

Guidance on Resolution Stays and Contractual Obligations of Eligible Financial Contracts

This guidance note provides an overview of the framework for the treatment of eligible financial contracts (“EFCs”) between CDIC federal member institutions (“MIs”) and their contractual counterparties in the context of the resolution of an MI under the *Canada Deposit Insurance Corporation Act* (the “CDIC Act”).

CDIC is a Crown corporation designated under the *CDIC Act* as the resolution authority for its MIs. When a non-viable MI enters resolution, certain rights of EFC counterparties to terminate or accelerate obligations and to deal with financial collateral (collectively, “Close-Out Rights”)¹ are stayed under the *CDIC Act*.² These stays are carefully limited in a manner that is consistent with the Financial Stability Board’s Key Attributes³, ensuring that mass termination of EFCs does not disrupt financial system stability while maintaining adequate safeguards for EFC counterparties and creditors to manage their risk.

No Stay

Certain rights of EFC counterparties are not affected by the stays. The stays apply only to contract provisions dealing with⁴

- (a) the netting or setting off or compensation of an amount payable under or in connection with the contract,
- (b) the exercise of remedies for a failure to satisfy an obligation under or in connection with the contract, including the payment of an amount payable — or the delivery of property deliverable — under or in connection with the contract, or

¹ See paragraphs (a), (b) and (f) of subsection 39.15(7) of the CDIC Act.

² See subsection 39.15 (7.1)-(7.104) and (7.11) of the CDIC Act.

³ This includes section 4 of the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions [fsb.org](https://www.fsb.org)

⁴ The stays described in subsection 39.15(7.1) do not apply to the actions referred to in paragraphs (c), (d) and (e) of subsection 39.15(7) of the CDIC act.

(c) financial collateral⁵

- i. to satisfy an amount payable — or the delivery of property deliverable — under or in connection with the contract,
- ii. for the purpose of calculating an amount payable under or in connection with the contract by way of netting, setting off or compensation of the financial collateral or application of the proceeds or value of the financial collateral, or
- iii. as a remedy for a failure described in (b) above.

EFC counterparties can exercise any other Close-Out Rights unless they are stayed for reasons covered by the Resolution Stays discussed below.

Resolution Stays

In Resolution, EFC counterparties would be stayed from exercising Close-Out Rights if the only reason for doing so is⁶

- (a) the insolvency or deteriorated financial condition (DFC) of the federal member institution, any of its affiliates or any of its providers of credit support or guarantors in respect of the institution's obligations under the eligible financial contract;
- (b) the assignment or assumption of the eligible financial contract to or by a bridge institution or a third party;
- (c) the making of the order or any change of control or ownership of the federal member institution or any of its affiliates that is related to the making of the order;
- (d) a conversion under subsection 39.2(2.3) in respect of the federal member institution; or

⁵ Any dealing with financial collateral, other than those mentioned in this section are affected by resolution stays. See subsection 39.15(7)(f) of the CDIC Act.

⁶ See subsection 39.15(7.1) of the CDIC Act

- (e) a conversion of any of the federal member institution's shares or liabilities in accordance with the contractual terms of those shares or liabilities.

With respect to a counterparty's Close-Out rights triggered by insolvency or deteriorated financial condition, if provided for in a given EFC, the duration of the stay is short: CDIC has until 5:00 p.m. on the second business day after entry to resolution to give an undertaking to assign the EFC to a bridge institution⁷. If CDIC gives the undertaking, then the stay is extended through resolution.

In the case where resolution will be carried out by bridge institution, the same duration applies to stay of a Close-Out right triggered by the resolution order itself, as well as change of control triggers.

Where CDIC intends to transfer all or substantially all of the assets of the MI to a third party and does *not* intend to transfer a given EFC to the same third party, CDIC must give notice to the counterparties thereto⁸. The stay in respect of these Close-Out rights is immediately lifted upon such notice being given.

EFC counterparties that would exercise Close-Out rights for any of the other noted reasons above would continue to be stayed until resolution has concluded.

Third parties to which CDIC may cause an assignment of EFCs are those which are:

- balance sheet solvent;
- able to discharge its obligations under the assigned EFC as they become due; and,
- at least as credit-worthy as the MI was immediately before the Resolution Order was made (taking into account any credit support or guarantee in respect of the obligations under the EFC before and after the assignment, respectively⁹).

⁷ See subsection 39.15(7.102) of the CDIC Act

⁸ See subsection 39.15(7.101) of the CDIC Act.

⁹ See subsection 39.15(7.21) of the CDIC Act.

Where CDIC assigns an EFC to a third-party or a bridge bank, CDIC must assign all of the EFCs outstanding between the MI and the same counterparty, including its affiliates).

CDIC Eligible Financial Contracts By-law amendment and Discussion

CDIC has made amendments to the EFC By-law, which became effective on 8 April 2026. These amendments were made to ensure that the by-law remains aligned with current global industry standards (such as FSB key attributes and ISDA protocol) and facilitates compliance consistent with international best practices. The prescribed class of EFCs defined in the By-law must include the required contract provisions pertaining to Resolution Stays to ensure compliance.

