

# Explanatory Brief: The Securities And Futures Bill, The Financial Advisers Bill And The Insurance (Amendment) Bill

25 Sep 2001... The Deputy Prime Minister and Chairman MAS, BG (NS) Lee Hsien Loong, today moved three Bills for first reading in Parliament, namely:

- [The Securities and Futures Act 2001 \(SFA\)](#);
- [The Financial Advisers Act 2001 \(FAA\)](#); and
- [The Insurance \(Amendment\) Act 2001 \(IIA\)](#).

2 This Explanatory Brief is correspondingly divided into 3 parts.

3 The Monetary Authority of Singapore (MAS) conducted a public consultation exercise on earlier drafts of the SFA and FAA in March 2001. The comments and feedback from the industry and the public centred on drafting issues. MAS has reviewed and incorporated some of these comments in the Bills.

## (I) THE SECURITIES AND FUTURES ACT 2001

### OVERVIEW

4 The SFA is a new legislation which regulates Singapore's capital markets. It consolidates the provisions in the Securities Industry Act (SIA) (Cap 289), the Futures Trading Act (FTA) (Cap 116), the capital-raising provisions in the Companies Act (CA) (Cap 50), and certain provisions in the Exchanges (Demutualization and Merger) Act (EDMA) (Cap 99B). It introduces new provisions. The SFA sets out the regulatory framework for the capital markets in a single piece of legislation. The SIA, FTA, and affected provisions in the CA and EDMA will be repealed.

5 The impetus for the SFA is the introduction of structural policy reforms which would require a substantial rewriting of existing legislation. The aims of these reforms can be broadly described as follows:

- To redraft and update legislation to keep abreast of the many developments that have taken place in the capital markets since the enactment of the SIA and FTA;
- To create a flexible regulatory framework for intermediaries, and to reduce compliance cost;
- To provide a comprehensive rulebook on capital markets activities;
- To facilitate the development of a disclosure-based regime;
- To enhance the regulatory framework for clearing and settlement activities, and to provide an exception to laws of insolvency for clearing and settlement activities;
- To provide an enhanced market enforcement regime, which is crucial for a disclosure-based regime; and
- To streamline the appeal processes.

6 The following is a summary of major policy reforms introduced by the SFA:

### UPDATING LEGISLATION TO CATER TO DEVELOPMENTS IN CAPITAL MARKETS

Recognised Trading System Providers (Part II); Redefinition of 'Markets' (1st Schedule) and 'Dealing in Securities/Trading in Futures' (2nd Schedule); Extra-Territorial Jurisdiction (Clause 339)

7 Globalization and advances in telecommunication technology have led to more cross-border trade, especially in the electronic realm. Cross-border financial services are increasingly made accessible to Singapore. New electronic financial services deconstruct traditional value chains. This requires a redefinition of regulated activities found in the SIA and FTA, which were not drafted with these new business models in mind.

8 To keep abreast of these developments, the SFA will update the definitions of markets (First Schedule) and regulated activities (Second Schedule). Electronic trading systems and overseas exchanges that target Singaporeans may be approved as Recognised Trading System Providers (ReTS Providers) (Part II Div 4).

9 Clause 339 will introduce an extra-territorial jurisdiction provision for offences. This is a codification of judicial pronouncements in common law jurisdictions that a foreign act is justiciable in a country if it has an effect in that country. This is the practice in other major financial centres. The SFA will confer jurisdiction on acts outside Singapore that have substantial and reasonably foreseeable effects in Singapore.

## **CREATING A FLEXIBLE REGULATORY FRAMEWORK FOR INTERMEDIARIES AND TO REDUCE COMPLIANCE COST**

Single Licensing Framework for Securities and Futures Market Intermediaries (Part IV)

10 The SFA introduces a single modular licensing framework which allows for a range of regulated activities that are better differentiated to accommodate the business needs of the intermediaries, as well as a graduated scale of capital and compliance requirements commensurate with the risk exposure of each type of activity.

11 Market intermediaries will only be required to hold a single modular licence, instead of multiple licences, to engage in the regulated activities listed in the Second Schedule. In order to create a nimble regulatory framework to cater to the fast-evolving nature of the capital markets, Clause 340 provides that the Minister may, by Gazette, amend the Schedules to the Act. Any amendments would have to be presented to Parliament as soon as possible thereafter.

