

RCP PAPER NO. : **EMC/RCP/138/2023/CP95**

SUBJECT : **HOLISTIC REVIEW OF THE MARKET RULES RELATED TO CESSATION OF BUSINESS, LIQUIDATION, AND INSOLVENCY**

FOR : **DISCUSSION**

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### **Executive Summary**

This paper reviews the handling of events of default involving insolvency or related events, accounting for applicable laws governing them.

When an event of default occurs, the Energy Market Company (“EMC”) may request the Market Surveillance and Compliance Panel (“MSCP”) to issue a suspension order to the defaulting Market Participant (MP). Upon such a request, the MSCP is required to conduct and conclude a hearing within 4 BDs to determine if a suspension order should be issued.

For events of default that are related to insolvency, however, the above processes may not be consistent with prevailing laws. In particular, the MSCP conducting a hearing and issuing a suspension order may not be consistent with the Insolvency, Restructuring, and Dissolution Act (“IRDA”) and the Companies Act (“CA”), which may prohibit proceedings against insolvent parties. For such cases, the suspension process then becomes unworkable.

If the defaulting MP cannot be suspended in a timely manner, there could be an impact on the financial integrity of the market. To mitigate the financial risks posed by such a MP, it is proposed for the market rules to provide for an automatic suspension process for insolvency-related default cases.

The EMC recommends that the RCP:

- a. support the EMC’s proposal to adopt an automatic suspension framework for the handling of insolvency-related defaults; and
- b. task the EMC to draft relevant modifications to the Market Rules to give effect to such proposal.

At the 138<sup>th</sup> RCP meeting, the RCP unanimously supported EMC’s recommendations.

## 1. Introduction

This paper reviews the process involving the Energy Market Company (“EMC”) and the Market Surveillance and Compliance Panel (“MSCP”) in suspending a defaulting Market Participant (MP), following events of default that involve insolvency and related events, accounting for applicable laws governing such events.

## 2. Background

Chapter 3, Section 7.3.1 of the Market Rules provides a list of events of default<sup>1</sup>, as shown in Annex 1, that could trigger the suspension process if not remedied by the MP in time. When an event of default occurs, the EMC shall take one or more of the following actions according to Chapter 3 Section 7.3.3:

- (1) Issue a default notice to the market participant (“MP”) and the MP will be given 1 business day (“BD”) to perform the necessary remedy actions as specific in Chapter 3 Section 7.3.6 to 7.3.9;
- (2) Determine the amount the MP owes and to make claim on any credit support held in obligations of the MP; and
- (3) Request the MSCP to issue a suspension order.

Where a suspension order is requested by the EMC, the MSCP is required to conduct and conclude a hearing within 4 BDs to determine if a suspension order should be issued. If the MSCP issues a suspension order, the MP’s rights to participate in the Singapore Wholesale Electricity Market (“SWEM”)<sup>2</sup> will be halted.

In 2020, the EMC reviewed the allowable remedies for various events of default and the EMC’s actions in response to them<sup>3</sup>. It was then discovered that the current provisions for the handling of events of default that involve insolvency, restructuring, and dissolution (as summarised in Table 1, hereafter referred to as “insolvency-related defaults”) may not be consistent with relevant laws, in particular the Insolvency, Restructuring, and Dissolution Act (“IRDA”) and the Companies Act (“CA”). This would render the current suspension process unworkable on such events of default. The EMC has therefore conducted a deeper review to address the inconsistency.

**Table 1: Events of Default Involving Insolvency, Restructuring, and Dissolution**

Market Rule	Description of Event of Default
Section 7.3.1.7	Cessation of business.
Section 7.3.1.8	Entering into an arrangement, composition, or compromise with its creditors.
Section 7.3.1.10	Appointment of a judicial manager.
Section 7.3.1.11	Appointment of an administrator, liquidator, or trustee in bankruptcy.
Section 7.3.1.12	Application for winding-up.

<sup>1</sup> Chapter 3 Section 7.3.1.1 to 7.3.1.16 of the market rules

<sup>2</sup> Chapter 3 Section 7.3.10 of the market rules

<sup>3</sup> RC367: Review of Allowable Remedies for Events of Default

Section 7.3.1.13	Dissolution of the company.
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### 3. Analysis

