

CONSULTATION PAPER

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Proposed Legislative Amendments to Enhance the Resolution Regime for Financial Institutions in Singapore

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 23 June 2015, the Monetary Authority of Singapore (MAS) issued a consultation paper on proposed enhancements to the resolution regime for financial institutions in Singapore. MAS has considered the feedback received. The consultation paper and our responses to comments of wider interest can be found on the MAS website at [this link](#).

1.2 To effect the policy proposals set out in the consultation paper, MAS is now consulting on the draft legislative amendments for enhancing the resolution regime for financial institutions in Singapore. MAS is also consulting on amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 and a draft Notice, as well as Guidelines, on recovery and resolution planning for banks. MAS invites comments from interested parties on these proposed amendments.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. Hence, if respondents would like (i) their whole submission or part of it, (ii) their identity, or (iii) both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.3 Please submit written comments by 30 May 2016 to:

Prudential Policy Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Email: policy@mas.gov.sg

1.4 Electronic submission is encouraged. We would appreciate that you use [this suggested format](#) for your submission to ease our collation efforts.

2 Introduction

2.1 As part of MAS' review of the resolution regime for financial institutions in Singapore, MAS will be amending the Monetary Authority of Singapore Act (MAS Act) to strengthen our powers to resolve distressed financial institutions while maintaining continuity of their critical economic functions.

2.2 To complement the exercise of resolution powers under the MAS Act, MAS will be issuing a Notice, as well as Guidelines, on recovery and resolution planning for banks.

2.3 MAS will also be amending the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 to include safeguards to ensure that set-off and netting arrangements will not be affected by the exercise of resolution powers under the MAS Act.

3 Proposed Amendments to the MAS Act

3.1 The draft amendments to enhance the resolution regime will affect Parts IVA and IVB of the MAS Act. The areas being amended are set out in the following paragraphs.

Recovery and Resolution Planning (RRP)

3.2 MAS currently has supervisory powers to require regulated financial institutions to comply with RRP requirements. A new Division will be included in Part IVA of the MAS Act to consolidate MAS' powers to impose RRP requirements on pertinent financial institutions and insurers that have been notified by MAS. Such pertinent financial institutions and insurers will be required to prepare recovery plans, submit information to MAS for resolution planning, and where necessary adopt measures to address deficiencies in their recovery plans and remove impediments to resolvability.

3.3 The new Division on RRP requirements is set out in **Annex 1**.

3.4 In addition, as mentioned in the June 2015 Consultation Paper, MAS will be setting out further details on the RRP requirements in a new MAS Notice. The Notice will apply to banks notified by MAS. Further guidance will also be set out in the RRP Guidelines. The draft Notice and Guidelines are set out in **Annexes 2 and 3**. Similar RRP requirements will apply to financial holding companies notified by MAS.

Temporary Stays on Termination Rights

3.5 A new Division will be included in Part IVB of the MAS Act empowering MAS to temporarily stay the termination rights 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.

3.6 The duration of the temporary stay will be limited to two business days and subject to 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 prescribed in Regulations.

3.7 MAS will also introduce powers to prescribe in Regulations, requirements for pertinent financial institutions and insurers to include contractual provisions in specified contracts, such that MAS' powers to temporarily stay the termination rights on the contracts will be enforceable.

3.8 The Division will also include similar powers enabling MAS to temporarily stay the termination rights of counterparties to reinsurance contracts entered into with an insurer over which MAS has exercised its resolution powers. The maximum duration of this stay will be prescribed in Regulations made for this purpose.

3.9 The new Division on temporary stays on termination rights is set out in **Annex 4**.

Statutory Bail-In Regime

3.10 A new Division will be included in Part IVB of the MAS Act empowering 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) Bill¹. The amendments will also empower 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) Bill. The classes of financial institutions that are subject to the statutory bail-in regime will be prescribed in Regulations. MAS intends to apply the

¹ The proposed powers will also cover any equity instrument that is not in the form of shares.

statutory bail-in regime to Singapore-incorporated banks and bank holding companies for the time being.

3.11 The amendments will empower MAS to require, via Regulations, contractual recognition clauses for liabilities which fall within the scope of MAS' statutory bail-in powers but which are governed by foreign laws, to allow MAS to write down or convert these liabilities to equity.

3.12 In the event of a bail-in, the amendments provide for the suspension of all shareholders' voting rights on matters which require shareholders' approval, until the Minister has assessed whether any new shareholders, arising from the conversion of creditor claims into shares, can become substantial shareholders or controlling shareholders, if they have breached the relevant shareholding thresholds. This will ensure that only fit and proper persons can exercise voting rights attached to substantial or controlling stakes in the financial institution.

3.13 When exercising its bail-in powers, MAS will have regard to the principles of respecting the hierarchy of claims in liquidation and equal treatment of creditors of the same class. In deciding whether to apply these principles, MAS will consider various factors, including the systemic impact of the firm's failure, how to maximise value for the benefit of all creditors as a whole, and public interest.

3.14 The new Division on the statutory bail-in regime is set out in **Annex 5**.

Cross-Border Recognition of Resolution Actions

3.15 Upon being notified of a foreign resolution action and with the approval of the Minister, the amendments to the MAS Act set out a framework for MAS to recognise all or part of the foreign resolution action or to deny recognition.

3.16 In determining whether a foreign resolution action should be recognised, MAS will take into account factors such as whether the foreign resolution action would have a 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 matter that MAS may prescribe in Regulations.

3.17 The cross-border recognition framework will be set out in a new sub-division of Division 5 of Part IVB of the MAS Act. The proposed amendments to Division 5 are set out in **Annex 6**.

Creditor Compensation Framework

3.18 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 under a new Division of Part IVB of the MAS Act.

3.19 After resolution action has been taken on the financial institution, the Minister will appoint a valuer to assess if any creditor or shareholder of the financial institution was made worse off in resolution than in liquidation. MAS will be able to request reconsideration of the valuer's decision. The amendments will also empower MAS to prescribe in Regulations (i) the criteria for appointing and removing the valuer, and (ii) the valuation principles that the valuer would be required to apply.

3.20 The amendments will also allow creditors and shareholders the right to appeal to the court on their determined compensation amounts.

3.21 The new Division on the creditor compensation framework is set out in **Annex 7**.

Resolution Funding Arrangements

3.22 A new Division will be included in Part IVB of the MAS Act empowering 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. Costs incurred by the resolution fund will be recovered from industry on an ex post basis, and the resolution fund will have priority to the assets of the entity in liquidation, before unsecured creditors and equity holders. Related amendments will be made to the Banking Act, the Insurance Act, the Finance Companies Act and the Deposit Insurance and Policy Owners' Protection Schemes Act.

3.23 The new Division on resolution funding arrangements is set out in **Annex 8**.

4 Proposed Amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013

4.1 Set-off and netting arrangements are widely used by commercial counterparties to offset liabilities to each other. It is not MAS' intent, in exercising resolution powers over financial institutions, to interfere with such contractual arrangements. An exercise of resolution powers should not defeat or otherwise affect the preservation of set-off and netting arrangements, which include transactions cleared on an approved clearing house.

4.2 Amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 will 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, in particular where there is a transfer of part but not the whole of the business of a pertinent financial institution. The draft amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013 are set out in **Annex 9**.

**DRAFT AMENDMENTS TO
PART IVA OF THE MONETARY AUTHORITY OF SINGAPORE ACT
IN RELATION TO RECOVERY AND RESOLUTION PLANNING**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

PART IVA CONTROL OVER FINANCIAL INSTITUTIONS

Division 2 – Recovery and resolution planning

Interpretation of this Division

30AAJA. – In this Division, unless the context otherwise requires –

“recovery plan” means a plan prepared by a pertinent financial institution or an insurer pursuant to section 30AAJB(1).

Recovery Planning

30AAJB. – (1) A pertinent financial institution or an insurer that has been notified by the Authority in writing shall prepare and maintain at all times a recovery plan to stabilise and restore the financial strength and viability of the pertinent financial institution or the insurer, in the event of financial pressure or stress.

(2) A pertinent financial institution or an insurer that has been notified by the Authority under subsection (1) to prepare and maintain a recovery plan shall –

- (a) prepare and maintain the recovery plan in such form and manner as may be specified by the Authority by a direction or notice under section 30AAJD; and
- (b) submit to the Authority the recovery plan within such time and in accordance with such frequency as may be specified by the Authority by direction or notice in writing under section 30AAJD.

(3) The Authority may direct a pertinent financial institution or insurer referred to in subsection (1) to make specific changes to a recovery plan submitted to the Authority pursuant to subsection (2) as the Authority may determine, including changes to address any material deficiency in the recovery plan, or any material impediment to the implementation of the recovery plan.

(4) The Authority may, by notice in writing, direct the pertinent financial institution or insurer to implement arrangements or measures as may be necessary to stabilise and restore the financial strength and viability of the pertinent financial institution or insurer, as the case may be.

Resolution Planning

30AAJC. -- (1) The Authority may require a pertinent financial institution or an insurer to furnish, within such time and in such form and manner notified by the Authority in writing, any information or document that the Authority may reasonably require for the purposes of resolution planning.

(2) A pertinent financial institution or an insurer shall comply with any requirement to furnish information or document to the Authority under subsection (1).

(3) Where the Authority is of the opinion that it is necessary to improve the resolvability of a pertinent financial institution or an insurer, it may, by notice in writing, direct the pertinent financial institution or insurer to take specific measures to address or remove impediments to orderly resolution.

(4) Without prejudice to the generality of subsection (3), any direction issued by the Authority may include requiring changes to the pertinent financial institution's or insurer's business practices, legal, operational or financial structures or organisation.

(5) A pertinent financial institution or insurer shall comply with any direction from the Authority under subsection (3).

Notices for the purposes of this Division

30AAJD. – (1) The Authority may, by notice in writing to a pertinent financial institution or an insurer, give directions or impose requirements as may be necessary or expedient for the purposes of recovery planning or resolution planning.

(2) Without prejudice to the generality of subsection (1), any direction or notice under that subsection may be given in respect of –

- (a) the elements that shall be included in a recovery plan;
- (b) the submission of the recovery plan;
- (c) the frequency of review and circumstances for updating a recovery plan;
- (d) the endorsement and oversight within the pertinent financial institution or an insurer, of the recovery planning process;
- (e) the requirement to notify the Authority on the occurrence of specific events;
- (f) the type of data and information to be maintained and submitted for the purposes of resolution planning;
- (g) the maintenance of such management information systems as may be necessary for producing information for recovery and resolution planning; and
- (h) the maintenance of outsourcing arrangements that support the critical functions and critical shared services of the pertinent financial institution or insurer.

(3) A pertinent financial institution or an insurer shall comply with any direction given to the pertinent financial institution or insurer, or any requirement imposed on the pertinent financial institution or insurer, by any notice issued to the pertinent financial institution or insurer under subsection (1).

(4) Directions or notices issued under this section may relate to a pertinent financial institution or a class of pertinent financial institutions, an insurer or a class of insurers, and may make different provisions for different classes of pertinent financial institutions or insurers or be of general or specifically limited applications.

(5) It shall not be necessary to publish any notice in writing issued under subsection (1) in the *Gazette*.

Offences under this Division

30AAJE. – (1) Any pertinent financial institution or insurer which contravenes any of the requirements under this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(2) Any pertinent financial institution or insurer who, in purported compliance with any requirement under this Division, knowingly or recklessly furnishes to the Authority any information or document that is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000.

DRAFT NOTICE ON RECOVERY AND RESOLUTION PLANNING

DISCLAIMER: This version of the Notice is in draft form and subject to change.

MAS Notice XXX

DD MMM YYYY

NOTICE TO BANKS

MONETARY AUTHORITY OF SINGAPORE ACT, CAP. 186

RECOVERY AND RESOLUTION PLANNING

I. INTRODUCTION

1.1 This Notice is issued pursuant to section XX of the Monetary Authority of Singapore Act (Cap. 186) (“MAS Act”) and applies to all banks which have been notified by the Authority pursuant to section XY of the MAS Act (“notified bank”).

1.2 Recovery and resolution planning aims to reduce the risks posed by a bank to the stability of financial system, ensure the continuity of functions that are critical to the economy, and enable a distressed bank to be restructured or to exit from the market in an orderly manner. This Notice sets out the requirements that a notified bank has to comply with in its recovery and resolution planning.

