p> <p>ASX supports the amendments to Division 5 (section 30AAZHA) dealing with cross-border recognition of resolution actions which provides MAS with the ability to deny, or provide only partial, recognition to the actions undertaken by foreign resolution authorities.</p>

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S/N	Respondent	Full Response from Respondent
		<p>In circumstances where MAS denies recognition, in full or part, to a foreign resolution action it is important that this should be backed by “reserve powers” for MAS to step in (i.e. take control of local assets and operations of the foreign financial institution) to protect Singapore’s national interest.</p> <p>The reservation of such powers is consistent with the Financial Stability Board’s Key Attributes for Effective Resolution Regimes¹⁶.</p> <p>These powers could, for example, enable MAS to manage and deal with the licensee’s operations and assets located in Singapore or to issue directions to the licensee’s local personnel (e.g. to not transfer assets offshore).</p> <p>Without such “reserve powers”, local regulatory agencies could be largely powerless to exercise influence over the resolution of an offshore-based FMI in circumstances where Singapore’s interests in a financial crisis are overridden by the foreign authority’s statutory duties to promote the public interest in their home jurisdiction. Stated another way, the existence of such “reserve powers” may provide valuable leverage to Singapore authorities in dealing with a foreign resolution authority in a crisis situation.</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>No comment.</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>No comment.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p>

¹⁶ See Key Attribute 7.3 “The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers **either** to support a resolution carried out by a foreign home authority ... **or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction’s financial stability.**” (emphasis added)

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S/N	Respondent	Full Response from Respondent
		No comment.
2	The Bank of Tokyo-Mitsubishi UFJ, Ltd., Singapore Branch	<p>General comments:</p> <p>(i) The Bank of Tokyo-Mitsubishi UFJ, Ltd (“BTMU”) thanks MAS for the opportunity to respond to this Consultation Paper and would welcome any further discussion on any of the points raised. Please do not hesitate to contact Mr. David Quinn, Manager, Compliance Department on +65 6594 4650 or Mr. Naoya Hiramatsu, Head, Compliance Department on +65 6231 1704.</p> <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>(a) In paragraph [2.6] of the response to feedback received, MAS has shared that <i>“FIs that are subject to the RRP requirements will be formally notified by MAS and given an appropriate transition period to comply with the requirements.”</i></p> <p>In the draft amendments to Part IVA of the MAS Act, there are strict requirements that a pertinent financial institution must comply with, such as to prepare and maintain the recovery plan in such form and manner as may be specified by the Authority; and to submit to the Authority the recovery plan within such time and in accordance with such frequency as may be specified by the Authority.</p> <p>If the pertinent financial institution does not comply with these provisions, it shall be liable to financial penalties as detailed in Section 30AAJE. Hence, we would ask that the Authority will consider the length of such “appropriate transition period” (as set out in paragraph [2.6] of the response to feedback received) and allow a pertinent financial institution sufficient time when notifying them to prepare, maintain and submit a recovery plan.</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p>(i) We would like to clarify the definition of “group” under paragraph [33] of the Draft Guidelines to MAS Notice XXX on Recovery and Resolution Planning. Our bank has two related entities in Singapore (i.e. another foreign bank branch and merchant bank which are under/owned by different immediate head offices but share the same ultimate financial</p>

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S/N	Respondent	Full Response from Respondent
		<p>holding company as our bank). Would these entities be considered to be under the same “group”?</p> <p>(ii) We would like to clarify which definition do we refer to when references are made to “group” in other sections of the Draft Guidelines (i.e. in paragraphs [4], [13], [23] and [38])?</p> <p>(iii) We understand that the draft Notice is applicable to all banks which have been notified by the Authority pursuant to Section XY of the MAS Act.</p> <p>In paragraph [2.6] of the response to feedback received, MAS has shared that <i>“For the banking sector, the RRP requirements will be applied to domestic systemically important banks (D-SIBs), and where necessary, applied on a proportionate basis to other banks that are assessed to have systemic impact or that maintain critical functions.”</i></p> <p>We would request that the Authority consider notifying “other banks that are assessed to have systemic impact or that maintain critical functions”, as soon as possible as the foreign banks incorporated outside Singapore would have to engage their Head Offices in formulating the Recovery and Resolution Plans. Where the Head Office or Group’s recovery and resolution plans do not adequately take into consideration the Singapore Operations, the foreign banks would have to formulate and develop their own recovery and resolution plans accordingly.</p> <p>(iv) We appreciate the Authority in highlighting that the recovery and resolution planning process is an iterative one and that the Authority will engage and collaborate closely with banks to clarify their obligations and the Authority’s expectations with regard to the recovery and resolution plan as part of the Authority’s supervisory interaction with banks. The Bank would appreciate guidance from the Authority in implementing these new regulatory requirements, in the event that the Bank is required to formulate and develop a recovery and resolution plan.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p>Nil.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p>

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S/N	Respondent	Full Response from Respondent
		<p>Nil.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>Nil.</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>Nil.</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>Nil.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>Nil.</p>
3	Clifford Chance Pte Ltd with The Asia Securities Industry & Financial Markets Association	<p>General comments:</p> <ol style="list-style-type: none"> 1. In light of the focus on global collaboration encapsulated in the Financial Stability Board's ("FSB") Key Attributes of Effective Resolution Regimes for Financial Institutions ("Key Attributes") and the EU's Bank Resolution and Recovery Directive ("BRRD"), we recommend the following: <ol style="list-style-type: none"> a. That the Monetary Authority of Singapore ("MAS") will have regard to the fact that most if not all cross-border financial institutions ("FI") are also subject to global resolution and recovery planning ("RRP") requirements in their home jurisdiction. We would like to draw particular attention to our key recommendation (outlined in further detail below) that the MAS not require FI's with existing RRP's in their home jurisdictions to produce standalone RRP's locally. This is in line with the FSB's Key Attributes' statement that "<i>at least for G-SIFIs [global systemically important financial institutions], the home resolution authority should lead the development of the group</i>

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S/N	Respondent	Full Response from Respondent
		<p><i>resolution plan in coordination with all members of the firm's CMG ["crisis management groups" – includes supervisory authorities, central banks, resolution authorities, etc]."¹⁷</i></p> <p>b. That the MAS will consider the potential impact of its exercise of resolution powers on the financial stability of other jurisdictions. This would support a coordinated approach to the resolution of global financial institutions with operations and interest holders in multiple jurisdictions, and be in line with the Key Attributes.</p> <p>2. We observe that there are several areas in which draft regulations have not yet been published. For example, the draft of section 30AAZAE of the <i>Monetary Authority of Singapore Act (Cap. 186)</i> ("MAS Act") provides that a Division 4A financial institution must not "<i>enter into a contract in relation to an eligible instrument, unless [it]...has complied with the requirements <u>as may be prescribed by regulations made under section 30AAZN for the purposes of this section</u></i>" (emphasis added). We would be grateful if the MAS would provide sufficient time for comments when the draft regulations for these outstanding issues are released. We would also strongly encourage the MAS to issue these draft regulations for consultation as soon as possible to promote legal certainty.</p> <p>3. While we are grateful that the MAS has removed the proposed penalties on individuals for an FI's failure to comply with the proposed local RRP requirements, we are concerned that there are still penalties on individuals for other resolution tools. For example, the draft section 30AAZAC(7) of the MAS Act provides for imprisonment for a term of up to three years for failing to comply with the bail-in provisions. We observe that the MAS Response dated April 2016 to Feedback Received in relation to the Consultation Paper dated June 2015 on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore ("MAS Response") stated that "<i>MAS agrees that the primary responsibility to ensure compliance with the RRP requirements rests with the FI...Having considered the feedback, MAS is of the view that this provision [section 28B</i></p>

¹⁷ FSB's Key Attributes paragraph 11.8.

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S/N	Respondent	Full Response from Respondent
		<p><i>of the MAS Act providing for secondary liability for the board and executive officers] is sufficient to deal with the more egregious cases, and strikes a reasonable balance between holding board and executive members accountable, while not being overly onerous."</i>¹⁸ We would strongly encourage the MAS to apply this reasoning to the other resolution tools and remove the proposed penalties on individuals.</p> <p>4. Finally, we wish to emphasise the importance of expressly and broadly protecting set-off, netting and collateral arrangements (our suggestion is outlined in greater detail below). The MAS has long promised a safe-harbour provision for such crucial arrangements and the need for such an express safe-harbour is becoming increasingly urgent. This is, for example, in view of global and APAC regulators implementing non-cleared margin requirements from September 2016 pursuant to G20 commitments, as the MAS is well aware. If collateral arrangements are not protected, global systematically important banks ("G-SIBs") might not be able to include Singapore branches in collateral security arrangements with the result that business will be deliberately booked away from Singapore. This would ultimately result in a significant impact on the liquidity of G-SIB driven markets. We would therefore strongly encourage the MAS to prioritise the protection of set-off, netting and collateral arrangements – even to the extent of addressing this issue in a separate legislative initiative in priority to the other general issues in this consultation.</p> <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>5. Further clarification and guidance from the MAS on the following relating to the recovery and resolution planning ("RRP") requirements under Part IVA of the MAS Act <i>would</i> be greatly appreciated:</p> <p><u>Scope of financial institutions subject to RRP requirements</u></p> <p>6. In the MAS Response, the MAS stated that RRP requirements would be applied both to domestic systematically important</p>

¹⁸ MAS Response, paragraph 2.13.

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S/N	Respondent	Full Response from Respondent
		<p>banks ("D-SIBs") as well as "<i>other banks that are assessed to have systemic impact or that maintain critical functions.</i>"¹⁹</p> <p>7. We would be grateful if the MAS would provide clarification and guidance as to the method by which such <i>other banks</i> are designated. We understand from the MAS Response that MAS' approach in assessing an FI's systemic importance or impact to the financial system is set out in MAS' Framework for Impact and Risk Assessment of Financial Institutions and the Monograph on Supervision of Financial Market Infrastructures in Singapore, as elaborated in the MAS Response.²⁰ However, while the MAS Response has explained the general principles to which the MAS will have regard, it remains unclear what the criteria which the MAS will apply in its determination are. For example, size and importance in terms of share of activity in different markets and relative scale of retail reach, have been included as principles that the MAS will have regard to. However, it is not clear what degree of size, importance or scale the MAS requires to determine that the RRP requirements will apply.</p> <p>8. We would be grateful if the MAS could also confirm whether the proposed local RRP requirements apply only to banks or to other FIs as well. The proposed new section 30AAJB(1) of the MAS Act refers to a "<i>pertinent financial institution</i>," which is defined to encompass both banks and other FIs. The MAS Response also suggests that RRP requirements could also apply to other FIs such as financial market infrastructures and operators and settlement institutions of Designated Payment Systems.²¹ On the other hand, the Draft Notice on Recovery and Resolution Planning ("Draft Notice") and the Draft Guidelines on Recovery and Resolution Planning ("Draft Guidelines") at Annexes 2 and 3 of the MAS Consultation Paper dated 29 April 2016 respectively refer only to banks, and not to other FIs. Will MAS issue similar notices that apply to FIs other than banks?</p> <p><u>Integration with global RRP regimes</u></p>

¹⁹ MAS Response, paragraph 2.6(a).

²⁰ MAS Response, paragraph 2.5.

²¹ MAS Response, paragraph 2.6.

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S/N	Respondent	Full Response from Respondent
		<p>9. We note from the MAS Response that, for an FI headquartered in a foreign jurisdictions, MAS will review the FI's recovery and resolution plans in consultation with its parent or head office and home authorities, where applicable, and that the MAS' requirements will not preclude an FI leveraging on its group or head office's RRP plans, provided that they take into consideration the Singapore operations.²²</p> <p>10. While the MAS' openness towards FIs' leveraging on their group or head office's RRP plans is encouraging, we welcome a more explicit integration of Singapore's RRP regime with that of the global RRP regime.</p> <p>11. In particular, we recommend that branches of foreign banks in Singapore with existing RRP in home jurisdictions (formulated in accordance with the home regulators' requirements) would not be required to produce stand-alone RRP locally. Instead, the MAS could set out a method by which foreign RRP are recognised in Singapore, with local intervention reserved for exceptional cases.²³ This will allow the FIs, when formulating their global RRP, to take into account the requirements in relation to a Singapore RRP. This obviates the need for FIs to revisit their global RRP when they are notified by the MAS to prepare an RRP for Singapore. This will allow FIs to ensure that their global RRP comply with Singapore law requirements (if the FI is notified by the MAS to prepare an RRP) and is consistent with the foreign RRP requirements across jurisdictions. This will also save significant time and costs for FIs generally in their preparation and maintenance of RRP. If the MAS chooses to adopt this approach, we suggest that additional provisions be made to clarify when a global RRP will be accepted by the MAS to be in the proper "<i>form and manner</i>" pursuant to section 30AAJC(1) of the MAS Act.</p> <p>12. If the MAS decides to implement additional RRP requirements at a local level to notified branches of foreign banks in Singapore, we would be grateful if the MAS gives FIs under the local RRP requirement and with a head office in a foreign jurisdiction a transitional period to integrate and leverage upon their respective global RRP. Furthermore, the FI's</p>

²² MAS Response, paragraph 2.3.

²³ This would mirror the express provision in clause 13 of the Hong Kong Financial Institutions (Resolution) Bill ("**FIRB**") allowing the resolution authority to adopt a group RRP either completely or in part.

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		<p>home authority should be given access to the FI's Singapore RRP and other relevant information. This would be in line with the FSB's Key Attributes' emphasis on the sharing of information between an FI's home and host authorities.</p> <p><u>Period to fulfil RRP requirements</u></p> <p>13. We wish to reiterate our previous suggestion that the MAS clarify the timelines set for the implementation period of the local RRP under the new MAS Act and the provision of any information maintained under a resolution plan when requested by the MAS. In relation to the submission of local RRP for FIs with a head office in a foreign jurisdiction, we would be grateful if the timelines set by the MAS be flexible enough to coincide with the submission of the FIs' global RRP.</p> <p><u>MAS' power to issue directions</u></p> <p>14. In relation to the MAS' power to issue wide-ranging directions or requirements under section 30AAJD of the MAS Act, we observe that there are no safeguards in place to guide any exercise of the power. Therefore, we suggest that the MAS consider adopting the following safeguards from Hong Kong's RRP regime – a provision providing time for FIs to propose their own measures, an expressly stated intent on the part of the MAS that directions would not be issued independently for cross-border FIs and a process to lodge an appeal against a disproportionate direction.</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p><u>Information requirements</u></p> <p>15. We would be grateful if the MAS could provide a clearer demarcation between local and foreign banks in relation to information requirements. This would be in line with MAS' statement of intention in the MAS Response that the application of any RRP requirement to foreign banks would be on a "<i>proportionate basis</i>."²⁴</p>

²⁴ MAS Response, paragraph 2.6(a).

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		<p>16. Based on the Draft Notice and the Draft Guidelines in the Consultation Paper, both local and foreign banks have to maintain extensive information on items such as capital allocation, booking arrangements, intra-group guarantees and treasury function and funding arrangements. In addition, banks must submit data and information relating to resolution planning "<i>whenever requested</i>" by the MAS.²⁵</p> <p>17. It is also worth pointing out that the broad scope of the information requirements, such as the maintenance of a list of financial institution counterparties with which the bank has significant dealings or relationships is not in line with the specific information requirements under RRP regimes proposed or in place in other jurisdictions.²⁶</p> <p>18. Such broad information requirements may potentially amount to breaches of confidentiality agreements, or may conflict with confidentiality obligations under the laws of other jurisdictions. Compliance with the MAS' information requirements and requests would potentially be extremely complex and challenging in practice. We suggest that, in relation to foreign banks, the MAS consider the alternative of limiting information to that which would be held by, and available to the MAS from, a foreign bank's home regulator instead of approaching the foreign bank in Singapore. This would avoid the onerous and duplicative duty of having to provide the same information twice over.</p> <p>19. If the MAS proceeds with the proposed information requirements, we request the MAS to clarify the following contained in the Draft Guidelines:</p> <p>a. Paragraph 1 provides definitions for "<i>local bank</i>" and "<i>foreign bank</i>." However, we observe that there is a potential overlap in the respective definitions in the sense that a locally incorporated bank that is a subsidiary of a foreign entity could fulfil either definition. We therefore seek clarity from the MAS as to the status of such an entity.</p>

²⁵ Draft MAS Notice in the Consultation Paper, paragraph 4.2.

²⁶ See for example the draft provisions in Hong Kong – Supervisory Policy Manual RE-2 on Resolution Planning dated 22 April 2016 (available at <http://www.hkma.gov.hk/media/eng/doc/keyfunctions/banking-stability/supervisory-policy-manual/RE-2.pdf>), and the United Kingdom's Financial Conduct Authority's Handbook at IFPRU 11 Annex 2 (available at <https://www.handbook.fca.org.uk/handbook/IFPRU/11/Annex2.html>).

