ISDA 2020 IBOR Fallbacks Protocol and IBOR Fallbacks Supplement

These FAQs are intended to provide a summary of certain aspects of the ISDA 2020 IBOR Fallbacks Protocol (**IBOR Fallbacks Protocol**) and the Supplement to the 2006 ISDA Definitions (**IBOR Fallbacks Supplement**) published by the International Swaps and Derivatives Association, Inc. (**ISDA**) on 23 October 2020. The IBOR Fallbacks Supplement and the amendments made by the IBOR Fallbacks Protocol will take effect on 25 January 2021.

This is not intended to be an exhaustive description of all relevant terms of the IBOR Fallbacks Protocol or the IBOR Fallbacks Supplement. You should review in full the terms of those documents, as well as the Frequently Asked Questions, published by ISDA at www.isda.org for further information.

1. Who can adhere to the IBOR Fallbacks Protocol?

The IBOR Fallbacks Protocol is open for adherence by any entity regardless of where it may be domiciled. An entity does not need to be a member of ISDA to be able to adhere to the IBOR Fallbacks Protocol.

2. What does the IBOR Fallbacks Protocol do?

The IBOR Fallbacks Protocol allows adhering parties to amend the terms of certain of their documentation that is within the scope of the IBOR Fallbacks Protocol (each, a **Protocol Covered Document**):

(a) to amend those Protocol Covered Documents which incorporate, or reference, a rate as defined in certain of the ISDA definitions booklets (each, a **Covered ISDA Definitions Booklet**, and as further described below) to incorporate the terms of the newly published IBOR Fallbacks Supplement or the relevant definitions from the IBOR Fallbacks Supplement into that documentation; and/or

(b) to amend those Protocol Covered Documents that otherwise reference a benchmark rate that is within the scope of the IBOR Fallbacks Protocol (howsoever that benchmark rate is defined in that documentation) (each such rate, a **Relevant IBOR**, and as further described below), to include new fallbacks for that Relevant IBOR.

3. What amendments are made by the IBOR Fallbacks Protocol?

The IBOR Fallbacks Protocol enables parties:

(a) whose Protocol Covered Document incorporates a Covered ISDA Definitions Booklet to amend that Protocol Covered Document to incorporate the version of the Covered ISDA Definitions Booklet as amended by the terms of the IBOR Fallbacks Supplement;

(b) whose Protocol Covered Document references a Relevant IBOR as defined in, or which otherwise provides that the Relevant IBOR has the meaning given in, a Covered ISDA Definitions Booklet to amend that Protocol Covered Document so that the reference to that Relevant IBOR will instead be a reference to the relevant rate option (or the first rate option if there are more than one) for the Relevant IBOR as defined in, and subject to the other relevant terms of, the IBOR Fallbacks Supplement; and

(c) whose Protocol Covered Document includes a reference to a Relevant IBOR (howsoever defined) to amend that Protocol Covered Document to include the fallbacks and related terms for the Relevant IBOR as set out in Paragraph 6 of the Attachment to the IBOR Fallbacks Protocol.

4. What does the IBOR Fallbacks Supplement do?

The IBOR Fallbacks Supplement updates rate options for Relevant IBORs to include new fallbacks in the event of a permanent cessation of those Relevant IBORs (and, for sterling LIBOR, Swiss franc LIBOR, U.S. dollar LIBOR, Japanese yen LIBOR and euro LIBOR (each, a **LIBOR Rate Option**), in the event of a 'pre-cessation' event (as further described below)).

A permanent cessation of a Relevant IBOR means that a public statement or publication of information occurs:

(a) by or on behalf of the administrator of the Relevant IBOR announcing that it has ceased or will cease to provide the Relevant IBOR permanently or indefinitely; and/or

(b) by the regulatory supervisor for the administrator of the Relevant IBOR, the central bank for the currency of the Relevant IBOR, an insolvency official with jurisdiction over the administrator for the Relevant IBOR, a resolution authority with jurisdiction over the administrator for the Relevant IBOR or a court or an entity with similar insolvency or resolution authority over the administrator for the Relevant IBOR, stating that the administrator of the Relevant IBOR has ceased or will cease to provide the Relevant IBOR, in each case provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the Relevant IBOR.

