

## Client Alert

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## MAS Issues Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore

### Background

In June 2015, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper on the Proposed Enhancements to the Resolution Regime for Financial Institutions in Singapore ("**June 2015 Consultation Paper**"). On 29 April 2016, the MAS issued its Response to Feedback Received on the June 2015 Consultation Paper ("**Response**"), and an additional consultation paper on Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore ("**April 2016 Consultation Paper**").

Collectively, the June 2015 Consultation Paper, Response and April 2016 Consultation Paper set out the MAS' proposed framework for strengthening the resolution regime for financial institutions in Singapore, in accordance with the principles set out in the Key Attributes of Effective Resolution Regimes for Financial Institutions adopted by the Financial Stability Board. The MAS' proposed framework covers recovery and resolution planning, temporary stays and suspensions of termination rights triggered by resolution, statutory bail-in powers, cross-border recognition of resolution actions, creditor safeguards and resolution funding.

### Proposed Resolution Framework

The following requirements and powers are set out under the proposed resolution framework:

(a) **Power to require notified financial institutions to formulate recovery and resolution plans:** Certain financial institutions (including banks and insurers) will be required to prepare and implement recovery plans, and submit such plans to the MAS. For financial institutions headquartered in foreign jurisdictions, MAS has indicated in its Feedback that it will review the recovery plans in consultation with the financial institutions' group/head offices' recovery and resolution plans, provided that they adequately take into consideration the Singapore operations.

In the April 2016 Consultation Paper, the MAS has also proposed a new Notice and Guidelines to elaborate on these requirements. The proposed Notice and Guidelines indicate that the recovery plan should provide for a framework of events triggering recovery processes, an escalation process upon the occurrence of a trigger event, a menu of recovery options, and a communication plan. However, following feedback to the June 2015 Consultation Paper, the MAS has decided against imposing additional criminal penalties (including imprisonment) on the board and executive officers of a financial institution for the financial institution's failure to comply with such requirements. Instead, the MAS will rely on existing powers to impose fines on the board and executive officers in such instances.

**(b) Power to introduce temporary stays of termination rights triggered by resolution:** The MAS will have the power to temporarily stay the termination rights of certain counter-parties of a financial institution, which may be triggered in the event of a resolution. This includes the termination rights of counterparties to certain financial contracts, rights of re-insurers to terminate coverage, and rights of certain service providers providing essential services and functions to the financial institution in resolution. Whereas in the June 2015 Consultation Paper, the MAS had also proposed a specific power to suspend the rights of insurance policy owners to withdraw from policies, the MAS has since decided that this is not necessary as it already has the power to prohibit certain financial institutions from performing any act or function connected with its significant business.

In addition, following feedback to the June 2015 Consultation Paper, the MAS has agreed to limit the maximum duration of any temporary stay to 2 business days with respect to termination rights of counterparties to certain financial contracts and rights of certain service providers providing essential services and functions to the financial institution in resolution. The MAS also indicated in its Response that the power to stay termination rights will not apply to contracts with central banks, payment systems, clearing houses and depositories.

**(c) Statutory bail-in:** The MAS will have the power to write down or convert into equity or other instrument of ownerships, all or part of unsecured and uninsured creditor claims, of Singapore-incorporated banks and bank holding companies. In its Response, the MAS indicated that the exercise of bail-in powers will depend whether: (i) the bank's available assets can support payment of its liabilities; (ii) the bank is or is likely to become insolvent; (iii) the bank is carrying on its business in a manner likely to be detrimental to the interests of its depositors or creditors; (iv) the bank has contravened the Banking Act; (v) the bank has failed to comply with any condition attached to its licence; or (vi) it is in the public interest to do so. In particular, the MAS will consider the bank's viability, taking into account its risk-based capital adequacy.

**(d) Cross-border recognition of resolution actions:** In its Response and April 2016 Consultation Paper, the MAS will implement a statutory framework whereby upon being notified of a foreign resolution action and with the approval of the Minister, the MAS may recognise all or part of the foreign resolution action or to deny recognition. Recognition depends whether the foreign resolution action would have widespread adverse effect on the financial system or economy of Singapore, whether it discriminates against creditors resident in Singapore, whether it is against public interest, whether it has material fiscal implications, and any other matters that MAS may prescribe. If recognised, the resolution may have substantially the same legal effect as if it was taken by the MAS under the proposed resolution framework.

**(e) Creditor safeguards:** Generally, in exercising resolution powers, MAS intends to respect statutory creditor hierarchy of claims and the principle of equal treatment of creditors of the same class. However, MAS will establish a framework to compensate creditors who will be made worse off in resolution as compared to liquidation. In its Response, the MAS has clarified that the framework will apply where the following resolution powers are exercised by the MAS: compulsory transfer of business, compulsory transfer of shares, compulsory restructuring of share capital or bail-in powers, and may also apply where the MAS has recognised or supported foreign resolution actions.

**(f) Resolution funding:** A resolution funding arrangement will also be established to recover costs incurred in resolving a financial institution from other financial institutions within the financial industry. Such funding may go towards compensation of creditors, meeting of administrative costs, provision of loans to the financial institution, meeting cost of loss-sharing agreements with acquiring financial institutions, etc. In its Feedback, the MAS indicated that contribution to

resolution funding from each contributor will depend on the risk that the contributor poses to the financial system, the benefit it derives from the resolution of the particular financial institution or resolution regime in general, economic or financial conditions of the contributor and other relevant factors. While the MAS had previously indicated that separate funding arrangements could be set up for different sectors within the finance industry (i.e. banks, insurers, capital market infrastructures and designated payment system operators), following feedback, the MAS will consult further on the funding structure for capital market infrastructures and designated payment system operators.

## Further comments

The MAS has invited interested persons to provide comments to the April 2016 Consultation Paper by **30 May 2016**.