

**RESPONSE TO
FEEDBACK RECEIVED**

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Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore

MAS

Monetary Authority of Singapore

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1 Preface

1.1 In June 2015, the Monetary Authority of Singapore (MAS) issued a consultation paper on proposed enhancements to the resolution regime for financial institutions (FIs) in Singapore. The proposals are aimed at promoting the orderly and effective resolution of distressed FIs, and take into account the “Key Attributes of Effective Resolution Regimes for Financial Institutions” issued by the Financial Stability Board (FSB).

1.2 The consultation period closed on 22 July 2015. MAS would like to thank all respondents for their contributions.

1.3 MAS has carefully considered the feedback received, and will incorporate them where we agree with the feedback. Comments that are of wider interest, together with MAS’ responses, are set out in the following sections:

Section 2: Recovery and resolution planning

Section 3: Temporary stays on early termination rights on financial contracts

Section 4: Temporary suspensions and stays on insurance contracts

Section 5: Ensuring continuity of essential services and functions

Section 6: Statutory bail-in regime

Section 7: Cross-border recognition of resolution actions

Section 8: Creditor compensation framework

Section 9: Resolution funding

2 Recovery and Resolution Planning (RRP)

2.1 The consultation paper proposed legislative amendments to require FIs notified by MAS to prepare and maintain recovery plans, address deficiencies in the recovery plans where necessary, furnish information to MAS for the purpose of resolution planning, and take measures to improve resolvability or remove impediments to orderly resolution. The policy intent was to apply such requirements to FIs that are systemically important or that maintain critical functions. The industry generally appreciated the need for such requirements.

Home-host cooperation

2.2 Some respondents commented that the proposed powers should be exercised in coordination with home resolution authorities for resolution of cross-border groups where relevant. A few respondents also suggested that FIs be allowed to leverage on the head office or group's recovery and resolution plans.

MAS' Response

2.3 MAS will cooperate closely with foreign supervisory and resolution authorities for cross-border crisis management and resolution planning¹. For an FI headquartered in foreign jurisdictions, MAS will review the FI's recovery and resolution plans in consultation with its parent/head office and home authorities, where applicable. MAS' requirements will not preclude an FI leveraging on its group/head office's recovery and resolution plans, provided that they adequately take into consideration the Singapore operations. MAS will continue our close engagement with the home authorities in the normal course of supervision, during a crisis and in the event of the implementation of a global resolution strategy.

¹ This is also articulated in MAS' Objectives and Principles of Financial Supervision in Singapore, which can be found at the following weblink:

<http://www.mas.gov.sg/~media/MAS/About%20MAS/Monographs%20and%20information%20papers/Objectives%20and%20Principles%20of%20Financial%20Supervision%20in%20Singapore%20revised%20in%20April%202013.pdf>

FIs subject to RRP requirements

2.4 Several respondents sought clarification on the criteria for assessing systemic importance and critical functions. There was also a suggestion to extend RRP requirements to all FIs that are within the scope of MAS' resolution powers. This was on the basis that RRP requirements can be designed in a proportionate manner that would not be overly burdensome for smaller FIs.

MAS' Response

2.5 MAS' approach to assessing an FI's systemic importance or impact to the financial system is set out in MAS' Framework for Impact and Risk Assessment of Financial Institutions² and the Monograph on Supervision of Financial Market Infrastructures in Singapore³. In general, an FI's impact is assessed based on a combination of qualitative factors and quantitative measures such as (i) relative size and importance in terms of share of activity in different markets; (ii) relative scale of retail reach; and (iii) criticality to the stable functioning of and confidence in the financial system. With regard to critical functions, taking reference from the FSB's Guidance on Identification of Critical Functions and Critical Shared Services⁴, these are defined as activities performed by an FI for third parties where failure would lead to the disruption of services that are vital for the functioning of the real economy and for financial stability due to the FI's size or market share, external and internal interconnectedness, complexity and cross-border activities.

2.6 FIs that are subject to the RRP requirements will be formally notified by MAS and given an appropriate transition period to comply with the requirements. MAS' policy intent is to apply the RRP requirements to FIs set out in footnote 5 of the consultation

² MAS' Framework for Impact and Risk Assessment of Financial Institutions can be found at the following weblink:

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Monographs%20and%20Information%20Papers/MAS%20Framework%20for%20Impact%20and%20Risk%20Assessment%20of%20Financial%20Institutions.pdf>

³ MAS' Monograph on Supervision of Financial Market Infrastructures in Singapore can be found at the following weblink:

<http://www.mas.gov.sg/~media/MAS/About%20MAS/Monographs%20and%20information%20papers/MASMonograph%20Supervision%20of%20Financial%20Market%20Infrastructures%20in%20Singapore%20Final.pdf>

⁴ This guidance does not cover functions provided by financial market infrastructures.

paper⁵ that are considered to be systemically important or that maintain critical functions in Singapore. On a standalone basis, non-systemically important FIs do not cause significant impact or disruption to the financial and economic systems. Accordingly, MAS will not subject such FIs to RRP requirements, but will continue to engage them on their crisis management procedures, and capital and liquidity contingency funding plans during the normal course of supervision.

- (a) For the banking sector, the RRP requirements will be applied to domestic systemically important banks (D-SIBs), and where necessary, applied on a proportionate basis to other banks that are assessed to have systemic impact or that maintain critical functions.
- (b) For the insurance sector, MAS will continue to monitor international developments on the identification of domestic systemically important insurers (D-SIIs) and insurers that maintain critical functions. MAS will conduct a public consultation on the proposed D-SII framework at a later stage and any D-SIIs that are subsequently identified will be subject to the RRP requirements.
- (c) For financial market infrastructures (FMIs), the Principles for Financial Market Infrastructures stipulate that a systemically important FMI should prepare appropriate plans for its recovery or orderly wind-down. Systemically important FMIs refer to approved clearing houses, depositories⁶, licensed trade repositories and systemically important payment systems⁷ in Singapore. The RRP requirements will also be

⁵ This includes banks, finance companies, merchant banks, financial holding companies, insurers, operators or settlement institutions of designated payment systems, approved exchanges, recognised market operators, licensed trade repositories, licensed foreign trade repositories, approved clearing houses, recognised clearing houses, approved holding companies, capital market services licensees (excluding those in the business of providing credit rating services), trustees for collective investment schemes, and licensed trust companies, regulated by MAS under the relevant legislation.

⁶ This refers to The Central Depository (Pte) Ltd, in its role as a depository. Depositories are regulated under the Securities and Futures Act, following the transfer of provisions on the Central Depository System from the Companies Act in January 2016.

⁷ The RRP requirement does not apply to MEPS+, which is owned and operated by MAS.

applied to approved exchanges and approved holding companies that are notified by MAS⁸.

- (d) Given that the failure of Designated Payment Systems (DPSes)⁹ could affect public confidence in Singapore, the RRP requirements will be extended to the operators and settlement institutions of DPSes, notwithstanding that these DPSes are not subject to the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions. This also serves to assist in the recovery planning of these FIs.
- (e) For capital market intermediaries, the identification of domestic non-bank non-insurance systemically important FIs (NBNI-SIFIs) is at a nascent stage internationally. MAS will continue to monitor international developments and will conduct a public consultation on the proposed NBNI-SIFIs framework. Any NBNI-SIFIs that are subsequently identified will be subject to the RRP requirements.

Circumstances under which MAS will take action

2.7 Several respondents sought clarification on the circumstances under which MAS will (i) require an FI to take recovery measures, (ii) implement measures to improve resolvability and (iii) trigger resolution.