Each of the Relevant IBORs will, in the event of a permanent cessation of the Relevant IBOR (as well as, for the LIBOR Rate Options, in the event of a 'pre-cessation' event), first fall back to a term adjusted risk-free rate for the relevant currency plus a spread. Further fallbacks apply in respect of each of the specified rate options.

The IBOR Fallbacks Supplement also includes new fallbacks in the event of a 'pre-cessation' event for the LIBOR Rate Options. A 'pre-cessation' event is a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR (currently, the Financial Conduct Authority in the United Kingdom) announcing that:

(a) the regulatory supervisor has determined that LIBOR in the relevant currency is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that LIBOR in the relevant currency is intended to measure and that representativeness will not be restored; and

(b) it is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts (**Pre-cessation**).

U.S. dollar LIBOR is an input used to calculate the Singapore dollar Swap Offer Rate (**SOR)** and the Thai baht interest rate fixing (**THBFIX**). Therefore, in respect of rate options for the Singapore dollar SOR and the Thai baht THBFIX, the IBOR Fallbacks Supplement includes new fallbacks in the event of a permanent cessation or Pre-cessation of U.S. dollar LIBOR. These new fallbacks are to rates which are calculated by reference to actual transactions in the U.S. dollar/Singapore dollar foreign exchange swap market (in respect of the Singapore dollar SOR) and the U.S. dollar/Thai baht foreign exchange swap market (in respect of the Thai baht THBFIX) and a U.S. dollar interest rate calculated by reference to the fallback for U.S. dollar LIBOR (i.e. term adjusted SOFR plus a spread) in place of U.S. dollar LIBOR.

5. What documents are within the scope of the IBOR Fallbacks Protocol?

Protocol Covered Documents are defined in the IBOR Fallbacks Protocol as:

(a) Protocol Covered Master Agreements;

(b) Protocol Covered Credit Support Documents; and

(c) Protocol Covered Confirmations,

excluding any documentation governing cleared transactions.

A **Protocol Covered Master Agreement** is an ISDA Master Agreement (including, for the avoidance of doubt, the ISDA 2002 Master Agreement and the 1992 ISDA Master Agreement (Multicurrency – Cross Border)) or other master agreement listed in Part 1 of the Additional Documents Annex to the IBOR Fallbacks Protocol as an 'Additional Master Agreement' (which includes the 1995 PSA/ISMA Global Master Repurchase Agreement, the 1996 TBMA Master Repurchase Agreement, the 2000 TBMA/ISMA Global Master Repurchase Agreement, the 2011 SIFMA/ICMA Global Master Repurchase Agreement and the 2010 ISLA Global Master Securities Lending Agreement) that:

(a) has been entered into between two parties that have adhered to the IBOR Fallbacks Protocol (**Adhering Parties**) either (i) by execution by the parties or (ii) by execution by the parties of a confirmation pursuant to which a party is deemed to have entered into an ISDA Master Agreement or an Additional Master Agreement with the other party;

(b) is dated, dated as of, or specifies a trade date that is, a date before 25 January 2021 or, if later, the date of acceptance by ISDA of an adherence letter from the later of the two Adhering Parties to adhere; and

(c) satisfies one or more of the following conditions:

 (i) incorporates a Covered ISDA Definitions Booklet;

 (ii) references a Relevant IBOR "as defined" in, or otherwise provides that the Relevant IBOR has the meaning given in, a Covered ISDA Definitions Booklet; and/or

 (iii) references a Relevant IBOR, howsoever defined.

A **Protocol Covered Credit Support Document** is an ISDA Credit Support Document or other credit support document listed in Part 2 of the Additional Documents Annex to the IBOR Fallbacks Protocol as an 'Additional Credit Support Document' that is entered into between two Adhering Parties, and that is dated, dated as of, or specifies a trade date that is, a date before 25 January 2021 or, if later, the date of acceptance by ISDA of an adherence letter from the later of the two Adhering Parties to adhere, and which:

(a) incorporates a Covered ISDA Definitions Booklet;

(b) references a Relevant IBOR "as defined" in, or otherwise provides that the Relevant IBOR has the meaning given in, a Covered ISDA Definitions Booklet; and/or

(c) references a Relevant IBOR, howsoever defined.

