ASIFMA/Freshfields Resolution and Recovery Planning (RRP) Project

A comparison of key features of RRP regimes in major jurisdictions

With the kind collaboration of:

Allen & Gledhill

DAVIS POLK & WARDWELL

KIM & CHANG

	International standards (i.e. FSB Key Attributes[1], and other relevant guidance issued by standard-setting bodies such as the FSB, IOSCO etc)	Industry position (global)[2]	US[3]	PRC[4]	Hong Kong[5]	South Korea[6]	Singapore[7]
Entities within scope of the resolution regime	Any financial institution that could be systemically significant or critical if it fails. The regime should be clear and transparent as to the financial institutions (***firms***) within its scope. It should extend to: (i) holding companies of a firm; (ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and (iii) branches of foreign firms. Financial market infrastructures (***FMIs***) should be subject to resolution regimes that apply the objectives and provisions of the Key Attributes in a manner as	Resolution planning should focus on domestic firms and any of their critical functions that stand to have a systemic impact of failure. Local branches of global financial institutions should not be required to provide a country-level resolution plan, as their operations are included in group-level plans. The FSB's Key Attributes call for coordination between home and host jurisdictions to ensure that their respective requirements don't overlap and impede the global resolvability of a financial institution.[8] This is achieved by providing a legal requirement for cooperation, information exchange and coordination domestically and with foreign resolution authorities	With respect to the resolution regime, the scope is defined under both the Dodd-Frank Wall Street Reform and Consumer Protection Act (**DFA**) for financial companies and the Federal Deposit Insurance Act (**FDIA**) for depository institutions. The Orderly Liquidation Authority (**OLA**) enacted in Title II of the DFA covers any **financial company**, subject to systemic risk determinations summarized below. A financial company means a company that: (i) is incorporated or organized under any provision of U.S. federal law of the laws of any U.S. state; (ii) is:	No unified or systematic legislation on RRP for financial institutions in the PRC has been released by the PRC regulators, although the financial regulators have been pushing for the implementation of the relevant international standards in the PRC financial sector. According to the 2016 Financial Stability Reports issued by the People's Bank of China (***PBoC***) in July 2017[13], the PRC regulators have been involved in the regulatory reforms of the FSB and the Basel Committee on Banking Supervision (***BCBS***) in order to facilitate the implementation of the relevant standards and guidelines in the PRC. The scope of the financial institutions subject to RRP is not defined. However it	The Financial Institutions (Resolution) Ordinance (***FIRO***) provides that the following entities are Financial Institutions (***FIs***) that are within scope FIs under the FIRO (***within scope FIs***): (i) All Authorised Institutions (***AIs***): all types of AIs (whether locally incorporated or Hong Kong branches of overseas entities), including all licensed banks, restricted license banks and deposit-taking companies. AIs are banking sector entities for which the Hong Kong Monetary Authority (***HKMA***) is the Resolution Authority (***RA***). (ii) Certain SFC-licensed corporations (***LCs***): (a) LCs that are non-bank non-insurer (***NBNI***) global systemically important FIs (***G-SIFIs***); and (b) LCs that	Under the current legal framework of Korea, the resolution of a Korean financial institution is regulated under the Financial Institution Restructuring Law ("***FIRL***"), the Depositor Protection Law (the "***DPL***") and the Debtor Rehabilitation and Bankruptcy Law (the "***DRBL***"). While the DRBL provides a general insolvency regime applicable to all types of debtor, the FIRL and the DPL provide special regimes that apply only to financial institutions. The resolution authorities under the FIRL and the DPL are the Financial Supervisory Commission ("***FSC*** ") and the Korea Deposit Insurance Corporation ("***KDIC***"). Before a decision to resolve a	The Monetary Authority of Singapore (the "**MAS**") has resolution and control powers over all financial institutions that come within its purview. This includes banks, merchant banks, licensed insurers and insurance intermediaries, finance companies, operators and settlement institutions of designated payment systems, approved exchanges, recognised market operators, approved clearing houses, recognised clearing houses, licensed trade repositories, licensed foreign trade repositories, approved holding companies, approved trustees and holders of capital markets services licences. These powers would equally apply where the financial institution is constituted as a branch. In addition, the MAS has the power to give directions to, or impose requirements on or relating to the operations of a "significant associated entity"

[1] Key Attributes of Effective Resolution Regimes for Financial Institutions, Financial Stability Board (15 October 2014): http://www.fsb.org/what-we-do/policy-development/effective-resolution-regimes-and-policies/key-attributes-of-effective-resolution-regimes-for-financial-institutions/

[2] Special thanks to Freshfields Bruckhaus Deringer for their contributions.

[3] Special thanks to Davis Polk & Wardwell and SIFMA for their contributions.

[4] Special thanks to Freshfields Bruckhaus Deringer for their contributions.

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[6] Special thanks to Kim & Chang for their contributions.

[7] Special thanks to Allen & Gledhill for their contributions

[8] Key Attributes of Effective Resolution Regimes for Financial Institutions, Financial Stability Board (15 October 2014): http://www.fsb.org/what-we-do/policy-development/effective-resolution-regimes-and-policies/key-attributes-of-effective-resolution-regimes-for-financial-institutions/

[13] http://www.pbc.gov.cn/jinrongwendingju/resource/cms/2017/07/2017072516522223298.pdf (English version is not available as of 25 October 2017)

	appropriate to FMIs and their critical role in financial markets. The choice of resolution powers should be guided by the need to maintain continuity of critical FMI functions. The resolution regime should require that at least all domestically incorporated global SIFIs (***G-SIFIs***): (i) have in place a recovery and resolution plan (***RRP***), including a group resolution plan, containing all elements set out in I-Annex 4 of the Key Attributes; (ii) are subject to regular resolvability assessments; and (iii) are the subject of institution-specific cross-border cooperation agreements.	before and during resolution.[9] Domestic resolution regimes should thus formally recognize home-country resolution plans and create a clear and formal statutory recognition procedure for cross-border resolution actions.[10] The resolution authority overseeing a firm or its subsidiary in a host jurisdiction should be responsible for determining critical financial market infrastructure (FMI).[11] The resolution authority should communicate this determination to the relevant firm, which should convey that determination to the provider of the critical FMI. Resolution requirements also should recognize that some subsidiaries of a financial institution, i.e. insurers, may be governed by separate, industry-specific resolution requirements.[12] Including them in domestic resolution planning may,	(a) a nonbank financial company supervised by the Board of Governors for the Federal Reserve System (**FRB**); (b) a bank holding company as defined under the Bank Holding Company Act (**BHC Act**); (c) a company that is predominantly engaged in activities that the FRB has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act; or (d) a subsidiary of any company described in any clauses (a) through (c) that is predominantly engaged in activities that the FRB has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act (other than a subsidiary that is an insured depository	is generally thought that licensed financial institutions, in particular commercial banks, trust companies and insurance companies, are subject to RRP. According to the 2017 list of global systemically important banks (***G-SIBs***) released by the FSB on 21 November 2017, Agricultural Bank of China has been identified as a G-SIB and has been allocated in Bucket 1, while Industrial and Commercial Bank of China, Bank of China and China Construction Bank have been allocated in Bucket 2. Meanwhile, according to the 2016 list of global systemically important insurers (***G-SIIs***) released by the FSB on 21 November 2016, Ping An Insurance (Group) Company of China has been identified as a G-SII.	are branches or subsidiaries of, or subsidiaries of a holding company of, a global systemically important bank (***G-SIB***) or a global systemically important insurer (***G-SII***). Within scope FIs that are LCs are securities and futures sector entities for which the Securities and Futures Commission (***SFC***) is the RA. (iii) Certain insurers: an insurer authorised under the Insurance Companies Ordinance (***ICO***) that is, or is a member of a group of companies that includes, a G-SII. Within scope FIs that are insurers are insurance sector entities for which the Insurance Authority (***IA***) is the RA. (iv) Certain financial market infrastructures (***FMIs***): (a) a settlement institution (as defined in the Payment Systems and Stored Value Facilities Ordinance (***PSSVFO***) of a designated clearing and settlement system that is not otherwise an AI (excluding a settlement institution that is wholly owned and operated by the Hong Kong government); (b) a system operator (as defined in the PSSVFO) of a designated	failing financial institution is reached by the FSC and/or the KDIC, the subject financial institution will be guided through rehabilitation by a combination of institutional measures called Timely Corrective Measures (further explained below) tailored to the financial state of the subject financial institution. The FSC is currently leading the discussions on the adoption of a resolution regime that is in line with the FSB standards. The revised resolution regime is expected to be implemented through amendments to the FIRL. However, specific legislative proposals are yet to be developed. This summary is based on the currently effective resolution regime in Korea as well as publicly announced plans for the adoption of a resolution regime aligned to international standards. The FSC issued a press release[14] on 30 October 2015 (“***FSC Press***	of a specified financial institution. A “significant associated entity” is defined to mean, in relation to a specified financial institution, an entity incorporated, formed or established in Singapore: (a) which is treated, for accounting purposes according to the Accounting Standards (as defined in the Companies Act, Chapter 50 of Singapore), as part of the group of companies of the specified financial institution; (b) which is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated under the Monetary Authority of Singapore Act, Chapter 186 of Singapore (the “**MAS Act**”) or any of the written laws set out in the Schedule; and (c) which: (i) is significant to the business of (A) the specified financial institution; or (B) all or any of the entities which are treated, for

[9] GFMA response to BCBS Consultative Document: Global systemically important banks – revised assessment framework (30 June 2017): http://www.gfma.org/correspondence/item.aspx?id=934

[10] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

[11] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

[12] Ibid.

[14] http://www.fsc.go.kr/downManager?bbsid=BBS0048&no=100230

		thus, conflict or overlap with those requirements.	institution (**IDI**) or an insurance company; and (iii) is not: (a) a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971; (b) a governmental entity, (c) the Federal National Mortgage Association or any affiliate thereof, the Federal Home Loan Mortgage Corporation or any affiliate thereof, or any Federal Home Loan Bank; or (d) an IDI. As described in more detail in the "Resolution Conditions" row, before the FDIC can be appointed receiver under Title II's OLA, the following must occur: (i) A written recommendation must be made and delivered to the Secretary of the Treasury, which must include, among other things, discussions of whether the financial company is in default or in danger of default, the effect that its default would have on U.S. financial stability and the		clearing and settlement system (excluding a system operator that is wholly owned and operated by the Hong Kong government); and (c) a company that is recognised under the Securities and Futures Ordinance (***SFO***) as a clearing house. Within scope FIs that are FMIs of types (a) and (b) in this list are banking sector entities for which the HKMA is the RA. Within scope FIs that are FMIs of type (c) in this list are securities and futures sector entities for which the SFC is the RA. (v) Certain exchanges: exchange companies recognized under the SFO that are designated by the Financial Secretary (***FS***), on the recommendation of the SFC, as within scope FIs. Within scope FIs that are exchanges are securities and futures sector entities for which the SFC is the RA. (vi) Certain other FIs: the FS has the power to designate FIs that are not initially covered by the regime as within scope FIs if, in the future, the FS is of the opinion that a risk could be posed to the stability and effective working of the financial system in Hong Kong, including to the continued performance of critical financial functions, should the FI cease to be viable. The FS will designate whether the HKMA, the SFC or the IA will be the RA for	***Release***") announcing its plans to develop a resolution regime for systemically important financial institutions ("***SIFIs***"). As of 2017, four financial holding companies and one bank have been designated as domestic systemically important bank holding companies or banks ("***D-SIBs***").	accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution; or (ii) provides any service which is essential or necessary for the continued operation of (A) the specified financial institution; or (B) all or any of the entities which are treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution. A "specified financial institution" is defined to mean a "pertinent financial institution" or an "excluded financial institution". Each of the following persons is prescribed as a "pertinent financial institution": (a) a bank; (b) a licensed finance company; (c) a merchant bank;

			U.S. economy, whether the private sector or the Bankruptcy Code may be an alternative to the exercise of OLA, recommendations regarding how OLA would be exercised over the financial company and the effects OLA would have on the financial company's creditors, counterparties and shareholders and other market participants; (ii) The written recommendation referenced in (i) must be approved by: (a) for a financial company that is not a broker-dealer—two thirds of the directors of both the FDIC and the FRB from; (b) for a financial company that is a broker-dealer—two-thirds of the directors of both the SEC and SIPC; or (c) for a financial company that is an insurance company—both the director of the Federal Insurance Office and two-thirds of the directors of the FRB; and (iii) The Secretary of the Treasury (**Secretary**), in consultation with the President, must		any FI that it designates as a within scope FI.		(d) a financial holding company; (e) an operator or a settlement institution of a designated payment system under the Payment Systems (Oversight) Act, Chapter 222A of Singapore (the "**PSOA**"); (f) an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, or a holder of a capital markets services licence (not being a holder of a capital markets services licence who carries on business in the regulated activity of providing credit rating services) under the Securities and Futures Act, Chapter 289 of Singapore, (the "**SFA**"); (g) a trustee for a collective investment scheme authorised under section 286 of the SFA, that is approved under the SFA (h) a licensed trust company. Each of the following persons is prescribed as an "excluded financial institution": (a) a person who:

			determine that the financial company should be placed into receivership, based on, among other things, determinations that the financial company is in default or danger of default, its failure absent OLA would have serious adverse effects on U.S. financial stability, any effect on creditors, counterparties and shareholders of the financial company and other market participants under OLA would be appropriate given the serious adverse effects on U.S. financial stability and the use of OLA would avoid or mitigate such adverse effects. The scope of application of the resolution regime for IDIs is defined under the FDIA, which provides for the appointment of the Federal Deposit Insurance Corporation (**FDIC**) as receiver for Federal and state IDIs on certain grounds. An IDI is in turn defined to mean a bank or savings association, the deposits of which are insured by the FDIC. The grounds for the appointment of the FDIC as a receiver, defining the circumstances in which the U.S. resolution regime for IDIs applies, do not require that such IDIs be				(i) is a licensed financial adviser; (ii) is an exempt financial adviser but is not a pertinent financial institution; (b) a person who is exempted from the requirement to hold a capital markets services licence under the SFA to carry on business in any regulated activity specified in the Second Schedule to the SFA, but is not a pertinent financial institution; (c) an insurer licensed or otherwise regulated under the Insurance Act, Chapter 142 of Singapore (the "**Insurance Act**"); (d) an insurance intermediary registered or otherwise regulated under the Insurance Act; (e) a money-changer licensed to conduct money-changing business, or a remitter licensed to conduct remittance business, under the Money-changing and Remittance Businesses Act, Chapter 187 of Singapore; (f) a holder of a stored value facility under the PSOA.

			systemic or critical in the event of failure.				On 1 August 2017, the Monetary Authority of Singapore (Amendment) Act 2017 (the "**MAS Amendment Act**") was passed, introducing legislative enhancements to the resolution regime, in line with the FSB Key Attributes, although these changes have not yet come into effect. The MAS Act was amended to insert a new Division 2 of Part IVA of the MAS Act to consolidate the MAS' powers to impose RRP requirements on "pertinent financial institutions" notified by the MAS (i.e. regulated financial institutions assessed to be systemically important or that maintain critical functions in Singapore – the MAS will prescribe the precise definition in updated regulations). In this connection, the MAS has consulted on a draft notice (the "**RRP Notice**") which will apply to banks designated by the MAS as domestic systemically important banks ("**D-SIBs**"). The MAS has also stated that it will apply similar RRP requirements to certain financial holding companies of D-SIBs. Further, the MAS Amendment Act will introduce a new Division 5A of Part IVB of the MAS Act to introduce the cross-border recognition framework of foreign resolution actions.
Resolution authority	Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime	In questions of cross-border coordination during resolution, the home authority should be the lead authority and its	<u>Resolution Authority:</u> Title II's OLA gives the FDIC authority to coordinate and begin an orderly liquidation (**OL**) as the **receiver** for a financial company. There are differences in the FDIC's	In the absence of specific legislation, the institutions that may have a role to play within the RRP framework in the PRC are as follows:	Please refer to the information under "Entities within scope of the resolution regime – Hong Kong" above for the designated RAs for different types of entities.	It is most likely for the FSC to be designated as the LRA. The Financial Supervisory Service ("***FSS***") and KDIC are also expected to play a role in	The sole resolution authority is the MAS. The principal objects of the MAS are, *inter alia*, to foster a sound and reputable financial centre and to promote financial stability.

	(***resolution authority***). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated. Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction. As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should: (i) pursue financial stability and ensure continuity of systemically important financial services, and payment, clearing and settlement functions; (ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such depositors, insurance policy holders and investors as are covered by such schemes and arrangements; (iii) avoid unnecessary destruction of value and seek to	decisions should take precedence.[15]	powers as a receiver under OLA and under the FDIA. Once appointed as receiver under OLA, the FDIC is not subject to the direction of any other agency or department of the U.S. or any state in the exercise of it authority. *Note*: The appointment of the FDIC as receiver is subject to confidential review by the U.S. District Court for the District of Columbia. In the case of broker-dealer liquidation, the FDIC serves as receiver, but the Securities Investors Protection Corporation (**SIPC**) must also appoint a trustee. The power to appoint the FDIC as receiver under OLA occurs only after the following procedural steps, each of which depends upon certain systemic risk considerations: (i) (a) for a financial company that is not a broker-dealer—a written recommendation from and approval of two thirds of the directors of both the FDIC and the FRB; (b) for a financial company that is a	(i) the PBoC, under the auspices of the State Council, is responsible for formulating and implementing monetary policies, guarding against and eliminating financial risks, and maintaining financial stability; (ii) the China Banking Regulatory Commission (***CBRC***) is responsible for banking regulation and supervision, with the objective of ensuring a safe and sound banking industry; and (iii) the China Securities Regulatory Commission (***CSRC***) and China Insurance Regulatory Commission (***CIRC***) are responsible for regulating capital markets and insurance activities respectively. Given the mandates of the PBoC and CBRC, and the fact that the banking system currently accounts for the majority of assets within the financial system, the PBoC and CBRC are involved to a significant extent in the overall implementation of RRP.	The FIRO empowers the FS to designate an RA as the lead resolution authority (***LRA***) of a cross-sectoral group. The FS has designated the HKMA as the LRA for 25 cross-sectoral groups, which took effect on 7 July 2017. In relation to a within scope FI that is in a cross-sectoral group, and the RA of which is not the LRA of the group, the LRA may, if it considers it necessary: (i) give the RA of the FI written directions as to the performance by it of any function under the FIRO in relation to the FI; or (ii) perform any function under the FIRO in relation to the FI as if it were its RA. The FIRO empowers an RA to resolve, and apply any of its other powers under the FIRO in respect of, a holding company of a within scope FI in the same way, and to the same extent, that it could if the holding company were a within scope FI being resolved by it. The FIRO also empowers an RA to resolve, and apply any of its other powers under the FIRO in respect of, an affiliated operational entity (***AOE***) in the same way, and to the same extent, that it could if the AOE were a	the administration of the resolution regime.	<u>*Authority to enter into agreements with resolution authorities of other jurisdictions*</u> The MAS generally has to power to enter into agreements with resolution authorities of other jurisdictions. However, provision of assistance to foreign resolution authorities under section 30AAZE of the MAS Act is subject to the MAS' satisfaction of the conditions set out in section 30AAZC of the MAS Act, which includes, *inter alia*: (i) the material requested for is of sufficient importance to the resolution of a financial institution and cannot reasonably be obtained by any other means, (ii) the matter to which the request relates is of sufficient gravity and (iii) the rendering of assistance will not be contrary to the public interest or the interests of the affected persons of the financial institution. In addition, the MAS has entered into Memorandums of Understanding with key host supervisory/resolution authorities of the local systemically important financial groups. <u>*Protection against liability*</u> Under section 22 of the MAS Act, the MAS generally has immunity for anything done (including any statement made) or omitted to be done in good faith in the course of or in connection with (i) the exercise

[15] GFMA response to BCBS Consultative Document: Global systemically important banks – revised assessment framework (30 June 2017): http://www.gfma.org/correspondence/item.aspx?id=934

	minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and (iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions. The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions. The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms. The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in		broker-dealer—a written recommendation from and approval of two-thirds of the directors of both the SEC and SIPC; or (c) for a financial company that is an insurance company—a written recommendation from and approval of both the director of the Federal Insurance Office and two-thirds of the directors of the FRB; and (ii) a written recommendation by the Secretary of the Treasury (in consultation with the President). The FDIC may also be appointed receiver under OLA for a covered subsidiary of the financial company if the FDIC and the Secretary of the Treasury jointly make certain systemic risk determinations. A covered subsidiary means a subsidiary of the financial company that: (i) is organized under U.S. federal law or the laws of any U.S. state; and (ii) is not an IDI, an insurance company or a financial company that is a broker dealer.		within scope FI being resolved by it.		or purported exercise of any power; (ii) the performance or purported performance of any function or duty; or (iii) the compliance or purported compliance with the MAS Act or any other written law. <u>*Unimpeded access*</u> The MAS Amendment Act will introduce a new section 45 to which empowers the MAS to direct pertinent financial institutions to address or remove impediments in relation to the resolution of the pertinent financial institution, including requiring the financial institution to make changes to its practices, organisation and structure (including its operational, legal and financial structures).

