CONSULTATION PAPER

P013 - 2018

July 2018

Proposed Regulations to Enhance the Resolution Regime for Financial Institutions in Singapore

Monetary Authority of Singapore

Contents

1 Preface

1.1 In July 2017, Parliament passed the Monetary Authority of Singapore (Amendment) Act 2017 ("MAS (A) Act") introducing enhancements to the resolution regime for financial institutions (FIs) in Singapore. MAS is now consulting on amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013, and introduction of new regulations issued under the Deposit Insurance and Policy Owners' Protection Schemes Act, which are necessary to support the amendments in the MAS (A) Act.

1.2 MAS invites comments from interested parties on these proposed regulations.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. Hence, if respondents would like (i) their whole submission or part of it, or (ii) their identity, along with their whole submission, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right to not publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.3 Please submit written comments by 16 August 2018 to:

Prudential Policy Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Email: prudential_policy_dept@mas.gov.sg

1.4 Electronic submission is encouraged. We would appreciate that you use this suggested format for your submission to ease our collation efforts.

2 Introduction

2.1 As part of MAS' review of the resolution regime for FIs in Singapore, MAS amended the Monetary Authority of Singapore Act ("MAS Act") to strengthen our powers to resolve distressed FIs while maintaining continuity of their critical economic functions.

2.2 To exercise these new resolution powers under the MAS Act, MAS will be amending the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 (the "Regulations") and issuing new regulations under the Deposit Insurance and Policy Owners' Protection Schemes Act. The changes are made in relation to five areas – Temporary Stays on Termination Rights, Statutory Bail-in Regime, Creditor Compensation Framework, Safeguards on Covered Bond Programmes and Resolution Funding Arrangements.

3 Proposed Amendments to Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013

Temporary Stays on Termination Rights

Excluded entities

3.1 In MAS' Response to Feedback Received on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore dated 29 April 2016 ("2016 Response"), MAS indicated that it is not the intent, through the exercise of its resolution powers, to affect the operations of any central bank in performing its mandate, the smooth functioning of financial markets, nor the safe and orderly operations of designated payment systems under the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231). The MAS (A) Act empowered MAS to prescribe the types of counterparties of an FI which will be explicitly exempted from the application of the temporary stay.

3.2 Accordingly, MAS has amended Regulation X under Annex B to exempt central banks, designated payment systems, approved clearing houses, recognised clearing houses and depositories from the operation of the temporary stay.

Contractual recognition requirement for contracts governed by foreign law

3.3 MAS' power to stay the early termination rights of counterparties to financial contracts governed by foreign law is intended to support the orderly resolution of a distressed FI by ensuring that any resolution action taken against the distressed FI would not trigger the early termination of its financial contracts governed by foreign laws.

3.4 Where a contract is governed by a foreign law, it is unclear whether a court in the foreign jurisdiction will enforce MAS' exercise of temporary stay powers over early termination rights unless the law of that jurisdiction expressly recognises MAS' resolution action.

3.5 To provide greater legal certainty, MAS proposes a contractual recognition requirement for a qualifying pertinent FI to ensure that certain contracts governed by foreign laws contain enforceable provisions, the effect of which is that all the parties to the contract agree that their exercise of termination rights may be subject to MAS' temporary stay powers.

3.6 Accordingly, MAS has amended Regulation X1 under Annex B to introduce this requirement for certain pertinent FIs that are incorporated in Singapore and that are required to perform recovery and resolution planning (defined in the Regulations as "qualifying pertinent FIs"). These are

(a) a bank;
(b) a financial holding company;
(c) an operator or a settlement institution of a designated payment system under the Payment Systems (Oversight) Act (Cap. 222A);
(d) an approved exchange, a recognised market operator, a licensed trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, or a depository under the Securities and Futures Act (Cap. 289); and
(e) an insurer licensed under the Insurance Act (Cap. 142).

3.7 Their related entities will also have to comply with the contractual recognition requirement for contracts which are guaranteed or otherwise supported by these qualifying pertinent FIs. The contractual recognition requirement will have prospective effect and apply to new financial contracts which are governed by a foreign law.

3.8 Consistent with MAS' temporary stay powers, contracts entered into by qualifying pertinent FIs with central banks, designated payment systems, approved clearing houses, recognised clearing houses, and depositories will be excluded.

