

**RESPONSE TO
FEEDBACK RECEIVED**

29 October 2021

**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, the Monetary Authority of Singapore (MAS) issued a consultation paper on the Proposed Regulations to enhance the Resolution Regime for Financial Institutions (FIs) in Singapore¹ to support the amendments in the MAS (Amendment) Act 2017.

1.2 In relation to temporary stays on termination rights, MAS had proposed to impose a contractual recognition requirement for qualifying pertinent FIs (QPFIs) (refer to paragraph 2.1 below for scope of QPFIs) and their related entities to include enforceable provisions in their financial contracts which contain early termination rights where such contracts are governed by foreign law. The effect of the provisions is to have all parties to the contract agree that their exercise of termination rights will be subject to MAS' temporary stay powers in the event of a resolution.

1.3 In view of feedback to the consultation paper received from respondents on the scope and application of the contractual recognition requirement, MAS had, in its response on 26 October 2018², stated that it would not promulgate regulations relating to the contractual recognition requirement at that point in time, and would engage the industry further. MAS has since had further discussions with FIs which would be subject to the contractual recognition requirement, on the scope and application of the requirement.

1.4 MAS has carefully considered the feedback and where appropriate, incorporated them into the regulations relating to the contractual recognition requirement issued on 29 October 2021 and effective 1 November 2021. Feedback of wider interest are set out below together with MAS' responses.

1.5 MAS thanks all respondents for their feedback. The list of respondents to the 2018 consultation paper is in Annex A. Full submissions are published in Annex B.

¹ The consultation paper can be found at: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/CP-on-Proposed-Regulations-to-Enhance-the-Resolution-Regime-for-FIs-in-Singapore.pdf>.

² MAS' response to the feedback to the consultation paper can be found at: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2018-10-26-Response-to-Feedback-Received-on-Proposed-Regulations-to-Enhance-the-Resolution-Regime.pdf>.

2 Scope of QPFIs

2.1 MAS had proposed that a QPFI to be subject to the contractual recognition requirement, be defined as:

- (a) a bank;
- (b) a financial holding company;
- (c) an operator or a settlement institution of a designated payment system;
- (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 company markets services licence, or a depository; or
- (e) an insurer,

which was incorporated in Singapore and issued a direction under section 43(1) of the MAS Act.

2.2 MAS had also proposed that the related entities of a QPFI be subject to the same contractual recognition requirement for their financial contracts which were guaranteed or otherwise supported by the QPFI.

2.3 Some respondents provided feedback that the scope of QPFIs was too wide, and cited implementation challenges such as the need to obtain counterparties' agreement to include the necessary provisions in contracts. Other respondents sought clarification on what was meant by financial contracts of a QPFI's related entities which were "otherwise supported" by the QPFI.

MAS' Response

2.4 MAS will narrow the scope of QPFIs subject to the contractual recognition requirement to only banks incorporated in Singapore and to which a direction has been issued under section 43(1) of the MAS Act, and the subsidiaries of these banks. For the avoidance of doubt, "otherwise supported" in respect of financial contracts entered into by the subsidiaries of a QPFI refers to contracts which are legally enforceable on the QPFI.

2.5 MAS has considered that the introduction of the contractual recognition requirement for the other types of FIs listed in paragraph 2.1(b) to (e) is currently less common internationally, and that such FIs in Singapore tend to have few (if any) financial contracts governed by foreign law. MAS will continue to monitor developments with

respect to the introduction of a contractual recognition requirement for FIs in paragraph 2.1(b) to (e), and update the regulations to expand the scope of QPFIs should the need arise.

2.6 The contractual recognition requirement will also not apply to banks operating as branches in Singapore. MAS recognises that it may be too onerous for the Singapore branches to identify, among the financial contracts entered into by their head offices, those contracts that relate to the branches' activities. Moreover, MAS notes that branches in Singapore are subject to their home jurisdiction's resolution regime, which would have imposed their own contractual recognition requirements to ensure enforceability when temporary stays are statutorily exercised.