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		<p>b. Paragraph 35(a)(i) requires a foreign bank to have a complete organisational chart. If the chart is required to cover entities with "<i>linkages and dependencies with operations in Singapore</i>" and those linkages include financial and operational independencies, the chart would take on enormous proportions for very large international banks with global operations. We therefore suggest that the chart be limited to shareholding relationships. We also request that the MAS provide further clarification on what should be covered in the chart.</p> <p>c. Paragraph 35(a)(ii) refers to "<i>material entities</i>" as entities within the group that are material to the operations in Singapore. We request that the MAS clarify what amounts to "<i>material</i>" and how the concept of material entities would apply to a foreign bank branch operating in Singapore. We would like to emphasise that entities within the group who are not located within Singapore should not be included.</p> <p>d. Paragraph 35(f)(iii) requires a foreign bank to maintain information on cross-border or cross-entity booking arrangements for treasury and lending activities. In this regard, we request the MAS to clarify how "treasury activities" are defined, and whether it includes investment bank trading activities in addition to general funding or liquidity-type treasury activities. From a plain reading of the provisions, it appears that the MAS is seeking group-wide information that might not be relevant to the financial stability of Singapore. Where such information is truly necessary, we reiterate the suggestion that the MAS approach the FIs' home authority for access to such information.</p> <p>e. Paragraph 35(e)(i) requires a foreign bank to maintain information on "<i>critical functions</i>" performed by the bank. We request that the MAS clarify whether the reference to "bank" refers to Singapore operations only. We are of the view that critical functions performed by other parts of the parent banking group in other jurisdictions should not be included.</p> <p>20. In addition, we would be grateful if the MAS would clarify and offer guidance on the scope of a foreign bank's entities that would be subject to the information requirements. Paragraph 33 of the Draft Guidelines states that "<i>a foreign bank should</i></p>

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		<p><i>maintain the required information for resolution planning for all subsidiaries and branches."</i> The term "foreign bank" is defined in the Draft Guidelines to mean "any bank incorporated outside Singapore or foreign owned bank incorporated in Singapore." To the extent that a foreign bank has a branch in Singapore and is subject to the proposed RRP requirements under the MAS Act, it would be extremely onerous if the information requirements set out at paragraph 33 of the Draft Guidelines were applied to all of the subsidiaries and branches of the foreign bank, including those outside of Singapore that have no relevance to Singapore. We would be grateful if the MAS could confirm the scope of the information requirement at paragraph 33 of the Draft Guidelines in relation to foreign banks. In this regard, we recommend the scope be limited to an entity that is under the direct purview of the MAS (e.g. a Singapore branch of a foreign bank) and the other entities in Singapore within the same group that are material to the operations of that entity.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p><u>Imposition of temporary stay</u></p> <p>21. We welcome MAS' decision to limit the operative period for temporary stays of termination rights in financial contracts and contracts for essential services and functions, as it promotes certainty and ensures international consistency. We would like to make two observations about the drafting of the provision imposing the two-day limit:</p> <ol style="list-style-type: none"> It would be possible for a temporary stay to exceed two business days if the stay is effected in the morning of day zero. For example, a stay that begins at 09:00 on Monday morning could last until 23:59 on Wednesday evening, with an actual operative period of three business days. We would therefore recommend that the MAS insert express wording to provide that a temporary stay cannot operate for more than two business days in total, in line with the FSB Key Attributes. We would be grateful if the MAS could expressly provide that the operative period cannot be extended and that multiple stays cannot be imposed. <p>22. We are also of the view that the imposition of a temporary stay should be strictly limited to the time at which the MAS</p>

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		<p>first exercises its resolution powers under the MAS Act. Therefore, a temporary stay should not be imposed when the resolution process is already well underway, or when the resolution process has ceased. Further, we ask that the MAS consider implementing express language for the consideration of similar temporary stays imposed by foreign authorities. This would avoid the unnecessary cumulative impact of having multiple stays on an FI.</p> <p>23. We would appreciate clarity on the interplay between the timing of the temporary stay and the timing of cross-border recognition of resolution actions. Would the MAS have the power to impose a temporary stay from the time the MAS exercises a power under section 30AAZHA(3) of the MAS Act for the purpose of recognising the foreign resolution action or from the later stage where the Minister issues a certificate of recognition under section 30AAZHB?</p> <p><u>General comments on drafting of the relevant sections</u></p> <p>24. The MAS made it clear that the power to stay termination rights temporarily should be limited to financial contracts and contracts for essential services and functions of an FI.¹¹ However, we note that the draft legislation uses the term "<i>contract</i>" without providing any restricted definition to give effect to the earlier proposal. We would be grateful if the MAS could amend the draft to make its intention clearer, and would support a definition of "<i>financial contract</i>" that is aligned as closely as possible with the one included in the EU BRRD, as well as the definition of "<i>qualified financial contract</i>" in the US rules.</p> <p>25. We would be grateful if the MAS could offer further clarity as to the interaction between sections 30AAZAH(1) and 30AAZAI of the MAS Act. Section 30AAZAH(1) appears to impose a <i>permanent</i> stay on termination rights triggered by an exercise of resolution powers by the MAS. Section 30AAZAI, on the other hand, appears to impose a <i>temporary</i> stay on the same type of termination rights. Furthermore, section 30AAZAH(1) as drafted might have the unintended consequence of preventing a party from terminating a contract at all after the stay has expired or even where no stay has been imposed. We therefore suggest that section 30AAZAH(1) be removed, or alternatively restricted in scope according to MAS' intention for including it in the first place. In this regard, we observe that the UK regime provides for a general (permanent) stay on termination rights that are triggered solely by an exercise of resolution powers, and a temporary stay on all termination</p>

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		<p>rights that arise during the period of the temporary stay, <i>even if</i> they are not triggered by an exercise of resolution powers.</p> <p>26. In relation to subsection 30AAZAI(5) of the MAS Act, subsection (a) deals with termination rights that were not triggered by the MAS' exercise of resolution powers. However, section 30AAZAJ(a) provides that the entire section 30AAZAI does not apply to any termination rights not triggered by the MAS' exercise of resolution powers. The two provisions appear to contradict each other and give rise to ambiguity. We request the MAS to clarify its intent in relation to these two provisions and review them.</p> <p><u>Scope of entities required to include contractual provisions in specified contracts</u></p> <p>27. We would be grateful if the MAS would provide clarification and guidance on the scope of entities that would be subject to the requirement to include contractual provisions in specified contracts under the proposed new subsection 30AAZN(2)(g) of the MAS Act. While the statutory power to stay contracts temporarily under subsection 30AAZAI(1) of the MAS Act includes a subsidiary of a parent pertinent FI or insurer in certain scenarios, subsection 30AAZN(2)(g) only provides that regulations may be issued in relation to a pertinent FI or insurer to include contractual provisions in specified contracts. Therefore, we would be grateful if the MAS could confirm whether subsidiaries of pertinent financial institutions are within the scope of the requirement to include contractual provisions in specified contracts.</p> <p><u>Definition of essential services and functions, in relation to non-financial contracts</u></p> <p>28. In relation to temporarily staying termination rights in non-financial contracts, we note from the MAS Response that the policy intent is to impose the stay only on "<i>non-financial contracts that pertain to critical functions and critical shared services, which are specific to each FI, depending on their businesses and operations. Hence, MAS will not be prescribing an ex ante list of services and functions that will be subject to the proposed power. MAS will work with FIs that are subject to RRP requirements to identify the essential services and</i></p>

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		<p><i>functions for which operational continuity measures are expected to be implemented as part of the RRP process.</i>"²⁷</p> <p>29. We welcome the MAS focusing on operational continuity of critical shared services, as this helps to ensure proportionality of resolution planning requirements. However, it is not clear from the MAS response if MAS' powers to stay termination rights in non-financial contracts extend to FIs that are <u>not</u> subject to the proposed local RRP requirements under the MAS Act. It is also not clear what is the criteria which the MAS will apply to identify such "<i>essential services and functions</i>" in respect of FIs that are <u>not</u> subject to such RRP requirements, or how the MAS will work with such FIs to identify the "<i>essential services and functions</i>." It would provide greater certainty to FIs if the MAS could clarify or issue guidelines on what amounts to "<i>essential services and functions</i>" in respect of FIs generally, including FIs that are not subject to the proposed local RRP requirements under the MAS Act.</p> <p><u>Achieving operational continuity and continued services generally</u></p> <p>30. As the current draft legislative provisions only provide for stay of termination rights, they might not be sufficient to fulfil the goal of ensuring operational continuity and continued service. We request the MAS to clarify if it intends to issue regulations or guidelines to ensure operational continuity in resolution consistent with some of the approaches taken by international regulators whilst remaining sensitive to any challenges that members may face in Singapore. In this regard, we recommend that the MAS consider the progress made by the FSB, and the recommendations made by ASIFMA's sister organisation, the Global Financial Markets Association, in response to a consultation by the FSB.²⁸</p> <p>31. In particular, we are very concerned about the lack of powers to ensure continuity of membership of Financial Market Infrastructures ("FMI") in the event of resolution. As the concept of resolution is not recognised in FMI rulebooks as distinct from default or insolvency, we believe the MAS should ensure that it has the statutory power to prevent</p>

²⁷ MAS Response, paragraph 5.5.

²⁸ The recommendations are contained in a letter from the Global Financial Markets Association to the FSB dated 23 December 2015, available at <http://afme.eu/WorkArea/DownloadAsset.aspx?id=13632>

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		<p>disorderly termination of FMI membership in the event of resolution, or to temporarily suspend some membership criteria (e.g. having external credit ratings). If not, changes to the FMI rulebooks will be required.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p>32. We observe that in MAS' Response, the MAS confirmed that it will be "<i>applying the statutory bail-in powers to Singapore-incorporated banks and bank holding companies for the time being.</i>"²⁹ However, we note that the draft legislation refers to "<i>Division 4A financial institutions</i>" but leaves the prescribing of the class of such FIs to regulations to be made in the future under section 30AAZN of the MAS Act. We would like to clarify that the MAS still intends to limit the scope of the power to bail-in, and would suggest that the regulation prescribing the class of Division 4A FIs be quickly released to reflect this intention. We would also be grateful if the MAS would provide some guidance as to if and when the bail-in powers will be extended to foreign banks, and the factors that would trigger such a decision.</p> <p>33. We would like to reiterate our previous comment that the MAS' decision to limit the scope of the proposed bail-in regime only to subordinated unsecured liabilities is not in line with the existing and planned regimes in Hong Kong, Europe, or the United States. The narrow scope of the proposed regime could result in several problems, as highlighted in our response submitted to the consultation paper of June 2015. To reiterate, we summarise below the problems:</p> <ul style="list-style-type: none"> a. There is the risk that the bail in of subordinated unsecured liabilities alone would not be sufficient to cover all of the resolution costs. The resolution fund would have to be tapped, which could force surviving institutions to contribute larger amounts to the resolution fund. b. There is also the question of how senior debt would be treated in the event that capital and subordinated debt are completely bailed-in and there are still insufficient funds to absorb losses.

²⁹ MAS Response, paragraph 6.3.

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		<p>c. The narrow application of statutory bail-in would put the Singapore senior bank debt market in a different position to that of other global markets.</p> <p>34. At the same time, we recognise that having the opposite of an expansive scope of liabilities subject to bail-in would pose the problem of uncertainty. We would recommend that the MAS take a middle course by, for example, by exploring the feasibility of creating a new, distinct layer of senior unsecured debt to which bail-in is applied in priority to other senior unsecured debt. This is the approach being pursued by several EU member states and which EU authorities are seeking to introduce. The main advantages would be greater clarity in the ranking of creditors and a larger bail-in pool to meet the costs of resolutions, while ensuring a greater prospect of resolution success and reducing the possibility of engaging the resolution funding regime as a backstop.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>35. We support the MAS' creation of a statutory framework for cross-border recognition of resolution actions in accordance with the FSB's Principles for Cross Border Effectiveness of Resolution Actions dated November 2015.</p> <p>36. We would be grateful if the MAS could also further clarify the conditions that would have to be fulfilled before there is local recognition. In particular, the draft section 30AAZHA(2)(e) of the MAS Act broadly states that the MAS would also consider "<i>any other matter that the Authority may prescribe by regulations made under section 30AAZN.</i>" In light of the exhaustiveness of the four preceding conditions that ensure that the foreign resolution action would not have a widespread adverse effect on the financial system or economy of Singapore, result in the inequitable treatment of any Singapore creditor relative to a foreign creditor, be contrary to the national or public interests, or have material fiscal implications, the additional condition in (e) appears to be redundant and unnecessarily adds uncertainty to the recognition of foreign resolution actions. We therefore request that MAS consider deleting condition (e), or provide guidelines or clarity on what are the matters which may be considered relevant under it.</p>

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		<p>37. We would also suggest that the MAS inform the wider industry when a foreign resolution has been refused recognition in Singapore under this provision.</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>38. In relation to the definition of "<i>trigger power</i>," we recommend that the MAS not limit the eligibility for compensation for the cross-border recognition of resolution actions to foreign resolutions that are equivalent to any of the MAS' resolution powers under the MAS Act. The compensation framework should be made available to all creditors impacted by a recognised resolution regardless of whether it is technically equivalent to powers exercised by the MAS.</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>39. We suggest that the costs of an FI failure should primarily be borne by its shareholders and creditors and not imposed on the public. We therefore support MAS' decision to establish resolution funding arrangements on an ex post basis. However, we would like to clarify that the primary mechanism for absorbing losses should still be bail-in, and the resolution funding arrangement should only be resorted to in exceptional circumstances – in essence, where the creditors of an institution have been written down in full. This dovetails with our suggestion, as stated above, that the bail-in regime should be expanded to include other types of liabilities beyond subordinated, unsecured liabilities so as to provide adequate, first-level funding for resolutions.</p> <p>40. We would also be grateful if the MAS would further clarify and offer guidance as to the method of calculating the ex post levies. In the MAS Response, the MAS lists four factors that will be taken into account: <i>risks that the contributor would pose to the financial system; benefits that the contributor had derived from the resolution of the resolved FI or from the resolution regime in general, economic conditions or the financial condition of the contributor, and such other factors</i></p>

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		<p><i>as may be relevant</i>.³⁰ We strongly encourage the MAS to provide more objective and transparent standards for calculating the ex post levy by defining the above factors in greater detail in subsidiary legislation. This would alleviate fears among foreign banks that they could be subjected to uncapped liabilities.</p> <p>41. In relation to the fourth factor of "<i>economic conditions or the financial condition of the contributor</i>," we are concerned that this would require and, in essence, penalise financially healthy institutions to contribute more than others. In this regard, a possible solution would be to give credit, and therefore reduce the quantum of the levy, for the amount of loss absorbing capacity of a bank. This would incentivise the creation of greater loss absorbing capacity and reduce moral hazard.</p> <p>42. In addition, we observe that the fourth factor of "<i>such other factors as may be relevant</i>" is very broad and will add uncertainty to the calculation of <i>ex post</i> levies. This factor should therefore be removed altogether, or, if not removed, we request that the MAS provide guidance as to what these other factors will include.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p><u>High-level statement of principle</u></p> <p>43. We would like to suggest that the MAS adopt the approach of inserting a high-level statement of principle that it will not exercise resolution powers under the MAS Act in a way that would affect set-off, netting and collateral arrangements. We observe that this would be in line with the position under the EU BRRD and the Hong Kong FIRB, which include general protection for set-off, netting and collateral arrangements regardless of the nature of the resolution tool.</p> <p>44. The high-level statement would fulfil the policy intention stated by the MAS in its response to public feedback to the Consultation Paper on Proposed Amendments to the Monetary Authority of Singapore Act of December 2012</p>

³⁰ MAS Response, paragraph 9.15.

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		<p>(wherein the MAS proposed extending the resolution regime applicable to banks and insurers, including similar compulsory transfer of business provisions, to other regulated FIs):</p> <p><i>"the MAS (A) Bill will be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS will also provide in the MAS(A) Bill, a general power to prescribe safeguards to the exercise of the resolution powers. This would enable the Minister to expressly provide in subsidiary legislation that bilateral netting arrangements, as well as other similar arrangements warranting carve-out, will not be affected by the exercise of resolution powers under the MAS Act."</i> (Emphasis added)</p> <p>45. Importantly, this approach would also effectively solve the following problems inherent in the current draft legislation:</p> <p><u>Individual safeguards for individual powers</u></p> <p>46. Regulation 15 as drafted specifies individual safeguards for individual resolution powers under the MAS Act. It only provides for the protection of set-off and netting rights where part of a business is compulsorily transferred under section 30AAS of the MAS Act. The result is that the other resolution powers exercisable by the MAS would not be subject to safeguards for set-off and netting. There would therefore be legal uncertainty as to whether such rights are protected when the MAS:</p> <ul style="list-style-type: none"> a. Issues directions to relevant FIs under section 30AAB(2); b. Exercises its powers under section 30AAJB(4) to direct a pertinent FI to <i>"implement arrangements or measures as may be necessary to stabilise and restore the financial strength and viability of the pertinent institution" or under section 30AAJC(4) to require "changes to the pertinent financial institution's...business practices, legal, operational or financial structures or organisation;"</i> c. Temporarily stays termination rights in financial contracts under section 30 AAZA; or d. Recognises cross-border resolution actions under section 30 AAZHB. <p><u>Lack of protection for collateral agreements</u></p>

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		<p>47. Another problem with Regulation 15 as drafted is that it makes no provision for the protection of collateral agreements in support of set-off and netting arrangements. In particular, collateral agreements that involve the creation of security would not be protected under the current wording of Regulation 15. For example, a bank ("Bank A") that received collateral from a pertinent financial institution ("Bank B") subject to a temporary stay under section 30AAZA would not be able to enforce the collateral against Bank B. From a macroscopic perspective, this would pose problems for compliance with G20 commitments.</p> <p><u>Moratorium loophole</u></p> <p>48. Regulation 16 as drafted provides that, in relation to set-off and netting arrangements, the various provisions for a moratorium upon the exercise of various powers³¹ by the MAS would be preserved, and merely limited to the duration of the temporary stay on termination rights, i.e. two days. This suggests that the moratorium would affect set-off and netting arrangements for those two days. We strongly suggest that the moratorium should not affect set-off and netting arrangements at all, and propose that the best way to accomplish this crucial protection is the high-level statement as mentioned above.</p> <p><u>Remedies for breach of high-level statement of principle</u></p> <p>49. To ensure the effectiveness of the protection of set-off and netting arrangements provided by the high-level statement of principle, we strongly recommend the MAS institute clear remedies for any breach of the high-level statement. In this regard, remedies must be immediate and self-executing, for example, by providing that a netting arrangement is enforceable even where the MAS has transferred some of the rights and/or obligations under a master netting agreement. Remedies such as the payment of compensation or some other ex post remedy would not be sufficient protection for set-off and netting arrangements.</p> <p><u>Insurance Act</u></p>

³¹ Sections 30AAU(2) in relation to the compulsory transfer of business, 30AAX(13) in relation to the compulsory transfer of shares, 30AAZA(13) in relation to the compulsory restructuring of share capital, and 30AAO in relation to the resolution of FIs.

