



Monetary Authority of Singapore

**RESPONSE TO FEEDBACK RECEIVED
CONSULTATION ON CORPORATE GOVERNANCE
GUIDELINES AND REGULATIONS
8 SEPTEMBER 2005**

CONSULTATION ON CORPORATE GOVERNANCE GUIDELINES AND REGULATIONS - RESPONSE TO FEEDBACK RECEIVED

In February 2003, MAS published a consultation paper inviting industry and public comments on the Corporate Governance Guidelines (“the Guidelines”) and Banking (Corporate Governance) Regulations 2005 and Insurance (Corporate Governance) Regulations 2005 (“the Regulations”).

After the consultation closed on 24 March 2003, MAS continued to engage the industry and other interested parties extensively, to clarify our requirements and obtain their further feedback. This paper summarises the feedback received and sets out MAS’ responses. Appendix A provides the list of respondents.

MAS would like to thank all respondents for their submissions and comments.

The finalised Guidelines and Regulations can be found on the MAS website. While the Regulations take effect immediately, existing banks and significant insurers¹ will be given until their respective annual general meetings (AGMs) in 2007 to comply with the Regulations. The Guidelines take effect from the respective AGM of each locally incorporated bank and direct insurer held on or after 1 January 2007 or where the bank or direct insurer does not hold an AGM, the date of expiry of the period within which the AGM is required by law to be held. Locally incorporated banks and direct insurers listed on the Singapore Exchange should disclose their corporate governance practices and explain deviations from the Guidelines in their annual reports for AGMs held from 1 January 2007 onwards. Those that are not listed on the Singapore Exchange should disclose the same on their websites.

¹ A significant insurer is a direct life insurer incorporated in Singapore with total fund assets of at least \$5 billion.

SECTION A: SUMMARY OF FEEDBACK ON THE GUIDELINES ON CORPORATE GOVERNANCE (“THE GUIDELINES”)

1 Streamlining the Guidelines with the Code of Corporate Governance

Some respondents suggested that the Guidelines and the Code of Corporate Governance (Code) issued by the Council for Corporate Disclosure and Governance for listed companies be streamlined to reduce duplication and resources to comply with both sets of corporate governance requirements. The disclosure requirements in section 2 of the Guidelines could also be removed as they were already required either in the Code or the Companies Act.

MAS’ Response

MAS agrees and has reorganised the Guidelines, adopting the Code and supplementing it with additional principles and guidelines to take into account the unique characteristics of financial institutions². The additional principles include requiring the Board to ensure an adequate risk management system is in place and that the financial institutions’ related party transactions are made on an arm’s length basis.

2 Responsibilities of the Board

The Board’s role is to set clear lines of accountability within the financial institution and to ensure that the financial institution has adequate risk management systems and sound internal controls.

Some respondents commented that such responsibilities should rest with the Chief Executive Officer or senior management instead of the Board.

MAS’ Response

The Board is primarily responsible for these functions because of its legal responsibility to act in good faith and in the best interest of the financial institution. Although its execution may be delegated to management, the Board remains accountable and cannot abrogate its overall responsibility for these functions.

² For the purposes of this response document, a reference to “financial institution” in relation to the Guidelines means any bank, financial holding company or direct insurer which is incorporated in Singapore, and a reference to “financial institution” in relation to the Regulations means any bank, financial holding company, or any significant insurer which is incorporated in Singapore.

SECTION A: SUMMARY OF FEEDBACK ON THE GUIDELINES ON CORPORATE GOVERNANCE (“THE GUIDELINES”)

3 Appointment of Independent Directors

Some respondents proposed allowing minority shareholders, the Singapore Institute of Directors (SID) and the Securities Investors Association of Singapore (SIAS) to propose candidates as independent directors to ensure that there is a group of directors who is not beholden to any major shareholder. They also suggested allowing only minority shareholders to vote for the appointment of independent directors. A few respondents felt that the number of directorships held by independent directors should be capped.

MAS’ Response

There is nothing to prohibit minority shareholders, SID and SIAS from proposing candidates as independent directors. Such nominations would be subject to review by the financial institution’s Nominating Committee (NC). In reviewing any nomination, the NC should satisfy itself that each nominee is fit and qualified for the office. The NC is also charged with the responsibility to determine if the nominee is independent.