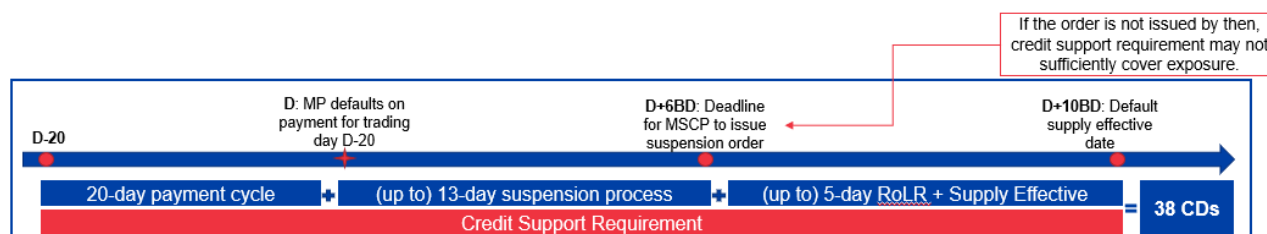
#### 3.1 Problems Identified with Current Handling of Insolvency-related Defaults

As described above, part of the provisions in the handling of events of default involve the EMC requesting the MSCP to issue a suspension order, and for the MSCP to conduct a suspension hearing within 4 BDs.

However, the EMC was advised by external legal counsel that statutory moratoria under the IRDA and CA prevent the commencement or continuation of “proceedings” against a company under certain situations, unless leave of court is obtained. The concern is whether the MSCP and the EMC have the power to take actions against an MP that has incurred an insolvency-related default (hereafter referred to as “insolvent defaulting MP”). This includes the MSCP’s ability to hold a suspension hearing, as a hearing may be considered a “proceeding” against the insolvent defaulting MP and hence prohibited under the IRDA and CA. The MSCP had proposed that it is possible to hold a hearing should the MP apply for and obtain a leave of court. EMC has consulted external legal counsel whose opinion is that there will be some uncertainty as to whether a court in Singapore would make orders in such an application for a leave of court commenced by such MPs seeking such a show cause hearing.

This may result in the current suspension process becoming unworkable for such insolvency-related defaults, in turn impacting the financial integrity of the market. Consider that the current credit support framework is dependent on the suspension process concluding within the stipulated timeframe, as illustrated in Figure 1. If the suspension process could not be concluded within the stipulated timeframe as the hearing could be prohibited, the credit support provided by the defaulting MP may be insufficient to cover its exposure in the SWEM. A default levy may then have to be imposed on non-defaulting MPs if the defaulting MP fails to meet its payment obligations.

**Figure 1: Illustration of Current Credit Support Regime and Possible Issues**



To maintain the financial integrity of the SWEM, there needs to be a legally workable process to in a timely manner suspend MPs that incur such insolvency-related defaults.

#### 3.2 Proposed Solution

This section covers the solutions that EMC has explored to remedy the inconsistency between the IRDA and CA and current handling of insolvency-related defaults in the SWEM. As any solution would need to be legally workable, the EMC engaged external legal counsel to inform the EMC’s analysis.

##### 3.2.1 Legislative Amendments

The clearest way to remove any doubt on any inconsistencies between the Market Rules and the IRDA and CA would be to enact legislative amendments. The Insolvency, Restructuring and Dissolution (Prescribed Contracts under s440) Regulations 2020 should be amended to include the Market Rules as an exempt contract.

However, legislative amendments are a matter for Parliament. They are not straightforward and expected to be long drawn. It would be prudent for the market to have a solution for such insolvency-related defaults, at least in the interim, until legislative amendments can be made.

### 3.2.2 Declaratory Relief

Declaratory relief refers to an order made by a court which declares with finality the rights and obligations of the parties in relation to the dispute before it. A declaratory relief would provide clarity on whether current market rule provisions for the handling of insolvency-related defaults are consistent with the IRDA and CA.

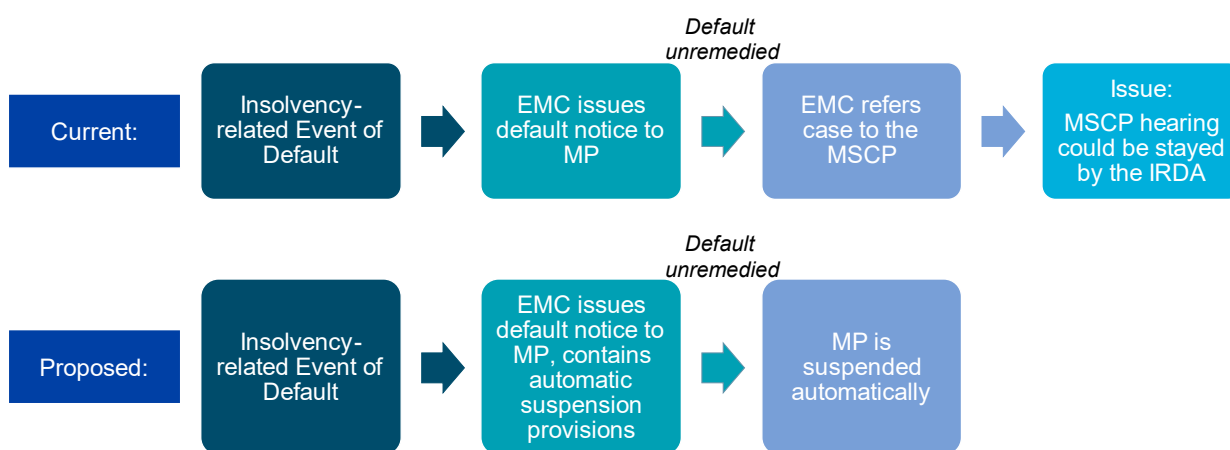
However, seeking declaratory relief also takes time, and more crucially, requires a live case. The occurrence of a live case simply cannot be planned. It would be prudent to take the initiative to devise a solution instead before a live case occurs.

