

CONSULTATION PAPER

P001 - 2015

January 2015

Proposed Amendments to the Banking Act

MAS

Monetary Authority of Singapore

PREFACE

i As part of MAS' ongoing review of the banking regulatory framework to take into account market developments and international regulatory standards and best practices, MAS is amending the Banking Act ("BA") to strengthen its supervisory oversight over banks and to codify MAS' current supervisory expectations and practices.

ii MAS had issued a public consultation paper on 28 November 2013 to seek feedback on the significant policy amendments. MAS has considered the feedback received, and our responses to comments of wider interest can be found at the MAS website. This consultation paper sets out the legislative amendments that give effect to these changes, and other refinements to the BA. A summary of the key changes can be found at [Annex A](#).

iii MAS invites interested parties to provide their views and comments on the draft Banking Act (Amendment) Bill which is appended at [Annex B](#). Electronic submission is encouraged. Please submit your written comments by 13 February 2015 to:

Prudential Policy Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Email: policy@mas.gov.sg

iv Please note that all submissions may be made public unless confidentiality is specifically requested.

1 INTRODUCTION

1.1 The last major amendment of the BA was in 2007. As part of MAS' ongoing review of the banking regulatory framework, MAS is amending the BA to ensure that it remains current and reflects MAS' expectations and requirements. Specifically, the amendments serve to implement MAS' regulatory and supervisory policies, and effect several technical and administrative revisions.

1.2 MAS had previously sought feedback on the key proposed amendments which are aimed at:

- formalising banks' duties to inform MAS of material adverse developments and information in relation to the bank, its shareholders and controllers, and key appointment holders;
- strengthening MAS' control over banks' key appointment holders and auditors; and
- formalising banks' duties to implement adequate risk management systems and controls.

1.3 Apart from the proposed amendments highlighted above, MAS is proposing to make further amendments to the BA. Those which are more significant are set out in section 2 below.

2 PROPOSED CHANGES TO THE BA

2.1 Apart from the proposals which were highlighted in MAS' public consultation paper, MAS would like to make particular mention of the following proposed amendments to the BA:

- (a) banks' places of business; and
- (b) MAS' power to declare bank holidays.

Banks' places of business

2.2 Banks are currently required, under section 12 of the BA, to seek MAS' approval to open a new place of business or change the location of its existing place of business at which it conducts banking business. MAS is proposing to amend the BA such that it would have the power to extend the approval requirement to include places at which banks conduct other financial or related activities (e.g. money-changing and remittance activities) so as to exercise better oversight of banks' activities.

MAS' power to declare bank holidays

2.3 Currently, section 60 of the BA empowers MAS to declare bank holidays. When a bank holiday is declared, banks are not allowed to conduct business without MAS' approval. MAS is proposing to refine the provision such that MAS is empowered to:

- (a) declare any day or part thereof to be a bank holiday or holidays; and
- (b) prescribe either a positive or negative list of activities that banks may or may not conduct during the bank holiday.

2.4 MAS will be similarly amending the bank holiday provision for merchant banks, for consistency with the revised BA bank holiday provision.¹

¹ A new notice on *Declaration of Bank Holidays* will be issued to replace MAS Directive 17, which will state, *inter alia*, the following:

Where the Authority has declared a bank holiday or holidays under section 60(1) of the Banking Act (Cap. 19), a merchant bank shall not conduct, during the bank holiday or holidays --

- (a) such activities as may be specified; or
- (b) all activities other than such activities as may be specified.

Other amendments

2.5 A full list of the key changes is summarised at Annex A. MAS invites views and comments on the draft legislative amendments, set out at Annex B, to effect these changes.

Nothing in this Notice shall be deemed to affect any written law which may from time to time be in force in Singapore relating to public holidays.

ANNEX A

LIST OF KEY AMENDMENTS TO THE BA

S/N	Key amendment	Section in Draft Bill (Annex B)
A	Implementation of MAS' policies: To enhance depositor protection	
1.	Local incorporation requirement MAS may require any bank that is incorporated outside Singapore which meets certain specified criteria, to be incorporated in Singapore, for the purpose of enhancing depositor protection.	5
2.	Basel III Leverage Ratio requirements MAS may impose Leverage Ratio requirements on banks.	9
3.	Liquid assets requirements MAS may impose Minimum Liquid Assets or Liquidity Coverage Ratio requirements to be maintained by banks.	23
B	Implementation of MAS' policies: To ensure adequate risk management controls	
4.	Requirement to implement risk management controls MAS will formalise the expectation for banks to implement adequate risk management systems and controls. MAS will consult on the Regulations setting out the risk management requirements in due course.	49
C	Implementation of MAS' policies: To strengthen corporate governance	
5.	Transactions with related persons MAS will be able to terminate, prohibit or impose restrictions on transactions with related persons that are detrimental to depositors' interests.	18
6.	Removal of director or executive officer MAS will be able to remove directors of Singapore-incorporated banks and executive officers of all banks where the person is "not fit and proper".	37

S/N	Key amendment	Section in Draft Bill (Annex B)
7.	<p>External auditors</p> <p>MAS will introduce a safe harbour provision protecting external auditors from liability arising from disclosure, in good faith, of confidential information provided to MAS.</p> <p>MAS will be able to penalise auditors for their failure to discharge their statutory duties as set out in the BA.</p> <p>MAS will also be able to direct a bank to remove external auditors who have not satisfactorily performed their statutory duties.</p>	42
D	Implementation of MAS' policies: Others	
8.	<p>Place of business</p> <p>MAS currently requires banks to seek MAS' approval to open a new place of business or change the location of its existing place of business at which it conducts any type of banking business. The amendment will enable MAS to require banks to seek approval for places of business at which they conduct certain non-banking activities (e.g. money-changing and remittance business).</p>	3, 10
9.	<p>Joint and several liability on bank directors</p> <p>MAS will repeal the provision that makes bank directors jointly and severally liable for their banks' losses arising from unsecured credit facilities granted or exposures to specified persons in the director groups of the bank.</p>	19
E	Miscellaneous (Clarifications)	
10.	<p>Minimum capital and capital adequacy requirements</p> <p>MAS will clarify the definitions of minimum paid-up capital and minimum capital funds for Singapore-incorporated banks, such that they can be met with Singapore Dollar or any currency approved by MAS, and only in the form of ordinary shares, which have the greatest loss absorbing capacity.</p>	6, 7

S/N	Key amendment	Section in Draft Bill (Annex B)
	MAS will refine the capital adequacy provision to better clarify the full suite of capital adequacy requirements for Singapore-incorporated banks.	8
11.	<p>Public disclosure requirements</p> <p>MAS will clarify that it may require banks to disclose information relating to the operations or activities of, or standards to be maintained by banks, for the purpose of enhancing market discipline.</p>	9
12.	<p>Notification requirements</p> <p><i>Shareholders</i></p> <p>MAS will require Singapore-incorporated banks to immediately notify MAS as soon as they become aware of persons who have become substantial shareholders and controllers without seeking the prior approval of the Minister-in-charge of MAS. MAS will also formalise the requirement for Singapore-incorporated banks to notify MAS as soon as they become aware of any information that negatively affects the suitability of these persons to be their substantial shareholders and controllers.</p> <p><i>Key appointment holders</i></p> <p>MAS will require banks to immediately notify MAS as soon as they become aware of any material information that may negatively affect the fitness and propriety of any officer whose appointment was previously approved by MAS.</p> <p><i>Material adverse developments</i></p> <p>MAS will formalise the requirement for banks to immediately notify MAS of any material adverse developments that the bank has reasonable grounds to believe is likely to materially and adversely affect the bank in Singapore. MAS will consult on the Regulations setting out what constitutes material adverse developments in due course.</p>	<p>13</p> <p>36</p> <p>34</p>