MAS agrees that directors should only take on directorships if they are able to give sufficient time and attention to the companies that they are directors of. However, it is not appropriate for MAS to impose a definite limit on the number of directorships each director can have, as it is recognized that each situation is different. The Nominating Committee should assess if a candidate with multiple directorships is able to adequately carry out his duties as a director of the financial institution, before nominating him to the Board. This is stated in guideline 4.4.

4 Remuneration of Independent Directors

There were comments that the remuneration of an independent director should be commensurate with his responsibilities, as an independent director’s independence might be undermined if his remuneration as a director of a financial institution were a significant source of his annual income.

MAS’ Response

An independent director’s remuneration for the responsibilities placed on him should be sufficient but not excessive such that his independence might be compromised. In this regard, the Remuneration Committee should put in place a framework for determining the remuneration of all directors, including independent directors, to ensure that the level and composition of remuneration is suitable to attract, retain and motivate directors to perform their roles and carry out their responsibilities. This is stated in guideline 8.2.

SECTION A: SUMMARY OF FEEDBACK ON THE GUIDELINES ON CORPORATE GOVERNANCE (“THE GUIDELINES”)

5 Non-Executive Directors

A respondent suggested including in the Guidelines the need for non-executive directors to meet regularly in the absence of management, to provide a platform for effective discussion on issues like the Chief Executive Officer’s performance and succession plan.

MAS’ Response

This has been included in guideline 2.6.

6 Audit Committee

The Guidelines in the consultation paper require members of the Audit Committee (AC) not to be part of the Executive Committee.

Some respondents felt that the independence of AC members would not be compromised if they are concurrently Executive Committee members. Where there are conflicts of interests, that director could abstain from the deliberations.

MAS’ Response

MAS views an Executive Committee as a board committee that is generally authorised to act for the Board. The role of an Executive Committee is to carry out certain functions of the Board without having the authority to exercise all of the powers of the Board. It should also not take on the functions of management and lose its capacity, as part of the Board, to oversee management. In this regard, MAS agrees that there would be no conflict of interest if an Audit Committee member is also a concurrent Executive Committee member, since the role of an Executive Committee member is distinct from management. Principle 16 has been added to provide guidance on the role of an Executive Committee.

SECTION B: SUMMARY OF FEEDBACK ON THE REGULATIONS ON CORPORATE GOVERNANCE (“THE REGULATIONS”)

1 Independent Directors

Several comments were received on the required number of independent directors and their composition on the Board and board committees, such as:-

- (a) shareholders’ representation on the Board should be in proportion to their stakes so that their rights are not undermined;
- (b) the number of independent directors on the Board should be reduced from a majority to one-third, to be in line with the Code;
- (c) there were difficulties in finding independent directors in Singapore and therefore the prescribed composition of independent directors would be difficult to comply with;
- (d) the Nominating Committee should be able to consider a director to be independent notwithstanding the fact that he or a member of his family is being employed by the financial institution or its related corporations, or by the substantial shareholder or an affiliate of the substantial shareholder, at any time during the preceding three financial years; and
- (e) substantial shareholders should be allowed to be members of the Audit Committee as there would not be any incentive for them to suppress internal control weaknesses.

MAS’ Response

Recognising that banks and significant insurers need time to reconfigure their boards and board committees, the banks and significant insurers will be given up to their annual general meetings in 2007 to comply with the regulations.

The Regulations and Guidelines are not intended to undermine shareholders’ rights. They aim to help ensure that the board of directors does not take action that is detrimental to or not in the best interest of the financial institution as a whole, although the action may be in the interest of certain stakeholder group(s). Nevertheless, MAS has taken into account the feedback received and reviewed the composition of the Board and various board committees. We have modified the earlier proposed regulations on composition to address possible conflict of interest situations, such as when a director represents the interests of substantial shareholders, management or business relations. A summary of the revised composition of the Board and board committees is listed in the following table.

SECTION B: SUMMARY OF FEEDBACK ON THE REGULATIONS ON CORPORATE GOVERNANCE (“THE REGULATIONS”)

No. of directors who are:	Board & Executive Committee (if any)	Nominating Committee and Remuneration Committee	Audit Committee
Independent from any management and business relationship with the bank or significant insurer ³	At least a majority	At least a majority, including the Chairman	All
Independent ⁴	At least 1/3	At least 1/3	At least a majority, including the Chairman
Independent of any single substantial shareholder ⁵	At least a majority	At least a majority	Not applicable ⁶

With regard to the definition of an independent director, MAS recognizes that a director who is employed by the parent of, or another subsidiary of the parent of, the financial institution, can be considered independent of the management of the financial institution, as there is no apparent motivation for the director to act in the interest of the financial institution’s management. However, MAS would regard such a director to be not independent of substantial shareholders of the financial institution as he is obliged to act in the interest of the parent company of which he is an employee.

