

RESPONSE TO FEEDBACK RECEIVED

January 2016

Response to Feedback Received – Proposed Amendments to the Banking Act

MAS

Monetary Authority of Singapore

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1 Preface

1.1 On 15 January 2015, MAS issued a consultation paper on proposed legislative amendments to the Banking Act (“BA”) (the “draft Bill”). These legislative amendments would give effect to the policy changes arising from MAS’ review of the BA.¹

1.2 The consultation period closed on 13 February 2015. MAS would like to thank all respondents for their contributions. The list of respondents is set out in the Annex.

1.3 MAS has carefully considered the feedback received, and has incorporated them, where appropriate, in the final Banking (Amendment) Bill. Comments that are of wider interest, and MAS’ responses to them, are set out below.

2 Requirement for Local Incorporation of Banking Business

2.1 The draft Bill proposed to empower MAS to require foreign banks to locally incorporate the whole or part of their banking business, where this is deemed to be necessary or expedient in the interest of the public, the depositors of the bank, or the financial system in Singapore. The local incorporation requirement is part of MAS’ suite of policy measures to address the risks posed by domestic systemically important banks (“D-SIBs”).

2.2 Some respondents commented that the grounds for requiring local incorporation in the draft Bill are wider in scope than those announced for D-SIBs. Under the D-SIB framework, the local incorporation requirement would only apply to a bank with significant retail presence in Singapore, for the purposes of protecting retail depositors.

2.3 One respondent also enquired about the expected timeframe for completion of the local incorporation process, and requested that MAS provide sufficient time for affected banks to comply with the additional requirements applicable to locally-incorporated banks.

¹ Please refer to MAS’ [consultation paper on proposed legislative amendments in January 2015](#), as well as our earlier [consultation on policy proposals in November 2013](#) and corresponding [response to feedback](#).

MAS' Response

2.4 As set out in MAS' D-SIB framework, MAS' policy intent is to impose the local incorporation requirement only on banks which have a significant retail presence in Singapore. The criteria for deeming a bank to have a significant retail presence are set out in MAS' Framework for Impact and Risk Assessment of Financial Institutions.² The local incorporation provision in the draft Bill has been drafted more broadly to provide MAS with sufficient policy flexibility.

2.5 MAS recognises that the time required to complete the local incorporation process will differ across banks, depending on the size, scale and complexity of their operations. MAS will give the affected banks sufficient time to complete their local incorporation process, and to comply with the applicable requirements.

3 Public Disclosure Requirement

3.1 In order to enhance transparency and market discipline, the draft Bill proposed to empower MAS to require banks to publicly disclose information relating to their operations and activities, including the manner of their compliance with requirements under the BA.

3.2 Several respondents sought clarification on the scope of application of the requirement. In particular, one respondent suggested that for banks that are headquartered outside Singapore, disclosure should be required only in respect of their local subsidiaries. This is because banks headquartered outside Singapore may already be subject to disclosure requirements (such as the disclosure requirements in Pillar 3 of the Basel framework) at the group level. The disclosure of information relating to the Singapore branch or any part of the banking group situated outside Singapore could also involve information that is subject to contractual confidentiality restrictions.

² The criteria are: (a) a share of resident non-bank deposits of at least 3%; and (b) at least 150,000 depositors with accounts less than or equal to S\$250,000. MAS' Framework for Impact and Risk Assessment of Financial Institutions can be found at the following weblink: <http://www.mas.gov.sg/~media/MAS/About%20MAS/Monographs%20and%20information%20papers/Apr%202015%20MAS%20Framework%20for%20Impact%20and%20Risk%20Assessment%20of%20Financial%20Institutions.pdf>.

MAS' Response

3.3 MAS notes the respondents' concerns about potential overlaps in disclosure requirements for banking groups, as well as sensitivities arising from the disclosure of information that could be subject to contractual confidentiality restrictions. For a bank incorporated outside Singapore, the public disclosure requirement will apply only to the bank's operations in Singapore, and will not include information relating to its parent, branches or affiliates located outside Singapore. Prior to promulgating disclosure requirements, MAS will consult details of the disclosure with the industry.