S/N	Key amendment	Section in Draft Bill (Annex B)
13.	<p>Information to be furnished by banks to MAS</p> <p>MAS will be able to penalise banks which fail to take reasonable care to ensure that the submission of information required by MAS is accurate, even if the information is not material.</p> <p>MAS will be able to disclose any information received from a bank if such disclosure is required under any written law or an order of a Singapore court.</p>	17
14.	<p>Major stake rules</p> <p>MAS will clarify that the requirement for banks to seek approval for their major stakes includes holdings in non-companies such as Singapore partnerships, co-operative societies and trusts. References to major stakes in companies in Parts VII and VIII of the Banking Regulations will correspondingly be amended and consulted on in due course.</p> <p>MAS will also rename the major stake provision to reflect that it pertains to major stakes in entities or trusts.</p>	21
15.	<p>Compliance with prudential requirements on a consolidated basis</p> <p>MAS will clarify the prudential requirements for compliance on a consolidated basis.</p>	65
16.	<p>Inspection of banks</p> <p>MAS will clarify its power to inspect subsidiaries, including overseas subsidiaries, of Singapore-incorporated banks.</p>	26, 31
17.	<p>Inspections by parent supervisory authorities</p> <p>MAS will clarify that parent supervisory authorities of foreign banks and merchant banks in Singapore are allowed to inspect all activities that are regulated or licensed by MAS, in relation to the foreign bank and merchant</p>	29, 31,

S/N	Key amendment	Section in Draft Bill (Annex B)
	bank subsidiaries and branches in Singapore, subject to MAS' power to require the parent supervisory authority to comply with conditions relating to specified information/activities where necessary.	
18.	<p>Safekeeping customer information</p> <p>The provisions relating to the safekeeping of customers' financial information, and permissible circumstances for disclosure, will now be titled "Privacy of customer information" to accurately reflect their substance.</p>	32
19.	<p>Approval of key appointment holders</p> <p>MAS will move the existing requirement for banks to obtain MAS' prior approval for the appointment of their key appointment holders from the Banking (Corporate Governance) Regulations to the BA. MAS will be able to impose conditions on approvals granted and prescribe the responsibilities of key appointment holders.</p>	36
20.	<p>Bank holidays</p> <p>MAS will clarify that the power to declare a bank holiday can be implemented either by prescribing a positive or negative list of prohibited activities. MAS will also clarify that it may declare a whole day or part of a day as a bank holiday.</p>	43
21.	<p>Priority of foreign currency deposits</p> <p>MAS will clarify that insured deposits, regardless of their currency, will rank ahead of uninsured deposits in the event of the winding up of a bank.</p>	44
22.	<p>Privilege against self-incrimination</p> <p>MAS will provide for the privilege against self-incrimination in the provision of information under the relevant BA provisions.</p>	14, 39

S/N	Key amendment	Section in Draft Bill (Annex B)
F	Miscellaneous (Operational matters)	
23.	<p>Licence application fees</p> <p>MAS will clarify that a bank which desires to carry on a different range of activities as that permitted under its conditions of licence shall apply to MAS in writing.</p> <p>MAS will be able to impose fees for new applications for bank licences and for applications to carry on a different range of activities as that permitted under its conditions of licence.</p>	4
24.	<p>Representative offices</p> <p>MAS will implement a registration regime for representative offices.</p> <p>MAS will be able to impose fees for new applications for the registration of representative offices.</p>	11
25.	<p>Annual gazette of list of banks</p> <p>MAS will repeal the requirement to publish annually a list of all banks licensed under the BA in the Gazette, given that an updated list of all licensed banks can be found on the MAS website. MAS will be required to publish, in the Gazette, a notice of a change in the name of a bank, in addition to the issuance, revocation or surrender of a bank licence.</p>	47
26.	<p>Penalties</p> <p>MAS will impose, raise and align several penalties for contraventions of BA requirements.</p>	Various
G	Credit and charge card issuers	
27.	<p>Place of business</p> <p>MAS will move the existing requirement on setting up or relocation of places of business of credit and charge card issuers from MAS Notice 647</p>	41

S/N	Key amendment	Section in Draft Bill (Annex B)
	into the BA, and enact powers that are consistent with those applicable to banks (as per #8 above). Specifically, MAS will be able to approve places of business for which credit and charge card issuers conduct other activities prescribed by MAS.	
28.	Provision of information MAS will formalise its powers to collect information from non-bank credit and charge card issuers.	41

DISCLAIMER: THIS VERSION OF THE BILL IS IN DRAFT FORM AND IS SUBJECT TO CHANGE

ANNEX B

Banking (Amendment) Bill

Bill No. /2015.

Read the first time on .

A BILL

i n t i t u l e d

An Act to amend the Banking Act (Chapter 19 of the 2008 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Banking (Amendment) Act 2015 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of long title

2. The long title of the Banking Act is deleted and the following long title substituted therefor:

10 “An Act to provide for the licensing and regulation of the businesses of banks, merchant banks and related institutions, and the credit card and charge card business of banks, merchant banks and other institutions, and matters related thereto”.

Amendment of section 2

3. Section 2(1) of the Banking Act is amended —

15 (a) by inserting, immediately after the word “established” in the definition of “company”, the words “in or”;

(b) by inserting, immediately after the definition of “limited liability partnership”, the following definition:

20 ““merchant bank” means a merchant bank approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);”;

(c) by deleting the definition of “place of business” and substituting the following definition:

25 “place of business”, in relation to a bank, includes a head or main office, a branch, an agency, a mobile branch of the bank, any office established and maintained for a limited period only, and any other place used by the bank for the conduct of any business of the bank;”;

30 (d) by inserting, immediately after the definition of “related corporation”, the following definition:

““representative office” means an office established by a person to carry out liaison work, market research or feasibility studies, in relation to banking business, for use by the person.”; and

- 5 (e) by deleting the words “the supervisory authority” in paragraphs (a) and (b) of the definition of “parent supervisory authority” and substituting the words “a parent supervisory authority”.

Amendment of section 7

10 **4.** Section 7 of the Banking Act is amended —

- (a) by deleting subsection (2);
 (b) by inserting, immediately after subsection (4), the following subsections:

15 “(4A) Without limiting the generality of subsections (3) and (4), the conditions that may be imposed include —

- (a) a condition as to the type of banking business that may be carried out; and
 (b) a condition placing limits on the banking business that may be carried out.”;

20 (c) by inserting, immediately after subsection (7), the following subsections:

25 “(7A) A bank which desires to vary a condition referred to in subsection (4A) in its licence must apply to the Authority in writing, and the application must be accompanied by such information as the Authority may require.

30 (7B) An application under subsection (1) or (7A) must be accompanied by a non-refundable application fee of such amount as the Authority may, by notification in the *Gazette*, prescribe, which must be paid in the manner specified by the Authority.

(7C) Any person who knowingly or recklessly furnishes any document or information in connection

with an application under subsection (1) or (7A) which is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction —

- 5 (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.”; and
- 10 (d) by inserting, immediately after the word “licence” in the section heading, the words “or variation of condition as to banking business”.

New section 8A

5. The Banking Act is amended by inserting, immediately after section 8, the following section:

15 **“Power to require incorporation**

8A. –(1) The Authority may, by notice in writing to a bank, direct the bank to incorporate a company under the Companies Act (Cap. 50) within a reasonable time for the purpose of carrying on the whole or part of its banking business in Singapore, if the Authority is of the opinion that –

- 20 (a) it is necessary or expedient in the public interest;
- (b) it is in the interest of the depositors of the bank; or
- (c) it is in the interest of the financial system in Singapore,

25 for the bank to incorporate a company for that purpose; and the bank must comply with that notice.

 (2) For the purposes of making a determination under subsection (1), the Authority may have regard to such criteria as may be specified in a written notice of the Authority.

30 (3) A bank which fails to comply with a notice under subsection(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of

a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 9

5 **6.** Section 9 of the Banking Act is amended —

(a) by inserting the following subsections after subsection (2):

(2A) Subject to subsection (2B), the paid-up capital and capital funds of a bank incorporated in Singapore must be denominated in Singapore dollars or any
10 currency approved by the Authority, and must be in ordinary shares.

(2B) Any amount of paid-up capital or capital funds of a bank incorporated in Singapore above \$1,500 million, or such other amount as may be prescribed by the
15 Authority, may be denominated in any currency, and may be in any type of shares.”;

(b) by inserting, immediately after subsection (3), the following subsection:

“(3A) A bank shall maintain —

(a) in the case of a bank incorporated in Singapore, capital funds of not less than \$1,500 million, or such other amounts as may be prescribed;

(b) in the case of a bank incorporated outside Singapore, head office capital funds of not less
25 than \$200 million.”;

(c) by inserting, immediately after the words “subsection (1)” in subsection (4), the words “or (2A)”;

(d) by deleting the the words “section 71” in subsection (5) and substituting the words “subsection (5A)”;

(e) by inserting, immediately after subsection (5), the following
30 subsection:

“(5A) Any bank which fails to comply with —

(a) subsection (1A), (3), (3A) or (4); or

(b) any direction of the Authority under subsection (5),

5 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine of \$25,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 9A

10 **7. Section 9A of the Banking Act is amended —**

(a) by inserting the following subsections after subsection (3):

15 “(3A) Subject to subsection (3B), the paid-up capital and capital funds of a bank which is a qualifying subsidiary must be denominated in Singapore dollars or any currency approved by the Authority, and shall be in ordinary shares.