MAS' Response

2.8 MAS expects an FI that is experiencing stress¹⁰ to take prompt and adequate recovery actions to stabilise and restore its financial strength and viability. Where MAS assesses that actions by the board or senior management have not been timely or were

⁸ Approved exchanges are market operators that are assessed to be systemically important based on the criteria stated in section 5 of the Guidelines on the Regulation of Markets. Approved holding companies are the holding companies of any approved exchanges, licensed trade repositories, or approved clearing houses.

⁹ Designated under the Payment Systems (Oversight) Act. These are the Singapore Dollar Cheque Clearing System, US Dollar Cheque Clearing System, Inter-bank Giro System, Fast and Secure Transfers and NETS Electronic Funds Transfer at Point of Sale.

¹⁰ This includes continuing financial deterioration, solvency concerns, imminent risk of breaching regulatory and prudential requirements, loss of public confidence, adverse media attention with significant reputational impact, and where parental support is in doubt.

insufficient to ensure that the FI continues to operate in a safe and sound manner, MAS will require the FI to take recovery measures.

2.9 The resolution planning process entails identifying barriers to resolution and implementing measures to improve resolvability. MAS' resolvability assessments will take into account, amongst other factors, the separability and operational continuity of critical functions, the nature and extent of intra-group exposures, the capacity of the FI to provide detailed and timely information, and the robustness of cross-border cooperation and information sharing. Where impediments to orderly resolution are identified and measures are necessary to improve resolvability, MAS will discuss these issues with the FI and home or key host authorities where applicable, as part of the resolution planning process. MAS will take into account business efficacies and operational considerations when requiring such measures to be taken.

2.10 On resolution triggers, section 30AAL of the MAS Act empowers MAS to exercise its resolution powers where the failure of an FI would have a widespread adverse effect on the financial system in Singapore or on the economy of Singapore, where it is in the public interest to do so, or for any other matter that MAS considers relevant. Overall, MAS seeks to ensure financial stability and the continuity of critical financial services and FMI functions.

Proposed penalties on individuals

2.11 The consultation paper sought views on holding the FI's board and executive officers accountable for ensuring compliance with RRP requirements, with contravention by the FI and/or any of its board members and executive officers constituting an offence. The penalties proposed included fines for the FI and fines and/or imprisonment for individuals.

2.12 Several respondents expressed concerns over the severity of the proposed penalties, which could potentially hamper the recruitment of directors. Some respondents were of the view that the criminal penalties, including imprisonment, should be applied only where there was gross negligence or wilful neglect, with the burden of proof placed on the prosecution. One respondent was of the view that the liability should rest only with the FI.

MAS' Response

2.13 MAS acknowledges the industry's concerns. MAS agrees that the primary responsibility to ensure compliance with the RRP requirements rests with the FI. Under

an existing provision of the MAS Act, section 28B¹¹, the board and executive officers are liable on a secondary basis if the offence was committed by the FI with their consent or connivance, or if the offence was attributable to their neglect. The penalty for breaching this provision is a fine and does not include imprisonment. Having considered the feedback, MAS is of the view that this provision is sufficient to deal with the more egregious cases, and strikes a reasonable balance between holding board and executive officers accountable, while not being overly onerous. Hence, MAS will not be introducing additional penalties for individuals. Operationally, MAS will notify an FI, its board of directors and the relevant executive officers of the need to comply with RRP requirements in writing. The FI is also expected to have internal mechanisms and processes to ensure that relevant individuals within the FI are aware of their responsibilities with respect to the RRP process. The RRP process is an iterative one and MAS has been and will be engaging the individuals responsible as part of the process to ensure clarity of expectations and obligations.

2.14 Specific RRP responsibilities include:

- (a) preparing and maintaining a recovery plan, following notification by MAS in writing;
- (b) furnishing information for the purpose of resolution planning, following notification by MAS in writing;
- (c) complying with any direction issued by MAS to:
 - make specific changes to the recovery plan, including to address any material deficiencies in the recovery plan or material impediments to its implementation;
 - implement arrangements or measures as necessary to restore the financial strength and viability of the FI;
 - take specific measures to improve resolvability by addressing or removing impediments to orderly resolution; and

¹¹ Section 28B of the MAS Act states “Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

- (d) ensuring that information provided for RRP is not false or misleading.

Scope of application of powers

2.15 Some respondents sought clarification on whether the scope of application of the proposed powers would include the board and executive officers of the parent FI for foreign branches and subsidiaries operating in Singapore, and the level of “executive officers” that would be subject to the requirements.

2.16 Respondents also sought clarification on whether there would be a grace period for the FI to rectify or explain the reasons for deficiencies, and whether MAS would allow for remediation of the issues, before deciding to impose penalties.

MAS’ Response

2.17 MAS intends to place the responsibility for ensuring compliance with the RRP requirements on the board of the Singapore-incorporated entity and the relevant executive officers responsible for the branch or subsidiary here in Singapore (referred to as “Singapore operations”). The definition of “executive officer” is any person, by whatever name described, who (i) is in the direct employment of, or acting for or by arrangement with, the FI; and (ii) is concerned with or takes part in the management of the FI on a day-to-day basis.

2.18 In the event that an FI is found to have breached the RRP requirements, MAS will follow up with the board in the case of a locally-incorporated FI and relevant executive officers of the Singapore operations to understand the underlying causes and consider mitigating circumstances, if any. As part of the follow up, the FI and its board and relevant executive officers would be given an opportunity to explain and clarify their efforts to remediate the issues identified.

3 Temporary Stays on Early Termination Rights on Financial Contracts

3.1 MAS consulted on proposed statutory powers to temporarily stay early termination rights of counterparties to financial contracts, entered into with an FI over which MAS has exercised its resolution powers.

Scope of financial contracts

3.2 Several respondents sought clarification on the scope of financial contracts within MAS' proposed powers. In addition, some respondents suggested that MAS consider aligning the scope of financial contracts with that set out in equivalent regimes in the US and the EU.

MAS' Response

3.3 MAS' intention is for the powers to stay the rights of counterparties to a contract of an FI in resolution to be applied only to financial contracts¹² and contracts for essential services and functions of an FI, which have early termination rights or acceleration clauses that would be triggered by an FI's entry into resolution. MAS will effect the stay by way of notification in the Government Gazette, and will specify the relevant counterparties and contracts that the stay would be applicable to.

3.4 The application of MAS' stay powers in relation to contracts for essential services and functions of an FI is further discussed under section 5.

Maximum duration of temporary stay

3.5 A majority of respondents who commented on MAS' proposal to retain the flexibility to specify a longer duration when imposing a temporary stay strongly recommended that the duration of the stay be strictly limited in time and not exceed two business days in all circumstances. A few respondents also highlighted that extending the duration of the stay could pose issues for FIs, such as exposure to market risk or compromising the enforceability and effectiveness of close-out netting which could adversely impact the capital requirements of affected counterparties.

MAS' Response

3.6 MAS agrees with the feedback and will limit the maximum duration of any temporary stay to two business days.

¹² This would include contracts for repurchasing, borrowing or lending securities or commodities, derivatives contracts, and futures contracts.

Exemption for certain counterparties

3.7 Several respondents expressed the view that MAS' statutory stay regime should provide greater transparency by explicitly exempting the financial contracts that central banks, payment systems and entities performing clearing and settlement functions (such as central counterparties (CCPs) and securities settlement systems) have entered into with an FI in resolution from the operation of the stay (similar to the approach proposed in the UK). In relation to CCPs in particular, some respondents raised concerns that applying a stay on CCPs could adversely affect the ability of CCPs to function, as CCPs exist to carry out default management and resolve issues arising in times of financial stress.