1.3 This Notice shall take effect on DD MMM YYYY.

II. DEFINITIONS

2.1 In this Notice –

“Authority” means the Monetary Authority of Singapore;

“bank” means a bank in Singapore –

- (a) a bank incorporated in Singapore; or
- (b) in the case of a bank incorporated outside Singapore, the branches and offices of the bank located within Singapore;

“critical functions” refer to activities performed by a bank for third parties where failure would lead to the disruption of services that are vital for the functioning of the real economy and for financial stability due to the bank’s size or market share, external and internal interconnectedness, complexity and cross-border activities;

“critical shared services” refer to activities performed within the group or outsourced to third parties where failure would lead to the inability to perform critical functions;

“executive officer”, in relation to a bank, means any person, by whatever name described, who –

- (a) is in the direct employment of, or acting for or by arrangement with, the bank; and
- (b) is concerned with or takes part in the management of the bank on a day-to-day basis;

“group” includes the bank’s Head Office or parent company, subsidiaries, affiliates, and any entity (including their subsidiaries, affiliates and special purpose entities) that the bank exerts control over or that exerts control over the bank;

“outsourcing arrangement” means an arrangement in which a service provider provides the bank with a service that may currently or potentially be performed by the bank itself and which includes the following characteristics:

- (a) the bank is dependent on the service on an ongoing basis but such service excludes services that involve the provision of a finished product¹; and
- (b) the service is integral to the provision of a financial service by the bank or the service is provided to the market by the service provider in the name of the bank;

“service provider” means any person which provides a service to the bank, including any entity within the bank’s group, whether it is located in Singapore or elsewhere.

2.2 The expressions used in this Notice shall, except where defined in this Notice or where the context otherwise requires, have the same meanings as in the MAS Act.

III. RECOVERY PLANNING

3.1 A recovery plan (“RCP”) serves as a guide to the recovery of a distressed bank, and outlines actions the bank can take to stabilise and restore its financial strength and viability under situations of severe stress.

3.2 For the purposes of recovery planning, the bank shall:

¹ Finished product refers to products such as insurance policies.

- (a) establish a RCP which includes the following:
 - (i) a framework of recovery triggers that identifies the points at which appropriate recovery options may be taken;
 - (ii) an escalation process upon the occurrence of a trigger event, to facilitate prompt assessment of the impact, and decision on the appropriate course of action;
 - (iii) a menu of recovery options which are available in situations of severe stress to address capital shortfalls and liquidity pressures; and
 - (iv) a communication plan to ensure timely communication with internal and external stakeholders;
- (b) put in place processes to update the RCP at least annually, and upon the occurrence of an event that could materially impact the RCP;
- (c) ensure that the RCP is approved or endorsed by the board of directors for a locally-incorporated bank, or the chief executive in Singapore for a foreign bank branch; and
- (d) submit the RCP to the Authority –
 - (i) whenever requested by the Authority; and
 - (ii) in the event of any material change to the RCP arising from updates referred to in paragraph 3.2(b), within such time as is required by the Authority.

3.3 For the purposes of establishing an appropriate escalation process under paragraph 3.2(a)(ii), the bank shall –

- (a) outline the escalation process upon the occurrence of a trigger event in the RCP, including the decision-making mechanism governing the process and the roles and responsibilities of key staff involved; and
- (b) specify the level of authority that is empowered to make decisions in respect of activating the recovery plan and determining the recovery options to be implemented.

3.4 When establishing a range of recovery options under paragraph 3.2(a)(iii), the bank shall ensure that the options –

- (a) are sufficiently diverse so as to deal with a range of stress scenarios covering idiosyncratic and market-wide stresses;

(b) substantially enhance the viability of the bank; and

(c) are capable of being executed within a reasonable timeframe.

3.5 In assessing events that could materially impact its RCP under paragraph 3.2(b), the bank shall take into account any changes in circumstances facing the bank, group or the financial system.

3.6 The bank should establish a framework to regularly test the feasibility and effectiveness of its RCP. A bank which is a settlement institution of a designated payment system under the Payment Systems (Oversight) Act (Cap. 222A) should also establish a framework to regularly test the effectiveness of its RCP with regard to that role.

IV. RESOLUTION PLANNING

4.1 A resolution plan (“RSP”) facilitates the effective use of the Authority’s resolution powers. It aims to make feasible the resolution of a bank without severe systemic disruption while protecting systemically important functions.

4.2 For the purposes of resolution planning, the bank shall —

(a) maintain data and information for the purposes of resolution planning, resolvability assessment and the conduct of resolution;

(b) submit data and information for the purposes of resolution planning, resolvability assessment and the conduct of resolution whenever requested by the Authority; and

(c) inform the Authority in the event of any material change to the bank’s business or structure, so as to facilitate resolution planning.

V. GENERAL

5.1 In addition to the requirements under Parts III and IV, the bank shall —

(a) appoint an executive officer as the key person to oversee the recovery planning process and the maintenance and submission of the required information for resolution planning;

(b) immediately inform the Authority in the event that the bank assesses that its viability is, or is potentially, threatened;

(c) maintain management information systems that are able to produce,

in a timely manner, information required for recovery and resolution planning, resolvability assessment and the conduct of resolution;

- (d) provide information under paragraph 5.1(c) whenever requested by the Authority; and
- (e) put in place adequate measures such that outsourcing arrangements which support critical functions and critical shared services can be maintained in crisis situations and in resolution.

DRAFT GUIDELINES ON RECOVERY AND RESOLUTION PLANNING

DISCLAIMER: This version of the Guidelines is in draft form and subject to change.

GUIDELINES TO MAS NOTICE XXX ON RECOVERY AND RESOLUTION PLANNING

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I. INTRODUCTION

Recovery and resolution planning is an important process to reduce risks posed by a bank to the stability of the financial system, ensure the continuity of critical functions to the economy, and allow a distressed bank to restore its financial strength, be restructured, or to exit the market in an orderly manner. The Monetary Authority of Singapore (“the Authority”) requires banks notified by the Authority to be subject to recovery and resolution planning requirements set out in Notice XXX. These Guidelines provide further guidance and elaboration on these requirements, and should be read in conjunction with Notice XXX.

The recovery and resolution planning process is an iterative one. The Authority will engage and collaborate closely with banks to clarify their obligations and the Authority’s expectations with regard to the recovery and resolution plan as part of our supervisory interaction with banks.

II. DEFINITIONS

1. In these Guidelines –

“core business lines” are business lines that are material to the bank’s franchise value or will cause serious impact to the group if there is discontinuation without contingency arrangements made;

“foreign bank” means any bank incorporated outside Singapore or foreign-owned bank incorporated in Singapore;

“local bank” means any bank incorporated in Singapore which the Authority has consolidated supervisory authority over;

2. The expressions used in these Guidelines (except where defined or where the context otherwise requires) have the same meanings as in the MAS Act (Cap. 186).

III. RECOVERY PLAN

General

3. A local bank should undertake recovery planning on a consolidated basis, taking into consideration the holding company, local and overseas subsidiaries and branches, as well as any material non-bank financial institutions.
4. A foreign bank, in formulating its recovery plan, may leverage on the head office’s or group’s recovery plan, provided that these plans adequately cover and address the Singapore operations.
5. A foreign bank should ensure that the recovery plan is prepared in consultation with the parent company or head office.
6. The recovery plan should take into account any legal, reputational and operational impediments to recovery.
7. The bank should put in place a robust governance structure and sufficient resources to support its recovery planning process. The roles and responsibilities of each person involved in the recovery planning process should be clearly assigned within the bank and specified in the recovery plan.

This should include the executive officers, committees and business or functional units in Singapore, overseas subsidiaries/ branches (for local banks) and the head office and other subsidiaries/ branches (for foreign banks).

8. The recovery planning process should be integrated into a bank's overall governance processes and risk management framework. This includes the development, review, approval, monitoring, escalation, activation and implementation of the recovery plan.
9. The recovery plan should reflect the nature, size, complexity, interconnectedness, level of substitutability and scale of cross-border operations of the bank.
10. The recovery plan should take into account specific circumstances of the bank, including its unique organisational and legal structure, business model, risk profile, characteristics of the markets the bank operates in, amongst others.
11. The bank should not assume extraordinary assistance from the Authority or authorities from other jurisdictions. For the purpose of recovery planning, the bank may consider access to existing central bank facilities, which shall be subject to the prevailing terms and conditions applicable. In such instances, the recovery plan of the bank should:
 - (a) consider the circumstances in which the bank would need to access such facilities;
 - (b) analyse eligible assets as collateral for the facilities and estimate such potential drawing capacity after applying the relevant haircuts; and
 - (c) outline the action plan the bank would take to repay such facilities.

Recovery Triggers

12. The bank should identify and develop criteria and procedures that are clearly defined and calibrated to trigger timely activation and implementation of recovery options within the recovery plan. The recovery plan should clearly indicate the actions to be taken upon the occurrence of a trigger event.
13. In formulating the recovery triggers, the bank should consider stress scenarios that are sufficiently severe to threaten the going concern and survivability of the bank and its group. The bank should consider both idiosyncratic and market-wide stress scenarios, including the potential impact of cross-border

contagion, as well as simultaneous stress situations in markets that are significant to the bank.

14. The recovery triggers should be comprehensive and robust, and incorporate leading indicators where possible. The bank should consider a combination of quantitative and qualitative indicators.
15. The bank should implement processes and have sound management information systems to monitor these recovery triggers. The recovery triggers should be monitored on a regular basis to allow timely activation and implementation of recovery options where necessary.

Recovery Options

16. The menu of recovery options should specify measures that are within the direct control of the bank. Where the execution of any recovery option is dependent on other entities or stakeholders, for example, the head office of a foreign bank, these dependencies and the processes to co-ordinate the execution of the recovery options, should be clearly set out in the recovery plan.
17. The bank should detail, in the recovery plan, the steps and estimated time needed to implement each recovery option, the underlying assumptions for each recovery option, as well as the circumstances which could render the option unavailable.
18. The bank should assess the potential effectiveness and feasibility of each recovery option. This should take into account the impact, timeliness, ease of execution and any associated risks that may arise from implementing the recovery option.
19. The recovery plan should include measures to reduce the risk profile of the bank and conserve capital, as well as strategic options, such as the divestiture of business lines and restructuring of liabilities.
20. Where the bank's recovery plan includes disposal options of a part or the whole of the bank or its business or assets, the bank should also establish processes for determining the value and marketability of such operations, businesses and assets.
21. The bank should identify the potential hurdles, challenges and constraints that it may face for each recovery option. These should be documented in the

recovery plan, along with the measures that the bank intends to take to address these impediments.

22. A bank which is a settlement institution of a designated payment system under the Payment Systems (Oversight) Act (Cap. 222A) (“a settlement institution”) should include specific recovery triggers, recovery options, and stress scenarios that may prevent the settlement institution from being able to perform its role as a going concern, as part of the bank’s overall recovery plan.

Communication

23. The communication plan should address communications with relevant stakeholders, including shareholders, employees, key group entities, customers, regulators and the media.
24. The communication plan should also specify the roles and responsibilities of persons involved in the communication to stakeholders, and include ready templates where applicable.

IV. RESOLUTION PLAN

General

25. Resolution plans developed by the Authority facilitate the effective use of resolution powers with the aim of making feasible the resolution of a bank without severe systemic disruption while protecting systemically important functions. Resolution planning involves developing a substantive resolution strategy for a bank and an operational plan for its implementation.
26. The bank should maintain the essential information to facilitate resolution planning.
27. Paragraphs 29 to 32 and 33 to 36 set out guidance on the information requirements for local banks and foreign banks respectively.
28. The resolution plan is expected to include, amongst others, information on:
 - (a) functions for which continuity is critical;
 - (b) resolution options to preserve these critical functions or wind them down in an orderly manner;
 - (c) data requirements on the bank’s business operations, structures, and critical functions;

- (d) potential barriers to effective resolution and actions to mitigate those barriers;
- (e) actions to protect insured depositors and ensure the rapid return of segregated clients assets; and
- (f) options or principles for the bank’s exit from the resolution process.

Information requirements

Local Banks

- 29. A local bank should maintain the required information for resolution planning on a consolidated basis, taking into consideration local and overseas subsidiaries and branches, as well as any material non-bank financial institutions (“consolidated group”).
- 30. A local bank should establish communication facilities and procedures for providing relevant stakeholders with access to information during resolution.
- 31. A local bank should maintain the following required information for resolution planning:
 - (a) Organisational structure
 - (i) A complete organisational chart detailing the legal structure, relationships and shareholdings of all entities¹ within the consolidated group.
 - (ii) A list of entities within the consolidated group that are assessed by the bank to be material (“material entities”), and the factors or criteria used by the bank to assess their materiality.
 - (iii) A listing of entities that are systemically significant or critical to the financial stability of the jurisdictions they operate in.
 - (b) Material entities
 - In relation to each material entity -
 - (i) The name of the entity and place of incorporation or operation.
 - (ii) The names of directors, executive officers and key crisis-management personnel and their contact information.

¹ “Entities” include bank and non-bank subsidiaries, branches and affiliates.