A **Protocol Covered Confirmation** is a confirmation entered into between two Adhering Parties, that is dated, dated as of, or specifies a trade date that is, a date before 25 January 2021 or, if later, the date of acceptance by ISDA of an adherence letter from the later of the two Adhering Parties to adhere and which:

(a) supplements, forms part of and is subject to, or is otherwise governed by, an ISDA Master Agreement or an Additional Master Agreement and incorporates a Covered ISDA Definitions Booklet;

(b) supplements, forms part of and is subject to, or is otherwise governed by, an ISDA Master Agreement or an Additional Master Agreement and references a Relevant IBOR "as defined" in, or otherwise provides that the Relevant IBOR has the meaning given in, a Covered ISDA Definitions Booklet; and/or

(c) supplements, forms part of and is subject to, or is otherwise governed by, an ISDA Master Agreement or an Additional Master Agreement and references a Relevant IBOR, howsoever defined.

A 'confirmation' as referred to above means, in respect of a transaction, one or more documents or other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the transaction.

A **Covered ISDA Definitions Booklet** means each of the 2006 ISDA Definitions, the 2000 ISDA Definitions, the 1998 ISDA Euro Definitions, the 1998 Supplement to the 1991 ISDA Definitions and the 1991 ISDA Definitions.

6. What are the Relevant IBORs?

A **Relevant IBOR** is:

(a) any of the following: sterling LIBOR, Swiss franc LIBOR, U.S. dollar LIBOR, euro LIBOR, the euro interbank offered rate (EURIBOR), the Japanese yen LIBOR, the Japanese yen Tokyo Interbank Offered Rate (TIBOR), the euro-yen TIBOR, the Bank Bill Swap Rate (BBSW), the Canadian dollar Offered Rate (CDOR), the Hong Kong Interbank Offered Rate (HIBOR), the Singapore dollar SOR and the Thai baht THBFIX; or

(b) LIBOR (the London interbank offered rate) (with no reference to, or indication of, the currency of the relevant LIBOR),

in each case, howsoever defined or described (whether in English or in any other language) in the relevant Protocol Covered Document.

7. What spread will apply as part of the fallback if a permanent cessation event occurs?

Following the permanent cessation of the Relevant IBOR, each Relevant IBOR will first fall back to a term adjusted risk-free rate for the relevant currency plus a spread (except for the Singapore dollar SOR and the Thai baht THBFIX; please refer to Q4: *What does the IBOR Fallbacks Supplement do?*).

The spread component of the fallback will be the spread published by Bloomberg on the date of the public statement or publication of information which constitutes a permanent cessation event. This spread will be based on data for the historical period that includes risk-free rate data published up to and including the date no later than two (2) business days prior to the date of the relevant statement or publication.

If a public statement or publication of information which constitutes a Pre-cessation subsequently occurs after the permanent cessation, then this will not affect the spread (i.e. the spread will remain the spread published on the date of the public statement or publication of information by the specified entity regarding the permanent cessation of the Relevant IBOR).

8. What spread will apply as part of the fallback if a Pre-cessation occurs?

If a Pre-cessation occurs, then the spread which applies as part of the fallback will be the spread published by Bloomberg on the date of the first public statement or publication of information by the regulatory supervisor which constitutes a Pre-cessation. This spread will be based on data for the historical period that includes risk-free rate data published up to and including the date no later than two (2) business days prior to the date of the relevant statement or publication.

If a permanent cessation of the Relevant IBOR occurs after the Pre-cessation, then this will not affect the spread (i.e. the spread will remain the spread published on the date of the public statement or publication of information by the regulatory supervisor in respect of the Pre-cessation).

Parties may bilaterally disapply the inclusion of the Pre-cessation provisions.

9. When does the IBOR Fallbacks Protocol become effective?

The agreement between two parties who have sent adherence letters to ISDA to make the amendments contemplated by the IBOR Fallbacks Protocol will be effective on the date of acceptance by ISDA of the adherence letter from the later of such two Adhering Parties (the **Implementation Date**). That agreement to make the amendments will form part of each Protocol Covered Document from the Implementation Date (or, if later, the date of such Protocol Covered Document).

