

CONSULTATION PAPER

P016 - 2013

November 2013

Review of the Banking Act

MAS

Monetary Authority of Singapore

PREFACE

i MAS proposes several changes to the Banking Act (“BA”) to, *inter alia*, strengthen its supervisory oversight over banks and codify MAS’ expectations as to the risk management practices that banks should implement. This consultation paper sets out some of the key changes proposed.

ii MAS invites comments on the proposed changes to the BA. Electronic submission is encouraged. Please submit your written comments by 15 January 2014 to:

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

Email: policy@mas.gov.sg

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

1 INTRODUCTION

1.1 The BA was last revised about six years ago. MAS is reviewing the BA to ensure that it remains current and reflects MAS' requirements and expectations. Specifically, MAS intends to codify its expectations as to the information that banks should provide to MAS and the risk management practices that banks should implement. MAS also proposes several changes to the BA to rationalise and enhance its supervisory powers over banks and their directors, executive officers and external auditors. These proposed changes are discussed in this consultation paper, and MAS invites comments on them.

1.2 Aside from the proposed changes set out in this paper, MAS has also variously consulted on other proposed changes to the BA. These include the proposed repeal of subsections 29(4) and (5) of the BA to lift bank directors' joint and several liability for losses arising from the bank's exposures to its director groups, which was discussed in the consultation paper on related party transaction requirements for banks issued on 26 December 2012. MAS has also recently consulted on the proposed introduction of a prohibition order framework into the BA, in a consultation paper issued on 4 October 2013.

1.3 MAS is working to collectively effect all the proposed changes to the BA before the end of 2014.

2 DUTY TO INFORM MAS OF MATERIAL DEVELOPMENTS

2.1 As a bank supervisor and regulator, MAS should be kept promptly informed of all material developments that may affect a bank, so as to be able to take such supervisory action as may be necessary in a timely manner. In particular, MAS should be made aware of all material developments relating to the bank, its related entities, directors, executive officers, substantial shareholders and controllers as soon as possible.

Banks and their related entities

2.2 To ensure that MAS makes appropriate supervisory decisions based on up-to-date information, MAS proposes that banks be required to notify MAS as soon as they become aware of any material adverse developments. Specifically, MAS proposes that banks be required to notify it of all material adverse developments affecting:

- (a) the bank (including its head office and branches); or
- (b) any entity in its group, i.e. the bank's holding companies, subsidiaries of the holding companies, and the bank's subsidiaries and affiliates,

whether the entity is located in Singapore or elsewhere.

2.3 Material adverse developments would include, at a minimum, the breach (or possible breach) of any laws or regulations, business rules or codes of conduct, whether in Singapore or elsewhere. For the avoidance of doubt, MAS should be notified as soon as there are reasonable grounds to suspect that a breach has occurred, for example, where the bank is being investigated for an offence even though it has yet to be convicted. However, a bank will only be required to notify MAS of a material adverse development affecting another entity in its group where it is aware of the development. A bank will therefore not breach this requirement in failing to inform MAS of a material adverse development affecting a group entity that it is unaware of.

Question 1: MAS seeks views on the proposed requirement for banks to notify MAS as soon as they become aware of any material adverse development affecting the bank or any entity in its group.

Key appointment holders

2.4 Locally incorporated banks are currently required to obtain MAS' prior approval for the appointment of their directors, chief executive officers, deputy chief executive officers, chief financial officers and chief risk officers. MAS' approval is similarly required for the appointment of the chief executive officers and deputy chief executive officers of banks incorporated outside Singapore. In deciding whether to approve their appointments, a key factor that MAS takes into consideration is whether they are fit and proper to hold office. As stated in MAS' [Guidelines on Fit and Proper Criteria \(FSG-G01\)](#), the criteria that MAS takes into account in considering whether a person is fit and proper include the following:

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.

2.5 However, such key appointment holders are expected to be fit and proper not only at the point of their appointment, but throughout their tenure. MAS therefore proposes requiring banks to notify MAS as soon as they become aware of any material information which may negatively affect the fitness and propriety of any officer whose appointment was approved by MAS. This will allow MAS to reassess the officer's continued suitability for office and/or whether any supervisory action is required.

Question 2: MAS seeks views on the proposed requirement for banks to notify MAS as soon as they become aware of any material information which may negatively affect the fitness and propriety of any officer whose appointment was approved by MAS.

Substantial shareholders and controllers

2.6 Sections 15A and 15B of the BA require the Minister's approval to be obtained before any person becomes a substantial shareholder (5%), 12% controller, 20% controller or indirect controller (collectively, "controllers") of a bank incorporated in Singapore. This ensures that only fit and proper persons are allowed to become substantial shareholders and controllers of a bank incorporated in Singapore.