- (iii) The unconsolidated financial statements, including (a) an overview of assets that are encumbered and whether they are intra-group or external encumbrances, and (b) an overview of assets under custody.
 - (iv) A description of the business activities or functions within each material entity, including the products/services offered, its geographical reach, customer segments, and contribution to the consolidated group based on internal metrics such as revenue or assets.
 - (v) Information on material operational dependencies within the consolidated group or on third parties, including (a) the location of key staff; (b) the location and name of the entity hosting the systems and data; (c) the location and name of the entity hosting the backup systems and data; and (d) the location of key support personnel.
- (c) Deposit-taking
- A list of deposit-taking entities within the consolidated group, amount of deposits held, including amounts insured under the respective deposit insurance regimes and the uninsured sums.
- (d) Core business lines
- (i) A list of the business lines that are assessed by the consolidated group to be material, and the factors or criteria used to assess their materiality.
 - (ii) In relation to each core business line -
 - A. A list of the entities involved in operating the business line.
 - B. The location of these entities.
 - C. Whether the entities are regulated in their respective jurisdictions and the authorities in charge².

² Both the names of the supervisory and the resolution authority should be provided if these roles are played by different agencies.

- D. Information on the location and name of the entity (or a support unit within the entity) that processes transactions for the business line identified.
 - E. Information on material operational dependencies within the consolidated group or on third parties, including (a) the location of key staff; (b) the location and name of the entity hosting the systems and data; (c) the location and name of the entity hosting the backup systems and data; and (d) the location of key support personnel.
- (e) Critical functions
- (i) A list of functions performed by the consolidated group that are assessed to be critical functions.
 - (ii) The relevant metrics used to assess criticality of functions.
 - (iii) A mapping of the critical functions to the material entities under which they are conducted.
 - (iv) An assessment on impact of cessation of critical functions.
- (f) Dependencies
- (i) Capital allocation and mobility
To provide for each material entity:
 - A. A breakdown of regulatory capital.
 - B. A breakdown of capital currently allocated³.
 - C. The bank's analysis and planning assumption with regard to the mobility of capital amongst entities within the consolidated group.
 - (ii) Critical shared services
 - A. A list of critical shared services.

³ This includes capital that does not qualify as regulatory capital.

- B. The relevant criticality metrics used to assess critical shared services.
- C. Information on critical shared services, including (a) the location of key staff; (b) the location and name of the entity hosting the systems and data; (c) the location and name of the entity hosting the backup systems and data; and (d) the location of key support personnel.

(iii) Booking arrangements

- A. The list of products with cross-border or cross-entity booking arrangements⁴ for treasury and lending activities, and in relation to each product, the following information:
 - I. A description of the booking model.
 - II. The location and name of the entity where the product originated from, is booked and risk managed.
 - III. The supervisory and resolution authority overseeing the entity responsible for the risk arising from the product.
 - IV. Whether the product has back-to-back booking arrangements and the details of the booking flow for the product.
- B. Where there are cross-border or cross-entity booking arrangements for treasury and lending activities, the collateral management details, including:
 - I. The type of collateral.
 - II. The name of the entity that holds the collateral on custody.
 - III. The linkage between transactions and level of collateral, including instances where the collateral is shared.

⁴ “Cross-border arrangements” include those within the same entity, e.g. among sister branches in different jurisdictions. “Cross-entity arrangements” include those involving different entities in the same jurisdiction.

IV. The amount of collateralised and non-collateralised exposures.

V. The amount of collateral available for contingency funding and liquidity needs.

(iv) Intra-group guarantees

A. A description of how and when intra-group guarantees are used.

B. The type of intra-group guarantees extended.

C. The circumstances under which the guarantees will be enforced.

(v) Treasury function and funding arrangements

A. A description of the treasury function and how it is organised.

B. A description of funding arrangements within the consolidated group, including the main sources of funding and intra-group flows of funds. Branches and subsidiaries that play significant roles in intra-group funding should be highlighted.

C. A list of significant intra-group balances.

D. Information on major funding sources other than that described in paragraphs 31(f)(v)B and 31(f)(v)C.

(vi) Financial institution counterparties

A list of financial institution counterparties that the consolidated group or its material entities have significant dealings or relationships with, and the key metrics or indicators that the bank measures, such as the volume of trades, amount of borrowing, tenor of trades, etc.

(vii) Joint ventures and alliances

A list of joint ventures and alliances that the bank has entered into, with the name and an overview of the roles and responsibilities of each joint venture partner.

(viii) Payment and settlement services, clearing services, cash services, and other services

- A. The names of the entities within the consolidated group involved in providing such services and functions to financial market participants.
- B. A list of systems used for the provision of such services and the location of these systems.
- C. The names of the parties that the consolidated group entities provide the services to.
- D. A list of services and functions provided by external parties to the bank.
- E. The relevant metrics such as transaction and flow volumes on an average day.
- F. A list of interfaces⁵ with the systems identified above.
- G. The location of users with the authority to administer access to the systems. If system access is effected by a user who is different from a user with the authority to administer access to the systems, the location for both sets of users.

(ix) Others

A description of any other significant linkages and dependencies amongst the material entities within the consolidated group or with external entities that are not already covered above, and the bank's assessment of possible external factors or internal constraints that could impact such linkages and dependencies.

(g) Contingency analysis

- (i) The bank's assessment of the extent to which entity-specific information is available upon request by authorities in respect of the bank's recovery and resolution planning.

⁵ Interfaces refer to interactions and inter-dependencies between systems, where a failure of or changes in one system can have upstream or downstream impact on other systems.

- (ii) The bank’s assessment of the extent to which material entities, core business lines, and critical functions, can be separated from the consolidated group, taking into consideration staffing, technology, operations, intra-group and external dependencies, legal and other aspects, in order to enable the consolidated group to continue operating with minimal disruption.
32. In maintaining and submitting the required information for resolution planning, a local bank that performs its role as a settlement institution should also maintain and submit the information set out in paragraph 31 which pertains to its role as a settlement institution of a designated payment system, with the exception of the information specified under sub-paragraphs (e)(i), (e)(ii), (f)(i), (f)(iii) and (f)(ix).

Foreign Banks

33. A foreign bank should maintain the required information for resolution planning for all subsidiaries and branches, as well as any material non-bank financial institutions that have presence in Singapore (“group”⁶).
34. A foreign bank should establish communication facilities and procedures for providing relevant stakeholders with access to information during resolution.
35. A foreign bank should maintain the following required information for resolution planning:
- (a) Organisational structure
 - (i) A complete organisational chart detailing the legal structure, relationships and shareholdings of all entities⁷ within the group that have linkages or dependencies with operations in Singapore.
 - (ii) A listing of entities within the group that have linkages or dependencies with operations in Singapore, and that are assessed to be material to the operations in Singapore (“material entities”), and the factors or criteria used to assess their materiality.
 - (b) Material entities
 - In relation to each material entity -
 - (i) The name of the entity and place of incorporation or operation.

⁶ All subsequent references to “group” within this sub-section have the same meaning unless otherwise stated.

⁷ “Entities” include bank and non-bank subsidiaries, branches and affiliates.

- (ii) The names of directors, executive officers and key crisis-management personnel and their contact information.
 - (iii) The unconsolidated financial statements, including (a) an overview of assets that are encumbered and highlight if they are intra-Group⁸ or external encumbrances and (b) an overview of assets under custody.
 - (iv) A description of the business activities or functions within each material entity, including the products/services offered, its geographical reach, customer segments, and contribution to the Group based on internal metrics such as revenue or assets.
 - (v) Information on material operational dependencies within the Group or on third parties, including (a) the location of key staff; (b) the location and name of the entity hosting the systems and data; (c) the location and name of the entity hosting the backup systems and data; and (d) the location of key support personnel.
- (c) Deposit-taking
- A list of deposit-taking entities within the group that have operations in Singapore, amount of deposits held, including amounts insured under the respective deposit insurance regimes and the uninsured sums.
- (d) Core business lines
- (i) A list of the core business lines in Singapore, and the factors or criteria used to assess their materiality to the operations in Singapore.
 - (ii) In relation to each core business line in Singapore -
 - A. A list of the other entities of the Group that are involved in operating the business line.
 - B. The location of these entities.

⁸ For foreign banks, “Group” refers to all entities within the group, including local and overseas entities. All subsequent references to “Group” within this sub-section have the same meaning unless otherwise stated.

- C. Whether these entities are regulated in their respective jurisdictions and the authorities in charge⁹.
 - D. Information on the location and name of the entity (or a support unit within the entity) that process transactions for the business line identified.
 - E. Information on material operational dependencies within the Group or on third parties, including (a) the location of key staff; (b) the location and name of the entity hosting the systems and data; (c) the location and name of the entity hosting the backup systems and data; and (d) the location of key support personnel.
- (e) Critical functions
- (i) A list of functions performed by the bank that are assessed to be critical functions.
 - (ii) The relevant metrics used by the bank to assess criticality of functions.
 - (iii) A mapping of the critical functions to the material entities under which they are conducted.
 - (iv) An assessment on impact of cessation of critical functions.
- (f) Dependencies
- (i) Capital allocation and mobility
To provide for each material entity:
 - A. A breakdown of regulatory capital.
 - B. A breakdown of capital currently allocated¹⁰.
 - C. The bank's analysis and planning assumption with regard to the mobility of capital amongst entities within the group.

⁹ Both the names of the regulator and the resolution authority should be provided if the roles are played by different agencies.

¹⁰ This includes capital that does not qualify as regulatory capital.

(ii) Critical shared services

- A. A list of critical shared services. This should include critical shared services that Singapore operations have linkages or dependencies on.
- B. The relevant criticality metrics used to assess critical shared services.
- C. Information on critical shared services, including (a) the location of key staff; (b) the location and name of the entity hosting the systems and data; (c) the location and name of the entity hosting the backup systems and data; and (d) the location of key support personnel.

(iii) Booking arrangements

- A. The list of products with cross-border or cross-entity booking arrangements¹¹ for treasury and lending activities, and in relation to each product, the following information:
 - I. A description of the booking model.
 - II. The location and name of the entity where the product originated from, is booked and risk managed.
 - III. The name of the regulatory authority overseeing the entity responsible for the risk arising from the product.
 - IV. Whether the products has back-to-back booking arrangements and the details of the booking flow for the product.
- B. Where there are cross-border or cross-entity booking arrangements for treasury and lending activities, the collateral management details, including:
 - I. The type of collateral.
 - II. The name of the entity that holds the collateral on custody.

¹¹ “Cross-border arrangements” include those within the same entity, e.g. among sister branches in different jurisdictions. “Cross-entity arrangements” include those involving different entities in the same jurisdiction.

- III. The linkage between transactions and level of collateral, including instances where the collateral is shared.
- IV. The amount of collateralised and non-collateralised exposures.
- V. The amount of collateral available for contingency funding and liquidity needs.

(iv) Intra-Group guarantees

- A. A description of how and when intra-Group guarantees are used.
- B. The types of intra-Group guarantees extended.
- C. The circumstances under which the guarantees will be enforced.

(v) Treasury function and funding arrangements

- A. A description of the treasury function and how it is organised.
- B. A description of funding arrangements between the bank and other Group entities, including the main sources of funding and intra-Group flows of funds. Branches and subsidiaries that play significant roles in intra-Group funding should be highlighted.
- C. A list of significant intra-Group balances.
- D. Information on major funding sources other than that described in paragraphs 35(f)(v)B and 35(f)(v)C.

(vi) Financial institution counterparties

- A list of financial institution counterparties that the bank has significant dealings or relationships with, and the key metrics or indicators that the bank measures, such as the volume of trades, amount of borrowing, tenor of trades, etc.

(vii) Joint ventures and alliances

A list of joint ventures and alliances that the bank has entered into, with the name and an overview of the roles and responsibilities of each joint venture partner.

(viii) Payment and settlement services, clearing services, cash services, and other services

A. The names of the entities within the Group that provide services and functions to financial market participants in Singapore. The corresponding (a) service and function; (b) financial market participants to whom the services have been provided to; (c) systems used for providing these services; and (d) location of these systems.

B. A list of services and functions provided by external parties to the bank.

C. The relevant metrics such as transaction and flow volumes on an average day.

D. A list of interfaces¹² with the systems identified above.

E. The location of users with the authority to administer access to the systems. If system access is effected by a user who is different from a user with the authority to administer access to the systems, the location for both sets of users.

(ix) Others

A description of any other significant linkages and dependencies between the bank and other entities within the Group or external entities that are not already covered above, and the bank's assessment of possible external factors or internal constraints that could impact such linkages and dependencies.

¹² Interfaces refer to interactions and inter-dependencies between systems, where a failure of or changes in one system can have upstream or downstream impact on other systems.