20 (3B) Any amount of paid-up capital or capital funds of a bank which is a qualifying subsidiary above \$100 million, or such other amount as may be prescribed by the Authority, may be denominated in any currency, and may be in any type of shares.”;

(b) by inserting, immediately after the words “subsection (1)” in subsection (5), the words “(3) or (3A)”;

25 (c) by deleting the the words “section 71” in subsection (6) and substituting the words “subsection (6A)”;

(d) by inserting, immediately after subsection (6), the following subsection:

“(6A) Any bank which fails to comply with –

(a) subsection (2), (3), (3A) or (5); or

30 (b) any direction of the Authority under subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine of \$25,000 for every day or part thereof during which the offence continues after conviction.”.

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Amendment of section 10

8. Section 10 of the Banking Act is amended –

(a) by deleting subsection (2) and substituting the following subsections:

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“(2) The Authority may, by notice in writing to any bank incorporated in Singapore or any class of banks incorporated in Singapore, impose capital adequacy requirements on them.

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(2A) Without limiting the generality of subsection (2), a notice under that subsection may prescribe –

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(a) the appropriate level (which may be expressed in ratios) and quality of capital that is commensurate with the type, amount and concentration of risk of the bank or class of banks;

(b) the manner and process for calculating its level (which may be expressed in ratios) or quality of capital;

25

(c) the internal processes of each bank in assessing the adequacy of its level and quality of capital ;

(d) the reports to be submitted by each bank; and

(e) restrictions on the distributions of a bank in the event that it fails to maintain the level or quality of capital prescribed under paragraph (a).”;

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(b) by deleting the words “the capital adequacy ratio” in subsection (3) and substituting the words “any capital

adequacy requirement applicable to the bank or class of banks”;

(c) by deleting subsection (4) and substituting the following subsections:

- 5 “(4) Without prejudice to subsection (5), the Authority may restrict or suspend the operations of a bank which fails to comply with a notice under subsection (1) or (2).
- (5) A bank which fails to comply with –
- (a) a notice under subsection (1) or (2); or
- 10 (b) any restriction or suspension imposed by the Authority under subsection (4),
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not
- 15 exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.”.

New sections 10A and 10B

9. The Banking Act is amended by inserting, immediately after section 10, the following sections

20 “Leverage ratio requirement

10A. – (1) The Authority may, by notice in writing, require any bank incorporated in Singapore or any class of banks incorporated in Singapore, to maintain a minimum leverage ratio of a specified percentage, and to carry out other acts

25 relating to this.

(2) Without limiting the generality of subsection (1), a notice under subsection (1) may prescribe the manner of and process for calculating the leverage ratio.

(3) Where the Authority issues a notice under subsection (1) to a class of banks incorporated in Singapore, the Authority

30 may—

- (a) impose additional leverage ratio;

(b) vary the requirements for different banks within that class having regard to the risks arising from the activities of each bank, the financial soundness of each bank, and such other factors as the Authority may consider relevant.

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(4) Any bank which fails to comply with a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

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(5) In this section, “leverage ratio” means the ratio of the capital to the exposures of the bank.

Public disclosure requirement

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10B. – (1) For the purposes of enhancing market discipline, the Authority may, by notice in writing to a bank in Singapore or a class of banks in Singapore, require each bank to disclose to the public, in the form and manner specified by the Authority, any information relating to its operations, as well as the operations of any part of its bank group within the meaning of section 48A.

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(2) Without limiting the generality of subsection (1), a notice under that subsection may require a bank to disclose –

(a) its risk profile and risk management process;

25

(b) aspects of its corporate governance;

(c) its capital adequacy, including various components used to calculate its capital adequacy;

(d) its leverage ratio;

(e) the aggregation of –

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(i) the bank’s assets, liabilities, profits or losses, and any other information whether or not on its balance sheet; and

5 (ii) the assets, liabilities, profits or losses, and any other information whether or not on the balance sheet or balance sheets, of all or any of the bank's related corporations, and the entities and trusts in which the bank holds, directly or indirectly, a major stake as defined in section 32(7).

10 (3) Any bank which fails to comply with a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.”.

Repeal and re-enactment of section 12

15 **10.** Section 12 of the Banking Act is deleted and the following section substituted therefor:

“New place of business and change of location of existing place of business

12. –(1) Except with the approval of the Authority, a bank must not —

- 20 (a) open a new place of business in Singapore for the conduct of any business referred to in subsection (2);
- (b) change the location of an existing place of business in Singapore for the conduct of any business referred to in subsection (2); or
- 25 (c) conduct any business referred to in subsection (2) from the new place of business referred to in paragraph (a) or the relocated place of business referred to in paragraph (b).

(2) Subsection (1) applies to the following businesses:

- 30 (a) the dispensing or acceptance of money on account;
- (b) the conduct of other banking business;
- (c) such business referred to in section 30(1)(b) to (e) as may be prescribed.

(3) Except with the approval of the Authority, a bank incorporated in Singapore must not open a new branch, agency or office in a place outside Singapore.

5 (4) An application for approval under subsection (1) or (3) must be made in such form and manner as the Authority may specify.

(5) On receiving an application, the Authority may –

(a) approve the application, with or without conditions; or

(b) reject the application.

10 (6) The Authority may at any time vary or revoke any existing condition, or impose conditions or additional conditions.

15 (7) A bank which contravenes subsection (1) or (3), or fails to comply with any condition imposed under subsection (5) or (6), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for every day or part thereof during which the offence continues after conviction.”.

New section 13A

20 **11.** The Banking Act is amended by inserting, immediately after section 13, the following section:

“Registration of representative office

25 **13A.**–(1) A person must not establish or operate a representative office in Singapore that is not registered with the Authority.

(2) Any person who desires to establish or operate a representative office must –

(a) apply in writing to the Authority for registration of the office;

30 (b) furnish such information or documents as the Authority may require; and

(c) pay the Authority a non-refundable fee of such amount as the Authority may, by notification in the *Gazette*, prescribe, in the manner specified by the Authority.

5 (3) Upon receiving an application under subsection (2), the Authority is to consider the application, and may register the representative office, with or without conditions, or refuse to register the representative office.

(4) The Authority may at any time add to, vary or revoke any condition of registration, or impose a condition of registration.

10 (5) A registered person must furnish such information or documents in relation to its representative office as the Authority may require from time to time, within such time as the Authority may specify.

15 (6) The Authority may cancel the registration of a representative office if the registered person contravenes –

(a) any condition of registration imposed by the Authority; or

(b) any provision of this Act.

20 (7) Any person who contravenes subsection (1) or (5), fails to comply with any condition of registration imposed by the Authority, or operates a representative office which has had its registration cancelled by the Authority under subsection (6), shall be guilty of an offence and shall be liable on conviction –

25 (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction; or

30 (b) in any other case, to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(8) Any person who knowingly or recklessly furnishes any document or information under subsection (2)(b) or (5) which is false or misleading in a material particular shall be guilty of an offence and shall be liable on conviction —

- 5 (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.

(9) Where a person that has—

- 10 (a) before the [date of commencement of section 11 of Amendment Act] notified the Authority in writing of his intention to establish a representative office; and
- (b) before the [date of commencement of section 11 of Amendment Act] or such later date as the Authority may in writing approve, established and commenced
- 15 operating the representative office,

then that representative office is taken to have been registered under this section.

20 (11) A registration under subsection (9) is subject to such conditions as the Authority may at any time by notice in writing impose on the person referred to in that subsection.

(12) Subsections (4) to (8) shall apply in relation to a representative office that is taken as registered under subsection (9).”

25 **Amendment of section 14**

12. Section 14 of the Banking Act is amended by inserting, immediately after subsection (3), the following subsections:

30 “(4) Any bank which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(5) Any person who in purported compliance with any requirement under subsection (2A), knowingly or recklessly furnishes any information or document that is false or

misleading in a material particular, shall be guilty of an offence and shall be liable on conviction –

- 5 (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.”.