	support of foreign resolution proceedings. The resolution authority should have unimpeded access to firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.		If the FDIC is appointed receiver for a covered subsidiary, such subsidiary is treated as if it were a financial company for which the FDIC were appointed receiver. <u>Resolution Authority and Rights:</u> Upon appointment as receiver under OLA for a financial company, the FDIC: (i) succeeds to: (a) all rights, titles, powers and privileges of the financial company and its assets, and of any stockholder, member, officer or director of the financial company; and (b) title to the books, records and assets of any previous receiver or legal custodian of the financial company; (ii) may: (a) take over the assets of and operate the financial company with all the powers of the members or shareholders, the directors, and the officers of the financial company, and conduct all business of the				

			covered financial company; (b) collect all obligations and money owed to the financial company; (c) perform all functions of the financial company, in the name of the financial company; (d) manage the assets and property of the financial company, consistent with maximization of the value of the assets in the context of the OL; and (e) provide by contract for assistance in fulfilling any function, activity, action, or duty of the FDIC as receiver; (iii) may provide for the exercise of any function by any member or stockholder, director or officer of the financial company; and (iv) shall liquidate, and wind-up the affairs of the financial company, including taking steps to realize upon the assets of the financial company, in such manner as the FDIC deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company, or the exercise of any other				

			rights or privileges granted to the FDIC as receiver, subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the financial company. In exercising such powers, the FDIC must: (i) determine that its actions are necessary for purposes of U.S. financial stability; (ii) ensure that shareholders of the financial company do not receive payment until after all other claims and the Orderly Liquidation Fund (**OLF**) are fully paid; (iii) ensure that unsecured creditors bear losses in accordance with the priority of their claims; (iv) ensure that management and members of the board of directors responsible for the failed condition of the financial company is removed' (v) not take an equity interest in or become a shareholder of the financial company. Furthermore, the FDIC—as receiver—shall: (i) coordinate to the maximum extent possible with appropriate foreign				

			regulatory authorities regarding the resolution of a financial company that has any assets or operations in a country other than the U.S.; and (ii) consult with the primary financial regulatory agency or agencies of the financial company and its covered subsidiaries; (iii) consult with the primary financial regulatory agency or agencies of any subsidiaries of the financial company that are not covered subsidiaries and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and (iv) consult with the SEC and SIPC in the case of a financial company that is a broker-dealer regarding the transfer to a bridge company. <u>Statutory Authority:</u> The FDIC is an independent regulatory agency which has statutory authority under the FDIA. The FDIC insures the deposits of eligible banks and savings associations. The FDIC is managed by a five-member board of				

			directors—three who are appointed by the President (with advice and consent of the Senate), one of whom has U.S. state bank supervisory experience—while the other two members are the Comptroller of the Currency and the Director of the Consumer Financial Protection Bureau (**CFPB**). The FDIC is required to submit annual reports to Congress of its operations, activities, budgets, receipts, and expenditures for the preceding twelve-month period, including the current financial condition of the Deposit Insurance Fund (**DIF**). <u>Statutory Liability Protection:</u> The liability regime for the FDIC and its officials are provided under the Federal Torts Claims Act (**FTCA**). The FTCA provides for a waiver of sovereign immunity in certain cases involving torts committed by government employees, holding the Government liable if the employee was acting within the scope of his office or employment. While it grants jurisdiction for actions seeking money damages for injury, property loss or death caused by the negligent or wrongful acts or omissions of federal				

			employees, the FTCA contains a number of exceptions, disallowing certain claims. This includes any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation or based upon the exercise of a discretionary function, whether or not the discretion involved be abused. The remedy provided under FTCA shall be exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee. Thus, if a tort suit does not lie under the FTCA, the action is barred altogether. An employee of the FDIC has no liability under the Securities Act of 1933, with respect to any claim arising out of any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets by the FDIC. The FDIC's Indemnification Policy, set forth in Circular 5000.1, indemnifies a present or past director, officer or employee of the FDIC against liability and expenses incurred relating to any claim for wrongful acts in which the				

			person may become involved by reason of being or having been a director, officer or employee or by reason of having taken or not taken any action in the person's official capacity as a director, officer or employee. <u>Unimpeded Access</u>: In addition to its supervisory authority with respect to IDIs for which it is the primary U.S. federal banking agency, the FDIC, under its authority by the FDIA, has special examination authority with respect to any IDI, nonbank financial company supervised by the FRB or bank holding company with at least $50 billion in total consolidated assets. The FDIC may exercise this special examination authority: (i) with respect to an IDI—when necessary to determine the condition of such IDI for deposit insurance purposes; or (ii) with respect to such nonbank financial company or bank holding company—for the purpose of implementing its authority to provide for OL of any such company, provided that: (a) such authority may not be used with respect to any				

			such company that is in generally sound condition; and (b) the FDIC has reviewed any available and acceptable resolution plan submitted by such company and available examination reports and shall coordinate to the maximum extent practicable with the FRB in order to minimize duplicative or conflicting examinations. In making any such examination, the FDIC may also examine the affairs of any affiliate of any IDI as may be necessary to disclose fully the relationship between the IDI and the affiliate and the effect of such relationship on the IDI.				
Resolution authority's preparatory powers (e.g. resolvability assessment, recovery and resolution planning, loss-absorbing capacity requirements, directions to	Resolution authorities should have at their disposal a broad range of preparatory powers, which should include powers to do the following: (i) remove and replace the senior management and directors and recover monies from responsible persons, including claw-	In questions of cross-border coordination of resolvability assessments or during resolution, the home authority should be the lead authority and its decisions should take precedence.[16] The resolution authority overseeing a firm or its subsidiary in a host jurisdiction should be responsible for	<u>Resolution Planning</u>: Section 165(d) of DFA and regulations issued jointly by the FRB and FDIC require a **covered company** to submit a resolution plan to the FRB and the FDIC. A covered company means: (i) a nonbank financial company supervised by the FRB;	As there is no unified RRP legislation in the PRC, the powers of the sector regulators are found under various regulations. (A) Commercial banks In the event that a commercial bank is/may be in a credit crisis that may seriously affect the interests of depositors, the CBRC may take over	The FIRO provides RAs with preparatory powers that are designed to support effective resolution planning with some of these powers being available to the RAs both before and after the commencement of resolution. The preparatory powers include: (i) resolvability assessments; (ii) resolution planning; (iii) removal of	Under the FIRL, when the FSC determines that there is a clear likelihood that a financial institution's financial conditions would fall below a designated level of financial soundness, the FSC may order certain Timely Corrective Measures to be implemented by the financial institution.	*<u>Removal and replacement of senior management</u>* The MAS is generally empowered to remove directors and executive officers of certain financial institutions, under the respective legislation governing each type of financial institution.

[16] GFMA response to BCBS Consultative Document: Global systemically important banks – revised assessment framework (30 June 2017): http://www.gfma.org/correspondence/item.aspx?id=934

remove impediments, other directions etc.)	back of variable remuneration; (ii) appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to ongoing and sustainable viability; (iii) effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely payout or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds); (iv) undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular: (a) the extent to which critical financial services, and payment,	determining critical financial market infrastructure (FMI).[17] The resolution authority should communicate this determination to the relevant firm, which should convey that determination to the provider of the critical FMI.[18]	(ii) a bank holding company, as that term is defined in the BHC Act that has $50 billion or more in total consolidated assets; or (iii) a foreign bank or company that is a bank holding company under U.S. law or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978, and that has $50 billion or more in total consolidated assets. In a multi-tiered holding company structure, a covered company means the top-tier of the multi-tiered holding company. Each resolution plan, commonly known as a **living will**, must describe the company's strategy for a rapid and orderly resolution under the Bankruptcy Code (and not under OLA) and without extraordinary government support in the event of material financial distress or failure of the company. A living will must include both public and confidential sections. Covered companies must submit resolution plans to the FRB and FDIC annually, unless the FRB and FDIC jointly determine otherwise. The	the bank, take necessary measures to protect the interests of depositors and restore the ordinary business ability of the bank. The CBRC's administrative decision in relation to a take-over shall specify the following: (i) the name of the commercial bank being taken over; (ii) reasons for the take-over; (iii) the organisation in charge of the take-over; and (iv) the term of the take-over. The organisation in charge of the take-over shall exercise the business management power of the commercial bank from the date of the take-over, while creditor rights and liabilities of the commercial bank being taken over shall not be changed due to the take-over. At the expiration of the take-over term, the CBRC may decide to extend the term, however the maximum term shall not exceed two years. The take-over shall be	impediments; (iv) loss-absorbing capacity (***LAC***) requirements; (v) giving directions; and (vi) removal of directors. (i) Resolvability assessments An RA may from time to time conduct a resolvability assessment to determine whether there are any impediments to the orderly resolution of a within scope FI (or its holding company) and, if so, the extent of those impediments. (ii) Resolution planning An RA may from time to time: (a) devise strategies for securing an orderly resolution of an FI or its holding company; and (b) support such strategies by either or both of: (i) developing one or more resolution plans; or (ii) adopting the whole or part of one or more non-Hong Kong resolution plans. (iii) Removal of impediments Where an RA is of the opinion that significant impediments exist to the orderly resolution of a within scope FI or its holding company, an RA may, by written notice served on an FI or its holding company, direct it to take any measures in relation to its structure (including group structure), operations	Such Timely Corrective Measures include: (i) sanctions against officers and employees; (ii) increase/reduction of capital, asset sale, or downsizing of the organisation; (iii) prohibition on the acquisition of high risk assets with a high level of default risk or market risk, or suspension of businesses involving the payment of interest at a high interest rate to depositors; (iv) suspension of duties of officers, or the appointment of an administrator; (v) retirement or consolidation of shares; (vi) partial or complete suspension of business; (vii) merger or third party acquisition of the failing financial institution; (viii) business transfer or assignment of business; and (ix) any other measures deemed necessary to improve the financial soundness of the failing financial institution. Any further measures in addition to the Timely Corrective Measures as mentioned above are likely to be adopted through an amendment of the FIRL. According to the FSC Press Release,	<u>*Claw-back of variable remuneration*</u> Under section 30AAQ of the MAS Act, the MAS may apply to the High Court, *inter alia*, for an order that any salary, remuneration or other benefits received by a director or executive officer of a specified financial institution be repaid or returned to that financial institution, from a period of two years immediately preceding the date on which the MAS exercises its resolution powers under the MAS Act or under any other written law. <u>*Appointment of administrator*</u> Under section 30AAB(2)(b) of the MAS Act, the MAS may appoint one or more persons as statutory adviser, on such terms and conditions as the MAS may specify, to advise the relevant financial institution on the proper management of such of the business of the relevant financial institution as the MAS may determine. <u>*General powers*</u> More generally, under section 30AAB(2)(a) of the MAS Act, the MAS may also require the relevant financial institution immediately to take any action or to do or not to do any act or thing whatsoever in relation to

[17] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

[18] Ibid.

	clearing and settlement functions can continue to be performed; (b) the nature and extent of intra-group exposures and their impact on resolution if they need to be unwound; (c) the capacity of the firm to deliver sufficiently detailed accurate and timely information to support resolution; and (d) the robustness of cross-border cooperation and information sharing arrangements. Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities. Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as far as possible with the home authority that conducts		FRB and FDIC jointly determine whether each resolution plan is credible. If a living will is jointly determined by the FRB and FDIC to not be credible, the covered company must submit a revised living will to the FRB and FDIC that addresses the deficiencies the FRB and FDIC identified in the initial filing. If the FRB and FDIC jointly determine that the revised living will does not adequately remedy the identified deficiencies or if the covered company does not submit a revised living will within the required time period, the FRB and FDIC may jointly impose more stringent capital, leverage or liquidity requirements on or may restrict the growth, activities or operations of the covered company or any of its subsidiaries. If the FRB and FDIC jointly determine that the covered company or any of its subsidiaries shall be subject to these more stringent requirements or restrictions, the covered company has failed to adequately remedy any deficiencies within two years of the day when such heightened requirements or restrictions were imposed, and the FRB and FDIC jointly determine	terminated in the event of any of the following: (i) the term prescribed in the take-over decision has expired, or the extended term as determined by the CBRC has expired; (ii) the commercial bank has resumed its ordinary business before the expiration of the term of the take-over; or (iii) before the expiration of the term of the take-over, the commercial bank has been merged or declared bankrupt according to law. (B) Insurance companies Under the PRC Insurance Law, where an insurance company is unable to repay debts that are due, it has insufficient assets to pay off all its debts, or it is obviously incapable of repaying debts, the insurance company or any of its creditors may, with the CIRC's approval, apply to the court for the reorganisation, reconciliation, or liquidation of the insurance company. The CIRC may also take over the insurance company for up to three years. Upon the expiration of the take-over term, parties concerned may apply to the court for the reorganisation, reconciliation, or liquidation of the	(including intra-group dependencies), assets, rights or liabilities that are, in the opinion of the RA, reasonably required to remove, or mitigate the effect of, those impediments. Before serving such a notice, the RA must have regard to: (a) how difficult it would be to carry out an orderly resolution of the FI or its holding company if the measures were not taken; (b) the likely impact of complying with the notice (including on the future viability and capacity of the FI to continue to perform critical financial functions); and (c) if applicable, the advisability of taking measures to remove impediments in Hong Kong to facilitate the orderly resolution of the FI or holding company in accordance with a non-Hong Kong resolution plan. Various safeguards apply, including the ability of the FI or holding company to apply to a Resolvability Review Tribunal for a review. (iv) LAC requirements FIRO does not itself specify any requirements on LAC. However, it empowers an RA to make rules: (a) prescribing LAC requirements for within scope FIs or their group companies; or (b) for connected purposes. It also contains a list of characteristics that these rules may (but are not	recovery plans will be devised by each SIFI, and will be assessed by the FSS and reported to the FSC.	its business as the MAS may consider necessary. <u>*Undertaking resolvability assessments*</u> As part of the resolution planning process, the MAS conducts resolvability assessments, based on information furnished by financial institutions, to identify barriers to resolution and measures necessary to improve resolvability. The MAS discusses these issues with the systemically important financial institutions and home host authorities (where applicable) through supervisory colleges, Crisis Management Groups, or other engagement platforms. <u>*Facilitate the development and maintenance of resolution plans by firms*</u> The MAS has proposed to require D-SIBs to comply with Notices and Guidelines in relation to RRP which will be issued. The MAS has also stated that similar requirements will apply to certain financial holding companies of D-SIBs. The MAS has stated that it expects these financial institutions to appoint an executive officer as the accountable person responsible for leading and overseeing the recovery planning process, as well as for maintaining and submitting the required information to the MAS to

	resolvability assessment for the group as a whole; (v) facilitate the development and maintenance of resolution plans by firms. A resolution plan should facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular: (a) financial and economic functions for which continuity is critical; (b) suitable resolution options to preserve those functions or wind them down in an orderly manner; (c) data requirements on the firm's business operations, structures, and systemically important functions; (d) potential barriers to		that divestiture of certain assets or operations would be necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code, the FRB and FDIC in consultation with the Financial Stability Oversight Council (**FSOC**) may require such divestiture. <u>Prompt Corrective Action (**PCA**)</u>: Under the FDIA, the FDIC must initiate a prompt corrective action with respect to any IDI that is either: (i) significantly undercapitalized, as defined under FDIC regulations; or (ii) undercapitalized, as defined under FDIC regulations ; and (a) fails to submit a capital restoration plan acceptable to the relevant U.S. federal banking agency within the time prescribed; or (b) materially fails to implement a capital restoration plan accepted by the relevant U.S. federal banking agency. The FDIC also must restrict the activities of any IDI that is critically undercapitalized, as defined under FDIC regulations, and, at a	insurance company if it has not resumed its normal operation.	required to) have, including that they may take into account the standards of the FSB, the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions or any other body that issues international standards relating to LAC. (v) Directions Where an RA is satisfied that Conditions 1 and 3 as set out in the FIRO are met in the case of an FI, an RA may by written notice direct an FI or a related person to take or refrain from taking, any action specified in the notice in relation to the affairs, business or property of the FI or a group company of the FI. An RA may only give a direction by such a notice if it is of the opinion that the direction will assist in meeting the Resolution Objectives or will facilitate the exercise of a power conferred by the FIRO or the Court of First Instance on the RA. A direction may extend to a within scope FI or related person outside Hong Kong, or the taking, or refraining from taking, of an action outside Hong Kong in relation to the affairs, business or property in Hong Kong of a within scope FI or group company.		facilitate the resolution planning process.

	effective resolution and actions to mitigate those barriers; (e) actions to protect insured depositors and insurance policy holders and ensure the rapid return of segregated client assets; and (f) clear options or principles for the exit from the resolution process. At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to RRPs and the information and measures that would have an impact on their jurisdiction. Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions cooperating with the home authority to ensure that the plan is as		minimum, prohibit any such IDI from doing any of the following without the FDIC's prior written approval: (i) entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the IDI is required to provide notice to the relevant Federal banking agency; (ii) extending credit for any highly leveraged transaction; (iii) amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order; (iv) making any material change in accounting methods; (v) engaging in any covered transaction as defined in section 23A of the Federal Reserve Act (**FRA**); (vi) paying excessive compensation or bonuses; or (vii) paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the		(vi) Removal of directors and senior management Where an RA is satisfied that Conditions 1 and 3 as set out in the FIRO are met in the case of an FI, an RA may by written notice revoke a person's appointment: (a) as a director of a within scope FI incorporated in Hong Kong; or (b) as a chief executive officer or deputy chief executive officer of a within scope FI or its holding company (provided that the person's appointment relates to the business in Hong Kong of the FI or holding company). An RA may only give such a notice of revocation if it is of the opinion that removing the person will assist in meeting the Resolution Objectives. Such a notice of revocation does not affect the rights of any party to a contract of employment or services under which a person acts for an FI or its holding company.		

	consistent as possible with the group plan; and (vi) require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure or organisation, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of ongoing business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.		prevailing rates of interest on insured deposits in the IDI's normal market areas. Under the PCA regime, a critically undercapitalized IDI, beginning 60 days after becoming critically undercapitalized, may not make any payment of principal or interest on its subordinated debt, unless the FDIC grants the IDI an exception from this requirement. A critically undercapitalized IDI also must be placed in conservatorship or receivership within 90 days of such a determination, unless the FDIC and the relevant U.S. federal banking agency determine that other action would better resolve the problems of the IDI at the least possible long-term loss to the DIF. Additionally, the relevant U.S. federal banking agency must appoint a receiver for an IDI that is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized—unless the relevant U.S. federal banking agency and the FDIC determine, among other things, that the IDI has positive net worth. <u>Well-Capitalized Requirement for Bank</u>				

			<u>Holding Companies</u>: Activities of a bank holding company are limited to the business of banking, managing or controlling banks and certain other activities determined by the FRB to be closely related to banking. If a bank holding company is, among other things, well-capitalized, it can elect to be treated as a financial holding company, in which case it may engage in a wider range of activities that are considered to be financial in nature, as well as activities incidental or complimentary to financial activities. A bank holding company that fails to be well-capitalized may be required by the FRB to cease engaging in the expanded set of financial activities. <u>Removal Authority</u>: Under OLA, the FDIC—as receiver for a financial company—succeeds to all rights, titles, powers, and privileges of the financial company and of any stockholder, member, officer or director of the company. As such the FDIC has the power to remove and replace senior management and directors of the financial company. OLA also provides that the FDIC shall ensure that management and members of the board of				

			directors responsible for the failed condition of the financial company be removed.				
Resolution conditions	Resolution should be initiated when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of non-viability to help guide decisions on whether firms meet the conditions for entry into resolution.	Resolution regimes should ensure that resolution doesn't affect set-off, netting and collateral arrangements.	Under OLA, before the FDIC can be appointed receiver under OLA, the following must occur: (i) A written recommendation must be made and delivered to the Secretary of the Treasury, which must include: (a) an evaluation of whether the financial company is in default or in danger of default; (b) a description of the effect that the default of the financial company would have on financial stability in the U.S. and the economic conditions or financial stability for low income, minority or underserved communities; (c) a recommendation regarding the nature and the extent of actions to be taken under this subchapter regarding the financial company; (d) an evaluation of the likelihood of a private sector	The current law and regulations do not provide specific guidance on resolution conditions.	The FIRO provides that an RA may only initiate the resolution of a within scope FI if it is satisfied that the following Conditions 1, 2 and 3 are met in the case of the FI: • Condition 1 is that the FI has ceased, or is likely to cease, to be viable. • Condition 2 is that there is no reasonable prospect that private sector action (outside of resolution) would result in the FI again becoming viable within a reasonable period. • Condition 3 is that: (a) the non-viability of the FI poses risks to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions; and (b) resolution will avoid or mitigate those risks. The FIRO also provides that an RA, in deciding whether to institute the resolution of a within scope FI or which stabilization option to apply,	The FSC Press Release indicates plans to commence resolution of a failing financial institution if rehabilitation is deemed infeasible. Detailed resolution conditions are yet to be determined.	The MAS may exercise its resolution powers (in relation to a financial institution) as appears to it to be necessary, where (a) the financial institution informs the MAS that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments; (b) the financial institution becomes unable to meet its obligations, or is insolvent, or suspends payments; (c) the MAS is of the opinion that the financial institution (i) is carrying on its business in a manner likely to be detrimental to the interests of certain persons (e.g. the public or a section of the public) or to certain specified regulatory objectives; (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments; (iii) has contravened any of the provisions of the relevant statute; or

			alternative to prevent the default of the financial company; (e) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company; (f) an evaluation of the effects on creditors, counterparties and shareholders of the financial company and other market participants; and (g) an evaluation of whether the financial company satisfies the definition of a financial company. (ii) The written recommendation referenced in (i) must be approved by: (a) for a financial company that is not a broker-dealer—two thirds of the directors of both the FDIC and the FRB from; (b) for a financial company that is a broker-dealer—two-thirds of the directors of both the SEC and SIPC; or (c) for a financial company that is an insurance company—both the		may consider the potential effect of the decision on: (a) any other group company of the FI; and (b) the stability and effective working of the financial system in any other jurisdiction. It also requires an RA to consult the FS, and liaise (as the RA considers appropriate) with the IA, HKMA or SFC, before resolution can be initiated. Under FIRO, an RA may initiate the resolution of a holding company of a within scope FI if it is satisfied that: (a) the three Conditions are met in the case of the FI; and (b) an orderly resolution of the FI that meets the Resolution Objectives can be more effectively achieved by resolving the holding company. An RA may also initiate the resolution of an AOE under FIRO if: (a) it is exercising its power to secure the continued provision by the AOE of services that it provides, directly or indirectly, to the FI; and (b) the RA is satisfied that the three Conditions are met in the case of the FI.		(iv) has failed to comply with certain conditions or restrictions imposed on it; or (d) the MAS considers it in the public interest to do so.