2.7 The onus lies on the person who wishes to become a substantial shareholder or controller to obtain the Minister's prior approval. The bank in question is not required to inform MAS even if it is aware of a person who has become a substantial shareholder or controller without first obtaining the Minister's approval. MAS therefore proposes to require banks incorporated in Singapore to notify MAS as soon as they become aware of persons who have become their substantial shareholders or controllers without obtaining the Minister's prior approval. As banks have direct information of their substantial shareholders and controllers, this requirement will act as a safeguard in case the Minister's prior approval is not obtained, and help to ensure that the suitability of all substantial shareholders and controllers are properly verified.

2.8 Further, to assist MAS in monitoring the suitability of substantial shareholders and controllers of locally incorporated banks on an ongoing basis, MAS proposes that banks incorporated in Singapore be required to notify MAS as soon as they become aware of any material information that may negatively affect the suitability of their substantial shareholders and controllers.

Question 3: MAS seeks views on the proposed requirements for banks incorporated in Singapore to notify MAS as soon as they become aware of:

- (a) any person who has become their substantial shareholder or controller without first obtaining the Minister's approval; and
- (b) any material information that may negatively affect the suitability of a substantial shareholder or controller.

3 MAS' CONTROL OVER KEY OFFICERS AND AUDITORS

Directors and executive officers

3.1 Under section 54(2) of the BA, MAS may direct the removal of a director of a locally incorporated bank or an executive officer of any bank in Singapore, where MAS is satisfied that the director or executive officer has:

- (a) wilfully contravened or wilfully caused the bank to contravene any provision of the BA;
 - (b) without reasonable excuse, failed to secure the bank's compliance with the BA, the MAS Act or any of the written laws set out in the Schedule to the MAS Act; or
 - (c) failed to discharge any of the duties of his office,
- (collectively, "the grounds for removal"), where MAS thinks that such removal is necessary in the public interest or for the protection of the depositors of the bank (collectively, "the premises for removal").

3.2 As stated in paragraph 2.4 above, the fitness and propriety of bank directors and executive officers is a key factor that MAS takes into consideration in deciding whether to approve their appointment. Such key appointment holders are also expected to remain fit and proper throughout their tenure, and their ceasing to be fit and proper may result in their removal from office. To align the grounds for removal of bank directors and executive officers with the key criterion for their approval, MAS proposes replacing the current grounds for removal in section 54(2) with a single criterion of the director or executive officer ceasing to be fit and proper. This criterion encompasses the three current grounds for removal, and more accurately reflects the circumstances in which MAS will remove a bank director or executive officer.

3.3 MAS further proposes to include "interest of the Singapore financial system" as an additional premise for the removal of a bank director or executive officer, to specifically allow MAS to take into consideration the reputation of and stakeholder confidence in the financial system, in determining whether to exercise its power of removal.

3.4 MAS will give prior notice of any intention to remove a bank director/executive officer to the bank and the director/executive officer, in accordance with section 54(4) of the BA, so as to afford them an opportunity to show cause against the removal. Any bank or director/executive officer aggrieved by a direction for removal may, within 30 days after receiving the direction, appeal in writing to the Minister.

Question 4: MAS seeks views on the proposal to replace the existing grounds for removal of directors and executive officers with “ceasing to be fit and proper” and to include “interest of the Singapore financial system” as an additional premise for such removals.

Auditors

3.5 Bank auditors have to be approved by MAS, and are required to discharge the statutory duties prescribed in section 58 of the BA. These duties include carrying out an audit of the bank's accounts, and immediately reporting the following matters to MAS:

- (a) a serious breach or non-observance of BA provisions;
- (b) the commission of a criminal offence involving fraud or dishonesty;
- (c) losses have been incurred which reduce the capital funds of the bank by 50%;
- (d) serious irregularities, including irregularities that jeopardise the security of creditors; and
- (e) where he is unable to confirm that the claims of creditors are still covered by the assets.

3.6 So as to ensure that auditors are not held liable for breach of their duties of confidentiality or defamation, MAS proposes to introduce a safe harbour provision into the BA to protect auditors which disclose information to MAS in good faith, in the course of their duties, from liability.

3.7 In addition, given the critical role that bank auditors play in assisting MAS' supervisory functions, MAS proposes to prescribe the failure of auditors to discharge their statutory duties as an offence. MAS further proposes to be empowered to direct the removal of an auditor which has not satisfactorily discharged its statutory functions.

Question 5: MAS seeks views on the proposals to:

- (a) introduce a safe harbour provision into the BA, to protect bank auditors that provide information to MAS in good faith, in the course of their duties, from liability;
- (b) prescribe the failure of auditors to discharge their statutory duties as an offence; and
- (c) introduce powers for MAS to remove bank auditors which have not satisfactorily discharged their statutory functions.