3.9 The insertion to the Regulations in relation to the temporary stays on termination rights is set out in **Annex B**.

Question 1. MAS seeks comments on:
a. the draft regulations in relation to the temporary stays on termination rights;
b. the scope of qualifying pertinent financial institutions; and

c. whether this contractual recognition requirement should also apply to FIs which operate as branches in Singapore that are required by MAS to perform recovery and resolution planning, and if not, the reasons for this.

Statutory Bail-In Regime

3.10 To effect the policy proposals introduced in earlier consultations[1], MAS will amend Part III of the Regulations to prescribe Singapore-incorporated banks and bank holding companies to be subject to the statutory bail-in regime. Unsecured subordinated liabilities and contractual bail-in instruments issued or contracted after the effective date of the bail-in regime will be prescribed as eligible instruments within scope of MAS' statutory bail-in powers.

3.11 MAS will also amend the Regulations to set out the information to be specified in the bail-in certificate that is to be issued by the Minister in the event that the Minister approves a bail-in of eligible instruments.

3.12 To complement the statutory bail-in regime, the Regulations will be amended to require contractual recognition provisions for liabilities which fall within the scope of MAS' statutory bail-in powers but which are governed by foreign laws. Singapore-incorporated banks and bank holding companies will be required to provide an independent legal opinion setting out the enforceability of the contractual recognition provisions.

3.13 The revised Regulations will also require Singapore-incorporated banks and bank holding companies to disclose, on the front cover of any offering document related to an eligible instrument, the consequences of a bail-in to debt holders for liabilities within the scope of MAS' statutory bail-in powers.

3.14 The insertions to the Regulations in relation to the statutory bail-in regime are set out in **Annex C**.

Question 2. MAS seeks comments on:
a. the draft regulations in relation to the statutory bail-in regime; and
b. the proposal to require Singapore-incorporated banks and bank holding companies to disclose, on the front cover of any offering document related to an

[1] MAS's Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore dated 23 June 2015 and MAS' Response to Feedback Received on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore dated 29 April 2016.

eligible instrument, the consequences of a bail-in to debt holders for liabilities within the scope of MAS' statutory bail-in powers.

Creditor Compensation Framework

3.15 The MAS (A) Act introduced a compensation framework, under which 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. In the 2016 Response, MAS indicated that the framework would include the following criteria for the appointment of a valuer who will determine whether each creditor or shareholder is eligible for compensation and any eligible compensation amount:

(a) independence from both MAS and any other relevant public authority, and the FI in resolution. The valuer should not have any material interest in common or in conflict with any of these parties; and

(b) capacity of the valuer, based on whether the valuer has relevant experience and expertise, knowledge of the insolvency framework and adequate technical and human resources to carry out the valuation, commensurate with the nature, size and complexity of the FI.

3.16 MAS also indicated that the valuer will be required to follow certain valuation principles including the following:

(a) the valuer should assume that the provision of any extraordinary public financial support to the FI under resolution would not have been made available in a liquidation scenario; and

(b) 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.

3.17 Accordingly, MAS proposes amendments to Part III of the Regulations to implement the aforementioned policy proposals as well as to prescribe other details of the framework including:

(a) the scope of FIs covered by the framework;

(b) the form, manner and timing for payment of compensation;

(c) the procedure for recovery of compensation paid in excess or error; and

(d) the information that a valuer is required to specify in the valuation report setting out the valuer's decision on whether each creditor or shareholder is eligible for compensation and any eligible compensation amount.

3.18 The insertions to the Regulations in relation to the creditor compensation framework is set out in **Annex D**.

Question 3. MAS seeks comments on the draft regulations in relation to the creditor compensation framework.

4 Proposed Amendments to Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018

Safeguards on Covered Bond Programmes

4.1 The Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018 ("Safeguard Regulations") introduced safeguards in relation to MAS' powers to compulsorily transfer the business of a pertinent FI under the existing Division 2 of Part IVB of the MAS Act. Such a transfer may be made in relation to a part of the business of a pertinent FI or the whole of the business. Since the promulgation of the Safeguard Regulations, MAS has been examining the need to include any additional safeguards, in particular, in relation to structured finance arrangements. In this regard, MAS has identified covered bond programmes as one such arrangement that could be affected by the exercise of powers to carry out a partial transfer of business. To provide certainty to counterparties, MAS proposes to introduce a safeguard to protect the integrity of covered bond programmes.