Amendment of section 15E

13. Section 15E of the Banking Act is amended by inserting, immediately after subsection (5), and the following subsections:

10 “(6) A designated financial institution must immediately inform the Authority after the institution becomes aware that–

- (a) a person has contravened section 15A(1) or (3) or 15B(1) in relation to the institution;
- 15 (b) a person is, in accordance with the guidelines issued by the Authority, not a fit and proper person to be a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the institution; or
- 20 (c) having regard to the likely influence of a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the institution, the institution is not likely to be able to conduct its business prudently or to comply with the provisions of this Act.

 (7) A designated financial institution which fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

 (8) In subsection (6), “12% controller”, “20% controller” and “indirect controller” have the meaning given to those expressions in section 15B.”.

Amendment of section 18

30 **14.** Section 18 of the Banking Act is amended by inserting, immediately after subsection (4), the following subsection:

5 “(5) Where a person claims, before providing any information or document to a designated financial institution under subsection (1) or to the Authority under (2), that the information or document might tend to incriminate the person, the information or document is not admissible in evidence against the person in criminal proceedings, other than proceedings under this section.”.

Amendment of section 19

10 **15.** Section 19(3) of the Banking Act is amended by inserting, immediately after the words “every day”, the words “or part thereof”.

Amendment of section 25

15 **16.** Section 25(5) of the Banking Act is amended by inserting, immediately after the words “every day”, the words “or part thereof”.

Amendment of section 26

17. Section 26 of the Banking Act is amended —

(a) by deleting the word “or” at the end of subsection (6A)(d);

20 (b) by deleting the full stop at the end of paragraph (e) of subsection (6A) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(f) the disclosure of the information is required under any written law.”;

25 (c) by inserting, immediately after subsection (6A), the following subsection:

“(6B) Nothing in subsection (6) prevents the Authority from disclosing any information received from a bank under this section if the disclosure is pursuant to an order of court in Singapore.”; and

30 (d) by deleting subsection (8) and substituting the following subsections:

5 “(8) Any bank which contravenes subsection (1) or (2) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine of \$25,000 for every day or part thereof during which the offence continues after conviction.

10 (9) Any officer or agent of a bank who, on behalf of the bank, wilfully contravenes subsection (1) or (2) or a requirement of the Authority under subsection (5), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or both.

15 (10) Any person who furnishes any information which is false or misleading in a material particular to the Authority under this section shall be guilty of an offence and shall be liable on conviction –

20 (a) in the case of an individual who committed the offence wilfully, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both;

(b) in the case of an individual who did not commit the offence wilfully, to a fine not exceeding \$125,000; or

25 (c) in any other case, to a fine not exceeding \$250,000.

30 (11) Any bank which fails to take reasonable care that any information furnished to the Authority under this section is accurate, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.”.

Amendment of section 27

18. Section 27 of the Banking Act is amended –

(a) by inserting immediately after the words “any person” in paragraphs (f) and (g) of subsection (1), the words “or

trustee of a trust in relation to the operations of the trust.”;

(b) by deleting subsection (3) and substituting the following subsection:

5 “(3) If it appears to the Authority, whether from a statement submitted under subsection (2)(c) or otherwise, that any credit facility, exposure or transaction of the bank with or to any person referred to in subsection (1) is detrimental to the interests of the depositors of the bank,
10 the Authority may by notice in writing to the bank do one or more of the following:

(a) direct the bank to -

(i) secure repayment of the credit facility;

(ii) reduce or eliminate the exposure; or

15 (iii) terminate the transaction,

within such time and to such extent as may be specified in the notice;

(b) prohibit the bank from granting any new credit facility, creating any new exposure, or entering
20 into any new transaction to or with the person;

(c) impose such restrictions as the Authority considers appropriate on the grant of any new credit facility, the creation of new exposure, or the entering into of any new transaction to or
25 with the person.

(3A) A bank which fails to comply with a notice under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof
30 during which the offence continues after conviction.”;

(c) by deleting the full stop at the end of subsection (4) and substituting a semi colon, and inserting immediately thereafter the following definition:

5 “ “transaction” has the meaning given to it in the Fifth Schedule.”; and

(d) by deleting the section heading and substituting the following section heading:

10 **“Information on transactions, etc. and actions if transactions, etc. detrimental to depositors’ interests”.**

Amendment of section 29

19. Section 29 of the Banking Act is amended by deleting subsections (4) and (5).

Amendment of section 30

15 **20.** The section heading of section 30 is deleted and the following section heading substituted therefor:

“Businesses which banks in Singapore may carry out”.

Amendment of section 32

21. Section 32 of the Banking Act is amended —

20 (a) by deleting the word “company” in subsection (1) and substituting the words “entity or trust”;

(b) by deleting subsections (2), (3) and (3A) and substituting the following subsections:

25 “(2) The Authority must not grant its approval under subsection (1) if —

(a) in the case of an entity, the entity carries on, whether as its principal business or otherwise, any prohibited business; or

(b) in the case of a trust—

- (i) the trust property includes –
- (A) shares in a company that carries on, whether as its principal business or otherwise, any prohibited business;
 - (B) prescribed interest in any entity (not being a company) that carries on, whether as its principal business or otherwise, any prohibited business; or
 - (C) interest in a trust whose trust property includes any interest referred to in subparagraph (i)(A) or (ii)(B); or
- (ii) the trustee carries on, for and on behalf of the trust, any prohibited business;

15

(3) Despite subsection (2), the Authority may, in a particular case that comes within that subsection, grant its approval if it is satisfied that approval should be granted by reason of the exceptional circumstances of the case.

20

(3A) An approval of the Authority under this section may be subject to such conditions as the Authority may determine, including any condition relating to the operations or activities of the entity or trustee of the trust concerned, and the property of the trust concerned.”;

25

- (c) by deleting paragraph (a) of subsection (5) and substituting the following paragraph:

“(a) disapply this section to any entity or trust, or class of entities or trusts, subject to such conditions as may be prescribed;”;

30

- (d) by deleting paragraph (c) of subsection (5) and substituting the following paragraph:

“(c) provide that any interest or control referred to in the definition of “major stake” in subsection (7) that is

acquired or held, directly or indirectly, by an entity or the trustee of a trust in which the bank has directly or indirectly, a major stake is to be treated as acquired or held by the bank”; and

- 5 (e) by deleting the definition of “major stake” in subsection (7) and substituting the following definitions:

10 ““company” means a company incorporated under the Companies Act (Cap. 50) or any corresponding previous written law, or a company incorporated outside Singapore;

“entity” means any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore;

15 “limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A) and includes a limited liability partnership formed or established outside Singapore;

“major stake”, in relation to an entity, means –

- 20 (a) any beneficial interest in more than 10% of the total number of issued shares in the entity, if the entity is a company, or such corresponding interest as may be prescribed, if the entity is not a company;
- 25 (b) control of over more than 10% of the voting power in the entity, if the entity is a company, or such corresponding matter as may be prescribed, if the entity is not a company; or
- 30 (c) any interest in the entity, by reason of which the management of the entity is accustomed or under an obligation, whether formal or informal, to act in accordance with the bank’s directions, instructions or

wishes, or where the bank is in a position to determine the policy of the entity;

“major stake”, in relation to a trust, means –.

- 5
- (a) any beneficial interest exceeding 10% of the total assets of the trust;
 - (b) control of over more than 10% of the voting power in the trust ; or
 - (c) any interest in the trust, by reason of which the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act in accordance with the bank’s directions, instructions or wishes, or where the bank is in a position to determine the policy of the trust;
- 10

15 “management”, in relation to an entity, means–

- (a) if the entity is a company, its directors;
 - (b) if the entity is a limited liability partnership; its partners or managers;
 - (c) if the entity is any other partnership, its partners;
 - (d) if the entity is a co-operative society, the members of its committee of management; or
 - (e) if the entity is any other society, its officers,
- 20
- 25 and includes such other person of the entity as the Authority may prescribe;”;

(f) by deleting the section heading and substituting the following section heading:

“Major stake in entity or trust”.