MAS' Response

3.8 MAS agrees with the feedback. MAS does not intend, through the exercise of its resolution tools, to affect the operations of any central bank in performing its mandate, nor to affect the financial markets and the safe and orderly operations of payment systems and entities performing clearing and settlement functions. The amendments to the MAS Act will include powers for MAS to prescribe the types of counterparties of an FI which will be explicitly exempted from the application of the temporary stay. MAS intends to prescribe central banks, payment systems¹³, approved clearing houses, recognised clearing houses, and depositories as exempt counterparties.

Record-keeping requirements

3.9 In connection with MAS' proposals on temporary stays, one respondent asked if MAS intends to require FIs to maintain records on financial contracts and if so, whether MAS will recognise global reporting systems put in place under equivalent regimes.

MAS' Response

3.10 MAS recognises that in order to apply the temporary stays effectively, timely access to information on financial contracts is crucial. MAS therefore intends to require FIs, as part of their RRP obligations, to maintain relevant information on their financial

¹³ This will include payment systems designated under the Payment Systems (Oversight) Act and the Payment and Settlement Systems (Finality and Netting) Act.

contracts. Similar record-keeping requirements will apply to non-financial contracts subject to temporary stays. The FIs may maintain such information through a global system put in place under equivalent regimes (such as global information management systems) as long as they are able, at any point in time, to isolate the relevant information in respect of the specific contracts under Singapore's regime.

Cross-border enforceability and contractual recognition

3.11 Several respondents sought clarification on the cross-border enforceability of our powers to temporarily stay the early termination rights of counterparties to financial contracts.

MAS' Response

3.12 MAS recognises that additional regulatory initiatives may be needed to ensure legal certainty where contracts are governed by foreign laws. MAS will be empowered to promulgate regulations for such purpose. MAS will consider the merits as well as the most effective means of promoting the adoption of contractual recognition clauses in contracts governed by foreign laws. Such measures would relate only to financial contracts.

4 Temporary Suspensions and Stays on Insurance Contracts

4.1 MAS proposed to give MAS the statutory powers (i) to temporarily suspend the rights of policy owners to withdraw from their insurance policies with an insurer in resolution, and (ii) to stay the rights of reinsurers of an insurer or of another reinsurer in resolution to terminate or not reinstate coverage relating to periods after the commencement of resolution.

Statutory powers to suspend policy owners' withdrawal rights

4.2 One respondent commented that policy owners' withdrawal rights are contractual rights and MAS should not prohibit such rights. Some respondents also sought clarifications on whether such suspensions would prohibit insurers from making maturity and claim payments.

MAS' Response

4.3 The purpose of having such statutory powers, which are intended to be temporary, is to facilitate an orderly resolution of the insurer and protect policy owners'

interests. Such powers would minimise short-term liquidity stress on the insurer being resolved, and help avoid situations where policy owners make impulsive withdrawals that could result in a loss of their insurance coverage and policy values. Policy owners may also incur substantial losses due to surrender penalties if they decide to make a withdrawal. Notwithstanding this, the insurer in resolution will still be obliged to fulfil other contractual obligations, including the payment of valid claims.

4.4 Having further considered our current statutory powers, MAS will rely on existing moratorium powers¹⁴ in the MAS Act to fulfil the above-mentioned objectives, instead of introducing a specific statutory power to suspend policy owners' withdrawal rights. In exercising the moratorium powers, MAS will consider the interests of the affected persons of the insurer.

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

4.5 Some respondents asked whether MAS would be able to stay the rights of unlicensed reinsurers who are parties to the outward reinsurance contracts of licensed insurers. In addition, another respondent suggested that the proposed powers should only apply to insurance contracts that are incepted after the effective date of the MAS Act amendments.

MAS' Response

4.6 MAS wishes to clarify that the proposed statutory provisions would give MAS powers to stay the early termination rights of unlicensed reinsurers in connection with their contracts with a ceding insurer/reinsurer in resolution.

4.7 Existing contracts established prior to the legislative amendments will still fall under the scope of the proposed powers. This is because for the stay to be effective in securing the continuity of the resolved insurer's services, it has to be imposed on all contracts in force.

¹⁴ In section 30AAO(1) of the MAS Act.

Contractual recognition clauses and insurance contracts governed by foreign laws

4.8 One respondent sought clarification on whether insurers are required to review and update contractual clauses to ensure the applicability of the proposed powers. MAS also received feedback that there are reinsurance contracts that are governed by foreign laws.

MAS' Response

4.9 MAS recognises that additional regulatory initiatives may be needed to ensure legal certainty where contracts are governed by foreign laws. MAS will be empowered to promulgate regulations for such purpose. MAS will also consider the merits as well as the most effective means of promoting the adoption of contractual recognition clauses in contracts governed by foreign laws. However, as international developments on adopting contractual recognition clauses in insurance contracts are still at the nascent stage, MAS will monitor the developments before consulting on the need for contractual recognition clauses at a later stage.

Duration of suspension for policy owners and stays for reinsurers

4.10 The consultation sought views on the appropriate duration of the suspension for policy owners' withdrawal rights and stays for reinsurers. The responses ranged from two days to 12 months. One respondent mentioned that the duration of suspension for policy owners' withdrawal rights should be the same as the duration of the stay on financial contracts (i.e. two business days).

4.11 One respondent also commented that temporary stays imposed by MAS should not extend beyond the contract expiry date, without allowing the counterparties to renegotiate the terms and conditions. The respondent was of the view that when the temporary stay is imposed, the reinsurer is required to abide by the contractual terms and conditions for the entire period of the stay.

MAS' Response

4.12 MAS recognises that the varied responses on the appropriate duration for the suspension of policy owners' withdrawal rights and stays for reinsurers could be due to the differing nature of insurance contracts. In addition, there is currently no clear international guidance on this area. In view of this, MAS will monitor international

developments, taking into consideration the varying nature of different types of insurance contracts, before consulting on the proposed durations at a later stage.

4.13 MAS also wishes to clarify that while the stay on reinsurers requires the reinsurer not to terminate the reinsurance contract for the duration of stay, it is limited to the coverage period as stipulated under the terms of the reinsurance contract. The contractual expiry of the reinsurance contract will thus not be altered by any stay that MAS may impose.

Safeguards similar to those proposed for financial contracts

4.14 For direct insurance contracts, one respondent questioned the relevance of having safeguards similar to those for financial contracts.

MAS' Response

4.15 MAS reviewed the relevance of these safeguards for direct insurance contracts and noted that the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions does not require safeguards similar to those for financial contracts to be imposed on direct insurance contracts. MAS agrees that these safeguards should more appropriately apply to reinsurance contracts and will thus only subject reinsurance contracts to the safeguards.

5 Ensuring Continuity of Essential Services and Functions

5.1 To ensure continuity of essential services and functions in resolution, MAS sought feedback on a proposal to introduce powers to suspend the termination rights of non-financial contracts between FIs and their service providers, or to require these contracts to be performed on the same terms and conditions that were in place prior to resolution. Respondents generally understood the importance of these proposals.

Potential implications and safeguards

5.2 Several respondents commented that the proposed power to stay termination rights for non-financial contracts could potentially increase the cost of doing business as these powers could affect the contractual rights of service providers and result in service providers increasing their fees. This could also result in service providers renegotiating existing contracts with FIs and/or FIs facing greater difficulty in negotiating future contracts with service providers. One respondent suggested the provision of safeguards

for service providers to limit the impact of the proposed powers. Such safeguards include ensuring that service providers continue to receive payment for their services.