### 3.2.3 Automatic Suspension

The key issue with the current suspension process is that the MSCP holding a hearing and subsequently issuing any orders against insolvent defaulting MPs may be prohibited by the IRDA and CA. This deprives the market of an avenue (i.e., issuance of suspension order) to stop any insolvent defaulting MP from further accumulating exposure in the market, which would pose a financial risk to the market if the exposure exceeds what is covered by their posted credit support.

To remedy this, it is proposed to amend the market rules to provide for an automatic suspension of insolvent defaulting MPs, which would be triggered by the occurrence of an insolvency-related default. There will be no hearings required, which could otherwise be stayed by the IRDA and CA, before the suspension takes effect. Figure 2 illustrates an overview of the proposed automatic suspension process contrasted with the current default handling process.

**Figure 2: Comparison between Current and Proposed Handling of Insolvency-related Defaults**



It is worth noting that in cases where the MSCP intends to issue a suspension order to an MP that is either a generation or importer licensee, the Market Rules currently provide for the Energy Market Authority (“EMA”) to prohibit the issuance of the suspension order and notify the MSCP of any action the EMA proposes to take instead<sup>4</sup>. For the avoidance of doubt, this same arrangement will apply for the proposed automatic suspension procedure.

<sup>4</sup> Chapter 3 Section 7.3.13 of the market rules

While the EMC acknowledges that this approach lowers tolerance of insolvent defaulting MPs, we consider it more important to safeguard the financial integrity of the market in a way that is legally workable under the IRDA and CA. Therefore, the EMC proposes the adoption of an automatic suspension process for insolvency-related defaults.

Operational Process for Effecting Automatic Suspension

A proposed operational process flow for the automatic suspension is laid out below:

- (1) **Day T:** EMC becomes aware of an insolvency-related default.
- (2) **Day T + 1BD:** EMC issues a Notice of Default. The Notice of Default would specify that should the default remain unremedied within 1 BD of the issuance of the Notice of Default, the MP shall be automatically suspended after 5 BDs following the issuance of the Notice of Default.
- (3) **Day T + 6BD:** Should the default remain unremedied, the MP is automatically suspended as of this day. If the defaulting MP is a retailer, the Retailer of Last Resort (RoLR) event is triggered.

The timeline proposed to complete the automatic suspension is consistent with the duration of any suspension hearings that would have been conducted by the MSCP, thereby ensuring that the current credit support requirements remain sufficient to cover the insolvent defaulting MP’s exposure.

To reiterate, this automatic suspension process is proposed to address the inconsistency identified between the Market Rules and the IRDA and CA regarding insolvency-related defaults. Automatic suspension can prevent insolvent defaulting MPs from further accumulating financial exposure, protecting the SWEM’s financial integrity.

**4. Consultation**

The concept paper was published for consultation on 17 October 2023. Comments were received from the MSCP and SP Services. The comments raised and EMC’s responses are provided below.

S/N	Comment Received	EMC Response
<i>Comments from the MSCP</i>		
1	The MSCP supports the proposed arrangement to handle insolvency-related defaults by introducing an automatic suspension framework for such cases as it is critical to safeguard the financial integrity of the market. The potential rule change will be beneficial to the market as market participants will be aware and notified of their obligations.	EMC notes this comment.
2	Currently, in cases where the MSCP intends to issue a suspension order to an MP that is either a generation or importer licensee, section 7.3.13 of Chapter 3 of the Market Rules currently provide that the MSCP shall request action from the Energy Market Authority (“EMA”) to issue a direction to the MSCP to either prohibit (and notify the MSCP of any action the EMA proposes to take instead) or authorise the MSCP to proceed with the issuance of the suspension	EMC would clarify that the intent is to allow EMA to prohibit or authorise an impending automatic suspension of a MP who is a generation or importer licensee.  As the suspension is automatic, we concur that the MSCP will not be involved in such processes.