4 Places of Business

4.1 Currently, banks are required to seek MAS' approval prior to opening or relocating a place of business for the conduct of banking business. The draft Bill proposed to extend this requirement to the conduct of certain types of non-banking activities.

4.2 Several respondents sought clarification on the types of non-banking business that would be subject to MAS' approval requirement. Specifically, they enquired:

- (a) whether the new requirement would extend to locations conducting middle and back-office activities;
- (b) whether the approval requirement would extend to activities currently allowed under the BA without prior approval (e.g. credit card roadshows where no applications are received);
- (c) whether a bank incorporated in Singapore would need to seek MAS' approval for places of business established overseas by its overseas banking subsidiaries or branches to conduct non-banking business; and
- (d) whether a bank may seek block approval for a list of locations that the bank intends to establish over a period of time for non-banking activities.

4.3 One respondent also suggested that MAS should apply a risk-based approach to the approval requirement. For example, the requirement need not extend to activities that are already subject to robust internal controls and thus would not pose significant financial and regulatory risks.

MAS' Response

4.4 The requirement to seek MAS' approval for opening or relocating places of business will only extend to non-banking activities that have been prescribed by MAS. For example, MAS will require banks to seek approval for places of business which conduct money-changing and remittance business. This seeks to ensure that proper control measures are in place, such as to address money laundering and terrorist financing risks.

4.5 MAS will consult on the prescribed activities, as well as the entities to which the requirement will apply (i.e. whether it extends to overseas branches and subsidiaries of a bank incorporated in Singapore), in due course.

5 Accuracy of Information to be Furnished by Banks

Restricting penalty to returns relating to prudential requirements and material errors

5.1 The draft Bill proposed to allow MAS to penalise banks for failing to take reasonable care to ensure accuracy of information submitted to MAS, even if the information is not material. Several respondents commented that penalising the inaccurate submission of non-material information could be unduly onerous for banks. It would also exceed the fair presentation requirements for financial statements under the Singapore Financial Reporting Standards, which apply the concept of materiality.

5.2 One respondent also suggested that the imposition of a penalty be restricted to regulatory returns that are collected by MAS in a standardised form and in accordance with a defined schedule. This is because banks may not be able to exercise the same degree of rigour and oversight in respect of ad-hoc information requests with tight submission deadlines.

MAS' Response

5.3 The objective of this provision is to enable MAS to take action against a bank that furnishes erroneous information to MAS persistently, regardless of whether the information is financial-related. MAS expects all banks to exercise due care when submitting information, as its accuracy is important for decision-making. As such, it would not be appropriate to differentiate the type or nature of returns. For example, ad-hoc information requests triggered by unforeseen developments may nonetheless be critical for MAS to assess the financial condition of a bank or banking group. It is therefore imperative that banks put in place adequate controls and governance

structures, with appropriate management oversight, to ensure that information submitted to MAS is complete, accurate, and timely. Where there are errors in the information submitted, MAS expects banks to take appropriate measures to address the root causes and prevent recurrence.

5.4 Nevertheless, in deciding whether to take action against a bank, MAS will give due regard to the facts of the case, including the frequency of the reporting errors, the circumstances resulting in the errors, the nature and severity of the errors, and the bank's overall compliance culture and internal controls.

Guidance on what constitutes “reasonable care”

5.5 A few respondents sought guidance as to what would constitute a “failure to take reasonable care”. One respondent asked if the “reasonable care” requirement would be satisfied if the bank had adhered to internal due diligence policies and procedures on its submissions.

MAS’ Response

5.6 It is not MAS’ intention to penalise banks mechanistically for errors made in their submissions. Rather, in deciding whether to take action against the bank, MAS would consider the type of information requested, the nature and severity of the error, the robustness of the bank's internal controls and processes, and the circumstances leading to a breach. In other words, what constitutes “reasonable care” would have to be assessed based on facts and circumstances of the case.

5.7 Further, the adequacy and robustness of banks’ policies and procedures in addressing data integrity requirements could differ from bank to bank, depending on the nature and scale of its activities. It would not be prudent for MAS to accept a bank's reliance on its adherence to its policies and procedures as having satisfied the “reasonable care” requirement, if its policies and procedures are clearly inadequate. Banks should adopt a proactive and holistic approach in ensuring data integrity, including periodic reviews of the adequacy and appropriateness of its policies, systems, controls, and governance structure.