MAS' Response

5.3 As part of the RRP process, MAS would already be engaging FIs to ensure that arrangements for operational continuity of essential services and functions are in place. Hence, the proposed powers would not necessarily introduce additional requirements on systemically important FIs and their service providers over and above what is already required under the RRP process. Nevertheless, MAS recognises the potential implications of the proposed powers, including the potential increase in business costs for FIs. To mitigate the business impact on FIs and provide greater certainty and assurance to service providers, the same safeguards as those proposed for temporary stays on financial contracts will apply. These include ensuring that substantive obligations (for example payment, delivery and collateral obligations) under a contract continue to be performed notwithstanding the stay, and limiting the duration of the stay on termination rights to two business days.

Scope of non-financial contracts

5.4 A number of respondents suggested that the scope of non-financial contracts subject to the proposed powers and the definition of essential services and functions be further clarified. In addition, a few respondents suggested that the scope of application should be aligned with the definition of critical shared services and critical functions in FSB's Guidance on Identification of Critical Functions and Critical Shared Services. One respondent also commented that the proposed powers should not compromise the continued safe and orderly operations of FIs.

MAS' Response

5.5 The proposed powers are intended to ensure continuity of essential services and functions in resolution, which is in line with FSB's emphasis on maintaining continuity of critical shared services and critical functions. The policy intent is to impose the stay only on non-financial contracts that pertain to critical functions and critical shared services, which are specific to each FI, depending on their businesses and operations. Hence, MAS will not be prescribing an ex ante list of services and functions that will be subject to the proposed power. MAS will work with FIs that are subject to RRP requirements to identify the essential services and functions for which operational continuity measures are expected to be implemented as part of the RRP process.

5.6 The amendments to the MAS Act will include powers for MAS to prescribe the types of service providers to an FI which will be explicitly exempted from the application of the temporary stays. MAS intends to prescribe payment systems¹⁵, approved clearing houses and recognised clearing houses, and depositories as exempt service providers.

Cross-border enforceability

5.7 Several respondents commented that the proposed powers may be limited in application to foreign service providers located outside Singapore or contracts governed by foreign laws. A few respondents further emphasised the importance of cross-border enforceability of our proposed powers.

MAS' Response

5.8 For contracts governed by Singapore law, MAS is of the view that the resolution powers will bind all service providers, whether they are located in Singapore or overseas. In relation to contracts governed by foreign laws, MAS will monitor international developments in this area and consider the merits of contractual recognition clauses in non-financial contracts for essential services and functions.

5.9 At the same time, MAS expects FIs to complement the proposed powers by strengthening contractual provisions within their contracts for essential services and functions to achieve operational continuity in resolution and ensuring that arrangements to support operational continuity are in place. Examples include ensuring that contracts with service providers exclude early intervention, resolution and cross-default events as grounds for termination or contractual modification.

6 Statutory Bail-In Regime

6.1 The consultation paper proposed a statutory bail-in regime, to be applied to Singapore-incorporated banks and bank holding companies. Under the proposed regime, MAS would have statutory powers to write down or convert into equity, all or part of unsecured subordinated debt and unsecured subordinated loans. MAS would

¹⁵ This will include payment systems designated under the Payment Systems (Oversight) Act and the Payment and Settlement Systems (Finality and Netting) Act.

also have statutory powers to bail in contingent convertible instruments and contractual bail-in instruments, whose terms have not been triggered prior to resolution.

Statutory bail-in to be implemented for Singapore-incorporated banks and bank holding companies

6.2 Some respondents asked if the proposed statutory bail-in powers would apply to other FIs, such as insurers, merchant banks, CCPs or payment systems.

MAS' response

6.3 MAS will be applying the statutory bail-in powers to Singapore-incorporated banks and bank holding companies for the time being. The implementation of the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions is more advanced internationally 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

6.4 Some respondents were supportive of the proposal to implement bail-in powers for unsecured subordinated debt and unsecured subordinated loans. Other respondents expressed concern that the proposed scope of liabilities subject to bail-in powers might not provide sufficient loss-absorbing capacity.

MAS' response

6.5 MAS will retain the proposal to implement statutory bail-in powers for unsecured subordinated debt and unsecured subordinated loans¹⁶. While a broader scope of bail-in would increase the loss-absorbing capacity of a bank, it would also raise the risk of contagion to the financial system and broader economy arising from bailing in a bank's liabilities, and impact banks' cost of funding. To promote banking resilience and financial stability, MAS emphasises close supervisory oversight of banks and processes to allow for timely intervention and recovery measures to be put in place in stress

¹⁶ The proposed powers will also cover any equity instrument that is not in the form of share capital, as well as contingent convertible instruments and contractual bail-in instruments, whose terms have not been triggered prior to resolution.

situations. MAS also subjects Singapore-incorporated banks to high capital and prudential standards and rigorous stress testing requirements on an ongoing basis.

Setting out the scope of bail-in in legislation

6.6 Some respondents proposed that MAS expressly sets out a list of liabilities which would not be within the scope of bail-in. Others sought confirmation that certain liabilities, namely liabilities related to trading, clearing and settlement obligations to approved exchanges, clearing houses and depositories, obligations towards payment systems, collateral posted to a CCP, client money, liabilities arising from derivatives, liabilities to employees, contingent liabilities, and other liabilities arising from regulatory requirements (e.g. deposit insurance liabilities, tax obligations), would be excluded from the scope of bail-in.

MAS' response

6.7 MAS will prescribe in Regulations the scope of liabilities that are within the scope of MAS' statutory bail-in powers. The bail-in powers will apply to unsecured subordinated debt and unsecured subordinated loans¹⁷ of Singapore-incorporated banks and bank holding companies. Correspondingly, liabilities that are not listed within the scope of bail-in¹⁸ will effectively be excluded from the scope of the statutory bail-in powers.

Application of statutory bail-in powers on a prospective basis

6.8 MAS proposed to apply statutory bail-in powers on a prospective basis, to liabilities issued or contracted after the effective date of the relevant legislative amendments implementing the statutory bail-in regime. Some respondents sought clarification on how the application of bail-in on a prospective basis would allow the hierarchy of claims in liquidation to be respected. If liabilities, issued or contracted after the statutory bail-in regime comes into effect, are bailed in ahead of other liabilities of

¹⁷ The proposed powers will also cover any equity instrument that is not in the form of share capital, as well as contingent convertible instruments and contractual bail-in instruments, whose terms have not been triggered prior to resolution.

¹⁸ These include unsubordinated obligations towards exchanges, clearing houses, depositories and payment systems, collateral posted to a CCP, client money, liabilities owed to employees, contingent liabilities, deposit insurance liabilities, tax obligations, and all secured liabilities.

the same class which were issued or contracted before the effective date of the bail-in regime, the principle of equal treatment of creditors within the same class would be violated.

MAS' response

6.9 MAS will retain the proposal to apply statutory bail-in powers on a prospective basis, to liabilities within the scope of MAS' powers, issued or contracted after the effective date of the relevant legislative amendments implementing the statutory bail-in regime. To apply bail-in retrospectively would not be fair to the holders of instruments issued or contracted before the effective date of the bail-in regime, as their holdings would become riskier (subject to potential bail-in) without a commensurate increase in yield. The existing instruments which were issued or contracted before the effective date of the bail-in regime will also mature or be redeemed by the issuing banks over time.

Complementing the statutory bail-in regime with contractual recognition provisions

6.10 MAS proposed a complementary contractual recognition regime for liabilities that fall within the scope of MAS' statutory bail-in powers, but which are governed by foreign laws. The proposal required Singapore-incorporated banks and bank holding companies to insert contractual recognition clauses in such liabilities. Some respondents expressed concern about the compliance effort. Respondents also requested clarity on the requirement to draft the contractual recognition provisions such that they do not conflict with the application of statutory bail-in in practice. Other respondents highlighted that it may be difficult to obtain an unequivocal legal opinion confirming that MAS would be able to enforce the contractual recognition clauses.