Key updates are summarized as follows:

- Central counterparty is defined as “a corporation, association, partnership, agency or other entity that provides a clearing and settlement system and fully guarantees the performance of, or fully novates, eligible financial contracts that are cleared or settled through that system”.
- The exempt party defined in subparagraph 3(a)(ii): “The government of a foreign country **including any of its departments or agencies**”.
- The exempt party defined in subparagraph 3(a)(vi): “A bank that is owned and funded by the governments of two or more countries and established for the purpose of economic development”.
- Contracts with counterparties who are not Federal MIs, GSIBs, or an affiliate of those institutions must be in compliance by October 1st, 2028. There are no changes for contracts involving those three types of counterparties.

Please consult the EFC By-law for full details.

Frequently Asked Questions

1. What counterparties are exempt from Resolution stays?

Answer: Exempt counterparties are outlined in section 3 of the EFC by-law. These include contracts with:

- (i) Her Majesty in right of Canada,
- (ii) the government of a foreign country, *including any of its departments or agencies,*
- (iii) a central bank,
- (iv) a *clearing house*, as defined in subsection 39.15(9) of the Act,
- (v) a central counter-party, or
- (vi) *a bank that is owned and funded by the governments of two or more countries and established for the purpose of economic development.*

2. What EFC counterparty rights are affected by Resolution Stays?

Answer: An EFC to which an MI is a party to and which contains provisions permitting the taking of an action referred to in subsection 39.15(7) (a), (b) or (f) of the CDIC Act may be subject to resolution stays. Please refer to the EFC By-law to determine whether an EFC meets the definition of the prescribed class of EFCs.

3. What EFC counterparty rights are not affected by Resolution Stays?

Answer: In accordance with the provisions of an EFC, the taking of an action defined in subsection 39.15(7) (c), (d) or (e) of the CDIC Act is not affected by resolution stays.

4. What is required to ensure compliance with the by-law?

Answer: MIs must include the language recognizing the limited stay of proceedings prescribed in section 4 of the By-law in their contracts (see question 5 below). Parties of an EFC subject to the prescribed class of EFCs defined in section 3 of the By-law should work with the MI to help ensure that the contract indicates the parties' agreement to the stay provisions. If an existing EFC from the prescribed class does not include this language, parties can ensure compliance either by amending the contract with the MI or by adhering to the Canadian Jurisdictional Modular Protocol (ISDA JMP).

5. What language should I add to my contract to ensure it upholds resolution resilient language?

Answer: Every MI must ensure that all eligible financial contracts that are part of the class prescribed by section 3 of the EFC by-law contain provisions indicating the parties' agreement to the application of subsections 39.15(7.1) to (7.104) and (7.11) of the *CDIC Act* in relation to the actions that the parties may take.

6. How does the ISDA JMP pertain to EFC By-law compliance?

Answer: Market participants can adhere to the ISDA JMP to facilitate By-law compliance.

ISDA JMP facilitates compliance with the EFC By-law by amending in-scope ISDA documentation to recognize Canadian resolution stay powers where that documentation is governed by non-Canadian law or involves certain non-Canadian counterparties.

7. Are single country economic development banks also exempt from the EFC by-law?

Answer: While the by-law does not expressly exempt such institutions, they may fall within existing exemptions where, depending on their structure and function, they constitute a department or agency of the government of a foreign country.

8. Is the Bank of international settlements exempt from the EFC by-law?

Answer: Yes, CDIC considers the Bank for International Settlements (BIS) to be an exempted party under section 3. Given that the BIS is exclusively owned by central banks, it falls within the category of a central bank under the by-law.

9. Which branches of a foreign government are exempt from the EFC By-law?

Answer: Section 3(a)(ii) refers to “the Government of a foreign country, including any of its departments or agencies”.

This applies to a foreign country’s singular, national, sovereign government and does not extend to sub national governments such as provincial or state governments.

10. For the purposes of this By-law, what constitutes a government “department” and “agency”?

Answer: For the purposes of the EFC By-law:

- Government departments are administrative subdivisions which are not legally distinct from the government.
- Government agencies are separate legal entities which are empowered to act on behalf of and whose liabilities are fully guaranteed by that government.

11. When do EFC contracts need to include the provisions from section 4 of the By-law in order to be compliant?

Answer: EFCs that meet conditions 3(a) and (b) of the EFC by-law must include the contract provisions outlined in section 4 of the EFC By-law if one of the following conditions are met:

- (i) it is entered into, amended or renewed on or after October 1, 2023 and at least one of the other parties to it is
 - (A) a federal member institution or an affiliate of a federal member institution, or
 - (B) an institution that has been identified by the Financial Stability Board as a global systemically important bank or an affiliate of an institution that has been so identified,
- (ii) it is entered into, amended or renewed on or after October 1, 2028, or
- (iii) at least one other party to it and the federal member institution are together parties to another contract that is part of a class prescribed by this section.