6 Credit Facilities and Exposures to Related Persons

6.1 The draft Bill proposed to empower MAS to direct banks to terminate, prohibit or impose restrictions on transactions with related persons that are deemed detrimental to depositors’ interests. One respondent sought clarification on how this power would be exercised. Some respondents suggested that MAS allow for flexibility, such as

providing grace periods for alternative arrangements to be made, should the power be exercised.

6.2 A respondent also asked whether MAS would consider requiring banks to include certain clauses in the terms and conditions of their contracts, such as provisions for limits on liquidated damages, should MAS direct the bank to unwind the transaction.

MAS' Response

6.3 Currently, MAS has powers under section 27(3) of the BA to direct a bank to secure repayment of a credit facility or reduce an exposure, where it appears to MAS that any credit facility from or exposure of the bank is to the detriment of the interests of the banks' depositors. The draft Bill proposed to extend the scope of the aforesaid powers to other types of transactions, including non-exposure transactions. This is because large non-exposure transactions, such as the sale and purchase of significant assets, could be detrimental to depositors if their terms are unfavourable to the bank. In addition, the capture of non-exposure transactions would be aligned with the scope of the requirements under the revised Basel Core Principles for Effective Banking Supervision on banks' transactions with related parties. The amendments to section 27, coupled with the revised MAS Notice 643, collectively set out the Authority's requirements relating to banks' related party transactions, and seek to minimise the risk of abuse arising from conflicts of interest.

6.4 We note the respondents' concerns and would like to emphasise that this power will be exercised judiciously. MAS will allow banks time to unwind the transaction, where appropriate.

6.5 MAS will not mandate that banks include clauses in their contracts to provide for a possible termination at MAS' direction. These are commercial decisions that will be left to the discretion of banks.

7 Major Stakes

7.1 Currently, section 32 of the BA requires banks to seek MAS' prior approval for their major stake holdings in companies. The draft Bill proposed to extend this requirement to include holdings in trusts and non-company entities such as cooperative societies. One respondent enquired whether banks would be required to seek MAS' retrospective approval for existing major stake holdings in trusts and non-company entities, whether MAS would require such banks to divest their existing major stakes, and if so, the corresponding divestment period.

MAS' Response

7.2 Based on feedback given, MAS understands that banks' existing major stakes in trusts relate to unit trusts. It is not MAS' intention to capture holdings in unit trusts as these are typically held for investment purposes. Accordingly, MAS will not be extending section 32 to cover banks' holding in trusts. Notwithstanding, banks should not circumvent the spirit of section 32 by structuring the legal form of a major stake holding as a trust.

7.3 For other major stakes that a bank currently holds in any non-company entity before the commencement date of the BA (Amendment) Act:

- (a) Where the entity carries on any business under section 30(1)(a) to (d) of the BA before the commencement date –
 - (i) and where the entity will continue to carry on any of those businesses on or after the commencement date, the bank is not required to seek MAS' approval for the holding.
 - (ii) but where the entity will carry on any prohibited business³ on or after the commencement date, the bank must seek MAS' approval for the holding before the entity carries on any prohibited business.
- (b) Where the entity carries on any prohibited business before the commencement date –
 - the bank must seek MAS' approval for the holding within three months of the commencement date; and
 - where MAS does not grant its approval, the bank must divest the major stake within twelve months of MAS' refusal, or such longer period of time as MAS may allow.

7.4 For avoidance of doubt, paragraph 7.3 applies only to existing major stakes in non-company entities held by banks. Going forward, a bank is required to seek MAS'

³ "Prohibited business" means any other business other than the businesses referred to in section 30(1)(a) to (d) of the BA.

prior approval before taking a major stake in any entity, irrespective of whether the entity engages in prohibited business.

8 Inspection of Subsidiaries

Inspection in Singapore of subsidiaries of locally-incorporated banks

8.1 The draft Bill proposed to enable MAS to inspect the subsidiary of a locally-incorporated bank, even if the subsidiary is not regulated or licensed by MAS. One respondent enquired about the focus of such an inspection, and the impact of the inspection results on the locally-incorporated bank.