MAS' response

6.11 Consistent with the FSB's guidance on "Principles for Cross-Border Effectiveness of Resolution Actions", MAS will retain the proposal to require contractual recognition clauses for liabilities that fall within the scope of MAS' statutory bail-in powers, but which are governed by foreign laws. This would help support the cross-border enforceability of MAS' bail-in actions. Singapore-incorporated banks and bank holding

companies will not be allowed to issue instruments that are within the scope of bail-in but which are governed under foreign laws, unless the instruments contain the required contractual recognition clauses¹⁹.

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

6.13 MAS notes the concerns about obtaining an unequivocal legal opinion on the enforceability of bail-in by MAS. MAS will require the bank to provide a reasoned legal opinion, which addresses the following:

- (a) the enforceability of the specific contractual provisions under the specific governing law;
- (b) the validity of specific consents or waivers of legislative provisions under the foreign governing law (e.g. provisions designed to prevent amendments to bond documentation without bondholder consent), where these are required to give effect to the bail-in;
- (c) the materiality and likely effect of any qualifications or limitations (e.g. on policy grounds) on the enforceability of any bail-in action; and
- (d) compliance with applicable disclosure requirements, to the extent that breaches might compromise the enforceability of the contractual recognition provisions under the instruments.

Disclosure requirements

6.14 MAS proposed that banks prominently disclose the consequences of a bail-in to creditors, for all liabilities within the scope of MAS' statutory bail-in powers.

¹⁹ This requirement does not apply to issuances out of foreign subsidiaries of locally-incorporated banks.

Respondents generally agreed with the proposal and requested details on the disclosure requirements.

MAS' response

6.15 MAS will consult on details of the disclosure requirements at a later stage.

Circumstances where statutory bail-in powers will be exercised

6.16 Respondents requested clarity on the circumstances under which statutory bail-in powers would be exercised. Respondents also sought clarification on how the proposed statutory bail-in regime would interact with the other resolution tools under MAS' toolkit, such as compulsory transfer of business and restructuring of share capital.

MAS' response

6.17 In determining whether to exercise resolution powers on an FI, MAS may have regard to whether the failure of the FI would have a widespread adverse effect on the financial system or economy of Singapore, whether it is in the public interest to do so, or any other matter considered relevant, as currently set out under section 30AAL of the MAS Act. In addition, the various resolution tools under MAS' powers may be applied as appropriate to meet the resolution objectives in each specific situation and where the respective triggers for the exercise of the specific tools are met.

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

Respecting creditor hierarchy and equal treatment of creditors of the same class

6.19 Some respondents asked how MAS intends to respect the creditor hierarchy of claims and the principle of equal treatment of creditors of the same class, and requested details on the circumstances where MAS may depart from the two principles.

MAS' response

6.20 The proposed legislation will set out that MAS, when exercising its statutory bail-in powers, will have regard to the principles of respecting the hierarchy of claims in liquidation and equal treatment of creditors of the same class. In determining whether to apply these principles, MAS will consider various factors, including the systemic impact of the firm's failure, how to maximise value for the benefit of all creditors as a whole, and public interest.

Equity conversion under statutory bail-in

6.21 Respondents highlighted that the conversion of all or part of unsecured and uninsured creditor claims into equity could potentially trigger the shareholding approval requirements under the Banking Act²⁰.

MAS' response

6.22 MAS notes respondents' feedback. MAS will provide in legislation that, in the event of a bail-in, all shareholders' voting rights on matters which require shareholders' approval will be suspended, until the Minister has assessed whether any new shareholders, arising from the conversion of creditor claims into shares, can become substantial shareholders or controlling shareholders, if they have breached the relevant

²⁰ Section 15A of the Banking Act states that no person shall become a substantial shareholder of a designated FI without first obtaining the approval of the Minister. A person is deemed to have a substantial shareholding in a company if (i) he has an interest or interests in one or more voting shares in the company and (ii) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares included in that class. Section 15B of the Banking Act also requires a person to first obtain the Minister's approval before the person can become a 12% controller, a 20% controller or an indirect controller of the bank.

shareholding thresholds. This will ensure that only fit and proper persons can exercise voting rights attached to substantial or controlling stakes in the financial institution.

Total Loss Absorbency Capacity (TLAC)

6.23 Respondents asked whether TLAC requirements would be introduced for locally-incorporated banks to increase the amount of their bail-inable liabilities.

MAS' response

6.24 Currently, MAS does not intend to introduce any additional capital requirements beyond the higher loss absorbency requirement for D-SIBs.

7 Cross-Border Recognition of Resolution Actions

7.1 In the consultation paper, MAS noted our existing powers to take supportive measures to effect a foreign resolution action, and consulted on the possibility of achieving a cooperative solution with foreign resolution authorities by giving effect to foreign resolution actions through a recognition process.

7.2 Several respondents were strongly in favour of having a formal recognition process with a statutory basis, and suggested that this would provide legal and commercial certainty. A few respondents noted the possibility that there could be technical or procedural differences in MAS' regime and that of a foreign resolution authority, which could hinder a single, consistent outcome across jurisdictions in a cross-border resolution.

MAS' Response

7.3 Taking into account the feedback and further international developments in this area, MAS will introduce a statutory framework for cross-border recognition. This will enable MAS to achieve a cooperative solution with foreign resolution authorities by giving effect to foreign resolution actions through a recognition process, in addition to taking supportive measures.

8 Creditor Compensation Framework

8.1 The consultation paper proposed to establish a creditor compensation framework that will grant creditors and shareholders a right to compensation where they do not receive under resolution at least what they would have received in a

liquidation of the FI under the applicable insolvency regime. This is also referred to as the “no-creditor-worse-off than in liquidation” (NCWOL) safeguard. The framework will apply to banks, merchant banks, finance companies, insurers, capital market infrastructures (CMIs)²¹, operators and settlement institutions of DPSEs²², and financial holding companies regulated by MAS. Respondents supported the proposal, and requested details on the proposed framework.

Scope of Creditor Compensation Framework

8.2 One respondent requested details on the situations under which the creditor compensation framework would apply and the scope of persons eligible to receive compensation. Another respondent suggested that losses that members and clients incurred in relation to actions, such as variation margin haircuts, taken by a CCP under its rules should be made whole under the creditor compensation framework.

MAS’ Response

8.3 The intent of the creditor compensation framework is to provide the NCWOL safeguard when MAS exercises resolution powers that directly affect creditors’ or shareholders’ rights. As such, the framework will apply where the following resolution powers are exercised by MAS (either singly or in combination): (i) compulsory transfer of business; (ii) compulsory transfer of shares; (iii) compulsory restructuring of share capital; or (iv) bail-in powers. The framework will therefore not cover losses incurred by members or clients of CCPs arising from actions taken by CCPs, as such actions are separate and independent of MAS exercising any resolution action provided for in the MAS Act.

8.4 For financial groups, the framework will apply to group entities for which MAS is empowered to exercise resolution powers. This includes foreign branches of locally-incorporated banks and insurers, and excludes their foreign subsidiaries.

8.5 The framework will also apply where MAS has recognised or supported resolution measures taken by a foreign resolution authority in a group-wide resolution in respect of a subsidiary or branch of a foreign FI operating in Singapore. It will however

²¹ CMIs are approved holding companies, approved exchanges, approved clearing houses, depositories and licensed trade repositories regulated under the Securities and Futures Act.

²² Designated under the Payment Systems (Oversight) Act

not apply where there is a separate arrangement to allow affected creditors or shareholders of the FI to claim creditor compensation under an arrangement in the jurisdiction of the foreign resolution authority.