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		<p>50. In closing, we suggest that the above two recommendations – the adoption of a high-level statement of principle, and the provision of automatic remedies for breach of that high-level statement - should be similarly inserted in relation to the <i>Insurance Act</i> (Cap. 142) to extend such protection to insurers under the <i>Insurance Act</i>.</p>
4	CLS Bank International	<p>General comments:</p> <p><u>Advance Notice</u></p> <p>CLS notes that, under the proposed Singapore resolution framework, there is no express reference to the provision of advance notice of participant resolution to FMIs by the resolution authority. In 2014, the Financial Stability Board (“FSB”) introduced Appendix II, Annex 1 to the FSB’s Key Attributes,³² which emphasizes the relevance of notice to FMIs, drawing particular attention to the importance of advance notice. The Key Attributes specifically stipulate that “resolution authorities should inform FMIs as soon as possible of the resolution of a participant, and <i>if possible in advance of the firm’s entry into resolution</i>” [emphasis added].³³ Receipt of prior notice by FMIs will maximize the likelihood of continued participation in the FMI by the institution or any bridge bank or other successor institution to which the entity’s business is transferred as part of a resolution proceeding. CLS fully agrees with the Key Attributes approach, and is of the view that advance notice to FMIs is critical for the following reasons:</p> <ol style="list-style-type: none"> 1. <u>FMI’s role as provider of information.</u> If the entity in resolution is a participant in an FMI, the FMI will be able to provide the resolution authority with comprehensive up-to-date information regarding that participant, including information about its role in the FMI ecosystem, that will increase the likelihood of a successful resolution.

³² FSB’s Key Attributes of Effective Resolution Regimes for Financial Institutions, dated October 15, 2014 (the “Key Attributes”).

³³ Please refer to Section 5.1 of Appendix II, Annex 1 to the Key Attributes, relating to resolution of FMI participants, which provides that “Resolution authorities should inform FMIs as soon as possible of the resolution of a participant, and ***if possible in advance of the firm’s entry into resolution*** [emphasis added]. Throughout the period that a participant is in resolution, authorities should provide the FMI with information about the participant or any bridge institution to which its functions have been transferred relevant to the continued participation of that firm or bridge institution in the FMI”.

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S/N	Respondent	Full Response from Respondent
		<p>2. <u>Ability to comply with obligations to the FMI.</u> FMIs need sufficient time to ensure that a participant in resolution will be able to comply with its obligations. In the case of CLS, for example, timely funding is critical to ensure timely settlement and to avoid use of default arrangements. Subject to specific facts and circumstances, a failure to fund can have a significant adverse impact on the CLS System and its participants. Therefore, CLS will need assurance, prior to the start of the next settlement session, that the participant in resolution will be able to comply with its funding obligations. Ensuring that the participant's obligations are met is in the interest of the resolution authority, the FMI, and other participants in the FMI.</p> <p>3. <u>Ability to Timely Undertake Necessary Steps.</u> In order to accommodate the continued participation of a participant in resolution (or its successor) in a compressed timeframe, such as a weekend, FMIs need sufficient time to undertake the many necessary (and often complex) internal steps and processes, which may include operational, liquidity, credit, and legal-related assessments and actions.³⁴</p> <p>4. <u>Application of mitigants.</u> FMIs require the time to assess the need to apply appropriate mitigants in a resolution scenario so that the safety of the FMI will not be comprised.</p> <p>Given the clear regulatory guidance, the critical importance of notice to FMIs, and the fact that it is in the interest of the regulatory authorities to provide as much advance notice as possible to FMIs prior to the use of resolution tools, CLS suggests that the Singapore resolution laws should specifically reflect the importance of advance notice to FMIs whenever possible.</p> <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>N/A</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p>N/A</p>

³⁴ This is particularly true in a transfer of membership scenario.

S/N	Respondent	Full Response from Respondent
		<p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p>Proposed section 30AAZAJ of the Monetary Authority of Singapore Act (Cap. 186) (the “MAS Act”) provides that stays on termination rights will not apply to termination rights arising “under a contract held by a party which has been prescribed by regulations made under section 30AAZN as an excluded party”. CLS notes MAS’s intention, as reflected in the “Proposed Enhancements to Resolution Regimes for Financial Institutions in Singapore - Response to Feedback Received” document, dated April 29, 2016 (the “MAS Feedback”), to include “<i>designated payment systems</i>” as “excluded parties” in the regulations.³⁵ As CLS is technically designated under the FNA as a “<i>designated system</i>” and not a “<i>designated payment system</i>”, CLS is seeking a technical clarification that “designated systems” will be included as “excluded parties” in the regulations.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p>CLS notes that MAS intends to prescribe in future regulations, liabilities that are <u>within scope</u> of MAS’s statutory bail-in powers.³⁶ In the MAS Feedback, MAS suggests that “unsubordinated obligations towards...payments systems” will be excluded from scope. As it is unclear from both the Consultation Paper and the MAS Feedback whether excluded liabilities will be specifically enumerated in the future regulations, CLS suggests that, for the avoidance of doubt, <u>liabilities that are out of scope</u> be expressly set out in the regulations as well. This provides certainty of breadth, and is consistent with the approach taken in other jurisdictions, such as the European Union.³⁷ In addition, if MAS specifies a list of excluded liabilities, CLS proposes that liabilities and payment obligations, whether unsubordinated or subordinated, owed to designated systems by all parties should be excluded from the scope of bail-in powers. Finally, it is important that the determination as to whether liabilities owed to designated systems are excluded does not hinge</p>

³⁵ Paragraph 3.8 of the MAS Feedback.

³⁶ Paragraph 6.7 of the MAS Feedback; see also the proposed definition of “eligible instrument” in proposed section 30AAZAA of the MAS Act.

³⁷ Article 44(2) of the EU Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of May 15, 2014.

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S/N	Respondent	Full Response from Respondent
		<p>on the maturity of such obligations. The imposition of a maturity limitation could result in the bail-in of liabilities to FMIs even though their repayment is necessary to ensure the continuity of essential services, so giving rise to widespread and disruptive contagion to other parts of the financial system.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>N/A</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>N/A</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>N/A</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>The inclusion of safeguards to protect set-off and netting rights in respect of financial contracts³⁸ in partial transfer scenarios is welcome.³⁹ However, CLS is of the view that clearing, payment, and settlement system arrangements should also be classified as protected arrangements under the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013; at a minimum, safeguards should include the protection of transactions through designated systems as well as the application and enforceability of the rules of the designated system. In this regard, CLS further proposes that clearing, payment, and settlement system arrangements should be protected by</p>

³⁸ A “financial contract” is defined as “(a) a contract for repurchasing, borrowing or lending securities, units in a collective investment scheme or commodities; (b) a derivatives contract; or (c) a futures contract within the meaning of section 2(1) of the Securities and Futures Act...”

³⁹ Section 15 of the Draft Amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013, Part IV.

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S/N	Respondent	Full Response from Respondent
		<p>default not only in partial transfer resolution scenarios, but also in complete transfer and bail-in scenarios.</p> <p>In connection with safeguarding clearing, payment, and settlement system arrangements, and in order to maximize the likelihood of a successful resolution and minimize systemic disruption, certain amendments should be made to the FNA. Specifically, it should be made clear that proceedings of designated systems take precedence over resolution laws, as is currently the case with respect to insolvency laws under section 8 of the FNA.⁴⁰</p>
5	DBS Bank Ltd	<p>Dear Sir,</p> <p>Thank you for the opportunity to provide comments on the above-titled proposed legislative amendments.</p> <p>Please refer to our comments as below.</p> <p>1) We recommend strongly that MAS expands safeguards to include collateral rights and arrangements. The current safeguards drafted are silent with respect to protecting collateral arrangements. We are concerned that the MAS's resolution powers could delay or even prevent enforcement of collateral rights. This would have significant impact on DBS and other market participants who use collateral arrangements as risk mitigants with respect to their trading/lending/derivatives relationships. In light of the soon to be in force margin rules (VM and IM) for uncleared swaps in Singapore, EU and US amongst other countries – collateral rights and arrangements, especially those using ISDA's Credit Support Annex (title transfer or security interest) and Credit Support Deed (security interest) would be ever more in use by market participants. It will be important that such rights, in particular the collateral taker's rights to enforce their security in a timely manner (which are required under the margin rules) are not called into question here.</p>

⁴⁰ For the avoidance of doubt, and because resolution authorities may be afforded powers in a resolution scenario similar to liquidators' powers in an insolvency scenario (e.g. the power to avoid dispositions), MAS may also wish to consider amending section 12 of the FNA to make clear that resolution proceedings do not end finality protections under the FNA.

As a general matter, CLS believes, and has made the point in the past, that MAS might wish to consider amending the FNA to provide that statutory protections under the FNA will not terminate after an insolvency, but will continue at all times (including upon and after insolvency). This is consistent with the statutory approach taken in other jurisdictions, such as Canada and South Africa. Alternatively, MAS should consider making amendments to clarify that all protections continue for transfer orders and funding entered into the designated system after the end of the relevant day in Singapore, if authorized by the relevant insolvency official.

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S/N	Respondent	Full Response from Respondent
		<p>2) We recommend that a separate consultation process be undertaken in respect of CCPs. The draft CP here includes references to CCPs in certain provisions, but we are of the view that this is a complex area that merits a further study. CCPs are subject to their own specific resolution and recovery rules, including rules requiring their members to make contributions to the CCPs. It would be important for entities within the scope of the resolution regime here and who are also members of CCP(s) that these resolution regime rules do not contradict or interfere with the CCPs' rules which they are required to comply with. For e.g., how would CCP rules on members' contributions interact with the resolution funding requirements here?</p> <p>3) We would be grateful for clarification from MAS in respect of the scope and operation of Section 30AAZAI and Section 30AAZAH (Annex 4). Section 30AAZAI provides for MAS to be able to institute a temporary stay of termination rights triggered by MAS' exercise of its resolution powers; but Section 30AAZAH appears to provide for a permanent stay / unlimited in time. Is Section 30AAZAH meant to be a permanent stay? If it is intended as a temporary stay, then how does it interact with Section 30AAZAI; is it intended to cover a different type of termination right?</p> <p>4) We would welcome confirmation from MAS or an express provision in the proposed legislation that there cannot be an extension of the length of stay and that multiple/consecutive subsequent stays cannot be imposed.</p> <p>5) We note that "eligible instrument" is to be defined in the proposed regulations, but the CP does not provide any indication on what the scope of this definition will be. We recommend derivatives be expressly carved out from definition/scope of "eligible instrument". Otherwise, derivative transactions would raise specific concerns here, e.g., for how would statutory bail-in provisions apply in practice to live derivative trades? Such trades are yet to mature or terminate and there are likely to be continuing obligations to make payments or deliver margin that still need to be performed at the time the bail in power is exercised. How would such trades be valued? How would the bail-in power be applied in practice with respect to a portfolio of trades / positions under an ISDA? How would related hedges or transactions hedged by such derivative trade be affected?</p>

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S/N	Respondent	Full Response from Respondent
		<p>6) We note that Regulation 16 under Annex 9 includes a specific safeguard for moratoriums in the context of set off and netting arrangements. This appears to suggest that a moratorium would affect set off and netting 2 arrangements while it is in force. Furthermore, is such a moratorium intended to function as a temporary stay or does it have other/wider effect? Also, there appears to be no safeguards provided for in respect of these moratorium provisions. We would appreciate clarification from MAS as to what is intended here. And submit that there should be an express statement in Regulation 16 that such moratorium provisions would not affect set off and netting arrangements and are in fact intended to protect collateral arrangements/security interests.</p>
6	Deutsche Bank AG	<p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>We agree that these amendments will provide MAS with more explicit powers to require recovery plans, information for resolution planning, and to adopt measures to address deficiencies in recovery plans and remove impediments to resolvability. While this is framework legislation and so necessarily high level, we do believe enhancements would be beneficial in a number of areas to make explicit the MAS' policy intent or to align with other major resolution regimes. These could also be spelled out in further detail in the Notice on recovery and resolution planning.</p> <p>On the scope of banks covered by recovery and resolution planning (RRP) requirements, we appreciate the clarification that this will not only be domestic systemically important banks (D-SIBs), but any bank considered to have a systemic impact on Singapore or that maintains critical functions in Singapore. However, we would request that that this is codified in the legislation with an explicit section specifying that MAS will assess the systemic importance of financial institutions based on existing risk assessment frameworks, as described in the feedback paper. We also request that it be made explicit in the legislation that affected firms will have an opportunity to provide evidence that their failure will not have a systemic impact. This will help MAS to ensure as stated that RRP requirements are applied proportionately to non-D-SIBs. For example, if a bank does not have any critical functions in Singapore – which by definition would mean that the sudden cessation of any of its activities would not disrupt the economy or financial stability – we would question the need for local resolution planning requirements.</p>

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S/N	Respondent	Full Response from Respondent
		<p>As the MAS notes, there may be a more proportionate way to achieve the objectives of recovery and resolution planning through the normal course of supervision or, in the case of foreign banks, through cooperation with home authorities or by relying on the group plan. We suggest that the MAS follow the Hong Kong authorities by explicitly including the possibility to adopt a foreign resolution authority's resolution plan in whole or in part, if it is satisfied that it takes Singapore operations into account.</p> <p>On recovery planning, while we appreciate a distinction being drawn between MAS requiring banks to make changes to the recovery plan and requiring banks to take measures under the recovery plan, we suggest making it explicit in Section 30AAJB that paragraph 4 will only be applied should the bank experience severe financial distress and has failed to take appropriate action. It is not appropriate or proportionate to intervene before this is the case, as recovery planning, monitoring and action should be owned and driven by the bank itself, as an integrated part of its risk management framework.</p> <p>On resolution planning, it would be consistent with all major resolution regimes to include a process by which the bank itself may propose measures to address impediments to resolvability. This is the case in the EU, US and Hong Kong regimes, and we strongly recommend including it explicitly in Singapore. As such, we recommend including in paragraph 5 of Section 30AAJC that financial institutions will have a timeframe within which to propose alternative measures to address the impediment to resolvability.</p> <p>Finally, we appreciate that in the draft amendments the MAS will have the flexibility to specify the timing and frequency of information. This will allow the MAS to consider the timetable to which foreign headquartered banks will be subject to under their group RRP process and to seek to align with that. Whether this results in a combined approach – e.g. information for resolution planning submitted at the same time – or an iterative one – e.g. local recovery plan explains how the group plan would apply – it should be coordinated and the most appropriate approach adopted that works with existing processes.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p>We strongly welcome the MAS' commitment to strictly limit the application of the temporary stay on termination rights to two business days and to exclude central banks and financial market infrastructures (FMIs) from the stay power. The proposed safeguards are also broadly consistent with those under similar</p>

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S/N	Respondent	Full Response from Respondent
		<p>resolution regimes and with conditions to be considered an eligible regime under the ISDA protocol. However, there are four areas where we believe the stay power should be clarified:</p> <p>i) Duration of the stay: as currently drafted, the stay power could be interpreted as able to be applied for three business days. For example, if notification of the stay is published in the Gazette on a Monday, it would “expire no later than 23:59 (Singapore time) on the second business day after the date of publication”. This could be read as expiring at 23:59 on the Wednesday, which is inconsistent with the intent. We suggest using wording as in the EU Bank Recovery and Resolution Directive (BRRD) – “end of the business day following” publication – or the Hong Kong Bill – end of “the first business day following” publication.</p> <p>ii) Exclusions from the stay: we appreciate the MAS’ intent to exclude central banks and FMIs from the application of the stay power, as well as the general provision that the MAS will have regard to the impact of its exercise on the safe and orderly functioning of financial markets and FMIs. However, we suggest going further and being explicit in the amendment itself that central banks and FMIs will be excluded counterparties, or explicitly mentioning the possibility of excluding certain counterparties in regulations made under Section 30AAZN, which currently only explicitly mentions potential to impose contractual requirements.</p> <p>iii) Contractual requirements: we agree with the intent to limit use of the stay power in practice to financial contracts and those related to essential operations and services identified during the course of resolution planning, and to similarly limit requirements to include contractual stay clauses. We understand that the MAS needs the ability to exercise the stay power over a broad range of contracts, as financial contracts not governed by Singapore law or non-financial contracts linked to essential operations and services can only be identified in the course of resolution planning. However, we are concerned that Section 30AAZN is too broadly drafted as it does not limit the potential application of requirements to include contractual stay clauses in this way. We believe that it is important to distinguish in the legislation between a broad power, and the focused approach to contractual requirements.</p> <p>iv) Operational continuity: Finally, while we support the temporary stay power as drafted to prevent early termination while resolution is put into effect (and the broader provision</p>

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S/N	Respondent	Full Response from Respondent
		<p>under Section 30AAZAH that resolution action should not trigger termination rights as long as substantive obligations continue to be met) we are concerned that this is not sufficient to support ongoing continuity of essential operations and services. It does not provide the MAS with statutory powers to direct continued performance of services should providers disregard Section 30AAZAH or breach contractual continuity arrangements for resolution. Under the EU BRRD, a statutory power to enforce continuity of contracts exists for all service providers, including third parties. Under the Hong Kong draft Bill this at least applies to service providers which are affiliated entities. We suggest that the MAS further consider such powers.</p> <p>Finally, we are very concerned that the powers in this Division do not explicitly provide for continuity of FMI membership. While 30AAZAH may provide for continuity in limited circumstances – e.g. if the institution under resolution is the same as the institution which holds the membership – it should be explicitly provided for that the MAS has the power to enforce FMI membership continuity. In addition, it should be able to require the FMI to temporarily waive membership criteria in certain circumstances arising from resolution (e.g. if the institution in resolution will temporarily be in breach of capital and liquidity requirements, or if a transfer to a new institution takes place which does not have an established credit rating) as long as there is no danger to the FMI itself. This would be similar to powers under the EU BRRD. While addressing FMI continuity is under discussion globally by the FSB, we encourage the MAS to use the opportunity of making its legislative changes to address this issue.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p>We welcome MAS' considered approach to introducing bail-in powers, which focuses for the time being on locally incorporated banks, given ongoing international discussions on bail-in for FMIs and other types of financial institutions. We also appreciate the implication that the MAS would therefore not independently exercise the bail-in power to branches of foreign banks, which is consistent with the approach to cross-border cooperation set out in the consultation and feedback papers. In particular, given the narrow scope of the MAS' proposed bail-in regime, we strongly welcome the MAS' proposed broad cross-border recognition power, as outlined in more detail under Q5, as this is critical to overcome the lack of alignment between the scope of bail-in in Singapore versus that in other regimes.</p>