The amendments to Protocol Covered Documents contemplated by the IBOR Fallbacks Protocol will be effective on the later of (i) the Implementation Date and (ii) 25 January 2021.

10. How do I adhere to and implement the IBOR Fallbacks Protocol?

If you intend to adhere to the IBOR Fallbacks Protocol, you should access the “Protocols” section of the ISDA website at www.isda.org to enter the information that is required to generate its form of an adherence letter. Each Adhering Party should sign the populated adherence letter (a “wet-ink” signature is not required) and upload it as a PDF (portable document format) attachment into the Protocol system. Once the signed adherence letter has been approved and accepted by ISDA, such Adhering Party will receive an e-mail confirmation of adherence to the IBOR Fallbacks Protocol.

The ISDA website at www.isda.org and the Frequently Asked Questions thereto set out further information with respect to the adherence process and costs.

Adherence to the IBOR Fallbacks Protocol requires a one-time application fee of US$500. In this regard, an Adhering Party will NOT be required to submit such fee to ISDA insofar as:

(a) it is not a primary member of ISDA; and

(b) its adherence letter is submitted prior to 25 January 2021.

11. Can parties agree bilaterally to amend the terms or scope of the IBOR Fallbacks Protocol?

Yes, Adhering Parties may bilaterally agree to amend the terms or scope of the IBOR Fallbacks Protocol.

12. What should I consider when determining whether to adhere to the IBOR Fallbacks Protocol?

You should consider carefully and consult internally on the effects of adhering to the IBOR Fallbacks Protocol. You should also seek independent advice from external professional advisers, as appropriate, to ensure that you fully understand all applicable regulatory, tax, accounting, hedging and other considerations in respect of adhering to the IBOR Fallbacks Protocol.

13. What if I do not want to adhere to the IBOR Fallbacks Protocol?

To the extent that you do not adhere to the IBOR Fallbacks Protocol or otherwise bilaterally include robust fallbacks in your relevant financial markets documentation, the existing fallbacks may not operate to allow parties to identify a fallback rate in the absence of a Relevant IBOR.

If you do not adhere to the IBOR Fallbacks Protocol, such protocol will not affect your existing relevant financial markets documentation with us. However, given that the continued use of U.S. dollar LIBOR (and, consequently, the Singapore dollar SOR) is not likely to be feasible after 31 December 2021 and existing fallbacks for other Relevant IBORs may also not operate to allow parties to identify a fallback rate, your relevant financial markets documentation will need to be amended on a bilateral basis.

We will be contacting you in due course if you have not adhered to the IBOR Fallbacks Protocol to agree to the amendments to relevant financial markets documentation with us.

14. Where will the new fallback rates be published?

The fallback rate for the Singapore dollar SOR will be published by ABS Benchmarks Administration Co Pte. Ltd. The fallback rate for the Thai baht THBFIX will be published by the Bank of Thailand. The fallback rates (i.e. the term-adjusted risk-free rate plus the spread) for sterling LIBOR, Swiss franc LIBOR, U.S. dollar LIBOR, euro LIBOR, the euro EURIBOR, Japanese yen LIBOR, the Japanese yen TIBOR, the euro-yen TIBOR, the BBSW, the Canadian dollar (CDOR) and the Hong Kong (HIBOR) will be published by Bloomberg Index Services Limited.

In summary, and subject to the detailed terms of the IBOR Fallbacks Supplement which should be reviewed in full, the hierarchy of applicable fallback rates is as follows:

(a) firstly, in respect of:

- (i) sterling LIBOR is Fallback Rate (SONIA);
- (ii) Swiss franc LIBOR is Fallback Rate (SARON);
- (iii) U.S. dollar LIBOR is Fallback Rate (SOFR);
- (iv) euro LIBOR and the euro EURIBOR is Fallback Rate (EuroSTR);
- (v) Japanese yen LIBOR, the Japanese yen TIBOR and the euro-yen TIBOR is Fallback Rate (TONA);
- (vi) the BBSW is Fallback Rate (AONIA);
- (vii) the Canadian dollar CDOR is Fallback Rate (CORRA);
- (viii) the Hong Kong HIBOR is Fallback Rate (HONIA);
- (ix) the Singapore dollar SOR is Fallback Rate (SOR); and
- (x) the Thai baht THBFIX is Fallback Rate (THBFIX),

each, the **First Fallback Rate** in respect of the relevant benchmark rate;