MAS' Response

8.2 Banking supervision is underpinned by the concept of consolidated supervision. This entails a comprehensive approach to monitoring and managing risks posed by a banking group, including non-financial entities. For instance, it may be in MAS' interest to inspect a subsidiary that provides IT services to the banking group, to ensure that the subsidiary has in place proper security policies, systems and controls to protect the confidentiality and security of sensitive information, such as customer data, computer files, records, object programs and source codes. Where weaknesses or deficiencies are noted in the policies, processes, controls or systems of these subsidiaries, MAS would require the bank incorporated in Singapore to take appropriate measures to address them.

Inspection outside Singapore of subsidiaries of locally-incorporated banks

8.3 A respondent noted that in some foreign jurisdictions, prior approval from the local supervisory authority may be required before MAS can inspect the books of a subsidiary of a locally-incorporated bank located in those jurisdictions.

MAS' Response

8.4 MAS will seek prior written approval from the foreign supervisory authority to conduct inspections of overseas subsidiaries of locally-incorporated banks, where required under the laws of the foreign jurisdiction.

9 Notification of Material Adverse Developments

9.1 The draft Bill proposed to require banks to immediately notify MAS of any developments that the bank has reasonable grounds to believe would affect, in a

material and adverse manner, its branches and offices in Singapore. In the case of a bank incorporated in Singapore, this would extend to any such developments affecting any entity or trust in its bank group and, where relevant, its designated financial holding company (“FHC”) group.

Definition of “material adverse developments”

9.2 A few respondents sought guidance on what would constitute (i) a “material” and “adverse” development; and (ii) “reasonable grounds” to believe that an adverse development has occurred.

MAS’ Response

9.3 The circumstances constituting an adverse development that materially affects or is likely to materially affect the bank located in Singapore or, in the case of a Singapore-incorporated bank, any entity or trust in its bank group or designated FHC group, can be wide-ranging and varied. It would not be feasible for MAS to be overly prescriptive on the circumstances that require notification, as this may increase the compliance burden on banks without achieving the desired regulatory outcome. Instead, a bank would be in a better position to identify and assess the event, and consider whether there are reasonable grounds to believe that the development is likely to materially affect adversely the bank in Singapore, its bank group or designated FHC group.

9.4 To guide the banks in making this assessment, the BA will make it clear that the bank should notify MAS if the development will materially affect adversely, or is likely to materially affect adversely⁴ –

- (a) the financial soundness or reputation of the bank, or of any entity in the bank group of the bank, or any entity or trust in the FHC group of the designated financial holding company of the bank;
- (b) the ability of the bank to conduct any business referred to in section 30(1) of the BA, or the ability of any entity in the bank group of the bank or any entity or trust in the FHC group of the designated financial holding company of the bank, to conduct its business; or

⁴ In the response to the feedback received on the review of the BA (issued on 15 January 2015), MAS had indicated that this would be set out in regulations. The requirements will now be specified directly in the BA.

(c) such other matters as MAS may prescribe.

9.5 In addition, a contravention or likely contravention of any laws or regulations administered by MAS, or requirements imposed by MAS, would also constitute a development that materially affects adversely or is likely to materially affect adversely the relevant entities. Banks should consider both the probability of the event happening and the severity of the outcome on the relevant entity should it happen, having regard to the above implications. The accuracy of the information should also be ascertained.

9.6 MAS expects all banks to put in place a framework for identifying and assessing events to determine if they constitute an adverse development that has or is likely to have a material impact on the relevant entity, taking into account its circumstances and business operations. Banks are also expected to exercise sound judgement in identifying and evaluating such adverse developments.

Timing of notification of adverse developments

9.7 A respondent suggested that banks should be required to notify MAS “as soon as reasonably practicable” rather than “immediately” upon being made aware of the development, as this would more accurately reflect the practical challenges faced by banks in its ability to notify MAS.

MAS’ Response

9.8 In assessing whether a bank has contravened the requirement to “immediately” notify MAS of the occurrence of the adverse development, MAS will consider if the bank had made the notification as soon as was reasonably practicable.