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S/N	Respondent	Full Response from Respondent
		<p>We also welcome the MAS' stated intent not to impose any additional capital or TLAC requirements beyond higher loss absorbency requirements for D-SIBs. However, we would note that the MAS should consider the risk that D-SIBs may have insufficient subordinated liabilities available for bail-in, which would either risk going deeper into the capital structure – without the clear rules for doing so that inclusion of senior debt in the bail-in regime would provide – or imposing losses on the broader industry through ex-post levies. However, we consider this is best addressed through resolution planning and ongoing supervision of capital adequacy, referenced in paragraph 6.18 of the feedback paper.</p> <p>On other aspects of the bail-in regime, we welcome the clarification of how it will approach change of shareholder control and fit and proper tests, the commitment to define the scope of eligible liabilities further in regulations, and the description of how the MAS will approach contractual bail-in requirements. We request greater clarification in the regulations in the following areas:</p> <p>i) Scope of bail-in: the MAS says in the feedback paper that it will also have a power to bail-in contingent convertible instruments and contractual bail-in instruments. We assume this is partly to ensure sufficient loss-absorbency of such instruments at the point of resolution, but would request that the MAS confirm that this is only in relation to debt instruments issued by locally incorporated banks in Singapore. Under other resolution regimes, “contractual bail-in instruments” could be broader than debt instruments – e.g. potentially any liability subject to bail-in powers and a requirement to include contractual recognition of bail-in, as under EU BRRD. Would senior debt instruments be in scope if contingently convertible or containing contractual terms consenting to bail-in under foreign regimes? Finally, would the bail-in power be limited to subordinated debt and loans issued to third parties, or also to intra-group ones?</p> <p>ii) Treatment of subsidiaries: the MAS does not specify whether it intends to apply the statutory bail-in power to all locally incorporated banks, regardless of where they are headquartered. In the event of a foreign bank resolution, we would expect the parent to stabilise and continue operations in its subsidiaries and as such the MAS should not need independent bail-in powers. This is especially the case where the subsidiary does not issue debt instruments in its own right; if the MAS were to apply bail-in, the only creditor taking losses would be the parent, potentially undermining the group resolution action. The only circumstances we foresee where the MAS may need to be able to exercise the bail-in</p>

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S/N	Respondent	Full Response from Respondent
		<p>power independently locally for a subsidiary of a foreign bank is if the resolution was unsuccessful or not executed for some reason by the home resolution authority and the subsidiary was either a D-SIB, whose disorderly failure would impact financial stability in Singapore, or a material sub-group of a G-SIB, in which case internal TLAC may need to be written down.</p> <p>iii) Contractual recognition clauses: we support the MAS' intent to require contractual recognition clauses for issued instruments eligible for bail-in which are governed by foreign law, but request clarification that this would not be required for subsidiaries of foreign banks. This would be consistent with the MAS' intent not to require them for foreign subsidiaries of locally incorporated banks, presumably on the basis they would not contribute to bail-in.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>We strongly welcome the MAS' proposed enhancements to its cross-border recognition powers. The new Section 30AAZHA puts the Singapore regime on a par with the most effective resolution regimes globally by including a broad statutory recognition power, along with the ability to take local resolution measures in support of the foreign resolution action and to enforce it if necessary. In particular, by basing the recognition power on a comparison with the treatment creditors would receive in the home state of the foreign resolution action – rather than with treatment under the Singapore regime – the draft amendment removes the risk of non-recognition arising from lack of total alignment in regimes. However, we request that point (e) under paragraph 2 be removed, as this reduces legal certainty by widening the scope of conditions for refusing recognition beyond those recommended by the FSB.</p> <p>This will significantly enhance cross-border legal certainty of resolution, while the MAS still reserves the right to refuse recognition should they not be satisfied that the impact on financial stability, the economy, Singapore creditors, the fiscal position or public interest of Singapore has been sufficiently considered. As such, we also welcome that the MAS will seek to cooperate with home resolution authorities and leverage group resolution plans accordingly. As outlined under questions 1 and 2, we believe that local resolution planning for foreign banks should focus on ascertaining the impact on Singapore operations of the group resolution plan, and be applied proportionately to that impact.</p>

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S/N	Respondent	Full Response from Respondent
		<p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>We appreciate the MAS' intention stated in the feedback paper to only apply the creditor compensation framework in circumstances when it has applied resolution powers or when it has recognised foreign resolution but the foreign regime does not have a creditor compensation framework. However, this intent does not seem to currently be fully reflected in the draft legislative amendments. As currently drafted, only one element – eligibility for compensation – seems to be affected whether the foreign resolution regime has a creditor compensation framework in place or not. As such, we would be grateful if the MAS would either make a broad clarification that this Division would not apply if there is, or specify that in these cases there is also no need to appoint a valuer, do a valuation or issue a report.</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>We strongly welcome the MAS' focus on ex-post levies to recover operational costs of resolution, and only after bail-in or recovery from the institution itself. We appreciate that the MAS will consult on further details. However, in the draft amendments, it is not yet clear enough that the resolution fund would not be used to recapitalise an institution under resolution. This would socialise losses of a failed bank to wider industry, rather than internalising losses as bail-in is intended to achieve.</p> <p>For example, Section 30AAZHP only requires the MAS to “have regard” to whether “appropriate” losses have been imposed. Likewise, paragraph (2) (a) and (b) of Section 30AAZHO refer to the resolution fund providing “capital”, when this should in principle be limited to working capital. Finally, section 30AAZHQ does not make it clear that the full residual value of the institution would be used to meet costs before imposing levies, only that the MAS “may” recover costs from the institution.</p> <p>Similar to the creditor compensation framework, as the definition of “resolution power” would include recognition of foreign resolution action, we request clarification on what elements of Part IVB would apply in these circumstances. In the case of European banks, the home resolution authority will have access to resolution funds under the EU BRRD and US banks the FDIC and banks will contribute based on the global balance sheet to these resolution funds. Would the MAS envisage local resolution funds being</p>

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S/N	Respondent	Full Response from Respondent
		<p>available to meet foreign resolution costs? In our view, this would not be appropriate at least for branches of foreign banks, as their liabilities are covered by the home resolution regime and banks will have already paid into their home resolution funds to cover these in resolution.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>We welcome the proposed amendments to the 2013 Regulations, as they clarify the MAS' intent to avoid impacting contractual arrangements for set-off and netting of counterparty liabilities. However, in light of the broader changes to the MAS' resolution powers, we would urge the MAS to consider a broader set of general safeguards for protected arrangements, as under the EU BRRD and Hong Kong draft Bill, including netting and set-off rights, secured liabilities and collateralised arrangements. A broad provision which states that these will be protected in resolution regardless of the resolution power exercised, and preventing partial transfer from disrupting them, would be very welcome.</p>
7	Friends Provident International Limited (Singapore Branch)	<p>General comments:</p> <p>Nil</p> <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>Nil</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p>Nil</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p>Nil</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p>Nil</p>

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S/N	Respondent	Full Response from Respondent
		<p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>Nil</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>Nil</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>With regards to the preconditions to use of moneys in Fund, we suggest MAS to make it explicit that the cost be imposed on the shareholders and unsecured creditors first rather than having a consideration. This is because moneys should not be used for the benefit of addressing liabilities of non-policyholders.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>Nil</p>
8	ICE Clear Singapore Pte Ltd	<p>General comments:</p> <ul style="list-style-type: none"> We generally suggest that the primary legislation reflect general policy objectives in relation to recovery and resolution. That is, although we fully expect to engage in due course with any consultations on secondary legislation/regulation which may further clarify the scope of these statutory changes, we suggest that it is appropriate to set some statutory limits now on important concepts such as “<i>eligible instrument</i>” and “<i>pertinent financial institution</i>”. We believe doing so would also be broadly consistent with comparative regimes in other major markets. In particular, we suggest a clear statutory exclusion from bail-in of liabilities owed to FMIs by their members and third party institutions which support the functioning of FMIs.

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S/N	Respondent	Full Response from Respondent
		<p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning. (Annex 1)</p> <ul style="list-style-type: none"> • New section 30AAJB and general usage of term “<i>pertinent financial institution</i>”: We suggest that the process for determining what is a “<i>pertinent financial institution</i>” be given some defined statutory guidance. For example, is there an intended balance sheet threshold and/or other assessment as to the systemic importance of the institution which would cause it to be regarded as a “PFI”? • Additionally and particularly in relation to clearing houses and exchanges, such statutory guidance could expressly provide that where a recognised clearing house is located outside of Singapore it may better assess whether the recovery and resolution plans it prepared for its home regulator is adequate for Singapore. • New section 30AAJB(4): We acknowledge that a recovery plan may require further remedial work to be performed by a PFI following review by MAS, but a general discretion as set out in this section to direct a PFI broadly “<i>to implement arrangements or measures</i>” seem excessive and undefined. We note from an international comparison that other resolution authorities may, in the scope of their prudential supervision, impose consequences such as instituting caps or limits on certain prudential ratios in order to constrain an institution’s activities in such a case. We suggest “<i>arrangements and measures</i>” be similarly defined to such specific remedies in the nature of prudential penalties or otherwise restricted to the removal of material impediments to the implementation of a recovery plan. It is also arguable that section 30AAJB(4) as currently drafted is a regulatory power to be exercised during a recovery or resolution event rather than during the submission and approval of a recovery and resolution plan. When viewed this way such regulatory powers could be set out alongside other recovery and resolution powers available to the regulator and not in Part IVA of the MAS Act. • New section 30AAJC(3): As with our comments regarding section 30AAJB(4), we suggest that broad powers to direct PFIs to take “<i>specific measures</i>” be supplemented with clear statutory parameters.

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S/N	Respondent	Full Response from Respondent
		<p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning. (Annex 2 and 3)</p> <p>We have no comments in relation to this Question.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights. (Annex 4)</p> <ul style="list-style-type: none"> New section 30AAZAH(2): We support the additional clarification that application of default management procedures does not as a matter of principle cause a FMI to be in breach of its obligations. However, we would request clarification with regards to “<i>loss allocation</i>” (perhaps by way of an additional definition) broadly to include any default management procedures (including the application of any guaranty fund) or any additional margin or collateral call to replenish a guaranty fund or other loss (e.g. the default of a settlement bank or an assessment amount). New section 30AAZAJ(b): We request that some statutory limits or guidance be placed around who may be the type of “<i>excluded party</i>” to whom section 30AAZAI will not apply. Although we fully intended to engage with subsequent consultations on secondary legislation, we believe it is appropriate for the primary legislation initially to reflect policy goals. We suggest that such an exclusion expressly apply to clearing houses by way of statute. Additionally, we suggest that such exclusion also extend to clearing houses located outside of Singapore who clear contracts traded and obligations entered into by Singapore entities which are subject to these statutes. <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime. (Annex 5)</p> <ul style="list-style-type: none"> Definition of “<i>eligible instrument</i>” in 30AAZAA: Similar to our comment in relation to section 30AAZAJ(b), we believe it is critical for the primary legislation expressly to reflect public policy views. Accordingly, we request that “<i>eligible instrument</i>” be limited to certain senior debt obligations or similar, and that it expressly excludes obligations owed to clearing houses and FMIs (including contributions to clearing house guaranty and default funds and sums collected under clearing house assessments).

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		<ul style="list-style-type: none"> Additionally, we would request that the obligation of account banks and custodians in respect of cash or other assets held by it and which relate to a FMI's risk management or default management be excluded "<i>eligible instrument</i>". That is, we believe it is critical to safeguard from bail-in the payment and custody obligations and systems on which a FMI relies on to continue to function viably. Accordingly, we suggest that the statutes also guide the regulator to exclude from "<i>eligible instrument</i>" the following: (ii) cash deposits and non-cash assets placed with a bank by a clearing house or FMI that represent margin, collateral, security, guaranty fund contributions, assessment amount contributions or fidelity fund contributions; and (iii) assets placed by a clearing house or FMI with the bank which represent amounts required under the clearing house's or FMI's own recovery and resolution plan (e.g. operating costs required for an orderly wind down of a clearing house if necessary). Trigger for application of bail-in power in section 30AAZAB(3)(b): We suggest that there be greater statutory limitations on when the MAS may make a bail-in determination. We suggest the inclusion of a requirement that bail-in must be intended to achieve the long-term viability or financial soundness of the financial institution. In the case of a clearing house specifically, it will be important to consider the interaction of the clearing house's own recovery and resolution provisions or otherwise consider whether a clearing house should be expressly excluded from the definition of a Division 4A financial institution. New section 30AAZAC(10)(e): We suggest a carveout from this requirement in order to allow FMIs to exercise default management procedures. For the avoidance of doubt, ICSG takes its collateral by way of title transfer and would therefore not "<i>enforce security</i>" when applying collateral in a default scenario. However default management processes may constitute a "proceeding" under paragraph (c). In addition, we believe a clarification would generally be beneficial for FMIs. New section 30AAZAF: We suggest the use of "<i>shall</i>" in place of "<i>may</i>" in the first line. <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework. (Annex 7)</p>

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		<p>We have no comments in relation to this Question on the assumption that an exchange or clearing house will not be prescribed as a Division 5A financial institution.</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.(Annex 8)</p> <ul style="list-style-type: none"> Definition of “<i>Division 5B financial institution</i>”: We request that FMIs be specifically be excluded from this definition or that there be specific statutory guidance given in relation to new section 30AZHQ(1)(b) as to how a FMI may be levied in connection with its “<i>utilisation</i>” of a financial institution. <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>We have no comments in relation to this Question.</p>
9	International Swaps and Derivatives Association, Inc.	<p>General comments:</p> <p>In this response, similar to our approach in the 2015 Submission, we primarily address the issues that are relevant to derivatives markets – in particular, we have focused on the proposals relating to the following areas:</p> <ul style="list-style-type: none"> (a) bail-in; (b) temporary stay; (c) cross-border recognition of resolution actions; and (d) safeguards for netting and set-off arrangements. <p>We have also included comments on the other areas where we have received feedback from members.</p> <p>We thank the MAS for the opportunity to comment on the proposals set out in this Consultation Paper. Before going into our responses to individual questions, we would set out the following high level observations and comments in respect of the proposals as a whole, some of which were raised in our earlier submission.</p> <ul style="list-style-type: none"> (a) <i>Consequence of exercise of resolution powers</i>

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		<p>As a starting point, we would note that the FSB Key Attributes state that the objective of an effective resolution regime is to make feasible the resolution of FIs without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation. In particular, the FSB Key Attributes highlight that an effective resolution regime should, as one of its main objectives, ensure continuity of systemically important financial services and payment, clearing and settlement functions. We would submit that the MAS may consider the approach taken in the European Union's (EU) Bank Recovery and Resolution Directive (BRRD) and Hong Kong's Financial Institutions (Resolution) Bill (FIRB), which contain provisions on preservation of certain protected arrangements in case of partial transfers – these provisions serve to safeguard special arrangements such as collateralisation.</p> <p>We would welcome further clarity on the consequences of the MAS' exercise of its resolution powers in respect of counterparties to the FI under resolution. In particular, we would submit that an exercise of resolution powers (including the implementation of any temporary stay) should not, of itself, render an FI or a counterparty in breach of regulatory obligations such as exposure limits and loan to value (LTV) limits.</p> <p>For instance, exposures may shift following a transfer of business to another FI. Similarly, a partial transfer of business may result in transactions becoming under collateralised, if collateral is not transferred. A suitable remedy period should be provided to allow parties to take steps to remedy such technical breaches that arise solely as a consequence of an exercise of resolution powers.</p> <p>(b) <i>Expanding safeguards to include collateral rights</i></p> <p>We note that the policy discussions thus far and the proposed safeguards in Annex 8 of the Consultation Paper have centred around set-off and netting arrangements but have not touched on the issue of security interests that are entered into in connection with financial contracts that are part of set-off and netting arrangements. This raises a concern that the MAS' resolution powers, which include powers to issue directions, moratoriums and the power to stay, could (aside from their potential impact on set-off and netting) also</p>

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		<p>prevent or delay the enforcement of collateral rights. As the current proposed safeguards are silent on the treatment of collateral taken by way of a security interest, we would urge the MAS to review and expand the scope of the safeguards to protect such collateral arrangements.</p> <p>This issue cuts across not only existing collateral arrangements but also the industry's efforts to address the EU and United States (US) non-cleared margin requirements. The US requirements are expected to take effect from September 2016, with the EU to follow thereafter. The rules impose initial margin (IM) requirements that necessitate new documentation for transactions subject to IM. There is a requirement that IM must be segregated, which means the current English law ISDA Credit Support Annex (which provides for full title transfer instead of the creation of a security interest) will not be appropriate. The new IM documentation will therefore rely on the creation of a security interest, and the rules require that IM must be available to the posting counterparty in a "timely manner" should the collecting counterparty default.</p> <p>As such, the ability to enforce collateral in a timely manner becomes an issue of key importance. If there is a lack of clarity around the ability of collateral takers to do so, this could result in global systemically important banks (G-SIBs) having to book away from Singapore branches to avoid affecting global credit support arrangements.</p> <p>In light of the US non-cleared margin requirements taking effect from September 2016, as well as the revised timetable from the EU, there is particular urgency surrounding this issue and we would therefore like to request that the MAS prioritise its review of the proposals surrounding the safeguards, ideally with a view to amending the safeguards before September 2016. ISDA will also contact the MAS separately on this point.</p> <p>(c) <i>Remedies for breaches of safeguards</i></p> <p>We note that the proposed legislation is silent on the remedies for breaches of safeguards. As indicated in our response to the Policy Consultation, we would submit that the remedy for a breach of safeguards should be made clear and should not simply be subject to judicial review.</p> <p>For instance, in the case of a transfer, there is particular concern that the possibility that an action could be made void</p>