³ As defined in Regulation 6 of the Banking (Corporate Governance) Regulations 2005 and Regulation 5 of the Insurance (Corporate Governance) Regulations 2005.

⁴ As defined in Regulation 2 of the Banking (Corporate Governance) Regulations 2005 and Regulation 3 of the Insurance (Corporate Governance) Regulation 2005.

⁵ Unless the single substantial shareholder holds 50% or more of the share capital of votes.

⁶ This is not applicable as a majority of the Audit Committee members would already be independent of any single substantial shareholder given that the Audit Committee is required to comprise a majority of independent directors.

SECTION B: SUMMARY OF FEEDBACK ON THE REGULATIONS ON CORPORATE GOVERNANCE (“THE REGULATIONS”)

2 Separation of Chairman and Chief Executive Officer Roles

The Guidelines require a separation of the roles of the Board Chairman and Chief Executive Officer (CEO).

A respondent suggested that the Board Chairman should also be a non-executive director. This will prevent the situation where the executive Board Chairman becomes the de facto CEO of the financial institution.

MAS’ Response

MAS agrees with the comment. The rationale for separating the roles of Board Chairman and CEO is to ensure that there is a clear segregation of duties between the two. The Board Chairman should be independent of management to ensure that there is effective oversight of management.

3 Wholly-Owned Subsidiaries

Several respondents suggested exempting wholly-owned subsidiaries from complying with the Regulations as their parent companies, which oversee the corporate and business affairs of these wholly-owned subsidiaries, would have in place a governance structure that would perform the prescribed functions for the subsidiary bank or insurer.

MAS’ Response

While MAS recognizes that it is necessary for the board of a parent company to exercise adequate oversight of the activities of the subsidiary, the board of the subsidiary financial institution (whether wholly-owned or otherwise) should retain its corporate governance responsibilities for itself, including maintaining its own financial soundness and protecting the interests of its depositors and policyholders. MAS agrees that there are circumstances where the interest of the subsidiary and parent company are aligned. Hence, the Regulations provide that in these circumstances, members on the board of the subsidiary who are concurrently directors or executives of the parent company will be considered independent of substantial shareholders. These circumstances are stated in Regulation 7(2) of the Banking (Corporate Governance) Regulations and Regulation 6(2) of the Insurance (Corporate Governance) Regulations.

SECTION B: SUMMARY OF FEEDBACK ON THE REGULATIONS ON CORPORATE GOVERNANCE (“THE REGULATIONS”)

4 Executive Committee

A respondent commented that Executive Committees should be regarded as board committees given their important role in helping the Board of Directors vet and approve major issues.

MAS’ Response

MAS agrees with this suggestion. An Executive Committee is generally authorized to act on behalf of the Board, handling in particular, issues that arise in the period between full Board meetings. The composition of an Executive Committee should therefore mirror that of the Board. An Executive Committee should not have any management responsibility. The requirements on Executive Committee have been included in both the Regulations and Guidelines.

SECTION C: GENERAL COMMENTS

1 Application of Regulations and Guidelines to Direct Insurers

The Regulations apply to significant insurers defined as any direct life insurer with total assets of at least \$5 billion and any direct general insurer with total assets of at least \$500m. The Guidelines apply to all direct insurers.

Respondents had differing views as to which insurers the Regulations and Guidelines should apply to. Some respondents felt that for a level-playing field, the Regulations and Guidelines should apply to all insurers. Some viewed that both the Regulations and Guidelines should apply to significant insurers. There were others who viewed that the corporate governance framework that applied to their parent companies in their home countries should suffice. They could be subject to inconsistencies within the group if they have to comply with different corporate governance frameworks in countries they operate in.