## **PROVIDING A COMPREHENSIVE RULEBOOK ON CAPITAL MARKETS ACTIVITIES IN SINGAPORE**

Migration of Capital Raising Provisions from the Companies Act ' Shares and Debentures (Part XIII, Div 1)

12 The SFA migrates the capital raising provisions in the Companies Act into a comprehensive rulebook on capital markets activities in Singapore. This is to implement a recommendation of the Corporate Finance Committee (CFC).

Collective Investment Schemes (Part XIII, Div 2)

13 Also pursuant to CFC's recommendations, provisions in the Companies Act relating to public offers of 'interests' other than shares and debentures will be transferred to the SFA.

14 The SFA will require all collective investment schemes (in place of 'interests') offered to the public to be approved by MAS. The SFA will provide for foreign funds to be offered directly to the Singapore public, in addition to being offered indirectly through a Singapore scheme currently.

15 The SFA will also provide for the approval of collective investment schemes to be offered only to sophisticated investors without a prospectus. The criteria for approval for such schemes will be less stringent than those for retail schemes.

## **FACILITATING THE DEVELOPMENT OF A DISCLOSURE-BASED REGIME**

16 The SFA seeks to create a legal framework that facilitates the development of a disclosure-based capital markets in Singapore.

Enhancement in Prospectus Regime (Part XIII, Div 1)

17 The SFA will enhance the prospectus provisions migrated from the CA, with a view to enhancing market accountability and raising the standard of corporate disclosures. Issuers will be required to lodge their prospectuses with MAS. Prospectuses will be given a 2-week period for public exposure before they are registered. MAS may refuse to register a prospectus if it does not comply with the statutory disclosure requirements of the Act or where it is not in the public interest to do so. MAS will also be empowered to stop an offer if the registered prospectus is later found to be misleading or deficient.

Continuing Disclosure Requirements by Listed Companies (Clause 203)

18 The SFA will give legal teeth to the continuous disclosure regime. This is also one of the recommendations of the CFC. Presently, listed corporations are required to make continuous disclosure of material information under the Singapore Exchange's Listing Manual. The SFA will

make this continuous disclosure requirement a statutory one.

#### Notification of Substantial Shareholding in Listed Companies (Clause 137)

19 Clause 137 of the Bill will require persons to disclose their shareholdings to the Singapore Exchange within 2 days of becoming substantial shareholders <sup>1</sup> of listed companies and subsequent changes in their shareholdings.

### **ENHANCING THE REGULATORY FRAMEWORK FOR CLEARING AND SETTLEMENT ACTIVITIES, CREATING AN EXCEPTION TO LAWS OF INSOLVENCY FOR CLEARING AND SETTLEMENT ACTIVITIES**

#### Regulation of Clearing and Settlement Activities (Part III)

20 The SIA is presently not explicit on the regulatory reach of MAS on clearing and settlement institutions. The FTA, however, provides that any clearing house for a futures market shall be subject to MAS' approval and regulatory oversight. This dichotomy will be aligned in the SFA.

21 The SFA will introduce a legal framework for the regulation of clearing and settlement institutions in the securities and futures markets. Such institutions will require MAS' approval.

22 Part III Div 3 will generally provide an exception to the laws of insolvency for prescribed transactions that are cleared and settled through approved clearing institutions. The insolvency regime could create legal uncertainty, with far-reaching systemic effects on the capital markets, in the event of insolvency of members of a clearing house. The SFA will ensure that the insolvency of a member will not disrupt the clearing and settlement of trades already executed. This is consistent with the practice in other major financial centres.

### **ENHANCING MARKET ENFORCEMENT**

23 A disclosure-based regime requires an effective market enforcement regime. Any transgressions must be swiftly and firmly dealt with, in order to preserve investor confidence that Singapore's capital markets are fair and efficient. The SFA therefore introduces provisions that enhance market enforcement.

#### Review of Insider Trading Provisions (Part XII Div 3)

24 The SFA redefines the laws on insider trading. The present provisions <sup>2</sup> are based on the defendant's connection with the company and make only the insider and the tippee (a person acting in concert with the insider) liable for insider trading. There is difficulty in extending liability to others who are further down the information chain, even if they knowingly trade on inside information.