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		<p>would create substantial uncertainty as to the legal effect of the transferred business and contracts. The FSB Key Attributes have also highlighted that there should not be actions that could constrain implementation of resolution powers that result in a reversal of measures, and redress should primarily be by awarding compensation if justified. Accordingly, members have provided feedback that it should be clear that a breach of safeguards relating to transfers should not render the transfer void.</p> <p>(d) <i>Consequences of breaches of resolution tools</i></p> <p>We have received feedback that some members are concerned about the proposal to make breaches of certain elements of the new resolution tools (such as bail-in and recognition of foreign resolution actions) subject to criminal sanction, and have queried whether civil penalties would be a more appropriate response.</p> <p>(e) <i>Central Clearing Counterparties (CCPs)</i></p> <p>We note that the Consultation Paper includes certain points on CCP resolution and recovery. As you are aware, CCP resolution as well as CCP recovery give rise to different concerns from the resolution of FIs – for instance, with regards to resolution funding, there would need to be consideration of the interplay between resolution funding and the contributions that members of CCPs are already required to make under the CCP's rules. We would submit that these issues are complex and should be the subject of a separate consultation process, where they can be considered in depth. Our members are also supportive of a separate consultation process.</p> <p>ISDA, together with other trade associations, has made submissions in respect of the FSB consultation document on <i>Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions</i> and the CPMI-IOSCO consultative report, <i>Recovery of financial market infrastructures</i>, in which we discussed key principles</p>

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		<p>regarding financial market intermediary (FMI) recovery in detail.⁴¹</p> <p>In addition, ISDA has also published:</p> <ul style="list-style-type: none"> (i) a position paper on principles of CCP recovery⁴²; (ii) a position paper titled “CCP Default Management, Recovery and Continuity paper” in November 2014 that sets out a proposed recovery and continuity framework for CCPs⁴³; and (iii) a white paper on the resolution framework for systemically-important CCPs (together with The Clearing House)⁴⁴. <p>These may serve as a starting point to set out some of the issues involved in CCP resolution.</p> <p>We would also note that the FSB has stated in its November 2015 report to the G20 on <i>Removing Remaining Obstacles to Resolvability</i> that it will examine the need for, and may develop proposals for further guidance to support CCP resolvability and resolution planning and to enhance pre-funded financial resources and liquidity arrangements for CCPs in resolution. We believe that these proposals for further guidance would be a logical precursor to local implementation of resolution regimes for CCPs.</p> <p>We have also noted particular issues relating to the impact of resolution powers on FMI memberships in our response to question 3.</p> <p>(f) <i>Outstanding issues</i></p> <p>We note that there are a number of areas where regulations have not been proposed as yet. We look forward to the draft</p>

⁴¹ See response to the CPMI-IOSCO consultative report *Recovery of financial market infrastructures* (Oct. 11, 2013) and Response to FSB Consultation on *Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions* (October 15, 2013), available at <http://www2.isda.org/functional-areas/risk-management/page/2>

⁴² See <http://www2.isda.org/news/isda-launches-principles-on-ccp-recovery>

⁴³ See <http://www2.isda.org/news/isda-proposes-ccp-recovery-and-continuity-framework>

⁴⁴ https://www.theclearinghouse.org/~media/TCH/Documents/20160523_TCH_ISDA_White_Paper_Considerations_for_CCP_Resolution.pdf

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		regulations on these outstanding items and respectfully request that the MAS allow adequate time to comment on the supporting regulations.
10	KPMG Services Pte Ltd	<p>General comments:</p> <ul style="list-style-type: none"> The Consultation paper is largely consistent with what we have seen implemented by other jurisdictions, for example the UK. One area where the consultation paper is silent is on how MAS will interact and coordinate with other regulators in BAU times, as well as in times of crisis. The paper touches on Cross Border Recognition of Resolution Regimes, but is silent on broader interactions. With the G-SIB banks we have seen Crisis Management Groups (CMGs) being formed to allow regulators to discuss different jurisdictions' recovery plans, as well as overarching resolution strategies. These provide a useful channel of communication. MAS may want to consider this for locally headquartered D-SIB banks, to facilitate cross-regulatory communications. <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <ul style="list-style-type: none"> 30AAJB (4) – Under the recovery planning requirements, MAS may direct the pertinent financial institutions or insurer to implement arrangements or measure necessary to stabilise and restore the financial strength and viability of the institution. Can MAS provide examples of where they would use this power, including the types of measures they would look to use? 30 AAJC – In terms of requiring a financial institution or insurer to furnish any information or document that the Authority may require for resolution planning, is MAS planning on providing templates for submission of data to the regulator similar to in other jurisdictions. In the UK, the PRA has provided a number of templates which help firms to submit this data to the regulator. Such templates would be helpful in Singapore, as the range, complexity and volume of data required is significant. In the guidelines, further information is provided on the data types; more granular information could be furnished as part of a template.

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S/N	Respondent	Full Response from Respondent
		<p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <ul style="list-style-type: none"> The Notice and Guidelines are only currently applicable for Banks, will they be rolled out more broadly to financial institutions e.g. insurers over time? Part IVA of the MAS Act applies to pertinent financial institutions and insurers. The Notice states that recovery actions should be capable of being executed within a reasonable timeframe. Generally recovery actions are those which should be capable of being undertaken within a three to six month timeframe. Is this the timeframe MAS is considering as acceptable for recovery actions to be taken? The Notice requires that the bank should appoint an executive officer as the key person to oversee the recovery planning process. Does MAS have a particular executive officer in mind to assume this role? In some banks this role has been assumed by the Chief Risk Officer, and in others it sits in the finance function. The notice talks about being able to maintain systems which can produce the data in a timely manner. Will this be linked to the overall enhancements of systems required under BCBS 239 – currently applicable to the D-SIB banks? The Guidelines state that the recovery and resolution planning process is designed to be iterative. What is the expectation from MAS in terms of the first submission once the rules become effective. Paragraph 13 of the Guidelines refers to stress scenarios that are sufficiently severe to threaten the going concern and survivability of the bank and its group. For foreign incorporated groups, this may provide a challenge for the subsidiaries to produce. The group head office will have to be heavily involved, and there may be challenges over the sharing of data. Paragraph 17 of the Guidelines refers to the timelines required to execute an action. It is important that Banks consider any mandatory timelines which must be met, either through Regulatory Approvals or Listing requirements. In the section on Recovery Options, the Guidelines are silent on preparedness. In other jurisdictions it is common for

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		<p>regulators to ask banks to take steps to prepare for the potential execution of management actions. This could include the preparation of documentation in advance, or talking to key stakeholders on potential actions which might be required. The intention being, that should the bank need to take the recovery action steps have already been taken to try and expedite the process.</p> <ul style="list-style-type: none"> • In the section on Resolution planning – MAS describes the type of information which will be required from banks. Will MAS be providing a template for collation and submission? • The Guidelines are silent on whether MAS will share the contents of the resolution plan with banks. In other jurisdictions, regulators are not required to share the resolution plan with the banks, but may choose to discuss the resolution strategy with the senior management to aide understanding and test hypotheses on how resolution of that particular entity may occur. • When considering the information on critical shared services, will MAS be expecting information on the service level agreements, for example key provisions, who owns the relationship with service providers and the circumstances under which the contract would terminate. This will aide banks with the identification of which contracts will require additional provisions preventing termination from being triggered by recovery or resolution events. • The Guidelines include a requirement for banks to maintain a system outlining all relevant information in respect of specific financial contracts, which would allow for the identification of relevant information at any point time. This will likely be a significant undertaking for most industry players due to the number of contracts in place. • Paragraph 41 of the Guidelines states that the underlying contracts should include provisions preventing termination; this will likely involve the re-negotiation of a number of contracts, and will likely come at a commercial cost. <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <ul style="list-style-type: none"> • No comments

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		<p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <ul style="list-style-type: none"> 30AAZAB – (5) The Authority may, before making a determination, appoint one or more persons to perform an independent assessment of whether instruments should be bailed in. It is not clear under what circumstances MAS would obtain an independent assessment, who is qualified to undertake the independent assessment and how long do they have to complete the assessment and provide a response. <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <ul style="list-style-type: none"> No comments <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <ul style="list-style-type: none"> No comments <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <ul style="list-style-type: none"> No comments <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <ul style="list-style-type: none"> No comments
11	LCH.Clearnet Group Limited	<p>General comments:</p> <p>LCH.Clearnet Group Limited (“LCH” or “The Group”) is pleased to respond to the Monetary Authority of Singapore (“MAS”) consultation paper on proposed legislative amendments to enhance the resolution regime for financial institutions in Singapore.</p> <p><u>LCH overview</u></p>

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		<p>LCH⁴⁵ is a leading multi-asset class and international clearing house, serving major international exchanges and platforms as well as a range of OTC markets. It clears a broad range of asset classes including securities, exchange-traded derivatives, commodities, energy, freight, foreign exchange derivatives, interest rate swaps, credit default swaps and euro, sterling and US dollar denominated bonds and repos. LCH works closely with market participants and exchanges to continually identify and develop innovative clearing services for new asset classes. LCH is majority owned by the London Stock Exchange Group, a diversified international exchange group that sits at the heart of the world's financial community.</p> <p>LCH.Clearnet Limited ("LCH Ltd") is recognised as a Recognised Clearing House in Singapore pursuant to the Securities and Futures Act, in respect of the SwapClear, ForexClear and EnClear (Freight Division) services.</p> <p><u>LCH position</u></p> <p>As a multi-asset class and international clearing house, LCH has a direct interest in the recovery and resolution frameworks that exist or are under development in each of the jurisdictions in which it does, or may, operate. The Group strongly supports MAS's goal of strengthening resiliency in the derivatives market by enhancing the resolution regime for financial institutions in Singapore.</p> <p>LCH continues to be fully supportive of the G20 commitment to promote financial stability and reduce systemic risk in the OTC derivatives markets through the increased use of central counterparties. We recognise that implementing an effective resolution regime for clearing houses and other financial institutions is vital in preserving confidence in the financial markets and clearing, and in the ability of clearing houses to effectively manage market risks. Given the importance of the G20 objectives, we believe it is imperative that international regulatory and capital rules do not, whether directly or indirectly, damage the effectiveness of a CCP's default management processes and increase the risk of contagion to other market participants following a clearing member default.</p>

⁴⁵ LCH.Clearnet Group Limited consists of three operating entities: LCH.Clearnet Limited, the UK entity, LCH.Clearnet SA, the Continental European entity, and LCH.Clearnet LLC, the US entity. Link to Legal and Regulatory Structure of the Group: http://www.lchclearnet.com/about_us/corporate_governance/legal_and_regulatory_structure.asp

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		<p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p>We recommend that the final rules include an explicit exemption for those recognised clearing houses which already comply with the obligation to have a recovery plan in place under their home jurisdiction. For example, LCH Ltd already maintains a recovery plan under UK statutory requirements and reviews it regularly as required by the Bank of England to ensure it remains relevant to LCH's operations. The requirement for foreign recognised clearing houses to comply with both home and host recovery plans would seem disproportionate and unnecessarily complex.</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p>We have no comments on this question.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p>In order to promote the effectiveness of CCPs' default rules and to recognise their importance in the reduction of systemic risk and risk contagion in the financial markets, it is important to ensure that a CCP is an "excluded party" under the proposed section 30AAZAJ(b) of the MAS Act. We therefore strongly encourage the MAS to make a regulation under section 30AAZN(f) of the MAS Act to exempt CCPs from the temporary stay on termination rights in the proposed section 30AAZAI of the MAS Act. Please also refer to our explanation under Question 4 below on the importance of the continued application of a CCP's default rules in respect of a clearing member in resolution.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p>In order to promote the effectiveness of CCPs in the reduction of systemic risk and risk contagion in the financial markets, it is important to ensure that all liabilities arising from cleared derivatives are excluded from resolution authorities' bail-in powers.</p> <p>Including cleared derivatives in the bail-in tool would have serious (and highly undesirable) consequences on to the effectiveness of a CCP's default management procedures. If a clearing member defaults, and its contracts with the CCP are subject to bail in, the CCP would be prevented from defaulting the member and/or</p>

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		<p>liquidating the defaulter's positions. In such circumstances, the CCP would not be able to re-establish a matched book, which would increase risk contagion to other market participants.</p> <p>We note that MAS intends to exempt secured liabilities from the bail in tool, as set out in paragraph 3.10 of the consultation paper. In our view, this exemption would cover liabilities owed by a clearing member to the CCP because such liabilities are secured by margin and default fund contributions. For certainty, however, we would encourage the MAS to clarify in secondary legislation to be adopted under section 30AAZN of the MAS Act that liabilities owed to CCPs are exempt from the bail in regime in the proposed section 30AAZAB of the MAS Act.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p>We support the proposal to establish a recognition process under which effect can be given to foreign resolution actions. We agree it is important for host authorities to cooperate with foreign resolution authorities in the context of resolution of cross-border CCPs.</p> <p>Another important initiative for cross-border CCPs is the establishment of Crisis Management Groups (CMGs), which are considered in the FSB Key Attributes. CMGs will facilitate dialogue and discussion between the relevant supervisors, central banks and other public authorities. However, we believe that the decision making in respect of a particular entity or group should ultimately reside with a single resolution authority, which in our view should be the resolution authority of the jurisdiction in which the institution is established. This is on the basis that the home resolution authority will be most familiar with the CCP's operations and will be able to act decisively.</p> <p>We agree that it is important for key domestic and cross-border counterparts to have information sharing arrangements agreed in advance, and ideally to have tested these as part of a crisis management exercise (if possible, with the participation of the relevant FMI).</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p>We have no comments on this question.</p>

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S/N	Respondent	Full Response from Respondent
		<p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>We have no comments on this question.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>We strongly support the amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 that provide for broad protections to ensure that set-off and netting arrangements will not be affected by the exercise of resolution powers under the MAS Act, including in respect of transactions cleared on an approved clearing house.</p>
12	Linklaters Singapore Pte Ltd	<p>General comments:</p> <p>We generally welcome these draft amendments which will give the Monetary Authority of Singapore (“MAS”) additional powers to further align the Singapore resolution regime with the Financial Stability Board’s (“FSB”) “Key Attributes”, as set out in the FSB’s paper on Key Attributes of Effective Resolution Regimes for Financial Institutions dated 15 October 2014 (the “Key Attributes Paper”).</p> <p><i>Rationalisation of the MAS’ recovery and resolution powers:</i></p> <p>As an overarching note, we submit that now may be an opportune moment to rationalise the MAS’ existing recovery and resolution powers (further explained below) contained in the Monetary Authority of Singapore Act (Cap. 186) (“MAS Act”) and the institution-specific statutes and their application to financial institutions, as well as granting the new powers as proposed. A rationalisation would ensure that the full suite of the MAS’ recovery and resolution powers are coherent, which will in turn promote greater legal certainty.</p> <p>In this connection, we note the following with respect to the MAS’ existing recovery and resolution powers:</p> <ul style="list-style-type: none"> • The MAS’ resolution powers, as set out in Divisions 2, 3 and 4 of Part IVB of the MAS Act, apply in relation to “pertinent financial institutions”. “Pertinent financial institutions”, as defined in Section 30AAK of the MAS Act, read together with regulation 8 of the Monetary Authority of Singapore (Control

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		<p>and Resolution of Financial Institutions) Regulations 2013 (“MAS(CR)R”), appears to be similar to the entities identified in paragraph 2.2 of the MAS’ Consultation Paper on the Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore (23 June 2015) (the “2015 CP”). However, the definition of “pertinent financial institutions” under regulation 8 of the MAS(CR)R does not, as currently drafted, include insurers licensed or otherwise regulated under the Insurance Act (Cap. 142) (“IA”).</p> <ul style="list-style-type: none"> • Division 1 of Part IVB of the MAS Act has a broader application to “specified financial institutions” which is defined in Section 30AAK to mean a “pertinent financial institution” or an “excluded financial institution”. “Excluded financial institutions”, as defined in Section 30AAK read together with regulation 7 of the MAS(CR)R, includes insurers licensed or otherwise regulated under the IA. • The MAS also has recovery or early intervention powers under Part IVA of the MAS Act. However, Part IVA applies to “relevant financial institutions” which is more limited (defined to mean merchant banks and financial holding companies⁴⁶). • In addition, the MAS has certain recovery or early intervention powers under Part VII of the Banking Act (Cap. 19) (“BA”) (specifically sections 48A to 53). Analogous provisions are found in the statutes applicable to the other “pertinent financial institutions”: <ul style="list-style-type: none"> ○ Part VI of the Finance Companies Act (Cap. 108); ○ Part IIIA of the Trust Companies Act (Cap. 336); ○ Part VI of the Payment Systems (Oversight) Act (Cap. 222A); and ○ The following provisions under the Securities and Futures Act (Cap. 289): <ul style="list-style-type: none"> ▪ Part II Division 4 in relation to approved exchanges and recognised market operators;

⁴⁶ Per section 30AA(2) of the MAS Act, read together with regulation 3 of the MAS(CR)R.

