RESPONSE TO FEEDBACK RECEIVED

26 October 2018

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

MAS Monetary Authority of Singapore

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# 1 Preface

1.1 On 16 July 2018, MAS consulted on proposed regulations to enhance the Resolution Regime for Financial Institutions (FIs) in Singapore [1] to support the amendments in the Monetary Authority of Singapore (Amendment) Act 2017 ("MAS (A) Act").

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

Section 2: Temporary stays on termination rights

Section 3: Statutory bail-in regime

Section 4: Creditor compensation framework

Section 5: Resolution funding arrangements

1.3 The Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 will be revoked and two new separate regulations, the Monetary Authority of Singapore (Control of Financial Institutions) Regulations 2018 and the Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018 will be issued. The Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018 will also be revoked and the relevant provisions will be incorporated into the Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018.

1.4 The changes will take effect from 29 October 2018 unless otherwise stated. The new regulations relating to resolution funding arrangements under the Deposit Insurance and Policy Owners' Protection Schemes Act ("DI-PPF Act") will be issued at a later date.

[1] The consultation paper can be accessed here.

## 2 Temporary stays on termination rights

2.1 MAS proposed to:

(i) **exempt certain entities from the operation of temporary stays**. These entities would be limited to central banks, designated payment systems, approved clearing houses, recognised clearing houses and depositories;

(ii) **impose a contractual recognition requirement on qualifying pertinent FIs**[2], such that their financial contracts governed by foreign laws contain enforceable provisions whereby all parties to the contract agree that their exercise of termination rights may be subject to MAS' temporary stay powers; and

(iii) **impose the same contractual recognition requirement on related entities of qualifying pertinent FIs** where the financial contracts are guaranteed or otherwise supported by these qualifying pertinent FIs.

The consultation paper also sought comments on whether the contractual recognition requirement should apply to FIs operating as branches in Singapore that are required to perform recovery and resolution planning.

### *Exempted entities*

2.2 One respondent sought clarity on whether the exemption of certain entities from the operation of the temporary stays applied to both financial and non-financial contracts. Two respondents commented that the exemption of entities which were financial market infrastructures ("FMIs") might not provide for the continuity of FMI membership and access for the FI during resolution. This would affect the operational continuity of the FI's critical functions and critical shared services. Another respondent commented that the

[2] It was proposed that a qualifying pertinent FI refers to:

(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),

which is incorporated in Singapore and required to perform recovery and resolution planning.

scope of exempted entities could be expanded to those established or regulated in other jurisdictions.

## MAS' Response

2.3 **The exemption from temporary stays on termination rights applies to both financial and non-financial contracts**. The intent behind exempting FMIs from the operation of temporary stays is to protect the continued safety and orderly operations of these systems, thereby avoiding any disruption to financial stability. This is a separate issue from continued FMI membership for FIs in resolution. MAS will engage FMIs on safeguards to allow continued membership and access by an FI during resolution, so long as the FI continues to fulfil its obligations such as payment, collateral or settlement obligations[3]. Where necessary, MAS may direct FMIs to undertake actions to support resolution actions, provided that the safety and orderly operations of the FMIs are not compromised.

2.4 **The exempted entities in the regulations are intended to be limited to the scope of entities consulted on for now**. MAS will consider expanding the scope in the future, as necessary. MAS will also apply the same considerations as set out in paragraph 2.3 when deciding whether to exercise temporary stay of termination rights in contracts involving foreign FMIs and counterparties.

### *Scope and Application of Contractual Recognition Requirement*

2.5 **Some respondents cited difficulties in complying with the proposed requirement, particularly in light of its compulsory nature**. Respondents also raised concerns on applying the requirement to contracts entered into by related entities. Some respondents sought clarity on the definition of financial contracts in the draft regulations. There were also varied views on extending the scope of application of the requirement to FIs that operate as branches in Singapore. Two respondents requested MAS to provide a transitional time period for FIs to implement the requirement.

[3] In accordance with the FSB Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution, 6 July 2017.

MAS' Response

2.6 **MAS will engage the industry further on the scope and application of the contractual recognition requirement**. At this time, MAS will not promulgate regulations relating to the contractual recognition requirement.

## 3 Statutory bail-in regime

3.1 Regulations in relation to the statutory bail-in regime were proposed in the consultation paper to

(i) prescribe the scope of FIs and instruments subject to statutory bail-in ("eligible instruments");
(ii) set out the information to be specified in the bail-in certificate;
(iii) require contractual recognition provisions for eligible instruments which are governed by foreign laws, and an independent legal opinion setting out the enforceability of the contractual recognition provisions; and
(iv) require disclosure of the consequences of a bail-in on the front cover of any offering document related to an eligible instrument.

*Scope of financial institutions*

3.2 Some respondents asked why the scope of institutions subject to the bail-in regime is different from the scope of institutions subject to the temporary stays on termination rights.

MAS' Response

3.3 **In principle, the two scopes should generally align over time as these are powers needed to resolve FIs in an orderly manner. However, as bail-in involves imposing express losses on creditors and not just delaying contractual rights, MAS has adopted a more prudent approach of starting with Singapore-incorporated banks and bank holding companies**. This is because international standards like the FSB's Key Attributes of Effective Resolution Regimes for FIs are more advanced for the banking sector. For non-bank FIs, MAS will continue to monitor international developments on bail-in regimes.

*Liabilities within the scope of bail-in*

3.4 Some respondents asked for clarity on the scope of the eligible instruments in the Regulations, while one respondent asked MAS to exclude derivatives from the scope of eligible instruments. Another respondent asked if partially secured instruments and instruments such as senior perpetual securities, convertible bonds, exchangeable bonds, options, warrants and other securities convertible to shares would be eligible instruments.

MAS' Response

3.5 **MAS has revised the definition of what constitutes an eligible instrument** to include:

(i) any equity instrument or other instrument that confers or represents a legal or beneficial ownership in the Division 4A FI[4], except an ordinary share;

(ii) any unsecured liability or other unsecured debt instrument that is subordinated to unsecured creditors' claims of the Division 4A FI that are not so subordinated;

(iii) any instrument that provides for a right for the instrument to be written down, cancelled, modified, changed in form or converted into shares or another instrument of ownership, when a specified event occurs.

3.6 **For eligible instruments that are only partially secured, only the unsecured portion will be within the scope of MAS' bail-in powers**. Vanilla senior perpetual securities, senior convertible bonds and senior exchangeable bonds, options and warrants also generally would not meet the definition of eligible instruments set out in the Regulations.

3.7 **MAS has also expressly clarified in the Regulations that eligible instruments do not include derivatives contracts**.

[4] It was proposed that a Division 4A FI refers to:

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

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

### *Contractual recognition provisions*

3.8 A respondent requested MAS to include an impracticability clause (similar to the Prudential Regulation Authority (PRA) rules in the United Kingdom) to provide an exception that FIs need not comply with the requirement where it is impracticable.

