

DRAFT PAYMENT SYSTEMS (OVERSIGHT) BILL

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A BILL

i n t i t u l e d

An Act to provide for the oversight of payment systems and stored value facilities, and for matters connected therewith.

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

PART I

PRELIMINARY

Short title and commencement

5 **1.** This Act may be cited as the Payment Systems (Oversight) Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

10 “access”, in relation to a designated payment system, means the entitlement or eligibility of a person to become a participant in the payment system, in the capacity of a user of the payment system on a commercial basis on terms that are fair and reasonable;

15 “access regime”, in relation to a designated payment system, means an access regime imposed by the Authority under section 10 and that is in force;

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“bank in Singapore” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

20 “book” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any other electronic form or otherwise;

25 “chief executive officer”, in relation to the operator of a designated payment system, means any person by whatever name described, who is —

(a) in the direct employment of, or acting for, or by arrangement with, the operator of the designated payment system; and

30 (b) principally responsible for the management and conduct of the business of the operator in Singapore;

“designated payment system” means a payment system that is designated by the Authority under section 7 to be a designated payment system for the purposes of this Act;

5 “director” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“holder of the stored value”, in relation to a stored value facility, means the person who holds the stored value and makes payment for goods or services referred to in the definition of “stored value facility”;

10 “operator”, in relation to a payment system, means a person who operates the payment system;

“participant”, in relation to a payment system, means any person who is recognised in the rules of the payment system as being eligible to exchange and settle payments through the payment system with other participants;

15 “payment system” means a funds transfer system or other system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system;

20 “relevant bank”, in relation to a widely accepted stored value facility, means a bank in Singapore which has obtained the approval of the Authority under Section 29 for a widely accepted stored value facility;

“settlement institution” means a person who provides accounts for the participants of a payment system to —

25 (a) hold funds; and

(b) settle transactions with other participants of the payment system;

30 “single purpose stored value facility” means a stored value facility that is, or is intended to be, used for payment only of goods or services, or of both goods and services, provided by the holder of the stored value in respect of the stored value facility;

“share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

35 “stored value”, in relation to a stored value facility, means the amount of money that —

- (a) has been paid in advance for goods or services intended to be purchased through the use of the stored value facility;
- (b) is available for use from time to time for making payment under the terms and conditions applying to the stored value facility; and
- (c) is held by the holder of the stored value in respect of the stored value facility;

“stored value facility” means —

- (a) a facility (other than cash), whether in physical or electronic form, which is purchased by a person (referred to in this Act as the user) to be used as a means of making payment for goods or services up to the amount of the stored value that is available for use under the terms and conditions applying to the facility, and payment for the goods or services is made by the holder of the stored value in respect of the facility (rather than by the user); or
- (b) all the facilities referred to in paragraph (a) provided under the same terms and conditions;

“substantial shareholder” has the same meaning as in Division 4 of Part IV of the Companies Act (Cap. 50);

“widely accepted stored value facility” means a stored value facility for which approval of the Authority has been obtained under section 29.

(2) In any case —

- (a) where the functions of the operator or settlement institution of a payment system are assumed by or shared among more than one operator or settlement institution, a reference in this Act to the operator or settlement institution shall be read as a reference to each of such operators or settlement institutions; and
- (b) where the functions of the holder of the stored value in respect of a stored value facility are assumed by or shared among more than one holder, a reference in this Act to the holder shall be read as a reference to each of such holders.

(3) In this Act —

- (a) a reference to a facility includes a reference to a right to use a facility; and
- (b) a reference to the purchase of a facility includes a reference to the payment of an amount of money for a right to use a facility.

5 **Parts III and IV not to apply to Authority**

3. Parts III and IV shall not apply to the Authority in its capacity as —

- (a) a participant,
- (b) an operator; or
- (c) a settlement institution,

10 of any payment system.

PART II

POWERS OF THE AUTHORITY

Authority to exercise oversight over payment systems and stored value facilities

15 4.—(1) The Authority shall —

- (a) be responsible for the oversight of payment systems and stored value facilities under this Act; and
- (b) have power to do all such acts, matters and things as are necessary to be carried out under this Act.

