

MAS consults on proposed enhancements to the resolution regime for financial institutions in Singapore

The Monetary Authority of Singapore (MAS) has published a consultation paper on enhancements to its resolution regime for financial institutions in Singapore.

The proposed policy changes will be made by amending the Monetary Authority of Singapore Act, with specific regulations, which the MAS will separately consult on after considering feedback from the consultation paper.

Recovery and resolution plans

The MAS proposes to require financial institutions that are systemically important or maintain critical functions to prepare Recovery and Resolution Plans (RRPs). These institutions will need to take steps to address deficiencies in RRP and remove obstacles to implementation of their RRP.

Responsibility for compliance would rest on the board and executive officers of the financial institution, where a breach would be an offence punishable by fines and/or (in relation to individuals) imprisonment.

Temporary stays on early termination rights on financial contracts

The MAS also proposes to introduce statutory powers to stay temporarily the early termination rights of counterparties to financial contracts with any financial institution under resolution by the MAS.

The stay would last for a period of up to two business days but the MAS has proposed to have the flexibility to extend this.

Key proposals

- Systemically important financial institutions to formulate RRP when notified by the MAS
- MAS power to stay temporarily early termination rights on financial contracts (with discretion to extend duration of stay)
- MAS power to suspend temporarily insurance policy owners' rights to withdraw from insurance contracts and to stay rights of reinsurers to terminate or not reinstate coverage
- MAS power to suspend termination rights of non-financial contracts or require these to be performed on pre-resolution terms
- Statutory bail-in regime applicable to unsecured subordinated debt and unsecured subordinated loans issued or contracted after the effective date of the relevant legislative amendments
- Contractual recognition of bail-in to complement statutory bail-in regime
- Cross-border recognition of resolution actions
- No creditor worse off than in liquidation compensation framework
- Resolution funding through use of ex-post recovery mechanism and privately financed ex-ante funds

The MAS' power to impose a temporary stay would be subject to the following safeguards:

- a stay will only apply to early termination rights that arise by reason of entry into resolution or in connection with the use of resolution powers;
- no "cherry-picking" of contracts by the MAS;
- for contracts transferred to a third party or bridge institution, the acquiring financial institution will assume all of the transferring financial institution's rights and obligations;
- early termination rights of the counterparty will be preserved against the financial institution in resolution in the case of any default that is not related to the financial institution's entry into resolution or the exercise of a resolution power;
- following a transfer of financial contracts, early termination rights of the counterparty will be preserved against the acquiring financial institution in the case of any subsequent independent default of the acquiring financial institution;
- the counterparty may exercise its right to close out immediately against the financial institution in resolution on expiry of the stay or earlier if the relevant contracts will not be transferred; and
- after the duration of the stay, early termination rights may be exercisable for financial contracts that are not transferred.

Temporary suspensions and stays on insurance contracts

Apart from financial contracts, the MAS has also proposed to introduce statutory powers to:

- suspend insurance policy owners' rights to withdraw from their insurance contracts with an insurer in resolution; and
- stay the rights of reinsurers to terminate or not reinstate coverage relating to periods after the commencement of resolution.

The safeguards proposed are similar to those for financial contracts.

Ensuring continuity of essential services and functions

To avoid a disruption to essential services and functions required by a financial institution, the MAS proposes to introduce powers to suspend the termination rights of non-financial contracts or require these to be performed on the same terms that were in place prior to the resolution.

Bail-in regime

The MAS proposes to introduce statutory powers to carry out the bail-in of liabilities under the Monetary Authority of Singapore Act, starting with Singapore-incorporated banks and bank holding companies. The MAS is considering if the regime should be extended to non-bank financial sectors.

The statutory bail-in regime would apply to unsecured subordinated debt and unsecured subordinated loans issued or contracted after the effective date of the relevant legislative amendments.

To complement the statutory bail-in regime, the MAS has proposed that for in-scope liabilities which are governed by the laws of a foreign jurisdiction, banks would have to:

- include a contractual term, which states that the liability may be subject to write-down or conversion by the MAS under the statutory regime;
- draft recognition provisions to ensure that the contractual term above does not conflict with the application of the statutory regime in practice;
- seek independent legal advice from the jurisdiction of the governing law; and
- demonstrate to the MAS that any statutory bail-in by the MAS will be effective by means of a reasoned independent legal opinion.

Banks would also have to disclose prominently the consequences of a bail-in of the relevant debt to debtholders for in-scope liabilities.

As banks could be placed into resolution prior to the triggering of conditions for conversion into equity or write-down of contingent convertible instruments or contractual bail-in instruments, the MAS proposes that statutory powers be introduced so that it may either convert into equity or write down contingent convertible instruments and contractual bail-in instruments, whose terms had not been triggered prior to resolution.

Cross-border recognition of resolution actions

The MAS recognises that the resolution framework should enable a co-operative solution to be reached with foreign resolution authorities in a group-wide resolution and is evaluating the necessity of a recognition process in this regard.

The MAS' decision to give effect to a foreign resolution action would be contingent on the following considerations:

- whether the foreign resolution action has a widespread adverse effect on Singapore's financial system and/or economy;
- whether the foreign resolution action in any way discriminates against Singapore-resident creditors as compared to creditors located outside Singapore with similar legal rights; and
- whether the implementation of the foreign resolution action is against public interest.

Creditor safeguards

In accordance with the Key Attributes of Effective Resolution Regimes for Financial Institutions, creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the financial institution.

The MAS proposes to establish a framework to compensate creditors who are worse off in resolution as compared to liquidation. Key features of this creditor compensation framework would include the appointment of

a qualified independent valuation agent to assess if any creditor is worse off under resolution than under liquidation and to value the compensation awarded, as well as the right of creditors to appeal against their determined compensation entitlement.

Resolution funding

In relation to resolution funding arrangements, the MAS proposes that such funding arrangements be used to support costs incurred in implementing resolution measures, as well as to address any creditor compensation claims that may arise.

Costs of resolving a financial institution should first be borne by the financial institution and its equity holders and unsecured creditors. However, where this is insufficient, the MAS proposes to recover such additional costs from the industry by way of an *ex-post* recovery mechanism. Where privately funded *ex-ante* funds exist (such as the Deposit Insurance (DI) or Policy Owners' Protection Scheme Funds), these may also be tapped on to implement resolution measures.

The MAS has set out sector-specific proposals in relation to (i) banking entities, (ii) insurers, (iii) capital market infrastructures and designated payment system (DPS) operators and (iv) DPS settlement institutions in the consultation paper.

Feedback on the consultation

The consultation paper is available on the MAS' website and the closing date for the public to submit comments and feedback is **29 July 2015**.

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