			director of the Federal Insurance Office and two-thirds of the directors of the FRB; and (iii) The Secretary of the Treasury (**Secretary**), in consultation with the President, must determine that the financial company should be placed into receivership, based on a determination that: (a) the financial company is in default or in danger of default; (b) the failure of the financial company and its resolution under otherwise applicable U.S. federal or state law would have serious adverse effects on financial stability in the U.S.; (c) no viable private sector alternative is available to prevent the default; (d) any effect on creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions under the OLA is appropriate, given the impact that such actions would have				

			on financial stability in the U.S.; (e) any exercise of the OLA would avoid or mitigate such adverse effects, taking into account, the effectiveness the OLA powers in mitigating (1) potential adverse effects on the financial system, (2) the cost to the Treasury, and (3) the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company; (f) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and (g) the company satisfies the definition of financial company (see above). Following the Secretary's determination to appoint the FDIC as receiver, the Secretary must notify the financial company. If the financial company's board of directors' consents to the FDIC's appointment as receiver, the Secretary				

			immediately appoints the FDIC. In the absence of acquiescence or consent by the board of directors, the Secretary must file a petition with U.S. District Court for the District of Columbia for an order authorizing the Secretary to appoint the FDIC as receiver. This court has a statutorily circumscribed and expedited role in reviewing the appointment of the FDIC as receiver, before the FDIC may be appointed as receiver. <u>Court Determination</u>: The U.S. District Court for the District of Columbia shall decide, on a strictly confidential basis and without prior public disclosure, whether the determination made by the Secretary that the financial company is (1) in default or in danger of default and (2) satisfies the definition of a financial company is arbitrary and capricious. If the court determines in the decision is not arbitrary or capricious, then it must issue an order immediately authorizing the appointment of the FDIC as receiver. If deemed arbitrary and capricious, the court must instead immediately provide to the Secretary a written statement of each reason supporting this				

			conclusion, and the court must afford the Secretary an immediate opportunity to amend and refile its petition to have the FDIC appointed as receiver. If the court does not decide within 24 hours of receipt of a petition by the Secretary, the petition shall be granted by operation of law, the Secretary shall appoint the FDIC as receiver and the OL shall automatically commence. The Court's determination may be appealed, but there is no stay pending any such appeal. Under FDIA, the decision to resolve an IDI is made by its federal or state chartering authority. The FDIC may be appointed receiver of an IDI due to a wide range of issues, including but not limited to: (i) the IDI's assets are less than its obligations; (ii) a substantial dissipation of assets or earnings due to a violation of statute or regulation or an unsafe or unsound business practice; (iii) unsafe or unsound condition to transact business; (iv) willful violation of a cease-and-desist order;				

			(v) concealment of books, papers, records, or assets; (vi) IDI's inability to pay its obligations or meet its depositors' demand in the normal course of business; and (vii) the IDI has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the IDI to become adequately capitalized without federal assistance.				
Resolution powers							
i. Transfer to a purchaser	Resolution authorities should have the power to transfer or sell selected assets and liabilities, legal rights and obligations, including deposit liabilities and ownership in shares, of the failed firm to a third party institution. Any transfer of assets or liabilities should not: (i) require the consent of any interested party or creditor to be valid; and (ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party.	Resolution regimes should ensure that resolution doesn't affect set-off, netting and collateral arrangements.[19]	As receiver—under OLA and the FDIA—the FDIC succeeds to all rights, titles, powers and privileges of the company and its assets, and of any stockholder, member, officer or director of the company. As part of the OL process, the FDIC has the authority to: (i) arrange for the sale of selected assets to one or more private acquirers (subject to any applicable antitrust laws and government agency reviews); (ii) review claims and make determinations either allowing or disallowing them; and	The current law and regulations do not provide specific guidance on this. Under the relevant PRC law and regulations, corporate changes (including changes to, for example, the existing approved major shareholder, scope of business, transfers of assets and businesses etc.) of financial institutions are subject to the approval of the relevant regulator. Where a share or equity transfer involves the introduction of a new major shareholder (i.e. the purchaser), the application and approval process would focus on whether the purchaser meets certain qualification requirements and any	An RA has the power to transfer securities issued by a within scope FI to a purchaser by making one or more securities transfer instruments and the power to transfer assets, rights or liabilities of a within scope FI to a purchaser by making one or more property transfer instruments.	The FSC has the power to order a business transfer or assignment as a Timely Corrective Measure.	Under Part IVB of the MAS Act, the MAS may, *inter alia*, make a determination that the whole or any part of the business of a pertinent financial institution, or all or any of the shares held by a shareholder of a pertinent financial institution shall be transferred to a transferee. Such transfer does not require the consent of the transferor or any creditor, although the MAS has to be satisfied that the transfer is appropriate, and this would include having regard to the affected persons of the transferor. The MAS Amendment Act will introduce a new section 83 and section 84 in relation to the effect of resolution measures. In relation to contracts under which substantive obligations

[19] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

			(iii) disaffirm or repudiate any contract or lease to which the covered entity is a party that is deemed too burdensome. Under the FDIA, the FDIC has conservator powers which can be used to try to preserve the going concern value of the IDI, by restricting and returning it to health.	additional prudential requirements imposed by the regulator.			continue to be performed, the new section 83(2) provides that (i) the resolution measure, and the occurrence of any event directly linked to it, are to be disregarded in determining the applicability of a provision in the contract enabling a party to exercise a termination right; and any purported exercise of that termination right in reliance on that provision in the contract on the basis of either of those grounds in (ii) above has no effect. In relation to other contracts, the new section 84(2) provides that the MAS may, by notice in writing to the parties to the contract, suspend the exercise of certain termination rights in the contract for a specified period.
ii. Transfer of business to a bridge institution	Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a newly established bridge institution. Any transfer of assets or liabilities should not: (i) require the consent of any interested party or creditor to be valid; and (ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party.	Resolution regimes should ensure that resolution doesn't affect set-off, netting and collateral arrangements.[20]	<u>Bridge Institution Establishment:</u> Under both the FDIA and OLA, the FDIC has the powers to establish one or more bridge institutions, and to transfer to it assets and liabilities of the failed firm selected by the FDIC. Transfers in practice are effected by legally enforceable agreements. The FDIC has discretion in specifying the other terms and conditions under which a bridge institution will be established and operate as a going concern, including with respect to the bridge institution's ownership	See above analysis.	An RA has the power to transfer securities issued by a within scope FI to a bridge institution by making one or more securities transfer instruments and the power to transfer assets, rights or liabilities of a within scope FI to a bridge institution by making one or more property transfer instruments. An RA also has powers to make further securities transfer instruments or property transfer instruments to transfer securities issued by, or assets, rights or liabilities of, a brige institution to another entity.	Under the DPL, the KDIC may, subject to the FSC's approval, establish a resolution finance company for the purpose of transfer or assignment of the business of a failing financial institution in part or in whole, or in preparation for the resolution of the failing financial institution. Further legislative amendment to allow for the transfer of businesses to a bridge institution is expected to be based on this current power to establish a resolution finance company.	See row above. *<u>Transfer of business to a bridge institution</u>* The MAS Amendment Act also introduces a new section 63 which provides that the MAS may at any time after the compulsory transfer of business under a certificate of transfer, make a determination that the whole or any part of the business so transferred to the transferee by the be transferred to another transferee. This may be done where the first-mentioned transferee is a an entity established or incorporated to do one or both of the following (i) temporarily hold and manage the assets and

[20] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

	Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including: (i) the power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority; (ii) the power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe; (iii) the power to reverse, if necessary, asset and		structure. Both the FDIA and OLA provide that the status of a bridge institution shall terminate as such upon, among other things, the sale of 80 percent or more of its capital stock to a person or entity other than the FDIC or another bridge institution. Both also set a maximum five years on the life of a bridge. The FDIC as receiver has the discretion to cause capital stock or other securities of a bridge institution to be issued and offered for sale in amounts and on terms and conditions as the FDIC may determine. In addition, the FDIC has the power to make funds available for the operation of the bridge institution in lieu of capital. OLA does not allow the FDIC to transfer more liabilities than assets to the bridge institution and to cover the shortfall. Both the FDIA and OLA provide that a bridge institution may operate without any capital or surplus, or such capital or surplus as the FDIC as receiver may in its discretion determine to be appropriate The bridge institution is to be under the management of a board of directors whose		The FIRO permits deferral of certain licensing and authorisation requirements under the BO, SFO and ICO when there is a transfer to a bridge institution. An RA must take all necessary steps to wind up a bridge institution if: (i) all, or substantially all, of its assets, rights and liabilities have been transferred to a third party or; (ii) no further transfer is made to the bridge institution for two years after the last transfer was made to the bridge institution. An RA may be able to extend this two-year period where such extension is necessary to meet the Resolution Objectives.		liabilities of the transferor; (ii) do any other act for the orderly resolution of the transferor (i.e. a bridge institution). <u>*Reversal of transfer of business*</u> The MAS Amendment Act will also introduce a new section 61, which provides that the MAS may, at any time make a determination to reverse the compulsory transfer of business under a certificate of transfer

	liability transfers to a bridge institution subject to appropriate safeguards, such as time restrictions; and (iv) the power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, so as best to effect the objectives of the resolution authority.		members are appointed by the FDIC. <u>Reversal Powers</u>: Under both OLA and the FDIA, the FDIC has the power to, after creating a bridge institution, cause the bridge institution to assume such liabilities and purchase such assets of the failed financial company or failed IDI as the FDIC may, in its discretion, determine to be appropriate. The FDIC typically transfers assets and liabilities from a receivership to a bridge institution through a purchase and assumption agreement. These agreements typically provide a limited ability to put assets or liabilities back into the receivership. This power is subject to safeguards under the agreements, including that the reverse transfer power may be exercised only for a limited period of time and only under limited conditions consistent with an efficient resolution.				
iii. Transfer of assets, rights and liabilities to an asset management vehicle (*AMV*)	Resolution authorities should have the power to establish a separate AMV (for example, as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the AMV for management and run-down non-performing		OLA and the FDIA enable the FDIC as receiver to establish a separate asset management vehicle or equivalent corporate entity and transfer non-performing loans or difficult-to value assets to the vehicle to manage and run-down.	PRC financial institutions regulated by the CBRC are allowed to transfer in batches their non-performing assets to a licensed AMV through a public bidding process. The transfer process shall involve vendor and vendee due diligence, and the scope of transfer shall not include assets that	An RA has the power to transfer assets, rights or liabilities of a within scope FI or a bridge institution to an AMV by making one or more property transfer instruments. An RA also has powers to make one or more securities transfer instruments or property transfer instruments to transfer securities issued by,	Please see analysis in the preceding section.	While the MAS Act does not specifically provide for this power, the MAS has stated that as part of its resolution toolkit, it may set up an asset management company to coordinate the acquisition, management and disposal of some or all of a non-viable financial institution's assets.

	loans or difficult-to-value assets.		The FDIC has used separate asset management vehicles, including securitization vehicles and joint venture equity partnerships, for purposes of transferring non-performing loans or difficult-to-value assets.	involve government debtor/guarantor, etc.	or assets, rights or liabilities of, an AMV to another entity. An AMV must manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down. The FIRO permits deferral of certain licensing requirements under the SFO when there is a transfer to an AMV.		
iv. Bail-in	Resolution authorities should have the power to carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either: (i) by recapitalising the entity hitherto providing these functions that is no longer viable, or, alternatively; (ii) by capitalising a newly established entity or bridge institution to which these functions have been transferred following closure of the non-viable firm (the residual business of which would then be wound up and the firm liquidated). Powers to carry out bail-in within resolution should enable resolution authorities to: (i) write down in a manner that respects the hierarchy of claims in liquidation equity or other	Industry recommends the creation of a new, distinct layer of senior, unsecured debt to which bail-in is applied in priority to other senior secured debt; some EU member states are already doing this.[21] This could create greater clarity in creditor rankings and a larger bail-in pool to meet cost of resolution, and avoid situations where relying on only subordinated, unsecured liabilities is insufficient to cover the cost of resolution, requiring resolution authorities to tap the resolution fund and potentially requiring surviving institutions to make additional contributions.[22]	Neither OLA nor the FDIA include explicit statutory bail-in powers. The statutory creditor hierarchy under both regimes, however, mimics the concept of creditor bail-in—although losses are imposed on creditors only after the institution has failed and the FDIC has been appointed receiver. Under both OLA and the FDIA, the FDIC as receiver has the power to determine claims in accordance with the statutory hierarchy. Through the claims process the FDIC may pay equity holders and creditors less value than these investors had initially invested so that the investors bear losses arising from the covered firm's failure, in accordance with the statutory hierarchy of claims.	The current law and regulations do not provide specific guidance on bail-in.	An RA has the power in connection with a within scope FI to make one or more bail-in instruments that contain one or more of the following bail-in provisions: (i) for cancelling a liability owned by the FI; (ii) for modifying, or changing the form of, a liability owed by the FI; (iii) that an instrument under which the FI has a liability is to have effect as if a specified right had been exercised by the FI; or (iv) for cancelling or modifying an instrument under which the FI, or a group company of the FI, has a liability that the RA considers it appropriate to make in consequence of any provision mentioned in (i), (ii) or (iii) that: (a) is made in the same bail-in instrument, or; (b) has been made in another bail-in instrument in respect of the FI.	There is no bail-in feature under the current laws of Korea. It was announced in the FSC Press Release that the FSC will have the right to order debt to equity conversion or write-down creditor claims through amendments to the FIRL.	The MAS Amendment Act will introduce a new Division 4A in Part IVB of the MAS Act, empowering the MAS to write down or convert into equity, all or part of unsecured subordinated debt and unsecured subordinated loans issued or contracted after the effective date of the MAS (Amendment) Act. The amendments will also empower the MAS to bail-in contingent convertible instruments and contractual bail-in instruments, whose terms have not been triggered prior to entry into resolution, issued or contracted after the effective date of the MAS (Amendment) Act. The classes of financial institutions that are subject to the statutory bail-in regime will be prescribed in Regulations. The MAS has stated that it intends to apply the statutory bail-in regime to Singapore-incorporated banks and bank holding companies for the time being.

[21] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).
[22] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

	instruments of ownership of the firm, unsecured and uninsured creditor claims to the extent necessary to absorb the losses; and to (ii) convert into equity or other instruments of ownership of the firm under resolution (or any successor in resolution or the parent company within the same jurisdiction), all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation; and (iii) upon entry into resolution, convert or write-down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treat the resulting instruments in line with (i) or (ii). The resolution regime should make it possible to apply bail-in within resolution in conjunction with other resolution powers (for example, removal of problem assets, replacement of senior management and adoption of a new business plan) to ensure the viability of the firm or newly established entity following the implementation of bail-in.		Under its current preferred strategy to resolve a financial company under OLA, the FDIC—upon becoming receiver—would charter a bridge financial company to which all of the assets of the failed financial company would be transferred. Rights related to equity, subordinated debt and senior unsecured debt of the financial company would remain with the receivership, and the right to payment, in resolution or other satisfaction of claims based thereon would be determined pursuant to the claims process of the receivership. The newly formed bridge financial company would continue to perform the systemically important functions of the failed financial company, thereby minimizing disruptions to the financial system. Subsidiaries—both domestic and foreign—of the failed financial company would remain open and operating, with capital and liquidity support where necessary provided by the parent bridge.		A bail-in instrument relating to securities may: (i) provide for securities issued by a within scope FI to be transferred to the RA, an entity assisting the RA or any other entity; (ii) make any other provision for the transfer of securities issued by the FI; (iii) cancel or modify any securities issued by the FI; (iv) convert any securities issued by the FI from one form or class into another; or (v) make provision with respect to rights attaching to securities issued by the FI. When exercising the power to make a bail-in provision, an RA must have regard to the winding up hierarchy principles. The purpose of bail-in is absorb the losses incurred, or reasonably expected to be incurred, by the relevant entity and to provide a measure of capital for it so as to enable it to carry on business for a reasonable period and maintain market confidence in it. The FIRO contains a list of excluded liabilities in respect of which an RA is not empowered to make a bail-in provision. An RA may, in a bail-in instrument, exclude additional liabilities from the application of any bail-in if it is of the opinion that the exclusion is justified because: (i) it is not reasonably possible to effectively apply the bail-in provision to the liability or		

					class within a reasonable time; (ii) the exclusion is necessary and proportionate to meet the Resolution Objectives: or (iii) application of the bail-in provision to the liability or class would cause a reduction in its value such that the losses borne by other creditors would be higher than if the liability or class were excluded. A bail-in instrument may also include directions to directors of the FI. At least one bail-in instrument must include a requirement that one or more directors of the FI prepare and submit a business reorganization plan with respect to the FI, and this bail-in instrument may also include a requirement for the FI to engage appropriate professional advisors to assist in the preparation of the business reorganisation plan. An RA is empowered to make rules that impose a requirement on a within scope FI or a holding company to ensure that the terms and conditions of a contract creating a liability contain a provision to the effect that the parties to the contract agree that the liability is eligible to be the subject of a bail-in provision. It was noted in the consultation conclusions on an effective resolution regime for financial		

					institutions in Hong Kong[23] that the authorities expect to issue guidance or a Code of Practice setting out their approach to carrying out bail-in once the FIRO is in force.		
v. Transfer to a temporary public ownership company (*TPO*)	As a last resort and for the overarching purpose of maintaining financial stability, some countries may decide to have a power to place the firm under TPO and control in order to continue critical operations, while seeking to arrange a permanent solution such as a sale or merger with a commercial private sector purchaser. Where countries do equip themselves with such powers, they should make provision to recover any losses incurred by the state from unsecured creditors or, if necessary, the financial system more widely.	Resolution regimes should ensure that resolution doesn't affect set-off, netting and collateral arrangements.[24]	Under OLA, the FDIC has the power to charter a bridge financial company to which the assets of the failed financial company would be transferred. The newly formed bridge financial company would continue to perform the systemically important functions of the failed financial company, thereby minimizing disruptions to the financial system. Under the FDIA, the FDIC has the power to charter a bridge national bank or federal savings association to which the assets of the failed IDI would be transferred. The newly formed bridge bank or savings association would continue to perform the banking services of the failed IDI. The FDIC also has the authority, under the FDIA, to charter a deposit insurance national bank (**DINB**) to which the FDIC would transfer the insured deposits of the failed IDI. The DINB may	The current law and regulations do not provide specific guidance on this.	An RA has the power to transfer securities issued by a within scope FI to a TPO company, but only if: (i) the RA after considering all of the other stabilization options is satisfied that an orderly resolution of the FI that meets the Resolution Objectives is most appropriately achieved by the transfer; and (ii) the FS has approved the transfer. An RA also has powers to make one or more securities transfer instruments to transfer to another entity securities issued by the TPO company or securities issued by the FI and held by the TPO company.	The current laws of Korea do not provide for this resolution power.	The MAS Amendment Act will introduce a new Division 5B of Part IVB of the MAS Act. In particular, the new section 99 provides that for the purposes of supporting a resolution measure undertaken for a financial institution and other matters relating to the measure, the Minister charged with responsibility for the MAS (the "**Minister**") may, on the recommendation of the MAS, establish a resolution fund. The fund is to be administered and managed by a trustee, which may obtain a loan from the MAS for the purpose of constituting the fund. Among other things, the resolution fund may be used to facilitate temporary public ownership of a financial institution under resolution, including initial capital for a bridge entity or asset management company. Under the new section 102, where one or more withdrawals has been made from the resolution fund, the Minister may direct the trustee of the resolution fund to recover the sum(s) withdrawn by making claim or imposing a levy on the financial institution

[23] An Effective Resolution Regime for Financial Institutions in Hong Kong, Hong Kong Monetary Authority (9 October 2015): http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/resolution/CP2_response_20151009.pdf

[24] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

			remain open for up to two years, during which time insured deposit holders would be able to transfer their deposits to another financial institution.				under resolution as well as other financial institutions.
vi.	**Stay on early termination rights**	Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed. Should contractual acceleration or early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the exercise of any resolution powers. The stay should: (i) be strictly limited in time (for example, for a period not exceeding two business days); (ii) be subject to adequate safeguards that protect the integrity of financial	A period should be provided for (similar to a temporary stay) to enable the supervisor/resolution authority of a firm in resolution, to assess whether the firm in question needs to continue to access the FMI.[25] The decision will be based on factors such as whether the service provided by the FMI is linked to a critical function being performed by the participant. Beyond that, any temporary stay imposed by resolution authorities should not affect set-off, netting and collateral arrangements.[26]	<u>Qualified Financial Contracts:</u> Under OLA and the FDIA, the right of counterparties to qualified financial contracts (**QFCs**) with a financial company or IDI for which the FDIC has been appointed receiver to terminate, liquidate or net such QFCs solely by reason of, or incidental to, the appointment of the FDIC as a receiver for the financial company are subject to a temporary stay. These rights cannot be exercised until (i) 5:00pm (Eastern Time) on the business day following the date of the appointment or (ii) after the person has received notice that the contract has been transferred. This temporary stay remains in effect with respect to each QFC for the full period described above, even if the FDIC as receiver informs the counterparty prior to the end of such period that the QFCs between the counterparty and the failed financial company	The current law and regulations do not provide specific guidance on this.	An RA has the power (by way of a Part 5 instrument) temporarily to suspend early termination rights in certain contracts of within scope FIs and their group companies for a period that commences when the instrument providing for the suspension is first published, and ends at the end of the period specified in that instrument (which must be no later than the expiry of the first business day following the day on which that instrument was published). The contracts for which early termination rights can be suspended include only contracts entered into by a within scope FI or its group company where the obligations provided for in the contract for payment and delivery and for provision of collateral continue to be performed. RAs are empowered to make rules that impose requirements to include contractual provisions to the effect that the parties agree to be bound by any	The current laws of Korea do not provide for stays on early termination rights. According to the FSC Press Release, the FSC would be given the power to impose temporary stay on early termination rights, following the adoption of a resolution regime in line with the FSB standards.	The MAS Amendment Act will introduce a new Division 4B in Part IVB of the MAS Act, empowering the MAS to temporarily stay the termination rights (including a right to accelerate) of counterparties to financial and non-financial contracts entered into with a pertinent financial institution or insurer over which MAS has exercised its resolution powers. The duration of the temporary stay will be limited to two business days and subject to certain safeguards. The stays will not apply in respect of (i) termination rights which become exercisable independently of MAS' exercise of powers, and (ii) contracts held by excluded parties, as will be prescribed in regulations.