3 Scope of Contracts

3.1 Some respondents sought clarity on the scope of contracts that would be covered by the contractual recognition requirement. Specifically, clarity was sought on when the contractual recognition requirement would come into effect, the application of the requirement to new transactions executed under existing agreements, and the effect on outstanding transactions at the point in time when the requirement takes effect.

MAS' Response

3.2 Section 84 of the MAS Act provides MAS with the statutory powers to temporarily suspend the termination rights of a counterparty to a financial contract with an FI in resolution, so as to complement any resolution measures taken in relation to the FI. Such suspension does not extend to an early termination right that is exercisable for a breach by the FI of a basic substantive obligation. Notwithstanding, 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 the early termination rights unless the law of that jurisdiction expressly recognises MAS' resolution action. Hence, provisions in the contract expressly recognising MAS' authority to do so provides greater legal certainty and serves to support an orderly resolution of a distressed FI.

3.3 The contractual recognition requirement will also ensure that the parties to the contract agree to be bound by section 83 of the MAS Act, such that any resolution action taken by MAS would not trigger termination rights under the contract only because of the resolution measure, even if the contract is governed by foreign laws.

3.4 Considering that the contractual recognition requirement is complementary to MAS' temporary stay powers, the scope of contracts covered under the contractual recognition requirement should therefore be correspondingly broad.

3.5 The contractual recognition requirement will thus apply to:

- (a) a contract that is a financial contract³; which is governed by foreign law and which contains a termination right⁴; and
- (b) any contract which falls within (a) above entered into, or any transaction executed under a contract which falls within (a) above, on or after such date which is three years after the commencement of the contractual recognition requirement (relevant date).

3.6 Paragraph 3.5(a) means that a financial contract which (i) contains a termination right but is governed by Singapore law, or (ii) is governed by foreign law but does not contain a termination right (for instance, due to its short term nature), will not be subject to the contractual recognition requirement.

3.7 For the avoidance of doubt, financial contracts that a QPFI enters into with its intragroup entities are included in the scope of the contractual recognition requirement.

3.8 The contractual recognition requirement will also apply to contracts where new transactions are executed even if the contract had been entered into before the relevant date (including master agreements). On the other hand, contracts where there are transactions which are outstanding at the relevant date but where no new transactions are executed, will not be in scope. In effect, this means that outstanding transactions of existing contracts as at the relevant date would not be impacted by the requirement. The requirement will impact new transactions executed after the relevant date.

4 Enforceability of Provisions Recognising MAS' Temporary Stay Powers

4.1 Some respondents queried if QPFIs are required to obtain a legal opinion stating the enforceability of the provisions which are inserted in contracts to recognise MAS' temporary stay powers.

MAS' Response

4.2 FIs are not required to obtain legal opinions on the enforceability of the provisions. However, MAS expects QPFIs (and their subsidiaries) to satisfy themselves that the provisions are enforceable, and be able to demonstrate so, should the need arise.

³ "financial contract" is as defined in the Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018.

⁴ "termination right" is as defined in section 82 of the MAS Act.

5 Transitional Period

5.1 A number of respondents had requested that a reasonable transitional period be given before the contractual recognition requirement comes into effect, given the resources and time required to amend and update the contracts. This includes the need to identify contracts that require amendments and discussions with counterparties regarding the amendments.

MAS' Response

5.2 The transitional period to implement the contractual recognition requirement will be three years from the effective date of the MAS (Resolution of Financial Institutions) (Amendment No.2) Regulations 2021.

5.3 The three-year transitional period should provide sufficient lead time for QPFIs to make the necessary preparations to comply with the regulations. MAS will also in due course, engage the International Swaps and Derivatives Association (ISDA) to explore the possibilities of putting in place an ISDA Jurisdictional Module for Singapore, to support industry efforts.

MONETARY AUTHORITY OF SINGAPORE

29 October 2021

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

1. Clifford Chance
2. DTCC Data Repository (Singapore) Pte. Ltd.
3. EQ Insurance Company Limited
4. ICE Clear Singapore Pte. Ltd.
5. iFAST Financial Pte. Ltd.
6. The International Swaps and Derivatives Association (ISDA)
7. Life Insurance Association
8. St. James's Place International plc (Singapore Branch)
9. Swiss Re Asia Pte. Ltd.
10. Swiss Re International SE Singapore Branch
11. The Asia Securities Industry & Financial Markets Association (ASIFMA)
12. 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, and for which the feedback is relevant to the proposed contractual recognition requirement in relation to temporary stays on termination rights⁵.