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		<ul style="list-style-type: none"> ▪ Part IIA Division 4 in relation to licensed trade repositories and licensed foreign trade repositories; ▪ Part III Division 5 in relation to approved clearing houses and recognised clearing houses; ▪ Part IIIA Division 2 in relation to approved holding companies; ▪ Part IV Division 1 in relation to holders of capital markets services licences; and ▪ Part XIII Division 2 Sub-division (2) in relation to trustees of collective investment schemes. <ul style="list-style-type: none"> • Apart from Division 1 of Part IVB of the MAS Act, the MAS' recovery and resolution powers over insurers are found in Division 3 of Part III and Part IIIAA of the IA. <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <p><u>General notes</u></p> <p>We welcome these draft amendments to grant the MAS powers to impose RRP requirements on certain notified "pertinent financial institutions" and insurers. We note that the policy intent behind the introduction of the RRP regime is to, amongst other objectives, reduce the risks posed by a financial institution to the stability of the Singapore financial system and to ensure the continuity of critical functions to the Singapore economy. This is consistent with the approach to subject only those financial institutions that are considered to be systemically important or that maintain critical functions in Singapore to the RRP requirements (e.g. domestic systemically important banks ("D-SIBs")). This is in line with the principles set out by the FSB in Key Attribute 11.1 (i.e. jurisdictions should have in place a recovery and resolution planning process which covers, at a minimum, domestically-incorporated firms that could be systemically significant or critical if they fail), as set out in the Key Attributes Paper.</p> <p>We particularly agree with the MAS' approach under the proposed section 30AAJB(3), pursuant to which the MAS will be able to require changes to the RRP if the RRP prepared by the financial institution is not satisfactory. This is in accordance with the recommendation in Key Attribute 11.12, and it is a crucial power to</p>

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		<p>ensure that robust and effective RRP are drawn up by all notified “pertinent financial institutions” and insurers.</p> <p><u>Current scope of Part IVA of the MAS Act</u></p> <p>We note the proposal of the MAS to incorporate the new RRP requirements into Part IVA of the MAS Act, and note that the RRP requirements appear to be intended to apply to “pertinent financial institutions” and insurers, pursuant to paragraph 2.2 of the 2015 CP. However, Part IVA, as currently drafted, applies to “relevant financial institutions” which, as explained above, is a narrower concept than “pertinent financial institutions”. If the MAS does intend the RRP requirements to apply to “pertinent financial institutions” and insurers, appropriate amendments will need to be made to Part IVA to incorporate the relevant definitions.</p> <p><u>Individual responsibility and liability</u></p> <p>We also note our support for the decision of the MAS not to introduce additional penalties for individuals⁴⁷, in light of the existing power under section 28B of the MAS Act to attribute secondary liability to the officers (which includes directors and executive officers) of a financial institution. We do not think that this decision is contrary to Key Attribute 11.4, which recommends that the senior management of a financial institution should be responsible for providing the necessary input into the RRP. However, as the MAS will issue a new Notice and set of Guidelines⁴⁸, MAS could consider incorporating into the Notice or Guidelines a statement that senior management is responsible for providing input. We also discuss this further below, in our response to question 2.</p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p><u>General notes</u></p> <p>We are supportive of the draft Notice and Guidelines, as they provide clarity on the specific requirements which will apply to licensed banks which have been notified by the MAS (i.e. those licensed banks which are notified as being required to comply with</p>

⁴⁷ As explained in paragraph 2.13 of the MAS’ Response to Feedback Received on the Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore (29 April 2016).

⁴⁸ The draft Notice and Guidelines set out in the CP apply only to banks notified by the MAS.

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		<p>the new RRP requirements). We note that the requirements and expectations set out in the draft Notice and Guidelines are broadly in line with the expectations set out in Key Attribute 11, read together with Appendix I – Annex 4 (<i>Essential Elements of Recovery and Resolution Plans</i>) of the Key Attributes Paper.</p> <p>As noted above, the MAS’ proposed RRP powers (set out in the proposed Division 2 of Part IVA of the MAS Act) will apply to “pertinent financial institutions” and insurers – we therefore assume that similar industry-specific notices and guidelines will be issued by the MAS at a later date, to provide guidance in respect of the RRP requirements and expectations which will apply to each respective class of financial institution (e.g. financial holding companies, merchant banks, finance companies and insurers).</p> <p>We also agree with the MAS’ approach to allow foreign banks⁴⁹ to leverage on the head office’s or group’s recovery plan, on the condition that these plans will adequately cover and address the Singapore operations of the foreign bank. This takes into account the nature of the banking industry in Singapore, which, in addition to local banks (e.g. United Overseas Bank), is populated by branches, offices and subsidiaries of foreign banks (e.g. Standard Chartered Bank), which will benefit from the ability to leverage on their respective group RRPs, which will, in practice, likely be formulated at the bank’s head office, in compliance with the RRP requirements of the jurisdiction where the head office is located⁵⁰. We are also supportive of the inclusion of foreign owned banks which are incorporated in Singapore within the definition of “foreign banks”, as this provides some consistency in the approach.</p> <p>We note that Appendix 1 – Annex 4 of the Key Attributes Paper sets out the various expectations for RRPs, and that such expectations are relatively prescriptive, in comparison to the slightly more general approach taken by the MAS (particularly as regards the content requirements for recovery plans, as proposed at Part III of the Guidelines). In particular, the FSB recommends that both the recovery and resolution plans should include a high-level substantive summary of the key recovery and resolution strategies⁵¹, as such a summary may assist to facilitate the expedient</p>

⁴⁹ The definition of “foreign bank”, as set out in the Guidelines, includes a foreign owned bank which is incorporated in Singapore.

⁵⁰ If this is an FSB jurisdiction (e.g. an EU member state), then the requirements will likely be broadly similar.

⁵¹ Please see paragraph 2.2 of Appendix 1 – Annex 4 of the Key Attributes Paper.

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		<p>execution of the recovery plan. Ideally, such a substantive summary should include:</p> <ol style="list-style-type: none"> 1) the identification of the bank's essential and systemically important functions; 2) a description of the critical measures to implement the key recovery and resolution strategies and an assessment of potential impediments to the successful implementation of the strategies; and 3) any material changes or actions taken since the last RRP which the bank had submitted to the MAS. <p>We would therefore submit that the MAS may wish to consider introducing into the Notice and/or Guidelines a requirement for RRP to include a substantive summary, broadly covering the areas noted above. On a more general note, the MAS may wish to consider making the content requirements for recovery plans, as set out in Part III of the draft Guidelines, more prescriptive in accordance with Appendix 1 – Annex 4 of the Key Attributes Paper.</p> <p><u>Individual responsibility and liability</u></p> <p>As noted above, the MAS may wish to consider incorporating into the Notice or the Guidelines an expectation that the senior management of a financial institution will provide the necessary input to the MAS in respect of the assessment of the recovery plan and the preparation of resolution plans. This would not create any additional individual liability (an approach that we agree with), but would clarify the expectations upon senior management.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p> <p><u>Key Attributes</u></p> <p>Key Attribute 4.2 stipulates that subject to adequate safeguards and provided the substantive obligations under the contract (which should include payment and delivery obligations and the provision of collateral) continue to be performed, contractual termination and set-off rights which would be triggered by the entry into resolution or the exercise of resolution powers can be over-ridden.</p> <p>Key Attribute 4.3 goes on to provide that should such contractual termination and setoff rights nevertheless remain exercisable in such circumstances, resolution powers should include the power to</p>

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		<p>impose a temporary stay on their exercise. Key Attributes 4.3 and 4.4, and the related FSB guidance in Appendix I – Annex 5 (<i>Temporary stay on early termination rights</i>) of the Key Attributes Paper set out the conditions which should apply when a temporary stay of the exercise of termination rights is imposed.</p> <p>We note that the proposed Division 4B of Part IVB is intended to implement Key Attributes 4.2 to 4.4.</p> <p><u>BRRD</u></p> <p>We note that the suspension powers granted under the EU Bank Resolution and Recovery Directive (Directive 2014/59/EU) (“BRRD”) are broader than those set out in Key Attribute 4.3. In addition to the suspension of the termination rights of any party to a contract with an institution under resolution (Article 71 BRRD), the BRRD requires that EU resolution authorities have powers to:</p> <ul style="list-style-type: none"> (a) suspend any payment or delivery obligation pursuant to any contract that the institution under resolution is a party to (Article 69 BRRD); and (b) restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution (Article 70 BRRD). <p><u>General comments</u></p> <ul style="list-style-type: none"> • <i>Over-riding and suspension of contractual rights:</i> Key Attributes 4.2 and 4.3 stipulate that contractual rights can be over-riden and suspended insofar as such rights are triggered by the entry into resolution or the exercise of resolution powers. However, the “specified power” defined in the proposed Division 4B of Part IVB includes recovery or early intervention powers as well as resolution powers. We recognise that the line between recovery and resolution powers is a fine one. We agree that there is at least as much (if not more) justification for disrespecting the sanctity of contractual rights to ensure the recovery of a distressed financial institution (versus its orderly resolution). The policy decision should, however, be enunciated and clearly communicated. • <i>Scope of suspension powers:</i> Key Attribute 4.3 is confined to the suspension of termination rights. BRRD is broader and extends to the suspension of payment and delivery obligations and the enforcement of security interests. We

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		<p>note that the MAS' proposed powers under this section would also be limited to the suspension of termination rights (thus aligning with Key Attribute 4.3), but nevertheless we urge that a policy decision be enunciated and clearly communicated.</p> <ul style="list-style-type: none"> <p><i>Safeguards:</i> Key Attribute 5 requires safeguards not only in relation to suspension powers but in relation to the exercise of resolution powers generally. As part of the rationalisation of the MAS' recovery and resolution powers (as suggested in our overarching general comments above), we would encourage a holistic approach to the safeguards regime. We believe that the key principles are as follows:</p> <ul style="list-style-type: none"> <p><i>Over-riding of rights:</i> Only insofar as the trigger is the entry into resolution or the exercise of recovery or resolution powers.</p> <p><i>Suspension of rights:</i> Strictly time-limited (no more than 2 business days – see a further note on this point below).</p> <p><i>Transfers:</i> No “cherry-picking”. Must include transfer of collateral.</p> <p>No party worse-off than in liquidation of the financial institution.</p> <p><i>Remedies:</i> Actions taken in breach of the safeguards should be void (and only in exceptional situations should compensation in lieu be available).</p> <p><i>Time-limitation of suspension:</i> We note that, under the proposed section 30AAZAI(3) of the MAS Act, the temporary stay can commence either on the date of the publication of the relevant notification in the <i>Gazette</i>, or at some other date that the MAS may specify. This discretion reduces the legal certainty of the duration of the stay. We note that the equivalent provisions of the BRRD (Articles 69(1), 70(1) and 71(1)) are more closely aligned with Key Attribute 4.3(i), as they set a definitive time for the commencement of the stay (i.e. the publication of a prescribed notice). Furthermore, we note that the MAS' power of temporary stay may extend to three business days under the proposed section 30AAZAI (e.g. a notice published in the <i>Gazette</i> on Monday morning would not expire until 23.59 on Wednesday). This is longer than temporary stays under the BRRD, which expire at midnight at</p>

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		<p>the end of the business day following publication of the prescribed notice.</p> <ul style="list-style-type: none"> Contractual “<i>hard-wiring</i>” of exercise of suspension powers: We note the proposed amendments to section 30AAZN of the MAS Act empower the passing of regulations requiring the financial institution concerned to include into specified contracts a provision whereby the counterparty agrees to be bound by the exercise of suspension powers by the MAS. We recognise that this step is in line with the FSB’s Principles for Cross-Border Effectiveness of Resolution Actions dated 3 November 2015 (the “Cross Border Principles”). However, we urge that a consultation with market participants be carried out before the MAS issues any such regulations. We would raise for consideration the approach taken in the UK which provides for a Code of Practice and the establishment of a Banking Liaison Panel. <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p> <p><u>General notes</u></p> <p>We are supportive of these draft amendments to give the MAS powers to (1) write down or convert into equity, all or part of unsecured subordinated debt and loans issued or contracted after the introduction of the bail-in provisions; and (2) bail-in certain types of instruments.</p> <p>We note that the bail-in regime is broadly aligned with Key Attributes 3.5 and 3.6. We note that the policy intention is for the classes of financial institutions that are subject to the statutory bail-in regime (which will be prescribed in regulations issued by the MAS) to be limited to Singapore-incorporated banks and bank holding companies. We think that this is broadly in line with the thrust towards introducing and refining the resolution regime for banks as an initial step, as, in particular, the D-SIBs are financial institutions which have been assessed to have a significant impact on the stability of the Singapore financial system and proper functioning of the broader Singapore economy. As international thought is not as far developed for bail-in of non-bank financial institutions, we agree with the MAS’ approach of limiting the scope to Singapore-incorporated banks and bank holding companies for the time being.</p> <p><u>Scope of instruments</u></p>

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		<p>We agree with limiting the scope of the bail-in powers to unsecured subordinated debt and unsecured subordinated loans, although we would request further clarity regarding the precise definition of “eligible instrument”, as this will be crucial to the effectiveness of the new bail-in powers. For example, the MAS may wish to consider the position in relation to under-secured debt or loans, and whether the undersecured portion of such instruments should be available for bail-in. We would submit that the best approach would be to define “eligible instruments” broadly (e.g. to include unsecured portions of instruments as eligible for bail-in). This approach will give the MAS flexibility in exercising its proposed bail-in power.</p> <p>Furthermore, we understand the rationale of the MAS’ proposal to not specifically define out-of-scope instruments. However, we would submit that greater legal certainty would be achieved by listing upfront those instruments which the MAS will definitely exclude in all cases, whilst stating explicitly that the list is non-exhaustive. Such an approach would facilitate the catch-all that the MAS appears to intend, whilst achieving greater legal certainty.</p> <p>We also seek further clarification on the limitation of bail-in powers to instruments issued or contracted after the effective date of the legislation. Such a restriction may lead to certain unintended loopholes (e.g. debt arising under a master framework agreement, or contingent liabilities arising from an agreement pre-dating the legislation). As far as we are aware, this limitation has not been adopted in Europe, and could severely limit the effectiveness of the MAS’ bail-in powers. The MAS may therefore wish to reconsider whether to limit the scope of bail-in in this manner. If the MAS intends to retain this limitation, we would request further guidance in relation to how certain liabilities (such as debt arising from a master framework agreement) will be treated.</p> <p>The limitation of the scope of instruments to unsecured subordinated debt and unsecured subordinated loans consequentially means that the statutory hierarchy of creditors will be protected (as secured debt and senior debt simply cannot be bailed in), which is in accordance with the recommendation of Key Attribute 3.5. We are also supportive of the proposed section 30AAZAF(1), which explicitly sets out that the MAS will respect the statutory hierarchy of creditors.</p> <p><u>Contractual recognition and disclosure</u></p> <p>We agree with the MAS’ proposals and decisions in respect of contractual recognition and disclosure, which are in accordance with the Cross Border Principles. In particular, we note that:</p>

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		<ul style="list-style-type: none"> the core proposal to require contractual recognition for liabilities which are governed by the law of a jurisdiction outside Singapore, but which fall within the scope of the MAS' bail-in powers, is consistent with Principle 9(a) of the Cross Border Principles; the proposal to require banks to obtain a reasoned legal opinion as to the enforceability of bail-in by the MAS is consistent with Principle 9(d) of the Cross Border Principles. Requiring such an opinion (rather than merely relying on the assumption that a financial institution would receive independent legal advice when entering contracts) will promote legal certainty, which is essential in the cross-border recognition of bail-in; and the proposal to require banks to prominently disclose bail-in consequences to creditors is consistent with Principle 9(c) of the Cross Border Principles. We look forward to the MAS consulting further on the details of such disclosure requirements. <p>We assume that the proposed Section 30AAZAE is intended to empower the MAS to make regulations to require contractual recognition of bail-in and the associated legal opinion and disclosure requirements. We request that this be made more explicit.</p> <p>We also request that the MAS consider certain lessons from the BRRD approach to the contractual recognition of bail-in. In particular, we note that:</p> <ul style="list-style-type: none"> the range of liabilities to which the obligation to include bail-in language applies should be clearly defined and limited. Principle 9 of the Cross Border Principles envisages contractual bail-in provisions of debt instruments, whereas Article 55 BRRD can apply to any liability. This broad scope has caused considerable confusion and uncertainty in the EU, and so we would recommend that the MAS take a position with greater legal certainty; a <i>de minimis</i> limit on liabilities should be considered. Such a limit was not included in Article 55 BRRD, which led to the UK introducing temporary waivers where compliance with contractual bail-in provisions would be "impracticable". We would suggest that, without a <i>de minimis</i> limit on these contractual recognition provisions, the compliance burden for financial institutions will be too onerous. A prescribed <i>de</i>

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		<p>minimis limit would also be beneficial from a legal certainty standpoint; and</p> <ul style="list-style-type: none"> it may be useful if the MAS could provide further guidance on how the contractual recognition clause should be drafted. In this respect, the MAS could consult various industry body templates relating to Article 55 BRRD, such as the Loan Syndications & Trading Association (LSTA), the International Swaps and Derivatives Association (ISDA), the Association for Financial Markets in Europe (AFME) and the International Capital Market Association (ICMA). <p><u>Exemption for significant shareholder approvals</u></p> <p>We are supportive of the proposed section 30AAZAD of the MAS Act, which exempts persons who become significant shareholders of a bank by virtue of the MAS' exercise of bail-in powers from requiring certain approvals. This exemption is necessary to ensure that bail-in can occur smoothly and expediently, and so we look forward to the MAS issuing further regulations regarding the important definition of "significant shareholder", and would suggest that this should be defined at the lowest level of shareholding that could potentially trigger a requirement for MAS / ministerial approval.</p> <p><u>Safeguards</u></p> <p>We appreciate the need for the MAS and the Minister to be granted broad discretion as to the circumstances in which the bail-in powers should be exercised. We also note that the proposed Section 30AAZAF attempts to provide guidance on the factors that will be considered by the MAS in deciding whether or not to exercise its powers. Nevertheless, we would ask the MAS to consider the adoption of a Code of Practice and the establishment of a Banking Liaison Panel (as the UK has done) as this may give market participants greater assurance and confidence as to the transparency and predictability of the process.</p> <p>The proposed Section 30AAZAD(6) and (7) empower the Minister to serve a written notice of objection on a significant bail-in shareholder and to require such shareholder to take steps to ensure that he ceases to be such within a reasonable period. Failure to comply is an offence under the proposed Section 30AAZAD(8), which carries severe penalties, including imprisonment. Given that the significant bail-in shareholder became such through compulsion and not through choice, these provisions are onerous. As such, we submit that more explicit guidance is called for.</p>