- (g) Contingency analysis
 - (i) The bank's assessment of the extent to which entity-specific information is available upon request by regulators in respect of the bank's recovery and resolution planning.
 - (ii) The bank's assessment of the extent to which material entities, core business lines, and critical functions, can be separated from the Group, taking into consideration staffing, technology, operations, intra-Group and external dependencies, legal and other aspects, in order to enable the Group to continue operating with minimal disruption.

36. In maintaining and submitting the required information for resolution planning, a foreign bank that performs its role as a settlement institution should also maintain and submit the information set out in paragraph 35 which pertains to its role as a settlement institution of a designated payment system, with the exception of the information specified under sub-paragraphs for (e)(i), (e)(ii), (f)(i), (f)(iii) and (f)(ix).

V. MANAGEMENT INFORMATION SYSTEMS

37. The bank shall maintain management information systems that are capable of producing information necessary for recovery and resolution planning, resolvability assessment and the conduct of resolution. Such information should be produced in a timely manner, whenever requested by the Authority.
38. In relation to management information systems, the bank should:
- (a) maintain a detailed inventory, including a description and the location of the key management information systems used in its material entities, mapped to its critical functions and critical shared services;
 - (b) identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a group;
 - (c) demonstrate as part of the recovery and resolution process, that the bank is able to produce the essential information needed to implement such plans within a short period of time; and
 - (d) 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.

39. The bank shall maintain up-to-date details of financial contracts entered into by the bank, including records of counterparties. The bank may maintain such information through a global system as long as it is able, at any point in time, to identify the relevant information in respect of the specific financial contracts under Singapore's regime. Similarly, the bank shall maintain up-to-date details of non-financial contracts pertaining to its critical functions and critical shared services.

VI. OPERATIONAL CONTINUITY

40. The bank should ensure that it has in place appropriate contingency arrangements that enable it to continue to operate while recovery measures are being implemented. This may include arrangements to enable the functioning of IT systems, clearing and settlement facilities and supplier and employee contracts.
41. The bank should put in place adequate measures such that outsourcing arrangements which support critical functions and critical shared services can be maintained in crisis situations and in resolution. The underlying contracts should include provisions that prevent termination from being triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer where necessary.
42. The bank should assess the additional requirements that may be needed in order to maintain its membership in financial market infrastructures during crisis situations. The bank should identify options for addressing the additional requirements, for example, a plan for the sourcing of additional collateral, and assessment of potential constraints on the bank's total payment flows.

**DRAFT AMENDMENTS TO
PART IVB OF THE MONETARY AUTHORITY OF SINGAPORE ACT
IN RELATION TO TEMPORARY STAYS ON TERMINATION RIGHTS**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

PART IVB
RESOLUTION OF FINANCIAL INSTITUTIONS

[...]

Division 4B – Termination Rights

Interpretation of this Division

30AAZAG. – In this Division, unless the context otherwise requires –

“business day” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

“financial market infrastructure” means any person who is prescribed by regulations made under section 30AAZN as a financial market infrastructure;

“reinsurance contracts” means any contract or arrangement involving the reinsurance of liabilities under insurance policies;

“related corporation” has the same meaning as in section 4(1) of the Companies Act;

“resolution” has the same meaning as in section 30AAZB;

“resolution authority” has the same meaning as in section 30AAZB;

“specified power” means any of the Authority’s powers under –

- (a) division 2, 3, 4,4A, or sub-division (2) of division 5 of this Part;
- (b) divisions 2, 3 or 4 of Part IIIAA or division 3 of Part III of the Insurance Act (Cap. 142); or
- (c) any relevant provisions as defined in section 30AAK;

“termination right” means –

- (a) a right to terminate a contract;
- (b) a right to accelerate, close out, set-off or net obligations; or
- (c) any provision that suspends, modifies or extinguishes an obligation of a party to the contract;

“transferee” has the same meaning as in section 30AAR of this Act or section 49FE of the Insurance Act, as the case may be.

Termination rights

30AAZAH. – (1) Notwithstanding the provision of any rule of law, written law or contract, the Authority’s exercise of any specified power in respect of a pertinent financial institution or insurer shall not trigger a termination right under any contract entered into by the pertinent financial institution or insurer, as the case may be,

provided that the substantive obligations provided for in the contract continue to be performed.

(2) Where the pertinent financial institution is a financial market infrastructure, the financial market infrastructure shall not be deemed to be unable to meet its substantive obligations under subsection (1) by virtue of any application of loss allocation to margin or collateral –

- (a) under the rules of the financial market infrastructure; or
- (b) under the Authority's exercise of any specified power.

Temporary stay of contracts

30AAZAI. — (1) The Authority may, by notification in the *Gazette*, suspend a termination right of any party to a contract which will arise or arises by reason of or in connection with the Authority's exercise of a specified power, if one of the parties to the contract is –

- (a) a pertinent financial institution or insurer in respect of which the Authority will exercise or is exercising a specified power;
- (b) a pertinent financial institution or insurer in respect of which a resolution authority of a foreign country or territory will take or is taking a resolution action; or
- (c) a subsidiary of a parent pertinent financial institution or insurer where –
 - (i) the Authority will exercise or is exercising a specified power in respect of the parent pertinent financial institution or insurer;
 - (ii) the Authority's exercise of a specified power in respect of the parent pertinent financial institution or insurer will trigger or has triggered a termination right under the contract; and
 - (iii) the obligations of the subsidiary are guaranteed or otherwise supported by the parent pertinent financial institution or insurer.

(2) Except as provided under subsection (3), a stay imposed under subsection (1) will take effect on the date of publication of the notification in the *Gazette* or such other date as the Authority may specify in the notification, and will expire no later than 23:59 (Singapore time) on the second business day after the date of the publication of the notification in the *Gazette*.

(3) Where a stay is imposed under subsection (1) in respect of a reinsurance contract, the stay will take effect on the date of publication of the notification in the *Gazette* or such other date as the Authority may specify in the notification, and will expire no later than such date the Authority may prescribe in regulations made under section 30AAZN.

(4) A party subject to the stay imposed under subsection (1) may exercise a termination right under the contract before the expiry of the stay if the party is given written notice by the Authority that the contract will not form part of the business to

be transferred under section 30AAT or section 49FG of the Insurance Act, as the case may be.

(5) On the expiry of the stay, if –

- (a) a termination right has been triggered independent of the Authority’s exercise of any specified power and the contract will form part of the business to be transferred under section 30AAT or section 49FG of the Insurance Act, as the case may be; or
- (b) the contract will not form part of the business to be transferred under section 30AAT or section 49FG of the Insurance Act, as the case may be,

the party subject to the stay imposed under subsection (1) may exercise the termination right in accordance with the terms of the contract.

(6) The *Gazette* notification referred to under subsection (1) may relate to all, or any class, category or description of a counterparty of a pertinent financial institution or insurer, and may make different provisions for different classes, categories or descriptions of counterparties of the pertinent financial institution or insurer, or of general or specifically limited applications.

(7) A copy of the *Gazette* notification referred to in subsection (1) shall be published –

- (a) by the Authority on its website; and
- (b) by the pertinent financial institution or insurer, as the case may be, on its official website.

(8) When exercising its power under this section, the Authority shall have regard to the impact of the exercise of the power on the safe and orderly functioning of the financial market and financial market infrastructures in Singapore.

Non-application of Stay

30AAZAJ. — Section 30AAZAI shall not apply where –

- (a) a termination right becomes exercisable independent of the Authority’s exercise of any specified power; or
- (b) a termination right arises under a contract held by a party which has been prescribed by regulations made under section 30AAZN as an excluded party.

[...]

Regulations for this Part

30AAZN. – [...]

(2) Without prejudice to the generality of subsection (1), regulations made under this section may —

[...]

(g) provide for a pertinent financial institution or insurer or any class thereof, to include contractual provisions in specified contracts, the effect of which is that the parties to the contract agree to be bound by any stay of termination rights imposed by the Authority under section 30AAZAI;

(h) prescribe any contracts or class of contracts as a specified contract referred to in paragraph (g).

**DRAFT AMENDMENTS TO
PART IVB OF THE MONETARY AUTHORITY OF SINGAPORE ACT
IN RELATION TO THE STATUTORY BAIL-IN REGIME**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

PART IVB
RESOLUTION OF FINANCIAL INSTITUTIONS

[...]

Division 4A – Bail-in

Interpretation of this Division

30AAZAA. In this Division, unless the context otherwise requires —

“certificate” means a certificate of bail-in issued by the Minister under section 30AAZAC(1);

“determination” means a determination made by the Authority under section 30AAZAB(1);

“Division 4A financial institution” means a class of financial institutions which is prescribed by regulations made under section 30AAZN as a Division 4A financial institution;

“eligible instrument” means an instrument or liability which has been prescribed by regulations made under section 30AAZN as an eligible instrument;

“resulting financial institution” means a class of financial institutions which is prescribed by regulations made under section 30AAZN as a resulting financial institution;

“significant shareholder” means any person prescribed by regulations made under section 30AAZN as a significant shareholder;

“significant shareholder provisions” means such provisions of written law as may be prescribed by regulations made under section 30AAZN as significant shareholder provisions.

Bail-in

30AAZAB. – (1) Subject to subsection (2), the Authority may make a determination that all or any of the eligible instruments held by a Division 4A financial institution shall be bailed-in by—

- (a) cancelling the eligible instrument;
- (b) modifying, converting, or changing the form of the eligible instrument; or
- (c) the eligible instrument having effect as if a right of modification, conversion or change of form had been exercised under it.

(2) Subsection (1)(a) shall not apply to a reduction of share capital of –

- (a) a pertinent financial institution incorporated in Singapore under section 30AAZ(1); and
 - (b) a licensed insurer incorporated or established in Singapore under section 49FM(1) of the Insurance Act (Cap. 142).
- (3) The Authority may make the determination referred to in subsection (1) if –
- (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the Division 4A financial institution, whether or not the Authority has exercised the power; and
 - (b) the Authority is of the opinion that —
 - (i) the eligible instrument ought to be bailed-in; or
 - (ii) the Division 4A financial institution’s available assets do not or are unlikely to support payment of its liabilities, as they become due and payable.
- (4) For the purposes of subsections (1)(b) and (1)(c), “modifying, converting, or changing the form” includes –
- (a) converting the eligible instrument from one form or class to another;
 - (b) replacing the eligible instrument with another instrument or contract of a different form or class;
 - (c) creating a new security (of any form or class) in connection with the modification of the eligible instrument; and
 - (d) converting the eligible instrument into securities issued by a resulting financial institution,
- and “modification, conversion or change of form” shall be read accordingly.
- (5) The Authority may, before making a determination, appoint one or more persons
=
- (a) to perform an independent assessment of the extent to which all or any eligible instruments of the Division 4A financial institution should be bailed-in; and
 - (b) to furnish to the Authority a report on the assessment.
- (6) The remuneration and expenses of any person appointed under subsection (5) shall be paid by the Division 4A financial institution.
- (7) The Authority shall serve a copy of any report furnished under subsection (5) on the Division 4A financial institution.
- (8) Upon making a determination, the Authority shall submit the determination to the Minister for his approval.
- (9) Before approving the determination, the Minister shall, unless he decides that it is not practicable or desirable to do so —
- (a) publish in the Gazette and in such newspaper or newspapers as he may determine a notice of his intention to approve the determination, specifying

such particulars as he considers appropriate and the date by which any affected holder of an eligible instruments of the Division 4A financial institution in which the eligible instruments are proposed to be bailed-in may make written representations to him; and

(b) cause to be given to the Division 4A financial institution notice in writing of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which the Division 4A financial institution may make written representations to him.

(10) In determining the period within which written representations have to be made under subsection (9), the Minister shall take into account the need for the bail-in to be effected expeditiously in the interest of the stability of the financial system in Singapore.

(11) Upon receipt of any written representation, the Minister shall consider the representation for the purpose of deciding whether to approve the determination.

(12) The Minister may —

(a) approve the determination without modification;

(b) approve the determination subject to any modification he considers appropriate; or

(c) refuse to approve the determination.

(13) Any approval under subsection (12) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition.

(14) The Division 4A financial institution shall comply with every condition referred to in subsection (13) that applies to it.

(15) Any affected holder of an eligible instrument shall comply with every condition referred to in subsection (13) that applies to the affected holder of the eligible instrument.

(16) A determination, an approval under subsection (12) of a determination or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the Division 4A financial institution.

Certificate of Bail-in

30AAZAC. – (1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of bail-in, which shall come into effect on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 30AAZN.