S/N	Respondent	Feedback from respondent
1	Clifford Chance	<p>General Comments</p> <p>We are grateful for the opportunity to respond to the Consultation Paper.</p> <p>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. 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.</p> <p>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.</p> <p><u>Scope of exemption</u></p> <p>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.</p>

⁵ For the complete list of feedback from respondents, please refer to Annex B of MAS’ response of 26 October 2018 to Feedback Received on Proposed Regulations to Enhance the Resolution Regime for Financial Institutions in Singapore at the following hyperlink: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2018-10-26-Response-to-Feedback-Received-on-Proposed-Regulations-to-Enhance-the-Resolution-Regime.pdf>.

		<p>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:</p> <p>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) <u>does not apply to a termination right under a contract between the pertinent financial institution and the following persons:</u> (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)</p> <p>Sections 84(1), 84(2) and 84(3) of the MAS Act are set out under the MAS Amendment Act as follows:</p> <p><i>Right to temporarily suspend termination right for contracts because of resolution measure</i> <i>84.—(1) This section applies to a contract one of the parties to which is —</i> <i>(a) a pertinent financial institution that is the subject or proposed subject of a resolution measure;</i> <i>(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</i> <i>(c) an entity that is part of the same group of companies as that of a pertinent financial institution where —</i> <i>(i) the pertinent financial institution is the subject or proposed subject of a resolution measure;</i> <i>(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</i> <i>(iii) the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution.</i></p> <p><i>(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.</i></p> <p><i>(3) The notice under subsection (2) does not apply to —</i> <i>(a) a termination right under the contract which becomes exercisable for a breach of a basic substantive obligation only;</i></p>
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		<p><i>(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</i></p> <p><i>(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)</i></p> <p>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 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.</p> <p><u>Definition of “financial contract”</u></p> <p>We would be grateful if the MAS could clarify the meaning of “<i>financial contract within the meaning of regulation 32</i>”, 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 “<i>financial contract</i>” or a regulation 32.</p> <p><u>Scope of “related entities” and “group”</u></p> <p>We would be grateful if the MAS could clarify the meaning of the terms “<i>related entities</i>” and “<i>group of companies</i>”.</p> <p>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.</p> <p>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.</p> <p>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</p>
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		<p>may result in inconsistencies and difficulties in practical implementation.</p> <p>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.</p>
2	DTCC Data Repository (Singapore) Pte. Ltd.	<p>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.</p> <p>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.</p> <p>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).</p> <p>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.</p> <p>This complements existing regulations applicable to trade repositories.</p> <p>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.</p> <p>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.</p>

		<p>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.</p>
3	EQ Insurance Company Limited	<p>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.</p> <p>Although we are not and do not operate as a branch in Singapore, we opine that such requirement should be applicable to branches.</p>
4	ICE Clear Singapore Pte. Ltd.	<p>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.</p> <p>Proposed regulation X1(2)(b)(iv): Please insert “<i>incorporated in Singapore</i>” after “<i>recognised market operator</i>” and “<i>recognised clearing house</i>”. We think it would be helpful to include an express clarification that overseas-incorporated RMOs and RCHs are excluded.</p>
5	iFAST Financial Pte. Ltd.	<p>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.</p> <p>(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</p> <p>(2) MAS to elaborate on the consequences where a 3rd party does not agree to have such clause on MAS powers mentioned in the 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.</p>
6	The International Swaps and Derivatives Association (“ISDA”)	<p>General Comments</p> <p>The International Swaps and Derivatives Association, Inc. (ISDA) is grateful for the opportunity to respond to this Consultation Paper.</p> <p>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</p>