4.2 In order to bring all the resolution-related regulations into the same legal instrument, the Safeguard Regulations will be repealed and the provisions therein will be consolidated within the Regulations.

4.3 The proposed amendments to the Safeguard Regulations (which will eventually be consolidated within the Regulations) in relation to safeguarding covered bond programmes are set out in **Annex E**.

Question 4. MAS seeks comments on:

a. the draft regulations to safeguard covered bond programmes; and
b. whether securitisations or other similar arrangements not covered under the existing safeguards should be protected during a partial transfer of business.

5 Proposed New Regulations to be issued under the Deposit Insurance and Policy Owners' Protection Schemes Act

Resolution Funding Arrangements

5.1 MAS proposes to issue new regulations on the valuation principles for calculating an equivalent cost, where the Deposit Insurance Fund ("DI Fund") is used to provide temporary liquidity support for the resolution of a Deposit Insurance Scheme Member ("DI Scheme Member"). The equivalent cost criterion aims to cap the amount drawn on the DI Fund for resolution at the amount that would have been paid out to the DI Scheme Member's depositors had that DI Scheme Member failed.

5.2 The following valuation principles will be set out in the new regulations:

(a) the valuer should assume that the provision of any extraordinary public financial support to the DI Scheme Member under resolution would not have been made available in a depositor payout situation; and

(b) the valuer should assume that the DI Scheme Member would have been wound up based on Singapore's winding-up proceedings, including the creditor hierarchy applicable to the DI Scheme Member under Singapore law.

5.3 MAS will consult at a later date on other resolution funding regulations such as who to impose ex post levies on, how to share the funding cost among them, and late payment fees.

5.4 The new Regulations to be issued under the Deposit Insurance and Policy Owners' Protection Schemes Act is set out in **Annex F.**

Question 5. MAS seeks comments on the new Regulations to be issued under the Deposit Insurance and Policy Owners' Protection Schemes Act.

Annex A

LIST OF QUESTIONS

Annex B

DRAFT INSERTIONS TO PART III OF THE
MAS (CONTROL AND RESOLUTION OF FINANCIAL INSTITUTIONS) REGULATIONS 2013
IN RELATION TO TEMPORARY STAY ON TERMINATION RIGHTS

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

Persons excluded from section 84 of the Act

X – For the purposes of section 84(3)(b) of the Act, the notice issued under section 84(2) does not apply to a termination right under a contract between the pertinent financial institution and the following persons:

(a) a central bank;
(b) an operator or a settlement institution of a designated system under the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231); or
(c) an approved clearing house, a recognised clearing house or a depository under the Securities and Futures Act (Cap. 289).

Contractual recognition of section 83 and 84 of the Act

X1 – (1) Except as provided in paragraph (4), where a qualifying pertinent financial institution enters into any specified contract with another party, the qualifying pertinent financial institution must ensure that the contract contains enforceable provisions the effect of which is that all the parties to the contract agree that if the qualifying pertinent financial institution is the subject of a resolution measure, the parties shall be entitled to exercise termination rights under the contract only to the extent that they would be entitled to do so pursuant to section 83 of the Act and any suspension of termination rights in that contract imposed by the Authority under section 84.

(2) In this regulation –

(a) "resolution measure" has the same meaning as in section 82 of the Act;

(b) a qualifying pertinent financial institution means:
(i) a bank;
(ii) a financial holding company;
(iii) an operator or a settlement institution of a designated payment system under the Payment Systems (Oversight) Act (Cap. 222A);
(iv) an approved exchange, a recognised market operator, a licensed trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a holder of a capital markets services licence, or a depository under the Securities and Futures Act (Cap. 289); and
(v) an insurer licensed under the Insurance Act (Cap. 142),

which is incorporated in Singapore and has been issued a direction by the Authority under section 43(1) of the Act.

(c) a contract is a specified contract if it:
(i) is a financial contract within the meaning of regulation 32;
(ii) is governed by the laws of a foreign jurisdiction; and
(iii) contains a termination right, the exercise or enforcement of which could be suspended or prevented or the application of which would be disregarded under the Act if the financial contract had been governed by the laws of Singapore.

(3) The qualifying pertinent financial institution must ensure its related entities comply with paragraph (1) as if such related entity was a qualifying pertinent financial institution, if:

(a) the entity is an entity that is part of the same group of companies as that of a qualifying pertinent financial institution; and

(b) the obligations of the entity under the contract are guaranteed or otherwise supported by the qualifying pertinent financial institution.

