

29 August 2018

Prudential Policy Department  
Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117

**Re: ASIFMA response to the MAS Proposed Regulations to Enhance the Resolution Regime for Financial Institutions in Singapore**

Dear Sirs,

The Asia Securities Industry & Financial Markets Association (ASIFMA)<sup>1</sup> and its members welcome the opportunity to provide feedback on this consultation paper, which sets out the Monetary Authority of Singapore's (MAS) proposed regulations to enhance the resolution regime for financial institutions (FIs) in Singapore.

ASIFMA fully supports the development of a recovery and resolution framework in Singapore to safeguard the stability of Singapore's financial system while minimising public costs and economic impact in the event of a financial crisis. In line with that support, we submitted responses in June 2015 and 2016 to the MAS' previous consultations on enhancements to Singapore's resolution regime for financial institutions. We therefore commend the MAS's consultation paper for being in line with the expectations set in those consultations.

We do note several areas worth further consideration, however, and urge the MAS to align with international norms to safeguard Singapore's competitiveness as a global financial centre. ASIFMA recommends that the contractual recognition requirement not apply to FIs operating as branches in Singapore, in line with the Financial Stability Board's (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions ("the Key Attributes"). ASIFMA is also concerned that the scope of the proposed bail-in may be too narrow to provide sufficient loss-absorbing capacity. Exempting senior debt is not fully aligned with the objective of the FSB's Key Attributes of ensuring that authorities have the capacity to allocate losses to shareholders and creditors according to the creditor hierarchy. We also urge the MAS to provide further guidance on ex-post funding for resolution. We set forth below our replies to the specific

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<sup>1</sup> ASIFMA is an independent, regional trade association with over 80 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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questions raised in the consultation paper, together with comments on related matters, drawing on member feedback and discussions with financial institutions' clients.

We look forward to continued engagement with the MAS on this issue. If you have further questions or would otherwise like to follow up, please contact Wayne Arnold, ASIFMA's Executive Director and Head of Policy and Regulatory Affairs, at [warnold@asifma.org](mailto:warnold@asifma.org) or +852 2531-6560.

Sincerely,



Mark Austen  
Chief Executive Officer  
Asia Securities Industry & Financial Markets Association

**Question 1. MAS seeks comments on:**

- a. the draft regulations in relation to the temporary stays on termination rights;**
- b. the scope of qualifying pertinent financial institutions; and**
- c. whether this contractual recognition requirement should also apply to FIs which operate as branches in Singapore that are required by MAS to perform recovery and resolution planning, and if not, the reasons for this.**

ASIFMA welcomes the amendment to Regulation X under Annex B to exempt central banks, designated payment systems, approved clearing houses, recognised clearing houses and depositories from the operation of the temporary stay, as the exemption is now clearly defined. Consistent with Annex B, we assume that contracts entered into by qualifying pertinent FIs with the above will be excluded, and that the same applies to related entities of qualifying pertinent FIs.

ASIFMA recommends, in response to Question 1c above, that the contractual recognition requirement not apply to FIs operating as branches in Singapore, in line with the FSB's Key Attributes. Given that only Singapore-incorporated FIs are subject to the MAS's resolution powers, it is only those entities that should be required to include these contractual provisions. FIs operating as branches in Singapore will most likely be subject to the resolution regimes of their home country, which may conflict with contractual provisions applied in Singapore. In addition, it is impractical to require foreign branches, which will likely apply non-Singapore law to their underlying documentation, to amend a majority of the documents used in Singapore. The implementation of a branch-specific regime would pose significant challenges (e.g. identification of clients on a branch analysis, trade blocking processes and related controls). This may have the unintended effect of reducing the number of liquidity providers in Singapore. Finally, ASIFMA recommends that the MAS take an approach on contractual recognition requirements consistent with those in other key jurisdictions.