### MAS' Response

3.9 **MAS is of the view that an impracticability clause is not required upfront**. MAS has powers in exceptional circumstances to exempt any eligible instrument from the contractual recognition requirement via written notice to a Division 4A FI, and it is for MAS as the resolution authority to determine based on the facts at the time whether or not the circumstances are exceptional.

### *Independent legal opinion setting out the enforceability of the contractual recognition provisions*

3.10 A respondent expressed concern that the requirement for an independent legal opinion to be provided prior to the issuance of an eligible instrument will affect the Division 4A FI's speed to market the eligible instrument. Moreover, their views were that the legal opinion would have validity only in respect of instruments that have been issued. The respondent suggested that MAS allow a Division 4A FI to provide a draft legal opinion on the enforceability of the bail-in provisions prior to the issuance of the instrument and to provide the full legal opinion only after the settlement date of the instrument.

3.11 Another respondent asked MAS to apply the requirement for an independent legal opinion to issuances of Additional Tier 1 and Tier 2 capital instruments only. Some respondents asked whether the requirement for a legal opinion would apply to eligible instruments issued by a Division 4A FI to intragroup entities, such as a holding company.

3.12 Yet another respondent asked MAS to clarify whether a foreign law opinion is still required if the contractual recognition provisions were governed by Singapore law and subject to the exclusive jurisdiction of the Singapore courts, while the rest of the contract remains governed by foreign law.

## MAS' Response

3.13 **MAS will retain the requirement for a Division 4A FI to provide an independent legal opinion on the enforceability of the contractual recognition provisions prior to the issuance of an eligible instrument, but may allow the FI up to 10 days after the issuance date of the eligible instrument to provide that legal opinion**. The requirement is in line with the FSB's principles for cross-border effectiveness of resolution actions for firms to be able to demonstrate to the relevant authorities in their home jurisdiction prior to issuing the instrument under foreign law that a statutory bail-in of the instrument by home authority will be enforceable as a result of the contractual recognition provisions. Nonetheless, recognising the time sensitivity of issuing capital market instruments, MAS may, on an application made by a Division 4A FI before the issuance of an eligible instrument and subject to such conditions and restrictions as MAS may impose, extend the time for the provision of the legal opinion by up to 10 days after the issuance date of the eligible instrument.

3.14 **The requirement to provide an independent legal opinion setting out the enforceability of the contractual recognition provisions will apply to all eligible instruments issued by a Division 4A FI to all entities**, including an intragroup entity. The intent of the legal opinion is to provide more legal certainty as to the enforceability of the contractual provision where the contract is governed by foreign law. Therefore, where different provisions are governed by different laws, a legal opinion would still be required for that legal certainty, notwithstanding that the provision may be governed by Singapore law while the other provisions in the contract are governed by foreign law.

### *Legal basis to trigger conversion or write-down of eligible instruments*

3.15 Some respondents asked MAS to clarify whether MAS will convert or write down eligible instruments pursuant to the contractual mechanisms for conversion or write-down upon certain defined triggers outside of resolution (for example, where the FI's capital ratio falls below a particular level or the FI reaches the point of non-viability), or pursuant to statutory bail-in powers when MAS exercises statutory bail-in at the same time as the occurrence of an event that triggers a contingent convertible clause in the contract of the eligible instrument.

### MAS' Response

3.16 **The FSB's Principles for Cross-border Effectiveness of Resolution Actions states that contractual bail-in mechanism is distinct from the exercise of statutory bail-in by the home resolution authority and that there may be exceptional circumstances such as where both could be applied consecutively.** The FSB's Key Attributes of Effective Resolution Regimes for FIs also states that resolution authorities should have bail-in powers, upon entry in resolution, to convert or write down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution.

3.17 **MAS will generally consider FSB Principles and Key Attributes when determining which bail-in mechanism to take**. For example, in the case of an eligible instrument which contains a contingent convertible provision and a statutory bail-in provision, statutory bail-in will be applied on the principal amount of the eligible instrument that has not been entirely written off or converted into ordinary shares in accordance with the contingent convertible provision.

### *Transitional period*

3.18 Some respondents requested MAS to provide a transitional period for Division 4A FIs to implement the bail-in contractual recognition and disclosure requirements.

### MAS' Response

3.19 **The revised requirements will apply in respect of instruments issued on or after 29 November 2018**. This will provide sufficient lead time for Division 4A FIs to make the necessary preparations to comply with the revised regulations starting from the effective date.

### *Disclosure requirements on the cover page of the offering document*

3.20 Several respondents sought clarity on the level of details in relation to the consequences of bail-in which they are required to disclose on the front cover of the offering document. Some respondents expressed concern over space constraints on the front cover of the document.

3.21 Another respondent also stated that not all securities issued under a programme will be subject to the bail-in provisions and would like to inquire if it is possible to include

the disclosure within the base prospectus instead of the front cover. Another respondent also asked MAS to clarify if the disclosure requirements extend to eligible instruments issued by Division 4A FIs to intragroup entities, such as a holding company.

### MAS' Response

3.22 **The front cover of the offering document must state, at the minimum, that the instrument or certain instruments issued under the programme may be subject to cancellation, modification, conversion, or change in form under a bail-in certificate**. The issuer may provide a cross-reference within the offering document for details of the consequences of a bail-in. The front cover disclosure requirements will apply to any prospectus, information circular or other offering document related to an eligible instrument, including those issued to intragroup entities.

## 4 Creditor compensation framework

4.1 **MAS proposed regulations to prescribe details of the creditor 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. The proposed details include:

- (i) the scope of FIs covered by the framework;
- (ii) the form, manner and timing for payment of compensation;
- (iii) the criteria for appointment and removal of a compensation valuer by the Minister;
- (iv) the valuation principles that a compensation valuer will be required to follow in the valuation of compensation amounts; and
- (v) 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.

### *Ensuring compensation valuer has no material conflict of interest*

4.2 A respondent suggested that the criteria for the appointment of a person as a compensation valuer by the Minister should include a requirement of the person's independence from any party that might benefit from the compensation framework.

MAS' Response

4.3 **MAS agrees with the intent of the respondent's suggestion** and will seek to ensure that the compensation valuer has no material conflict of interest.

4.4 **However, we will not adopt the respondent's suggestion in its original form**. Doing so would mean that in practice only a person who is independent of all creditors and shareholders of the FI in resolution may be appointed as a compensation valuer, as it will not be possible to identify with certainty prior to the valuation which creditors and shareholders of the FI in resolution will benefit from compensation paid. This would pose severe challenges and possibly cause undue delay given that systemically-important financial institutions are likely to have financial relationships with many eligible persons.

4.5 **MAS will thus prescribe in the Regulations that the Minister, in appointing a person as a compensation valuer, must consider any factors that may influence the person's judgement in performing the role of the valuer**. This will preclude the appointment of a person with any material conflict of interest. As part of the appointment process, candidates will be required to disclose any potential conflict of interest that they may have, as a pre-requisite for consideration for appointment.

