International Swaps and Derivatives Association, Inc.

Standard Contractual Recognition of Hong Kong Resolution Stay Clause

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published the following standard contractual recognition clauses (each, a "**Standard Clause**") to enable market participants in Hong Kong to include contractual recognition of the application of stays on termination language in agreements subject to the requirements of the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights—Banking Sector) Rules (Cap. 628C, laws of Hong Kong) made by the "Monetary Authority" under section 92 of the Financial Institutions (Resolution) Ordinance (Cap. 628, laws of Hong Kong) (Hong Kong Regulation).

Parties responsible for determining the appropriateness of a Standard Clause:

ISDA does not assume any responsibility for any use to which a Standard Clause may be put. Each party must satisfy itself that a Standard Clause is appropriate for the relevant agreement, has been properly used and/or adapted for such agreement and that such agreement (including a Standard Clause) has generally been properly drafted to reflect the commercial intentions and legal and regulatory obligations of the parties. Each party must also satisfy itself as to any possible adverse consequences which may occur as a result of a Standard Clause applying to any agreement.

Parties should seek legal, tax and accounting advice and consult with any other adviser they deem appropriate prior to using a Standard Clause.

I.   Contractual Recognition of Stay in Resolution – standalone clause

With respect to [each of] the [*Agreement[s]*][1], each [*party*][2] agrees that, despite any other term or condition of the [*Agreement[s]*] or any other agreement, arrangement or understanding between the parties, it will be bound by a suspension of a "termination right" in relation to [each of] the [*Agreement[s]*] imposed by the "resolution authority" under section 90(2) of the Financial Institutions (Resolution) Ordinance (Cap. 628). [The amendments in this paragraph shall be made to the [*Agreement[s]*] as of the Compliance Date. For this purpose, "**Compliance Date**" means [twenty-four (24) months from the "initial day"][3] [thirty (30) months from the "initial day"][4], with "initial day" being defined in the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C).][5]

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[1] The Standard Clause should be updated for the type of agreement in which it is used.

[2] The Standard Clause should be updated for the appropriate defined terms for each agreement in which it is used.

[3] Include if there are no counterparties to the Agreement[s] other than an "authorized institution" or a "financial institution" (other than an "authorized institution" that is a "globally systemically important bank" on the "initial day" (each of the terms in quotation marks as defined in the Financial Institutions (Resolution) Ordinance (Cap. 628) or the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C)).

[4] Include if footnote 3 does not apply.

[5] Parties using this language should note that since the Hong Kong stay rules as contained in the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C) provide for a transitional period for compliance, the bracketed language here provides for the effective date of the amendment to take effect at the end of such transitional period. On the basis that this standard language is developed for use in amendment agreements for the purpose of amending existing agreements, the concept of "Compliance Date" is included. If parties prefer to have the amendment take effect when the amendment agreement is signed, the bracketed language can be changed to: "The amendments in this paragraph shall be made to the [Agreement[s]] as of the date of this [amendment agreement]."

If parties use this language for new agreements entered into *after* the end of the transitional period, the Compliance Date concept no longer applies and the amendment should take effect as of the date of the new agreement. The bracketed language can be omitted in this case.

II. Contractual Recognition of Stay in Resolution - incorporation of the Hong Kong Module by reference

"The terms of paragraph 3 of the Hong Kong Module are incorporated into and form a part of the [*Agreement*[*s*]][6], and [each of] the [*Agreement*[*s*]] shall be deemed a Covered Agreement for purposes thereof.

For purposes of incorporating the terms of paragraph 3 of the Hong Kong Module, [7][[*insert name of party which is not subject to the requirements in the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C) ("Stay Rules")*] shall be deemed to be a Module Adhering Party and [*insert name of party which is subject to the Stay Rules*] shall be deemed to be a Regulated Entity Counterparty with respect to such Module Adhering Party.] [8][each of [*insert name of party*] and [*insert name of party*] shall be deemed to be a Module Adhering Party and the other party shall be deemed to be a Regulated Entity Counterparty with respect to such Module Adhering Party.] In the event of any inconsistences between the Agreement[s] and paragraph 3 of the Hong Kong Module, the Hong Kong Module will prevail.

[The amendments in paragraph 3 of the Hong Kong Module as incorporated into the Agreement[s] shall be made to the Agreement[s] as of the Compliance Date. For this purpose, "**Compliance Date**" means [twenty-four (24) months from the "initial day"][9] [thirty (30) months from the "initial day"][10], with "initial day" being defined in the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C).][11]

Words and phrases in quotation marks and italics in paragraph 3 of the Hong Kong Module shall be interpreted in accordance with the Hong Kong Module.

"**Hong Kong Module**" means the Hong Kong Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol."

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[6] The Standard Clause should be updated for the type of agreement in which it is used.

[7] Include this option if one party is not subject to the Stay Rules and the other party is.

[8] Include this option if both parties are subject to the Stay Rules.

[9] Include if there are no counterparties to the Agreement other than an "authorized institution" or a "financial institution" (other than an "authorized institution" that is a "globally systemically important bank" on the "initial day" (each of the terms in quotation marks as defined in the Financial Institutions (Resolution) Ordinance (Cap. 628) or the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C)).

[10] Include if footnote 9 does not apply.

[11] Parties using this language should note that since the Hong Kong stay rules as contained in the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights – Banking Rules) Rules (Cap. 628C) provide for a transitional period for compliance, the bracketed language here provides for the effective date of the amendment to take effect at the end of such transitional period. On the basis that this standard language is developed for use in amendment agreements for the purpose of amending existing agreements, the concept of "Compliance Date" is included. If parties prefer to have the amendment take effect when the amendment agreement is signed, the bracketed language can be changed to: "The amendments in paragraph 3 of the Hong Kong Module as incorporated into the Agreement[s] shall be made to the Agreement[s] as of the date of this [amendment agreement]."
If parties use this language for new agreements entered into *after* the end of the transitional period, the Compliance Date concept no longer applies and the amendment should take effect as of the date of the new agreement. The bracketed language can be omitted in this case.