ASIFMA would also welcome further clarity on the definition of "financial contracts *within the meaning of regulation 32*" in scope of the temporary stay on early termination entails. We would also appreciate clarity on the definition of related entities "supported" by a qualifying pertinent FI, as we assume the intention of this is to spare pertinent FIs from having to make payments pursuant to financial support if the relevant contract is terminated. We understand that the MAS is also drafting a number of regulations relate to this consultation paper. ASIFMA would appreciate these draft regulations being opened for consultation so we may more accurately assess the rules' overall impact.

**Question 2. MAS seeks comments on:**

- a. the draft regulations in relation to the statutory bail-in regime; and**
- b. the proposal to require Singapore-incorporated banks and bank holding companies to disclose, on the front cover of any offering document related to an eligible instrument, the consequences of a bail-in to debt holders for liabilities within the scope of MAS' statutory bail-in powers.**

Paragraph 3.10 of the consultation paper states that unsecured subordinated liabilities and contractual bail-in instruments issued or contracted after the effective date of the bail-in regime will be prescribed as eligible instruments within scope of MAS' statutory bail-in powers.

ASIFMA is concerned that the scope of bail-in may be too narrow to provide sufficient loss-absorbing capacity. Exempting senior debt is not fully aligned with the objective of the FSB Key Attributes to ensure that authorities have the capacity to allocate losses to shareholders and creditors in accordance with the creditor hierarchy, which is intended to enforce market discipline and reduce moral hazard. The primary purpose of resolution funds should be to support funding needs in resolution for the continued function of the financial market. Resolution funds should not dilute bail-in as the primary means of absorbing losses or be regarded as an easily used, medium- to long-term means of absorbing supplemental losses. ASIFMA therefore supports expanding the scope of statutory bail-in to cover unsecured senior debt in the draft statute, in line with the FSB's comments in its latest Peer Review of Singapore. Even though contractual bail-in is a helpful addition, it is not automatic and may not offer the same reliability and predictability as statutory bail-in.

With regards to paragraph 3.7, ASIFMA would welcome confirmation that the contractual recognition requirement will only apply to new financial contracts entered into after the effective date of this regulation, i.e. "prospective effect." However, should the contractual recognition requirement apply to live financial contracts from the effective date, ASIFMA would suggest at least a 24-month transitional period be applied to give banks time to make the necessary re-papering arrangements. Also, given that breach of contractual recognition requirements could lead to significant fines and would be a criminal offense, it remains unclear what would happen if a foreign offshore counterparty refused to amend the contract.

**Question 3. MAS seeks comments on the draft regulations in relation to the creditor compensation framework.**

The recent consultation provides the framework for appointment of a valuer and certain valuation principles the valuer must follow. ASIFMA believes the valuer should be independent from any major creditor of an FI in resolution (in addition to MAS/FI in resolution) or any other party that might benefit from the compensation framework. ASIFMA suggests the MAS add flexibility on the way payments to creditors are made, for instance by introducing stays or instalments, as large payments for compensation could have a knock-on effect on the resolution entity.

**Question 4. MAS seeks comments on:**  
**a. the draft regulations to safeguard covered bond programmes; and**  
**b. whether securitisations or other similar arrangements not covered under the existing safeguards should be protected during a partial transfer of business.**

ASIFMA does not have any comments on Question 4.

**Question 5. MAS seeks comments on the new Regulations to be issued under the Deposit Insurance and Policy Owners' Protection Schemes Act.**

ASIFMA notes that the MAS proposes to issue new regulations on the valuation principles for calculating an equivalent cost, and that it would rely on the Deposit Insurance Fund to provide temporary liquidity support for the resolution of a Deposit Insurance Scheme Member. We would welcome further clarity on ex-post funding for resolution. ASIFMA recommends transparent standards for calculating the ex-post levy, especially where the scope of instruments for bail-in is limited, as such transparency would alleviate foreign banks' concern that they might be subject to uncapped liabilities.