*Flexibility for staggered payment of compensation*

4.6 Two respondents suggested that the Regulations provide for flexibility for staggered payment of compensation, with a view to avoid imposing stress on the financial position of a newly-resolved FI caused by one-time payment of potentially large compensation amounts.

MAS' Response

4.7 **Compensation payable under the creditor compensation framework will be payable from the resolution fund**. Given that resolution generally preserves the value of a distressed FI to a greater extent than liquidation, a majority of creditors and shareholders are not expected to be made worse off in resolution than in liquidation. Hence, the total compensation payable in a resolution is not expected to be disproportionate.

## 5 Resolution funding arrangements

5.1 **Once the MAS (A) Act comes into effect, the DI-PPF Act will allow the use of the Deposit Insurance ("DI") Fund to support the implementation of resolution measures at "equivalent cost" for the resolution of DI Scheme Members**. The "equivalent cost" criterion caps the amount to be drawn from the DI Fund at an amount that would have been paid out to the DI Scheme Member's depositors had that DI Scheme Member failed. MAS proposed new regulations on the valuation principles for calculating an "equivalent cost".

5.2 One respondent noted MAS' proposed regulations. The respondent also asked for further clarity on the arrangements for the ex-post recovery of resolution costs.

MAS' Response

5.3 **MAS will consult at a later date on other resolution funding regulations including the ex-post recovery of resolution costs**. The regulations relating to resolution funding arrangements proposed in the consultation paper will be issued at a later date.

**Annex A**

# LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED REGULATIONS TO ENHANCE THE RESOLUTION REGIME FOR FINANCIAL INSTITUTIONS IN SINGAPORE

1. Clifford Chance
2. DBS Bank Limited
3. DTCC Data Repository (Singapore) Pte. Ltd.
4. EQ Insurance Company Limited
5. ICE Clear Singapore Pte. Ltd.
6. iFAST Financial Pte. Ltd.
7. ISDA
8. Life Insurance Association
9. Maybank Singapore
10. St. James's Place International plc (Singapore Branch)
11. Swiss Re Asia Pte. Ltd.
12. Swiss Re International SE Singapore Branch
13. The Asia Securities Industry & Financial Markets Association (ASIFMA)
14. WongPartnership LLP

Eight respondents requested for confidentiality of identity.

Please refer to Annex B for the submissions.

**Annex B**

# SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED REGULATIONS 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 | Feedback from respondent |
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| 1 | Clifford Chance | **General Comments**<br>We are grateful for the opportunity to respond to the Consultation Paper.<br><br>As a general comment, we note that the nature of the proposals would include discussions with counterparties and amendments to contractual documents (in particular, the inclusion of contractual recognition requirements for temporary stays and the bail-in regime). We would be grateful if the MAS could indicate when the proposals would come into force, and confirm whether there will be a transitional period to allow FIs to implement the proposals.<br><br>On a related note, we have observed that there are certain undefined terms in the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provision) Regulations 2018. In particular, the terms "*margin rules*" and "*default arrangements*" are not defined in Regulation 9. We would be grateful if the MAS could clarify the meaning of these terms.<br><br>**Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.**<br><br>Scope of exemption<br>We note that the MAS proposes to exempt central banks, designated payment systems, approved clearing houses, recognised clearing house and depositories from the operation of the temporary stay.<br><br>However, we note that the categories of entities contemplated under the proposed Regulation X and Section 84(1) are not exactly aligned. To elaborate, Regulation X is proposed in the Consultation Paper to be as follows:<br><br>**Persons excluded from section 84 of the Act**<br>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 |

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| | | 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) (emphasis added)<br><br>Sections 84(1), 84(2) and 84(3) of the MAS Act are set out under the MAS Amendment Act as follows:<br><br>***Right to temporarily suspend termination right for contracts because of resolution measure***<br>*84.—(1) This section applies to a contract one of the parties to which is —*<br>*(a) a pertinent financial institution that is the subject or proposed subject of a resolution measure;*<br>*(b) a pertinent financial institution in respect of which a foreign resolution authority of a foreign country or territory has carried out, or has informed the Authority that it has grounds to carry out, a foreign resolution; or*<br>*(c) an entity that is part of the same group of companies as that of a pertinent financial institution where —*<br>*(i) the pertinent financial institution is the subject or proposed subject of a resolution measure;*<br>*(ii) the contract has a termination right that is exercisable if the pertinent financial institution becomes insolvent or is in a certain financial condition; and*<br>*(iii) the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution.*<br><br>*(2) The Authority may, by notice in writing to the parties to the contract, suspend the exercise of any termination right in the contract for a specified period.*<br><br>*(3) The notice under subsection (2) does not apply to —*<br>*(a) a termination right under the contract which becomes exercisable for a breach of a basic substantive obligation only;*<br>*(b) a termination right under a contract between the pertinent financial institution and a person prescribed for the purposes of this paragraph by regulations made under section 126; or*<br>*(c) a termination right under a contract, or a contract within a class of contracts, prescribed for the purposes of this paragraph by regulations made under section 126. (emphasis added)*<br><br>The categories of contract parties contemplated under Section 84(1)(c) which may be subject to temporary suspension of termination rights by the MAS may include contract parties that are |

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| | | not pertinent financial institutions. However, the exemption under Regulation X only applies to contract parties which are pertinent financial institutions. We would be grateful if the MAS could provide clarity on this.<br>Definition of "financial contract"<br>We would be grateful if the MAS could clarify the meaning of "*financial contract within the meaning of regulation 32*", as the current version of the MAS (Control and Resolution of Financial Institutions) Regulations 2013 in relation to Temporary Stay on Termination Rights does not contain a definition of the term "*financial contract*" or a regulation 32.<br><br>Scope of "related entities" and "group"<br>We would be grateful if the MAS could clarify the meaning of the terms "*related entities*" and "*group of companies*".<br><br>**Question 1c: MAS seeks comments on 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.**<br><br>We would suggest that the contractual recognition not apply to FIs which operate as branches in Singapore that are required by the MAS to perform recovery and resolution planning.<br><br>This is because such FIs are likely to be bound by stay provisions mandated by their home jurisdictions. It therefore appears unnecessary to include stay provisions specific to the Singapore branch, as a stay would take place pursuant to those provisions in the event that the FI is subject to resolution powers in its home jurisdictions. Further, the stay provisions pursuant to the laws of the home jurisdiction and that of Singapore may differ, which may result in inconsistencies and difficulties in practical implementation.<br><br>Counterparties may also need to sign amendments to the contracts to incorporate the contractual recognition clauses, which is unnecessarily burdensome in view of the above.<br><br>**Question 2a: MAS seeks comments on the draft regulations in relation to the statutory bail-in regime.**<br><br>Scope of institutions<br>We note that the scope of institutions subject to the bail-in regime is slightly different than the scope of institutions subject to the temporary stay. For a better understanding of the policy rationale, we would be grateful if the MAS could clarify if its intent is to have different types of institutions for the bail-in proposals and the temporary stay proposals. |