8.6 The framework will provide a rebuttable presumption that the following counterparties are not worse off in resolution compared to a liquidation, and hence are not eligible for creditor compensation: (i) counterparties whose contracts have been transferred on resolution to a new entity to be continued to be performed on the same terms and conditions; and (ii) where only bail-in is used as a resolution tool, counterparties whose liabilities are not within the scope of the bail-in provision. Such counterparties would generally not be expected to be worse off in resolution than in liquidation.

Appointment and Removal of Independent Valuer

8.7 The consultation paper proposed that the creditor compensation framework would include the appointment of an independent valuer to assess if any creditor or shareholder of the FI was made worse off under the resolution of the FI instead of liquidation. The valuer would be appointed based on criteria of independence and capacity.

8.8 Several respondents requested details on the process and criteria for appointment and removal of a valuer.

MAS' Response

8.9 The framework will empower the Minister to appoint a valuer, based on the following criteria:

- (a) independence from both MAS and any other relevant public authority, and the FI in resolution. The valuer should not have any material interest in common or in conflict with any of these parties, as well as the significant creditors and shareholders of the FI. MAS will also consider any other factors that are relevant or which may influence, or be perceived to influence, the valuer's judgment; and
- (b) capacity of the valuer, based on whether the valuer has relevant experience and expertise, knowledge of the insolvency framework and adequate technical and human resources to carry out the valuation, commensurate with the nature, size and complexity of the FI.

8.10 The framework will similarly empower the Minister to remove a valuer, on grounds of incapacity, serious misconduct, or failure to continue meeting the appointment criteria of independence and capacity.

Valuation Principles and Assumptions

8.11 Respondents to the consultation requested details on the valuation principles and assumptions to be used by the valuer. Several respondents suggested that the valuation should be done as at the date at which the first resolution action came into effect.

8.12 One respondent suggested that an FI regulated by MAS which is a creditor of the FI in resolution, should have a higher priority over other types of creditors, as this would support overall financial stability.

MAS' Response

8.13 MAS will prescribe the valuation principles that the valuer would be required to follow, including that:

- (a) the valuation should be done as at the date at which the first resolution action comes into effect;
- (b) the valuer should assume that the provision of any extraordinary public financial support to the FI under resolution would not have been made available in a liquidation scenario; and
- (c) the valuation of the amount due to creditors or shareholders under the hypothetical liquidation scenario would adhere to the creditor hierarchy under the applicable insolvency regime.

8.14 It would be consistent with the intent of the NCWOL safeguard that the valuation under the hypothetical liquidation scenario is based on the creditor hierarchy under the applicable insolvency regime. This valuation principle would similarly apply to the valuation of claims due to creditors that are FIs regulated by MAS.

Cost of Valuation

8.15 Several respondents sought clarification on the party bearing the cost of the NCWOL valuation or the remuneration of the valuer for the NCWOL valuation.

MAS' Response

8.16 Under the creditor compensation framework, the resolution fund (referred to in Section 9) will be used to fund the NCWOL valuation and the remuneration of the valuer.

Appeal Process

8.17 Respondents agreed on the proposal to establish an appeal process for creditors and shareholders to appeal against their determined compensation entitlement. Several respondents suggested that the appeal process allow for an appeal to a second qualified independent valuer, and that the compensation amount determined by the second independent valuer be considered final.

MAS' Response

8.18 The creditor compensation framework will allow creditors and shareholders to appeal to the courts on their awarded compensation amount or non-award of compensation as decided by the valuer. This would allow for an appeal process which is independent of MAS as the resolution authority.

9 Resolution Funding

9.1 MAS proposed to establish resolution funding arrangements to ensure timely access to funds to implement resolution measures. Recovery of such resolution costs would take place on an ex post basis, though existing privately-financed ex ante funds could also be tapped on to implement resolution measures. The consultation also laid out sector-specific arrangements.

Uses of resolution funding arrangements

9.2 The proposal in the consultation paper was for resolution funding arrangements to be used for (i) supporting any costs incurred in the implementation of a resolution measure, including administrative and interests costs; and (ii) meeting any creditor compensation claims that may arise.

9.3 There was general support among respondents for the proposed uses of the resolution funding arrangements, although some sought clarification on the types of costs that would be covered under the resolution funding arrangements. A respondent suggested that resolution funding arrangements should not cover administrative and interest costs where these costs may be small and part of work to be carried out by the

authorities; another opined that creditor compensation claims should be excluded from the scope of resolution funding arrangements. A few respondents also commented that the arrangements should not be used to provide capital or to cover losses of the FI under resolution. One respondent proposed that MAS consider the recovery of costs in the event that an FI does not fail after MAS has incurred significant costs in planning for its resolution²³.

MAS' Response

9.4 The resolution funding arrangements are intended to cover costs specifically incurred for the purpose of resolving an FI, which would not otherwise have been incurred. This includes possible creditor compensation claims, which result from the implementation of resolution measures to ensure financial stability or to resolve an FI that is systemically important or that maintains critical functions. A non-exhaustive list of purposes for which the resolution funding arrangements may be used is as follows:

Table 1: Non-exhaustive list of purposes for which resolution funding arrangements may be used

S/N	Purposes
1	To facilitate temporary public ownership of an FI under resolution, including initial capital for a bridge entity or asset management company (AMC).
2	To meet the operating costs of a bridge entity or an AMC.
3	To meet administrative costs incurred in the implementation of any resolution measure, including interest costs and the cost of advisory services procured in effecting the resolution e.g. cost of independent valuation of the FI and cost of external legal advice.
4	To meet creditor compensation claims and any associated costs that may arise from the implementation of a resolution measure.
5	To provide guarantees in relation to the transfer of the assets or the liabilities of an FI under resolution, a resolved FI, a bridge entity or an AMC.

²³ Potentially, this could happen if MAS undertakes recovery or pre-resolution expenditure such as valuation of assets and liabilities of the FI in anticipation of a possible regulatory intervention, but the FI subsequently recovers via other measures (e.g. private sector initiatives) and continues to be viable.

S/N	Purposes
6	To meet the cost of selling or transferring all, or any part, of the assets, liabilities, or obligations of an FI under resolution, a resolved FI, a bridge entity or an AMC.
7	To make loans to the FI under resolution, a resolved FI, a bridge entity or an AMC.
8	To meet the cost of loss-sharing agreements ²⁴ with an acquiring FI.

9.5 In line with other jurisdictions with resolution funding arrangements, MAS will not preclude the use of resolution funding arrangements to recapitalise an FI under resolution. However, the resolution fund will be used for this purpose only after losses have been imposed on unsecured subordinated creditors²⁵ and equity holders to the fullest extent possible or appropriate.

9.6 MAS has carefully considered the suggestion on recovery of costs in the event that an FI manages to return to viability after significant expenses have been incurred in planning for the resolution for the FI. Should such costs be incurred, MAS will not recover these from the rest of the industry. MAS will consider alternative means of cost recovery, including recouping the costs from the affected FI²⁶.

Losses to be imposed on equity holders and unsecured creditors

9.7 MAS had sought views on the appropriate level of losses to be imposed on equity holders and unsecured creditors of the FI to be resolved, before resolution funding arrangements could be tapped upon.

9.8 Some respondents suggested that equity holders and unsecured creditors of the FI should be written down in full before the resolution funding arrangements can be tapped on. Other respondents felt that losses imposed on equity holders and unsecured

²⁴ Under a typical loss-sharing agreement, the resolution authority commits to bear a specified percentage of future losses experienced by the acquiring FI, on a specified pool of assets of the FI that was resolved, within a specified period of time.

²⁵ Where the FI under resolution does not have any unsecured subordinated creditors, the issue of imposing losses on this group of creditors will not arise.

