

No. S 000

**INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT
2018
(CHAPTER 40 OF 2018)**

**INSOLVENCY, RESTRUCTURING AND DISSOLUTION
(PRESCRIBED CONTRACTS UNDER SECTION 440)
REGULATIONS 2020**

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In exercise of the powers conferred by section 449(1) of the Insolvency, Restructuring and Dissolution Act 2018, the Minister for Law makes the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations are the Insolvency, Restructuring and Dissolution (Prescribed Contracts under Section 440) Regulations 2020 and come into operation on [insert date of commencement].

PART 2

PREScribed FINANCIAL CONTRACTS

Definitions for this Part

2. In this Part, unless the context otherwise requires —

“approved clearing house”, “approved exchange”, “licensed foreign trade repository”, “licensed trade repository”, “listing rules”, “overseas exchange”, “recognised clearing house”, “recognised market operator” and “spot contract” have the respective meanings given by section 2(1) of the Securities and Futures Act (Cap. 289);

“business rules”, in relation to an approved exchange, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house or a recognised market operator, has the meaning given by section 2(1) of the Securities and Futures Act;

[Adapted from definition of “business rules” in section 2(1), SFA]

“Central Depository System” and “depository rules” have the respective meanings given by section 81SF of the Securities and Futures Act;

“commodities lending or borrowing contract” means a contract under which a person (called in this definition the transferor) transfers [the legal interest in] any commodities to another person (called in this definition the transferee) subject to a commitment that the transferee will return equivalent

commodities at some future date or when requested to do so by the transferor;

Specific Questions for Feedback 1:

1. Specific feedback on the definition of “commodities lending or borrowing contract” is sought.
2. Views as to the need to include the words in square brackets (i.e. “the legal interest in”) are sought.
3. The phrase “the legal interest in” is also found in the definition of “securities lending or repurchase agreement” in the Companies (Prescribed Arrangements) Regulations 2017.

“cover pool”, “covered bond” and “covered bond special purpose vehicle” have the respective meanings given by regulation [2] of the Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) Regulations 2020 (G.N. No. S X/2020);

“derivatives contract”, “master netting agreement”, “securities contract” and “securities lending or repurchase agreement” have the respective meanings given by regulation [2] of the Insolvency, Restructuring and Dissolution (Prescribed Arrangements and Proceedings) Regulations 2020 (G.N. No. S X/2020);

“designated system” has the meaning given by section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231);

“designated systems operating rules”, in relation to a designated system, means rules, regulations, by-laws or other similar body of written statements, by whatever name called, and whether or not contained in the constituent documents of the designated system, that govern the activities and conduct of —

(a) the designated system; and

(b) any other persons in relation to the designated system;

[Definition of “Rules” in section 2(1), Payment and Settlement Systems (Finality and Netting) Act]

“member”, in relation to a recognised clearing house or recognised market operator, has the meaning given by section 2(1) of the Securities and Futures Act;

“netting arrangement” and “set-off arrangement” have the respective meanings given by section 61(1) of the Act;

“operator”, in relation to a designated system, means the person specified in the order mentioned in section 3(1) of the Payment and Settlement Systems (Finality and Netting) Act as the operator of the designated system;

[Definition of “operator” in section 2(1), Payment and Settlement Systems (Finality and Netting) Act]

“participant”, in relation to a designated system, means a party to an arrangement that establishes the designated system;

[Adapted from definition of “participant” in section 2(1), Payment and Settlement Systems (Finality and Netting) Act]

“participant”, in relation to a licensed foreign trade repository, has the meaning given by section 2(1) of the Securities and Futures Act;

[“system” has the meaning given by section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act.]

Prescribed financial contracts for purposes of section 440(5)(a) of Act

3. The following financial contracts are prescribed for the purposes of section 440(5)(a) of the Act:

- (a) the business rules of an approved exchange, a licensed trade repository or an approved clearing house, which have effect as a contract by virtue of section 24, 46R or 67, respectively, of the Securities and Futures Act;
- (b) the business rules of a licensed foreign trade repository, recognised clearing house or recognised market operator which operate as a contract —

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- (i) between the licensed foreign trade repository and its participants, and between each participant and each other participant; or
 - (ii) between the recognised clearing house or recognised market operator and its members, and between each member and each other member;
 - (c) any contract between a recognised clearing house or recognised market operator and its members, or any contract between a licensed foreign trade repository and its participants, containing **or** incorporating by **reference** the business rules of the recognised clearing house, recognised market operator or licensed foreign trade repository, as the case may be;
 - (d) the depository rules (as may be amended from time to time) in relation to the operation of the Central Depository System, which have the same force and effect as if made by an approved exchange under section 81ST of the Securities and Futures Act, and have effect as a contract by virtue of section 24 of that Act;
 - (e) any contract between the operator of a designated system and a participant of the designated system containing **or** incorporating by **reference** the designated system operating rules of the designated system;
 - (f) any derivatives contract, [securities contract,] master netting agreement, securities lending or repurchase agreement, commodities lending or borrowing contract, margin lending agreement or spot **contract**, that contains a netting arrangement or set-off arrangement;
 - (g) any contract that creates a mortgage, charge, pledge, lien or other type of security interest that is recognised by law, being a mortgage, charge, pledge, lien or other security interest that secures an obligation under a contract or an agreement mentioned in paragraph (f);
 - (h) [any securities contract;]

Specific Questions for Feedback 2:

1. The references to “securities contract” in paragraph 3(f) and 3(h) above are alternatives.
2. Your view is sought as to whether the proposed exclusion of securities contracts should be general and unqualified as provided for in paragraph 3(h), or qualified as provided for in paragraph 3(f).

(i) any contract or agreement that is —

(i) a covered bond; or

(ii) directly connected with a covered bond or the issuing of a covered bond;

[adapted from regulation 5.3A.50(1)(p) of Australian Corporations Regulations 2001 (as amended by Corporations Amendments (Stay on Enforcing Certain Rights) Regulation 2018)]

(j) any contract or agreement that is, or that [governs][is directly connected with], a bond;

Specific Questions for Feedback 3:

1. The phrases “governs” and “is directly connected with” in paragraph (j) above, are alternatives to each other.
2. Reasoned opinions are sought as to the more appropriate phrase. Alternatives may also be proposed.

Made on 2020.

LOH KHUM YEAN
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Ministry of Law,
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