[25] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

[26] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

	contracts and provide certainty to counterparties; and (iii) not affect the exercise of early termination rights of a counterparty against the firm being resolved in the case of any event of default not related to entry into resolution or the exercise of the relevant resolution power occurring before, during or after the period of the stay (for example, failure to make a payment, deliver or return collateral on a due date). The stay may be discretionary (imposed by the resolution authority) or automatic in its operation. In either case, jurisdictions should ensure that there is clarity as to the beginning and the end of the stay. Resolution authorities should apply the temporary stay on early termination rights in accordance with the guidance set out in I-Annex 5 to the Key Attributes to ensure that the stay does not compromise the safe and orderly operations of regulated exchanges and FMIs.		or IDI will not be transferred. <u>Other Contracts</u>: Subject to limited exceptions, counterparties to contracts with a covered financial company are prohibited from exercising any right to terminate, accelerate or declare a default under such contracts or to obtain possession or exercise control over any property of the failed financial institution or affect any contractual rights of the covered financial company without the consent of the FDIC as receiver during the 90-day period commencing on the date of appointment of the FDIC as receiver. These contracts are enforceable by the FDIC as receiver notwithstanding any contractual term providing for the termination, default, acceleration or exercise of rights upon, or solely by reason of, insolvency or the appointment of the FDIC as receiver or the filing for the petition of the commencement of an orderly liquidation.		suspension of termination rights.		
vii. Other tools and powers of resolution authority	Resolution authorities should have the power to: (i) operate and resolve the firm, including powers to terminate contracts,	A period should be provided for (similar to a temporary stay) to enable the supervisor/resolution authority of a firm in	<u>Power to operate and resolve the firm:</u> Under OLA, the FDIC as receiver has the power to take control of and operate a	The current law and regulations do not provide specific guidance on this.	<u>Power to operate and manage an FI in resolution</u> An RA has the power to manage the affairs, business or property of an entity in	The current laws of Korea do not provide for this.	As part of its resolution powers over financial institutions, the MAS may generally: (a) require the financial institution immediately

	(e.g. direction to continue provision of essential services, suspension of obligations, power to prohibit filing of winding-up petition etc.)	continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm's operations; (ii) ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties; (iii) override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets; (iv) impose a moratorium with a suspension of payments to unsecured creditors and customers	resolution to assess whether the firm in question needs to continue to access financial market infrastructure.[27] That decision should be based on factors such as whether the service provided by the FMI is linked to a critical function being performed by the participant. The FMI should be required to consult with the authorities and such authorities should include both the regulators of the FMI as well as the regulator/ resolution authority of the FMI participant to ensure that there is a right balance between safety of FMI and public interest consideration.[28] Resolution regimes should also ensure that resolution doesn't affect set-off, netting and collateral arrangements.[29]	failed financial company to achieve the company's orderly resolution. The FDIC as receiver has broad authority to manage the assets and operations of the failed financial company to, among other things, restructure or wind down the failed company, repudiate contracts, enforce contracts, assign contracts to a bridge financial company or purchasing entity, enter into contracts, and purchase and sell assets. Under the FDIA, the FDIC as receiver of a failed IDI has similar powers. In addition, the FDIC has conservator powers which can be used to try and preserve the going concern value of the IDI, for example, by restructuring and returning it to health. The FDIC's powers as conservator differ in several ways from its powers as a receivership – e.g., shorter protection is afforded against termination rights (45 days compared to 90 in receivership). These differences are relevant, for example, regarding the establishment of bridge institutions. The FDIC's power as a		resolution or to exercise any power of an entity in resolution (including a power with respect to the management of the affairs, business or property of the entity). An RA may, for facilitating the orderly resolution of an entity in resolution and by way of a provision in a Part 5 instrument, require the entity in resolution to transfer or issue securities to the RA or to an entity appointed by it. <u>Power to direct a residual FI or an AOE to continue to provide essential services to support the transferred business</u> The FIRO empowers an RA to direct a within scope FI, some (but not all) of the assets, rights or liabilities of which have been transferred to a purchaser, bridge institution or AMV, to continue to provide to the transferee entity, on reasonable commercial terms, services that are essential to the continued performance of critical financial functions in Hong Kong. The FIRO specifies how these powers will work where winding up proceedings have been, or may be, commenced against the FI.		to take any action or to do or not to do any act or thing whatsoever in relation to its business as the MAS may consider necessary; (b) appoint one or more persons as statutory adviser, on such terms and conditions as the MAS may specify, to advise the financial institution on the proper management of such of the business of the financial institution as the MAS may determine; or (c) assume control of and manage such of the business of the financial institution as the MAS may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the MAS may specify. <u>*Moratoriums*</u> Under section 30AAO(1) of the MAS Act, the MAS may, if it considers it to be in the interests of the affected persons of a specified financial institution, make an order prohibiting that specified financial institution from

[27] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

[28] Ibid.

[29] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

	(except for payments and property transfers to central counterparties (***CCPs***) and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and (v) allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm, for example, under market reporting, takeover provisions and listing rules, where the disclosure by the firm could affect the successful implementation of resolution measures. In the case of insurance firms, resolution authorities should also have the power to: (i) undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policyholder; and (ii) discontinue the writing of new business by an insurance firm in resolution while continuing to administer existing contractual policy obligations for in-force business (run-off).		conservator has rarely been exercised. <u>Power to ensure continuity of services and functions:</u> Through its powers as a receiver of a failed financial company or IDI to succeed to all rights, titles, powers and privileges of the failed financial company or IDI, the FDIC can direct the failed financial company's or IDI's counterparties to continue to provide services to a successor or acquiring entity. Both OLA and the FDIA also afford the FDIC the power to enter into new service contracts with the private sector to assist in carrying out its responsibilities in the management and disposition of assets from the receivership, provided that the FDIC determines that such services are the most practicable, efficient and cost effective. Neither OLA nor the FDIA explicitly require affiliates of a failed financial company or IDI to continue to provide essential services to the failed financial company or IDI in receivership. However, the FDIC's authority under OLA and the FDIA to enforce contracts notwithstanding the contract providing for termination, default or acceleration due to the failed financial company or IDI's insolvency, failure		The FIRO also empowers an RA to direct an AOE to continue to provide services to its affiliated FI or to another entity to which all or any part of the assets, rights or liabilities of the affiliated FI have been transferred in the application of a stabilization option. An RA is empowered to do this only with respect to services that are essential to the continued performance of critical functions in Hong Kong and that the AOE provided to the FI immediately before the initiation of resolution of the FI. <u>Power to suspend certain obligations</u> An RA has the power to impose, by way of provision in a Part 5 instrument, a temporary suspension of obligations to make a payment or delivery under a contract to which the FI or a subsidiary of the FI is a party. The suspension begins when the instrument providing for the suspension is first published, and ends at the end of the period specified in that instrument (which must be no later than the expiry of the first business day following the day on which that instrument was published). During the suspension period, absent consent from the RA, a creditor may not commence or continue any action or proceeding to attach any assets, obtain		carrying on its significant business or from doing or performing any act or function connected with its significant business or any aspect thereof that may be specified in the order. Under section 30AAO(2) of the MAS Act, the MAS may, if it considers it to be in the interests of the affected persons of a specified financial institution, apply to the High Court for, and the High Court may make, one or more of the following orders: (a) that no resolution shall be passed, and no order shall be made, for the winding up of the specified financial institution; (b) that no judicial management order shall be made in relation to the specified financial institution, or that any judicial management order which is in force in relation to the specified financial institution shall be discharged; (c) that no proceedings shall be commenced or continued by or against the specified financial institution in respect of any business of the specified financial institution;

			or entry into receivership also extends to contracts for services to be provided by affiliates of the failed financial company or IDI. Additionally, the FDIC's authority to operate the failed financial company or IDI with the powers of the members or shareholders, directors and officers of the failed financial company or IDI allows the FDIC to operate subsidiaries, including service entities, controlled by the financial company or IDI. <u>Power to override rights of shareholders</u>: Both OLA and the FDIA provide the FDIC as receiver with powers to merge the failed financial company or IDI with another institution and to transfer or sell any asset or liability of the failed financial company or IDI to a third party (including an asset management vehicle or a bridge institution) without providing prior notification or obtaining approval, assignment or consent with respect to such transfer. Ex post notification of the transfer is required by at the latest 5p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver, but only if at least one QFC is transferred.		payment or obtain delivery of any other property. <u>Default event provisions</u> The commencement of resolution and certain other actions of an RA (crisis prevention measures) will not by themselves trigger a default event provision under a contract that is entered into by a within scope FI (or one of its group companies) when the obligations provided for in the contract for payment and delivery and provision of collateral continue to be performed. <u>Clawback of remuneration</u> An RA, at any time after it has initiated the resolution of a within scope FI, is empowered to apply to the court for a clawback order with respect to certain officers of the FI. The court may make a clawback order against an officer if it is satisfied that: (i) the officer, in performing his or her functions, acted or omitted to act in a way that caused, or materially contributed to, the FI ceasing, or becoming likely to cease, to be viable; and (ii) the act was done, or the omission was made, intentionally, recklessly or negligently. If the court decides to make a clawback order against an officer, it must, in determining the extent to which the remuneration of the officer is to be covered by that		(d) that no execution, distress or other legal process shall be commenced, levied or continued against any property of the specified financial institution; (e) that no steps shall be taken to enforce any security over any property of the specified financial institution or to repossess from the specified financial institution any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement; (f) that no steps shall be taken by any person, other than a person specified in the order, to sell, transfer, assign or otherwise dispose of any property of the specified financial institution. The MAS has proposed to amend regulations to provide broad protection to ensure that set-off and netting arrangements will not be affected by the exercise of resolution powers under the MAS Act. Please refer to the row below for further details on the Regulation 16 Safeguard.

			<u>Power to impose a moratorium with a suspension of payments to unsecured creditors and customers:</u> Both OLA and the FDIA impose a statutory stay on judicial actions against the failed financial company or IDI, including creditor actions to attach assets or otherwise collect money or property from the financial contract or IDI. For contracts other than financial contracts, this stay lasts 90-days. Under OLA, with respect to QFCs cleared by or subject to the rules of a clearing organization, if the FDIC as receiver fails to satisfy any margin, collateral or settlement obligations under the QFC (other than those that are not enforceable under OLA), the clearing organization has the immediate right to exercise its default rights and any other rights under the QFC. OLA also provides that no property of the FDIC shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the FDIC, nor shall any involuntary lien attach to the property of the FDIC. <u>Power to allow temporary exemptions from the disclosure requirements</u>: Under OLA and the FDIA, once a failed financial		order, take into account the extent to which the act or omission of the officer contributed to the FI ceasing, or being likely to cease, to be viable. The period covered in a clawback order is normally the three years immediately preceding the date on which the resolution of the FI was initiated, but the court (on application of the RA) may extend this period by up to an additional three years if satisfied that any act or omission on the part of the officer that caused, or materially contributed to, the FI ceasing, or being likely to cease, to be viable was dishonest. The normal statute of limitations periods in Hong Kong do not apply to when an RA may apply to the court for a clawback order. <u>Power temporarily to defer certain disclosure requirements under the SFO/suspension of trading</u> The SFO requires listed companies to disclose inside information publicly (subject to limited exceptions) and requires certain persons who have interests or short positions in shares of listed companies to report those interests and short positions to the market. An RA, after consulting with the SFC, may temporarily defer requirements for a listed within scope FI, its group companies or an		*<u>Temporary exemptions from disclosure requirements</u>* The MAS has general powers of exemption under section 41C of the MAS Act. *<u>Insurance firms</u>* Under section 41(2)(b) of the Insurance Act, Chapter 142 of Singapore (the "**Insurance Act**"), the MAS may assume control of and manage such of the business of a licensed insurer as the MAS may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the MAS may specify, save that in the case of a licensed insurer incorporated outside Singapore, any appointment of a statutory manager or any assumption of control by the MAS shall only be in relation to (i) the business and affairs of the licensed insurer carried on, or managed in or from, Singapore; and (ii) the property of the licensed insurer located in Singapore, or reflected in the books of the licensed insurer in Singapore, as the case may be, in relation to its operations in Singapore. Under section 41(2)(a)(v) of the Insurance Act, the MAS may direct a licensed insurer to stop the renewal or issuance of further policies of the class of business which the insurer is carrying on.

			company or IDI enters receivership, it may no longer have audited financial statements, and the failed financial company or IDI would, in due course, be de-listed from any exchanges on which its securities were traded. If it was an SEC registrant, a financial company or IDI in receivership remains subject to SEC reporting requirements (e.g., 8-K, 10-K and 10-Q) under the Securities Exchange Act of 1934, but relief may be available in certain circumstances. The SEC has discretion to accept modifications to the reporting requirements, similar to the modified reporting it accepts from companies undergoing a reorganization or bankruptcy process. The FDIC has stated that its preferred resolution strategy for a failed financial company under OLA would be a single point of entry (**SPOE**) strategy. Given the envisaged timeframe for recapitalizing the financial company under an SPOE strategy, disclosure and reporting obligations may arise during the FDIC's receivership. The FDIC has stated that it intends to have the bridge financial company comply with all disclosure and reporting requirements under		entity acquiring the whole or part of its business to disclose certain inside information and certain interests in shares or debentures or short positions in shares, provided that certain conditions have been satisfied. Under the FIRO, an RA can defer the disclosure requirements for up to 72 hours and can extend the deferral period by up to 72 hours at a time. An RA also may direct a recognized exchange company either: (i) not to exercise its powers to suspend dealing in securities of a listed entity that is a within scope FI or a group company of a within scope FI; or (ii) to suspend all dealings in any securities of a listed entity that is a within scope FI or a group company of a within scope FI. <u>Power to prohibit the filing of a winding-up petition</u> A petition for the winding up of a within scope FI or its holding company may not be presented to the court unless the petitioner has given the RA: (i) written notice of its intention to present the winding-up petition; and (ii) either a period of seven days has passed or the RA has informed the petitioner within such period that it does not intend to initiate		

			applicable securities law, provided that if all standards could not be met because audited financial statements are not available with respect to the bridge financial company, the FDIC would work with the SEC to set appropriate disclosure standards.		the resolution of the FI or holding company. In the context of bail-in, the FIRO provides that winding-up actions against an FI or its holding company while an RA is taking steps to apply the bail-in stabilization option will not be allowed to commence except with the RA's written consent.		
Set-off, netting, collateralisation, segregation of client assets	The legal framework governing set-off rights, contractual netting and collateralisation agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures. Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.	Resolution regimes should ensure that resolution doesn't affect set-off, netting and collateral arrangements.	<u>The legal framework governing set-off rights, etc. should be clear, transparent, enforceable</u>: Different statutes provide for requirements to separately account for client assets in the books and records of regulated financial entities (e.g., futures commission merchants, collective investment schemes), and to segregate client assets from such entities' own funds and from funds of other persons. Banks authorized by the OCC to hold assets in a fiduciary capacity shall segregate such assets from the general assets of the bank. In the event of failure of the bank, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart. IDIs may hold client assets as a depository of a financial intermediary. For instance, client assets deposited by a futures commission merchant	The current law and regulations do not provide specific guidance on this. As a general rule under the PRC financial laws and regulations, financial institutions shall segregate client assets from their own assets, and adopt separate and independent management of client assets. Commercial banks in China are permitted to use qualified netting (including balance netting, repurchase transaction netting, OTC derivatives etc.) and collateralisation as credit risk mitigation methods.	The FIRO provides that the Secretary for Financial Services and the Treasury (***SFST***) may make regulations that impose conditions on the powers of RAs to make regulated Part 5 instruments (***regulated Part 5 instruments***) that would grant special protected treatment to: (i) arrangements governed by the rules relating to participation in clearing and settlement transactions within an FMI; (ii) netting arrangements under which a number of claims or obligations can be converted into a net claim or obligation; (iii) certain structured finance arrangements (including asset-backed securities, securitisations, asset-backed commercial paper, residential and commercial mortgage-backed securities, collateralised debt obligations and covered bonds); (iv) secured arrangements under which a person acquires, by way of security, an actual or contingent interest in the property of another; and (v)	The current laws of Korea do not provide guidance in this area.	The MAS stated in a consultation paper on the Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore dated 29 April 2016 (the "**April 2016 CP**") that it is not the MAS' intent, in exercising resolution powers over financial institutions to interfere with contractual set-off and netting arrangements. In the April 2016 CP, the MAS proposed to introduce the following safeguards for set-off and netting arrangements: (a) a safeguard that prevents the cherry-picking of transactions during a partial transfer of business of a financial institution by providing that the Minister will not approve a partial transfer of business unless it provides for the transfer of protected rights and liabilities from the transferor to the transferee (the "**Regulation 15 Safeguard**"). Rights and

			with a bank must be held under an account identifying the funds as belonging to the clients of the futures commission merchant and held in segregation according to the Commodity Exchange Act (**CEA**). Future commission merchants are required to obtain a letter from the IDI acknowledging that the funds deposited represent client assets under the CEA and that the IDI may not offset any obligation that the depositing future commission merchant may have with the IDI as a depository by the funds maintained in a segregated account. Likewise, IDIs are eligible custodians of collective investment schemes, which must place their securities and similar investments in the custody of selected custodians. Broker-dealers must maintain a special reserve account separate from their other bank accounts, and enter into a written agreement with the bank that the funds in such reserve account shall not be used directly or indirectly as security for a loan and must maintain a "no-lien letter" from the bank acknowledging this limitation.		certain title transfer arrangements (including repurchase or reverse repurchase transactions and stock borrowing or lending arrangements). The regulations may among other things require an RA, in making a regulated Part 5 instrument that results in a partial property transfer (***PPT***) being effected, to seek to ensure that the instrument does not have the effect of adversely affecting a party (other than the transferor) to a protected arrangement by separating or otherwise affecting the constituent parts of the arrangement. In this connection, the Financial Institutions (Resolution) (Protected Arrangements) Regulation (***PAR***) was gazetted following a public consultation, and came into effect on 7 July 2017. The PAR sets out the defined classes of protected arrangements and the remedies that would be afforded to affected parties – see the column "Protected arrangements – Hong Kong" below for further information.		liabilities are considered to be protected if they are rights and liabilities which arise from all financial contracts between a transferor on one part and a counterparty, which are rights and liabilities of the counterparty which the counterparty is entitled to set-off or net under a set-off arrangement or netting arrangement. (b) a safeguard that provides that the MAS' powers of moratorium shall not apply to any set-off arrangement or netting arrangement in relation to a financial contract after 23:59 (Singapore time) on the second business day after the date on which the moratorium has commenced (the "**Regulation 16 Safeguard**"). The MAS Amendment Act will introduce a new Division 4B in Part IVB of the MAS Act, empowering the MAS to temporarily stay the termination rights (including a right to accelerate) of counterparties to financial and non-financial contracts entered into with a pertinent financial institution or insurer over which MAS has exercised its resolution powers. The duration of the temporary stay will be limited to two business days and subject to

			The FDIA provides for a general claims process according to which the FDIC determines whether to allow or disallow claims against an IDI filed with the FDIC as receiver. The FDIC as a receiver may disallow any portion of a claim or claim of security, preference or priority which is not proved to its satisfaction. The rules applicable on loss sharing between clients in the event of shortfall in the pool of client assets are subject to different laws, depending on which entity is being subject to an insolvency or liquidation proceeding. For instance, in case of liquidation of a futures commission merchant, the trustee shall distribute "customer property" to clients of futures commission merchants, in priority to all other claims except for claims attributed to the administration of such property. Any shortfall is mutualized *pro rata*, based on allowed net equity claims, among clients of the futures commission merchant. <u>Resolution should not trigger statutory or contractual set-off rights, or constitute an event to terminate a contract</u>: As discussed in the "Stay on Early Termination Rights" row above, under OLA				certain safeguards. The stays will not apply in respect of (i) termination rights which become exercisable independently of MAS' exercise of powers, and (ii) contracts held by excluded parties, as will be prescribed in regulations.

			and the FDIA, the right of counterparties to QFC with a failed financial company or IDI to terminate, liquidate or net such QFCs solely by reason of, or incidental to, the appointment of the FDIC as a receiver for the financial company are subject to a temporary stay. These rights cannot be exercised until (i) 5:00pm (Eastern Time) on the business day following the date of the appointment or (ii) after the person has received notice that the contract has been transferred. In relation to other types of contracts, subject to limited exceptions, counterparties to such contracts with a failed financial company or IDI are prohibited from exercising any right to terminate, accelerate or declare a default under such contracts upon or solely by reason of the company or IDI's insolvency or the appointment of the FDIC as a receiver, the filing for the petition for the commencement of an orderly liquidation, the issuance of a recommendation in connection thereto, or the exercise of powers or rights by the FDIC. Such counterparties also may not pursue a judicial action to obtain				

			possession or exercise control over any property of the failed financial company or IDI or affect any contractual rights of the covered financial company without the consent of the FDIC as receiver during the 90-day period commencing on the date of appointment of the FDIC as receiver. Therefore, while set-off rights may be exercised, the above limitations on early termination rights and judicial actions would apply.				
Protected arrangements		Resolution regimes should ensure that resolution doesn't affect set-off, netting and collateral arrangements, so industry supports protection for clearing and settlement systems arrangements.[30] The operation and enforceability of a recognized clearinghouse's default rules should be given specific protection under a partial property transfer. This would allow those default rules to continue operating without compromising the safe and orderly operation of the clearinghouse in the event that a clearing member enters into resolution. To aid in the cross-border recognition of resolution regimes, protection of set-	As discussed in the "Stay on Early Termination Rights" and "Set-Off, Netting, Collateralisation, Segregation of Client Assets" rows above, U.S. law does not provide any special, blanket protection to set-off, netting or collateralization rights. Exercise of these rights is subject to a stay following the FDIC's appointment as receiver under both OLA and the FDIA. The duration of this stay is reduced if the underlying contract giving rise to these rights is a QFC.	The current law and regulations do not provide specific guidance on protected arrangements.	Under the PAR, the defined classes of protected arrangements will benefit from the protections, and affected parties will be afforded the remedies, as set out below: (i) set-off, netting, and title transfer arrangements: in effecting a PPT, an RA should transfer all, rather than just some, of the rights and liabilities of an entity (transferor) under a set-off, netting, or title transfer arrangement entered into between the transferor and a particular person, provided that the arrangement is documented in writing. However, there are carve-outs in relation to rights and liabilities relating to deposits, subordinated debt, transferable securities, contracts entered into by, or on behalf of, the transferor	The current laws of Korea do not provide guidance on protected arrangements.	The MAS proposed that the Regulation 16 Safeguard apply to a set-off arrangement or a netting arrangement in relation to a financial contract. In turn, "financial contract" is proposed to mean: (a) a contract for repurchasing, borrowing or lending securities, units in a collective investment scheme or commodities; (b) a derivatives contract; or (c) a futures contract within the meaning of section 2(1) of the SFA.