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| | | Eligible instruments<br>We would be grateful if the MAS could clarify if each of items (a), (b) and (c) in the table are Eligible Instruments, or whether an Eligible Instrument is one which satisfies all of the criteria in items (a), (b) and (c). It appears that the former interpretation should be correct, but would be grateful if the MAS could confirm.<br><br>Legal opinion<br>We note that the legal opinion is to be provided to the MAS prior to the issuance of the eligible instrument. We would be grateful if the MAS could provide guidance as to the timeline in which the legal opinion should be provided to the MAS. This will assist in avoiding unexpected delays to the issue of the eligible instrument, in the event that the legal opinion is issued and provided to the MAS beyond the time expected by the MAS.<br><br>**Question 2b: MAS seeks comments on the proposal to 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.**<br><br>As different financial institutions may adopt different wording for the disclosure, we would be grateful if the MAS could clarify if any guidelines would be released on the wording to be used, or if any industry standard wording should be adopted. |
| 2 | DTCC Data Repository (Singapore) Pte. Ltd. | **Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.**<br><br>The TR has one critical function which is the handling and administration of derivative trade data (i.e. ingestion of OTC reportable trade data and reporting such data to the relevant regulator). Trade repositories are not party to the transactions it records.<br><br>Temporary stays on termination rights are meant to facilitate recovery and resolution actions in cases where the insolvency of a FI or the start of resolution actions against it can trigger certain close-out rights (which include early termination of relevant contracts, foreclosure on collateral and claim for payments).<br><br>If customers of a trade repository could immediately terminate their agreements, a temporary stay on such customers' termination rights would be beneficial to a trade repository because it would enable the trade repository to have adequate time to perform an orderly wind down as contemplated by the trade repository regulations. |

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<tr><td></td><td></td><td>This complements existing regulations applicable to trade repositories.<br><br>It should be noted, in contrast, that there should be no need for a financial institution in distress to be protected from a trade repository potentially terminating its contract. A distressed financial institution is likely to have need of derivatives contracts as a tool to hedge its positions or otherwise execute its recovery or resolution and will continue to be under an obligation to report them to the regulator. As long as the financial institution or its trustee or insolvency administrator pays for such services (as is expected to occur even in a resolution), the trade repository would continue to provide its services as required by relevant regulations.<br><br>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.<br><br>We submit that the MAS has correctly concluded that licensed trade repositories do not need to be included in the list of financial market infrastructure types of financial institutions identified in Regulation X under Annex B as exempt from the operation of a temporary stay.</td></tr>
<tr><td>3</td><td>EQ Insurance Company Limited</td><td>Question 1c: MAS seeks comments on 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.<br><br>Although we are not and do not operate as a branch in Singapore, we opine that such requirement should be applicable to branches.</td></tr>
<tr><td>4</td><td>ICE Clear Singapore Pte. Ltd.</td><td>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.<br><br>Proposed regulation X1(2)(b)(iv): Please insert “incorporated in Singapore” after “recognised market operator” and “recognised clearing house”. We think it would be helpful to include an express clarification that overseas-incorporated RMOs and RCHs are excluded.</td></tr>
<tr><td>5</td><td>iFAST Financial Pte. Ltd.</td><td>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.<br><br>(1) MAS to elaborate on the position of the parties during the temporary stay i.e. whether duties and obligations of the parties under the Agreement are suspended during the stay<br><br>(2) MAS to elaborate on the consequences where a 3rd party does not agree to have such clause on MAS powers mentioned in the</td></tr>
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| | | agreement and whether the FI would be prohibited from entering into a contractual agreement with such 3rd parties or could there be any exception or excluded scenario. |
| 6 | The International Swaps and Derivatives Association ("ISDA") | **General Comments**<br><br>The International Swaps and Derivatives Association, Inc. (ISDA) is grateful for the opportunity to respond to this Consultation Paper.<br><br>Consistent with our mission, we are primarily concerned in this submission with the effect of the proposed resolution regime on the safety and efficiency of the derivatives markets in Singapore, by considering the impact of the proposals on the rights of parties under derivatives transactions with failing financial institutions and other market counterparties. Any terms not defined herein have the meaning set out in the Consultation Paper.<br><br>Implementation Timeframe<br>As a general query, ISDA and its members would be grateful if the Monetary Authority of Singapore (MAS) can provide an indication of when the resolution framework is intended to come into force, and would request that MAS provide a transitional period for the implementation of these proposals.<br><br>Some of these proposals - in particular, those concerning contractual recognition of the temporary stays, contractual provisions for bail-in instruments and the disclosure requirements for bail-in instruments, would require significant lead time and resources to implement.<br><br>The industry would require time to draft and agree on standard language, to identify the relevant contracts that require amendments, and to reach out to clients and counterparties regarding the amendments. In many cases, Asian counterparties may be dealing with affected financial institutions (FIs) on their standard terms of business which may not be Singapore law governed, and the FIs will have to notify the counterparties in writing and may need the counterparty to countersign and agree to the amendments (this being the most certain way of guaranteeing the required legal enforceability). Time would also be required to educate counterparties, who may not be familiar with the concepts behind the temporary stay and bail-in.<br><br>With respect to contractual recognition requirements set out in regulation X1 under Annex B of the Consultation Paper in particular, we note that since a financial institution becomes a "qualifying pertinent FI" only after it has been issued a direction by MAS under section 43(1) of the Monetary Authority of Singapore Act, Chapter 186 of Singapore, the financial institution should be given sufficient |

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| | | time from the date of the issue of the direction to comply with the requirements. In addition, if the contractual recognition requirements set out in regulation X1 under Annex B of the Consultation Paper affect existing transactions and contracts (please see our comments under question 1(a) under "Application of contractual stay requirements"), we urge that MAS considers the time required for repapering.<br><br>As discussed with MAS, ISDA would be happy to consider and discuss the preparation of an industry solution in order to assist market participants to comply with these requirements. As MAS is aware, ISDA has worked together with regulators and market participants globally to publish the following protocols:<br>(a) The ISDA 2015 Universal Resolution Stay Protocol (this replaced the ISDA 2014 Resolution Stay Protocol);<br>(b) The ISDA 2016 Resolution Stay Jurisdictional Modular Protocol and the accompanying jurisdictional modules;<br>(c) The ISDA 2016 and 2017 Bail-in Article 55 BRRD Protocols; and<br>(d) The ISDA 2018 US Resolution Stay Protocol published in July 2018 and which is expected to be open for adherence soon.<br><br>Accordingly, ISDA and its members would like to request an adequate transitional period before the proposals take effect. We would be happy to discuss this further with MAS.<br><br>**Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.**<br><br>Definition of “financial contract”<br>ISDA and its members would under Annex B of the Consultation Paper, as the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 do not have a regulation 32 at the moment. Will this be defined in the same manner as in regulation 3 of the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018?<br><br>We therefore would like to seek clarification that the definition of “financial contract” for the regulations described above would be consistent and that, for example, spot FX and securities-related FX transactions are included within the scope of “financial contracts”. We note for example that Regulation 3(1)(d) of the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018 includes spot contracts in the definition of “financial contract”.<br><br>We also received feedback that if "securities contracts" (as defined in the Monetary Authority of Singapore (Safeguards for Compulsory |