20 (2) Without prejudice to the generality of subsection (1), the powers of the Authority, in relation to payment systems, shall include the power —

- (a) to require the provision of information relating to payment systems;
- (b) to designate payment systems that are considered important in terms of financial stability or public confidence;
- (c) to impose access regimes on designated payment systems;
- (d) to issue directions to participants, operators and settlement institutions in relation to designated payment systems;

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(e) to undertake inspection of the books, accounts, transactions or operations of operators and settlement institutions of designated payment systems; and

5 (f) to assume control of a designated payment system in an emergency.

(3) Without prejudice to the generality of subsection (1), the powers of the Authority, in relation to stored value facilities, shall include the power —

10 (a) to require the provision of information relating to stored value facilities;

(b) to approve stored value facilities as widely accepted stored value facilities; and

(c) to issue directions to relevant banks in relation to widely accepted stored value facilities.

15 **Authority to have regard to public interests**

5. In exercising its powers in relation to payment systems under this Act, the Authority shall have regard to the interests of the public, and in this respect, the Authority may take into consideration —

20 (a) whether any payment system is, in the opinion of the Authority —

(i) financially safe for use by participants;

(ii) efficient; and

(iii) not materially causing or contributing to increased risk to the financial system; and

25 (b) such other matters as the Authority may consider to be relevant.

PART III

INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS

Provision of information to Authority

30 **6.—**(1) The Authority may, by notice in the form and manner prescribed, require any participant in, or any operator or settlement

institution of, a payment system to provide to the Authority, within a reasonable period specified in the notice, all such information relating to the payment system as may be required by the Authority.

5 (2) Without prejudice to the generality of subsection (1), the Authority may in a notice issued under that subsection require any participant in, or any operator or settlement institution of, a payment system to provide, whether in the form of a return to be provided on a periodic basis or otherwise —

- (a) information relating to —
 - 10 (i) the operation of the payment system; and
 - (ii) the pricing of or other form of consideration for the services offered by the payment system;
- (b) information relating to its participation or other involvement in the payment system; and
- 15 (c) such other information as the Authority may require for the purposes of this Act.

(3) Any person to whom a notice is issued under subsection (1) shall comply with the notice.

20 (4) Any person who fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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PART IV

OVERSIGHT OF DESIGNATED PAYMENT SYSTEMS

Designation of payment systems

30 **7.—**(1) The Authority may, by order published in the *Gazette*, designate a payment system as a designated payment system for the purposes of this Act, if it is satisfied that —

(a) a disruption in the operations of the payment system could trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of Singapore;

5 (b) a disruption in the operations of the payment system could affect public confidence in payment systems or the financial system of Singapore; or

(c) it is otherwise in the interests of the public to do so.

10 (2) Any order made under subsection (1) shall identify the operator and settlement institution of the designated payment system, and shall continue to have effect until it is revoked by the Authority.

Revocation of designation of payment system

15 **8.** The Authority may, by order published in the *Gazette*, revoke the designation of any designated payment system at any time if the Authority is of the opinion that the consequences in section 7(1) are no longer valid or satisfied.

Annual fees payable by designated payment system

9.—(1) Every operator of a designated payment system shall pay to the Authority such annual fees as may be prescribed and in such manner as may be specified by the Authority.

20 (2) The Authority may, where it considers appropriate, refund or remit in whole or in part any annual fee paid or payable under subsection (1).

Power to impose an access regime

25 **10.—**(1) The Authority may, by order published in the *Gazette*, impose an access regime in respect of a designated payment system on the person who determines access to the designated payment system, whether he is a participant in or an operator of the designated payment system, on such terms and conditions as the Authority may consider appropriate.

(2) In considering whether to impose an access regime under subsection (1), the Authority shall have regard to the following:

30 (a) whether the imposition of the access regime in respect of the designated payment system would be in the interests of the public;

- (b) the interests of the current participants in, and the operator and settlement institution of the designated payment system;
- (c) the interests of persons who, in the future, may desire access to the designated payment system; and
- 5 (d) such other matters as the Authority may consider to be relevant.