(b) secondly, in respect of:

(i)

(A) sterling LIBOR is SONIA;
(B) Swiss franc LIBOR is SARON;
(C) U.S. dollar LIBOR is SOFR;
(D) euro LIBOR and the euro EURIBOR is EuroSTR;
(E) Japanese yen LIBOR, the Japanese yen TIBOR and the euro-yen TIBOR is TONA;
(F) the BBSW is AONIA;
(G) the Canadian dollar CDOR is CORRA; and
(H) the Hong Kong HIBOR is HONIA,

in each case, adjusted as necessary to account for any difference in term structure or tenor of such rate by comparison to the relevant First Fallback Rate and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book;

(ii) the Singapore dollar SOR is the MAS Recommended Rate; and

(iii) the Thai baht THBFIX is the BOT Recommended Rate;

(c) thirdly, in respect of:

(i)

(A) sterling LIBOR is the GBP Recommended Rate;
(B) Swiss franc LIBOR, is the NWG Recommended Rate;
(C) U.S. dollar LIBOR, is the Fed Recommended Rate;
(D) euro LIBOR and the euro EURIBOR is the ECB Recommended Rate;
(E) Japanese yen LIBOR, the Japanese yen TIBOR and the euro-yen TIBOR is the JPY Recommended Rate;
(F) the BBSW is the RBA Recommended Rate;
(G) the Canadian dollar CDOR is the CAD Recommended Rate; and
(H) the Hong Kong HIBOR is the HKD Recommended Rate,

in each case, adjusted as necessary to account for any difference in term structure or tenor of such rate by comparison to the relevant First Fallback Rate and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book;

(ii) the Singapore dollar SOR is SORA adjusted as necessary to account for any difference in term structure or tenor of SORA by comparison to the Fallback Rate (SOR) and by reference to the Calculation Methodology for Fallback Rate (SOR); and

(iii) the Thai baht THBFIX is THOR adjusted as necessary to account for any difference in term structure or tenor of THOR by comparison to the Fallback Rate (THBFIX) and by reference to the Bank of Thailand THBFIX Fallback Rate Adjustments Rule Book;

(d) fourthly, in respect of:

(i) sterling LIBOR is the UK Bank Rate;
(ii) Swiss franc LIBOR, is the Modified SNB Policy Rate;
(iii) U.S. dollar LIBOR is OBFR;
(iv) euro LIBOR and the euro EURIBOR is Modified EDFR; and
(v) the Canadian dollar CDOR is the BOC Target Rate,

in each case, adjusted as necessary to account for any difference in term structure or tenor of such rate by comparison to the relevant First Fallback Rate and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book; and

(e) finally, in respect of U.S. dollar LIBOR is the FOMC Target Rate adjusted as necessary to account for any difference in term structure or tenor of such rate by comparison to Fallback Rate (SOFR) and by reference to the Bloomberg IBOR Fallback Rate Adjustments Rule Book.

These FAQs have been prepared by United Overseas Bank Limited for use by United Overseas Bank (Malaysia) Bhd ("Bank") and are solely intended to assist in your consideration of the IBOR Fallbacks Protocol and IBOR Fallbacks Supplement. Unless otherwise defined herein, capitalised terms used in these FAQs have the same meanings ascribed to them in the IBOR Fallbacks Protocol and/or the IBOR Fallbacks Supplement. These FAQs 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 IBOR Fallbacks Protocol or IBOR Fallbacks Supplement. These FAQs is not intended to constitute legal, tax, accounting, or investment advice and you should consult with your legal advisers and/or any other advisers you deem appropriate prior to using or adhering to the IBOR Fallbacks Protocol. The Bank does not accept and/or assume any liability and/or responsibility whatsoever in relation to any statement or information contained in these FAQs and/or for any use to which any of your documentation or other documentation may be put.