25 The new insider trading provisions in the SFA will no longer depend on the proof of a person's connection with the company. The test will instead shift to the core of the offence, i.e. trading while in possession of undisclosed price-sensitive information by the defendant, irrespective of his connection with the company. The new provisions will also tighten the *mens rea* (mental intent) test for directors and connected persons. Clause 218(4) creates a rebuttable presumption that connected persons with possession of inside information, are deemed to know that the information in their possession is undisclosed and is price-sensitive. This will introduce greater discipline for those in fiduciary positions. Clause 220 will make it clear that it is not necessary to prove any intent to use inside information by the defendant.

#### Extension of Civil Fines/Civil Remedies to Other Forms of Market Misconduct (Part XII Div 4)

26 The SFA will extend the civil fine/civil remedy regime (presently available only for insider trading) to other forms of market misconduct found in Part XII - e.g. market rigging, market manipulation, the publishing of false or misleading information, and the employment of fraud and deceit in dealing. This will complement the present framework of criminal offences for such misconduct.

27 MAS will be empowered to bring an action in Court against a defendant for a civil penalty. The offender will also be liable for civil damages to investors who suffer losses as a result of the

contravening act.  
Fines for Offences

28 The penalties for non-compliance with provisions of the SIA and FTA have remained largely unchanged since their enactment - except for penalties relating to market misconduct offences, which were increased in March 2000 by way of the Securities (Amendment) Act 2000 by a factor of five <sup>3</sup>. There is a need to revise the fines for offences under the SFA (other than the market misconduct provisions in Part XII which were largely brought over from the SIA) in order to provide a deterrent effect. There is also a need to align penalties for offences migrated from the FTA and the CA with the general approach in the SFA.

29 The SFA will therefore update and align the penalties for offences. It will introduce penalties for continuing offences, where appropriate. The fines in most cases (except for Part XII offences) will be raised by a factor of five while those for continuing offences will be ten percent of that for the main offences. Clause 333 introduces higher fines for corporations a maximum of twice the amount imposed for individuals.

Enforcement Powers for MAS Officers (Part IX Div 3)

30 MAS will enforce the civil penalty regime for market misconduct under the SFA. Under current legislation, MAS has limited powers to perform this function.

31 The SFA provides enhanced investigative powers for MAS officers. Specific provisions will be provided for MAS to obtain information and records relevant for an investigation. MAS will be given powers to compel the production of documents and records, to conduct search and seizure with a warrant from the Court and to record statements.

Extra-Territorial Jurisdiction Clause for Market Misconduct

32 Other than Clause 339 <sup>4</sup>, Clauses 196, 205 and 213 in Part XII (Market Misconduct) will specifically confer jurisdiction over:

- conduct within Singapore in relation to securities or futures contracts listed and traded overseas; and
- conduct outside Singapore in relation to securities or futures contracts listed or traded in Singapore.

33 The first limb will deter perpetrators of market misconduct from using Singapore as a "haven" for their illegal activities. The second aspect will confer our Courts extra-territorial jurisdiction over foreign acts that affect the integrity of Singapore's markets. The enforcement of these provisions will be facilitated by various regulatory Memoranda of Understanding entered between MAS and foreign regulators.

## **STREAMLINING APPEAL PROCESSES**

Rationalization of Appeal Processes (Part XIV)

34 There is some dichotomy, under the SIA and FTA, in relation to provisions relating to appeals (by licencees, exchanges or aggrieved persons) against decisions made by MAS. Under the present SIA/FTA, most appeals are heard by the Minister. However, in the revocation of a dealer's licence under the SIA, an appeal to the High Court is allowed.

35 The SFA streamlines the appeal processes by having the appeals heard by the Minister. The SFA creates an independent advisory panel, comprising industry representatives and lawyers, to advise the Minister.

## **(II) THE FINANCIAL ADVISERS ACT 2001**

### **OVERVIEW**

36 The FAA will govern financial advisory activities in respect of investment products <sup>5</sup>, and the distribution or marketing of specific investment products, namely life insurance policies and

collective investment schemes.