(4) This regulation does not apply to a specified contract which is entered into by a qualifying pertinent financial institution and any of the entities set out in regulation X.

(5) Any qualifying pertinent financial institution which does not comply with paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part thereof during which the offence continues after conviction.

Annex C

DRAFT INSERTIONS TO PART III OF THE MAS (CONTROL AND RESOLUTION OF FINANCIAL INSTITUTIONS) REGULATIONS 2013 IN RELATION TO THE STATUTORY BAIL-IN REGIME

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

Definition of "Division 4A financial institution"

X1 – For the purposes of the definition of "Division 4A financial institution" in section 71 of the Act, each of the following persons is a Division 4A financial institution:

(a) a bank which is incorporated in Singapore; and

(b) a holding company incorporated in Singapore which has at least one subsidiary that is a bank incorporated In Singapore.

Definition of "eligible instrument"

X2 – For the purposes of the definition of "eligible instrument" in section 71 of the Act, where any Division 4A financial institution is set out in the first column of the Fifth Schedule, each corresponding instrument set out in the second column of that Schedule which has been entered into on or after *[commencement date of amendments]* is an eligible instrument for that Division 4A financial institution.

FIFTH SCHEDULE

INTERPRETATION

1. In this Schedule –

"equity instrument" means shares or instruments conferring or representing a legal or beneficial ownership interest in a Division 4A FI;

"MAS Notice 637" means the notice commonly known as MAS Notice 637 that is issued by the Authority pursuant to sections 10(2), 36(2) and 55 of the Banking Act (Cap. 19), and includes any notice that replaces it.

ELIGIBLE INSTRUMENTS

First column *Division 4A financial institution*	*Second column* *Eligible instrument*
(a) a bank which is incorporated in Singapore; and (b) a holding company incorporated in Singapore which has at least one subsidiary that is a bank incorporated In Singapore.	(a) Equity instruments that are not ordinary shares; (b) Liability, to the extent that it is unsecured, which contains contractual provisions, the effect of which is that such liability are subordinated to general creditor claims on the Division 4A financial institution; and (c) Instruments which contain terms that provide for the instruments to be written down, cancelled, modified, changed or converted into shares or other instruments

	of ownership, when a pre-specified trigger event occurs, including capital instruments issued by the Division 4A FI to comply with paragraphs 6.2.2 and 6.3.2 of MAS Notice 637, whose terms have not been triggered prior to the Authority's exercise of any power under Division 4A of the Act.

Particulars under section 75(4) of Act

X3 – (1) For the purposes of section 75(4) of the Act, the certificate of bail-in shall specify the following information:

(a) the name of the Division 4A financial institution;
(b) where the certificate provides for the cancellation of one or more eligible instruments held by the Division 4A financial institution, details of the eligible instruments to be cancelled, including the types or classes of eligible instruments;
(c) where the certificate provides for the modification, conversion, or change in form of one or more eligible instruments held by the Division 4A financial institution, details of the eligible instruments to be modified, converted, or changed in form, including the types or classes of eligible instruments; and
(d) where the certificate provides that one or more eligible instruments held by the Division 4A financial institution is to have effect as if a right of modification, conversion or change of form had been exercised under it —
    (i) details of the right of modification, conversion or change of form and its effect on the eligible instruments; and
    (ii) details of the eligible instruments to be affected, including the types or classes of eligible instruments.

Restriction on eligible instruments

X4 – (1) For the purposes of section 81 of the Act, where an instrument is an eligible instrument under regulation X2 and the contract governing the instrument is governed by the law of a foreign jurisdiction, a Division 4A financial institution must ensure that the contract contains a provision or provisions to the effect that all the parties to the contract agree for the eligible instrument to be the subject of a bail-in certificate.

(2) For the purposes of paragraph (1), the contract should make clear that:

(a) the eligible instrument may be subject to cancellation, modification, conversion, change in form, or have the effect as if a right of modification, conversion, or change of its form had been exercised by the Authority in its exercise of its powers under the Act;
(b) the terms and effect of such cancellation, modification, conversion, change in form, or have the effect as if a right of modification, conversion, or change of its form had been exercised will be solely determined by the Authority;
(c) the bail-in certificate would be binding on all the parties to the contract; and
(d) where the contract contains any contractual provision to the effect that upon the occurrence of a specified event, the eligible instrument would be cancelled, modified, converted, changed in form, or have the effect as if a right of

modification, conversion, or change of its form had been exercised, such a contractual specified event could occur independently of the Authority's exercise of its powers under the Act.

