



## **RESPONSE TO FEEDBACK RECEIVED – CONSULTATION ON AMENDMENTS TO THE MONETARY AUTHORITY OF SINGAPORE ACT**

### **1 Introduction**

1.1 In December 2012, the Monetary Authority of Singapore (“MAS”) issued a consultation paper setting out two draft Bills, the MAS (Amendment) Bill and the Financial Institutions (Miscellaneous Amendments) Bill, which seek to extend the resolution regime under the Banking Act and Insurance Act to other financial institutions under MAS’ purview, to institute the framework for the issuance of MAS book-entry securities and the regulation of primary dealers and other operational matters.

1.2 We have carefully considered the feedback received, and where appropriate, have incorporated them into the Monetary Authority of Singapore (Amendment) Bill [“MAS(A) Bill”] and the Financial Institutions (Miscellaneous Amendments) Bill. This document sets out general comments which are of wider interest, together with our response.

1.3 We would like to thank all respondents for their comments. The respondents are listed in Appendix A.

### **2 Resolution Regime**

#### Issue of bilateral netting arrangements

2.1 Some respondents have expressed concern that the proposed resolution powers may affect the enforceability of bilateral netting arrangements. They were of the view that the proposed resolution powers are broad and appeared to defeat existing contractual rights under such arrangements. In particular, the concerns centred around the compulsory transfer of business provisions (which in the respondents’ view, could potentially allow MAS to transfer part but not all of the transactions

entered into under an ISDA Master Agreement, which may result in preventing those transactions from being closed-out and netted under the ISDA Master Agreement) and the provision allowing MAS to issue directions to persons who have ceased being a financial institution ("FI"), which had to be complied with "notwithstanding any other duty imposed by any rule of law, written law or contract" (new section 30AAM). They expressed the view that if the proposed amendments were passed in their present form, there could be appropriate qualifications made to bilateral netting opinions in respect of Singapore and affect Singapore's status as a good "netting" jurisdiction.

### MAS' response

2.4 MAS would like to highlight that the majority of the new provisions in the MAS Act deal with the extension of resolution powers existing under the Banking Act ("BA") and the Insurance Act ("IA") to other regulated entities, and are not new provisions.

2.5 MAS agrees that the legal framework governing contractual netting should be clear and transparent during resolution of regulated entities, and not hamper implementation of resolution measures. In light of the comments, the MAS(A) Bill will be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS will also provide in the MAS(A) Bill, a general power to prescribe safeguards to the exercise of the resolution powers. This would enable the Minister to expressly provide in subsidiary legislation that bilateral netting arrangements, as well as other similar arrangements warranting carve-out, will not be affected by the exercise of resolution powers under the MAS Act.

### Expansion of scope

2.6 The proposal in the Consultation paper was for licensed trade repositories and licensed foreign trade repositories to be subject to the resolution regime. A respondent was of the view that resolution powers are only appropriate when applied to financial institutions ("FIs") which hold depositor, investor or client funds or might result in the outlay of taxpayers' funds. Such extensive powers are not appropriate in the context of licensed trade repositories which do not engage in such monetary transactions. A few respondents also expressed their view that central clearing counterparties ("CCPs"), should be subject to an enhanced resolution regime as they pose a major systemic risk.

## MAS' response

2.7 MAS agrees that the focus for some FMIs would be on recovery and continuity, and that specific measures taken towards those objectives may be different from recovery and resolution measures for FIs generally. MAS recognises that the range of resolution powers should be appropriate to the different roles performed by FMIs in the financial markets and where appropriate, be in alignment with the Financial Stability Board's recommendations on the Key Attributes of Effective Resolution Regimes for Financial Institutions with respect to FMIs when finalised. Also in line with the CPSS-IOSCO consultative report issued in July 2012, MAS will exercise resolution powers taking into account the functions of the specific FMI and in consideration of the recovery and resolution plans of the FMI. Where appropriate, MAS may prescribe safeguards on the exercise of resolution powers in respect of FMIs.

## Moratorium

2.8 The proposed section 30AAO(1) of the MAS(A) Bill empowers MAS to, if it considers it to be in the interests of the affected persons of an FI, make an order prohibiting that FI from carrying on its business as an FI or from doing or performing any act or function connected with its business as an FI or any aspect thereof that may be specified in the order. Subsection (4) further provides that the licence of the FI is suspended during this period.

2.9 A respondent commented that an order made under the proposed section 30AAO(1) could precipitate failure of a FI, if the FI is not permitted to engage in regulated activity.

## MAS' response

2.10 To balance the interests of the FI and that of the affected persons of the FI, MAS will amend subsection (4) to provide that MAS may suspend the licence of the FI if it considers it to be in the interest of the affected persons of an FI.

### **3 Additional powers proposed from the recommendations of the Financial Stability Board Key Attributes of Effective Resolution Regimes for Financial Institutions**

#### Directions to non-regulated operating entities

3.1 The provision on directions to non-regulated operating entities of a financial group which are material to the operations of an FI, is drafted widely to cover both local and overseas entities of a financial group of an FI, regardless of whether the FI is incorporated in Singapore.

3.2 A few respondents commented that the power should be limited to non-regulated operating entities which the FI controls and that the power should not to extend to parents (direct or indirect) or fellow subsidiaries of the FI which are not regulated by MAS. Some respondents also commented that the powers should be limited to entities which are headquartered in Singapore and where MAS is the home regulator of the consolidated group and fall within the accounting definition of a group.

#### MAS' response

3.3 MAS recognises that while MAS may be given powers to issue directions to overseas non-regulated operating entities, unless the FI in Singapore have some control over this entity, it will face difficulties ensuring that the directions are complied with by the entity. MAS will therefore, clarify that the power to impose directions over non-regulated operating entities covers only non-regulated operating entities which are incorporated or based in Singapore and which belong to the group of which the FI is part of, including parents or fellow subsidiaries.

### **4 Disqualification of Directors and Executive Officers**

4.1 A few respondents commented that while MAS has indicated that other employees (who are not representatives under the Securities and Futures Act or the Financial Advisers Act) are not subject to the revised disqualification rule, they would like more information regarding the nature and extent of obligation on the FI, to assess the risks and merits of each case of employment to determine if those employees with criminal conviction records or who are or become financially compromised, could be employed or retained, and implement processes to screen employees for adverse records.

## MAS' response

4.2 MAS expects the senior management of FIs to address the risks and merits of such cases of employment as part of the FI's risk management system. There should be processes in place at FIs to screen employees for adverse records at the point of recruitment as well as on an on-going basis. These processes may include, for example, regular employee self-declarations and checks with external data providers where available. We will be issuing guidance for this purpose.

**MONETARY AUTHORITY OF SINGAPORE**

5 February 2013

**LIST OF RESPONDENTS**

- 1 Asia Capital Reinsurance Group Pte Ltd
- 2 Bank Julius Baer Singapore branch
- 3 Clifford Chance Pte Ltd
- 4 The Depository Trust and Clearing Corporation
- 5 Friends Provident International Limited,
- 6 Great Eastern Life Assurance Co Ltd
- 7 International Swaps and Derivatives Association, Inc. (ISDA)
- 8 The Association of Banks in Singapore
- 9 The Law Society

Nine respondents have requested for confidentiality.