ISDA Resolution Stay Jurisdictional Modular Protocol

South African Jurisdictional Module

FAQs

ISDA has prepared this list of frequently asked questions to assist in your consideration of the **SOUTH AFRICAN JURISDICTIONAL MODULE to the ISDA RESOLUTION STAY JURISDICTIONAL MODULAR PROTOCOL** (the **ISDA Jurisdictional Modular Protocol**).

THESE FREQUENTLY ASKED QUESTIONS DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE SOUTH AFRICAN JURISDICTIONAL MODULE. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING OR ADHERING TO THE SOUTH AFRICAN JURISDICTIONAL MODULE. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION MAY BE PUT.

These FAQs address the following questions:

- What is the purpose of the South African Jurisdictional Module?
- How does adherence to the South African Jurisdictional Module and the ISDA Jurisdictional Modular Protocol work?
- How does the South African Jurisdictional Module relate to the South African Regulation?
- Why are certain terms in italics and quotation marks?
- What agreements are Covered Agreements under the South African Jurisdictional Module?
- What entities are Regulated Entities under the South African Jurisdictional Module?
- When does the South African Jurisdictional Module become effective?
- What are the compliance dates for the South African Regulation?
- How do I sign up to the South African Jurisdictional Module?

The ISDA Jurisdictional Modular Protocol is designed to facilitate market participants' compliance with regulations regarding contractual stays in financial contracts governed by third-country law in different jurisdictions. As regulations are adopted in a jurisdiction, a "Jurisdictional Module" to the ISDA Jurisdictional Modular Protocol can be published that includes operational provisions based on the text of that regulation and aimed at enabling parties to comply with those requirements. A party can adhere to a particular Jurisdictional Module by submitting an Adherence Letter for such Jurisdictional Module. Each Jurisdictional Module is considered individually. For more information on the ISDA Jurisdictional Modular Protocol and adherence to the ISDA

Jurisdictional Modular Protocol, please see the general FAQs for the ISDA Jurisdictional Modular Protocol.

The South African Jurisdictional Module was published as a Jurisdictional Module to the ISDA Jurisdictional Modular Protocol on November 8, 2023.

What is the purpose of the South African Jurisdictional Module?

The South African Jurisdictional Module was created to allow market participants to comply with Prudential Standard RA01 - Stays on Early-Termination Rights and Resolution Moratoria on Contracts of Designated Institutions in Resolution (**South African Regulation**) regarding contractual stays on early termination rights and resolution moratoria in certain financial contracts that are not governed by South African law. Adhering Parties will be able to adhere to the South African Jurisdictional Module and identify themselves as either "Regulated Entities" that are subject to the South African Regulation or "Module Adhering Parties" that are adhering for the purpose of satisfying the regulatory requirements applicable to their counterparties under the South African Regulation.

How does adherence to the South African Jurisdictional Module and the ISDA Jurisdictional Modular Protocol work?

Does a Module Adhering Party have to amend its Covered Agreements with all Regulated Entities?

No, a Module Adhering Party has the ability to choose the Regulated Entity or Regulated Entities it would like to amend its Covered Agreements with when it adheres to the South African Jurisdictional Module. Once a Module Adhering Party chooses to amend its agreements with a particular Regulated Entity, that Regulated Entity is defined as a "Regulated Entity Counterparty" with respect to that particular Module Adhering Party and to the South African Jurisdictional Module.

Module Adhering Parties have multiple options for how they can choose the Regulated Entity or Regulated Entities they would like to amend their Covered Agreements with.

How can a Module Adhering Party choose which Regulated Entities it will amend its Covered Agreements with?

A Module Adhering Party with respect to the South African Jurisdictional Module may choose the Regulated Entity or Regulated Entities it would like to amend its Covered Agreements with by choosing between the following three options in its Adherence Letter:

1. <u>All Regulated Entities</u>: Under this option, a Module Adhering Party identifies every Adhering Party that has identified itself as a "Regulated Entity" with respect to the South African Jurisdictional Module to be a Regulated Entity Counterparty with respect to it. That means that the Module Adhering Party is agreeing to amend all of the relevant Covered Agreements with all of the Regulated Entities that have adhered or will adhere in the future to the South African Jurisdictional Module.

2. <u>All G-SIBs</u>: Under this option, a Module Adhering Party identifies any current or future Regulated Entity with respect to the South African Jurisdictional Module that is part of a banking group that has been designated by the Financial Stability Board as a "global systemically important bank" (**G-SIB**), as of the date of the publication of the South African Jurisdictional Module, as a Regulated Entity Counterparty with respect to it. This election would include Regulated Entities within such G-SIB group that subsequently adhere to such Jurisdictional Module but not Regulated Entities that are members of banking groups that are subsequently identified as G-SIBs.

3. <u>Entity-by-Entity</u>: Under this option, the Module Adhering Party chooses to identify one or more Regulated Entities with respect to the South African Jurisdictional Module as Regulated Entity Counterparties with respect to it. The Module Adhering Party can notify each Regulated Entity that it identifies as a Regulated Entity Counterparty, either through ISDA Amend (functionality to be available in due course) or by sending a bilateral "**Module Adherence Notice**" directly to such Regulated Entity. Note that a Module Adhering Party that chooses to identify one or more Regulated Entities as Regulated Entity Counterparties with respect to it may choose between Regulated Entities in the same banking group within the South African Jurisdictional Module.

Note that a Module Adhering Party can elect both option 2 to identify all G-SIB Regulated Entities as its Regulated Entity Counterparties and option 3 to identify additional Regulated Entities as its Regulated Entity Counterparties.