(3) For each of the contracts referred to in paragraph (1), the Division 4A financial institution must, prior to the issuance of the eligible instrument, provide the Authority with an independent legal opinion provided by a person qualified to practice law in the jurisdiction of the governing law of the contract to the Authority setting out the enforceability of the contractual provisions required in paragraph (1) to be included in the contract in the foreign jurisdiction.

(4) For the purposes of the legal opinion in paragraph (3) –

(a) the opinion must be provided on the legal enforceability and effectiveness of the contractual provisions required under paragraph (1) to be included in contract in the foreign jurisdiction of the governing law of the contract; and
(b) a single legal opinion may be provided for one or more contracts or classes of contracts.

(5) Any Division 4A financial institution which does not comply with paragraph (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part thereof during which the offence continues after conviction.

Disclosure requirement

X5 – (1) A Division 4A financial institution must disclose, on the front cover of a prospectus, information, circular, other offering document related to an eligible instrument, that the instrument may be subject to cancellation, modification, conversion, or change in form upon the Authority's determination under Division 4A of the Monetary Authority of Singapore Act (Cap. 186).

(2) Any Division 4A financial institution which does not comply with paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 and, in the case of a continuing offence, to a further fine not exceeding $15,000 for every day or part thereof during which the offence continues after conviction.

Annex D

DRAFT INSERTIONS TO PART I AND III OF THE MAS (CONTROL AND RESOLUTION OF FINANCIAL INSTITUTIONS) REGULATIONS 2013 IN RELATION TO THE CREDITOR COMPENSATION FRAMEWORK

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

Definitions

"Accounting Standards" has the same meaning as in section 4 of the Companies Act (Cap. 50);

"Division 5C FI under resolution" has the same meaning as in section 112 of the Act;

"parent" has the same meaning as in the Accounting Standards;

"subsidiary" has the same meaning as in the Accounting Standards;

"public sector body" means a Ministry, a Government department, a statutory body, a public authority or any other body of persons in the public sector;

"pre-resolution creditor" has the same meaning as in section 112 of the Act;

"pre-resolution shareholder" has the same meaning as in section 112 of the Act;

"prescribed written law" has the same meaning as in section 112 of the Act;

"resolution date" has the same meaning as in section 112 of the Act;

"valuation report" has the same meaning as in section 112 of the Act;

"valuer" has the same meaning as in section 112 of the Act.

Definition of "Division 5C financial institution"

X1. For the purposes of the definition of "Division 5C FI" or "Division 5C financial institution" in section 112 of the Act, each of the persons listed in regulation 8 as a pertinent financial institution shall also be a Division 5C FI or Division 5C financial institution.

Form, Manner and Timing for Payment of Compensation

X2.—(1) For the purposes of section 114(4) of the Act, where the Minister has made a direction to the trustee of the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI to make a withdrawal from the fund under section 114(3), the trustee must pay the amount of compensation that the pre-resolution creditor or pre-resolution shareholder is entitled to in full in Singapore dollars:

(a) into an account in the name of the pre-resolution creditor or pre-resolution shareholder opened with a bank inside or outside Singapore; or

(b) in such other form as the Authority may determine.

(2) For the purposes of paragraph (1), where the compensation that a pre-resolution creditor or pre-resolution shareholder is entitled to is paid into an account in the name of the pre-resolution creditor or pre-resolution shareholder opened with a bank outside Singapore or denominated in a currency other than the Singapore dollar:

(a) the pre-resolution creditor or pre-resolution shareholder will be liable for all charges levied by the bank in relation to the payment of compensation into the account; and

(b) where the account is denominated in a currency other than the Singapore dollar, the pre-resolution creditor or pre-resolution shareholder will be subject to the rate of exchange determined by the bank in relation to the payment of compensation into the account.

(3) Before the payment of compensation and within the timeframe specified by the trustee, the trustee may require any pre-resolution creditor or pre-resolution shareholder that is entitled to compensation to submit one or more of the following:

(a) particulars of an account in the name of the pre-resolution creditor or pre-resolution shareholder opened with a bank inside or outside Singapore; and

(b) any other details as specified by the trustee that the trustee may require to facilitate the payment of compensation to a pre-resolution creditor or pre-resolution shareholder.