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| | | Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018) are included within the scope of financial contracts, this may capture, for instance, offering documents of securities and it may not be feasible to amend these terms to include contractual recognition provisions. Some members would like to seek clarification from MAS whether disclosure in the offering document would suffice without positive consent from investors.<br><br>Application of contractual stay requirements<br>ISDA notes that paragraph 3.7 of the Consultation Paper states, "the contractual recognition requirement will have prospective effect [emphasis added] and apply to new financial contracts which are governed by foreign law".<br><br>We note that regulation X1 of the Draft Insertions to Part III of the MAS (Control and Resolution of Financial Institutions) Regulation 2013 in relation to Temporary Stay on Termination Rights as set out in Annex B of the Consultation Paper (Temporary Stay Regulation) applies where a qualifying pertinent financial institution enters into any specified contract. Unlike the contractual recognition provisions for bail-in as set out in regulation X2 of the Draft Insertions to Part III of the MAS (Control and Resolution of Financial Institutions) Regulations 2013 in relation to the Statutory Bail-in Regime provided in Annex C of the Consultation Paper, there is no specified commencement date for the Temporary Stay Regulation. We would therefore like to seek clarification whether this is only intended to affect new financial contracts that are entered into after the regulations come into force, as set out in paragraph 3.7 of the Consultation Paper or whether this is intended to affect both existing and new financial contracts entered into after the regulations come into force.<br><br>If this regulation is only intended to affect new contracts, we would like to seek further clarification on what may constitute a new contract. In particular:<br>(a) we note that the ISDA Master Agreement is a master agreement with numerous underlying transactions. The ISDA Master Agreement is a single agreement together with Confirmations evidencing the individual transactions, and this is a concept that is important in ensuring enforceability of close-out netting provisions. This raises a question of whether, in a situation where an ISDA Master Agreement has been entered into before the commencement of the contractual stay provisions, the contractual stay would affect new transactions entered into under that particular ISDA Master Agreement. If so, this may necessitate either a bifurcation in treatment of transactions under the ISDA Master Agreement (which may have implications for netting enforceability), or may require the entire ISDA |

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| | | Master Agreement to be repapered, notwithstanding that the ISDA Master Agreement was entered into before the commencement date. The same consideration would also apply to other types of master agreements (including certain standard terms and conditions);<br><br>(b) we would like to query whether amendment agreements to a specified contract would be considered a new contract that would trigger the contractual stay requirements; and<br><br>(c) we would like to query whether long form confirmations, which incorporate an ISDA Master Agreement by reference, would be within the scope of a "specified contract".<br><br>In providing our comments above, we have also considered the scope of sections 83 and 84 of the Monetary Authority of Singapore Act (as amended by the Monetary Authority of Singapore (Amendment Act) 2017).<br><br>Scope of related entities<br>ISDA and its members note that “related entities” and “group” are not defined in the Temporary Stay Regulation. ISDA would like to confirm that “related entities” would be limited to “related corporations” as defined in section 6 of the Companies Act, Chapter 50 of Singapore - that is, corporations that are the holding company or subsidiary of another corporation. Similarly, ISDA would like to seek confirmation that “group” refers to the group of companies that are deemed to be related under section 6 of the Companies Act.<br><br>ISDA also notes that the contractual stay requirements apply to related entities where the obligations of the entity under the contract are guaranteed or otherwise supported by the qualifying pertinent financial institution. We would request clarification on what constitutes support - for instance whether an intra-group agreement would be in scope (and whether these would only be in scope for back to back arrangements, rather than say, intra-group services agreements) or whether only direct contractual arrangements between the affiliate and the underlying client are in scope. We would welcome further guidance on this and would be grateful if MAS is able to clarify this possibly either by way of guidelines or FAQs.<br><br>Criteria for enforceability<br>ISDA and its members would like to seek further guidance on the MAS’ expectations concerning what steps an FI would need to undertake to ensure that the provisions are enforceable. For instance, would the MAS require the FI to obtain a legal opinion, and if so, would the opinion need to be refreshed on an ongoing basis? |

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| | | ISDA would also note that legal opinions would be subject to standard qualifications, and there may be impediments to enforceability under certain circumstances. ISDA would also like to seek clarification on whether a single legal opinion over contractual provisions for a class or classes of contracts would be sufficient evidence of enforceability.<br><br>Resolution and Recovery (R&R)<br>We understand the MAS will consult on further R&R rules at a later stage. Our members would be happy to engage MAS on this topic and therefore hope the MAS will invite comments on the full set of recovery and resolution rules, as part of MAS' consultation process.<br>**Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.**<br><br>Our members would be grateful if the MAS could:<br>(a) confirm that merchant banks are not within scope of the definition of "qualifying pertinent financial institutions", as they do not constitute "banks", which are defined under the Monetary Authority of Singapore Act to mean banks licensed under the Banking Act, Chapter 19 of Singapore; and<br>(b) clarify whether the temporary stay on termination rights only applies to financial contracts entered into by the qualifying pertinent financial institution as principal and not to contracts that the qualifying pertinent financial institution entered into as agent.<br><br>We would also note that at the moment, "pertinent financial institution", as defined under regulation 8 of the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 does not include some of the entities set out under definition of a "qualifying pertinent financial institution" - namely, financial holding companies, insurers or a depository under the Securities and Futures Act, Chapter 289 of Singapore. As such, the categories of "qualifying pertinent financial institution" is wider than the category of institutions that have to produce recovery or resolution plans under section 43 of the MAS Act. ISDA would like to seek clarification on whether this is MAS' intention, and ISDA and its members would welcome further opportunities to consult with MAS on this point and to discuss possible resourcing constraints.<br><br>**Question 1c: MAS seeks comments on 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.**<br><br>We do not believe that the contractual recognition requirement should be extended to FIs which operate as branches in Singapore. |