(3) The Authority, in imposing an access regime under subsection (1), shall ensure that the access regime is fair and not discriminatory.

Variation of access regime

10 **11.**—(1) The Authority may, by order published in the *Gazette*, vary an access regime, which has been imposed in respect of a designated payment system under section 10, on such terms and conditions as it may consider appropriate.

(2) In considering whether to vary an access regime under subsection (1), the Authority shall have regard to the following:

- 15 (a) whether variation of the access regime in respect of the designated payment system would be in the interests of the public;
- (b) the interests of the current participants in, and the operator or settlement institution of, the designated payment system;
- 20 (c) the interests of persons who, in the future, may want access to the designated payment system; and
- (d) such other matters as the Authority may consider to be relevant.

Cessation and revocation of access regime

25 **12.**—(1) An access regime in respect of a designated payment system shall cease to be in force if —

- (a) the order imposing or varying the access regime under section 10(1) or 11(1), as the case may be, provides for an expiry date and that date is reached;
- (b) the Authority revokes the access regime under subsection (2); or
- 30 (c) the payment system concerned ceases to exist or operate, or ceases to be a designated payment system.

(2) The Authority may, by order published in the *Gazette*, revoke an access regime if it considers it appropriate to do so.

(3) In considering whether to revoke an access regime under subsection (2), the Authority shall have regard to the following:

- 5 (a) whether the revocation of the access regime would be in the interests of the public;
- (b) the interests of the current participants in, and the operator or settlement institution of, the designated payment system;
- 10 (c) the interests of persons who, in the future, may want access to the designated payment system; and
- (d) such other matters as the Authority may consider to be relevant.

Right to apply to High Court

15 **13.**—(1) If a person has been denied access to a designated payment system by the person who determines access to the designated payment system, whether he is a participant in, or an operator of the designated payment system, in contravention of a condition of the access regime that has been imposed under section 10(1) or 11(1), he may apply to the High Court for an order under subsection (3).

20 (2) The applicant for an order under subsection (1) shall give to the Authority notice in writing of the application together with a copy of the application, and the Authority may apply to the High Court to be joined as a party to the proceedings.

25 (3) If the High Court is satisfied that the person who determines access to a designated payment system, whether he is a participant in or an operator of the designated payment system, has contravened a condition of the access regime, the High Court may make —

- (a) an order directing the participant or operator, as the case may be, to comply with that condition of the access regime;
- 30 (b) an order directing the participant or operator, as the case may be, to compensate any person who has suffered loss or damage as a result of the contravention; or
- (c) such other order as the High Court thinks fit.

(4) The High Court may, upon an application by any person having a sufficient interest, or on its own motion, discharge or vary any order made

under this section but no discharge or variation of any order shall be made by the High Court unless a reasonable opportunity has been given for the Authority to make representations to the High Court.

Power to impose conditions or restrictions

5 **14.**—(1) The Authority may, by notice in writing, impose on a participant in, or an operator or a settlement institution of, a designated payment system such conditions or restrictions as it thinks fit.

(2) The Authority may, at any time, by notice in writing to a participant in, or an operator or a settlement institution of, the designated payment system, vary any condition or restriction as it may think fit.

(3) Without affecting the generality of subsection (1) or (2), the conditions or restrictions that the Authority may impose include conditions or restrictions relating to —

15 (a) the activities that the operator or settlement institution of the designated payment system may undertake; and

(b) the requirement for the operator or settlement institution of the designated payment system to operate as a corporation.

(4) Any participant in, or operator or settlement institution of, a designated payment system which fails to comply with any condition or restriction imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

25 **Approval of chief executive officer and directors of operator of designated payment system**

15.—(1) No operator of a designated payment system shall appoint a person as its —

(a) chief executive officer in Singapore; or

30 (b) director in Singapore,

unless the operator has obtained the approval of the Authority.