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		<p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p> <p><u>General notes</u></p> <p>We welcome these draft amendments to give a statutory basis to the circumstances under which the MAS may recognise a foreign resolution action. We note that the MAS already possesses broad powers to support foreign resolution actions (by exercising its powers under Divisions 1-4 of Part IVB of the MAS Act, and by providing assistance in accordance with Division 5 of Part IVB of the MAS Act). Key Attribute 7.1 recommends that the statutory mandate of a resolution authority should “empower and strongly encourage” such authority to take action to achieve a cooperative solution with foreign resolution authorities. Key Attribute 7.5 goes on to provide that this can be achieved by mutual recognition or supportive measures. Broadly, we think that the proposed amendments make progress towards achieving this recommendation.</p> <p>Key Attribute 7.5 recommends that the use of recognition powers should be provisional upon the foreign resolution action treating all creditors equitably, which is echoed in Principle 4 of the Cross Border Principles. We therefore support the proposed amendments in making the recognition of a foreign resolution action conditional upon the equitable treatment of Singapore creditors in comparison to foreign creditors.</p> <p>Expeditiousness is the second key tenet of Key Attribute 7.5, and Principle 5 of the Cross Border Principles specifically recommends that recognition processes be expedited. In light of this, we support the decision of the MAS to draft the amendments as an administrative process, where the determination of the MAS need only be approved by the Minister, which will generally be more expeditious than requiring the involvement of the courts.</p> <p><u>Conditionality of recognition</u></p> <p>Principle 2 of the Cross Border Principles provides that a statutory recognition process should give the resolution authority the legal capacity to recognise a foreign resolution action, whilst being subject to clearly specified conditions. We note that the draft amendments do set out clearly specified conditions under the proposed section 30AAZHA(2).</p>

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		<p>Principle 3 of the Cross Border Principles recommends that grounds for refusing to recognise a foreign resolution should be “clearly defined” and be limited to cases where the foreign resolution action would:</p> <ul style="list-style-type: none"> (a) have adverse effects on local financial stability; (b) contravene local public policy; or (c) have material local fiscal implications. <p>Whilst these conditions are specified in the proposed section 30AAZHA(2), the MAS’ grounds for refusing to recognise a foreign resolution action go further, and incorporate a discretionary element. Under the proposed sections 30AAZHA(2)(c) and (d), the notions of “national interest”, “public interest” and “material fiscal implications” are broad and afford the MAS considerable discretion, whilst under the proposed section 30AAZHA(2)(e), the MAS is empowered to prescribe any other condition for the recognition of a foreign resolution action. Furthermore, the Minister ultimately has absolute discretion as to whether to approve, approve with modifications, or refuse to approve the recognition determination by the MAS⁵². Whilst we can understand that the MAS is not in favour of a fully automatic recognition procedure (which would in any case be subject to precisely defined conditions), the level of discretion contained in the proposed amendments may generate legal uncertainty as to whether foreign resolution actions will be recognised, and delay if the need to recognise a foreign resolution action does arise. We would recommend that the MAS should consider removing, or further limiting by way of defined conditions, the discretionary element of the recognition process.</p> <p>Additionally, we note that the MAS has a general discretion by virtue of the proposed use of the word “may” in the proposed section 30AAZHA. In contrast, the UK’s Banking Act 2009 (“UKBA”) allows the regulator to refuse to recognise a thirdcountry resolution action only if certain conditions are fulfilled (section 89H UKBA). Given the broad discretion afforded to the MAS by considerations of “public interest”, as explained above, we would submit that the MAS should at the minimum consider amending the word “may” to “must” in the proposed section 30AAZHA to give greater legal certainty to this provision.</p>

⁵² Proposed section 30AAZHA(5).

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		<p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p> <p><u>General notes</u></p> <p>Key Attribute 5.2 recommends that creditors should have a right to compensation under the principle of “no creditor worse-off than under liquidation” (“NCWOL”). We note the proposed amendments are, rightly, based upon this NCWOL principle.</p> <p>Key Attribute 5.1 recommends that, in general, resolution powers should be exercised in a way that respects the statutory hierarchy of claims, whilst providing the flexibility to depart from that hierarchy. We generally welcome the proposed amendments in relation to the creditor compensation framework, together with the MAS’ statement that they do intend to generally respect the statutory hierarchy of creditor claims⁵³.</p> <p><u>Transparency</u></p> <p>Key Attribute 5.1 recommends that there should be transparency when departing from the principle of <i>pari passu</i> treatment of creditors of the same class, as regards the reasons for such departure. The proposed amendments do not impose any transparency requirements, but rather set out the “triggers” for creditor compensation as the exercise by the MAS of the following resolution powers:</p> <ul style="list-style-type: none"> • compulsory transfer of business; • compulsory transfer of shares; • compulsory restructuring of share capital; and • when enacted, the MAS’ bail-in powers. <p>In order to fully adhere to Key Attribute 5.1, we would suggest that the MAS consider incorporating an obligation in the event that <i>pari passu</i> treatment of creditors of the same class is not possible, whereby the MAS should inform those worse-off creditors as to why they were treated differently. Such a statement could feasibly be incorporated into the valuation report, required under the</p>

⁵³ See paragraph 8.2 of the 2015 CP.

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		<p>proposed section 30AAZHJ of the MAS Act. However, we recognise that respecting the NCWOL principle is not the same as ensuring the <i>pari passu</i> treatment of creditors of the same class (as certain creditors may, in certain circumstances, become better off than others, whilst all remain no worse-off than under liquidation). The more fundamental consideration is respecting the NCWOL principle, which the draft provisions attempt to achieve.</p> <p><u>Triggers for creditor compensation</u></p> <p>We note that the proposed “triggers” for creditor compensation do not include the exercise by the MAS of its powers to impose a temporary stay on certain contracts (pursuant to the draft amendments to Division 4B of Part IVB of the MAS Act). The MAS may wish to consider including temporary stays as a trigger event, as it is conceivable that a creditor could become worse-off as a result of market shifts resulting from the temporary stay itself. We appreciate that an assessment of the creditor’s loss in these circumstances may be difficult to compute, but this does appear to be a circumstance where a creditor could be worse-off as a direct result of the MAS exercising resolution powers, and therefore should be included as a trigger.</p> <p>We also note that the proposed “triggers” for creditor compensation do not include the exercise by the MAS of its powers under Division 1 of Part IVB of the MAS Act. However, in determining whether a creditor is “worse-off”, the proposed section 30AAZHD provides that the exercise of the MAS’ powers under Part IVB, that is, including Division 1 (other than sections 30AAP and 30AAQ) is also to be taken into account. We submit that the proposed “triggers” should include the exercise of the MAS’ powers under Division 1 of Part IVB as the exercise of these powers (in particular, sections 30AAM and 30AAO) could conceivably result in a creditor becoming worse-off.</p> <p>In addition, although not labelled as resolution, we submit that consideration should be given to the inclusion of the exercise of powers under Part IVA of the MAS Act (in particular, sections 30AAB(2)(a) and 30AAC(9)(b)) as “triggers” for creditor compensation. We would make the same point in regard to the provisions under the relevant institution-specific statutes (as outlined in our general overarching comments above).</p> <p><u>Future regulations</u></p> <p>Finally, we note that further regulations are still to be made in respect of:</p>

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S/N	Respondent	Full Response from Respondent
		<ul style="list-style-type: none"> • criteria for the appointment of a valuer, which we anticipate will establish the necessary independence requirements (both from the MAS and from the financial institution under resolution) for the valuer; • valuation principles to be followed by the valuer when conducting the valuation; • contents of the valuation report; and • procedure and time period for appeals. <p>We look forward to the opportunity to review such further details. We would specifically note that the proposed amendments do not currently make provision for setting of the reference date for valuation. We assume that this will be included in regulations setting out valuation principles, and would recommend that the MAS prescribes a date that is clearly defined and objective, such as the date upon which a public notice announcing the formal commencement of resolution proceedings is published. This is important to promote legal certainty and transparency.</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p><u>General notes</u></p> <p>We generally welcome these draft amendments, which will establish a statutory fund and reduce potential reliance on public ownership and bail-out funds, in accordance with the recommendations of Key Attributes 6.1 and 6.3.</p> <p>However, we note that the MAS has determined to retain discretion as regards the appropriate level of losses to be imposed on equity holders and unsecured creditors of the financial institution, only tapping the resolution fund once losses have been imposed on such parties to the fullest extent possible or appropriate. Key Attribute 6.2 recommends that losses incurred by a resolution authority should indeed be imposed first on unsecured creditors and equity holders prior to collecting ex post industry levies, but also specifically recommends that any losses imposed on unsecured creditors and equity holders should be subject to the NCWOL principle (as described in our response to question 6, above). We would submit that the proposed section 30AAZHQ should include an express reference to the NCWOL principle, whilst still affording the</p>

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		<p>MAS the discretion to impose losses to the extent it deems appropriate (up to the point where a creditor would be worse-off).</p> <p>An important aspect of resolution funding frameworks is to minimise the risk of moral hazard, as set out in Key Attribute 6.4. In light of this, we would submit that the preconditions for the use of the resolution fund should be extended to require the MAS to consider whether the provision of temporary funding is necessary to foster financial stability, and whether such funding will permit the implementation of the most appropriate resolution option (although in both of these considerations, the final determination should be at the discretion of the MAS). Both of these considerations are recommended in Key Attribute 6.4(i). Whilst we support the decision of the MAS to establish an <i>ex post</i> funding mechanism (rather than an <i>ex ante</i> fund), it should be made clear to market participants that the fund will only be tapped, and contributions from the industry will only be sought, when the funding is absolutely necessary.</p> <p><u>Sector-specific arrangements</u></p> <p>We welcome the MAS' proposals for certain sector-specific arrangements. Resolution actions may differ across sectors, and we submit that it is beneficial to have tailored approaches where possible. We look forward to the publication of further details on the mechanics for sector-specific resolution funding.</p> <p><u>Further detail on <i>ex post</i> levies</u></p> <p>Finally, we note that an important aspect of resolution funding will be the promotion of certainty regarding precisely who is required to make <i>ex post</i> levies, and the amount each person is required to contribute. The regulations to be made by the MAS pursuant to the proposed section 30AAZHR(3) will therefore be of high importance, and we look forward to the publication of further details in this regard.</p> <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p><u>General notes</u></p> <p>We are supportive of these draft amendments to provide clarity regarding the issue of how set-off and netting arrangements will be affected in the event that the MAS exercises its resolution powers. We note that the policy intention has always appeared to be that Singapore's status as a "good" netting jurisdiction should be</p>

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		<p>preserved, and the MAS has clarified that it is not the intention to interfere with contractual set-off and netting arrangements. These draft amendments give legislative weight to that policy. That said, we submit that the draft amendments could be improved, and have suggested certain amendments and clarifications below.</p> <p><u>Draft regulation 15</u></p> <p><i>General comments:</i> We query the utility of regulation 15(2)(b)(i) and (ii), and respectfully suggest that they may obfuscate rather than elucidate. We submit that these sub-sections should be removed from the draft regulation. In respect of regulation 15(2)(a), we submit that the sub-section should be expanded to cover any contract (rather than merely financial contracts) as this would better achieve the broader policy of protecting set-off and netting arrangements, irrespective of the type of contract to which they relate.</p> <p><i>Scope of safeguard:</i> We note that draft regulation 15 currently covers only the compulsory transfer of business in a resolution (section 30AAS of the MAS Act). It does not cover the MAS' other resolution powers in Part IVB of the MAS Act, and nor does it cover the MAS' control powers (e.g. under section 30AAB(2) MAS Act). We submit that, whilst the MAS' other resolution powers (i.e. compulsory share transfer / restructure of share capital) may not practically impact set-off or netting, the MAS' exercise of its control powers might cause problems in this regard. We submit that the neatest approach would be to expand regulation 15 to apply to all powers exercised under Parts IVA and/or IVB of the MAS Act.</p> <p><i>Safeguards for banks:</i> We note that the control powers of the MAS in relation to banks are found in the BA. For completeness, we recommend that equivalent provisions to these amendments be made in future regulations to protect the same arrangements where the MAS exercises its relevant BA powers.</p> <p><i>Remedies in the event of an action in contravention of the safeguard:</i> We would respectfully direct the MAS towards the UKBA (Restriction of Partial Property Transfers) Order 2009. An action that contravenes the safeguard should be void, as this removes all doubt that netting and set-off can be affected. We also recommend that the same remedy (i.e. voiding the action) be applied to the safeguard in respect of any resolution action (assuming that the scope of the safeguard is expanded as suggested above). In this respect, we note the UKBA (Restriction of Special Bail-In Provision, etc.) Order 2014, which gives a different remedy in the case of safeguards against bail-in, and would suggest that this approach is not followed as it could result in confusion.</p>

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		<p><i>Scope of protected arrangements:</i> We note that “netting arrangement” and “set-off arrangement” are already defined under section 30AAZN(6) of the MAS Act. However, greater clarity could be achieved by separately defining “protected arrangements” in section 2 of the MAS(CR)R. We would submit that this provision could be drafted similarly to section 48P(1) and (2) of the UKBA, which includes security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements (each of which are also defined separately).</p> <p><u>Draft regulation 16</u></p> <p><i>General comments:</i> We note that the intention of regulation 16 is to dis-apply relevant moratoria sections of the MAS Act, thereby protecting set-off and netting arrangements. However, we submit that the relevant moratoria provisions should not affect set-off and netting arrangements in any event, as these arrangements operate purely under contract. By expressly exempting set-off and netting arrangements, the MAS may be giving the impression that such arrangements would otherwise be prohibited (which is, in our view, incorrect). This may have implications for the interpretation of other similar provisions in other legislation (e.g. under the Companies Act in the case of insolvency). In light of this, we submit that the MAS should consider reframing draft regulation 16 to protect “protected arrangements” (the proposed definition of which is discussed above). The MAS might then clarify that set-off and netting arrangements are not affected by moratoria provisions, but should remove the impression that such arrangements are only safeguarded by virtue of regulation 16. This would also assist to ensure the protection of rights regarding the enforcement of security.</p> <p><i>Scope of protected arrangements:</i> We assume that “set-off arrangements” and “netting arrangements” in this draft regulation are intended to have the same definition as under section 30AAZN(6) of the MAS Act. We request that the MAS clarify this in the final regulations.</p>
13	Thomson Reuters and Reuters Transaction Services Ltd	<p>Thomson Reuters and Reuters Transaction Services Ltd (“RTSL”) would like to thank MAS for the opportunity to comment on the new proposed legislative amendments to enhance the Resolution Regime for Financial Institutions in Singapore:</p> <p>Whilst we have no specific comments relating to the detail of the proposed amendments, which presently seem to have limited applicability to overseas RMOs such as RTSL, we respectfully confirm</p>

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		<p>to MAS that RTSL is subject to recovery and resolution planning requirements by its home-state regulator, the FCA, and as such we request that MAS recognises the FCA's regime as equivalent in respect of any recovery and resolution planning arrangements for RMOs that MAS is considering.</p> <p>Other than that, we have no further material comments to add in terms of any amendments or additions.</p>
14	Wong Partnership LLP	<p>General comments:</p> <ol style="list-style-type: none"> 1. We support MAS' proposals to strengthen its powers under the Monetary Authority of Singapore Act (Cap. 186) ("MAS Act") to resolve distressed financial institutions while maintaining continuity of their critical economic functions. 2. We set out below our feedback and observations from a legal perspective on some of the proposed legislative amendments to the MAS Act. <p>Question 1: MAS seeks comments on the draft amendments to Part IVA of the MAS Act in relation to recovery and resolution planning.</p> <ol style="list-style-type: none"> 3. We would recommend a statutory definition and interpretation for the concept of "pertinent financial institution" that is used in the new provisions under Division 2 of Part IVA of the MAS Act. Presumably MAS intends for the concept of "pertinent financial institution" used in the new Division 2 of Part IVA to be aligned and consistent with such concept that is used and defined in the existing Part IVB of the MAS Act. That being the case, the existing Part IVA needs the following further amendments: <ol style="list-style-type: none"> (a) insertion of a new heading "Division 1 – General Provisions" just before Section 30AA; and (b) insertion of the following new definition in Section 30AAJA before the current definition of "<i>recovery plan</i>": <p>"pertinent financial institution" has the same meaning as in Section 30AAK.</p> <p>Alternatively, MAS could consider migrating the entire recovery and resolution planning ("RRP") provisions to Part IVB of the MAS Act where the term "pertinent financial</p>

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		<p>institution” is already defined in Section 30AAK for application to the whole of Part IVB.</p> <p>4. For completeness, the term “insurer” should also be defined, given that it does not fall within the ambit of the rather circular definition of “pertinent financial institution” in Section 30AAK. This can be inserted in the main interpretation section of the MAS Act (viz. Section 2) to clarify that the term refers to a licensed insurer under the Insurance Act (Cap. 142). We have noted a similar clarificatory definition for “bank” in Section 2 of the MAS Act.</p> <p>5. If however it is MAS’ intention to keep the scope of “pertinent financial institutions” under the RRP provisions of Part IVA distinct from those under Divisions 2, 3 and 4 of Part IVB, and MAS also wants the flexibility to prescribe from time to time the categories of financial institutions that are subject to the RRP requirements, it could do so by way of the following definition in Section 30AAJA:</p> <p><i>“pertinent financial institution” means any financial institution that belongs to a group of financial institutions that is prescribed by regulations made under Section 30AAJ.</i></p> <p>Question 2: MAS seeks comments on the draft Notice and Guidelines for recovery and resolution planning.</p> <p>6. In relation to the draft Guidelines for RRP (<u>Draft Guidelines</u>), we seek clarification on the definition of “local bank” and the reason for the inclusion of the qualification that it has to be a bank incorporated in Singapore <i>“over which MAS has consolidated supervisory authority”</i> (emphasis our own). It is not immediately apparent as to how the phrase should be interpreted.</p> <p>7. We have noted that the definition of “foreign bank” in the Draft Guidelines encompasses one that is a foreign-owned Singapore-incorporated bank. If MAS’ intention under the Draft Guidelines is to distinguish Singapore-incorporated banks which are Singaporeowned/controlled from Singapore-incorporated banks which are foreign-owned/controlled, we submit that it would be less confusing to the reader if “local bank” is defined as <i>“a bank incorporated in Singapore that is not a foreign bank”</i>.</p> <p>Question 3: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to temporary stays on termination rights.</p>

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		<p><u>In-Scope Contracts that would be Affected by Temporary Stays on Termination Rights</u></p> <p>8. We note that it is MAS' intention for its powers to stay termination rights to be applicable <i>only</i> in respect of (a) financial contracts and (b) contracts for essential services and functions of a financial institution ("<u>non-financial contracts</u>"), which have early termination rights or acceleration clauses that would be triggered by that financial institution's entry into resolution.⁵⁴ However, the scope or type(s) of contracts to which the new Division 4B of Part IVB relate is not defined nor clarified. The generic term "contract" is employed in the proposed Sections 30AAZAH, 30AAZAI and 30AAZAJ which suggests (on a literal reading) that MAS' powers of stay could apply to any contracts entered into by the pertinent financial institution or insurer.</p> <p>9. Given that it is not MAS' intention to exercise its powers of stay to all contracts of the pertinent financial institution or insurer, for clarity and certainty we would suggest that a clarification provision be included in Division 4B of Part IVB under the interpretation Section 30AAZAG for the in-scope financial and non-financial contracts.</p> <p>10. For the scope of "financial contracts", MAS may wish to consider streamlining these with the proposed definition of "financial contracts" as set out in the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 ("<u>MASR</u>").</p> <p>11. For the scope of "non-financial contracts", MAS may wish to consider limiting these to contracts that pertain to "critical functions" and "critical shared services", which is in line with MAS' policy intent, and consistent with the range of activities contemplated under Paragraph 2.1 of the Draft Notice to banks for RRP.</p> <p><u>Limits on Powers to Impose Multiple Stays</u></p>

⁵⁴ See Paragraph 3.3 and footnote 12 of MAS' Response to Feedback on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore (29 April 2016). This is intended to cover contracts for repurchasing, borrowing or lending securities or commodities, and derivative and futures contracts.