(3) The certificate may make provision for all or any of the following matters:

- (a) the cancellation of all or any of the eligible instruments held by the Division 4A financial institution;
- (b) the modification, conversion, or change in form of all or any of the eligible instruments held by a Division 4A financial institution;
- (c) that an eligible instrument held by the Division 4A financial institution is to have effect as if a right of modification, conversion or change of form had been exercised under it;
- (d) where provision under subsection (3)(c) has been made, the details of the right of modification, conversion or change of form; or
- (e) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the bail-in of the eligible instruments held by the Division 4A financial institution is fully effective, including conditions relating to such bail-in.

(4) The Minister may at any time before the certificate comes into effect add to, vary or revoke any matter specified in the certificate.

(5) On or before the date on which the certificate comes into effect, the Authority shall cause the certificate and any addition, variation or revocation referred to in subsection (4) to be served on the Division 4A financial institution, and to be published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Notwithstanding any written law or rule of law, anything in the memorandum and articles of association of the Division 4A financial institution or resulting financial institution, or anything in the eligible instruments held by the Division 4A financial institution, upon the certificate coming into effect —

- (a) where the certificate provides for the cancellation of all or any of the eligible instruments held by a Division 4A financial institution —
 - (i) the cancellation of the eligible instrument shall take effect without other or further act by the Division 4A financial institution; and
 - (ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected;
- (b) where the certificate provides for the modification, conversion, or change in form of all or any of the eligible instruments held by a Division 4A financial institution —
 - (i) the modification, conversion, or change in form of the eligible instrument shall take effect without other or further act by the Division 4A financial institution; and
 - (ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected; or
- (c) where the certificate provides that an eligible instrument is to have effect as if a specified right had been exercised under it —

- (i) the eligible instrument shall have effect as if the specified right had been exercised under it without other or further act by the Division 4A financial institution; and
- (ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected.

(7) A Division 4A financial institution which or any person who fails to comply with any provision in the certificate or any provision of this section shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(8) Where a person is charged with an offence under subsection (7), it shall be a defence for the person to prove that —

- (a) he was not aware he had contravened any provision in the certificate; and
- (b) he has complied with the provision within a reasonable time after becoming aware of the contravention.

(9) Except as provided in subsection (8), it shall not be a defence for a person charged with an offence under subsection (7) that he did not intend to or did not knowingly contravene any provision in the certificate.

(10) Notwithstanding section 30AAO(2) but subject to section 30AAZM, during the period beginning on the date on which the Minister publishes the notice under section 30AAZAB(9) in the *Gazette* on the bail-in of the eligible instruments held by a Division 4A financial institution or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under subsection (5) in the *Gazette* on the bail-in, and ending on the date on which the certificate comes into effect —

- (a) no resolution shall be passed, and no order shall be made, for the winding up of the Division 4A financial institution;
- (b) no judicial management order under Part VIIIA of the Companies Act shall be made in relation to the Division 4A financial institution;
- (c) no proceedings shall be commenced or continued against the Division 4A financial institution in respect of any business of the Division 4A financial institution;
- (d) no execution, distress or other legal process shall be commenced, levied or continued against any property of the Division 4A financial institution;
- (e) no steps shall be taken to enforce any security over any property of the Division 4A financial institution; and

(f) any sale, transfer, assignment or other disposition of any property of the Division 4A financial institution shall be void.

(11) No shareholder shall exercise any voting power in the Division 4A financial institution or resulting financial institution during the period beginning on the date on which the Minister publishes the notice under section 30AAZAB(9) in the *Gazette* on the bail-in of the eligible instruments held by a Division 4A financial institution or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under subsection (5) in the *Gazette* on the bail-in, and ending on –

(a) the date on which the Minister publishes the notification under section 30AAZAD(2)(a) in the *Gazette*; or

(b) the date on which the Minister publishes a notification in the *Gazette* allowing all shareholders to exercise their voting powers in the Division 4A financial institution or resulting financial institution.

(12) Subsection (11) shall have effect notwithstanding any of the provisions of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the Division 4A financial institution or resulting financial institution, as the case may be.

Significant bail-in shareholder

30AAZAD. – (1) Where any person becomes a significant shareholder of the Division 4A financial institution or the resulting financial institution as a result of a modification, conversion, or change in form of an eligible instrument under the certificate (referred to in this section as a significant bail-in shareholder) –

(a) the significant bail-in shareholder shall not be required to obtain the prior approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the Division 4A financial institution or the resulting financial institution, in respect of such shares; and

(b) the significant bail-in shareholder shall not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the Division 4A financial institution or the resulting financial institution, notwithstanding the provisions of the Companies Act or the Take-over Code.

(2) The Minister may –

(a) publish a notification in the *Gazette* confirming the status of the significant bail-in shareholders as significant shareholders; or

(b) serve a written notice of objection on a significant bail-in shareholder under subsection (6).

(3) Any confirmation under subsection (2)(a) may be made subject to such conditions as the Minister may impose on the significant bail-in shareholder, including but not limited to any condition –

- (a) restricting the significant bail-in shareholder's disposal or further acquisition of shares or voting power in the Division 4A financial institution or the resulting financial institution, as the case may be; or
- (b) restricting the significant bail-in shareholder's exercise of voting power in the Division 4A financial institution or the resulting financial institution, as the case may be.

(4) The Minister may at any time add to, vary or revoke any condition imposed under subsection (3).

(5) Any condition imposed under subsection (3) shall have effect notwithstanding any of the provisions of the Companies Act (Cap. 50) or anything contained in the memorandum or articles of association of the Division 4A financial institution or the resulting financial institution, as the case may be.

(6) The Minister may serve a written notice of objection on the significant bail-in shareholder if –

- (a) the Authority is not satisfied that —
 - (i) the significant bail-in shareholder is a fit and proper person; and
 - (ii) having regard to the likely influence of the significant bail-in shareholder, the Division 4A financial institution or the resulting financial institution will or will continue to conduct its business prudently and comply with the provisions of this Act and the relevant Act applicable to it; or
- (b) the Minister is not satisfied that —
 - (i) in any case where the Division 4A financial institution or the resulting financial institution is a bank incorporated in Singapore, it is in the national interest for the significant bail-in shareholder to become a significant shareholder of the Division 4A financial institution or the resulting financial institution; or
 - (ii) in any other case, it is in the public interest for the significant bail-in shareholder to become a significant shareholder of the Division 4A financial institution or the resulting financial institution, as the case may be.

(7) The Minister shall, in any written notice of objection, specify a reasonable period within which the significant bail-in shareholder to be served the written notice of objection shall take such steps as are necessary to ensure that he ceases to be a significant shareholder of the Division 4A financial institution or the resulting financial institution, as the case may be, subject to such conditions as may be specified therein.

(8) Any significant bail-in shareholder who fails to comply with any provision in this section shall be guilty of an offence and shall be liable on conviction –

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a

continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

Restriction on eligible instruments

30AAZAE. (1) – A Division 4A financial institution shall not, on or after [commencement date of amendments] enter into a contract in relation to an eligible instrument, unless the Division 4A financial institution has complied with the requirements as may be prescribed by regulations made under section 30AAZN for the purposes of this section.

(2) Any Division 4A financial institution which does not comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

Exercise of powers under this Division

30AAZAF. – (1) The Authority may exercise its powers under this Division with regard to whether the eligible instruments of the Division 4A financial institution are bailed in in such a manner that is consistent with the priority and treatment that a creditor would have enjoyed if the Division 4A financial institution had been wound up.

(2) In determining whether to exercise its powers in accordance with subsection (1), the Authority may consider –

- (a) the systemic impact of the Division 4A financial institution's failure;
- (b) the need to maximise value for the benefit of all creditors as a whole;
- (c) whether it is in the public interest to do so; and
- (d) any other matter that the Authority considers relevant.

**DRAFT AMENDMENTS TO
PART IVB OF THE MONETARY AUTHORITY OF SINGAPORE ACT
IN RELATION TO CROSS-BORDER RECOGNITION OF RESOLUTION
ACTIONS**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

*Division 5 — Assistance to foreign resolution authorities
and domestic authorities Cross-border cooperation for resolution*

Interpretation of this Division

30AAZB. In this Division, unless the context otherwise requires —

“certificate” means a certificate of recognition issued by the Minister under section 30AAZHB;

“determination” means a determination made by the Authority under section 30AAZHA;

“domestic authority” means any ministry or department of the Government, any Organ of State in Singapore and any statutory body (other than the Authority) established under a public Act for a public function, and includes the company designated to be the deposit insurance and policy owners’ protection fund agency under section 56 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);

“foreign creditor” means any person who holds shares or other similar instruments representing a legal or beneficial ownership interest issued by a foreign financial institution or is a creditor of a foreign financial institution, but does not include a Singapore creditor;

“foreign financial institution” means a financial institution incorporated, formed or established in a foreign country or territory that —

- (i) has a branch located, or a subsidiary incorporated, in Singapore; and
- (ii) the branch or subsidiary, as the case may be, is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule;

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“prescribed written law” means the following Acts and the subsidiary legislation made under those Acts:

- (a) this Act;
- (b) the Banking Act (Cap. 19);
- (c) the Deposit Insurance and Policy Owners’ Protection Schemes Act;
- (d) the Finance Companies Act (Cap. 108);
- (e) the Financial Advisers Act (Cap. 110);
- (f) the Insurance Act (Cap. 142);
- (g) the Money-changing and Remittance Businesses Act (Cap. 187);
- (h) the Payment Systems (Oversight) Act (Cap. 222A);
- (i) the Securities and Futures Act (Cap. 289);
- (j) the Trust Companies Act (Cap. 336); and

- (k) such other Act or Acts as the Authority may prescribe by regulations made under section 30AAZN;

“resolution” means any action by an authority (being an authority charged with responsibility for such action) to do either or both of the following:

- (a) to maintain financial stability;
- (b) to deal with any serious problem in a financial institution which affects the ability of the financial institution to continue its business or operations as a financial institution, and which, if not dealt with, may cause the financial institution to be no longer able to continue its business or operations as a financial institution;

“resolution authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory which, whether alone or together with one or more other authorities of the foreign country or territory, is responsible for the resolution, or for preparing plans for dealing with the resolution, of a financial institution;

[Act 9 of 2013 wef 18/04/2013]

“Singapore creditor” means any person who holds shares or other similar instruments representing a legal or beneficial ownership interest issued by, or is a creditor of, a branch located or subsidiary incorporated in Singapore, of a foreign financial institution.

Subdivision (1) – Assistance to foreign resolution authorities and domestic authorities

Conditions for provision of assistance to foreign resolution authority

30AAZC.—(1) The Authority may provide the assistance referred to in section 30AAZE to a resolution authority of a foreign country or territory, if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the resolution authority for assistance is received by the Authority on or after the date of commencement of section 10 of the Monetary Authority of Singapore (Amendment) Act 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 Authority;
- (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 paragraph (e)) 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 Authority 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 Authority;
- (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.

(2) For the purposes of subsection (1)(d) and (e), “designated third party”, in relation to a foreign country or territory, means such person in, or body or authority of, the foreign country or territory as the Authority may approve, upon an application to the Authority, if the Authority 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.

[Act 9 of 2013 wef 18/04/2013]

Other factors to consider for provision of assistance to foreign resolution authority

30AAZD. In deciding whether to grant a request for assistance referred to in section 30AAZE from a resolution authority of a foreign country or territory, the Authority may also have regard to the following:

- (a) whether the resolution authority is preparing plans for dealing with the resolution of any financial institution, or is in the process of determining whether to exercise, or is exercising, any resolution powers in relation to the financial institution;
- (b) whether the resolution authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the resolution authority for similar assistance;
- (c) whether the resolution authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the resolution authority has requested for.

[Act 9 of 2013 wef 18/04/2013]

Assistance that may be rendered to foreign resolution authority

30AAZE. —(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority 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 Authority that is requested by the resolution authority or a copy thereof;

- (b) order any person to furnish to the Authority any material that is requested by the resolution authority or a copy thereof, and transmit the material or copy to the resolution authority;
- (c) order any person to make an oral statement to the Authority 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 Government, or any statutory authority in Singapore, to furnish to the Authority any material that is requested by the resolution authority or a copy thereof, and transmit the material or copy to the resolution authority.

(2) An order under subsection (1)(b) or (c) 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.

(3) Nothing in this section shall compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), to furnish or transmit any material or copy thereof that contains, or to disclose, a privileged communication made by or to him in that capacity.

(4) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(5) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 30AAZG.

[Act 9 of 2013 wef 18/04/2013]

Assistance to domestic authority

30AAZF.—(1) 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, the Authority may, on its own motion or upon receiving a written request from a domestic authority for any material in relation to the resolution of a specified financial institution, transmit to the domestic authority any such material that is in the possession of the Authority or a copy thereof.