MAS' Response

MAS has reviewed the application of the Regulations and Guidelines to direct insurers. Considering that this is the first time that direct insurers will be subject to a corporate governance framework, MAS has decided to apply the Regulations to significant insurers defined as locally incorporated direct life insurers with total fund asset sizes of at least \$5 billion. It is important to apply these mandatory requirements to significant insurers given their long-term commitment to policyholders, their sufficiently large size and hence greater impact on the insuring public. The application of these requirements to other direct insurers will be reviewed in future taking into account any further developments. The Guidelines will, however, apply to all locally incorporated direct insurers.

2 Disclosure

A few respondents suggested that unlisted locally incorporated financial institutions that do not publish annual reports submit a separate disclosure document on their observance with principles and guidelines and lodge it with MAS and the Accounting and Corporate Regulatory Authority.

MAS' Response

MAS has streamlined the disclosure requirements. The Guidelines specify those disclosures applicable only to listed banks and insurers. As these institutions are already required to disclose such deviations and appropriate explanations in their annual reports, there is no need for a separate disclosure to MAS. For an unlisted financial institution which decides not to apply such recommended best practices, it will be required to make such disclosures on its website. This will enable stakeholders to assess the appropriateness of its corporate governance practices.

SECTION B: SUMMARY OF FEEDBACK ON THE REGULATIONS ON CORPORATE GOVERNANCE (“THE REGULATIONS”)

3 Cost of Compliance

Some respondents were concerned that the Corporate Governance framework would increase costs for the financial institutions especially for those that are small and unlisted with small shareholder base. A small talent pool of independent directors, the requirement for a separate risk management function without recognizing the opportunities for subsidiaries to outsource this function to their parent institutions were also quoted as reasons contributing to the cost.

MAS’ Response

MAS is mindful that the Corporate Governance framework for financial institutions should not unnecessarily burden the financial institutions. MAS has sought to balance regulatory needs with commercial and practical considerations. Therefore, the framework comprises Guidelines based on the Corporate Governance Code for Singapore Listed companies and mandatory requirements stipulated in Regulations. The Guidelines outline good principles on corporate governance and serve as best practices that financial institutions are encouraged to adopt. These are similar to corporate governance principles that exist in many other jurisdictions. Each financial institution is responsible for adopting governance practices that are built on sound principles best suited to its own circumstances. On the issue of outsourcing of risk management functions, financial institutions can refer to MAS Guidelines on Outsourcing. The mandatory requirements have been revised and would apply to financial institutions that have systemic or significant impact. MAS has also rationalised a number of the requirements.

4 Penalties

A few respondents commented that there should not be excessive penalties for non-compliance with the Regulations as it would be more likely that the non-compliance is inadvertent. There should be a grace period for financial institutions to rectify the breaches. Alternatively, MAS should be empowered to grant exemptions. There were also suggestions that a “comply or explain” approach as in the Guidelines, be adopted, rather than imposing mandatory regulations.

MAS’ Response

Mandatory requirements in the Regulations are imposed on financial institutions as MAS is of the view that minimum standards of corporate governance for financial institutions should be more ambitious than for non-financial firms. As is the case for compliance with any other regulatory requirement, financial institutions will be given the opportunity to explain their non-compliance with the Regulations, which MAS will take into account when considering the appropriate regulatory action to be taken.

APPENDIX A – LIST OF RESPONDENTS

Financial Institutions

1. Aviva plc
2. Bank of Nova Scotia
3. China Insurance Co (Singapore) Pte Ltd
4. Citibank Singapore Ltd
5. DBS Bank Ltd
6. Great Eastern Holdings Limited
7. Mitsui Sumitomo Insurance (Singapore) Pte Ltd
8. Oversea-Chinese Banking Corporation Limited
9. Prudential Assurance Co (S) Pte Ltd
10. Sompo Japan Insurance Company (Asia) Pte Limited
11. The Asia Life Assurance Society Limited
12. The Hongkong and Shanghai Banking Corporation Limited
13. The Tokio Marine & Fire Insurance Company (Singapore) Pte Ltd
14. United Overseas Insurance Limited
15. United Overseas Bank Limited
16. UOB Life Assurance Limited

Others

1. Associate Professor Leow Chye Sian
2. Capital International Asset Management
3. Chew Keng Seng, Prima Ltd
4. Deloitte & Touche
5. General Insurance Association of Singapore
6. Investment Managers Association of Singapore
7. Kevin Scully, Net Research Asia
8. Marian Ho, Khattar Wong & Partners
9. Naina Parwani
10. Peter Yap Kim Kee
11. Singapore Institute of Directors
12. Temasek Holdings