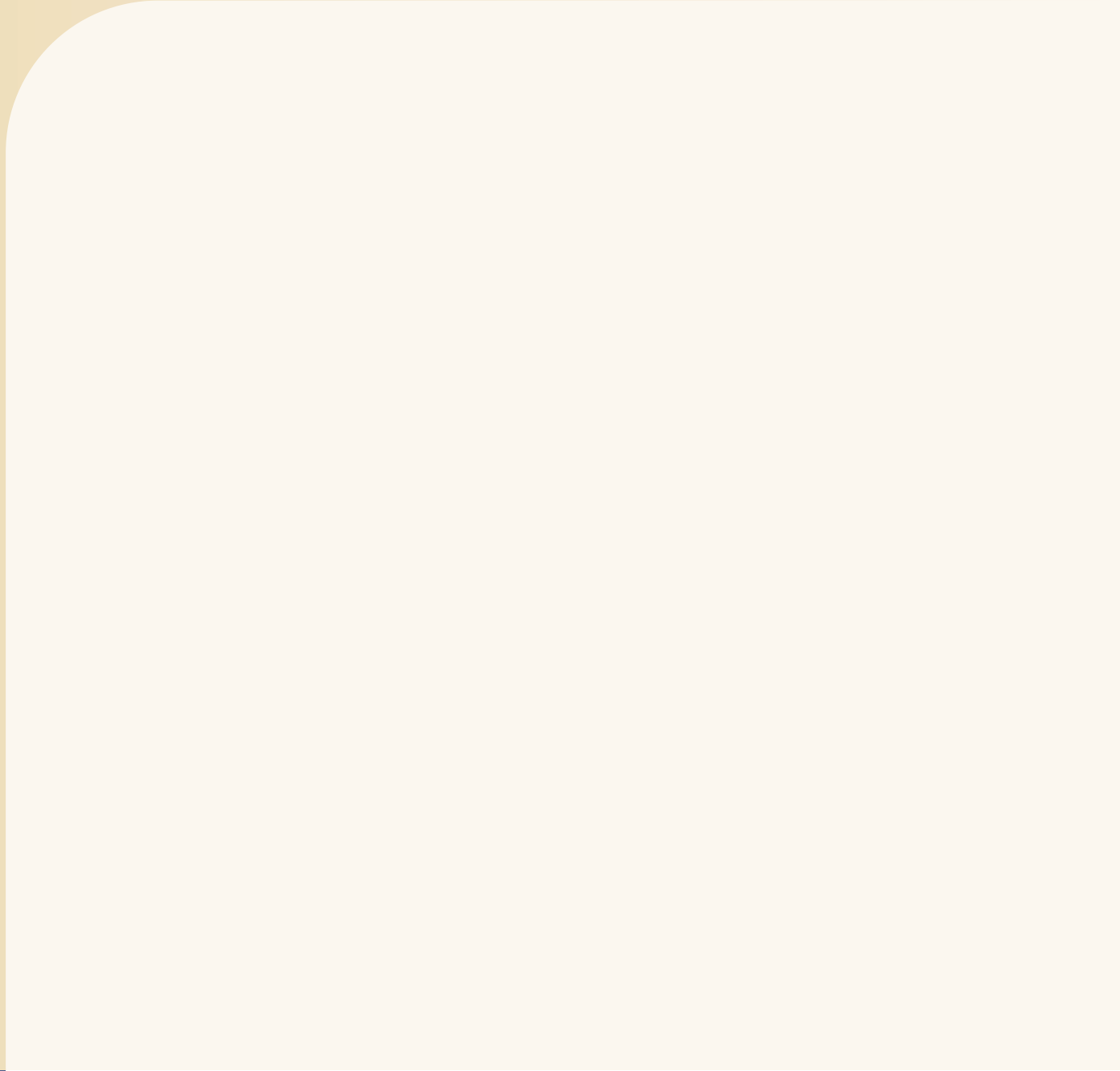
4 DUTY TO IMPLEMENT ADEQUATE RISK MANAGEMENT SYSTEMS AND CONTROLS

4.1 As the failures of some financial institutions during the financial crises have shown, effective risk management systems and internal controls are fundamental to the safe and sound management of a bank. MAS expects banks to implement adequate risk management systems and controls that are commensurate with the scale and nature of their operations, and currently takes regulatory actions or imposes supervisory requirements on banks that do not adequately manage their risks.

4.2 To enhance MAS' supervisory powers, MAS proposes to codify its expectation that all banks institute and maintain adequate risk management systems and controls in the BA. Specifically, banks will be required to establish a comprehensive risk management framework and internal controls that match their risk appetite as well as the scale and complexity of their operations. MAS will take reference from the [Guidelines on Risk Management Practices](#)¹ in determining whether the risk management systems and controls of a bank in Singapore are adequate.

Question 6: MAS seeks views on the proposed codification of MAS' expectation that banks institute and maintain adequate risk management systems and controls in the BA.

¹ MAS has issued a set of Guidelines on Risk Management Practices ("RMP guidelines"), with the objective of providing all MAS-supervised financial institutions with guidance on sound risk management practices. The RMP guidelines cover credit risk, market risk, liquidity risk, operational risk, technology risk, internal controls, and the role of a financial institution's Board of Directors and senior management.



Monetary Authority of Singapore