(2) Subject to section 16, where an operator of a designated payment system has obtained the approval of the Authority to appoint a person as

its chief executive officer or director under subsection (1), the person may be re-appointed as chief executive officer or director, as the case may be, of the operator of the designated payment system immediately upon the expiry of the earlier term without the approval of the Authority.

5 (3) An application for approval under subsection (1) shall be made in such form and manner as the Authority may prescribe.

(4) Without prejudice to any other matters that the Authority may consider relevant, the Authority may, in determining whether to grant its approval under subsection (1), have regard to such criteria as the
10 Authority may prescribe or specify in directions issued by notice in writing.

(5) Subject to subsection (6), the Authority shall not refuse an application for approval under this section without giving the operator of the designated payment system an opportunity to be heard.

15 (6) The Authority may refuse an application for approval under subsection (1) on any of the following grounds without giving the operator of the designated payment system an opportunity to be heard:

(a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

20 (b) the person has been convicted, whether in Singapore or elsewhere, of an offence —

(i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

25 (ii) punishable with imprisonment for a term of 3 months or more.

(7) Where the Authority refuses an application for approval under this section, the Authority need not give the person who was proposed to be appointed an opportunity to be heard.

30 (8) The operator of a designated payment system shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer or director.

(9) Any person who contravenes subsection (1) or (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding
35 \$200,000 and, in the case of a continuing offence, to a further fine not

exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

Removal of chief executive officer and directors

16.—(1) Where the Authority is satisfied that the chief executive officer
5 or a director of an operator of a designated payment system —

- (a) has wilfully contravened or wilfully caused that operator of the designated payment system to contravene this Act;
- (b) has without reasonable justification or excuse failed to ensure compliance with this Act;
- 10 (c) has failed to discharge the duties or functions of his office or employment;
- (d) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- 15 (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation; or
- (g) has been convicted, whether in Singapore or elsewhere, of an
20 offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, by notice in writing direct that operator of the designated payment system to remove the chief executive officer or
25 director from his office or employment, and that operator shall comply with such notice notwithstanding the provisions of section 152 of the Companies Act (Cap. 50).

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority may, in determining whether the chief
30 executive officer or a director of an operator of a designated payment system has failed to discharge the duties or functions of his office or employment for the purposes of subsection (1)(c), have regard to such criteria as the Authority may prescribe or specify in directions issued by notice in writing.

(3) Subject to subsection (4), the Authority shall not direct an operator of a designated payment system to remove from office or employment the chief executive officer or a director without giving that operator an opportunity to be heard.

5 (4) The Authority may direct an operator of a designated payment system to remove the chief executive officer or a director from his office or employment under subsection (1) on any of the following grounds without giving the operator an opportunity to be heard:

10 (a) the chief executive officer or director is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the chief executive officer or director has been convicted, whether in Singapore or elsewhere, of an offence —

15 (i) involving fraud or dishonesty or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

20 (5) Where the Authority directs an operator of a designated payment system to remove from his office or employment the chief executive officer or director under subsection (1), the Authority need not give that chief executive officer or director an opportunity to be heard.

(6) Any operator that is aggrieved by a direction of the Authority under subsection (1) may, within 30 days after the operator is notified of the direction, appeal to the Minister whose decision shall be final.

25 (7) Notwithstanding the lodging of an appeal under subsection (6), any action taken by the Authority under this section shall continue to have effect pending the decision of the Minister.

30 (8) The Minister may, when deciding an appeal under subsection (6), make such modifications as he considers necessary to any action taken by the Authority under this section, and such modified action shall have effect from the date of the Minister's decision.

(9) Subject to subsection (10), no criminal or civil liability shall be incurred by —

(a) an operator of a designated payment system; or

(b) any person acting on behalf of an operator of the designated payment system,

in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of its obligations under this section.

(10) Any operator of a designated payment system which, without reasonable excuse, contravenes a written notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Control of substantial shareholding in operators of designated payment systems

17.—(1) No person shall enter into any agreement to acquire shares in an operator of a designated payment system by virtue of which he would, if the agreement had been carried out, become a substantial shareholder of the operator without first obtaining the approval of the Authority to enter into the agreement.