30 **Deletion of section 36**

22. Section 36 of the Banking Act is deleted.

Amendment of section 38

23. Section 38 of the Banking Act is amended —

- (a) by deleting subsection (5);
- (b) by deleting the definition of “liquid assets” and substituting the following definition:

““liquid assets” means any asset specified in the notice referred to in subsection (1);” and

- (c) by deleting the section heading and substituting with the following section heading:

“Liquid assets requirement”.

Amendment of section 39

24. Section 39 of the Banking Act is amended—

- (a) by inserting, immediately after subsection (6), the following subsections:

“(6A) Notwithstanding subsection (1) and subject to subsection (6E), a bank may, in accordance with the requirements imposed under subsection (6C), utilise its cash balances held in accordance with subsection (1) if the bank —

- (a) is in a liquidity stress situation; and
- (b) is solvent immediately before, and will remain solvent after, the utilisation of its liquid assets.

(6B) For the purposes of subsection (6A), the Authority may, from time to time, by notice in writing to a bank impose requirements in relation to the utilisation by the bank of its cash balances held in accordance with subsection (1), including —

- (a) the procedures which the bank must comply with before or after utilising, or during the utilisation of, its liquid assets; and

(b) the manner in which the bank may utilise its liquid assets.

(6C) A bank shall, within such time as may be specified by the Authority, provide any information required by the Authority in relation to its liquidity stress situation and the utilisation of its cash balances held for the purposes of subsection (1).

(6D) Where the Authority is of the opinion that —

(a) a bank is not in a liquidity stress situation;

(b) a bank has failed to comply with any requirement imposed under subsection (6B);

(c) a bank is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments; or

(d) it is in the public interest to do so,

the Authority may by notice in writing to the bank —

(i) where the bank has already utilised its cash balances held for the purposes of subsection (1), direct the bank to comply with any requirement imposed under subsection (1) within such time as may be specified by the Authority in the notice; or

(ii) where the bank has not, or has not fully, utilised its cash balances held for the purposes of subsection (1), do one or more of the following:

(A) refuse to allow the bank to utilise any of its cash balances within the control of the Authority;

(B) direct the bank to stop utilising its cash balances;

(C) direct the bank to comply with any requirement imposed under subsection (1) within such time as may be specified by the Authority in the notice.”;

5

(b) by inserting, immediately after subsection (8), the following subsections:

“(9) Any bank which fails to comply with—

10

(a) any direction of the Authority under subsection (4), (5), (6C) or (6D)

(b) any requirement of the Authority under subsection (6B),

15

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine of \$25,000 for every day or part thereof during which the offence continues after conviction.”

“(10) In this section, “liquidity stress situation” has the meaning given to it in the Fifth Schedule.”.

20

Amendment of section 40

25. section 40 of the Banking Act is amended by –

(h) deleting subsection (1) and substituting the following subsection:

25

“(1) The Authority may, from time to time, by notice in writing to any bank in Singapore or any class of banks in Singapore, impose requirements in relation to the minimum amount or amounts of assets in Singapore that the bank or each bank in the class is to hold, for the purpose of meeting its liabilities.”; and

30

(h) deleting subsection (3) and substituting the following subsection:

5 “(3)Where the Authority issues a notice under subsection (1) to a class of banks, the Authority may impose different requirements on different banks, having regard to the financial soundness of each bank, the risk profile of each bank, and such other factors as the Authority may consider relevant.”.

Amendment of section 43

26. Section 43 of the Banking Act is amended –

10 (h) by deleting subsection (2) and substituting the following subsections:

15 “(2) The Authority shall, from time to time, inspect under conditions of secrecy, the books of each subsidiary incorporated in Singapore of a bank incorporated in Singapore, not being a subsidiary that is regulated or licensed by the Authority under any other Act.

(3) Without limiting the generality of subsection (1) or (2), the inspection may be conducted in respect of activities of the bank or subsidiary that are regulated or licensed by the Authority under any other Act.”; and

20 (h) by inserting, immediately after the word “banks” in its section heading, the words “and their local subsidiaries”.

Amendment of Part heading

27. The Part heading for Part VII of the Banking Act is deleted and the following Part heading substituted therefor:

25 “PART VII

POWERS OF CONTROL OVER BANKS, ETC.”.

Amendment of section 44A

28. Section 44A of the Banking Act is amended –

30 (h) by inserting, immediately after the word “bank” in subsections (1), (2) and (5), the words “or subsidiary”;

(h) by deleting paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs:

“(a) produce its books to the Authority and afford the Authority access thereto;

5 (b) provide such information or facilities as may be required by the Authority to conduct the inspection or investigation; and

10 (c) procure that any person who is in possession of such books referred to in paragraph (a) produce the books to the Authority and give such information and facilities;

(c) by inserting, immediately after subsection (3A), the following subsection:

15 “(3B) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (3A).” and

(d) by inserting, immediately after subsection (5), the following subsection:

20 “(5A) Where the offence under subsection (5) is proved to have been committed with the consent of, or to be attributable to any negligence on the part of an officer of the bank or subsidiary, that officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a
25 continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 45

30 **29.** Section 45 of the Banking Act is amended –

(a) by inserting, immediately after subsection (1), the following subsection:

“(1A) Without limiting the generality of subsection (1), and subject to subsection (2), the inspection may be conducted in respect of activities of the bank that are regulated or licensed by the Authority under any written law.”; and

(b) by inserting, immediately after subsection (6), the following subsection:

“(6A) Where the offence under subsection (6) is proved to have been committed with the consent of, or to be attributable to any negligence on the part of an officer of the bank, that officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of section 46

30. Section 46 of the Banking Act is amended –

(j) by inserting, immediately after the words “bank in Singapore” in subsections (1) and (2)(a) and (b), the words “or subsidiary incorporated in Singapore of a bank incorporated in Singapore”; and

(b) by inserting, immediately after the word “bank” wherever it appears in subsections (1), (2)(a) and (b) and (4), the words “or subsidiary”.

New sections 46A and 46B

31. The Banking Act is amended by inserting, immediately after section 46, the following sections:

“Application of section 45 to merchant banks

46A. –(1) Sections 45 and 46 apply, with such modifications as may be prescribed, in relation to an inspection by a parent supervisory authority of –

- (a) a merchant bank incorporated outside Singapore; or
- (b) a foreign-owned merchant bank incorporated in Singapore,

5 of the books of any branch or office of that merchant bank, as they apply in relation to an inspection by a parent supervisory authority of a bank incorporated outside Singapore or a foreign-owned bank incorporated in Singapore, of the books of any branch or office of the bank in Singapore.

(2) In this section –

10 “foreign-owned merchant bank incorporated in Singapore” means a merchant bank incorporated in Singapore, the parent bank of which is incorporated outside Singapore;

15 “merchant bank incorporated outside Singapore” means a merchant bank incorporated, formed or established outside Singapore;

20 “parent bank”, in relation to a foreign-owned merchant bank incorporated in Singapore or a merchant bank incorporated outside Singapore, means a financial institution incorporated outside Singapore of which the merchant bank is a subsidiary;

“parent supervisory authority”, means –

25 (a) in relation to a merchant bank incorporated outside Singapore, the supervisory authority which is responsible, under the laws of the country or territory where the merchant bank or its parent bank is incorporated, formed or established, for supervising the merchant bank or parent bank, as the case may be;

30 (b) in relation to a foreign-owned merchant bank incorporated in Singapore, the supervisory authority which has consolidated supervision authority over the merchant bank.”

Inspection outside Singapore of subsidiaries of banks incorporated in Singapore

5 **46B.**—(1) The Authority may, in a country or territory outside Singapore, from time to time, inspect under conditions of secrecy, the books of a subsidiary of a bank incorporated in Singapore.

10 (2) Without prejudice to the generality of subsection (1), the inspection may be conducted in respect of activities that correspond to activities that are regulated or licensed by the Authority under this Act or any other Act.

(3) The Authority may appoint an auditor, other than the auditor appointed by the bank or by the Authority under section 58, to exercise the power of inspection.

15 (4) If the inspection is carried out on the ground that the Authority has reason to believe that the subsidiary of a bank incorporated in Singapore is carrying on its business in a manner likely to be detrimental to the interest of the depositors and other creditors of the bank and if the Authority so directs, then the bank is liable to pay for the remuneration and expenses of the auditor appointed under subsection (3).

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(5) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (4).”