²⁶ This is in view that the expenditure was incurred in relation to the FI's potential resolution.

creditors should depend on the size of the FI and its operations in Singapore. One respondent recommended a threshold of 50% of the losses.

MAS' Response

9.9 Given the lack of consensus amongst respondents and the absence of international standards on this issue, MAS will retain the discretion to determine the appropriate level of losses to be imposed on equity holders and unsecured creditors of the FI. The intention is to tap on the resolution fund only after losses have been imposed on unsecured subordinated creditors²⁷ and equity holders to the fullest extent possible or appropriate.

Ex post recovery mechanism

9.10 MAS proposed in the consultation paper for costs incurred in resolving an FI to be recovered via an ex post recovery mechanism. Under this arrangement, MAS will first provide liquidity on a temporary basis for the resolution of an FI and subsequently recover the costs of providing the liquidity from the industry. Nevertheless, where privately-financed ex ante funds exist (e.g. the Deposit Insurance (DI) Fund), these may be tapped on to implement resolution measures.

9.11 A respondent commented that a well-run FI should not pay for the losses of a badly-run competitor, only to have the latter compete against it subsequently. Another respondent opined that ex post funding would lead to moral hazard as it least affects those who manage risk poorly, while potentially penalising others who conduct business in a prudent manner. The respondent suggested ex ante funding instead, as it would oblige all assumed beneficiaries, including those who may be bailed out, to contribute to the cost of resolution. Ex ante funding would also distribute individual contributions over time, and avoid one-off expenses which could exacerbate the situation for certain market participants at a time of volatility and create unintended spill-overs.

²⁷ Where the FI under resolution does not have any unsecured subordinated creditors, the issue of imposing losses on this group of creditors will not arise.

MAS' Response

9.12 MAS has carefully considered the feedback from all respondents, noting that most respondents concur with the proposal to establish an ex post recovery mechanism. While MAS acknowledges the concerns raised by the respondents, establishing a credible ex ante fund would require sizeable collections from the industry, which would in turn entail significant costs and inefficiencies for the contributors to the resolution funding arrangements.

Ex post levies

9.13 Some respondents commented that the cost of resolving an FI should first be borne by the residual value of the FI under resolution before being imposed on the rest of the sector. Other respondents sought clarifications on the contributions to be levied on the industry and suggested that levies collected should be proportional to the systemic importance or risk profile of a particular entity. A few respondents also opined that levies should take into account possible "double taxation", where an FI is a participant in both home and host resolution funding arrangements.

MAS' Response

9.14 MAS agrees that the residual value of the FI should be used to offset the cost of resolution. Hence, MAS will include a general provision in the MAS Act as well as amend the Banking Act and the Insurance Act to accord the resolution funding arrangement priority to the assets of an entity in liquidation, before unsecured creditors and equity holders. For banks, MAS will accord the DI Fund priority to recoveries from the assets of the bank where the DI Fund is used for resolution funding, consistent with the corresponding priority ranking for the Policy Owners' Protection General Fund and Policy Owners' Protection Life Fund (PPF Funds) under section 49FR of the Insurance Act.

9.15 MAS will consult on the details of the framework for ex post levies at a later stage, taking into consideration the sector-specific recovery mechanisms. Broadly, MAS intends to:

- (a) calculate ex post levies for each contributor, taking into account the following factors:

-
- (i) risks that the contributor would pose to the financial system²⁸;
 - (ii) benefits that the contributor had derived from the resolution of the resolved FI or from the resolution regime in general;
 - (iii) economic conditions or the financial condition of the contributor;
and
 - (iv) such other factors as may be relevant;
- (b) recover the costs of resolution from the industry within a specified period from the initial provision of liquidity. Levies may be collected in instalments if necessary to minimise financial impact on the contributing FIs. MAS is also proposing to retain the discretion to delay the imposition of levies on the industry or specific FI based on the economic and financial conditions at the point of levying; and
 - (c) retain the discretion to distribute surplus monies (if any) at the end of the resolution event to the contributing FIs.

Sector-specific recovery mechanism for banking entities and DPS Settlement Institutions

9.16 The consultation proposed sector-specific arrangements for banking entities and DPS settlement institutions as follows:

- (a) **Banking entities:** (i) expand the use of the DI Fund to include funding of the resolution of DI Scheme Members (excluding creditor compensation claims), subject to the equivalent cost criterion²⁹; (ii) apply ex post levies on all other banks, merchant banks, and finance companies, other than the banking entity in resolution.
- (b) **DPS Settlement Institutions:** resolve DPS Settlement Institutions as banks under the bank resolution framework.

²⁸ For FMIs, the risk that the contributor poses to the FMI or the sector would be more relevant.

²⁹ The equivalent cost criterion sets out that the amount drawn on the DI Fund should be capped at the amount that would have been paid out in a depositor payout situation for that particular DI Scheme Member in resolution (i.e. if the DI Scheme Member had failed).

9.17 Most respondents concurred with the proposals. Only three respondents objected to the use of DI Funds to fund resolution actions, citing concerns that this would deplete the DI Fund, hence reducing the amount available as compensation for non-bank depositors. Other respondents requested further details on the mechanics of how the DI Fund would be used.

9.18 On the proposal to apply ex post levies on the rest of the banking sector i.e. all other banks, merchant banks and finance companies, a majority of the respondents concurred with the proposed approach, generally acknowledging that all of the FIs would benefit from the stability that would ensue.

MAS' Response

9.19 As there were no major objections to the proposed recovery mechanisms for banks and DPS settlement institutions, MAS will implement the proposals in the consultation.

9.20 On the use of DI Fund for resolution funding, MAS would like to emphasise that the use of the DI Fund will be subject to appropriate safeguards such as the equivalent cost criterion. MAS will consult at a later stage on further details on the use of the DI Fund.

Sector-specific recovery mechanism for insurers

9.21 The consultation proposed to include all insurers in the scope of resolution funding arrangements, except for captives and Lloyd's, and to apply ex post levies by classes of insurers i.e. direct life insurers, direct general insurers and reinsurers. A majority of the respondents were supportive of the proposals.

9.22 One respondent suggested that Lloyd's should be included in resolution funding arrangements since Lloyd's profits from its business in the Singapore insurance market. Another respondent asked whether the insurance sector would benefit much from the resolution of a particular insurer as the knock-on effects from a defaulting insurer might be low compared to the banking sector. MAS also received feedback that it was not necessary to establish a "safeguard scheme" for reinsurers as the Policy Owners' Protection Scheme (PPF Scheme) does not include reinsurers.

9.23 With regard to ex post levies, one respondent suggested levying life reinsurers when temporary funding is provided by MAS to resolve a direct life insurer and vice versa, likewise for direct general insurers and general reinsurers. There was also a

suggestion that life and non-life reinsurers should not be grouped together for the purpose of ex post levies as the underlying risks differ for the two segments.

MAS' Response

9.24 On the scope of the resolution funding arrangement, MAS wishes to reiterate that the objective of the resolution funding arrangement is to ensure timely access to funds for the successful and orderly resolution of an FI that is systemically important or that maintains critical functions. MAS will retain the proposal to exclude Lloyd's considering that the risks underwritten by Lloyd's service companies in Singapore are borne by the members of Lloyd's syndicates in London, instead of being retained in Singapore. In this respect, MAS also proposes to exclude marine mutuals (or Protection & Indemnity Clubs) from the scope of resolution funding arrangements as they also insure the risks of their own members.

9.25 MAS recognises that it may be less evident that the orderly resolution of an insurer would benefit the entire sector when compared to the banking sector. In deriving the proposal to apply ex post levies, MAS assessed the need to spread out the costs of recovery and to instil public confidence in a particular class of insurers, rather than on the basis of business relationships (i.e. direct insurer and reinsurer). In addition, this split by class of insurers (i.e. not grouping direct insurers and reinsurers of the same business lines together) for the ex post cost recovery mechanism would be aligned with the ex ante component. For the ex ante component, reinsurers are not members of the PPF Scheme and therefore do not contribute to the PPF Funds.