(4) Upon receipt from the pre-resolution creditor or pre-resolution shareholder of the details required by the trustee in paragraph (3), the trustee must make the payment of compensation under paragraph (1) within such timeframe as is specified by the Authority by written notice to the trustee.

Recovery of Compensation Paid In Excess or In Error

X3.—(1) For the purposes of section 114(4) of the Act, if:

(a) the amount of compensation paid by the trustee to any pre-resolution creditor or pre-resolution shareholder is in excess of what ought to have been paid to the pre-resolution creditor or pre-resolution shareholder under Division 5C of Part IVB of the Act;

(b) pursuant to an order made by the Court under section 120(3) of the Act, the amount of compensation paid by the trustee to any pre-resolution creditor or pre-resolution shareholder is in excess of what ought to have been paid to the pre-resolution creditor or pre-resolution shareholder under Division 5C of Part IVB of the Act; or

(c) any compensation paid by the trustee is paid in error to any person,

the trustee must, as soon as practicable, recover, on behalf of the resolution fund established under Division 5B of Part IVB of the Act in relation to the resolution of the Division 5C FI, the amount paid in error or excess from the person who received the compensation, in such manner and within such period as may be specified by the trustee to that person, and that person must pay that amount to the resolution fund.

(2) Without prejudice to any other remedy, any amount paid in error or excess to any person shall be recoverable as a debt due to the resolution fund, established under Division 5B of Part IVB of the Act in relation to the resolution of the Division 5C FI, by that person.

Criteria for Appointment and Removal of Valuer

X4.—(1) For the purposes of section 115(3) of the Act, the Minister may only appoint a person as a valuer if the Minister is satisfied that all of the following conditions are fulfilled:

(a) the person is not employed by the Authority or by the Division 5C FI under resolution;

(b) the person is not a public sector body, the Division 5C FI under resolution, or a parent or a subsidiary of the Division 5C FI under resolution;

(c) the person does not have any material interest in common or in conflict with any of the following that could influence, or be reasonably perceived to influence, the person's judgment in the performance of the function of a valuer in relation to the Division 5C FI under resolution:

(i) any public sector body; or

(ii) the Division 5C FI under resolution, or a parent or a subsidiary of the Division 5C FI under resolution; and

(d) the person has sufficient experience, expertise, knowledge of winding up proceedings under Singapore law, and adequate technical and human resources to carry out the valuation for the Division 5C FI under resolution.

(2) In deciding the appointment of a person as a valuer, the Minister must also take into account any other factors which may influence, or be perceived to influence, the person's judgement in performing his role as a valuer.

(3) For the purposes of section 115(5) of the Act, the Minister may revoke the appointment of a valuer if the Minister is satisfied that the person appointed as a valuer:

(a) no longer meets the criteria set out in paragraph (1);

(b) has contravened any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct; or

(c) has become incapable of performing the role of a valuer appointed under section 115(2) of the Act.

Valuation Principles

X5.—(1) For the purposes of section 116(1) of the Act, a valuer for a Division 5C FI under resolution must conduct the valuation of the Division 5C FI in accordance with the valuation principles in paragraph (2).

(2) For the purposes of section 116(2)(a) of the Act, the valuer must:

(a) assume that the winding up proceedings commenced against the Division 5C FI immediately before the resolution date would have been in accordance with Part X of the Companies Act (Cap. 50) or by a liquidator appointed under section 377 of the Companies Act (Cap.50);

(b) not take into account any financial support or assistance provided to the Division 5C FI by the Government, a public body or a public officer, other than any financial support that is provided in the ordinary course of business; and

(c) assume that the Division 5C FI would not have been the subject of any resolution action under Division 2, Division 3, Division 4, Division 4A, Division 4B, Division 5 or Division 5A of Part IVB of the Act.

Information to be Specified in a Valuation Report

X6.—(1) For the purposes of section 116(4) of the Act, a valuation report must specify the following information:

(a) the valuer's assessment of what each pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date;

(b) the valuer's assessment of what each pre‑resolution creditor or pre‑resolution shareholder has received, is receiving, or is likely to receive, which shall comprise the following:

(i) a consolidated result of one or more of the actions mentioned in section 113(2) of the Act; and

(ii) any compensation under the law of a foreign jurisdiction governing the foreign resolution;

(c) an explanation of the key methodologies and assumptions adopted by the valuer in making the assessments in paragraphs (1)(a) and (1)(b), the reasons for their adoption, and the sensitivity of the respective assessments to these methodologies and assumptions; and

(d) any sources of valuation uncertainty inherent in the valuer's assessment.