[30] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

		off and netting rights should extend to arrangements that wholly or partially arise automatically as a matter of law, and not be limited to those explicitly created by contractual agreement.[31]			otherwise than in the course of undertaking financial activity, and claims for/awards of damages or claims under an indemnity relating to the undertaking of financial activity. Any PPT executed in such a way as to not meet the requirement imposed on the RA concerned does not affect the exercise of the particular person's right to set off or net rights or liabilities under the arrangement. An RA should not make a bail-in provision in respect of a protected liability. However, an RA is not prevented from making a bail-in provision that an instrument under which an entity has a liability is to have effect as if a specified right had been exercised under it. An affected party may notify the RA concerned, which would be required to investigate and to take one or more of the remedial actions, if the claim is substantiated, which include facilitating an issuance or transfer of securities by the entity/bridge institution to the affected party, or requiring the entity/bridge institution to transfer a sum to the affected party required for restoring the affected party to its rightful position; (ii) secured arrangements: in transferring assets or rights		

[31] ASIFMA Public Policy Committee Initiatives Grid (30 September 2017).

					of an entity (transferor) against which a liability is secured under a secured arrangement, an RA should ensure that the liability and benefit of the security are also transferred, provided that the arrangement was not entered into in contravention of any legislative requirements. This protection applies regardless of whether the liability is secured against specified assets or rights. An affected party may notify the RA concerned, which would be required to investigate and to effect the necessary transfers of assets, rights or liabilities in order to restore the party to its rightful position, if the claim is substantiated; (iii) protected structured finance arrangements: in transferring assets, rights and liabilities of an entity (transferor) that constitute, or form part of, a protected structured finance arrangement, an RA should transfer all, rather than just some, of those assets, rights and liabilities. Assets, rights and liabilities relating to a deposit made with the transferor are carved out from this protection, while any affected party is afforded the same remedy as described under secured arrangements above; and (iv) protected clearing and settlement systems arrangements: in transferring assets, rights		

					and liabilities of an entity that are part of a protected clearing and settlement systems arrangement, an RA should transfer all, rather than just some, of those assets, rights and liabilities, to the extent that not to do so would disrupt the operation of the arrangement e.g. where payment and delivery obligations, or rules of a designated clearing and settlement system or a recognized clearing house, are disrupted. Any failure of an RA to comply with the requirement would render the transfer void to the extent that it disrupts the operation of the protected clearing and settlement systems arrangement.		
Information gathering and sharing	Jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. In particular: (i) the sharing of all information relevant for recovery and resolution planning and for resolution should be possible in normal times and during a crisis at a	To facilitate coordination between home and host jurisdictions to ensure that their respective requirements don't overlap and impede the global resolvability of a financial institution, resolution regimes should include a legal requirement for cooperation, information exchange and coordination domestically and with foreign resolution authorities	The FDIC has strong powers to access information that is material for the planning, preparation and implementation of resolution measures in a timely manner and through several legal avenues. For example, the FDIC has the authority to access firms' information in connection with its responsibility to conduct on-site examinations of IDIs and its authority to take enforcement actions against IDIs, bank holding companies and their affiliates. The FDIC also has the special examination authorities described in the	The current law and regulations do not provide specific guidance on this.	RAs have wide powers in connection with within scope FIs and their group companies to gather information, investigate, require production of records or documents and require attendance for examination. These powers extend to third party entities if the RA has reasonable cause to believe that: (i) the third party entity has information, or is in possession of a record or document, relating to the within scope FI or its group company; and (ii) the information, record or document cannot be obtained from the within scope FI or its group company. An RA may	The current laws of Korea do not provide guidance in this area.	

	domestic and a cross-border level; (ii) the procedures for the sharing of information relating to G-SIFIs should be set out in institution-specific cooperation agreements; and (iii) where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of the relevant home and host authorities. Jurisdictions should require firms to maintain Management Information Systems (***MIS***) that are able to produce information on a timely basis, both in normal times for recovery and resolution planning and in resolution. Information should be available at the group level and the legal entity level (taking into account information needs under different resolution scenarios, including the separation of individual entities from the group). Firms should be required, in particular, to: (i) maintain a detailed inventory, including a description and the location of the key MIS used in their material legal	before and during resolution.[32]	"Unimpeded Access" section of the "Resolution Authority" row, above. When the FDIC does not have direct access to such information, it has in place robust information sharing mechanisms with the relevant federal regulatory agencies. The information shared with the FDIC and FRB in the context of resolution planning is deemed to be confidential supervisory information (**CSI**) and thus is the property of the FDIC and FRB. The FDIC and FRB—not the financial company or IDI—have discretion to share this information with foreign resolution authorities, subject to any safeguards and confidentiality requirements either may require. Firms subject to resolution planning are required to demonstrate management information system (**MIS**) capabilities for producing, on a legal entity basis, data that is relevant for recovery and resolution planning, for assessing resolvability and for resolving the firm. Firms' capabilities to promptly produce any and all information that may be necessary for recovery and resolution planning purposes, as well		authorise or appoint an investigator or other person to act for it in exercising these powers. These powers are exercisable whether or not the FI has ceased, or is likely to cease, to be viable and whether or not resolution has been initiated. RAs may also disclose information to a non-Hong Kong resolution authority if in the opinion of the RA: (i) the non-Hong Kong resolution authority is subject to adequate secrecy provisions in the non-Hong Kong jurisdiction; and (ii) either: (a) it is desirable or expedient that information should be so disclosed in the interests of furthering the Resolution Objectives; or (b) the disclosure will enable or assist the non-Hong Kong RA to perform its functions and it is not contrary to the interests mentioned in subparagraph (a) that the information should be so disclosed. Onward disclosure however is forbidden without the relevant RA's consent.		

[32] GFMA response to BCBS Consultative Document: Global systemically important banks – revised assessment framework (30 June 2017): http://www.gfma.org/correspondence/item.aspx?id=934

	entities, mapped to their core services and critical functions; (ii) identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a financial group (for example, as regards the information flow from individual entities of the group to the parent); (iii) demonstrate, as part of the recovery and resolution planning process, that they are able to produce the essential information needed to implement such plans within a short period of time (for example, 24 hours); and (iv) maintain specific information at a legal entity level, including, for example, information on intra-group guarantees and intra-group trades booked on a back-to-back basis.		as in resolution scenarios, are periodically being tested via recurrent supervisory activities.				

Continued access to FMIs	**The information below is based on FSB guidance published on 6 July 2017: http://www.fsb.org/2017/07/guidance-on-continuity-of-access-to-financial-market-infrastructures-fmis-for-a-firm-in-resolution-2/. The information below was extracted previously from the December 2016 consultation proposals]** Continuity of access arrangements at the level of the provider of critical FMI services Jurisdictions should ensure that the participation requirements and rules and procedures of an FMI governing a participant's default ("FMI rules") are not likely to hamper unnecessarily the orderly resolution of participants in the FMI. The entry into resolution of an FMI participant or use of a resolution tool should not lead to an automatic termination of its participation in the FMI. Jurisdictions should ensure that laws and regulations applicable to FMIs should not prevent FMIs from maintaining the participation of a firm in	The resolution authority overseeing a firm or its subsidiary in a host jurisdiction should be responsible for determining critical financial market infrastructure (FMI).[33] The resolution authority should communicate this determination to the relevant firm, which should convey that determination to the provider of the critical FMI. FMIs owned and operated by central banks are excluded from the scope of the FSB's [Dec. 2016] guidance.[34] While we understand that the FSB may not have jurisdiction over such bodies and they are excluded from the Key Attributes, the ability of firms to comply with the requirements of the guidance is dependent upon them having access to the necessary information from FMIs.[35] FMIs owned and operated by central banks should therefore be encouraged to apply the guidance. A period should be provided for (similar to a temporary stay) to enable the supervisor/resolution authority of a firm in	Both the FRB and the FDIC recognize problems presented by FMIs, but have not addressed this issue.	The current law and regulations do not provide specific guidance on this.	N/A.	The current laws of Korea do not provide guidance in this area.	The MAS is responsible for the supervision of systemically important payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories (together, "**FMIs**"). The regulatory framework for FMIs is set out in the PSOA and the SFA, and the MAS has wide-ranging emergency powers to, *inter alia*, require certain FMIs to take such action as the MAS considers necessary to maintain or restore the safe and efficient operation of the FMI. *Continuity of access arrangements at the level of the provider of critical FMI services* The MAS has stated in paragraph 7.9 of its Monograph on "MAS' Approach to Resolution of Financial Institutions in Singapore" issued August 2017 (the "**MAS Resolution Monograph**") that the rules and procedures of FMIs governing participation requirements and participants' defaults should not hamper the orderly resolution of participants in the FMI. MAS further stated in paragraph 7.8 of the MAS Resolution Monograph that the operations of FMIs will not be

[33] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

[34] Guidance on Continuity of Access to Financial Market Infrastructures ("FMIs") for a Firm in Resolution, Financial Stability Board (16 December 2016): http://www.fsb.org/wp-content/uploads/Continuity-of-Access-to-FMIs-Consultation-Document-FINAL.pdf

[35] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

	resolution provided that the safe and orderly operation of the FMI is not compromised. FMI rules should provide the FMI with sufficient flexibility to cooperate with the resolution authority of the FMI participant in order to prepare for and implement an orderly resolution in a way that does not increase risk to the FMI, its risk management, or its safe and orderly operations. In particular: (i) the contractual rights and obligations and other legally binding procedures that would be triggered by entry into resolution of an FMI participant, its parent or affiliate, should be clearly set out in the rules or contractual arrangements of providers of critical FMI services. If, and to the extent that, the relevant legal framework that applies to the provider prevents or restricts the ability of the provider to terminate or suspend the access of an FMI service user for reasons related to resolution (or otherwise facilitates the continued access by a firm or its successor or transferee (including a bridge institution) to those critical FMI services), this should be reflected in the	resolution to assess whether the firm in question needs to continue to access financial market infrastructure. That decision should be based on factors such as whether the service provided by the FMI is linked to a critical function being performed by the participant. <u>Continuity of access arrangements at the level of the provider of critical FMI services</u> There should be a role for authorities to facilitate the engagement between FMIs and their participants, in particular, in relation to the communication flow and the level of disclosure of information between FMI service provider and FMI participant, and of both parties with the competent authority.[36] The FMI should therefore be required to consult with the authorities and such authorities should include both the regulators of the FMI as well as the regulator/ resolution authority of the FMI participant to ensure that there is a right balance between safety of FMI and public interest consideration.					disrupted should a moratorium (which is automatically imposed in the case of a compulsory transfer if business or shares, bail-in or restructuring of share capital) imposed be imposed during the resolution of any FMI participant. <u>*Continuity of access expectations and requirements applicable to firms*</u> The MAS Amendment Act will introduce a new section 42 in the MAS Act, which provides that the MAS may issue a notice to pertinent financial institutions requiring each pertinent financial institution which is directed by the MAS to: (a) to prepare, in the form and manner and containing the information specified in the notice, a plan to restore the financial strength and viability of the financial institution in the event it suffers financial pressure or stress ("**recovery plan**"); (b) to review and keep up-to-date its recovery plan, at a frequency specified in the direction; (c) to adopt various procedures in

[36] Ibid.

	rules or contractual arrangements of the provider of critical FMI services; (ii) subject to appropriate safeguards, the provisions from rules or contractual arrangements of a provider of critical FMI services that would be triggered by entry into resolution of an FMI service user, its parent or affiliate, should be generally applicable irrespective of whether the firm entering into resolution is a domestic or foreign FMI service user; (iii) providers of critical FMI services should engage with their FMI service users to discuss and communicate the range of risk management actions and requirements they may impose on an FMI service user, where it (or its parent or affiliate) is in resolution. Each provider should seek, to the extent appropriate, to apply a common set of expectations and processes for dealing with its FMI service users in resolution; and (iv) providers of critical FMI services should be required to test regularly the effectiveness of their relevant rules, contractual arrangements and	To that end, FMIs should be required to report on a regular basis to its supervisor, the degree of compliance of its participants. This will enable the FMI and its supervisor to monitor where engagement is taking place and where deficiencies may exist. This would encourage participant engagement to help develop plans that act as a firewall against contagion and prevent possible resolution scenarios. FMIs should review their rulebooks or contractual arrangements to ensure that these allow for an FMI participant to maintain its participation during resolution.[37] Such arrangements should nevertheless be subject to appropriate safeguards to protect the continued safe and orderly operations of the FMI. Safeguards should include the condition that the participant in resolution must meet its obligations to the FMI. Equally the FMI should ensure that the rules do not automatically trigger a termination or suspension of critical FMI services in the event of entry into resolution of an FMI participant, its parent or affiliate.[38]					preparing its recovery plan, including the oversight of the process and endorsement of the plan; (d) to notify the MAS of the occurrence of any event that may necessitate the implementation of its recovery plan; (e) to maintain information to enable it to prepare, review and keep up-to-date its recovery plan, and to comply with any direction of the MAS under section 44 of the MAS Act (which provides for resolution plans of the MAS); (f) to have in place a management information system that is necessary for the maintenance and production of the information mentioned in (e) above; (g) to ensure that its outsourcing arrangements for its critical functions and critical shared services will continue in the event it comes under resolution; and (h) take such other action as in the MAS' opinion will facilitate

[37] Ibid.
[38] Ibid.

	procedures addressing a resolution scenario. <u>Continuity of access expectations and requirements applicable to firms</u> Firms should take measures to facilitate their continued access to critical FMI services in resolution, based on analyses on how the firm would maintain access to critical FMI services , including by ensuring that obligations to FMI service providers are met throughout resolution and through the provision of information to the relevant authorities,both as part of resolution planning and in contingency planning by a firm ahead of, and during resolution. In particular: (i) firms should be required to prepare contingency plans detailing how they would maintain access to critical FMI services. These contingency plans – together with other relevant information supplied by firms – should assist resolution authorities in developing effective resolution plans; (ii) firms should be required to provide information about their reliance on critical FMI	Industry supports the guidance that providers of critical FMI services should engage with the FMI participants to discuss and communicate the range of risk management actions and requirements that they may take in response to an FMI participant, its parent or affiliate entering resolution.[39] This kind of discussion should be supported by a non-disclosure agreement. The guidance should set also define appropriate engagement to ensure that FMIs actively and constructively engage with participants and do not reduce such important matters to communications via their website. The guidance should set out the need for engagement with individual participants, and require FMIs to engage throughout the resolution planning process and beyond to ensure plans are properly maintained.[40] Further guidance should be provided on the level of participation or engagement of FMI service providers in the preparation of the contingency plans. Industry supports the requirement for providers of critical FMI services to regularly test the					compliance with any notice or direction issued by the MAS under Division 2 of Part IVA of the MAS Act, or the effective implementation of the recovery plan of the pertinent financial institution or a resolution plan of the MAS. The MAS has consulted on a draft notice (the "**RRP Notice**") which will apply to D-SIBs. The MAS has also stated that it will apply similar RRP requirements to certain financial holding companies of D-SIBs. <u>*Co-operation among authorities and communication between authorities, firms and providers of critical FMI services*</u> The MAS is the supervisory authority and resolution authority over FMIs.

[39] Ibid.
[40] Ibid.

	services, including a mapping of service providers and key services. It should also cover requirements and conditions needed for continuity of access and the usage and size (if known) of commited and uncommitted credit facilities received from providers of critical FMI services; (iii) firms should engage with providers of critical FMI services to understand how they are likely to respond a firm in resolution and assess the nature and extent of any additional requirements. Contingency plans should also cover operational, governance and communication arrangements, including human resources that would be deployed to operationalise the plan during resolution; (iv) as part of contingency plans, firms should specifically develop and document how they would meet the financial requirements necessary to maintain continuity of access to critical FMI services. Contingency plans should detail any anticipated liquidity requirements and how the	effectiveness of their rules and procedures to address a resolution scenario.[41] The results of such tests should be shared with the industry, i.e. with FMI participants and competent authorities. The timing of the test should be defined: "regular" means each year or when a firms has a new provider, or when there is a change in firm's relevant rules, contractual arrangements and procedures addressing a resolution scenario. The FSB should instruct FMIs to establish and communicate a standard set of assumptions and arrangements that banks can incorporate into their resolution planning.[42] This should result in more robust and transparent contingency planning. <u>Continuity of access expectations and requirements applicable to firms</u> It is important to distinguish between FMIs and FMI intermediaries. The relationship between FMI intermediaries and firms is based on bespoke bilateral contractual arrangements which cannot be amended					

[41] Ibid.
[42] Ibid.

	firm would expect to meet them; and (v) contingency plans should provide a high-level impact analysis on the ability of the firm to continue performing its critical functions should access to providers of critical FMI services be terminated or suspended. <u>Co-operation among authorities regarding continuity of access to critical FMI services</u> The relevant authorities of firms and providers of critical FMI services play a significant role in facilitating continuity of access to critical FMI services for a firm in resolution and should therefore have adequate cooperation arrangements in place. In particular: (i) the relevant authorities for providers of critical FMI services together with resolution authorities of FMI service users should, as part of resolution planning, seek to address and manage the financial stability implications of continuity of access of FMI service users in resolution to FMIs and FMI intermediaries on the one hand and the risk management of the	unilaterally.[43] The onus should be on firm to seek any changes or clarification of contractual arrangements. The FMI intermediary should have a responsibility to negotiate the contract in good faith to balance the two objectives of continued access for the participant without negatively impacting the intermediary. Industry agrees that firms should develop contingency plans focused on facilitating continuity of access in the lead up to and upon entry into resolution.[44] For that, firms will need access to the information on expected risk management actions from critical FMI service providers to produce effective contingency plans. Rather than being a separate exercise, this planning should be integrated with recovery planning for the firm. Contingency planning should be based on and tailored to the relevant resolution strategy for the firm, including considerations such as which entity in the group would enter resolution. If a contingency plan of a firm envisages the access to a different service provider (back-up					

[43] Ibid.
[44] Ibid.

	providers of critical FMI services on the other; (ii) resolution authorities of FMI service users should identify and engage periodically with the relevant authorities of each provider of critical FMI services in order to discuss the resolution authority's preferred resolution strategy or strategies, the credibility and feasibility of firms' contingency plans and any barriers to continuity of access to critical FMI services; (iii) resolution and supervisory authorities of FMI service users should have in place appropriate information sharing arrangements with the relevant authorities of providers of critical FMI services. The relevant resolution and supervisory authorities and the relevant authorities of providers of critical FMI services should seek to give each other as much advance notice as possible about intended actions and possible risks with regards to maintaining continuity of access; (iv) resolution and supervisory authorities of FMI service users should have arrangements or understandings in	solution), this should not be shared with the main FMI service provider engaged in the preparation of contingency plan, to avoid conflicts of interest. Some aspects of the information requirements and contingency planning may be challenging for firms to accurately assess.[45] For unadvised credit limits, for example, it would be preferable to allow firms to base their assessments on usage of credit in practice rather than limits. It would also be better to address usage of credit facilities as part of overall liquidity planning rather than as a standalone information requirement. The requirement for firms to maintain transaction data and make it available on demand requires significant effort. The FSB should consider whether a time period for delivery could be specified instead. Contingency plans should include financial requirements (covering liquidity and credit commitments, collateral or default fund contributions being specifically mentioned), and the need to determine the most likely amount necessary and the maximum amount in order to maintain					

[45] Ibid.

	advance with the relevant FMI authorities on what information to share and how that information may be shared with the provider of critical FMI services or other stakeholders both in the lead-up to, and during, resolution; and (v) resolution authorities should consider the credibility and feasibility of plans for preserving access ot critical FMI services in resolution as part of resolvability assessments.	access. Greater clarity on these factors are required. The FSB should elaborate on how the liquidity requirements should be calculated by the FMI participant.[46] It is necessary to specify if the determined amount should be considered as indicative or binding requirement. While industry supports the introduction of such a requirement, therefore, it should only be indicative, introduced as a range and not the exact amount.[47] <u>Co-operation among authorities regarding continuity of access to critical FMI services</u> Authorities should be in a continuous dialog between FMIs and its participants in business as usual and stress scenarios.[48] In case the FMIs and the participant's supervisors are not the same appropriate coordination protocols and mechanism should be in place. More specific guidance should be considered to clarify the relationship between authorities, including how decisions would be made and the					

[46] Guidance on Continuity of Access to Financial Market Infrastructures ("FMIs") for a Firm in Resolution, Financial Stability Board (6 July 2017) http://www.fsb.org/wp-content/uploads/P060717-2.pdf

[47] GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution (24 February 2017): http://www.fsb.org/wp-content/uploads/Global-Financial-Markets-Association-GFMA-and-Institute-of-International-Finance-IIF.pdf

[48] Ibid.

		process for dissemination of information.[49] The guidance should also clarify that sharing of information should be on a confidential basis. It would also be helpful for the FSB to instruct the FMIs to establish and communicate a standard set of contacts, escalation points for use prior and/or in resolution.[50] Industry supports the principle that there should not be any discrimination between domestic and foreign FMI participants by a provider of critical FMI services.[51] Consideration should however be given to the application of stays on termination which might be different in different jurisdictions.					
D-SIB regime	The framework for dealing with D-SIBs issued by the Basel Committee on Banking Supervision in October 2012 sets out 12 principles, which focus on the assessment methodology for D-SIBs and higher loss absorbency (***HLA***) requirements for D-SIBs. <u>Assessment methodology</u> (i) National authorities should establish a methodology for assessing the degree to which banks	Resolution planning should focus on domestic (or locally-incorporated subsidiaries of global) firms and any of their critical functions that stand to have a systemic impact of failure. Local branches of global financial institutions should not be required to provide a country-level resolution plan, as their operations are included in group-level plans. Appropriate focus needs to be placed on the	The U.S. has not adopted the D-SIB framework. However, the concept of a D-SIB is embodied in the enhanced prudential standards, established under the DFA and FRB regulations, which apply to: (i) bank holding companies with $50 billion or more in total consolidated assets; (ii) nonbank financial companies that are	The current law and regulations do not provide specific guidance on D-SIBs.	The HKMA has developed a framework for recognising D-SIBs and the consequent application of HLA requirements. The HKMA published the Supervisory Policy Manual module "Systemically Important Banks" (CA-B-2) on 18 February 2015, which sets out the HKMA's assessment methodology for identifying D-SIBs, calibrates the level of HLA requirements to which they will be subject, and sets out other policy	D-SIBs are designated annually based on the standards set forth in the Regulations on Supervision of Banking Business and the Regulations on Supervision of Financial Holding Companies. According to the said regulations, the FSS will designate D-SIBs annually from a pool of bank holding companies, banks and foreign bank branches in Korea based on a combination of the	The MAS is responsible for the supervision of systemically important payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories (together, "**FMIs**"). The regulatory framework for FMIs is set out in the PSOA and the SFA, and the MAS has wide-ranging emergency powers to, *inter alia*, require certain FMIs to take such action as the MAS considers necessary to maintain or restore the safe and efficient operation of the FMI.