	<p>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.</p> <p><u>Implementation Timeframe</u></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 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.</p>
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	<p>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:</p> <ul style="list-style-type: none"> (a) The ISDA 2015 Universal Resolution Stay Protocol (this replaced the ISDA 2014 Resolution Stay Protocol); (b) The ISDA 2016 Resolution Stay Jurisdictional Modular Protocol and the accompanying jurisdictional modules; (c) The ISDA 2016 and 2017 Bail-in Article 55 BRRD Protocols; and (d) The ISDA 2018 US Resolution Stay Protocol published in July 2018 and which is expected to be open for adherence soon. <p>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.</p> <p>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.</p> <p><u>Definition of “financial contract”</u></p> <p>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?</p> <p>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”.</p> <p>We also received feedback that if "securities contracts" (as defined in the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018) are included within the scope of financial contracts, this may capture, for</p>
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		<p>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.</p> <p><u>Application of contractual stay requirements</u> 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".</p> <p>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.</p> <p>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:</p> <p>(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</p>
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		<p>netting enforceability), or may require the entire ISDA 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);</p> <p>(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</p> <p>(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".</p> <p>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).</p> <p><u>Scope of related entities</u></p> <p>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.</p> <p>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.</p> <p><u>Criteria for enforceability</u></p>
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	<p>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?</p> <p>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.</p> <p><u>Resolution and Recovery (R&R)</u></p> <p>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.</p> <p>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.</p> <p>Our members would be grateful if the MAS could:</p> <ul style="list-style-type: none"> (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 (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. <p>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</p>
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	<p>further opportunities to consult with MAS on this point and to discuss possible resourcing constraints.</p> <p>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.</p> <p>We do not believe that the contractual recognition requirement should be extended to FIs which operate as branches in Singapore.</p> <p>We note that the draft regulations at the moment do not extend to FIs that operate as branches.</p> <p>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.</p> <p>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 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.</p> <p>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</p>
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		EU branches of foreign institutions are not caught by virtue of having branches in the EU.
7	Life Insurance Association	<p>General Comments</p> <p>[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.</p> <p>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.</p> <p>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.</p> <p>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.</p> <p>[Prudential] Temporary stays on termination rights exemptions have been debated previously and MAS has extended the same to exclude 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.</p> <p>[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.</p> <p>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</p>