(2) In deciding whether to transmit any material to a domestic authority under subsection (1), the Authority may have regard to the following:

- (a) whether the assistance is intended to enable the domestic authority —

- (i) to prepare plans for dealing with the resolution of a specified financial institution;
 - (ii) to avoid having to exercise any resolution powers in relation to a specified financial institution; or
 - (iii) to determine whether or when to exercise resolution powers in relation to a specified financial institution;
- (b) whether the domestic authority has given or is willing to give a written undertaking —
- (i) 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 Authority; or
 - (ii) that any material or copy thereof transmitted by the Authority on its own motion shall not be used for any purpose other than a purpose that is specified by the Authority;
- (c) whether the domestic authority has given a written undertaking not to disclose to a third party any material or copy thereof obtained pursuant to the request or transmitted by the Authority on its own motion, unless the domestic authority is compelled to do so by the law or the Court.

[Act 9 of 2013 wef 18/04/2013]

Offences under this Subdivision ~~under this Division~~

30AAZG. Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 30AAZE(1)(b) or (c);
- (b) in purported compliance with an order under section 30AAZE(1)(b), furnishes to the Authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 30AAZE(1)(c), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[Act 9 of 2013 wef 18/04/2013]

Immunity for furnishing material, etc.

30AAZH.—(1) No liability, other than for an offence under section 30AAZG, shall lie against any person for —

- (a) furnishing to the Authority any material or copy thereof, if he had furnished that material or copy with reasonable care and in good faith in compliance with an order made under section 30AAZE(1)(b);
- (b) making a statement to the Authority with reasonable care and in good faith and in compliance with an order made under section 30AAZE(1)(c); or

- (c) doing or omitting to do any act, if he had done or omitted to do the act with reasonable care and in good faith and as a result of complying with an order made under section 30AAZE(1)(b) or (c).

(2) Any person who complies with an order made under section 30AAZE(1)(b) or (c) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

[Act 9 of 2013 wef 18/04/2013]

Subdivision (2) – Recognition of foreign resolution action

Recognition of resolution by foreign resolution authority

30AAZHA. - (1) Subject to subsection (2), where the Authority has been notified of a resolution by a resolution authority of a foreign country or territory concerning a foreign financial institution, the Authority may make a determination to –

- (a) recognise the resolution;
- (b) recognise only part of the resolution; or
- (c) refuse to recognise the resolution.

(2) The Authority may recognise the resolution or part thereof under subsection (1)(a) or (b), if it is satisfied that all of the following conditions are fulfilled:

- (a) the recognition of the resolution or part thereof would not have a widespread adverse effect on the financial system in Singapore or the economy of Singapore, or both, whether or not that widespread adverse effect occurs directly or indirectly as a result of the impact of the failure on the financial system in Singapore, or on other financial institutions in Singapore;
- (b) the recognition of the resolution or part thereof would not result in inequitable treatment of any Singapore creditor relative to a foreign creditor;
- (c) the recognition of the resolution or part thereof would not be contrary to the national interest or public interest;
- (d) the recognition of the resolution or part thereof would not have material fiscal implications; and
- (e) any other matter that the Authority may prescribe by regulations made under section 30AAZN.

(3) For the purposes of recognising the resolution or part thereof, the Authority may exercise one or more of its powers under this Part, in support of the resolution, in accordance with the powers under the respective provision of this Part.

(4) Upon making a determination under subsection (1), the Authority shall submit the determination to the Minister for his approval.

(5) The Minister may —

- (a) approve the determination without modification;
- (b) approve the determination subject to any modification he considers appropriate; or
- (c) refuse to approve the determination.

(6) Any approval under subsection (5) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition.

(7) A determination, an approval under subsection (5) of a determination or the issue of a certificate under section 30AAZHB(1) shall not preclude the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the branch or subsidiary of the foreign financial institution.

Certificate of recognition

30AAZHB. –(1) If the Minister approves a determination under section 30AAZHA(5)(a) or (b), he shall, as soon as practicable, issue a certificate of recognition, which shall come into effect on the date specified by him in the certificate.

(2) The certificate must specify such information as may be prescribed by regulations made under section 30AAZN.

(3) The certificate may provide that the resolution by a resolution authority of a foreign country or territory concerning the foreign financial institution, or part thereof, has substantially the same legal effect as if the resolution was taken by the Authority under this Part.

(4) The Minister may at any time before the certificate comes into effect add to, vary or revoke any matter specified in the certificate.

(5) On or before the date on which the certificate comes into effect, the Authority must cause the certificate, and any addition, variation or revocation referred to in subsection (4) –

- (a) to be served on the branch or subsidiary of the foreign financial institution, as the case may be, and any other person as the Authority may consider necessary, and;
- (b) to be published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) The Authority may, from time to time, issue such directions concerning any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule, as the Authority considers necessary for the purposes of giving full effect to the certificate made under subsection (1).

Offences under this Subdivision

30AAZHC. – (1) Any person who –

- (a) has been served with a certificate under section 30AAZHB(5), refuses or fails to comply with the certificate; or
- (b) refuses or fails to comply with a direction under section 30AAZHB(6).

shall be guilty of an offence and shall be liable on conviction –

- (i) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or
- (ii) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(2) Where a person is charged with an offence under subsection (1), it shall be a defence for the person to prove that –

- (a) he was not aware he had contravened any provision in the certificate or direction, as the case may be; and
- (b) he has complied with the provision within a reasonable time after becoming aware of the contravention.

(3) Except as provided in subsection (2), it shall not be a defence for a person charged with an offence under subsection (1) that he did not intend to or did not knowingly contravene any provision in the certificate or direction, as the case may be.

**DRAFT AMENDMENTS TO
PART IVB OF THE MONETARY AUTHORITY OF SINGAPORE ACT
IN RELATION TO THE CREDITOR COMPENSATION FRAMEWORK**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

PART IVB
RESOLUTION OF FINANCIAL INSTITUTIONS

[...]

Division 5A – Creditor Compensation

Interpretation of this Division

30AAZHD. – In this Division, unless the context otherwise requires –

“Division 5A financial institution” means a financial institution prescribed by regulations made under section 30AAZN as a Division 5A financial institution;

“eligible instrument” has the same meaning as in division 4A;

“pre-resolution creditor” means any person who held shares or other similar instruments representing a legal or beneficial ownership interest issued by a Division 5A financial institution, or was a creditor of a Division 5A financial institution –

- (a) immediately before the coming into effect of the Authority’s exercise of any trigger power; or
- (b) where the Authority has exercised a combination of trigger powers, immediately before the coming into effect of the first power exercised by the Authority;

“prescribed written law” has the same meaning as in section 30AAZB;

“protected information” means information that is protected from unauthorised disclosure under any prescribed written law;

“resolution authority” has the same meaning as in section 30AAZB;

“transferee” has the same meaning as in section 30AAR or section 49FE of the Insurance Act, as the case may be;

“trigger power” means –

- (a) any of the Authority’s powers under division 2, 3, 4 or 4A of this Part or division 2, 3 or 4 of Part IIIAA of the Insurance Act (Cap. 142); or
- (b) a recognition of a resolution by a resolution authority of a foreign country or territory under subdivision (2) of division 5 of Part IVB, where such resolution involves an action which is the equivalent of any of the Authority’s powers under division 2, 3, 4 or 4A of this Part or division 2, 3 or 4 of Part IIIAA of the Insurance Act;

“valuation report” means a report made by the valuer in accordance with section 30AAZHJ;

“valuer” means a legal or natural person appointed under section 30AAZHF;

“worse-off” means a situation where, as a result of the Authority’s exercise of any of the powers under Part IVB (excluding sections 30AAP and 30AAQ) or divisions 2, 3 or 4 of Part IIIA of the Insurance Act (Cap. 142), or a combination thereof, any pre-resolution creditor has received less than what the pre-resolution creditor would have received had winding-up proceedings been commenced against the relevant Division 5A financial institution immediately before the coming into effect of the Authority’s exercise of any trigger power.

Eligibility for compensation

30AAZHE. – (1) Subject to subsection (2), where the Authority has exercised any trigger power or a combination thereof in relation to a Division 5A financial institution, any pre-resolution creditor in the Division 5A financial institution will be eligible for a payment of compensation under this division if he is worse-off.

(2) Where the Authority has exercised its powers under subdivision (2) of division 5 of Part IVB, a pre-resolution creditor in the Division 5A financial institution will not be eligible for a payment of compensation under this division if the pre-resolution creditor is eligible to claim compensation under a similar arrangement in a foreign country or territory.

Appointment of valuer

30AAZHF. – (1) Subject to subsection (4), where the Authority has exercised any trigger power or a combination thereof in relation to any Division 5A financial institution, the Minister shall appoint a valuer to carry out the duties set out in section 30AAZHJ, on such terms and conditions as the Authority may specify.

(2) The appointment under subsection (1) shall be made as soon as practicable after the Authority’s exercise of any trigger power.

(3) The Minister may vary or revoke any appointment of a valuer made under subsection (1) and appoint a new valuer, subject to the grounds prescribed in regulations made under section 30AAZN.

(4) No appointment of a valuer under subsection (1) or (3) shall be made unless the Minister is satisfied that the person to be appointed satisfies the criteria as may be prescribed in regulations made under section 30AAZN.

(5) Where the appointment of a valuer is revoked and a new valuer is appointed under subsection (3), the Authority may direct the outgoing valuer to provide such information and documents to the new valuer as the Authority considers necessary for the new valuer to conduct the valuation.

Remuneration and expenses of the valuer

30AAZHG. – The Authority may at any time fix the remuneration and expenses to be paid to a valuer, which may be paid out of the Resolution Fund under division 5B of this Part.

Access to information by valuer

30AAZHH. - (1) A Division 5A financial institution under valuation must –

- (a) give the valuer appointed under section 30AAZHF access to such records and documents of the Division 5A financial institution as the valuer may require to conduct the valuation;
- (b) procure a person who is in possession of such records and documents of the Division 5A financial institution as the valuer may require to conduct the valuation, to give the valuer access to the relevant records and documents;
- (c) provide such information and facilities as the valuer may require to conduct the inspection; and
- (d) procure a person who is in possession of such information and facilities as the valuer may require to conduct the valuation, to provide the information and facilities to the valuer.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the Division 5A financial institution or any of its officers, or on any person referred to in subsection (1)(b) or (d), by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(3) A Division 5A financial institution which refuses or neglects, without reasonable excuse, to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(4) No civil or criminal liability is incurred by a Division 5A financial institution or any of its officers, or by any person referred to in subsection (1)(b) or (d), in respect of any obligation or restriction referred to in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(5) A Division 5A financial institution or any of its officers, or any person referred to in subsection (1)(b) or (d), that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (2).

Confidentiality and use of information

30AAZHI. – (1) A valuer must not use any information obtained under this Division other than for the performance of its functions under this Division.

(2) Any person who comes to the knowledge of any information in the course of assisting another person to perform a function under this Division must not use any such information for purposes other than for assisting that person to perform the relevant function under this Division.

(3) Where, for the purposes of the valuation, a valuer obtains any protected information, the valuer must treat that information as secret.

(4) Except as provided in section 30AAZHK, the valuation report must be kept confidential and must not be disclosed to any person in part or in whole by the valuer.

(5) The obligations of the valuer under subsections (1), (3) and (4) shall continue after the revocation or cessation of the appointment of the valuer.

(6) Any person who contravenes subsections (1) to (4) of this section shall be guilty of an offence and shall be liable on conviction —

(a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(7) Any person to whom the information referred to in subsections (1) to (4) of this section is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that such information was disclosed to the person in contravention of subsections (1) to (4) of this section as the case may be, shall be guilty of an offence and shall be liable on conviction —

(a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(8) Where a person is charged with an offence under subsection (7), it is a defence for the person to prove that —

(a) the disclosure was made contrary to the person's desire;

(b) where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the information surrendered, or taken all reasonable steps to surrender, the information and all copies of the information to the Authority; and

(c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the information, taken all reasonable steps to ensure the deletion of all electronic copies of the information and the surrender of the information and all copies of the information in other forms to the Authority.

Duties of valuer and valuation report

30AAZHJ. – (1) The valuer shall conduct a valuation of the Division 5A financial institution in respect of which the Authority has exercised any trigger power or a combination thereof, and shall issue a report setting out its decision on –

(a) whether any pre-resolution creditor is eligible for compensation; and

(b) the amount of compensation to be paid to each eligible pre-resolution creditor.

(2) In conducting a valuation, the valuer must do so in accordance with the valuation principles prescribed in regulations made under section 30AAZN and as may be specified by the Authority by written notice.

(3) It shall be a rebuttable presumption that the pre-resolution creditor is not worse-off in relation to a liability (whether arising under a contract or otherwise) owed by the Division 5A financial institution to the pre-resolution creditor, where –

- (a) the liability is transferred to a transferee under section 30AAT or section 49FG of the Insurance Act, as the case may be, and the transferee is subject to the liability on the same terms as those on which the Division 5A financial institution was subject to; or
- (b) the Authority has only exercised its powers under division 4A and the liability of the pre-resolution creditor is not an eligible instrument that has been the subject of the exercise of the Authority's powers.