## **RESPONSE TO MARKET CHANGES**

37 Product innovation has in recent years resulted in the convergence of financial products. Financial institutions do not just offer "plain-vanilla" instruments these days. Insurance companies, for instance, offer investment-linked life insurance products (ILPs), which are similar to unit trusts, except that they have an insurance element attached to them. Despite the similarities in product features, market intermediaries dealing with unit trusts and ILPs have so far been regulated differently.

38 Distribution channels for financial products are also no longer confined to traditional boundaries and institutions. Financial intermediaries are now expanding beyond traditional lines of business to provide "one-stop" service to meet investors' financial needs.

39 In response to the above-mentioned market changes and as part of its continuing review of the regulatory framework for the financial services industry, MAS has introduced the FAA to govern the regulation of persons engaging in financial advisory activities, irrespective of whether advice relates to dealing with life insurance, securities or futures.

40 The FAA will consolidate the current regulatory regime governing the provision of financial advisory services in respect of securities, futures and life insurance products, which are currently contained in three different Acts, namely SIA, FTA and Insurance Intermediaries Act (IIA) (Chapter 142A), into a single legislation.

41 There are significant benefits to both market participants and the investing public in consolidating the legislation regarding the provision of financial advice. The FAA will provide a more flexible and streamlined licensing framework for market intermediaries, as only one licence will be required to give advice on a spectrum of products. This reduces the administrative burden on and the compliance costs incurred by market intermediaries, who must currently comply with different regulatory provisions and require multiple licences under the securities, futures and insurance laws. The FAA will also facilitate the maintenance of consistent professional standards across the financial advisory industry.

## **KEY POLICY INITIATIVES**

42 The key policy initiatives in the Bill are as follows:

### **A Single Licensing Framework**

43 Any person who carries on a business in one or more of the following financial advisory activities in Singapore must hold a financial adviser's licence:

- Advising others, concerning investment products, other than advising on corporate finance;
- Issuing or promulgating analyses or reports concerning investment products;
- Marketing of any collective investment scheme, including unit trusts; or
- Arranging of any contract of insurance in respect of life policies.

44 Any individual who acts on behalf of a licensed financial adviser must similarly be licensed by the Authority.

### **Prudential Requirements for Licensed Financial Advisers**

45 Licensed financial advisers must meet certain prudential requirements, such as minimum paid-up capital and financial resource requirements at all times. These requirements are necessary in order to establish the financial adviser's commitment to operate in Singapore and to ensure that it possesses a minimum level of financial resources to discharge its liabilities and obligations as and when they fall due.

46 In addition, licensed financial advisers are required to procure a professional indemnity insurance policy, so as to protect clients against any financial loss suffered as a result of the licensed financial adviser's negligence in carrying out its activities.

### **Exemption for Financial Institutions Supervised by the Authority under Other Acts**

47 Financial institutions which are already supervised by the Authority under other Acts will be exempted from the need for licensing under the Bill. This would minimise regulatory overlap and reduce compliance costs for these institutions. However, to ensure a level playing field and to apply uniform standards to all market participants engaging in the same types of activities, such exempt financial advisers will be required to comply with similar requirements in respect of their financial advisory activities.

#### Power to Issue Prohibition Orders

48 The Authority will have the power to issue prohibition orders, which would forbid a person from providing any or all of the financial advisory services regulated by the FAA, either permanently or for a specified period. A person against whom a prohibition order is made must comply with the order. Where a prohibition order is made against a representative, no licensed financial adviser or exempt financial adviser shall employ or otherwise deal with the representative. The Authority may vary or revoke a prohibition order.

#### Appointment and Removal of Officers

49 Licensed financial advisers are required to seek the Authority's prior approval for the appointment of the Chief Executive Officer and directors. The Bill also empowers the Authority to direct a licensed financial adviser to remove any of its officers from their office where it thinks it necessary in the public interest or for the protection of investors to do so.

#### Inspection Powers of MAS

50 The Authority is empowered to inspect licensed financial advisers or any persons suspected of carrying on a business of providing financial advisory services in Singapore. This will enable the Authority to determine whether a financial adviser is conducting its business in a manner likely to be detrimental to the interest of its clients or the public or whether any person has breached any provision of the FAA.

#### Appeals to the Minister

51 The Bill provides for all appeals to be heard by the Minister and the creation of an independent advisory committee, comprising industry representatives and lawyers, to advise the Minister. The Minister is not bound by the recommendations of such committee. The decision of the Minister on any appeal is final.