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		<p>12. We note MAS' proposal to strictly limit the temporary stay of termination rights under a contract to two business days. Based on informal feedback we have received, this is generally acceptable to industry participants. However, based on the plain reading of the provisions of Section 30AAZAI, it is not clear if MAS could impose further stays in respect of the same contract after the expiry of the initial two business days. The concern that some of our clients have is that Section 30AAZAI does not limit the power of MAS to impose concurrent multiple stays – and it is theoretically possible that in such a situation, multiple stays could be imposed resulting in the entire stay period stretching beyond two business days. We would ask MAS to consider including the following clarification at the end of Section 30AAZAI as a new subsection (9):</p> <p><i>“(9) In respect of a contract, the total duration of a stay imposed under subsection (1) shall not exceed two business days, and such stay may not be extended or renewed upon its expiration.”</i></p> <p><u>Clarification of Scope of Termination Rights Subject to Temporary Stay</u></p> <p>13. "Termination right" is proposed to be defined in the new Section 30AAZAG to include "<i>a right to accelerate, close out, set-off or net obligations</i>". In relation to financial contracts which are derivative contracts where the concepts and enforceability of rights of set-off, netting and close-out netting are critical and vital for the derivatives market, particularly when such markets are under stress, there are concerns from derivatives counterparties of pertinent financial institutions that this undermines their rights and protection as unsecured creditors, and further curtails their ability to mitigate settlement and counterparty risks posed by these financial institutions.</p> <p>14. In this regard, it has been noted from:</p> <ul style="list-style-type: none"> (a) the policy intent of MAS set out in paragraph 4.1 of MAS' Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore (issued on 29 April 2016) ("<u>Consultation Paper</u>"); and (b) the response of then Finance Minister Mr Tharman Shanmugaratnam during the second reading of the Monetary Authority of Singapore (Amendment) Bill on 15 March 2013,

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		<p>that any supervisory control and resolution powers of MAS under Part IVB of the MAS Act (and we assume the draft legislative amendments proposed in the Consultation Paper) will not be exercised or carried out in a manner that would defeat or affect any contractual set-off and netting arrangements between commercial counterparties.</p> <p>15. Accordingly, clarification is sought from MAS as to whether this would be addressed specifically in the provisions of the MASR. Presently, there is no express safeguard in the proposed new Part IV Regulation 16 of the MASR to exclude set-off and netting arrangements under financial contracts (including related collateral support agreements and arrangements for such financial contracts) from the scope of Sections 30AAZAH and 30AAZAI of the MAS Act. The position should not be left open as it creates legal uncertainty in the derivatives market as to whether Singapore laws are netting-friendly; it may result in qualified Singapore legal opinions on netting <i>vis-a-vis</i> financial institutions if it cannot be affirmed or assumed that there would not be regulatory intervention defeating or affecting contractual set-off and netting arrangements between commercial parties.</p> <p><u>Automatic Termination Triggers</u></p> <p>16. Because the proposed definition of "termination right" under Section 30AAZAG includes <i>"any provision that suspends, modifies or extinguishes an obligation of a party to the contract"</i>, the proposed new Division 4B not only contemplates the stay or suspension of termination rights exercisable at the election of the counterparty to a pertinent financial institution or insurer, but also automatic early termination ("AET") provisions referencing the exercise of supervisory control and resolution powers by MAS. For consistency, MAS may consider amending the language of the proposed Section 30AAZAJ(a) to enlarge the scope of the exclusion to cover AET provisions that are independent of MAS' exercise of any supervisory control and resolution powers. In this regard, we propose that sub-section (a) of Section 30AAZAJ should read as follows:</p> <p><i>"(a) a termination right becomes exercisable or is triggered independent of the Authority's exercise of any specified power;"</i>.</p> <p>Question 4: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the statutory bail-in regime.</p>

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		<p>17. We are supportive of MAS' proposal on the statutory bail-in regime, which will empower MAS to write down or convert into equity, all or part of unsecured subordinated debt and unsecured subordinated loans in respect of Singapore-incorporated banks and bank holding companies.</p> <p>18. In this regard, we note that MAS has previously stated that that the "proposed legislation will set out that MAS, when exercising its statutory bail-in powers, will have regard to the principles of respecting the hierarchy of claims in liquidation and equal treatment of creditors of the same class"⁵⁵ (emphasis our own). In addition, FSB recognises the importance of respecting creditor hierarchy in an authority's exercise of its resolution powers.⁵⁶ In the event that a debt instrument is converted into shares of a bank, we would thus like to seek MAS' clarification whether such converted shares will rank higher than all existing classes of shares in terms of hierarchy of claims, so as to preserve the pre-conversion hierarchy in which a holder of the debt instrument would have ranked above all existing shareholders.</p> <p>19. We note that the foregoing considerations in relation to hierarchy of claims are purported to be provided for under the proposed Section 30AAZAF(1). However, the verb "may" used does not seem to accord sufficient weight or importance to MAS' considerations as regards respecting the hierarchy of claims. Thus, MAS may wish to consider replacing the verb "may" with "shall" under the proposed Section 30AAZAF(1). While this may seem to be only a matter of semantics (we are absolutely sure that MAS would, regardless of whether "may" or "shall" is used under the proposed Section 30AAZAF(1), respect the principle of hierarchy of claims), using "shall" instead of "may" may accord creditors affected under an FI's bail-in some sense of assurance that their rights would still be taken into account and protected by MAS.</p> <p>Question 5: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to cross-border recognition of resolution actions.</p>

⁵⁵ Paragraph 6.20 of MAS' (29 April 2016).

⁵⁶ Paragraph 5.1 of FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions (15 October 2014).

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		<p>20. We are supportive of MAS' proposal for MAS to recognise or deny recognition for all or part of a foreign resolution action.</p> <p><u>Issuance and Publication of Certificate where Foreign Resolution not Recognised</u></p> <p>21. We note that under the proposed Section 30AAZHB, a certificate shall be issued by the Minister where he approves MAS' determination in respect of a foreign resolution. On or before it takes effect, such certificate must be (a) served on the affected branch or subsidiary of the foreign financial institution and (b) published in, <i>inter alia</i>, the <i>Gazette</i>. However, there is no requirement to issue, serve on affected financial institutions or publish any certificate where the Minister does not approve MAS' determination.</p> <p>22. In this regard, it may be of significant interest for certain persons who have knowledge that they will be affected by MAS' determination pursuant to a foreign resolution ("<u>Potentially Affected Persons</u>") to be notified even where the Minister does not approve such MAS' determination. For example, Potentially Affected Persons may have taken on or abstained from certain acts voluntarily in the light of the foreign resolution or in anticipation of the issuance of the Minister's certificate approving MAS' determination. Such acts may come at a cost for Potentially Affected Persons, such as an increase in overheads or a loss of potential income. For instance, where an affected subsidiary of a foreign financial institution ("<u>Affected Subsidiary</u>") provides services to a customer ("<u>X</u>"), X may, in anticipation of the Minister's approval of a MAS' determination to wind up the Affected Subsidiary pursuant to a foreign resolution, discontinue its relationship with the Affected Subsidiary. The discontinuance of such relationship may ipso facto be costly to X and X would have to incur extra costs searching for a substitute in the industry. Even if a substitute is found, that substitute may not offer X the same rates as previously provided by the Affected Subsidiary. Where MAS' determination is refused by the Minister and the Affected Subsidiary is thus not going to be wound up, it may be in X's interest to resume its relationship with the Affected Subsidiary as soon as practicably possible. We are hence of the view that the Minister's refusal of MAS' determination may in certain scenarios have an impact (whether significant or not) on Potentially Affected Persons.</p> <p>23. In view of the foregoing considerations, we submit that in view of the economic interests of Potentially Affected Persons and the Singapore financial industry as a whole, MAS</p>

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S/N	Respondent	Full Response from Respondent
		<p>may wish to consider amending the draft 30AAZHB to provide for the (a) issuance of a certificate even where the Minister does not approve MAS' determination and (b) publication of such certificate in the <i>Gazette</i> as early as practicably possible.</p> <p><u>Scope of MAS' Powers in Recognising a Foreign Resolution</u></p> <p>24. We note that the proposed Section 30AAZHA(3) provides that:</p> <p><i>"(3) For the purposes of recognising the resolution or part thereof, the Authority may exercise one or more of its powers under [Part IVB of the MAS Act], in support of the resolution, in accordance with the powers under the respective provision of this Part."</i></p> <p>This seems to imply that MAS is restricted from exercising its powers, <i>for the purposes of recognising a resolution of a foreign resolution authority</i>, found under other Parts of the MAS Act⁵⁷, or any other relevant Acts⁵⁸ / instruments⁵⁹ applicable to the regulated financial institution being the subject of the foreign resolution.</p> <p>25. If it is not MAS' intention to limit the exercise of its powers, for the purposes of recognising a resolution of a foreign resolution authority, to those as provided for under Part IVB of the MAS Act, MAS may wish to consider amending the proposed Section 30AAZHA(3) to clarify that MAS may exercise any of its powers under the MAS Act or any other relevant Acts/instruments applicable to the regulated financial institution being the subject of the foreign resolution.</p> <p>Question 6: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to the creditor compensation framework.</p>

⁵⁷ For example, Section 28(3), (4) and (5) found under Part IV of the MAS Act and Sections 30AAB(2), 30AAE(1) and 30AAI(2) found under Part IVA of the MAS Act.

⁵⁸ For example, Section 49(2) of the Banking Act (Cap. 19), Section 35(2) of the Finance Companies Act (Cap. 108), Section 28(1) of the Payment Systems (Oversight) Act (Cap. 222A), Sections 44B(2), 44ZIB(2), 81SAA(2), 81ZGC(2), 97E(2) and 292D(2) of the Securities and Futures Act (Cap. 289), and Section 21C(2) of the Trust Companies Act (Cap. 336).

⁵⁹ For example, MAS Directive 14 issued to merchant banks.

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		<p>26. We are supportive of MAS' proposal to establish a creditor compensation framework where creditors and shareholders would be eligible for compensation of the difference where they do not receive under the resolution of a financial institution at least what they would have received had the financial institution been liquidated.</p> <p>27. We note that the proposed Section 30AAZHE(2) appears to stipulate that pre-resolution creditors will not be eligible to claim under MAS' proposed creditor compensation framework where such pre-resolution creditors are eligible to claim compensation under a similar arrangement in a foreign jurisdiction (the "Section 30AAZHE(2) Prohibition").</p> <p>28. We are of the view that the Section 30AAZHE(2) Prohibition is too restrictive and does not accord well with FSB's "no creditor worse off than in liquidation" safeguard.⁶⁰ First, the threshold for the Section 30AAZHE(2) Prohibition to be triggered seems to be too low. It would appear to apply where a pre-resolution creditor is merely <i>eligible</i> to claim compensation under a similar arrangement in a foreign jurisdiction, though he may not <i>actually</i> have made a claim under such foreign jurisdiction's creditor compensation framework. In this regard, it may be possible that although a pre-resolution creditor is <i>eligible</i> to claim under a foreign jurisdiction's creditor compensation framework, he may not desire to do so for various reasons. For instance, a pre-resolution creditor could be based in Singapore and it would thus be more convenient for him to claim under MAS' creditor compensation framework. Further, a pre-resolution creditor could simply prefer his claim to be assessed by the valuer appointed under MAS' creditor compensation framework, as opposed to the one appointed under the foreign jurisdiction's creditor compensation framework (taking into account both valuers' purported independence, duties and obligations under both frameworks). In this regard, there is no reason why a pre-resolution creditor should be prejudiced for being merely eligible to claim under a foreign framework.</p> <p>29. Second, in the event a pre-resolution creditor does manage to claim under a foreign framework, such compensation received by him may be lower than the amount he would receive had he made a claim under MAS' compensation</p>

⁶⁰ Paragraph 5.2 of FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions (15 October 2014).

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		<p>framework. This is because the valuer appointed under a foreign framework may not have the requisite information or expertise to assess with accuracy what the pre-resolution creditor would have received had winding-up proceedings been commenced against a financial institution under Singapore law. In our view, and in line with FSB's "no creditor worse off than in liquidation" principle, there is no reason why a pre-resolution creditor should be precluded from receiving the shortfall (assuming there is one) under MAS' compensation framework where the valuer of a foreign framework patently undervalues what the pre-resolution creditor should have received had winding-up proceedings been commenced against a financial institution under Singapore law.</p> <p>30. In view of the foregoing discussions, MAS may wish to consider amending the proposed Section 30AAZHE(2) so as to prohibit a pre-resolution creditor from claiming under MAS' creditor compensation framework only where (a) he has actually claimed compensation under a foreign jurisdiction's creditor compensation framework and that (b) he is no longer "worse-off" (as defined under the proposed Section 30AAZHD).</p> <p>Question 7: MAS seeks comments on the draft amendments to Part IVB of the MAS Act in relation to resolution funding arrangements.</p> <p>31. We are supportive of MAS' proposal to empower MAS to establish resolution funding arrangements and to issue regulations on the mechanics by which a resolution fund will be established and will operate.</p> <p>32. We note that under the proposed Section 30AAZHQ(1)(b), MAS is empowered to recover moneys paid out of the resolution fund by imposing levies on financial institutions. The amount of levies payable by each financial institution is assessed and computed by MAS pursuant to the proposed Section 30AAZHR. We further note that under the proposed Section 30AAZHR(3)(b), MAS may, for the purposes of assessing and computing such levies payable, make regulations in respect of the manner in which the amount of levies for each category of financial institutions or persons is to be determined. In this regard, we strongly encourage MAS to be transparent and unambiguous in relation to the set of criteria or considerations it may take into account in determining levies payable by financial institutions or categories of financial institutions.</p>

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		<p>33. Further, while we have no doubt that MAS will, as far as reasonably possible, make efforts to determine the amount of levies payable by financial institutions in a fair and equitable manner, MAS may not have had the chance to take into account certain facts or circumstances of a particular financial institution that it may not have knowledge of in coming to its determination. In this regard, MAS may wish to consider introducing a process by which financial institutions may make representations or submissions to MAS on the amount of levies that they are subject to as determined by MAS. We suggest that such representations or submissions should only be made by a financial institution where:</p> <ul style="list-style-type: none"> (a) MAS has already made a determination on the payable levies for a particular financial institution or a category of financial institutions under which such financial institution falls; (b) such financial institution is unsatisfied with MAS' determination on the amount of levies to be payable by it; and (c) such financial institution has compelling reasons for MAS to re-assess or recompute the amount of levies to be payable by it, taking into account: <ul style="list-style-type: none"> (i) the criteria MAS uses in assessing and computing the levies in question; or (ii) peculiar facts or circumstances pertaining to that financial institution of which MAS may not reasonably have knowledge in coming to its determination. <p>Question 8: MAS seeks comments on the draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013.</p> <p>34. Please refer to our earlier comments in paragraphs 13 to 15 above regarding the express safeguards needed for set-off and netting arrangements.</p> <p>35. We submit that if the policy intent of MAS and the Minister for Finance is that the supervisory control and resolution powers of MAS would not be exercised to undermine or affect netting and set-off arrangements, an express provision to that effect is needed in Regulation 16 of the MASR viz. that</p>

RESPONSE TO FEEDBACK RECEIVED ON PROPOSED LEGISLATIVE AMENDMENTS TO ENHANCE THE
RESOLUTION REGIME FOR FINANCIAL INSTITUTIONS IN SINGAPORE

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		MAS would not exercise its powers under Parts IVA and IVB of the MAS Act in a manner that would defeat, undermine or affect netting and set-off arrangements commercially agreed between parties under all financial contracts, including related collateral support contract arrangements. Accordingly, the existing provisions of Regulation 16 should be removed as they suggest that netting and set-off arrangements are subject to and affected by moratoriums imposed by MAS. This would be contrary to the general stance that powers under Parts IVA and IVB of the MAS Act should not be exercised with respect to netting

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