Confidentiality requirements associated with complying with the notification requirement

9.9 Several respondents highlighted that banks may be subject to confidentiality obligations imposed by local laws in a foreign jurisdiction, which could restrict or prohibit the disclosure of relevant information to the public. Accordingly, the respondents suggested that a bank be exempted from complying with the notification requirements on adverse developments if, by doing so, they breach those confidentiality obligations.

MAS’ Response

9.10 As set out in MAS’ response to the feedback received on the review of the BA (issued on 15 January 2015), MAS will take into account any confidentiality restrictions

to which the bank may be subject to under the relevant laws, in deciding whether to take regulatory action against a bank for breaching the notification requirement. However, banks should ensure that any confidentiality agreements or undertakings that they enter into with other parties are subject to such disclosures as may be required by law, including the BA. The bank, and any individuals acting on the bank's behalf, should ensure that they are contractually protected from any liability that may arise from the disclosure of the relevant information to MAS as required under the BA.

Imputing of knowledge for notification requirements

9.11 In relation to the proposed notification requirement for banks to immediately inform MAS when they become aware of developments that materially affect the bank (as well as their key appointment holders, substantial shareholders and controllers), one respondent sought clarification that it is the actual knowledge of the directors and senior management of the bank that will be imputed to the bank.

MAS' Response

9.12 As set out in MAS' response to the feedback received on the review of the BA (issued on 15 January 2015), MAS expects directors and executive officers of banks in Singapore to take all reasonable steps to ensure the bank's compliance with all applicable requirements, pursuant to section 66 of the BA. Correspondingly, banks are expected to have in place appropriate processes which would enable the directors and senior management of the bank to be kept apprised of the information which forms the basis for the notification requirement. The bank would be imputed to have known the particular information once the directors and senior management have been made aware of it.

10 Appointment of Key Appointment Holders

10.1 The draft Bill proposed to consolidate existing requirements relating to the appointment of banks' key appointment holders in the BA.

10.2 A respondent was concerned that it would be too onerous to require a bank that is incorporated outside Singapore to obtain MAS' prior approval for the appointment of its Chief Executive Officer ("CEO") and Deputy CEO, and that it could be perceived as an over-extension of MAS' powers.

10.3 Another respondent asked if a bank (whether incorporated in Singapore or outside Singapore) needs to obtain MAS' prior approval to re-appoint a person upon his retirement.

MAS' Response

10.4 The requirement for banks incorporated outside Singapore to seek approval relates only to the appointment of the CEO and Deputy CEO of the branches in Singapore. The CEO and Deputy CEO of a bank are key appointment positions, as they are able to influence the conduct of business and operations of the bank in Singapore. In light of this, all key appointment holders (including the CEO and Deputy CEO of the Singapore branch of a bank incorporated outside Singapore) must be “fit and proper” (as defined in MAS' Guidelines on Fit and Proper Criteria) to ensure the prudent conduct of the businesses of these banks in Singapore. Requiring banks to seek MAS' approval for these key appointments would ensure there is adequate and proper assessment of the suitability of these individuals. We would also highlight that this is an existing requirement under MAS Notice 622A.

10.5 On whether a bank has to obtain MAS' prior approval to re-appoint a person upon his retirement, MAS wishes to clarify that approval for re-appointments will only be required if MAS' approval for the appointment of the individual is subject to a specified time period, and if the time period has expired before the application for the re-appointment.

11 Auditors

11.1 The BA currently requires a bank to appoint an external auditor approved by MAS annually, and imposes certain statutory duties on the auditor. The draft Bill proposed to introduce a safe harbour provision to protect auditors from liability where they, in good faith, provide confidential information to MAS as required under section 58(8) of the BA. The draft Bill also proposed to empower MAS to direct a bank to remove its external auditors if they have not performed their statutory duties satisfactorily.

Extension of scope of safe harbour provision for auditors

11.2 A respondent suggested that the safe harbour provision for auditors be extended to cover information disclosed by auditors under section 58(5) of the BA (e.g. where the auditor is required to submit additional information in relation to his audit), and not be limited to information that an auditor must report to MAS under section 58(8) of the BA.