### **(III) THE INSURANCE (AMENDMENT) ACT 2001**

#### **OVERVIEW**

52. The amendments introduced are part of MAS' ongoing review of the legislative framework for the insurance industry to ensure that the prudential standards are kept current and appropriate, while at the same time to enhance the business oriented environment for growth and competition. The key amendments introduced cover the following areas:

- a. Requirements for non-life insurance companies to obtain actuarial certification of their insurance liabilities;
- b. Following the repeal of the Insurance Intermediaries Act (IIA), the transfer of provisions governing insurance intermediaries other than direct life insurance brokers from the IIA into the Insurance Act (IA);
- c. Revision of penalties and fines for offences committed under the IA;
- d. Amendments for Lloyds business in Singapore; and
- e. Other ancillary and consequential amendments.

#### **ACTUARIAL CERTIFICATION**

53 Following the liberalization of the insurance industry in 2000, MAS announced that it would require non-life insurers, and reinsurers, to obtain actuarial certification of their insurance liabilities annually, to ensure that appropriate reserves are made to meet all ultimate liabilities. This requirement will now be reflected in the Act, while detailed guidelines, as worked out by MAS together with industry representatives, would be specified in subsidiary legislation.

## **INSURANCE INTERMEDIARIES**

54 The provisions of the IIA re-enacted into the IA will remain largely unchanged save for the changes highlighted below and some other changes to align the IA with other regulatory Acts supervised by MAS. With the amendments, the IA will now govern, in addition to insurers, all insurance agents (both life and non-life), all reinsurance brokers (both life and non-life), and non-life direct insurance brokers. The regulation and supervision of the class of intermediaries known as 'direct life insurance brokers' will be governed under the new FAA.

### Interest Income from Insurance Broking Premium Account

55 Under the IIA, brokers are not permitted to mix insurance moneys <sup>6</sup> with proprietary funds, and are required to establish separate bank accounts to comply with this requirement. Currently, the interest earned from these moneys can be retained by the insurance broker. However, this has resulted in some insurance brokers delaying payment of the moneys to the insurer to earn interest. The amendment will allow MAS to prescribe regulations specifying how the interest earned should be distributed to insurers.

### Financial Institutions ("FIs") Acting as Insurance Intermediaries

56 Under the IIA, insurance agents are required to have written agreements with insurers as their principals. However, FIs <sup>7</sup> acting as agents of insurers are exempted from this rule, and insurers are not responsible for the actions of the FIs. The amendments will remove the current exemption, and FIs acting as agents will be required to have written agreements with the insurers. The intention is to ensure that the roles and duties of the FI in relation to the insurers as principal are clearly set out, and not to make insurers responsible for the FI. Exempt FIs acting as insurance brokers will also be subject to market conduct rules and standards applicable to insurance intermediaries. This will ensure that there is a level playing field in the industry.

### Register of Persons Prohibited

57 The IIA currently gives MAS the power to debar "undesirable persons" <sup>8</sup> from carrying on business as an insurance intermediary, or from participating in the management of any insurance intermediary. This power will be retained when the provisions are moved to the IA. To further improve transparency to enable the public, insurers and intermediaries in the industry to determine in advance whether a potential employee is a prohibited person, the amendment will permit the creation of a register of such persons prohibited under the IA, which will be available for public inspection.

### Register of Key Personnel Removed from Office

58 The IIA currently gives MAS the power to approve the appointment of the Chief Executive Officer or a director in Singapore, of a registered insurance broker. The amendments will give MAS a power to direct that any Chief Executive Officer or Director be removed from their appointments, on grounds that these persons have failed to perform their duties. A register of persons removed from office will also be created, and made available for public inspection. As a safeguard, the power to prohibit persons or remove key personnel is subject to a right of hearing and an appeal to the Minister.

### Restrictions on Unsecured Loan and Advances

59 Under the IIA currently, unsecured loans to directors are capped at a maximum of \$3,000 but unsecured loans to employees are capped at 6 months' emoluments of that employee. Under the FAA, unsecured loans or advances to directors are prohibited, while for employees and representatives, the cap is \$3,000. The amendment will align these provisions such to prohibit unsecured loans to directors, and for employees, an absolute cap of \$3,000 will apply. The new restriction will not apply to loans or advances granted before the coming into effect of the amendment.