(4) For the purposes of subsection (1)(b), the amount of compensation to be paid to each eligible pre-resolution creditor shall be determined by reference to the difference between –

- (a) the valuer's assessment of what the pre-resolution creditor would have received had winding-up proceedings been commenced against the relevant Division 5A financial institution immediately before the coming into effect of any trigger power; and
- (b) the valuer's assessment of what the pre-resolution creditor has received as a result of the Authority's exercise of any of its powers under Part IVB (excluding sections 30AAP and 30AAQ) or divisions 2, 3 or 4 of Part IIIAA of the Insurance Act, or a combination thereof.

(5) The valuation report shall specify such information as may be prescribed by regulations made under section 30AAZN and as may be specified by the Authority by written notice.

(6) The valuer shall provide the valuation report to the Minister and the Authority by such date as may be determined by the Minister.

(7) On receiving a copy of the valuation report, where the Authority is of the view that =

- (a) the valuation report was not prepared in accordance with this section; or
- (b) the valuer should have had regard to any additional circumstances not taken into account in the valuation report,

the Authority may by notice in writing direct the valuer to reconsider the valuation report or any aspect thereof and the valuer shall comply with that direction.

(8) A valuer who fails to comply with a direction issued to him under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

Disclosure of valuation report

30AAZHK. – (1) Subject to the approval of the Authority, disclosure of the valuation report in part or in whole may be made by the valuer to the relevant Division 5A financial institution, any eligible pre-resolution creditor, or the public.

(2) In granting approval for any disclosure under subsection (1), the Authority may impose such conditions or restrictions as it thinks fit on the valuer as to the form or content of the valuation report to be disclosed.

(3) The Authority may impose such conditions or restrictions as it thinks fit on the Division 5A financial institution or any eligible pre-resolution creditor that the valuer discloses the valuation report to pursuant to subsection (1).

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction —

- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.

Appeals

30AAZHL. – (1) The Authority or any pre-resolution creditor who is dissatisfied with
=

- (a) the valuer’s decision on the pre-resolution creditor’s eligibility for compensation; or
- (b) the amount of compensation to be paid to the pre-resolution creditor pursuant to the valuation report,

may appeal to the Court in accordance with the procedure and within the period of time, as may be prescribed in regulations made under section 30AAZN.

(2) The Court may make an order which confirms or varies the valuation report in respect of the eligibility of any pre-resolution creditor for compensation or the amount of compensation to be paid to such pre-resolution creditor.

**DRAFT AMENDMENTS TO
PART IVB OF THE MONETARY AUTHORITY OF SINGAPORE ACT
IN RELATION TO RESOLUTION FUNDING ARRANGEMENTS**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

MONETARY AUTHORITY OF SINGAPORE ACT

(CHAPTER 186)

[...]

Powers, duties and functions of Authority

23.- (1) The Authority may, in addition to the functions referred to in section 4(2), exercise and discharge the following powers, duties and functions:

[...]

(eb) grant any loan, advance, overdraft or other credit facility for the use of the Fund as defined in section 30AAZHM under such terms and conditions as the Authority thinks fit;

[...]

PART IVB

RESOLUTION OF FINANCIAL INSTITUTIONS

Division 5B – Resolution Funding

Interpretation of this Division

30AAZHM. In this Division, unless the context otherwise requires —

“Division 5B financial institution” means a financial institution or a class of financial institutions which is prescribed by regulations made under section 30AAZN as a Division 5B financial institution;

“Fund” means the fund established under section 30AAZHN;

“resolution” has the same meaning as in section 30AAZB;

“resolution power” means any of the Authority’s powers under division 2, 3, 4, 4A, 5A or sub-division (2) of division 5, divisions 2, 3 or 4 of Part IIIAA of the Insurance Act (Cap. 142) or relevant provisions as defined in section 30AAK.

Establishment of Resolution Fund

30AAZHN.—(1) There shall be established a fund to be called the Resolution Fund which shall, subject to the directions of the Minister, be controlled and administered by the Authority.

(2) The Fund shall consist of —

- (a) all moneys loaned to the Fund for the purposes set out in section 30AAZHO;
- (b) all levies and late payment fees paid by Division 5B financial institutions under section 30AAZHS;
- (c) any interest, dividend and other income derived from the use of the moneys in the Fund; and
- (d) all other moneys lawfully paid into the Fund.

(3) The Fund shall be used for the objects and purposes set out in section 30AAZHO and shall not be deemed a fund of the Authority for the purposes of any written law.

Objects of Fund and expenditure of moneys of Fund

30AAZHO.—(1) The object of the Fund is to support the exercise of any of the Authority’s resolution powers.

(2) In carrying out the objects of the Fund, the Authority may use the moneys of the Fund for all or any of the following purposes:

- (a) to provide capital for a Division 5B financial institution;
- (b) to provide capital for the purpose of establishing or incorporating an entity (referred to in this section as a provisional entity) to do any or all of the following –
 - (i) to temporarily hold and manage the assets and liabilities of the Division 5B financial institution;
 - (ii) to carry on the business of the Division 5B financial institution and to which such assets and liabilities are transferred to the provisional entity;
- (c) to pay for the costs of operating a provisional entity;
- (d) to provide guarantees or enter into any agreement to share any liability in relation to the transfer of the business of a Division 5B financial institution under this Part or Part IIIAA of the Insurance Act to a provisional entity or any entity which acquires or purchases the business;
- (e) to pay the cost of selling or transferring the whole or any part thereof, of the business of a Division 5B financial institution under this Part or Part IIIAA of the Insurance Act, to a provisional entity, or any entity which acquires or purchases the business;
- (f) to make loans, advances, overdrafts or other credit facilities to a Division 5B financial institution in relation to which the Authority has exercised its powers under this Part or Part IIIAA of the Insurance Act or a provisional entity;

- (g) to pay any other costs incurred in the exercise of the Authority's resolution powers, such as interest costs, legal costs, costs of any advisory services procured in effecting the resolution, and cost of independent valuation of a Division 5B financial institution;
- (h) to pay any creditor compensation claims and associated costs under Division 5A of this Part;
- (i) such other purposes not inconsistent with the objects of the Fund as the Minister may prescribe by regulations made by section 30AAZN.

Precondition to use of moneys in Fund

30AAZHP. – (1) In determining whether to use the moneys in the Fund, the Authority shall have regard to the following factors:

- (a) whether the Authority has exercised its resolution powers in relation to a Division 5B financial institution;
- (b) whether appropriate losses have been imposed on the shareholders and unsecured creditors of the Division 5B financial institution in relation to which the Authority has exercised its resolution powers;
- (c) whether private sector funding can be obtained by the Division 5B financial institution; and
- (d) such other factors as the Minister may prescribe.

(2) Where a determination has been made under subsection (1), the Authority shall, as soon as practicable, publish a notice in the *Gazette* and in such newspaper or newspapers as the Authority shall determine, of its determination to use the moneys of the Fund in relation to a specific Division 5B financial institution.

Recovery of moneys paid out of the Fund

30AAZHQ. – (1) Where moneys are paid out of the Fund in accordance with this Part, the Authority, with the approval of the Minister, may recover such moneys in any or all of the following manner -

- (a) from the Division 5B financial institution in relation to which the Authority has used the moneys of the Fund;
- (b) by imposing levies on any financial institution or class of financial institutions, or any person or class of persons who utilise the services of a financial institution or class of financial institutions, as the Authority may prescribe by regulations made under section 30AAZN.

(2) The Authority shall, as soon as practicable after an approval has been granted under subsection (1), publish a notice in the *Gazette* and in such newspaper or

newspapers as the Authority shall determine, of the requirement to pay the moneys or levies referred to in subsection (1).

Determination of amount of levies

30AAZHR. - (1) The Authority shall assess and compute the levies payable by each financial institution or person referred to in section 30AAZHQ(1)(b).

(2) Where the Authority has computed the amount of levies payable under subsection (1), the Authority shall as soon as practicable give a notice in writing to every financial institution or person referred to in section 30AAZHQ(1)(b) to be liable to pay such levies and the date or dates by which the levies shall be paid.

(3) For the purposes of assessing and computing the levies payable, the Authority shall, with the approval of the Minister, make regulations for or in respect of all or any of the following matters:

- (a) the establishment of a system classifying financial institutions or persons liable to pay levies under section 30AAZHQ(1)(b) into different categories;
- (b) the manner in which the amount of levies for each category of financial institution or persons is to be determined, including whether the financial institution has or will be contributing to the DI Fund, PPF General Fund, and PPF Life Fund as defined under the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B), where relevant, and how such levies will be redistributed where the financial institution is unable to meet its levy obligations;
- (c) the period within which the levies for each category of financial institution or persons are required to be paid;
- (d) such other matters as the Authority considers necessary.

Payment of levies and late payment fees

30AAZHS - (1) Where any financial institution or person is given notice in writing to pay any levy under section 30AAZHR(2), the financial institution or person shall pay to the Fund on or before the date of payment specified in the notice, the amount of levy that the financial institution or person is required to pay

(2) Subject to subsection (3), if any financial institution or person referred to in section 30AAZHQ(1)(b) fails to pay the levy on or before the date of payment specified in the notice issued under section 30AAZHR(2) —

- (a) the Authority may, by notice in writing, impose on the financial institution or person such late payment fee as may be prescribed by the Authority; and

(b) the financial institution or person shall pay to the Authority such late payment fee together with the unpaid levy on or before the date of payment specified in the notice under paragraph (a).

(3) The late payment fee referred to in subsection (2) shall not exceed the amount of levy owing by the financial institution or person referred to in section 30AAZHQ(1)(b).

(4) The amount of levy owing by the financial institution or person referred to in section 30AAZHQ(1)(b) and the late payment fee payable under this Part shall be paid in such manner as may be determined by the Authority.

(5) Without prejudice to any other remedy, any levy or late payment fee payable under this Part shall be recoverable as a debt due to the Authority by the financial institution or person referred to in 30AAZHQ(1)(b).

(6) Where the Authority has commenced any legal proceedings in a court in Singapore to recover any levy, or late payment fee from a financial institution or person referred to in section 30AAZHQ(1)(b) payable under this Part, the Authority shall be entitled to claim costs on a full indemnity basis from that financial institution or person.

Power to refund or remit levies, etc.

30AAZHT. The Authority may, with the approval of the Minister, refund or remit in whole or in part any levy paid or payable by any financial institution or person referred to in section 30AAHQ(1)(b).

Power to distribute surplus.

30AAZHU.—(1) The Authority shall, with the approval of the Minister, make regulations with respect to how any surplus is to be distributed.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may —

(a) specify the financial institution or person referred to in section 30AAZHQ(1)(b) who is entitled to any share of the surplus; and

(b) specify how the share of surplus payable to any financial institution or person in paragraph (a) is to be calculated.

(3) In this section, “surplus”, in relation to the Fund, means any money standing to the credit of the Fund after all borrowings of the Fund and interest payable in respect of them has been paid.

Refund of levies, etc. paid in excess and distribution of surplus

30AAZHV.—(1) Where it appears to the Authority that a financial institution or person has paid any levy in excess of the amount payable as prescribed by regulations made under section 30AAZHR(3), the Authority shall refund to the financial institution or person the amount of levy paid in excess.

(2) Where a determination has been made pursuant to the regulations under section 30AAZHU, the Authority shall distribute the surplus to the financial institutions or persons as prescribed under the regulations.

Disclosure of information relating to levies

30AAZHW.—(1) Subject to subsections (2) and (3), no financial institution or person or officer of any financial institution or person, shall disclose to any person —

- (a) the levy applicable to the financial institution or person under section 30AAZHS; and
- (b) any information which if disclosed, would enable any of the information referred to in paragraph (a) to be identified or deduced.

(2) Notwithstanding subsection (1), a financial institution or officer of any financial institution may disclose to —

- (a) any director or officer of the financial institution;
- (b) in the case where the financial institution is a branch, the head office, parent corporation or parent supervisory authority, resolution authority, deposit insurance authority or policy owners' protection scheme authority of the financial institution;
- (c) in the case where the financial institution is a company which is a subsidiary of a foreign corporation, the foreign corporation or the parent supervisory authority, resolution authority, deposit insurance authority or policy owners' protection scheme authority of the foreign corporation; or
- (d) such other person or class of persons as the Authority may approve in writing.

any of the matters referred to in subsection (1) where such disclosure is necessary for the performance of the duties of the person referred to in paragraph (a), (b) (c) or (d), as the case may be.

(3) No person to whom the financial institution or officer of any financial institution has disclosed information pursuant to subsection (2) shall disclose that information to any other person except as approved by the Authority.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both.

