

**CONSULTATION PAPER ON RULES ON CONTRACTUAL STAYS ON
TERMINATION RIGHTS IN FINANCIAL CONTRACTS FOR
AUTHORIZED INSTITUTIONS UNDER FINANCIAL INSTITUTIONS
(RESOLUTION) ORDINANCE**

SUBMISSION

1. The Hong Kong Monetary Authority, on 22 January 2020, released a *Consultation Paper on Rules on Contractual Stays on Termination Rights in Financial Contracts for Authorized Institutions under Financial Institutions (Resolution) Ordinance* (“Consultation Paper”) for public consultation.
2. The Law Society of Hong Kong makes the following submission on the consultation questions posed.
3. Unless otherwise defined, the abbreviations in this submission follow those adopted in the Consultation Paper.

Question 1:

Do you have any views on the scope of the covered entities to be subject to the Stay Rules?

Law Society’s Response:

4. We understand the scope of entities has been restricted to Hong Kong incorporated entities (i.e. AIs and holding companies of AIs and guarantors) and the reason proffered for the restriction. Notwithstanding what has been provided for in the Consultation Paper, we are of the view that entities as determined by the HKMA from time to time should be included.

Question 2:

Do you have any views on the scope of the covered financial contracts to be subject to the Stay Rules? Should other types of contracts also be included in your view?

Law Society's Response:

5. Yes, consideration should be given to include short term debt and commercial paper, which contributed to Lehman's demise.

Question 3:

Do you have any views on the counterparties proposed to be excluded from the Stay Rules?

Law Society's Response:

6. No.

Question 4:

Do you have any questions or comments on the above operational matters in relation to the Stay Rules?

Law Society's Response:

7. No.

Question 5:

Do you have any views on the proposed approach to 'material amendment'?

Law Society's Response:

8. No.

Question 6:

Do you agree with phasing in the implementation of the Stay Rules by counterparty types?

Law Society's Response:

9. We do not agree. The risks are the same whether dealing with bank counterparties or non-bank counterparties. Also, given the coronavirus infection in Hong Kong and in other countries, it is more important to implement these rules as soon as practicable. We are of the view that phasing in the implementation by the sizes of risk exposures would be more sensible.

Question 7:

Do you have any views on the expectations on AIs' internal capabilities to support resolvability and the effective application of temporary stay in a resolution?

Law Society's Response:

10. No.

Question 8:

Do you have any views on the periodic reporting and information requests in relation to the Stay Rules?

Law Society's Response:

11. No.

Question 9:

Do you have any views on potentially extending the coverage of the Stay Rules so that relevant contracts may be bound by the ongoing stay provision, in addition to the temporary stay provision?

Law Society's Response:

12. We are of the view that the coverage should be extended to the ongoing stay provision as soon as practicable. This removes any doubt or confusion about whether the ongoing stay provision should apply only to Hong Kong law governed contracts and not to foreign law governed contracts. This is particularly sensible as there is no reason to distinguish the two in the primary purpose of maintaining financial stability.

**The Law Society of Hong Kong
31 March 2020**