## **REVISION OF FINES AND PENALTIES**

### Amendments of Penalty Provisions and Penalties for Corporate Offenders

60 The penalty provisions for insurers under the IA are generally outdated, unrevised since 1986. These penalties are now too low to be of sufficient deterrent effect, and are out of line in terms of severity in comparison to the Banking Act, and the proposed SFA, as well as the FAA. The amendments will align the severity of the penalties. As corporations have higher resources generally, and a higher penalty is required to achieve the same deterrent effect, the amendments will impose a maximum fine on corporations at twice the penalty of individuals.

## **AMENDMENTS FOR LLOYDS BUSINESS IN SINGAPORE**

61 Lloyd's is currently permitted to insure Singapore risks, through licensed intermediaries, under Section 34 of the IA. The amendments will empower MAS to create schemes whereby a defined group, association or class of foreign insurers may carry on insurance business in Singapore. The regulations will set out the requirements, terms and conditions for the scheme, including provisions to require alternative registration of Lloyds underwriters. Two schemes will be created, which will run concurrently:

### Lloyd's Scheme

62. This scheme allows the existing arrangement for Lloyd's business in Singapore as mentioned above, to continue its operation. Section 34 will be repealed, but the repealed provisions will be recreated under this Scheme, and only approved brokers will be allowed to transact via this Scheme.

### Lloyd's Asia Scheme

63 This proposed new scheme seeks to replicate the Lloyd's insurance marketplace in Singapore over the longer term. Under this scheme, Lloyd's underwriting members will transact insurance business by setting up service companies in Singapore that will underwrite and issue Lloyds policies in Singapore. All registered insurance brokers will be allowed to transact with the service companies as if the latter were a licensed insurer in Singapore.

## **OTHER AMENDMENTS**

### New Part on Assistance to Foreign Regulatory Authorities

64 With the growing internationalization of insurers and cross-border financial services, co-operation and information exchange between regulators of different jurisdictions is an added advantage to achieve efficient supervision. The amendments will provide a framework for such agreements or understandings to be given effect, while ensuring that in the process, persons affected are given the due process of law.

### New Part on Appeals to the Minister, and Right of Hearing

65 Current provisions in the IA and IIA giving a right of hearing or appeals in certain circumstances will be streamlined. The amendments will grant a right of hearing, plus an appeal to the Minister, in relation to:

- a. cancellation of registration,
- b. the removal of key personnel, and
- c. prohibition from carrying on business.

66 The appeals will be heard by an independent Appeals Advisory Committee, which shall advise the Minister accordingly.

### New Provision to give Courts Extra-territorial Powers

67 The increased use of the internet for sale and distribution of financial products, including insurance, has resulted in a situation where a person outside Singapore is able to target consumers in Singapore., through actions which are carried on externally but have an effect within Singapore, and could harm consumers. The amendments will give Singapore Courts jurisdiction to adjudicate on these actions, even though they took place extra-territorially.

<sup>1</sup> i.e. holding 5% or more of a company's issued capital. [[Back](#)]



<sup>2</sup> Section 103 of the SIA. [[Back](#)]

<sup>3</sup> i.e. \$250,000 for individuals and \$500,000 for a body corporate.[[Back](#)]

<sup>4</sup> Please refer to para 9 above. [[Back](#)]

<sup>5</sup> Specifically, investment products will include:

- securities, including unit trusts
- futures contracts, as well as contracts or arrangements for the purposes of foreign exchange trading and leveraged foreign exchange trading;
- or life insurance policies, including investment-linked insurance policies.

To provide the flexibility to cater to new product development and/or market changes, the Bill will empower MAS to prescribe, via regulations, additional financial instruments as investment products. [[Back](#)]

<sup>6</sup> Any money in relation to a contract of insurance, which is either received from a client for onward payment to an insurer, or received from an insurer for payment to the client. [[Back](#)]

<sup>7</sup> Such as banks, merchant banks, licensed financial adviser, capital markets licensee, finance company, and other persons exempted under the IA. [[Back](#)]

<sup>8</sup> Section 31 IIA. [[Back](#)]

Last modified on 24/02/2011