(5) This section shall not apply in relation to any information referred to in subsection (1) that is public information.

(6) In this section—

“deposit insurance authority” in relation to a financial institution which is a branch or a company which is a subsidiary of a foreign corporation means an authority of a foreign country or territory which, whether alone or together with one or more other authorities, is responsible for administering a deposit insurance scheme in respect of the financial institution or the foreign corporation, as the case may be;

“resolution authority” in relation to a financial institution which is a branch or a company which is a subsidiary of a foreign corporation means an authority of a foreign country or territory which, whether alone or together with one or more other authorities is responsible for the resolution, or for preparing plans for dealing with the resolution of the financial institution or the foreign corporation, as the case may be;

“policy owners’ protection scheme authority” in relation to a financial institution which is a branch or a company which is a subsidiary of a foreign corporation means an authority of a foreign country or territory which, whether alone or together with one or more authorities, is responsible for administering a protection scheme for the policy owners of insurance policies in respect of the financial institution or the foreign corporation, as the case may be.

Priority of specified liabilities of a Division 5B financial institution

30AAZH. Notwithstanding the provisions of any written law or rule of law relating to the winding up of companies, in the event of a winding up of a Division 5B financial institution (other than a bank, a finance company or a licensed insurer), the amount paid or payable out of the Fund under section 30AAZHO shall have priority over all unsecured liabilities of the Division 5B financial institution other than preferential debts specified in section 328(1) of the Companies Act (Cap.50).

[...]

Consequential Amendments

Deposit Insurance and Policy Owners’ Protection Schemes Act

(Chapter 77B)

Withdrawal and application of moneys of DI Fund

10. – (1) In carrying out the objects and purposes of the DI Scheme, the moneys in the DI Fund may be withdrawn and applied as the Agency considers proper for all or any of the following purposes only:

[...]

(ba) the payment is in relation to any exercise of the powers of the Authority under Part IVB of the Monetary Authority of Singapore Act (Cap. 186) other than to pay any creditor compensation claims and associated costs under Division 5A of the Part;

[...]

(1A) For purposes of subsection (1)(c), the moneys in the DI Fund may only be withdrawn if the Authority has made a determination that the amount of moneys to be withdrawn in respect of the resolution of a DI Scheme Member is either equal to or less than the amount of compensation that would have been paid out to the insured depositors of the DI Scheme member if a compensation payout had been triggered under section 21.

[...]

Banking Act

(Chapter 19)

[...]

Priority of specified liabilities inter se

62. —(1) Notwithstanding the provisions of any written law or rule of law relating to the winding up of companies, in the event of a winding up of a bank, the following liabilities in Singapore of the bank shall, amongst themselves, rank in the following order of priority:

(a) firstly, any premium contributions due and payable by the bank under the Deposit Insurance and Policy Owners' Protection Schemes Act 2011 (Cap. 77B);

~~(b) secondly, liabilities incurred by the bank in respect of insured deposits, up to the amount of compensation paid or payable out of the DI Fund by the Agency under the Deposit Insurance and Policy Owners' Protection Schemes Act 2011 in respect of such insured deposits;~~ secondly, liabilities incurred by the bank in respect of insured deposits, up to the amount of compensation paid or payable out of the DI Fund by the Agency under the Deposit Insurance and Policy Owners' Protection Schemes Act in respect of such insured deposits and, if applicable, the amount paid or payable out of the DI Fund by the DI Agency under the Deposit Insurance and Policy Owners' Protection Schemes Act to fund any exercise of the powers of the Authority under Part IVB of the Monetary Authority of Singapore Act (Cap. 186);

(c) thirdly, deposit liabilities incurred by the bank with non-bank customers other than those specified in paragraphs (b) and (d);

(d) fourthly, deposit liabilities incurred by the bank with non-bank customers when operating an Asian Currency Unit approved under section 77;

(e) fifthly, the amount paid or payable out of the Resolution Fund established under Division 5B of Part IVB of the Monetary Authority of Singapore Act to fund any exercise of the powers of the Authority under the Part.

[...]

Insurance Act

(Chapter 142)

[...]

49FR. - (3) Notwithstanding the provisions of any written law or any rule of law relating to the winding up of companies, in the event of a winding up of a licensed insurer, the following liabilities in Singapore of the licensed insurer (which include liabilities which are properly attributable to the business to which an insurance fund relates) shall rank in the following order of priority:

[...]

(e) fifthly, the amount paid or payable out of the Resolution Fund established under Division 5B of Part IVB of the Monetary Authority of Singapore Act (Cap. 189) to fund any exercise of the powers of the Authority under the Part.

[...]

Finance Companies Act

(Chapter 108)

[...]

44A. —(1) Notwithstanding the provisions of any written law or rule of law relating to the winding up of companies, in the event of a winding up of a finance company, the following liabilities in Singapore of the finance company shall, amongst themselves, rank in the following order of priority:

(a) firstly, any premium contributions due and payable by the finance company under the Deposit Insurance and Policy Owners' Protection Schemes Act ~~2011~~ (Act 15 of ~~2011~~) (Cap. 77B);

(b) secondly, liabilities incurred by the finance company under the Deposit Insurance and Policy Owners' Protection Schemes Act ~~2011~~ in respect of insured deposits, up to the amount of compensation paid or payable out of the DI Fund by the Agency under the Deposit Insurance and Policy Owners' Protection Schemes Act ~~2011~~ in respect of such insured deposits.

(c) thirdly, the amount paid or payable out of the Resolution Fund established under Division 5B of Part IVB of the Monetary Authority of Singapore Act (Cap. 189) to fund any exercise of the powers of the Authority under the Part.

[...]

(3) In this section, “Agency” and “DI Fund” have the same respective meanings as in section 2(1) of the Deposit Insurance and Policy Owners’ Protection Schemes Act 2011.

[...]

**DRAFT AMENDMENTS TO
THE MONETARY AUTHORITY OF SINGAPORE (CONTROL AND
RESOLUTION OF FINANCIAL INSTITUTIONS) REGULATIONS 2013**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

PART I
PRELIMINARY

Definitions

2. In these Regulations, unless the context otherwise requires —

[...]

“collective investment scheme” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“commodities” has the same meaning as in section 2(1) of the Securities and Futures Act;

“derivatives contract” means any contract or arrangement under which —

(i) a party to the contract or arrangement is, or may be required to, discharge its obligations under the contract or arrangement at some future time; and

(ii) the discharge of the party’s obligations, or the value of the contract or arrangement, is ultimately determined, derived from, or varies by reference to (wholly or in part), the value or amount, or fluctuations in the values or amounts, of one or more underlying things;

“financial contract” means:

(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 Securities and Futures Act;

[...]

“securities” means —

(a) shares or any similar instrument representing a legal or beneficial ownership interest in a corporation, partnership, limited liability partnership or unit in a business trust; or

(b) debentures of a government, corporation, body unincorporated, partnership or business trust,

but does not include —

(i) any unit of a collective investment scheme;

(ii) any bill of exchange;

(iii) any certificate of deposit issued by a bank or finance company whether situated in Singapore or elsewhere; or

- (iv) such other instrument or class of instruments as the Authority may prescribe as not being securities by regulations made under section 341 of the Securities and Futures Act (Cap. 289);

[...]

“transferor” has the same meaning as in section 30AAR of the Act;

“transferee” has the same meaning as in section 30AAR of the Act.

“underlying thing” means any unit in a collective investment scheme, securities, securities index, commodity, currency, currency index, interest rate, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, or the credit of any person;

[...]

PART IV

SAFEGUARDS

Set-off and Netting Rights

15. — (1) For the purposes of section 30AAS(12) of the Act, the Minister shall not approve a determination made by the Authority for a transfer of only part (but not the whole) of the business of a transferor, unless the determination provides for the transfer of the protected rights and liabilities from the transferor to a transferee.

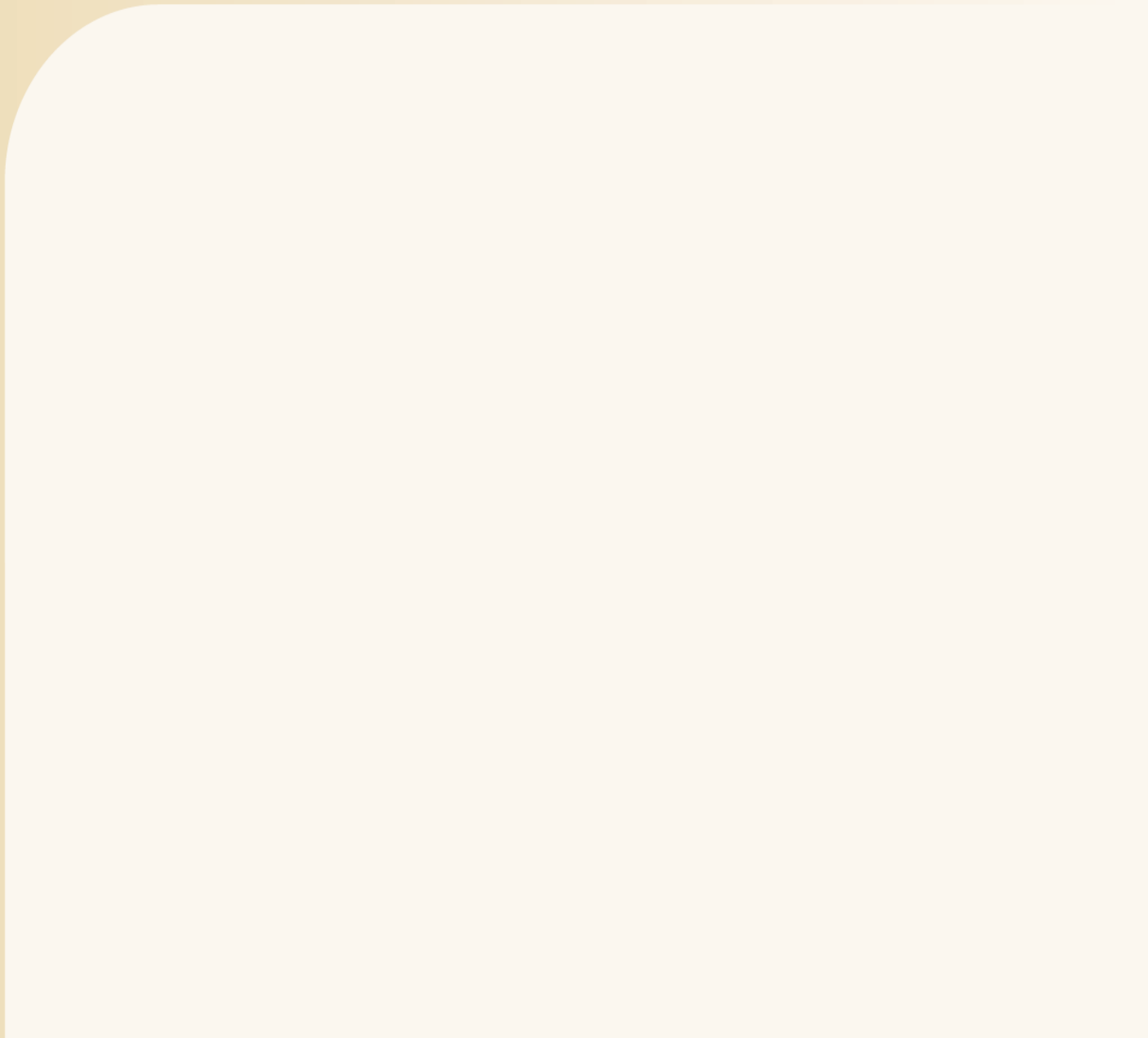
(2) For the purposes of paragraph (1), rights and liabilities are protected if —

- (a) they are rights and liabilities which arise from all financial contracts between a transferor on the one part and a particular person (referred to in this regulation as the “counterparty”) on the other part; and
- (b) they 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, regardless of whether —
 - (i) the arrangement which permits the transferor or the counterparty to set-off or net rights and liabilities also permits the transferor or the counterparty to set-off or net rights and liabilities with another person; or
 - (ii) the right to set-off or net is exercisable only on the occurrence of a particular event.

Arrangements exempted from Part IVB

16. – (1) For the purposes of section 30AAZN(2)(b)(i) of the Act, sections 30AAU(2), 30AAX(13), 30AAZA(13) and 30AAO shall not apply to any excluded arrangement after 23:59 (Singapore time) on the second business day after the date on which the moratorium under section 30AAU(2), 30AAX(13), 30AAZA(13) or 30AAO, as the case may be, has commenced.

(2) For the purposes of paragraph (1), an “excluded arrangement” is a set-off arrangement or a netting arrangement in relation to a financial contract.



Monetary Authority of Singapore