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| | | We note that the draft regulations at the moment do not extend to FIs that operate as branches.<br><br>As many jurisdictions have implemented or are in the process of implementing resolution regimes, such branches are likely to be subject to their home jurisdiction resolution regimes, which may conflict with or unintentionally extend the potential stay period that a counterparty may otherwise be subject to, if the resolution stay imposed by the MAS and the home regulator do not run concurrently. This is a material risk as the MAS' resolution stay only takes effect upon the MAS providing notice to the affected institution. In addition, the branches may end up with multiple contractual recognition clauses in their contracts, which creates legal uncertainty and confusion, and may undermine the single point of entry principle in respect of G-SIBs.<br><br>Capturing Singapore branches would also have the result that end clients of a multi-branch institution could be contacted multiple times in order to sign stay recognition documentation that has been imposed by, for instance, the home regulator as well as the regulators of each branch. Implementation of a branch-specific regime would also have significant challenges, including how to identify which clients are in-scope for the branch, trade blocking processes and controls<br>relating to this. It is impractical to require such foreign entities, which are likely to apply foreign law to their underlying documentation, to amend a majority of the documents used in Singapore. This may have the unintended effect of discouraging FIs from transacting through their Singapore branches and reduce liquidity providers in Singapore.<br><br>We also note that application of the contractual stay requirement to branches would be inconsistent with Article 55 of the EU Bank Resolution and Recovery Directive, where EU branches of foreign institutions are not caught by virtue of having branches in the EU.<br><br>**Question 2a: MAS seeks comments on the draft regulations in relation to the statutory bail-in regime.**<br><br><u>Scope of institutions</u><br>We note that the scope of institutions subject to the bail-in regime is slightly different than the scope of institutions subject to the temporary stay, and would like to query whether it is the policy intention to have different types of institutions for the bail-in proposals and the temporary stay proposals.<br><br><u>Scope of eligible instruments</u> |

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| | | We note that the second column of the Fifth Schedule under Annex C of the Consultation Paper sets out the list of eligible instruments that are subject to bail-in.<br><br>It is not clear whether each of sub-paragraph (a), (b) and (c) would be eligible instruments, or whether an eligible instrument is one that fulfils all the criteria in sub-paragraphs (a), (b) and (c).<br><br>Regulation X2 under Annex C of the Consultation Paper states that "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", while the descriptions set out in sub-paragraphs (a), (b) and (c) suggest that each sub-paragraph is intended to be a different instrument. However, the second column is labelled "eligible instrument" (in the singular).<br><br>ISDA and its members would like to seek clarification on this point, as the policy intention stated in earlier consultation papers was to subject unsecured, subordinated debt and loans, as well as contingent convertible instruments, but sub-paragraph (a) refers to equity instruments (which are not required to be subordinated).<br><br>If the intention is for each of the instruments in sub-paragraphs (a) to (c) to be eligible instruments (i.e. it is not necessary for an instrument to meet all of the criteria in sub-paragraphs (a) to (c) in order to qualify as an eligible instrument), ISDA and its members would note that, on a plain reading, these definitions could be wide enough to capture derivatives.<br><br>In sub-paragraph (a), "equity instruments" is widely defined and can include instruments that confer or represent a legal or beneficial ownership interest in a Division 4A FI. A physically-settled derivative that references shares or ownership interests of a Division 4A FI (such as an equity option, swap, forward or futures) may be regarded as an instrument that confers a legal ownership interest in the FI.<br><br>Similarly, sub-paragraph (c) applies to 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. There is a question of whether derivatives with a right to physical delivery of shares or instruments of ownership are instruments that are "changed" or "converted" into shares, or whether derivatives over convertible instruments may fall within this definition.<br><br>ISDA and its members would therefore like request for an express carve out for derivatives contracts, as these may potentially fall |

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| | | within the instruments set out in sub-paragraph (a) or (c), in particular, those referencing shares, stocks or other instruments that confer or represent a legal or beneficial ownership interest in a Division 4A FI.<br><br>ISDA would submit that powers of bail-in over the underlying shares, stocks or other ownership interests should be treated as distinct from the derivative itself (for instance, the swap, option, forward or futures contract). If the bail-in powers of MAS apply instead to the derivative and not the underlying instrument, this would enable MAS to cancel, modify, convert or change the derivative contract. This would create significant uncertainty as to the enforceability of such derivatives and cause significant disruption to the derivatives industry.<br><br>We note from MAS' response to the Consultation Paper on Proposed Enhancement to Regime for Financial Institutions in Singapore dated 29 April 2016, that the proposed bail-in powers are intended to cover any equity instrument that is not in the form of share capital. We understand this to mean that the bail-in powers are intended to capture equity instruments that are ownership interests but which do not take the form of shares, and that this is not intended to capture derivatives of such equity instruments. However, given that the definitions in subparagraphs (a) and (c) are drafted widely, ISDA and its members would be grateful if the MAS could provide express wording carving out derivatives from the scope of eligible instruments. |
| 7 | Life Insurance Association | **General Comments**<br><br>[Tokio Marine Life] We thank MAS for the opportunity to voice our views on the proposed changes to enhance the existing resolution framework for financial institutions in Singapore.<br><br>While we generally welcome the proposed regulations, we express some reservations on the compulsory nature of the requirements for contractual provisions to recognise MAS' temporary stay powers to be included in contracts governed by foreign law.<br><br>Further, we wish to seek some clarification on the current scope and applicability of the resolution regime, particularly under sections 83 and 84 of the MAS Act as recently amended.<br><br>**Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.**<br><br>[Prudential] Temporary stays on termination rights exemptions have been debated previously and MAS has extended the same to exclude |

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| | | entities of central banks, designated payment systems, approved clearing houses, recognised clearing houses and depositories. Temporary stay on termination rights, although operatively relevant and a step in the right direction in Singapore, is a difficult regime to enforce in the event a contract is governed by foreign law. In this regard, notwithstanding a contract is governed by foreign law and parties can have an express choice of seat of law of Arbitration to be Singapore law, enforcing temporary stay provisions on contracts governed by foreign law will remain a practical issue/difficulty to consider.<br><br>[Tokio Marine Life] We have some concerns with the mandatory nature of the regulations requiring contractual provisions to be included in contracts governed by foreign laws, particular where non-compliance with these regulations would lead to the imposition of a financial penalty.<br><br>The strict and mandatory nature of including these provisions may be a challenge in contractual negotiations. These provisions are effectively deal-breakers in financial contracts with very little room for a pertinent financial institution to be flexible and consider any alternatives in which the counterparties to the contract may propose.<br><br>The second implication to this is that pertinent financial institutions would almost invariably have to seek foreign legal advice on these specific clauses in the contract, to ensure that these provisions would be recognised under the applicable foreign law. These may involve a substantial amount of cost and expense for each contract governed by foreign laws.<br><br>We would propose that MAS adopt a softer touch to this requirement and perhaps adopt a "comply or explain" or a similar approach to these requirements.<br><br>[Transamerica Life] There are concerns that the counterparty may not want to incorporate such enforceable provisions within the contracts, especially where there is nothing within the law of that jurisdiction which would expressly recognise MAS' resolution action. Given that this is intended to be incorporated within the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013, it could constitute a breach on the part of the Singapore entity should the counterparty refuse to incorporate these provisions within the contract. Is this the intention of the amendments?<br><br>**Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.** |