[49] Ibid.
[50] Ibid.
[51] Ibid.

	are systemically important in a domestic context. (ii) Home authorities should assess banks for their degree of systemic importance at the consolidated group level, while host authorities should assess subsidiaries in their jurisdictions, consolidated to include any of their own downstream subsidiaries, for their degree of systemic importance. (iii) The impact of a D-SIB's failure on the domestic economy should, in principle, be assessed having regard to: (a) size; (b) interconnectedness; (c) substitutability/financial institution infrastructure (including considerations related to the concentrated nature of the banking sector); and (d) complexity (including the additional complexities from cross-border activity). In addition, national authorities can consider other measures/data that would inform these bank-specific indicators within each of the above factors, such as size of the domestic economy. <u>HLA requirements</u> (i) National authorities should document the methodologies and considerations used to	broader question of what degree of protection for hosts is appropriate, and how to achieve it in ways that make sense overall. Such a focus should aim to avoid the detrimental effects of excessive internal TLAC structures that would work against FSB cross-border objectives. This should be agreed through the CMGs rather than by host authorities' ultimately determining internal TLAC requirements, albeit in consultation with home authorities. D-SIB requirements should not be used to create a competitive advantage vis-à-vis GSIBs facing internal TLAC requirements. This is already occurring in some jurisdictions in ways that could be deemed protectionist. In some jurisdictions, the local TLAC or equivalent requirements have been reduced possibly even to zero for competitors of about the same size as a GSIB's material sub-group entity (cf. the Swiss and US cases), reflecting domestic policy choices regarding resolution resourcing and decisions on DSIB designations. Host regulators should be requested by CMGs to justify why a different resolution path or TLAC requirement would be imposed for subsidiaries of	supervised by the FRB; and (iii) foreign banking organizations (**FBOs**) with $50 billion or more in total consolidated assets. Such enhanced prudential standards include stress testing, TLAC and external long-term debt, risk-based capital, leverage, liquidity, resolution planning and risk governance requirements. These enhanced prudential standards apply differently to U.S. companies based upon their total consolidated assets and activities and to FBOs based upon their total consolidated assets, combined U.S. assets, activities and structure. There is draft proposed legislation that may raise this $50 billion threshold.		and supervisory measures to be applied to them. The first designation of five Hong Kong-incorporated banks as D-SIBs was made on 16 March 2015. Each of the designated D-SIBs following the HKMA's annual assessment is required to include an HLA requirement into the calculation of its regulatory capital buffers. The HKMA intends to phase in the full amount of the HLA requirement from 2016 to 2019 in parallel with the Capital Conservation Buffer and Countercyclical Capital Buffer.	following criteria: (i) size (20%); (ii) interconnectedness (20%); (iii) substitutability (20%); (iv) complexity (20%); and (v) Korea-specific factors (20%). Based on the above criteria, for the past three years four financial holding companies and onr bank (Hana Financial Group, Shinhan Financial Group, KB Financial Group, NH Financial Group and Woori Bank) have been designated as D-SIBs, which are required to set aside an additional capital of 1% over the minimum capital requirement, if deemed necessary, on an incremental basis of 0.25% per year from 2016 to 2019.	<u>*Continuity of access arrangements at the level of the provider of critical FMI services*</u> The MAS has stated in paragraph 7.9 of its Monograph on "MAS' Approach to Resolution of Financial Institutions in Singapore" issued August 2017 (the "**MAS Resolution Monograph**") that the rules and procedures of FMIs governing participation requirements and participants' defaults should not hamper the orderly resolution of participants in the FMI. MAS further stated in paragraph 7.8 of the MAS Resolution Monograph that the operations of FMIs will not be disrupted should a moratorium (which is automatically imposed in the case of a compulsory transfer if business or shares, bail-in or restructuring of share capital) imposed be imposed during the resolution of any FMI participant. <u>*Continuity of access expectations and requirements applicable to firms*</u> The MAS Amendment Act will introduce a new section 42 in the MAS Act, which provides that the MAS may issue a notice to pertinent financial institutions requiring each pertinent financial institution

	calibrate the level of HLA that the framework would require for D-SIBs in their jurisdiction. The level of HLA calibrated for D-SIBs should be informed by quantitative methodologies (where available) and country-specific factors without prejudice to the use of supervisory judgement. (ii) Home authorities should impose HLA requirements that they calibrate at the parent and/or consolidated level, and host authorities should impose HLA requirements that they calibrate at the sub-consolidated/subsidiary level. The home authority should test that the parent bank is adequately capitalised on a stand-alone basis, including cases in which a D-SIB HLA requirement is applied at the subsidiary level. Home authorities should impose the higher of either the D-SIB or G-SIB HLA requirements in the case where the banking group has been identified as a D-SIB in the home jurisdiction as well as a G-SIB. (iii) The HLA requirement should be met fully by Common Equity Tier 1.	G-SIBs relative to what is required for local banks of comparable size and risk profile.[52]					which is directed by the MAS to: (a) to prepare, in the form and manner and containing the information specified in the notice, a plan to restore the financial strength and viability of the financial institution in the event it suffers financial pressure or stress ("**recovery plan**"); (b) to review and keep up-to-date its recovery plan, at a frequency specified in the direction; (c) to adopt various procedures in preparing its recovery plan, including the oversight of the process and endorsement of the plan; (d) to notify the MAS of the occurrence of any event that may necessitate the implementation of its recovery plan; (e) to maintain information to enable it to prepare, review and keep up-to-date its recovery plan, and to comply with any direction of the MAS under section 44 of the MAS Act (which

[52] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

							provides for resolution plans of the MAS); (f) to have in place a management information system that is necessary for the maintenance and production of the information mentioned in (e) above; (g) to ensure that its outsourcing arrangements for its critical functions and critical shared services will continue in the event it comes under resolution; and (h) take such other action as in the MAS' opinion will facilitate compliance with any notice or direction issued by the MAS under Division 2 of Part IVA of the MAS Act, or the effective implementation of the recovery plan of the pertinent financial institution or a resolution plan of the MAS. The MAS has consulted on a draft notice (the "**RRP Notice**") which will apply to D-SIBs. The MAS has also stated that it will apply similar RRP requirements to certain financial holding companies of D-SIBs. *<u>Co-operation among authorities and communication between</u>*

							<u>authorities, firms and providers of critical FMI services</u> The MAS is the supervisory authority and resolution authority over FMIs.
Initial Safeguards							
i. Compensation mechanism	Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole. In particular, equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity). Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime (the "no creditor worse off	The creditor hierarchy should not be subjective to jurisdiction, whether home or host. Host authorities should not give preference to domestic creditors in the event of resolution and host authorities should only take initiative in exceptional cases (i.e. when the home jurisdiction is not taking action).	Both when it acts as a receiver for a financial company under OLA and for an IDI under the FDIA, the FDIC is required to exercise resolution powers in a way that respects the hierarchy of creditor claims, as respectively provided thereunder, and that allocates losses to shareholders and unsecured creditors before allocating losses to secured creditors. Under OLA, while the FDIC is generally required to observe the principle of equal (*pari passu*) treatment of creditors of the same class, it is also provided with a wide degree of flexibility to permit departure from such principle. For example, the FDIC may take certain actions preferencing creditors under certain conditions to maximize the value of the financial company in receivership or to initiate or continue the operations essential to implementation of the receivership or a bridge financial company.	The current law and regulations do not provide specific guidance on this.	The FIRO provides that any pre-resolution creditor or pre-resolution shareholder of an affected entity who has received, is receiving or is likely to receive, as a result of the resolution of that entity, less favourable treatment than would have been the case had winding up of the entity commenced immediately before its resolution was initiated is eligible for a payment of compensation under the NCWOL safeguard. The NCWOL provisions in the FIRO require the RA, as soon as practicable after making for the first time a Part 5 instrument, to notify a person (appointed by the FS) (the appointing person) who is empowered to appoint the an independent valuer. The appointing person then must as soon as practicable appoint an independent valuer (the ***NCWOL valuer***) meeting the criteria specified in the FIRO. The NCWOL valuer must: (i) assess the treatment that pre-resolution creditors and pre-resolution shareholders would have received if winding up of the affected entity had commenced	Under the current Insolvency Act, hierarchy of claims is in the order of: (i) wage claims; (ii) deposit and unsubordinated claims; (iii) subordinated creditors; and (iv) shareholders. It is expected that this hierarchy will be retained after the adoption of a resolution regime in line with the FSB standards. The principal of NCWOL already applies under the current regime, even though there are no specific provisions to such effect.	In paragraph 8.2 of its Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore issued on 23 June 2015 (the "**June 2015 CP**"), the MAS stated that as a guiding principle, in exercising any of its resolution powers, the MAS intends to respect the statutory creditor hierarchy of claims in liquidation, along with the principle of equal treatment of creditors of the same class, and the MAS would only depart from such principles where it is deemed appropriate, for instance, to ensure financial stability. In addition, the MAS Amendment Act introduces a creditor compensation framework under a new Division Part IVB of the MAS Act. Under the creditor compensation framework, creditors and shareholders who do not receive under the resolution of a financial institution at least what they would have received had the financial institution been liquidated will be eligible for compensation of the difference, i.e. the creditor compensation framework provides for the NCWOL safeguard.

	than in liquidation" safeguard, or "***NCWOL***").		Under the FDIA, the FDIC as receiver is generally required to observe the principle of equal treatment of creditors of the same class. While no provisions explicitly permit a departure from such *pari passu* treatment, the resolution regime under the FDIA is designed in such a manner that the FDIC can effectively depart from such principle, either by using DIF resources when necessary to minimize its losses or to maximizing the value of the failed IDI for the benefit of creditors or by providing assistance in derogation from the least cost test when that is necessary for financial stability purposes. The "no creditor worse off safeguard" is incorporated into OLA, which provides that in no case will a creditor receive less from the receivership than it would have received had the FDIC not been appointed receiver and the financial company been liquidated under the Bankruptcy Code or a relevant state insolvency law. FDIC regulations implementing the FDIA impose a requirement that is similar to the "no creditor worse off standard." These regulations allow the FDIC		immediately before resolution was initiated; (ii) assess the actual treatment that the pre-resolution creditors and pre-resolution shareholders have received, are receiving or are likely to receive as a result of the resolution; and (iii) if there is a difference between the treatment in (i) and (ii), assess the amount of that difference. The NCWOL valuer must make its valuation in accordance with the valuation assumptions and principles set forth in the FIRO (and any additional assumptions and principles specified by the SFST).		

			as receiver of a failed IDI to make payments to certain unsecured creditors prior to the payment in full of all claims of a category or class with higher priority than such creditors if the FDIC believes such payments are reasonably necessary to conduct the receivership. FDIC regulations provide, however, that the FDIC must determine, prior to making such a payment, that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.				
ii. Confidentiality	Resolution authorities should have the capacity in law, subject to adequate confidentiality requirements and protections for sensitive data, to share information, including RRPs, pertaining to the group as a whole or to individual subsidiaries or branches, with relevant foreign authorities (for example, members of a CMG), where sharing is necessary for recovery and resolution planning or for implementing a coordinated resolution. Jurisdictions should provide for confidentiality requirements and statutory safeguards for the protection of	Resolution authorities in host jurisdictions should not require foreign banks to maintain information that is out of line or more extensive than that held by, and available to them from, a foreign bank's home regulator. Doing so places foreign banks at risk of violating confidentiality and data privacy rules in their home jurisdiction.	*See* topic, Information gathering and sharing.	The current law and regulations do not provide specific guidance on this.	Strict confidentiality requirements apply to RAs, NCWOL valuers, certain persons and entities that RAs or NCWOL valuers appoint to assist them, FIs and their group companies, and certain other persons, subject to various exceptions. An RA may disclose information to a non-Hong Kong resolution authority if in the opinion of the RA: (i) the non-Hong Kong resolution authority is subject to adequate secrecy provisions in the non-Hong Kong jurisdiction: and (ii) either: (a) it is desirable or expedient that information should be so disclosed in the interests of furthering the Resolution Objectives; or (b) the disclosure will enable or assist the non-Hong Kong	This feature has not been under discussion thus far, but the FSC, FSS and KDIC are subject to general confidentiality requirements in their dealings with financial institutions.	Under section 30AAZE(1) of the MAS Act, the MAS may, in relation to a request by a resolution authority of a foreign country or territory for assistance: (a) transmit to the resolution authority any material in the possession of the MAS that is requested by the resolution authority or a copy thereof; (b) order any person to furnish to the MAS any material that is requested by the resolution authority or a copy thereof, and transmit the material or copy to the resolution authority;

	information received from foreign authorities.				resolution authority to perform its functions and it is not contrary to the interests mentioned in (a) that the information should be so disclosed.		(c) order any person to make an oral statement to the MAS on any information requested by the resolution authority, record such statement, and transmit the recorded statement to the resolution authority; or (d) request any ministry or department of the Singapore Government, or any statutory authority in Singapore, to furnish to the MAS any material that is requested by the resolution authority or a copy thereof, and transmit the material or copy to the resolution authority. Under section 30AAZE(2) of the MAS Act, an order under (b) or (c) above shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct. However, such assistance is subject to the MAS' satisfaction that all of the following conditions (set out in section 30AAZC of the MAS Act) are fulfilled: (a) the request by the resolution authority for

							assistance is received by the MAS on or after the date of commencement of 18 April 2013; (b) the assistance is intended to enable the resolution authority, or any other authority of the foreign country or territory, to deal with the resolution of a financial institution; (c) the resolution authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the MAS; (d) the resolution authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country or territory in accordance with (e) below) any material or copy thereof obtained pursuant to the request, unless the resolution authority is compelled to do so by the law or a court of the foreign country or territory; (e) the resolution authority has given a

							written undertaking to obtain the prior consent of the MAS before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the MAS; (f) the material requested for is of sufficient importance to the resolution of a financial institution and cannot reasonably be obtained by any other means; (g) the matter to which the request relates is of sufficient gravity; and (h) the rendering of assistance will not be contrary to the public interest or the interests of the affected persons of the financial institution. "Designated third party", in relation to a foreign country or territory, is defined to mean such person in, or body or authority of, the foreign country or territory as the MAS may approve, upon an application to the MAS, if the MAS is satisfied that the disclosure:

							(a) is necessary, in the interests of the resolution of a financial institution; and (b) is necessary for the performance of the duties and functions of that person, body or authority, as the case may be.
Resolution funding arrangements	Jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving firms. Where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to recover any losses incurred: (i) from shareholders and unsecured creditors subject to the NCWOL safeguard; or (ii) if necessary, from the financial system more widely. Jurisdictions should have in place privately-financed deposit insurance or resolution funds, or a funding mechanism with ex post recovery from the industry of the costs of providing temporary	Resolution costs should primarily be borne by the firm's shareholders and creditors and not imposed on the public. Resolution funding arrangements should, therefore, be established on an ex post basis. The primary mechanism for absorbing losses should be bail-in, and resolution funding arrangements should be a last resort, used only in those exceptional circumstances where creditors of an institution in resolution have been written down in full. Industry, therefore, recommends the creation of a new, distinct layer of senior, unsecured debt to which bail-in is applied in priority to other senior secured debt; some EU member states are already doing this. This could create greater clarity in creditor rankings and a larger bail-in pool to meet cost of resolution, and	OLA provides for temporary recourse to public funds to resolve a failed financial company. The FDIC may determine that the use of public funds, borrowed from the OLF, is necessary or appropriate to resolve a financial company in receivership.[53] The FDIC also must determine that such action is necessary for purposes of the financial stability of the U.S. and not for the purpose of preserving the financial company.[54] Claims resulting from the use of the OLF to fund the resolution of a financial company are treated as administrative expenses of the FDIC as receiver or amounts owed to the United States under the statutory creditor hierarchy and are first to be repaid from recoveries on the assets of the failed financial company. If such recovered funds are insufficient to repay the	The current law and regulations do not provide specific guidance on this.	The FIRO provides that an RA or the FS may charge an FI all reasonable costs properly incurred in connection with preparing for the making of a Part 5 instrument, the making of a part 5 instrument, the resolution of an entity (including payment of compensation due and any associated costs) or the appointment of an NCWOL valuer. The FIRO also provides that if there are shortfalls, a resolution levy may be imposed on all within scope FIs within the same sector to which the entity in resolution belongs or belonged, or a class of such within scope FIs. Different provisions apply if the entity in resolution is an FMI or a recognized exchange company. Under the FIRO, the FS may make regulations with respect to the imposition of a levy in connection with the resolution of a particular	Under the DPL, the Deposit Guarantee Fund serves as the pool/source of resolution funding. The principal of cost minimization is applied in the deployment of the funds to financial institutions in resolution.	The MAS Amendment Act introduces a new Division 5B of Part IVB of the MAS Act, empower the MAS to establish resolution funding arrangements, and to set out in regulations the mechanics by which a resolution fund will be established and will operate. The resolution fund will be administered and managed by a trustee and the MAS will provide the initial temporary liquidity loan to the resolution fund. Under the new section 102 of the MAS Act, where one or more withdrawals have been made from a resolution fund under section 101 of the MAS Act, the Minister may (on a recommendation of the MAS) direct the trustee of the resolution fund to recover the sum or sums withdrawn in one or both of the following ways: (a) by making a claim for all or part of that sum or those sums from the

[53] DFA Section 204(d).

[54] DFA Section 206(1).

	financing to facilitate the resolution of the firm. Any provision by the authorities of temporary funding should be subject to strict conditions that minimise the risk of moral hazard, and should include the following: (i) a determination that the provision of temporary funding is necessary to foster financial stability and will permit implementation of a resolution option that is best able to achieve the objectives of an orderly resolution, and that private sources of funding have been exhausted or cannot achieve these objectives; and (ii) the allocation of losses to equity holders and residual costs, as appropriate, to unsecured and uninsured creditors and the industry through ex-post assessments, insurance premium or other mechanisms.	avoid situations where relying on only subordinated, unsecured liabilities is insufficient to cover the cost of resolution, requiring resolution authorities to tap the resolution fund and potentially requiring surviving institutions to make additional contributions. The calculation of any ex post levies should be objective and transparent. Healthy institutions should not be required to contribute greater relative portions to a resolution fund. On the contrary, incentives should be created under which levies are reduced for institutions with higher loss-absorbing capacity. One of the largest potential costs of resolution being that of continued FMI access, please refer to industry recommendations above on contingency planning for continued access to FMIs.	amount borrowed from the OLF, the FDIC must impose assessments on claimants that received higher payments than they were entitled to receive based on the proceeds of the financial company's resolution—except for payments to claimants that were necessary for essential operations of the receivership or the bridge financial company. If such assessments are insufficient to repay the amount borrowed from the OLF, the FDIC must then impose risk-based assessments on bank holding companies with at least $50 billion in total consolidated assets and nonbank financial companies supervised by the FRB to repay the amount borrowed from the OLF. Under the FDIA, financing is available from the DIF, which is funded privately on an ex ante basis through insurance premiums paid by IDIs based on the quantity of their deposits. The DIF is used both to pay for losses associated with deposit insurance and for resolution functions for failed IDIs. The FDIC generally must resolve a failed IDI in the manner that is least costly to the DIF. The FDIC has the authority under the FDIA		entity. The Legislative Council may, on the recommendation of the FS, by resolution prescribe the rate of a resolution levy in accordance with the regulations made by the FS under the FIRO.		financial institution under resolution; (b) by imposing a levy, in accordance with section 104 of the MAS Act (which provides for the computation of the amount of levy by the MAS and the requirement for the MAS to give a written notice to the trustee of the amount of levy) and regulations made for this purpose on the following persons ("**levy payers**"): (i) financial institutions that have been prescribed by regulations as belonging to the same category as the financial institution under resolution; (ii) if the financial institution under resolution is a market infrastructure, those participants of the market infrastructure and of other market infrastructure

			to borrow from the U.S. Treasury if necessary for deposit insurance purposes.[55] Any obligations to the U.S. Treasury on account of such borrowings are obligations of the DIF, which repays the U.S. Treasury through the premiums paid by IDIs.				s, that have been prescribed by regulations as levy payers; (iii) if the financial institution under resolution is a payment system operator, those participants of the payment system operator that have been prescribed by regulations as levy payers. In addition, the Deposit Insurance and Policy Owners' Protection Schemes Act, Chapter 77B of Singapore will be amended to expand the use of the Deposit Insurance Fund to include funding of the resolution of Deposit Insurance Scheme Members (excluding creditor compensation claims), subject to the equivalent cost criterion, i.e. that the amount drawn on the Deposit Insurance Fund should be capped at the amount that would have been paid out in a depositor payout situation for that particular Deposit Insurance Scheme Member in resolution.

[55] FDIA, 12 USC. § 1824(a)(1).