S/N	Comment Received	EMC Response
	<p>order. The paper proposes that the same arrangement is to be applied to the automatic suspension procedure. However, the MSCP notes that for cases where the automatic suspension procedure is to be applied to a generation or importer licensee, the paper proposes the “same arrangement” as other suspension cases. This is not appropriate for the automatic suspension cases as there will be no issuance of suspension order and therefore, the MSCP will not be involved in the automatic suspension cases.</p>	
<i>Comments from SP Services</i>		
1	<p>While SPS has no comment on the timeline, EMC may wish to consider differentiating the Notice of Default for automatic suspension for insolvency cases from a Notice of Default for non-automatic cases.</p>	<p>EMC notes this comment.</p> <p>EMC agrees with SP Services that differentiation should be made in the Notice of Default for insolvency related event of default, which EMC will take into account when drafting the modification to the Market Rules.</p>

## 5. Conclusion and Recommendation

When an MP incurs an insolvency-related default, the current suspension process may not be workable due to potential inconsistency with relevant laws (namely, the IRDA and CA). The proposed automatic suspension process for insolvency-related default cases would allow for timely suspension of such defaulting MP, thereby preserving the financial integrity of the wholesale electricity market.

EMC recommends that the RCP:

- a) support EMC’s proposal of an automatic suspension framework for the handling of insolvency-related defaults; and
- b) task EMC to draft relevant modifications to the Market Rules to give effect to such proposal.

## 6. Decision at the 138<sup>th</sup> RCP Meeting

The concept paper was discussed at the 138<sup>th</sup> RCP meeting.

The RCP unanimously supported the EMC’s proposed automatic suspension framework, and tasked the EMC to draft the relevant modifications to the Market Rules to give effect to such proposal.



## ANNEX 1: List of Events of Default (Chapter 3 Section 7.3.1 of Market Rules)

Section	Event of Default
7.3.1.1	The market participant does not pay money due for payment by it under the market rules by the appointed time on the due date.
7.3.1.2	The EMC does not receive payment in full of any amount claimed by the EMC under any credit support submitted by or on behalf of the market participant within one business day in the jurisdiction of the market participant after the due time for payment of that claim.
7.3.1.3	The market participant fails to provide credit support required to be supplied under the market rules within the time required.
7.3.1.4	It becomes unlawful for the market participant to comply with any of its obligations under the market rules, a market manual or the system operation manual or any other obligation owed to the EMC or the PSO, or it is claimed to have become so by the market participant.
7.3.1.5	It becomes unlawful for a market participant's credit support provider to comply with any of its obligations under the credit support supplied by it or any other obligation owed to the EMC, or it is claimed to have become so by the credit support provider.
7.3.1.6	A licence (including an electricity licence), permit or other authorisation necessary to enable the MP or its credit support provider to carry on their respective principal business or activities is suspended, revoked or otherwise ceases to be in full force and effect, provided that where a market participant holds more than one electricity licence and only one such electricity licence has been suspended, revoked or otherwise ceases to be in full force and effect, the event of default and any action taken by the EMC with respect thereto shall relate only to such electricity licence.
7.3.1.7	The market participant or its credit support provider ceases or threatens to cease to carry on its business or a substantial part of its business or its credit support provider ceases or threatens to cease to carry on its business or a substantial part of its business.
7.3.1.8	The market participant or its credit support provider enters into or takes any action to enter into an arrangement, composition or compromise with, or an assignment for the benefit of, all or any class of their respective creditors or members or a moratorium involving any of them.
7.3.1.9	The market participant or its credit support provider states that it is unable to pay from its own money its debts when they fall due for payment.
7.3.1.10	A receiver, receiver and manager, judicial manager or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of any property of the market participant or its credit support provider which is used in or relevant to the performance by the market participant or its credit support provider of its obligations under the market rules, a market manual, the system operation manual, an electricity licence or credit support provided by it, as the case may be, issued to it.
7.3.1.11	An administrator, liquidator, trustee in bankruptcy or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the market participant or its credit support provider, or any action is taken to appoint such person.
7.3.1.12	An application is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the market participant or its credit support provider.
7.3.1.13	The market participant or its credit support provider is wound up or dissolved, unless the notice of winding up or dissolution is discharged.

**7.3.1.14** The market participant or its credit support provider is taken to be insolvent or unable to pay its debts under any applicable legislation.

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**7.3.1.15** The market participant ceases to satisfy any material requirement imposed upon it as a condition of its registration as a market participant.

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**7.3.1.16** The market participant fails to comply with a direction or order of the market surveillance and compliance panel made pursuant to section 7.2.8.

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