MAS' Response

11.3 MAS agrees with the respondent's feedback and will extend the safe harbour provision to include situations where an auditor discloses information pursuant to a notice issued by MAS under section 58(5) of the BA.

Approval and removal of auditors

11.4 A respondent suggested that instead of requiring the re-appointment and approval of auditors on an annual basis, an auditor's appointment should be ongoing until the auditor's resignation or removal, so that it would enhance the efficiency and therefore capacity of audit oversight and the profession to focus on risks rather than compliance. The respondent also suggested that MAS provide clearer guidance on the circumstances for the removal of an auditor.

MAS' Response

11.5 The approval requirement for appointments and re-appointments of auditors ensures their fitness, propriety and suitability to be appointed for an upcoming audit. MAS may direct the removal of an auditor where it comes to MAS' attention that an auditor has failed to satisfactorily discharge its statutory duties under the BA, or is deemed to have inadequate expertise or independence. MAS will exercise such removal powers judiciously, after carefully considering all relevant circumstances.

12 Bank Holidays

12.1 Currently, the BA enables MAS to declare a bank holiday. The draft Bill proposed to clarify that MAS can prescribe either a list of prohibited or permissible activities in the event of a bank holiday.

12.2 Several respondents sought clarification on the intended scope of the power to declare a bank holiday, as well as the notice period that will be provided before a bank holiday is declared effective.

12.3 A respondent also suggested that activities relating to the provision of operational, technological or administrative support and services for branches and affiliates within the same bank group be carved out from the bank holiday provision. This was because there could be impact on the operation of the bank group in other countries should such activities be prohibited.

MAS' Response

12.4 The bank holiday provision is intended to empower MAS to declare a bank holiday during a severe crisis that threatens financial stability. The type of banking activities that would be prohibited and the notice period that will be given to banks will be specific to each event. Financial institutions should therefore consider bank holiday scenarios as part of their crisis management and business continuity planning. Nonetheless, we note the respondents' suggestion on internal operations and activities, and will take this into account when prescribing the list of permissible or prohibited activities.

13 Implementation of Risk Management Systems and Controls

Implementation of adequate risk management systems and controls

13.1 The draft Bill proposed to formalise MAS' expectation for banks to implement adequate risk management systems and controls. One respondent sought clarification on MAS' expectations of banks' risk management controls. Another respondent asked whether it would be acceptable for a bank to rely on global policies and systems, or if it should still have a Singapore-level risk appetite statement as part of its risk management framework. The respondent also queried whether MAS would expect the risk and compliance functions to be merged operationally, or have aligned reporting lines.

MAS' Response

13.2 We recognise that a bank in Singapore may leverage on group-level policies and frameworks on risk management. Nonetheless, the bank in Singapore should assess whether these global risk policies are appropriate and relevant to its business in Singapore, and are in compliance with local rules and regulations. This includes board and senior management review and approval of the risk appetite framework, which should be comprehensive, actionable and consistent with the business strategy of the bank in Singapore.

13.3 Clear expectations should be set by the banks on ownership of risk with respect to risk monitoring, reporting, and responses. Each bank will need to ensure that accountability, including reporting lines, is properly ascribed under its corporate governance framework.

Penalty for failure to implement adequate risk management systems

13.4 A respondent suggested that the penalty for the failure to implement adequate risk management systems and controls should be attached only to “wilful contraventions”, given that the notion of adequacy would be subjective and open to interpretation.

MAS’ Response

13.5 Banks should establish comprehensive risk management frameworks and adopt sound practices to ensure that their processes, systems and controls for risk management are commensurate with the nature, size and complexity of their business activities. Hence, it would not be appropriate to limit the penalty to wilful contraventions of this provision. MAS will consider the facts and circumstances of each case carefully in determining the suitability and calibration of a penalty. More severe penalties will be imposed where a breach reveals serious weaknesses in the institution’s risk management systems and internal controls, or demonstrates wilful contravention on the part of the bank.