							The MAS has yet to issue the regulations relating to resolution funding under the new Division 5B of Part IVB of the MAS Act.
Recognition of foreign resolution actions and cross-border cooperation	The statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities. Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve domestic stability in the absence of effective international cooperation and information sharing. Where a resolution authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions. The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a	Local branches of global financial institutions should not be required to provide a country-level resolution plan, as their operations are included in group-level plans. The FSB's Key Attributes call for coordination between home and host jurisdictions to ensure that their respective requirements don't overlap and impede the global resolvability of a financial institution. This is achieved by providing a legal requirement for cooperation, information exchange and coordination domestically and with foreign resolution authorities before and during resolution. Domestic resolution regimes should thus formally recognize home-country resolution plans and create a clear and formal statutory recognition procedure for cross-border resolution actions. In questions of cross-border coordination during resolution, the home authority should be	<u>U.S. Resolution of U.S. Financial Company or IDI with Assets or Operations in a Non-U.S. Jurisdiction</u>: The FDIC, as receiver for a financial company under OLA, is required to coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the OL of any financial company that has assets or operations in a country other than the U.S.[56] While the FDIA does not create any material barriers to cooperation with foreign resolution authorities, the FDIC as receiver of an IDI is not required to take into account the impact of the resolution measure taken by the FDIC on financial stability in the relevant foreign jurisdictions. <u>U.S. Resolution of U.S. Branch or Agency of an FBO</u>: No specific requirement exists as to the prior notification to, or consultation with, a home resolution authority of a foreign firm when resolution action is taken by U.S. authorities on their own initiative. The	The current law and regulations do not provide specific guidance on this.	If an RA is notified of the taking of a non-Hong Kong resolution action, the RA may make a recognition instrument that: (i) recognises the action; or (ii) recognises part of the action but does not recognise the remainder (a recognition instrument). The effect if an RA makes a recognition instrument is that the non-Hong Kong resolution action (or the part of it) that is recognised by the recognition instrument produces substantially the same legal effect in Hong Kong that it would have produced had it been made, and had been authorised to be made, under the laws of Hong Kong. An RA may make a recognition instrument irrespective of whether the non-Hong Kong FI or non-Hong Kong group company to which the instrument relates is a within scope FI. The conditions under the FIRO for initiating resolution do not apply to the making of a recognition instrument. An RA must consult the FS before making a recognition instrument. An RA must not make a recognition instrument if the RA is of the	This feature has not been under discussion thus far – more information is expected in 2018 or after.	The MAS Amendment Act was also amended to insert a new Division 5A of Part IVB of the MAS Act to introduce the cross-border recognition framework of foreign resolution actions. Under the new section 94 of the MAS Act, where a foreign resolution authority of a foreign country or territory makes a request to the MAS to recognise a foreign resolution in relation to a foreign financial institution by the foreign resolution authority, the MAS must make a determination that the foreign resolution should be recognised in whole or in part, or that the foreign resolution should not be recognised. The MAS may make a determination that the foreign resolution should be recognised in whole or in part if it is satisfied that all of the following conditions are fulfilled: (a) recognition of the foreign resolution or part would not have a widespread adverse effect on the financial system in Singapore or the economy of Singapore, whether or

[56] DFA Section 210(a)(1)(N)

	foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability. Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority. National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors. Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by	the lead authority and its decisions should take precedence. To aid in the cross-border recognition of resolution regimes, protection of set-off and netting rights should extend to arrangements that wholly or partially arise automatically as a matter of law, and not be limited to those explicitly created by contractual agreement. Industry supports the principle that there should not be any discrimination between domestic and foreign FMI participants by a provider of critical FMI services. Consideration should however be given to the application of stays on termination which might be different in different jurisdictions. Appropriate focus needs to be placed on the broader question of what degree of protection for hosts is appropriate, and how to achieve it in ways that make sense overall. Such a focus should aim to avoid the detrimental effects of excessive internal TLAC structures that would work against FSB cross-border objectives. This should be agreed through the CMGs rather than by host authorities' ultimately determining internal TLAC requirements, albeit in	U.S. authorities have been negotiating the terms of cooperation agreements with non-U.S. regulators, providing that home authorities would be alerted when it becomes apparent that a domestic branch or incorporated entity is likely to enter resolution. Regarding the resolution of a U.S. uninsured federal branch or agency of an FBO, the OCC would determine which entity, if any, should be appointed to resolve such a branch or agency if necessary. The receiver appointed by the OCC and the state resolution authority of a state uninsured branch of an FBO would have discretion to act (or refrain from taking action) in a manner that supports the resolution carried out by a foreign home authority, but it is not explicitly required to do so. A state-chartered branch of an FBO would be resolved under the rules and regulations of the relevant state banking authority, such as the New York State Department of Financial Services for a branch chartered in New York. <u>Non-U.S. Creditors of U.S. Financial Companies or</u>		opinion that: (i) recognition would have an adverse effect on financial stability in Hong Kong; (ii) recognition would not deliver outcomes that are consistent with the Resolution Objectives; or (iii) recognition would disadvantage Hong Kong creditors or Hong Kong shareholders of the entity in relation to which the non-Hong Kong resolution action has been taken. In deciding whether to make a recognition instrument, an RA may take into account any fiscal implications for Hong Kong of the making of the instrument. An RA must not make a recognition instrument unless it is satisfied that an arrangement is in place such that any Hong Kong creditor or Hong Kong shareholder is eligible to claim compensation under an arrangement with the non-Hong Kong resolution authority that is broadly consistent with the eligibility for NCWOL compensation in the FIRO.		not that effect occurs directly or indirectly as a result of the effects of recognising the resolution or part; (b) recognition of the foreign resolution or part would not result in inequitable treatment of any Singapore creditor relative to any other creditor of the foreign financial institution with similar rights, or of any Singapore shareholder relative to any shareholder of the foreign financial institution; (c) recognition of the foreign resolution or part would not be contrary to the national interest or public interest; (d) recognition of the foreign resolution or part would not have material fiscal implications for Singapore; (e) any other condition that is prescribed by regulations for these purposes. Subject to the Minister's approval (with or without modification) of the MAS' determination, the Minister must, as soon as practicable, by order in the Gazette, declare that the foreign resolution is to be recognised. The order may make provision for any of the

	taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceeding.	consultation with home authorities. D-SIB requirements should not be used to create a competitive advantage vis-à-vis GSIBs facing internal TLAC requirements. This is already occurring in some jurisdictions in ways that could be deemed protectionist. In some jurisdictions, the local TLAC or equivalent requirements have been reduced possibly even to zero for competitors of about the same size as a GSIB's material sub-group entity (cf. the Swiss and US cases), reflecting domestic policy choices regarding resolution resourcing and decisions on DSIB designations. Host regulators should be requested by CMGs to justify why a different resolution path or TLAC requirement would be imposed for subsidiaries of G-SIBs relative to what is required for local banks of comparable size and risk profile. The creditor hierarchy should not be subjective to jurisdiction, whether home or host. Host authorities should not give preference to domestic creditors in the event of resolution and host authorities should only take initiative in exceptional cases (i.e. when the home	IDIs: Neither OLA nor the FDIA distinguishes between the claims of creditors on the FDIC receivership of a failed financial company or IDI based on the location of the creditor's claim, the creditor's nationality or the jurisdiction where the claim is payable. Under the FDIA, an insured deposit is given a higher placement in the hierarchy of creditor claims than other unsecured debts of an IDI. Whether or not a deposit at a U.S. IDI is an insured deposit and therefore given preference under the creditor hierarchy depends on the terms provided under the deposit agreement and various statutes, rules and regulations. A U.S. IDI may issue deposits that are dually payable both at a foreign branch and at a U.S. branch of the IDI. Such dually payable deposits are not insured deposits under the FDIA and FDIC regulations.				matters set out under the MAS' resolution powers (i.e. transfer of business, transfer of shares, restructuring of share capital and bail-in), which may be modified to give effect to the foreign resolution. The MAS has stated that it will cooperate closely with foreign supervisory and resolution authorities for cross-border crisis management and resolution planning. For an FI headquartered in foreign jurisdictions, the MAS will review the FI's recovery and resolution plans in consultation with its parent/head office and home authorities, where applicable. The 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. The MAS has also stated that it will continue its 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.

		jurisdiction is not taking action). Resolution authorities in host jurisdictions should not require foreign banks to maintain information that is out of line or more extensive than that held by, and available to them from, a foreign bank's home regulator. Doing so places foreign banks at risk of violating confidentiality and data privacy rules in their home jurisdiction.					
TLAC							The MAS has stated that it does not intend to introduce any additional capital requirements beyond the HLA requirement for D-SIBs (i.e. the increased CAR requirements in MAS Notice 637).
i. Entities subject to requirement	G-SIBs, according to the principles and term sheet[57] developed by the FSB. The term sheet implements the principles in the form of an internationally agreed standard on the adequacy of TLAC for G-SIBs.	TLAC requirements need to be assessed and potentially recalibrated to reflect other capital requirements, including changes to calculations of risk-weighted assets in the BCBS reforms of Basel III rules on credit risk.[58]	The FRB's total loss-absorbing capacity (**TLAC**) regulations apply to: (i) U.S. global systemically-important bank holding companies (**G-SIBs**) (currently, U.S. G-SIBs are JPMorgan, Citigroup, Bank of America, Goldman Sachs, Wells Fargo, Morgan Stanley, State Street and BNY Mellon); and (ii) U.S. intermediate holding companies (**IHCs**) of non-U.S. G-SIBs with at least $50 billion in U.S.	The current law and regulations do not provide specific guidance on TLAC.	The FIRO does not itself specify any requirements on LAC. However, it empowers an RA to make rules: (i) prescribing LAC requirements for within scope FIs or their group companies; or (ii) for connected purposes. The FIRO also contains a list of characteristics that these rules may (but are not required to) have, including that they may take into account the standards of the FSB, the Basel Committee on Banking Supervision, the International Association of	TLAC has not been under discussion thus far – more information is expected in 2018 or after.	N/A

[57] Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution, Total Loss-absorbing Capacity (TLAC) Term Sheet, 9 November 2015: http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf

[58] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

			non-branch assets (**Covered IHCs**).		Insurance Supervisors, the International Organization of Securities Commissions or any other body that issues international standards relating to LAC.		
ii. Eligibility	Credible ex-ante commitments to recapitalise a G-SIB in resolution as necessary to facilitate an orderly resolution and, in particular, to provide continuity of the firm's critical functions, from those authorities which may be required to contribute both to resolution funding costs (to cover losses and meet recapitalisation needs) and temporary resolution funding may count towards a firm's minimum TLAC, subject to the agreement of the relevant authorities, and so long as there are no legal impediments to so doing, including that there is no requirement that senior creditors are exposed to loss when such a contribution is made, and that there is no particular limit specified in law in respect of the amount which may be contributed. TLAC-eligible instruments must: (i) be paid in;	Calibration of TLAC without fully understanding impact of RWA reforms could lead to significantly higher capital requirements. Industry therefore recommends that TLAC requirements be assessed to ensure that its calibration takes into account other workstreams, including increases to risk-weighted asset requirements. Conversely, the TLAC requirements need to be considered in other capital and prudential requirements, including regulatory treatment of accounting provisions, leverage ratios, the net stable funding ratio and proposed capital floors.[59]	U.S. G-SIBs: Under the external TLAC requirement of the final rule, U.S. G-SIBs must maintain eligible external TLAC not less than the greater of 18 percent of the U.S. G-SIB's total risk-weighted assets and 7.5 percent of the U.S. G-SIB's total leverage exposure. A G-SIB's eligible external TLAC is the sum of common equity tier 1 (**CET1**) capital and additional tier 1 capital, excluding capital issued by subsidiaries but held by unaffiliated entities or persons, and unpaid principal of external long term debt (**LTD**) issued by the G-SIB, subject to haircuts based on the amount of principle due to be paid within one year. Covered IHCs: **Resolution Covered IHCs**—which would enter a resolution proceeding separately from their non-U.S. parent company if the parent company were to fail—have the option to issue TLAC and LTD externally to third-parties under the TLAC		The FIRO does not include specific requirements for internal or external loss absorbing capacity requirements, but it contains provisions pursuant to which Hong Kong resolution authorities may issue loss absorbing requirements in the future. To date, no such requirements have been issued, but on 17 January 2018 the HKMA issued a consultation on rules for loss-absorbing capacity for authorized institutions. The consultation sets out details of proposed internal and external loss absorbing capacity requirements, but it does not envision that any local Hong Kong loss absorbing capacity requirements will apply to Hong Kong branches of banks that are incorporated outside of Hong Kong. Consultation responses are due by 16 March 2016.		N/A

[59] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

	(ii) be unsecured; (iii) not be subject to set off or netting rights that would undermine their LAC in resolution; (iv) have a minimum remaining contractual maturity of at least one year or be perpetual (no maturity date); (v) not be redeemable by the holder (i.e. not contain an exercisable put) prior to maturity; and (vi) not be funded directly or indirectly by the resolution entity or a related party of the resolution entity, except where the relevant home and host authorities in the CMG agree that it is consistent with the resolution strategy to allow TLAC-eligible instruments or liabilities issued to a parent of a resolution entity to count towards external TLAC of the resolution entity. In addition, the appropriate authority should ensure that the maturity profile of a G-SIB's TLAC is adequate to ensure that its TLAC position can be maintained should the G-SIB's access to capital markets be temporarily impaired.		regulations or to issue it internally to a foreign parent or foreign wholly owned subsidiary of the foreign parent, consistent with their resolution strategy. Resolution Covered IHCs must maintain external or internal TLAC not less than the greater of: (i) 18 percent of the Resolution Covered IHC's risk-weighted assets; (ii) 6.75 percent of the Resolution Covered IHC's total leverage exposure—only if the Resolution Covered IHC has at least $250 billion in total consolidated assets or at least $1 billion in on-balance sheet foreign exposures; and (iii) 9 percent of the Resolution Covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. **Non-Resolution Covered IHCs**—which would not enter a separate resolution proceeding if their non-U.S. parent company were to fail—may only issue TLAC and LTD to their foreign parent or wholly-owned subsidiary of the foreign parent. Non-Resolution Covered IHCs must maintain internal TLAC				

			not less than the greater of: (i) 16 percent of the Non-Resolution Covered IHC's risk-weighted assets (ii) 6 percent of the Non-Resolution Covered IHC's total leverage exposure—only if the Non-Resolution Covered IHC has at least $250 billion in total consolidated assets or at least $1 billion in on-balance sheet foreign exposures; and (iii) 8 percent of the Non-Resolution Covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. <u>Buffers</u>: The TLAC regulations also require U.S. G-SIBs and Covered IHCs to maintain a risk-based TLAC buffer of comprised of CET1 capital of 2.5 percent of risk weighted assets plus a countercyclical capital buffer, if any, (and a G-SIB surcharge, if applicable). U.S. G-SIBs must also maintain a leverage TLAC buffer comprised of tier 1 capital of 2 percent of total leverage exposure. These buffers are, however, redundant with existing risk-based capital and leverage buffers. <u>Eligible External Debt Securities</u>: Eligible				

			external debt securities are debt instruments that: (i) are paid in and issued by the G-SIB or Covered IHC, as applicable; (ii) are not secured, not guaranteed by the G-SIB or Covered IHC or any of its subsidiaries ad not subject to other arrangements that legally or economically enhance the seniority of the instruments; (iii) have maturity of greater than or equal to one year from the date of issuance; (iv) are plain vanilla; and (v) are governed by U.S. state or federal law.				
iii. Subordination	Eligible TLAC generally must absorb losses prior to liabilities excluded from TLAC in insolvency or in resolution and, in all cases, without giving rise to material risk of successful legal challenge or valid compensation claims; and authorities must ensure that this is transparent to creditors. To ensure that eligible external TLAC absorbs losses prior to liabilities that are excluded from TLAC and therefore to support the aim of ensuring that the G-SIB is credibly and feasibly	The creditor hierarchy should not be subjective to jurisdiction, whether home or host. Host authorities should not give preference to domestic creditors in the event of resolution and host authorities should only take initiative in exceptional cases (i.e. when the home jurisdiction is not taking action).[60]	The regulations do not require contractual subordination for internal LTD securities, instead allowing Covered IHCs to rely on structural subordination, subject to the 5% cap on unrelated liabilities. However, no cap on unrelated liabilities applies if a U.S. G-SIB or Covered IHC chooses to contractually subordinate all of its eligible LTD to all external liabilities such that all of its eligible debt securities would represent the most subordinated claim in a receivership, insolvency,			N/A

[60] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

	resolvable, eligible instruments must be: (i) contractually subordinated to excluded liabilities on the balance sheet of the resolution entity; (ii) junior in the statutory creditor hierarchy to excluded liabilities on the balance sheet of the resolution entity; or (iii) issued by a resolution entity which does not have any excluded liabilities (for example, a holding company) on its balance sheet that rank pari passu or junior to TLAC-eligible instruments on its balance sheet. Subordination of eligible external TLAC to excluded liabilities is not required if: (i) the amount of excluded liabilities on the balance sheet of the resolution entity that rank *pari passu* or junior to the TLAC-eligible liabilities does not exceed 5% of the resolution entity's eligible external TLAC; (ii) the resolution authority of the G-SIB has the authority to differentiate among *pari passu* creditors in resolution; (iii) differentiation in resolution in favour of such excluded liabilities would not give rise to material risk of successful		liquidation or similar proceeding of the U.S. G-SIB or Covered IHC.				

	legal challenge or valid compensation claims; and (iv) this does not have a material adverse impact on resolvability. In all cases, the means of subordination of eligible external TLAC to excluded liabilities, the risk of successful legal challenge or valid compensation claims, and the transparency of the order in which creditors can expect to bear losses in insolvency or in resolution, is subject to discussion in the CMG and review through the RAP. To assess the risk of legal challenge, authorities should consider, among other things: (i) the amount of excluded liabilities, if any, that rank pari passu to TLAC in any given creditor class; (ii) the applicable resolution law for the resolution entity; and (iii) the agreed resolution strategy for the resolution entity. The subordination requirement specified Section 11 of the term sheet does not apply in those jurisdictions in which all liabilities excluded from TLAC specified in Section 10 of the term sheet are statutorily excluded from the scope of the bail-in tool and therefore cannot legally be written down or converted to equity in a						

	bail-in resolution. In this case, liabilities that rank alongside them and are included in scope of the bail-in tool and meet the eligibility criteria for TLAC would in fact be able to absorb losses in resolution and qualify for TLAC. If this option is used, authorities must ensure that this would not give rise to material risk of successful legal challenge or valid compensation claims, and that the terms of the TLAC-eligible liabilities specify that they are subject to bail-in. In those jurisdictions where the resolution authority may, under exceptional circumstances specified in the applicable resolution law, exclude or partially exclude from bail-in all of the liabilities excluded from TLAC specified in Section 10 of the term sheet, the relevant authorities may permit liabilities that would otherwise be eligible to count as external TLAC but which rank alongside those excluded liabilities in the insolvency creditor hierarchy to contribute a quantum equivalent of up to 2.5% risk-weighted assets (***RWAs***) of the resolution entity's minimum TLAC requirement when the TLAC RWA minimum is 16%, and up to 3.5% RWA						

	when the TLAC RWA minimum is 18%. If this option is used, authorities must ensure that the capacity to exclude or partially exclude liabilities from bail-in would not give rise to material risk of successful legal challenge or valid compensation claims. A resolution entity that uses one exemption under this Section cannot use any other exemption set out in this Section.						
iv. Cross-holdings deduction	For G-SIBs with more than one resolution entity and resolution group, the consolidated balance sheet of each resolution group should be calculated inclusive of any exposures of the resolution group to entities in other resolution groups of the same G-SIB. Where such exposures correspond to items eligible for TLAC they should be deducted from TLAC resources. The deduction also applies to exposures to external TLAC issued from a resolution entity to a parent that is also a resolution entity. The G-SIB's home and relevant host authorities, meeting in the CMG, shall discuss and, where appropriate and consistent with the resolution strategy, agree on the allocation of the deduction between the		The U.S. Basel III capital rules require deductions from regulatory capital for a banking organization's investments in unconsolidated financial institutions (**UFI investments**). Amounts of nonsignificant UFI investments—defined as investments in 10 percent or less of the unconsolidated financial institution's outstanding common stock—exceeding 10 percent of the banking organization's CET1 capital must be deducted from the banking organization's regulatory capital amount. Significant UFI investments not in the form of common stock must be deducted in their entirety from the banking organization's regulatory capital amount. Significant UFI investments in the form				N/A

	subsidiary resolution entity and the parent resolution entity. In all cases, the deduction at the parent must be no lower than the parent's exposure to the subsidiary's TLAC, less the amount of TLAC above the subsidiary's minimum TLAC requirement (***surplus TLAC***) that is attributable to the parent (that is, excluding surplus TLAC attributable to third party investors). The calculation of these surpluses should take into account any adjustment that has been agreed pursuant to the paragraph below. Any resulting change in the location of the deduction must respect all regulatory requirements applicable to the G-SIB and be consistent with the G-SIB's resolution strategy. For G-SIBs with more than one resolution entity and resolution group, if the sum of minimum TLAC requirements of the resolution entities within the same G-SIB is above the minimum TLAC requirement which would apply if the G-SIB were to have only one resolution entity, the G-SIB's home and relevant host authorities, meeting in the CMG, shall discuss, and where appropriate and consistent with the G-SIB's resolution strategy, agree		of common stock are subject to a deduction approach whereby: (i) any amount that exceeds 10 percent of the banking organization's CET1 capital must be deducted from the organization's CET1 capital amount; (ii) additionally, any amount not deducted due to clause (i) is pooled with certain other deductible assets and must be deducted from the organization's CET1 capital amount to the extent they exceed 15 percent of the organization's CET1 capital; and (iii) any amount not deducted is subject to a heightened risk weight.				

	an adjustment to minimise or eliminate that difference. Such an adjustment may be applied in respect of differences in the calculation of RWAs between home and host jurisdictions. However, it cannot be applied to eliminate differences resulting from exposures between resolution groups. In any event, the sum of minimum TLAC requirements of the resolution entities in relation to the consolidated balance sheet of the G-SIB shall not be lower than the minimum set out in Section 4.						
Internal TLAC	**<u>The information below is based on the FSB's 6 July 2017 guidance on internal TLAC:</u>** **http://www.fsb.org/wp-content/uploads/P060717-1.pdf.**						The MAS has stated that it does not intend to introduce any additional capital requirements beyond the HLA requirement for D-SIBs.
i. Entities subject to requirement	For G-SIBs: Internal TLAC is the loss-absorbing capacity that resolution entities have committed to material sub-groups. It provides for a mechanism whereby losses and recapitalisation needs of material sub-groups may be passed with legal certainty to the resolution entity of a G-SIB resolution group, without entry into resolution of the	While we accept the concept of internal TLAC, the main basis for trust among authorities – and therefore the willingness to refrain from unilateral actions in a crisis – should be the existence of broader structures of cooperation, more consideration should be given to prioritizing effective cooperation between the CMG members. Pre-positioning TLAC can only support but not replace true	Only Non-Resolution Covered IHCs are required to issue internal TLAC, as described in the "TLAC" rows, above. Under the TLAC regulations, internal TLAC must be issued by a Non-Resolution Covered IHC to its foreign parent or a wholly owned subsidiary of the foreign parent.	The current law and regulations do not provide specific guidance on internal TLAC.	The FIRO does not include specific requirements for internal or external loss absorbing capacity requirements, but it contains provisions pursuant to which Hong Kong resolution authorities may issue loss absorbing requirements in the future. To date, no such requirements have been issued, but on 17 January 2018 the HKMA issued a consultation on rules for loss-absorbing capacity for authorized institutions. The	Internal TLAC has not been under discussion thus far – more information is expected in 2018 or after.	N/A

	subsidiaries within the material sub-group. A material sub-group consists of an individual subsidiary or a group of subsidiaries that are not themselves resolution entities and that, on a solo or sub-consolidated basis, meet certain quantitative criteria (as specified in Section 17 of the FSB's TLAC Term Sheet, and set out below), or are identified by a firm's CMG as material to the exercise of the firm's critical functions. A sub-group of a resolution entity is considered "material" for purposes of applying the internal TLAC requirement if the subsidiary alone or the subsidiaries forming the sub-group on a sub-consolidated basis at the level of the sub-group meet at least one of the following criteria: (i) have more than 5% of the consolidated risk-weighted assets of the G-SIB group; (ii) generate more than 5% of the total operating income of the G-SIB group; (iii) have a total leverage exposure measure larger than 5% of the G-SIB group's consolidated leverage exposure measure; or	cooperation, which would be supported by the development of such agreements. To the extent possible, cooperation protocols should ensure that home and host regulators adhere to the proposed FSB guidance on material entities, common external Pillar 1 TLAC, and level of prepositioning. It should be made clear that material sub-groups consist of material entities, rather than an aggregation of individually immaterial entities that additively could meet the quantitative criteria. Aggregation of "sister companies" that are not otherwise part of an accounting or regulatory consolidation would cause unnecessary governance and risk management problems. Given that the objective of orderly resolution, and therefore TLAC requirements, is to maintain the continuity of critical functions, subsidiaries should only be included within a material sub-group to the extent that they provide critical functions. Composition of material sub-groups should be guided by the materiality criteria in the Term Sheet and further guidance on the appropriate process and procedures for defining material subgroups.			consultation sets out details of proposed internal and external loss absorbing capacity requirements, but it does not envision that any local Hong Kong loss absorbing capacity requirements will apply to Hong Kong branches of banks that are incorporated outside of Hong Kong. Consultation responses are due by 16 March 2016.		