Amendment of section 47

25 **32.** Section 47 of the Banking Act is amended –

(a) by deleting the words “approved as a financial institution under section 28 of the Monetary Authority of Singapore (Cap. 186)” in subsection (10); and

30 (b) by deleting the section heading and substituting the following section heading:

“Privacy of customer information”.

Amendment of section 48

33. section 48(2) of the Banking Act is amended –

() by deleting “\$100,000” and substituting “”250,000”; and

5 () by deleting “\$10,000” and substituting “”25,000”.

New section 48A

34. The Banking Act is amended by inserting, immediately after section 48, the following section:

“Information of material adverse development

10 **48A.**— (1) A bank in Singapore which is incorporated outside Singapore must immediately inform the Authority of any adverse development that has occurred or is likely to occur which the bank has reasonable grounds to believe is likely to materially affect the branches and offices of the bank located
15 within Singapore after it becomes aware of such development.

(2) A bank incorporated in Singapore must immediately inform the Authority of any adverse development that has occurred or is likely to occur which the bank has reasonable grounds to believe is likely to materially affect –

20 (a) the bank;

(b) any entity or trust in the bank group of the bank; or

(c) any entity or trust in the FHC group of the financial holding company of the bank,

after it becomes aware of such development.

25 (3) Any bank which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(3) In this section -

30 “accounting standards” means the accounting standards made or formulated by the Accounting Standards

Council under Part III of the Accounting Standards Act (Cap. 2B);

“associate”, in relation to an entity (referred to in this definition as the first entity), means –

- 5 (a) any entity in which the first entity controls the composition of the board of directors or such corresponding officers as may be prescribed;
- 10 (b) any trust whose trustee is accustomed or under an obligation, whether formal or informal, to act in accordance with the first entity’s directions, instructions or wishes, or where the first entity is in a position to determine the policy of the trust;
- 15 (c) any entity or trust in which the first entity controls more than half of the voting power or such corresponding measure to voting power as may be prescribed;
- (d) any entity in which the first entity holds more than half of the total number of issued shares or such corresponding interest as may be prescribed;
- 20 (e) any trust 20% of the assets of which are beneficially owned by the first entity;
- (f) a subsidiary of any other entity which is an associate by reason of paragraph (a), (b) or (c);
- 25 (g) any entity (referred to in this paragraph as the second entity) in which –
- (i) the first entity;
- (ii) any entity which is an associate by reason of paragraph (a), (c), (d) or (f); or
- 30 (iii) the trustee of any trust which is an associate by reason of paragraph (b), (c) or (f),

has, or the entities or trustees in subparagraphs (i) to (iii) together have, an interest in shares entitling

the beneficial owners thereof the right to cast (whether by proxy or in person) not less than 20% but not more than 50% of the total votes able to be cast at a general meeting of the second entity, or such corresponding interest as may be prescribed; or

(h) any trust in which –

(i) the first entity;

(ii) any entity which is an associate by reason of paragraph (a), (c), (d) or (f); or

(iii) the trustee of any trust which is an associate by reason of paragraph (b), (c) or (f),

has, or the entities or trustees in subparagraphs (i) to (iii) together control not less than 20% but not more than 50% of the voting power in the first-mentioned trust or such corresponding interest as may be prescribed; or

(i) any entity or trust (not being one which is an associate by reason of paragraph (a), (b), (c), (d), (e), (f), (g) or (h)) the policies of which –

(i) the first entity;

(ii) any entity which is an associate by reason of paragraph (a), (c), (d), (f) or (g); or

(iii) the trustee of any trust which is an associate by reason of paragraph (b), (c), (f) or (h),

or the entities or trustees in subparagraphs (i) to (iii) together are able to control or influence materially;

“bank group”, in relation to a bank, means a group of entities and trusts comprising the bank and—

- (a) any of its associates; and
- (b) any other entity or trust treated as part of the bank's group of companies according to the accounting standards applicable to the bank;

5 “entity” means any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore;

10 “FHC group”, in relation to a financial holding company, means a group of entities and trusts comprising the financial holding company and —

- (a) any of its associates; and
- (b) any other entity or trust treated as part of the financial holding company's group of companies according to the accounting standards applicable to the financial holding company;

15 “material adverse development” means such matters as the Authority may prescribe;

“subsidiary” –

20 (a) in relation to a corporation, has the same meaning as section 5(1) of the Companies Act (Cap. 50); and

(b) in relation to an entity (not being a corporation), means an entity that is deemed to be a subsidiary entity of the first-mentioned entity under subsection (4).

25 (4) In this section, an entity (not being a corporation) shall be deemed to be a subsidiary entity of another entity if –

(a) the second-mentioned entity –

30 (i) controls the composition of the board of persons (referred to in this paragraph as the Board) of the first-mentioned entity which is equivalent to the board of directors of a corporation;

(ii) controls more than half of the voting power of the first-mentioned entity or such corresponding measure to voting power as may be prescribed ; or

(iii) holds more than half of the issued equity interests of the first-mentioned entity or such corresponding interests as may be prescribed; or

(b) the first-mentioned entity is a subsidiary entity of another entity which is a subsidiary or subsidiary entity of the second-mentioned entity.

(5) For the purposes of subsection (4)(a)(i), the composition of the Board of an entity shall be deemed to be controlled by another entity if the second-mentioned entity has the power to, without the consent or concurrence of any other person, appoint or remove all or a majority of the Board of the first-mentioned entity, and for the purposes of this provision, the second-mentioned entity shall be deemed to have that power if –

(a) a person cannot be appointed as a member of the Board of the first-mentioned entity without the exercise in his favour by the second-mentioned entity of that power; or

(b) a person's appointment as a member of the Board of the first-mentioned entity follows necessarily from his holding an appointment in relation to the second-mentioned entity which is equivalent to that of a director or officer of a corporation.

(6) In determining whether an entity (not being a corporation) is a subsidiary entity of another entity –

(a) any equity interests held in or power exercisable over the first-mentioned entity by the second-mentioned entity in a fiduciary capacity shall not be treated as held or exercisable by the second-mentioned entity;

(b) subject to sub-paragraphs (c) and (d), any equity interest held in or power exercisable over the first-mentioned entity–

(i) by any person as a nominee for the second-mentioned entity (except where the second-mentioned entity is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary or subsidiary entity of the second-mentioned entity, not being a subsidiary or subsidiary entity which is concerned only in a fiduciary capacity,

5 shall be treated as held or exercisable over the first-mentioned entity by that second-mentioned entity;

(c) any equity interests held in or power exercisable over the first-mentioned entity by any person by virtue of the provisions of any debentures of the first-mentioned entity or of a trust deed for securing any issue of such debentures shall be disregarded; and

10

(d) any equity interest held in or power exercisable over the first-mentioned entity by, or by a nominee for, the second-mentioned entity or its subsidiary or subsidiary entity (not being equity interests held in or power exercisable over the first-mentioned entity as mentioned in sub-paragraph (c)) shall not be treated as held or exercisable by the second-mentioned entity if the ordinary business of the second-mentioned entity or its subsidiary or subsidiary entity, as the case may be, includes the lending of money, and the equity interests are held or power is exercisable as security only for the purposes of a transaction entered into the ordinary course of that business.

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25 **Amendment of section 49**

35. Section 49 of the Banking Act is amended by inserting, immediately after subsection (5), the following subsection:

“(6) A bank which fails to comply with any requirement imposed under subsection 2(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine of \$25,000 for every day or part thereof during which the offence continues after conviction.”.

30

New section 53A

36. The Banking Act is amended by inserting, immediately after section 53, the following section:

Appointment of chief executive and other persons

5 **53A.** –(1) A bank incorporated in Singapore must obtain the prior approval of the Authority for the appointment of any of the following persons:

- (a) all directors;
- (b) the chairman of the board of directors;
- 10 (c) the chief executive officer and the deputy chief executive officer; and
- (d) a person holding such appointment in the bank as may be prescribed.

15 (2) A bank which is incorporated outside Singapore must obtain the prior approval of the Authority for the appointment of the following persons:

- (a) the chief executive officer and the deputy chief executive officer; and
- 20 (b) a person holding such appointment in the bank as may be prescribed.

25 (3) Without prejudice to any other matter that the Authority may consider relevant, the Authority, in determining whether to grant its approval under subsection (1) or (2), must have regard to whether the person is a fit and proper person to hold the office or appointment.