Monetary Authority of Singapore

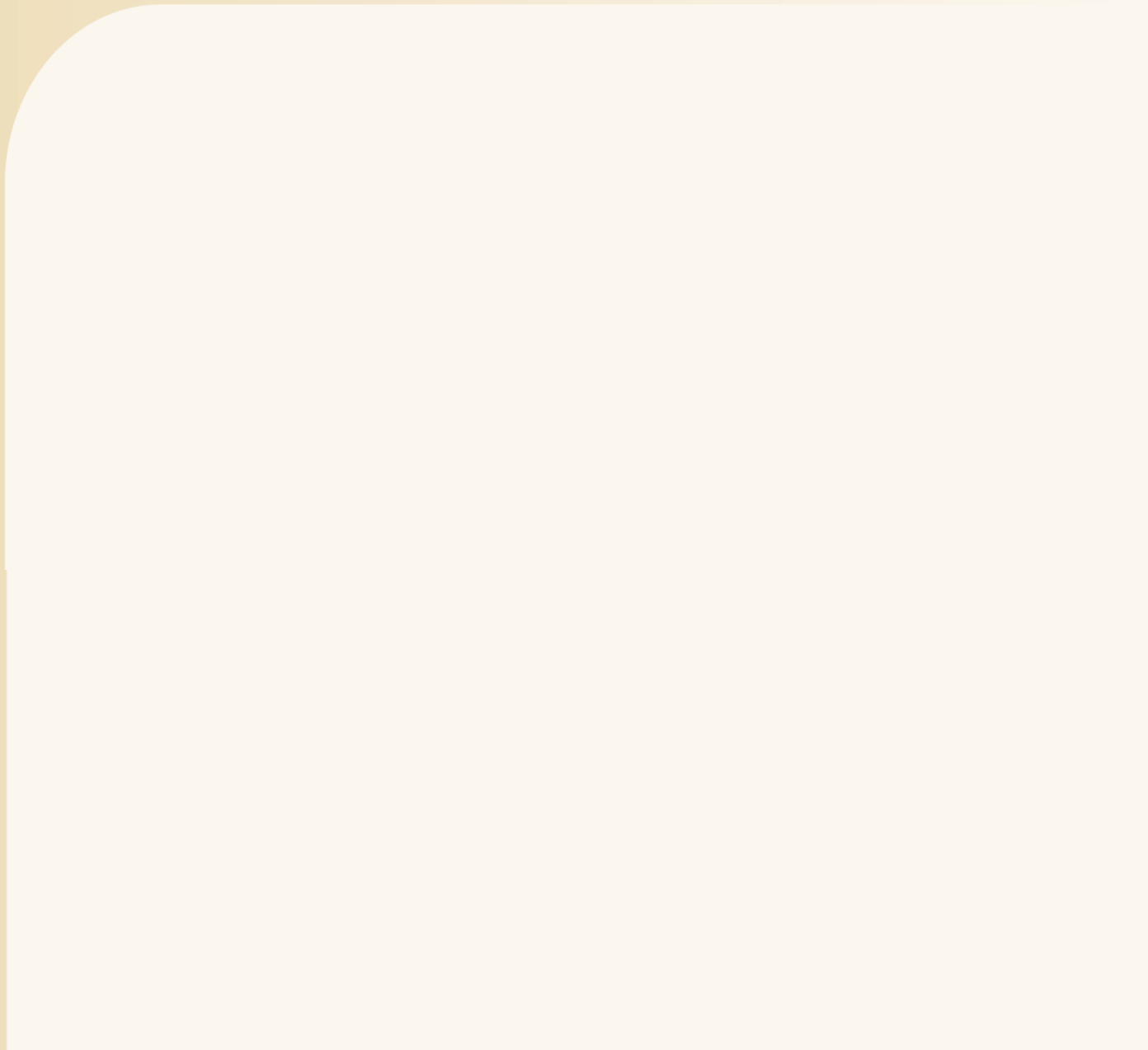
25 January 2016

Annex

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
PROPOSED AMENDMENTS TO THE BANKING ACT**

1. Chan & Goh LLP
2. Citibank NA, Citibank Singapore Ltd & Citicorp Investment Bank (Singapore) Ltd
3. CLS Bank International
4. CPA Australia
5. DBS Bank Limited
6. Deutsche Bank AG
7. Mr K Muralidharan Pillai
8. KPMG LLP
9. Malayan Banking Berhad

Four other respondents requested confidentiality.



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