Sector-specific recovery mechanism for CMIs and DPS operators

9.26 The consultation proposed an ex post recovery mechanism for CMIs and DPS operators. Views were sought on the appropriate scope of ex post recovery, specifically, on persons who would benefit from an orderly resolution of a CMI or DPS operator, and who should therefore contribute to any costs that may be incurred in resolving that CMI or DPS operator.

9.27 In respect of the ex post recovery mechanism for CMIs, there were diverse views from the respondents on the scope of participants that could be levied. Some respondents commented that imposing levies on CMIs in the same line of business may create contagion risks. Others commented that it may be onerous to impose additional costs on clearing members who have already contributed to a CCP's default fund. One respondent suggested delaying the introduction of resolution funding arrangements for

CMIs, until there is better clarity on other loss-absorption mechanisms (e.g. bail-in) on CMIs.

9.28 In respect of the ex post recovery mechanism for DPS operators, one respondent commented that resolution costs should not be levied on direct and indirect participants of a DPS operator as they do not have direct executive powers over the DPS operator. The same respondent noted that should MAS proceed with ex post recovery from participants, the ex post levies should be apportioned according to the level of each FI's participation in the DPS.

MAS' Response

9.29 MAS notes that international policy thinking on CMI resolution is still at a nascent stage. In addition, the participants to scope in for an ex post recovery could vary depending on the actual loss amount and circumstances leading to the resolution.

9.30 MAS acknowledges that direct and indirect participants of DPS operators generally do not have executive control. These participants derive actual benefits from the continued operations of the DPSEs run by the operator and it would be equitable that ex post levies are imposed on these participants. MAS agrees with the respondent's suggestion to fairly apportion the ex post levies amongst participants of the DPS operator.

9.31 MAS will consult the industry on the scope of participants in the case of CMIs as well as the mechanism for ex post recovery for CMIs and DPS operators at a later stage, based on the framework set out in paragraph 9.15.

MONETARY AUTHORITY OF SINGAPORE

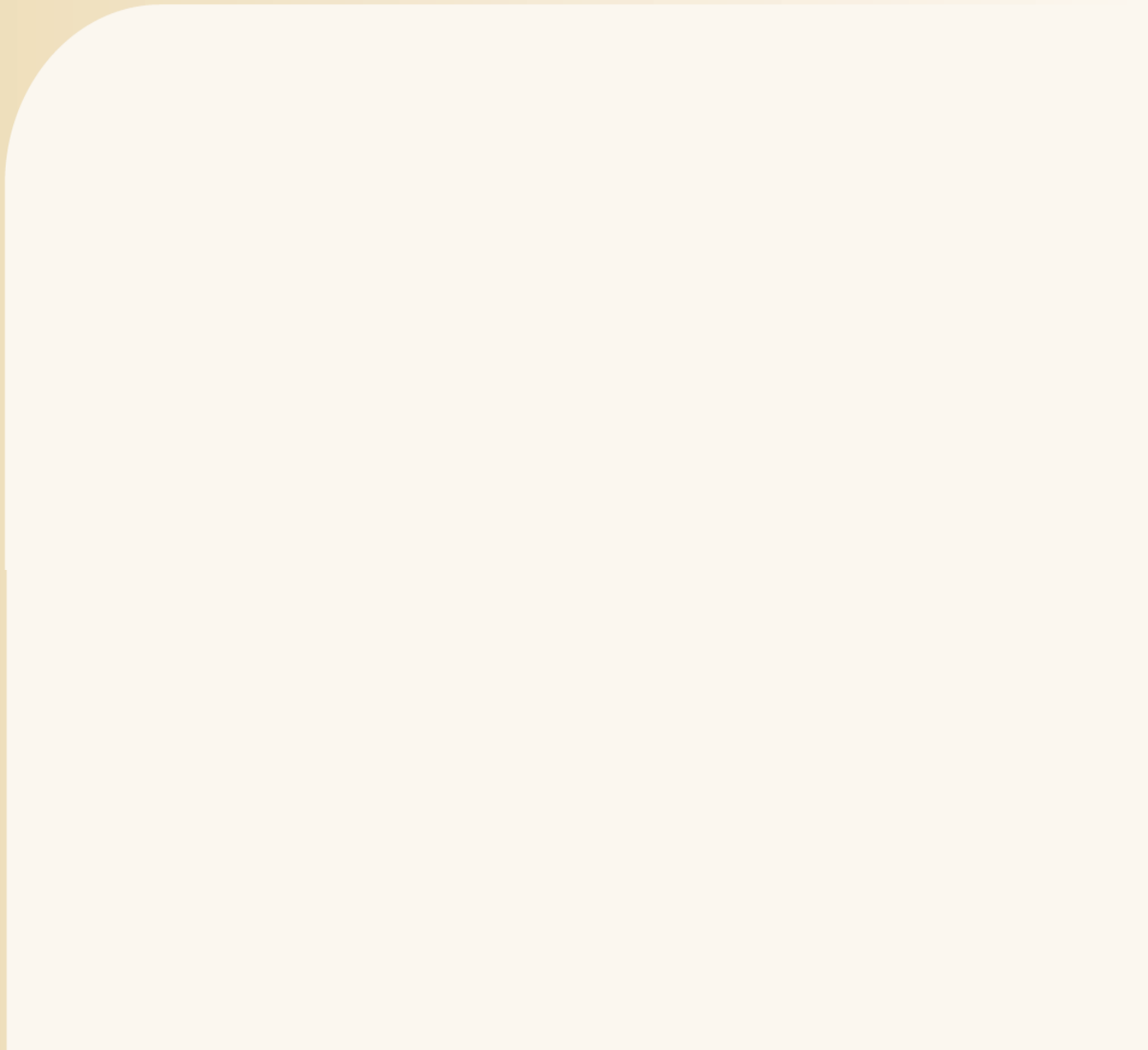
29 April 2016

Annex A

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

1. AIA Singapore Private Limited
2. AIG Asia Pacific Insurance Pte Ltd
3. Allen & Gledhill LLP representing DBS Bank Limited and Oversea-Chinese Banking Corporation Limited
4. Asia Capital Reinsurance Group Pte Ltd
5. Asia Securities Industry & Financial Markets Association (ASIFMA)
6. Bank of Tokyo-Mitsubishi UFJ, Limited
7. Banking Computer Services Pte Ltd
8. British Bankers' Association
9. Clifford Chance Pte Ltd
10. CLS Bank International
11. Credit Suisse
12. Deutsche Bank AG
13. Deutsche Börse AG
14. Friends Provident International Limited
15. Great Eastern Life Assurance Co Limited
16. ICE Clear Singapore Pte Ltd
17. ING Bank N.V
18. JPMorgan Chase Bank N.A.
19. LCH.Clearnet Ltd
20. Liberty Insurance Pte Ltd
21. Life Insurance Association Singapore (LIA)
22. Mizuho Bank Ltd
23. MSIG Insurance (Singapore) Pte Ltd
24. Singapore Exchange Ltd
25. Standard Chartered Bank
26. Swiss Reinsurance Company Ltd
27. The Alternative Investment Management Association Limited (AIMA)
28. The Hongkong and Shanghai Banking Corporation Limited
29. The International Swaps and Derivatives Association (ISDA)
30. The Toa Reinsurance Company Limited
31. United Overseas Bank Limited

Three other respondents requested confidentiality of identity.



Monetary Authority of Singapore