Annex E

DRAFT INSERTIONS TO THE
MAS (SAFEGUARDS FOR COMPULSORY TRANSFER OF BUSINESS, AND EXEMPTION FROM MORATORIUM PROVISIONS) REGULATIONS 2018 IN RELATION TO SAFEGUARDS ON COVERED BOND PROGRAMMES

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

Protected covered bonds

X.—(1) A transfer of only part (but not the whole) of the business of a transferor under section 57 of the Act must not provide for the transfer of some, but not all, of the rights and liabilities that constitute, or form part of, a covered bond programme that the transferor has issued itself or through a covered bond special purpose vehicle.

(2) Paragraph (1) does not apply to rights and liabilities relating to a deposit made with the transferor.

(3) For the purposes of paragraph (1), a certificate of transfer which purports to transfer all of the property, rights and liabilities which are or form part of an arrangement involving a covered bond that the transferor is a party to shall be treated as having done so effectively (and would not amount to a contravention of paragraph (1)).

(4) In this regulation –

"cover pool", in relation to a covered bond, means a pool of assets that are owned legally or beneficially, or both legally and beneficially, by a bank incorporated in Singapore or a covered bond special purpose vehicle, for the purpose of securing the payment of one or more of the following:

(i) the liabilities to a holder of the covered bond;

(ii) any liabilities arising from the enforcement of the rights of a holder of the covered bond;

(iii) any liabilities to any third-party service provider appointed for the purposes of the operation and administration of the programme under which the covered bond is issued.

"covered bond" means any bond, note or debenture issued by a bank incorporated in Singapore or by a covered bond special purpose vehicle established in connection with the programme introduced by a bank incorporated in Singapore for the issue of the bond, note or other debenture, under which the liabilities to a holder of such bond, note or debenture, and any liabilities arising from the enforcement of the rights of the holder are –

(a) secured by the assets in the cover pool; and

(b) recoverable from the bank regardless of whether the assets in the cover pool are sufficient to meet the liabilities.

"covered bond special purpose vehicle" means a company incorporated in Singapore for the primary purpose of one or both of the following:

(a) issuing any covered bond;

(b) holding the cover pool in relation to any covered bond issued by a bank incorporated in Singapore or the company.

Annex F

PROPOSED NEW REGULATIONS TO BE ISSUED UNDER THE DEPOSIT INSURANCE AND POLICY OWNERS' PROTECTION SCHEMES ACT

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

Valuation for the purposes of section 29A of the Act

X1 – (1) For the purposes of section 29A(2) of the Act, the Authority may appoint an independent valuer to conduct a valuation to determine the amounts that the Agency would have been repaid from or out of the assets of the DI Scheme member under section 27 of the Act.

Valuation Principles

X2 – (1) An independent valuer appointed under regulation 1 must conduct the valuation in accordance with the valuation principles in paragraph (2), and any other valuation principles specified by the Authority by written notice to the independent valuer.

(2) The independent valuer must:

(a) not take into account any financial support or assistance provided to the DI Scheme member by the Government, a public body or a public officer, other than any financial support that is provided in the ordinary course of business;

(b) assume that the DI Scheme member would not have been the subject of any resolution action under Division 2, Division 3, Division 4, Division 4A, Division 4B, Division 5 or Division 5A of Part IVB of the Monetary Authority of Singapore Act (Cap.186); and

(c) assume that the DI Scheme member would have been wound up in accordance with Part X of the Companies Act (Cap.50) or by a liquidator appointed under section 377 of the Companies Act (Cap.50).

Information to be Specified in a Valuation Report

X3.—(1) After conducting the valuation, the independent valuer must issue a valuation report to the Authority.

(2) The valuation report must include the following information:

(a) the independent valuer's assessment of what the Agency would have been repaid from or out of the assets of the DI Scheme member under resolution, under section 27 of the Act;

(b) an explanation of the key methodologies and assumptions adopted by the independent valuer in making the assessment in paragraph (2)(a), the reasons for their adoption, and the sensitivity of the assessment to these methodologies and assumptions; and

(c) any sources of valuation uncertainty inherent in the independent valuer's assessment.

Monetary Authority of Singapore