Once I submit my Adherence Letter, is my adherence to the South African Jurisdictional Module complete or are there any other steps I have to take?

Depending on the elections you make as a Module Adhering Party, you may be required to send notices to Regulated Entity Counterparties **after** you submit your Adherence Letter to complete your adherence to the South African Jurisdictional Module.

<u>Entity-by-Entity Designation</u>

If you adhere as a Module Adhering Party and elect to identify Regulated Entity Counterparties on an "Entity-by-Entity" basis (i.e., option 3 above), you need to take steps to identify Regulated Entity Counterparties. You can do this either (1) through ISDA Amend (functionality to be available in due course) or (2) by sending a bilateral "Module Adherence Notice" to each Regulated Entity Counterparty. **Your contracts will <u>not be amended</u> until the date you notify a Regulated Entity that it is a Regulated Entity Counterparty with respect to you.**

If you wish to use ISDA Amend to identify one or more specific Regulated Entities as Regulated Entity Counterparties with respect to you, you may do so by using the [ISDA Amend](http://www.markit.com/product/isda-amend) website (http://www.markit.com/product/isda-amend). To use the ISDA Amend website, you will need to have an account with ISDA Amend, log in and complete the steps necessary to make Entity-by-Entity elections.

If you wish to identify one or more specific Regulated Entities as Regulated Entity Counterparties with respect to you by sending such Regulated Entity or Regulated Entities bilateral Module Adherence Notices, rather than through ISDA Amend, such notices must at a minimum (1) identify the Module Adhering Party and the Jurisdictional Module and (2) identify the Regulated Entity as a Regulated Entity Counterparty with respect to the Module Adhering Party. ISDA has published a sample [Module Adherence Notice](http://assets.isda.org/media/f253b540-102/3eb0dc21.docx) (http://assets.isda.org/media/f253b540-102/3eb0dc21.docx) that Module Adhering Parties can use to make Entity-by-Entity elections.

<u>Adherence as an Agent on Behalf of Clients</u>

If you are an agent adhering on behalf of "some but not all" clients, you must either identify the clients on whose behalf you are adhering in an annex to your Adherence Letter (which will be made public on the ISDA website) or send a list to each Regulated Entity Counterparty with respect to such clients identifying the clients on whose behalf you are adhering.

If you are an agent adhering on behalf of "all" clients that you represent, you may, but are not required to, identify the clients on whose behalf you are adhering, either in an annex to your Adherence Letter (which will be made public on the ISDA website) or by sending a list of the clients on whose behalf you are adhering to each Regulated Entity Counterparty with respect to such clients.

If you wish to use ISDA Amend to notify your Regulated Entity Counterparties of the clients on whose behalf you are adhering, you may do so by using the [ISDA Amend](http://www.markit.com/product/isda-amend) website (http://www.markit.com/product/isda-amend). To use the ISDA Amend website, you will need to have an account with ISDA Amend, log in and complete the steps necessary to provide Regulated Entity Counterparties with the lists of clients on whose behalf you are adhering.

If you wish to bilaterally notify your Regulated Entity Counterparties of the clients on whose behalf you are adhering, ISDA has published a sample [Underlying Funds Notice](http://assets.isda.org/media/f253b540-103/af6818e9.docx) (http://assets.isda.org/media/f253b540-103/af6818e9.docx) that agents can use to notify their Regulated Entity Counterparties of the clients on whose behalf they are adhering.

How does the South African Jurisdictional Module relate to the South African Regulation?

The South African Jurisdictional Module is intended to facilitate compliance with the South African Regulation. The provisions of the South African Jurisdictional Module that amend Covered Agreements are based on the provisions of the South African Regulation. Note, however, that as discussed in Question 4 of the general FAQs for the ISDA Jurisdictional Modular Protocol, amendments in a Jurisdictional Module, including the South African Jurisdictional Module, are made to Covered Agreements on a "retrospective" and "prospective" basis, even if this is not required by the South African Regulation.

Parties should consult with their legal advisers and any other adviser they deem appropriate to understand the requirements of the South African Regulation.

Why are certain terms in italics and quotation marks?

Words and phrases in quotation marks and italics have the meaning given in the South African Regulation and the Financial Sector Regulation Act, 2017 (the **Act**). The South African Jurisdictional Module is interpreted in accordance with the South African Regulation and the Act.

What agreements are Covered Agreements under the South African Jurisdictional Module?

"*Covered contracts*", as defined under the South African Regulation, are Covered Agreements under the South African Jurisdictional Module.

What entities are Regulated Entities under the South African Jurisdictional Module?

A Regulated Entity under the South African Jurisdictional Module is, as such term is defined in the Act, a "*designated institution*."

When does the South African Jurisdictional Module become effective?

The amendments under the South African Jurisdictional Module become effective on the "Implementation Date" with respect to a Module Adhering Party and a Regulated Entity Counterparty.

What is the compliance date for the South African Regulation?

The South African Regulation came into effect on June 1, 2023.

Note that whilst there is no compliance date separate from the effective date of 1 June 2023, the 'Statement explaining the need for, intended operation, and expected impact of the prudential standard for designated institutions in respect of stays on early-termination rights and resolution moratoria, January 2023' included the statement: "*The Authorities are amenable to the proposals received from industry regarding the implementation timeline for the Standard and will ensure that designated institutions are afforded a minimum period of 12 months to ensure compliance with the requirements in the Standard*".

How do I sign up to the South African Jurisdictional Module?

Please see the general ISDA Jurisdictional Modular Protocol FAQs for information on adherence to Jurisdictional Modules and the ISDA Jurisdictional Modular Protocol.