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| | | [Prudential] The scope of qualifying pertinent financial institutions includes an insurer licensed under the Insurance Act (Cap. 142) and there is an express contractual recognition requirement for an insurer to ensure that certain contracts governed by foreign laws contain enforceable provisions lending credence to MAS's temporary stay powers over early termination rights. In this regard, major insurers in Singapore largely deal with Singapore law governed contracts even for foreign clients and although the qualifying scope of pertinent financial institutions include insurers, it will have little practical effect operatively on business operations.<br><br>[Tokio Marine Life] We would be grateful if MAS could provide clarification on the definition of "pertinent financial institution" and the scope of the existing resolution provisions in the MAS Act and these proposed regulations (in particular, the scope of clause X1(1) of the proposed regulations).<br><br>Presently, the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 (the "Regulations") provide that a "pertinent financial institution" does not include an insurer licensed under the Insurance Act. On the other hand, an insurer is a "qualifying pertinent financial institution" under the proposed amendments to the Regulations.<br><br>The proposed amendments to the Regulations in this consultation paper do not contain any amendments to the list of entities that constitute a "pertinent financial institution".<br><br>We note further that in the Consultation Paper issued 29 April 2016 titled "Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore", the proposed provisions on a temporary stay of contracts at section 30AAZAI provides that MAS may suspend a termination right of any party to a contract arising by reason of or in connection with MAS' exercise of a specified power, if one of the parties to the contract is "a pertinent financial institution or insurer". This wording was excluded in the final provisions which we understand to be finally captured in section 84 of the MAS Act.<br><br>In light of the above, could MAS clarify if sections 83 and 84, along with the other resolution provisions which are to apply to "pertinent financial institutions", are also applicable to insurers? As it now stands, the contractual recognition provisions as proposed in this Consultation Paper would require an insurer to |

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| | | include enforceable provisions recognising MAS' resolution powers but the primary provisions under sections 83 and 84 of the MAS Act which provide for such resolution powers do not seem to apply to an insurer.<br><br>[Transamerica Life] For branch entities operating within Singapore but where the company is incorporated outside of Singapore, the mandatory inclusion of these provisions within the contracts entered into the by the entity as a whole (given that a branch would not be a separate legal entity unto itself) may also create additional roadblocks (as mentioned in Q1a above) if the counterparty refuses to agree to the inclusion of such provisions. This is especially where the contracts will mostly be governed by laws outside of Singapore. However, under the current proposed regulations, the definition of a qualifying pertinent financial institution would exclude branches given that the parent entity would be incorporated outside of Singapore.<br><br>**Question 1c: MAS seeks comments on 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.**<br><br>[Prudential] This contractual requirement should apply to FIs with branches in Singapore for reason of ensuring consistency across the board for all FIs and most importantly, to prevent the misuse and/or facilitation of a work around for non-qualifying pertinent financial institutions in entering into contracts, incurring liability and being allowed to seek immediate recourse without lending credence to the essence of the proposed legislation, i.e. one of strengthening MAS's powers to resolve distressed FIs.<br><br>[Transamerica Life] Will MAS in time be proposing standard clauses for incorporation by these qualifying pertinent FIs?<br><br>**Question 2a: MAS seeks comments on the draft regulations in relation to the statutory bail-in regime.**<br><br>[Aviva] Even with contractual recognition of sections 83 and 84 of the Act, the provision remains a contractual obligation only. The enforcement and upholding of such provisions in a contract is subject to the foreign legal regime. The foreign legal regime may not allow or enforce such provisions in contracts. Ultimately, to be effective, different jurisdictions should seek convergence of their resolution regimes through legislative changes in their national legal regimes so that the same or similar provisions are entrenched in each national legislation. |

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| | | [Prudential] The statutory bail in regime governs the perusal of government money for the rescue of FIs and there are no comments on the same.<br><br>**Question 2b: MAS seeks comments on the proposal to 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.**<br><br>[Aviva] Depends on the activities of the branch, but preferable to cover as the activities of the branch may be such that its failure will cause systematic significant or critical impact on the stability of Singapore's economy. It will then fall within the spirit of what the amendments seek to address.<br><br>Exception – where Singapore is subject to a binding obligation to respect resolution of financial institutions under the laws of the foreign country in which the FI has its registered office (home jurisdiction) for example, EU directives which provide that the laws of the EU home country should be followed in winding-up proceedings.<br><br>Recommend that the provisions set out conditions under which such pertinent FIs will be included.<br>[Prudential] No comments on this issue given that it is indeed a step in the right direction in ensuring transparency and that prospective customers are well avail to the idea of a bail in regime.<br><br>**Question 3: MAS seeks comments on the draft regulations in relation to the creditor compensation framework.**<br><br>[Prudential] For the creditor compensation framework, independence and capacity of the valuer is key given the high stakes involved. In this regard, this seems to be well entrenched through guidelines stipulated by the legislation under Criteria for Appointment and Removal of Valuer, Valuation Principles and Information that must be specified in the valuation report. No further comments on this issue. |
| 8 | St. James's Place International plc (Singapore Branch) | **Question 1c: MAS seeks comments on 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.**<br><br>We believe that this contractual recognition requirement should apply to branches in Singapore that are systemically important to the |

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| | | financial system. Incidentally we are planning on writing resolution and recovery plans. |
| 9 | Swiss Re Asia Pte. Ltd. and Swiss Re International SE Singapore Branch | **Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.**<br><br>On the draft regulation and the imposition of the contractual recognition in a contract, Swiss Re do understand where MAS is coming from however, it is fairly onerous to impose a regulatory obligation on the FIs to ensure that the contracts are subject to MAS' suspension of the termination rights. The contract is ultimately one that is freely entered into between parties on terms that are mutually agreed. If the counterparty does not agree to the proviso as required under the proposed regulation, that would mean it could be a deal-breaker for the FI or that the FI would be in breach of regulations. As opposed to imposing a mandatory obligation on the FI to ensure that the contract contains the required provision, we should propose that the regulation state that we use reasonable endeavours instead. Hence, proposed revision to Section XI (1) of the draft regulations will be as follows:-<br><br>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 shall use reasonable endeavours to include in the contract 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.<br><br>**Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.**<br><br>An insurer licensed under the Insurance Act but excluding reinsurer.<br><br>**Question 1c: MAS seeks comments on 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.**<br><br>Should MAS impose this requirement, then it should apply to all FIs, branches or not, which are licensed by it and over which they can exercise their authority to stay the termination provisions. |

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| 10 | The Asia Securities Industry & Financial Markets Association (ASIFMA) | **Question 1. MAS seeks comments on:**<br>**a. the draft regulations in relation to the temporary stays on termination rights;**<br>**b. the scope of qualifying pertinent financial institutions; and**<br>**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.**<br><br>ASIFMA welcomes the amendment to 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, as the exemption is now clearly defined. Consistent with Annex B, we assume that contracts entered into by qualifying pertinent FIs with the above will be excluded, and that the same applies to related entities of qualifying pertinent FIs.<br><br>ASIFMA would also welcome further clarity on the definition of “financial contracts within the meaning of regulation 32” in scope of the temporary stay on early termination entails. We would also appreciate clarity on the definition of related entities “supported” by a qualifying pertinent FI, as we assume the intention of this is to spare pertinent FIs from having to make payments pursuant to financial support if the relevant contract is terminated. We understand that the MAS is also drafting a number of regulations relate to this consultation paper. ASIFMA would appreciate these draft regulations being opened for consultation so we may more accurately assess the rules’ overall impact.<br><br>ASIFMA recommends, in response to Question 1c above, that the contractual recognition requirement not apply to FIs operating as branches in Singapore, in line with the FSB’s Key Attributes. Given that only Singapore-incorporated FIs are subject to the MAS’s resolution powers, it is only those entities that should be required to include these contractual provisions. FIs operating as branches in Singapore will most likely be subject to the resolution regimes of their home country, which may conflict with contractual provisions applied in Singapore. In addition, it is impractical to require foreign branches, which will likely apply non-Singapore law to their underlying documentation, to amend a majority of the documents used in Singapore. The implementation of a branch-specific regime would pose significant challenges (e.g. identification of clients on a branch analysis, trade blocking processes and related controls). This may have the unintended effect of reducing the number of liquidity providers in Singapore. Finally, ASIFMA recommends that the MAS take an approach on contractual recognition requirements consistent with those in other key jurisdictions. |