	(iv) have been identified by the firm's CMG as material to the exercise of the firm's critical functions (irrespective of whether any other criteria of this Section are met). The list of material sub-groups and their composition should be reviewed by the home and host authorities within the CMG on an annual basis and, if necessary, revised by the relevant host authorities.	Determinations on materiality should be supported by information that is made clearly available to the CMGs and the firm, should not result in discrepancy to the requirements that apply to other similar firms in the domestic market, and should be subject to review and, in principle, agreement by the CMG. Not all entities in scope of application of the going concern requirements require internal TLAC, in particular those not organized as banks and those that could be resolved through normal insolvency procedures. Entities providing critical services in support of critical functions should normally not be required to have internal TLAC but instead should be able to demonstrate appropriate operational continuity measures. Internal TLAC is not appropriate for such entities. It would artificially attract RWA and create leverage where none was before, inflating the overall balance sheet. Operational continuity solutions, rather than internal TLAC, would also be more appropriate for service-center entities, which have no reason to be capitalized as if they were banks. Minimum debt requirements make					

		no sense for Service Centers, which do not operate on the same basis or with the same funding as operating subsidiaries. It would also be appropriate to develop in further detail why and how alternative arrangements (such as contingency planning, pre-positioned capital resources structured around the actual needs of the entity, guarantees or other devices would be more appropriate for other types of entities, especially service companies or other non-financial entities. Asset management companies, for example, require relatively limited capital. A specific issue also arises for firms that have partially owned subsidiaries that may fall within the scope of the 5% threshold. It should be made clear that resolution entities should not have to provide internal TLAC to absorb losses beyond their ownership interests, with the result that such subsidiaries should be treated the same as stand-alone entities in the relevant local jurisdiction.[61]					
ii. Size and compositi	Host authorities retain ultimate responsibility for	The distribution of internal TLAC should follow the	As discussed in the "TLAC" rows above, Non-		The FIRO does not include specific requirements for		N/A

[61] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

on of internal TLAC	setting internal TLAC requirements for the material sub-groups in their jurisdiction and, in doing so, scaling the requirement within the 75% - 90% range consistent with TLAC term sheet. Establishment of the requirement should be done in consultation with the home authority. The internal TLAC requirement should be set so as to ensure that there is sufficient internal TLAC to cover the loss-absorption and recapitalization needs of the material sub-group and to support the agreed resolution strategy for the resolution group. Host authorities should recognize that their requirements will have implications for the resolution group and take this into account when setting internal TLAC requirements. To promote consistency of internal TLAC requirements across material sub-groups of the same resolution group and with a view to ensuring that internal TLAC does not exceed external Minimum TLAC, the home authority should coordinate the host authorities' assessments of internal TLAC requirements and provide information to the host authorities as necessary to	principle of proportional distribution throughout the group, which should be reiterated in the Guiding Principles. Proportional distribution has the benefit of providing a simple, common-sense rule that can help reduce any incentives for regulators to compete for resources within the group. Internal TLAC requirements for a material sub-group should generally not exceed such requirements for equivalent local banks. It should also be made clearer that branches of a resolution entity are not in scope for internal TLAC, being part of the same legal entity as the resolution entity. The firm should be given a chance to submit comments or evidence to assist reaching appropriate determinations, including as necessary to rebut assumptions and preliminary conclusions. Calculating appropriate levels of internal TLAC requires close and specific analysis of the group's and the subsidiary's structure, balance sheet and the composition of its internal TLAC, avoiding simplistic assumptions about 1:1 relationships of external and internal TLAC. It should be possible for any entity within a group	Resolution Covered IHCs must maintain internal TLAC not less than the greater of: (i) 16 percent of the Non-Resolution Covered IHC's risk-weighted assets; (ii) 6 percent of the Non-Resolution Covered IHC's total leverage exposure—only if the Non-Resolution Covered IHC has at least $250 billion in total consolidated assets or at least $1 billion in on-balance sheet foreign exposures; and (iii) 8 percent of the Non-Resolution Covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. The FRB's final minimum risk-weighted TLAC requirement for Non-Resolution Covered IHCs is 89% of the final minimum risk-weighted TLAC requirement for U.S. G-SIBs, which is at the high end of the 75-90% range for internal TLAC for material foreign subsidiaries established by the FSB in its final international TLAC standard.		internal or external loss absorbing capacity requirements, but it contains provisions pursuant to which Hong Kong resolution authorities may issue loss absorbing requirements in the future. To date, no such requirements have been issued, but on 17 January 2018 the HKMA issued a consultation on rules for loss-absorbing capacity for authorized institutions. The consultation sets out details of proposed internal and external loss absorbing capacity requirements, but it does not envision that any local Hong Kong loss absorbing capacity requirements will apply to Hong Kong branches of banks that are incorporated outside of Hong Kong. Consultation responses are due by 16 March 2016.		

	support their assessments. TLAC that is not distributed to material sub-groups in excess of that required to cover risks on the resolution entity's solo balance sheet (***surplus TLAC***) should be readily available to the resolution entity to recapitalise any direct or indirect subsidiary. Home authorities should consider the characteristics of the corresponding assets in which such surplus TLAC is held to ensure that it is readily available to recapitalise any direct or indirect subsidiary, as required by Section 18 of the TLAC term sheet. Authorities should ensure that there are no legal and operational barriers to recapitalisation. Host authorities should determine the composition of internal TLAC in consultation with the home authority. In particular, host authorities should consult with the home authority on the impact that the composition of internal TLAC relative to external TLAC could have on the credibility and sustainability of the resolution strategy and the ability of the material sub-group to effectively pass losses and	(including a special-purpose financing entity), whether it is a resolution entity or not, to hold internal TLAC for the benefit of a resolution entity, so long as losses of the group are appropriately up-streamed as needed, as discussed under "flow of resources." The current linkage between the composition of internal TLAC and external TLAC, as described in Section 18 of the Term Sheet should be eliminated. There is already some flexibility specified in the text here, but it is restricted to provide relief for consolidation effects "only" and does not indicate how that might be achieved. However, there are other legitimate issues beyond consolidation effects that can arise in group structure, and developments in this area are evolving rapidly (for example the construction of secured support agreements in the US RRPs). We believe that it would be wiser to avoid a presumption of direct linkage between external TLAC and the sum of internal TLAC, as these tools are designed to address different specific issues. We suggest removing this language, and replacing it with broad deference to the home					

	recapitalisation needs to the resolution entity. Host authorities in consultation with the home authority may consider the inclusion within the internal TLAC requirement of an expectation that internal TLAC consist of debt liabilities accounting for an amount equal to, or greater than, 33% of the material sub-group's internal TLAC requirement. In applying such an expectation, host authorities should take into account the composition of the material sub-group's existing internal TLAC instruments and the practicality of making changes to it, with a view to ensuring that the material sub-group is not required to issue additional internal TLAC beyond the requirement set by the host authority. The issuance of internal TLAC by a material sub-group should credibly support the resolution strategy and the passing of losses and recapitalisation needs to the resolution entity. If this cannot be achieved, authorities should require the G-SIB to make changes to their internal TLAC issuance strategies in order to improve its resolvability. For example, internal TLAC may be	regulator, subject to providing comfort to host regulators. This would allow a group to provide comfort to hosts without having an unnecessarily direct effect on external TLAC issuance requirements. Such an approach would help reduce the effects of misallocation risk, and mitigate the issue of super-equivalence. This approach supports not only the key objective of improving bank resolvability, but also improves internal flexibility which can reduce the likelihood of bank or entity failure in the first place. Lastly, we believe that a less prescriptive approach is prudent at this time, considering the rapidly evolving nature of bank structures in this area, and is therefore likely to be more durable. It is not appropriate to transpose the 33% debt "expectation" to internal TLAC. External TLAC may be defensible on grounds it provides for market monitoring by external debt holders, but this argument does not apply to internal TLAC. The same monitoring function can be performed in other ways by regulators and resolution authorities for material sub-groups (and there is no market					

	issued directly from the relevant entity within the material sub-group to the resolution entity or indirectly through multiple legal entities within the group. To avoid possible double counting, authorities should consider applying an internal TLAC deduction approach or an equivalently robust supervisory approach. Internal TLAC should generally be subject to the governing law of the jurisdiction in which the material sub-group entity issuing the internal TLAC is incorporated. It may be issued under or be otherwise subject to the laws of another jurisdiction if, under those laws, the application of resolution tools by the relevant resolution authority, or the write-down or conversion into equity of instruments at PONV by the relevant authority, is effective and enforceable on the basis of binding statutory provisions or legally enforceable contractual provisions for the recognition of resolution actions and statutory PONV write-down powers. Authorities and G-SIBs should identify and address any legal, regulatory or operational obstacles that may arise from the implementation	oversight), so there is no reason to constrain funding choices by such an "expectation" of a debt requirement. Unlike external TLAC, the equity and debt holder of internal TLAC may be the same entity, minimizing the need for the separate debt requirement if sufficient equity capital is held in the form of internal TLAC. Additionally, certain subsidiaries may already hold sufficient equity capital to meet the internal T LAC requirements; a debt requirement would impose additional costs without an apparent benefit to resolvability. Thus, stating an expectation that would often become a requirement would unnecessarily limit firms' flexibility in deciding the appropriate funding mix for a given situation while not improving the ability of a material sub-group to absorb losses. Firms may choose to include debt in their internal funding mixes to some extent for tax or other reasons, but should have the ability to decide on the appropriate funding mix for their corporate structures. Use of guarantees to provide internal TLAC capacities in appropriate cases is important, notably because it alleviates the					

	of internal TLAC mechanisms. Particular issues that may need to be considered include: subordination of internal TLAC, regulatory frameworks for large exposures, tax treatment of internal TLAC and mechanism to upstream losses.	problem of deposit–funded banks where on-balance-sheet TLAC would necessarily lead to the addition of supplemental assets, creating more risks and increasing leverage. With respect to the concept of a “specific pool” of collateral, the Guidance seems to intend that dedicating a pool would be only an option, but the point should also be made that a “specific pool” should be considered necessary only when clearly indicated by the facts and circumstances of the case. As a general matter, specific pools (especially if there are multiple pools) would increase complexity and undermine flexibility, increasing misallocation risk, and so should not be encouraged. A group ought to be able to maintain, and manage, a common pool of collateral sufficient to cover all its obligations for internal TLAC. Firms should be permitted to maintain common pools, provided of course the group maintains sufficient collateral, after haircuts, to meet all obligations. Guarantees clearly need to meet the conditions of Guiding Principle 9: ‘will credibly and feasibly pass losses and recapitalisation needs to the resolution entity….’, but if this					

		condition is met, there is no particular reason why these guarantees should necessarily be collateralized. Collateralization introduces rigidities in the management of financial groups, for no apparent advantage other than that of reassuring a host authority of the intention of the home authority to force respect of the guarantee. This runs contrary to the spirit of international cooperation that the FSB seeks to promote. Home/host negotiations should allow partially or wholly uncollateralized guarantees where they make sense both for the group and for achievement of resolution goals. Guiding Principle 9, like the Term Sheet, requires that any collateral provided must meet the maturity requirements of external TLAC, i.e. have a maturity of over 12 months. Normally collateral is drawn from a list of acceptable assets, and can be rotated in and out, provided that all times there is enough, as the Guiding Principle recognizes; however, it is not clear why, for internal TLAC purposes, the maturity condition should be maintained, provided					

		processes exist to make sure the guarantee is always collateralized. Collateral of sufficient quality to satisfy demanding host authorities, and with residual maturity of over 12 months could well prove to be scarce in the market. The FSB should give further attention to the size of the pool of collateral available for such purposes.[62]					
iii. Design of trigger mechanism	Contractual triggers for internal TLAC instruments should at a minimum specify the conditions under which a write-down and/or conversion into equity is expected to take place. In accordance with the TLAC term sheet, this should be the point at which the material sub-group reaches the point of non-viability (***PONV***), as determined by the host authority. Since this judgement is made with reference to the relevant legal framework in the host jurisdiction, the contractual terms should be consistent with the relevant PONV conditions in the host jurisdiction. Home and host authorities should consider if the extent of the write-down and/or conversion into equity of internal TLAC and the period for home	More detail on the appropriate procedures and criteria for triggering internal TLAC would be helpful. More transparency, for instance, is needed on the criteria that authorities will use to determine the PONV in order to ensure ex-ante coordination of expectations. The industry is concerned about the degree of host control of the process: home-country consent should be a firm requirement, subject to override only in extraordinary circumstances, and only after discussion of such circumstances with the home country (and the firm). It would be appropriate to define detailed communication protocols	Eligible internal debt securities must include a contractual provision approved by the FRB that provides for the immediate conversion or exchange of the instrument into CET1 capital of the Non-Resolution Covered IHC upon the FRB's issuance of an internal debt conversion order, which can only be issued if certain strict conditions are satisfied. The FRB is permitted to issue an internal debt conversion order, activating the contractual trigger, if the following conditions are met: (i) the FRB has determined that the Non-Resolution Covered IHC is in default or in danger of default; and				N/A

[62] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

	authority consent should be incorporated into the contractual terms, or whether such principles should be agreed separately. Providing greater specificity in the contractual terms may be necessary in daisy chain structures to mitigate the risk that losses and recapitalisation needs do not pass through each step in the chain to the resolution entity due to a failure to trigger at a given level in the chain. However, the benefits of greater specificity should be weighed against the potential risks of constraining the flexibility of home and host authorities. <u>Stage 1 – Home and host communication prior to triggering internal TLAC</u> Host authorities should make home authorities aware as far as possible in advance that they are considering making a determination that the material sub-group has reached PONV. This applies regardless of whether internal TLAC is triggered through statutory powers (in the case of regulatory capital instruments) or contractual triggers. Home and host authorities should consider alternative options to restore the material sub-	for CMGs to be followed as a prerequisite for triggering internal TLAC. This would ensure that the home authority and CMG members are adequately informed and can take the preparatory steps on their side. While the protocols should specify the necessary steps to ensure that the home authority and CMG members are informed early in the process they should not predetermine specific measures that could otherwise limit the flexibility of the CMG to react to a specific situation. It should be stated very explicitly that there should not be features in internal TLAC that would trigger automatically upon specific events. Any trigger in a debt instrument that would provide for mandatory conversion or write down would be highly problematic, as it would exclude any other recapitalization measures that may be feasible in the circumstances, by the resolution entity or its home regulator, and may trigger counterproductive tax or other consequences that should be avoided. Furthermore, contractual write-down provisions may not be required where the statutory regime allows regulatory action to take place at the	(ii) any of the following circumstances apply: (a) a top-tier FBO that directly or indirectly controls the Non-Resolution Covered IHC or any subsidiary of the FBO parent has been placed into bankruptcy or similar proceedings, including the application of statutory resolution powers, in its home country; (b) the home country supervisor of the FBO has consented or has not objected within 24 hours of notification by the FRB to the conversion or exchange of the Non-Resolution Covered IHC's eligible internal debt securities; or (c) the FRB has made a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the Non-Resolution Covered IHC under OLA.				

	group's viability. Internal TLAC should only be triggered as a 'last resort' option when PONV is reached and no credible alternative options to restore the material sub-group's viability are available. The host authority should consult with the home authority on potential alternative options to restore the material sub-group's viability prior to making a determination that the material sub-group has reached PONV. <u>Stage 2 – Determination to trigger internal TLAC</u> The host authority's decision to trigger internal TLAC should be based on the determination that the material sub-group has reached the point of non-viability, and not be driven solely by resolution actions or the triggering of TLAC elsewhere in the group. Where the consent of the home authority of the resolution entity is required to trigger internal TLAC the host authority should – once it has reached a determination that the material sub-group has reached PONV – provide the home authority with sufficient time, for	Point of Non Viability (PONV) as determined by regulators. Not all circumstances that might require triggering internal TLAC can be foreseen and automatic triggers may be undesirable. There should therefore be a stronger presumption in favor of greater clarity in contractual terms, with a further presumption that stated terms will be followed. This is important not only to create as much clarity as possible between home and host authorities, but also because it may affect the group's disclosures to the market about its resolution plans and prospects, and therefore may affect the market for its paper, and overall market confidence. Internal TLAC should only be triggered as a "last resort" option, and that effects on the rest of the group (and potentially on wider financial stability) should be taken very seriously. Hosts must not trigger internal TLAC because of resolution actions elsewhere in the group. The principles of the ISDA Protocol should apply equally to internal TLAC decisions of hosts.[63]					

[63] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf

	example 48 hours, to decide whether to consent to the write-down and/or conversion into equity of internal TLAC. Communication and coordination between home and host authorities should commence as early as possible and well in advance of making a determination that the material sub-group has reached PONV. In cases where the home authority objects to the write-down and/or conversion into equity of internal TLAC, or does not provide consent within the ex ante agreed timeframe, the host authority may choose to apply its own resolution bail-in or other resolution powers to the material sub-group. This should be avoided to the greatest extent possible, as such actions may lead to a disorderly resolution with severe consequences for the financial system. Similarly, host authorities should avoid the premature application of statutory resolution powers to material sub-groups in their jurisdiction. <u>Stage 3 – Write-down and/or conversion of internal TLAC</u> The host authority should determine the capital shortfall and						

	recapitalisation level of a material sub-group that has reached PONV. The host authority should assist the home authority with its assessment of the condition of the resolution entity and the resolution group, including any subsidiaries in the host jurisdiction. The host authority will, at a minimum, need to propose to write-down and/or convert into equity a sufficient amount of internal TLAC so that the material sub-group will meet the jurisdiction's regulatory capital requirements (e.g. the minimum Basel III capital requirements and firm-specific additional requirements). Home and host authorities should ensure that the write-down and/or conversion into equity of internal TLAC in the form of regulatory capital instruments that are held by third parties does not (i) result in a potential change of control of the material sub-group that would be inconsistent with the resolution strategy for the resolution group or prohibited by the legal framework; or (ii) give rise to material risk of successful legal challenge. G-SIBs should be expected to meet the internal TLAC requirement as from the date when they are						

	expected to comply with the TLAC standard and implement the Minimum external TLAC requirement as provided in section 21 of the TLAC term sheet. If during the implementation period or thereafter a new sub-group is identified as material, for example due to restructurings, acquisitions, operational changes or changes in sub-group composition, the sub-group should meet the internal TLAC requirement within 36 months from the date of its identification as a material sub-group at the latest, or within an appropriate shorter period as determined by the host authority in consultation with the home authority.						
iv. Cooperation between home and host regulators	Home and relevant host authorities in CMGs may jointly agree to substitute on-balance sheet internal TLAC with internal TLAC in the form of collateralised guarantees, subject to the following conditions: (i) the guarantee is provided for at least the equivalent amount as the internal TLAC for which it substitutes; (ii) the collateral backing the guarantee is, following appropriately conservative haircuts,	The industry would like to see more balance to provide guidance emphasizing a cooperative, group approach to resolution agreed in CMGs and led by home authorities. This in turn would advance the purposes of the FSB's approach to effective, efficient cross-border resolution, reducing the risk of local ring-fencing, fragmentation of approaches, and misallocation of resources as a result of the accretion of unnecessary levels of internal TLAC.	The FRB participates in Crisis Management Groups for all Covered IHCs. In order to cooperate better with home countries, the FRB made some changes from the TLAC proposal to the final rule, in that the final rule modifies the proposal to require the FBO itself, rather than the home country resolution authority, to certify to the FRB whether the planned resolution strategy of the FBO involves the Covered IHC or its subsidiaries entering resolution, receivership, insolvency,			N/A

	sufficient fully to cover the amount guaranteed; (iii) the guarantee is drafted in such a way that it does not affect the subsidiaries' other capital instruments, such as minority interests, from absorbing losses as required by Basel III; (iv) the collateral backing the guarantee is unencumbered and in particular is not used as collateral to back any other guarantee; (v) the collateral has an effective maturity that fulfills the same maturity condition as that for external TLAC; and (vi) there should be no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant material sub-group. The host authority should satisfy itself that the collateralised guarantee will credibly and feasibly pass losses and recapitalisation needs to the resolution entity at the PONV. See other guidance on home/host coordination under other "Internal TLAC" sub-headings above.	It would be helpful if the guidance were focused on more collaborative, home-led structures, and aimed at incentivizing cooperative behavior among all relevant authorities, to support the best result for all, avoiding unhelpful competition for resources at any stage. The Guidance might be misinterpreted in a way that would lead to fragmentation and inefficient use of global resources. FSB guidance on a cooperative group approach focused on the group's resolution strategy would help mitigate this misinterpretation risk. The focus on a leading role for hosts may lead to the problems of Superequivalence, misallocation risk, and imperfect balance between home and host concerns. The Guidance should acknowledge that resolution planning has evolved since the FSB Term Sheet provisions on internal TLAC were finalized in November 2015 and that the internal TLAC guidance should be implemented in a manner that provides flexibility to authorities and firms as those standards continue to evolve and encourages coordination and cooperation among home and hosts. In short, the	or similar proceedings in the United States. The certification must be provided by the FBO to the FRB on the later of June 30, 2017 or one year prior to the date on which the Covered IHC is required to comply with the TLAC regulations. In addition, the FBO must provide an updated certification to the FRB upon a change in resolution strategy.				

		Guidance would be more useful and more consistent with the FSB's good work to date if it gave greater emphasis to the concept of internal TLAC (which is to say, group funding structures) as part of the overall, cooperative resolution planning process. The Guidance could do more to promote cooperative effort of home and host authorities in order to ensure coherent, effective use of group resources in resolution. The FSB should set out a fuller framework for home-host cooperation, articulating sound principles for the functioning of CMGs, setting objective criteria to follow when agreeing internal TLAC requirements and contemplating regular reviews and assessments at each periodic CMG meeting. The home authority should have the primary responsibility for determining whether internal TLAC at the sub-group level supports the group resolution strategy. Flexibility that allows groups to avoid misallocation risk is important in the interests of the system as a whole.[64]					

[64] IIF-GFMA Response to FSB Consultation on *Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ("Internal TLAC")* http://www.fsb.org/wp-content/uploads/Institute-of-International-Finance-IIF-and-Global-Financial-Markets-Association-GFMA2.pdf