- (4) The Authority may –
 - (a) grant its approval under subsection (1) or (2), with or without conditions; and
 - 30 (b) at any time add to, vary or revoke any condition referred to in paragraph (a) or impose any conditions thereto.

(5) Without limiting the generality of section 78, the Authority may prescribe –

- (a) the duties of a person appointed under subsection (1) or (2); and
- 5 (b) the maximum term for which a person appointed under subsection (1) or (2) shall hold such office or appointment.

(6) A bank incorporated in Singapore must immediately inform the Authority after it becomes aware that a person who holds an office or appointment referred to in subsection (1) is, in accordance with the guidelines issued by the Authority, no longer a fit and proper person to hold that office or appointment.

(7) A bank incorporated outside Singapore must immediately inform the Authority after it becomes aware that a person who holds an office or appointment referred to in subsection (2) is, in accordance with the guidelines issued by the Authority, no longer a fit and proper person to hold that office or appointment.

(8) Any bank which contravenes subsection (1) or (2), or fails to comply with any condition imposed by the Authority under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(9) Any bank which contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.”

30 **Amendment of section 54**

37. Section 54 of the Banking Act is amended by deleting subsections (2) and (3) and substituting the following subsections:

“(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that –

(a) a director of a bank in Singapore incorporated in Singapore; or

(b) an executive officer of a bank in Singapore,

is not a fit and proper person to be a director or executive officer (as the case may be), the Authority may, by notice in writing to the bank, direct the bank to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the bank must comply with the notice.

(3) In assessing whether to direct a bank to remove a director or executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether –

(a) he has wilfully contravened or wilfully caused the bank to contravene any provision of this Act;

(b) he has, without reasonable excuse, failed to secure the compliance of the bank with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;

(c) he has failed to discharge any of the duties of his office or employment; or

(d) his removal is necessary in the public interest or for the protection of the depositors of the bank.”.

Amendment of section 55

38. Section 55(2) of the Banking Act is amended—

(a) by deleting paragraph (*h*); and

(b) by deleting paragraph (*n*) and substituting the following paragraph:

(*n*) the opening of new places of business and representative offices and the change of location of any place of business or representative office of a bank;”.

Amendment of section 55N

39. Section 55N of the Banking Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) Any person who –

- 5 (a) without reasonable excuse, fails to comply with any requirement under subsection (1); or
- (b) in purported compliance with any requirement under subsection (1), knowingly or recklessly furnishes any information or document that is false or misleading in
- 10 a material particular,

shall be guilty of an offence and shall be liable on conviction –

- (i) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing
- 15 offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

- (ii) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further
- 20 fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

 (3) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish

25 under subsection (1), that the information or document might tend to incriminate him, the information or document is not admissible in evidence against him in criminal proceedings other than proceedings under this section.”.

Amendment of section 56

30 **40.** Section 56 of the Banking Act is amended by deleting the full stop at the end of the definition of “licensee” and substituting a semi colon, and by inserting immediately thereafter the following definition:

5 “place of business”, in relation to a licensee, includes a head or main office, a branch, an agency, a mobile branch of the licensee, any office established and maintained for a limited period only and any other place used by the licensee for the conduct of any business of the licensee.”.

New sections 57EA and 57EB

41. The Banking Act is amended by inserting, immediately after section 57E, the following sections:

10 **“Place of business**

57EA.—(1) Except with the approval of the Authority, a licensee must not —

- (a) open a new place of business in Singapore for the conduct of any business referred to in subsection (2);
- 15 (b) change the location of an existing place of business in Singapore for the conduct of any business referred to in subsection (2); or
- (c) conduct any business referred to in subsection (2) from the new place of business referred to in paragraph (a) or the relocated place of business referred to in paragraph (b).

(2) Subsection (1) applies to the following businesses:

- (a) the business of issuing credit cards or charge cards;
 - (b) such other business as may be prescribed.
- 25 (3) An application for approval under subsection (1) must be made in such form and manner as the Authority may specify.
- (4) On receiving an application, the Authority may –
- (a) approve the application, with or without conditions; or
 - (b) reject the application.

(5) The Authority may at any time vary or revoke any existing condition, or impose conditions or additional conditions.

5 (6) A licensee which contravenes subsection (1) or fails to comply with any condition imposed under subsection (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

10 **Information to be furnished on business of issuing credit cards or charge cards**

57EB. – (1) The Authority may, by notice in writing, require –

- (a) any licensee;
- 15 (b) any bank in Singapore; or
- (c) any person prescribed under section 57(9),

to furnish to the Authority such information or statement relating to its business of issuing credit cards or charge cards, at such time and in such manner as the Authority may specify if, in the opinion of the Authority, it requires that information or statement for the proper discharge of its functions under this Act.

(2) The Authority may require any information or statement submitted to it under subsection (1) to be accompanied by –

- 25 (a) in the case of a bank --
 - (i) a certificate of the auditor appointed by the bank under section 58(1); or
 - (ii) a certificate of any auditor appointed by the Authority under section 58(3); or
- 30 (b) in the case of any other person, a certificate of an auditor appointed by that person,

as to whether, in the opinion of the auditor, the statement or information is correct.

(3) Any information received from any person under this section shall be treated as secret by the Authority.

5 (4) The Authority may disclose any information or statement received under this section if –

- (a) it is in the public domain;
- (b) it is disclosed in such a manner that the identity of the person who furnished it cannot be ascertained;
- 10 (c) the person who furnished it, or the person from whom it is obtained, consents to the disclosure;
- (d) the person to whom the information or statement relates consents to the disclosure;
- (e) its disclosure is necessary for the performance of any
15 function, or the exercise of any power, of the Authority under this Act or any other written law; or
- (f) its disclosure is pursuant to any requirement under any written law or order of court in Singapore.

20 (5) Nothing in this section prevents the Authority from preparing and publishing consolidated statements aggregating information furnished under subsection (1).

25 (6) Any person who fails to comply with a requirement under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

30 (7) Any officer or agent of a person referred to in subsection (1)(a), (b) or (c) who wilfully withholds any information required by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 1 year or both.

(8) Any person who furnishes any information which is false or misleading in a material particular to the Authority under this section shall be guilty of an offence and shall be liable on conviction –

- 5 (a) in the case of an individual who committed the offence wilfully, to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 1 year or to both;
- 10 (b) in the case of an individual who did not commit the offence wilfully, to a fine not exceeding \$12,500; or
- (c) in any other case, to a fine not exceeding \$25,000.

 (9) Any person who fails to take reasonable care that any information furnished to the Authority under this section is accurate, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.”.

15

Amendment of section 58

42. Section 58 of the Banking Act is amended –

- () by deleting subsection (1) and substituting the following subsection:
- 20 “(1) Despite the provisions of the Companies Act (Cap. 50), every bank must–
- (a) on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and
- 25 (b) where, for any reason, the auditor ceases to act for the bank, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.”;
- (b) by deleting the words “banks unless he” in subsection (2) and substituting the words “a bank unless the auditor”;
- 30 () by inserting, immediately before the word “impose” in subsection (5), the words “, may, by notice in writing,”;

() by inserting, immediately after subsection (5), the following subsection:

“(5A) An auditor to whom a notice is given under subsection (5) must comply with each direction specified in the notice.”;

5 () by inserting, immediately after subsection (6), the following subsection:

“(6A) Despite any other provision of this Act or the provisions of the Companies Act, the Authority may, if it is not satisfied with the performance of any duty by an auditor of a bank, at any time –

(a) direct the bank to remove the auditor; or

(b) direct the bank to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the bank must comply with the directions.”;

15 () by deleting paragraphs (b), (c) and (d) of subsection (8) and substituting the following paragraphs:

“(b) losses have been incurred which reduce the capital funds of the bank by at least 50%;

20 (c) serious irregularities have occurred, including irregularities that jeopardise the security of the creditors of the bank; or

(d) the auditor is unable to confirm that the claims of creditors of the bank are still covered by the assets.”;

25 () by inserting, immediately after subsection (8), the following subsections:

“(9) Where an auditor discloses in good faith to the Authority

(a) any of the matters referred to in subsection (8); or

(b) any information in support of that matter,

30 the disclosure is not to be treated as a breach of any restriction on the disclosure imposed by any law, contract or rules of professional conduct, and the auditor is not liable for any loss

arising from the disclosure or any act or omission as a result of the disclosure.