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| | | **Question 2. MAS seeks comments on:**<br>**a. the draft regulations in relation to the statutory bail-in regime; and**<br>**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 eligible instrument, the consequences of a bail-in to debt holders for liabilities within the scope of MAS' statutory bail-in powers.**<br><br>Paragraph 3.10 of the consultation paper states that 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.<br><br>ASIFMA is concerned that the scope of bail-in may be too narrow to provide sufficient loss-absorbing capacity. Exempting senior debt is not fully aligned with the objective of the FSB Key Attributes to ensure that authorities have the capacity to allocate losses to shareholders and creditors in accordance with the creditor hierarchy, which is intended to enforce market discipline and reduce moral hazard. The primary purpose of resolution funds should be to support funding needs in resolution for the continued function of the financial market. Resolution funds should not dilute bail-in as the primary means of absorbing losses or be regarded as an easily used, medium- to long-term means of absorbing supplemental losses. ASIFMA therefore supports expanding the scope of statutory bail-in to cover unsecured senior debt in the draft statute, in line with the FSB's comments in its latest Peer Review of Singapore. Even though contractual bail-in is a helpful addition, it is not automatic and may not offer the same reliability and predictability as statutory bail-in.<br><br>With regards to paragraph 3.7, ASIFMA would welcome confirmation that the contractual recognition requirement will only apply to new financial contracts entered into after the effective date of this regulation, i.e. "prospective effect." However, should the contractual recognition requirement apply to live financial contracts from the effective date, ASIFMA would suggest at least a 24-month transitional period be applied to give banks time to make the necessary re-papering arrangements. Also, given that breach of contractual recognition requirements could lead to significant fines and would be a criminal offense, it remains unclear what would happen if a foreign offshore counterparty refused to amend the contract.<br><br>**Question 3. MAS seeks comments on the draft regulations in relation to the creditor compensation framework.** |

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| | | The recent consultation provides the framework for appointment of a valuer and certain valuation principles the valuer must follow. ASIFMA believes the valuer should be independent from any major creditor of an FI in resolution (in addition to MAS/FI in resolution) or any other party that might benefit from the compensation framework. ASIFMA suggests the MAS add flexibility on the way payments to creditors are made, for instance by introducing stays or instalments, as large payments for compensation could have a knock-on effect on the resolution entity.<br><br>**Question 5. MAS seeks comments on the new Regulations to be issued under the Deposit Insurance and Policy Owners' Protection Schemes Act.**<br><br>ASIFMA notes that the MAS proposes to issue new regulations on the valuation principles for calculating an equivalent cost, and that it would rely on the Deposit Insurance Fund to provide temporary liquidity support for the resolution of a Deposit Insurance Scheme Member. We would welcome further clarity on ex-post funding for resolution. ASIFMA recommends transparent standards for calculating the ex-post levy, especially where the scope of instruments for bail-in is limited, as such transparency would alleviate foreign banks' concern that they might be subject to uncapped liabilities. |
| 11 | WongPartnership LLP | **Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.**<br><br>It is noted that under paragraph XI(2)(c), a contract is a specified contract if it fulfils the three conditions set out therein. We would appreciate the Authority's clarification on whether if it is expressly provided in a contract that the terms relating to the termination rights shall be governed by Singapore law and subject to the exclusive jurisdiction of the Singapore courts, would that contract still be considered a specified contract notwithstanding the rest of the contract remains governed by a foreign law.<br><br>**Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.**<br><br>We would appreciate the Authority's clarification on whether it is intended for the scope of pertinent financial institutions to extend to merchant banks which are approved under the Monetary of Singapore Act (the "Act") since merchant banks do not fall within the definition of "bank" under paragraph X1(2)(i) (which refers only to banks licensed under the Banking Act) or any of the other categories listed in paragraph X1(2). In this regard, we note that it is not entirely |

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| | | obvious why merchant banks and other entities approved under the Act should be excluded.<br><br>**Question 1c: MAS seeks comments on 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.**<br><br>We agree with the proposal for the application of the contractual recognition requirement to FIs which operate as branches in Singapore that are required by MAS to perform recovery and resolution planning. This would help ensure a level playing field for banks incorporated in Singapore.<br><br>**Question 2a: MAS seeks comments on the draft regulations in relation to the statutory bail-in regime.**<br><br>In relation to the definition of "eligible instruments", we would appreciate the Authority's clarification on whether it is the intention for instruments such as senior perpetual securities as well as convertible bonds, exchangeable bonds, options, warrants and other securities convertible to shares to be caught under "eligible instruments"?<br><br>In relation to paragraph X4(2)(d), we would appreciate the Authority's clarification on which will take precedence in the event that the Authority exercises its powers under the Act but at the same time, a specified event occurs which provides for a different outcome. For instance, if the Authority exercises its power to change the form of the instrument, but the contractual provisions provides for the cancellation of the instrument upon the occurrence of the specified event.<br><br>In relation to paragraphs X4(3) and X4(4), we would appreciate the Authority's clarification on whether a foreign law opinion is still required if the contractual provisions required in paragraph X4(1) to be included in the contract were expressed to be governed by Singapore law and subject to the exclusive jurisdiction of the Singapore courts, while the rest of the contract remains governed by foreign law.<br><br>In relation to paragraph X5, we note that the proposed disclosure wording falls short of the full statement prescribed in X4(2)(a). We would appreciate the Authority's clarification on the reason for the deviation.<br><br>**Question 2b: MAS seeks comments on the proposal to require Singapore-incorporated banks and bank holding companies to** |

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| | | **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.**<br><br>We would appreciate the Authority's confirmation that for the purposes of complying with this requirement which is set out in paragraph X5(1), the issuer will only be required to include a statement as follows<br><br>"The [Notes/Securities] 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)."<br><br>If a more elaborate description of the consequences of a bail-in is required, can the Authority consider allowing the issuer to provide a cross-reference to the relevant regulatory write-up within the offering document instead, given that the front cover of a typical offering document is already fairly congested with a range of material information. |

Monetary Authority of Singapore