		<p>institution to be flexible and consider any alternatives in which the counterparties to the contract may propose.</p> <p>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.</p> <p>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.</p> <p>[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?</p> <p>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.</p> <p>[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.</p> <p>[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</p>
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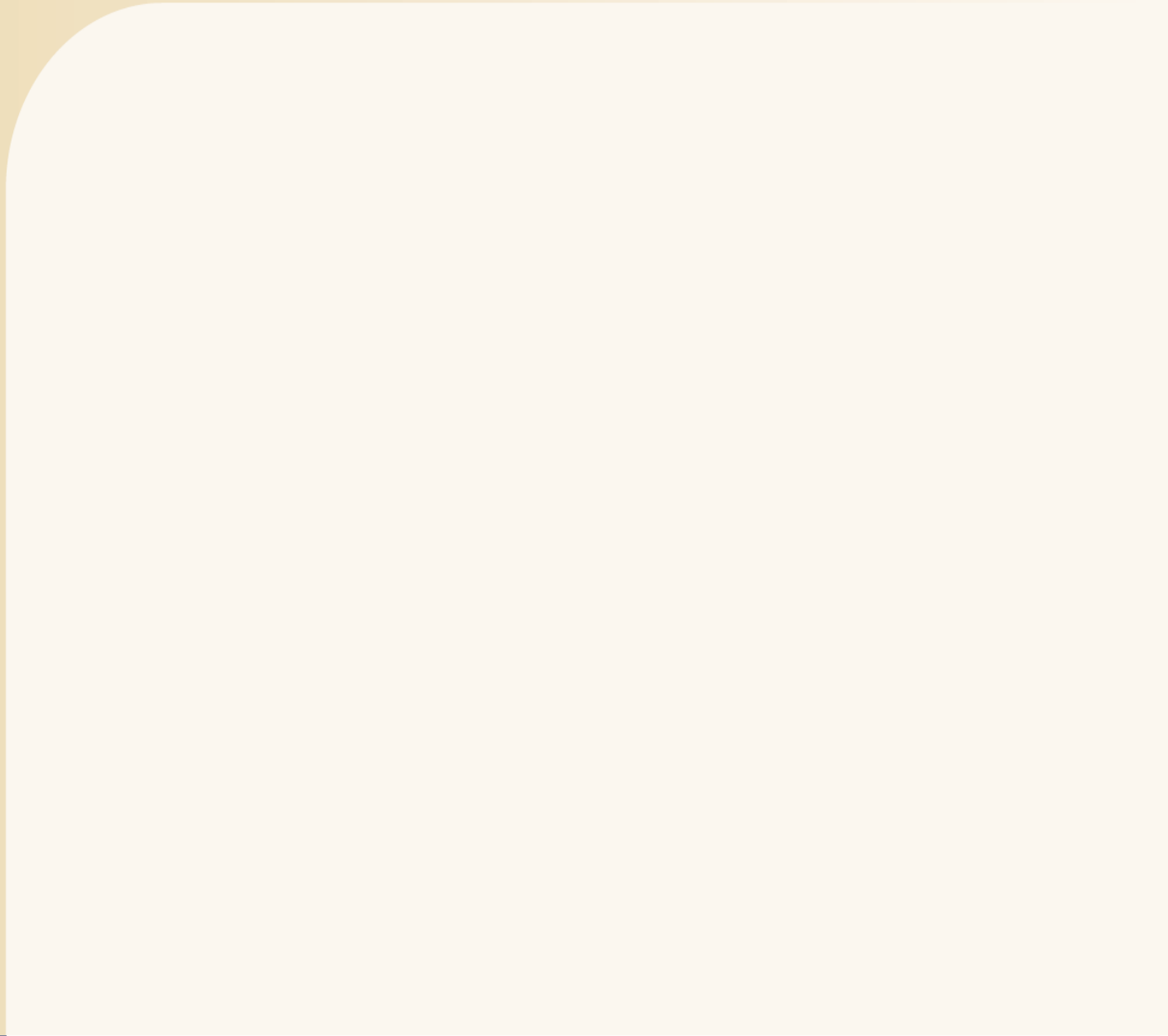
	<p>regulations (in particular, the scope of clause X1(1) of the proposed regulations).</p> <p>Presently, the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 (the “Regulations”) provide that a “pertinent financial institution” does not include an insurer licensed under the Insurance Act. On the other hand, an insurer is a “qualifying pertinent financial institution” under the proposed amendments to the Regulations.</p> <p>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”.</p> <p>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 30AAZA1 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.</p> <p>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 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.</p> <p>[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</p>
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		<p>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.</p> <p>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.</p> <p>[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.</p> <p>[Transamerica Life] Will MAS in time be proposing standard clauses for incorporation by these qualifying pertinent FIs?</p>
8	St. James's Place International plc (Singapore Branch)	<p>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.</p> <p>We believe that this contractual recognition requirement should apply to branches in Singapore that are systemically important to the financial system. Incidentally we are planning on writing resolution and recovery plans.</p>
9	Swiss Re Asia Pte. Ltd. and Swiss Re International SE Singapore Branch	<p>Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.</p> <p>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</p>

		<p>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:-</p> <p>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.</p> <p>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.</p> <p>An insurer licensed under the Insurance Act but excluding reinsurer.</p> <p>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.</p> <p>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.</p>
10	The Asia Securities Industry & Financial Markets Association (ASIFMA)	<p>Question 1. MAS seeks comments on:</p> <p>a. the draft regulations in relation to the temporary stays on termination rights;</p> <p>b. the scope of qualifying pertinent financial institutions; and</p> <p>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.</p>

		<p>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.</p> <p>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.</p> <p>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.</p>
11	WongPartnership LLP	Question 1a: MAS seeks comments on the draft regulations in relation to the temporary stays on termination rights.

	<p>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.</p> <p>Question 1b: MAS seeks comments on the scope of qualifying pertinent financial institutions.</p> <p>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 obvious why merchant banks and other entities approved under the Act should be excluded.</p> <p>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.</p> <p>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.</p>
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Monetary Authority of Singapore