5 (10) A bank which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

10 (11) A bank which fails to comply with a direction under subsection (6A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

15 (12) Any auditor who does not carry out any duty referred to in subsection (4), or who does not comply subsection (5A) or (8), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.”.

20

Amendment of section 60

43. Section 60 of the Banking Act is amended –

(a) by deleting subsections (1) and (2) and substituting the following subsection:

25 “(1) The Authority may, at any time by notice published in the *Gazette*, declare any day or days as a bank holiday or holidays, and prohibit banks in Singapore from conducting, during the bank holiday or holidays --

30 (a) such activities as may be specified in the notice; or

(b) all activities other than such activities as may be specified in the notice.”;

(b) by inserting, immediately after subsection (4), the following subsections:

5 “(5) Any bank which contravenes any prohibition under a notice referred to in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

10 (6) In this section, “day” includes a part of a day”.

Amendment of section 62

44. Section 62(1) of the Banking Act is amended by inserting, immediately after the words “section 77” in paragraph (d), the words “other than liabilities referred to in paragraph (b)”.

15 New section 65

45. The Banking Act is amended by inserting, immediately after section 64, the following section:

“Power of Authority to secure compliance with Act

20 **65.**—(1) A bank in Singapore, if called upon at any time by the Authority in writing to do so, must satisfy the Authority by the production of such evidence or information as the Authority may require, that the bank is not in contravention of any of the provisions of, or any notice or direction issued under, section 10, 10A, 23, 27, 29, 31, 32, 33, 35, 38, 39, 40, 42 or
25 this section.

(2) Without prejudice to sections 10, 10A, 23, 27, 29, 31, 32, 33, 35, 38, 39, 40 and 42, the Authority may, for the purpose of securing compliance with any of those sections on a consolidated basis, from time to time by notice in writing,
30 require any bank to aggregate, in such manner as may be specified in the notice –

- (a) its assets, liabilities, profits or losses, and any other information whether or not on its balance-sheet; and
- (b) the assets, liabilities, profits or losses, and any other information whether or not on the balance-sheet of –
- (i) the bank’s related corporations; and
- (ii) the entities and trusts in which the bank holds, directly or indirectly, a major stake as defined in section 32(7).

(3) The bank must comply with the notice under subsection (2) within such time as may be specified in the notice.

(4) Any bank that fails to comply with a requirement of the Authority under subsection (1) shall be guilty of an offence and and shall be liable on conviction to a fine not exceeding \$250,000 and in the case of a continuing offence, to a further fine of not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(5) Any bank that contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to the same punishment as that provided for a contravention of the section of the Act, or of a notice or direction under the section of the Act, for the compliance with which the notice was given.”.

Amendment of section 66

46. Subsection (2) of section 66 of the Banking Act is deleted and the following subsection substituted therefor:

“(2) Any person who –

- (a) provides any information or document to the Minister or the Authority under or for the purposes of any provision of this Act which is false or misleading in a material particular; and

(b) does not use reasonable care to ensure that the information or document is not false or misleading in any material particular,

5 shall, if the provision of such information or document which is false or misleading in a material particular is not already an offence under any other provision of this Act, be guilty of an offence and shall be liable on conviction—

(i) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(ii) in any other case, to a fine not exceeding \$250,000.”.

Reenactment of section 70

47. Section 70 of the Banking Act is deleted and the following section substituted therefor:

“Publication of information on banks

70.—(1) The Authority is to publish and maintain on its website at all times, a list of banks licensed under this Act.

(2) If any licence is issued, revoked or surrendered, or the name of any bank is changed, the Authority is to publish notice of this in the *Gazette*.”.

Amendment of section 74

47A. Section 74(b)(i) of the Banking Act is amended by deleting the words “section 44A(3)” and substituting the words “sections 44A(3) and 46B(3)”.

Amendment of section 77

48. Section 77(4) of the Banking Act is amended –

() by deleting “, 38” in paragraph (a)(ii); and

(b) by deleting the words “sections 38 and” in paragraph (b) and substituting the word “section”.

Amendment of section 78

49. Section 78 of the Banking Act is amended –

- 5 (a) by deleting the word “companies” in paragraph (a) of subsection (3) and substituting the words “entities or trusts”;
- (b) by deleting the word “and” at the end of paragraph (a) of subsection (3);
- 10 () by deleting the full stop at the end of paragraph (b) of subsection (3) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
- “(c) the risk management of banks.”; and
- () by deleting subsection (5) and substituting the following subsections:
- 15 “(5) Except as otherwise expressly provided in this Act, regulations made under this section may provide that any contravention of any of those regulations is an offence punishable –
- 20 (a) in the case of an individual, with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 2 years or with both and, in the case of a continuing offence, with a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction; or
- 25 (b) in any other case, with a fine not exceeding \$100,000 and, in the case of a continuing offence, with a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.
- 30 (6) Regulations made under subsection (3)(c) may provide that a contravention of any of those regulations is an offence punishable –

- 5 (a) in the case of an individual, with a fine not exceeding \$125,000 or with imprisonment for a term not exceeding 3 years or with both, and in the case of a continuing offence, with a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or
- 10 (b) in any other case, with a fine not exceeding \$250,000 and, in the case of a continuing offence, with a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.”.

Amendment of Fifth Schedule

50. The Fifth Schedule to the Banking Act is amended –

- 15 (a) by deleting the word “company” wherever it appears in the definitions of “affiliate” and “financial group” in paragraph 1 and substituting in each case the word “entity or trust”;
- (b) by inserting, immediately after the definition of “associate” in paragraph 1, the following definition:
- 20 ““child” includes a stepchild and a child who has been de facto adopted by the person in question, whether or not such adoption has been registered in accordance with the provisions of any written law;”;
- (c) by deleting the words “group of companies” in the definition of “financial group” in paragraph 1 and substituting the words “group of entities”;
- 25 (d) by deleting the full stop at the end of the definition of “substantial shareholder group” and substituting a semi colon, and by inserting immediately thereafter the following definition:
- 30 ““transaction” means any exposure, or any type of transaction including (but not limited to) any contract, agreement and arrangement and any transaction forming part of a contract, agreement or arrangement and includes a write-off of a debt, loan or any other similar arrangement”;
- 35

(e) by deleting the words “section 38” in paragraph 6 and substituting the words “sections 38 and 39”;

() by deleting paragraph 7 and substituting the following paragraphs:

5 “7. In this Schedule, unless the context otherwise requires –

(a) a reference to an entity is a reference to any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore; and

10 (b) a reference to an entity in which another entity acquires or holds, directly or indirectly, a major stake is a reference to an entity in which the other entity has a major stake as defined in section 32(7).” and

(g) by deleting the schedule heading and substituting the following schedule heading:

15 “DEFINITIONS IN SECTIONS 27, 28, 29, 38 AND 39”.

Savings and transitional provisions

51.(1) A person whose appointment as a director, the chairman of the board of directors, the chief executive officer, the deputy chief executive officer, of a bank incorporated in Singapore—

20 (a) has been approved by the Authority under regulation 18 of the Banking (Corporate Governance) Regulations 2005 in force immediately before [date of commencement of new section 53A]; and

(b) has not expired or been revoked before that date,

25 is taken to have been so appointed with the approval of the Authority under section 53A of the Banking Act.

(2) A person whose appointment as a chief executive or deputy chief executive of a bank incorporated outside Singapore—

30 (a) has been approved by the Authority under paragraph 4 of Notice 622A in force immediately before [date of commencement of new section 53A]; and

(b) has not expired or been revoked before that date,

is taken to have been so appointed with the approval of the Authority under section 53A of the Banking Act.

5 (3) Any condition to which the approval of the Authority under subsection (1)(a) or (2)(a) is subject and that is in force immediately before [date of commencement of new section 53A], continues to have effect as a condition of the approval of the Authority under section 53A of the Banking Act referred to in subsection (1) or (2), as the case may be.

(1) In subsection (2) –

10 “Notice 622A” means the notice commonly known as MAS Notice 622A that is issued by the Authority pursuant to section 55 of the Banking Act, and includes any notice that replaces it.

15 (2) For a period of 2 years after the date of commencement of this section, the Minister may by regulations prescribe such provisions of a savings or transitional nature consequent on the enactment of any provision of this Act as he may consider necessary or expedient.



Monetary Authority of Singapore