(2) No person shall become —

(a) a 12% controller; or

(b) a 20% controller,

of an operator of a designated payment system without first obtaining the approval of the Authority.

(3) In subsection (2) —

“12% controller” means a person, not being a 20% controller, who alone or together with his associates —

(a) holds not less than 12% of the number of shares in the operator of the designated payment system; or

(b) is in a position to control not less than 12% of the votes in the operator of the designated payment system;

“20% controller” means a person who, alone or together with his associates —

- (a) holds not less than 20% of the number of shares in the operator of the designated payment system; or
- (b) is in a position to control not less than 20% of the votes in the operator of the designated payment system.

5 (4) In this section —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7(6) to (10) of the Companies Act (Cap. 50); or

10 (ii) he otherwise has a legal or an equitable interest in that share, except such interest as is to be disregarded under section 7 (6) to (10) of the Companies Act;

(b) a reference to the control of a percentage of the votes in an operator of a designated payment system is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the operator of the designated payment system; and

(c) a person, A, is an associate of another person, B, if —

20 (i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, step-son or step-daughter or a brother or sister of B;

(ii) A is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B, or where B is a corporation, of the directors of B;

25 (iii) B is a corporation the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A, or where A is a corporation, of the directors of A;

30 (iv) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;

(v) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;

- (vi) A is a related corporation of B;
- (vii) A is a corporation in which B, alone or together with other associates of B as described in paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in A;
- 5 (viii) B is a corporation in which A, alone or together with other associates of A as described in paragraphs (ii) to (vi), is in a position to control not less than 20% of the votes in B; or
- (ix) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the operator of the designated payment system.

Approval of applications

15 **18.**—(1) The Authority may grant its approval referred to in section 17(1) or (2) subject to such conditions or restrictions as the Authority may think fit.

(2) Without prejudice to subsection (1), the Authority may, for the purposes of securing compliance with section 17(1) or (2) or any condition or restriction imposed under subsection (1), by notice in writing, direct the transfer or disposal of all or any of the shares of an operator of a designated payment system in which the substantial shareholder has an interest.

(3) Until a person to whom a direction is issued under subsection (2) transfers or disposes of the shares which are the subject of the direction, and notwithstanding anything to the contrary in the Companies Act (Cap. 50) or the memorandum or articles of association of the operator of the designated payment system —

- 30 (a) no voting rights shall be exercisable in respect of the shares which are the subject of the direction;
- (b) the operator of the designated payment system shall not offer or issue any shares (whether by way of rights, bonus, share dividend or otherwise) in respect of the shares which are the subject of the direction; and

(c) except in a liquidation of the operator of the designated payment system, the operator of the designated payment system shall not make any payment (whether by way of cash dividend, dividend in kind, or otherwise) in respect of the shares which are the subject of the direction.

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(4) Any offer or issue of shares by an operator of a designated payment system in contravention of subsection (3)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (2) shall immediately return those shares to the operator of the designated payment system, upon which the operator of the designated payment system shall return to the person any payment received from him in respect of those shares.

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(5) Any payment made by an operator of a designated payment system in contravention of subsection (3)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (2) shall immediately return the payment he has received to the operator of the designated payment system.

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(6) The Authority may exempt —

(a) any person or class of persons; or

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(b) any class or description of shares or interests in shares,

from section 17(1) or (2), subject to such conditions or restrictions as may be imposed by the Authority.

Contravention of sections 17 and 18

19.—(1) Any person who contravenes section 17(1) or (2), or any condition or restriction imposed by the Authority under section 18(1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

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(2) Any person who contravenes section 18(3)(b) or (c), (4) or (5) or any direction issued by the Authority under section 18(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

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**Obligation of operators of designated payment systems to notify
Authority of businesses and acquisition of corporations**

20.—(1) An operator of a designated payment system shall, as soon as practicable after the occurrence of any of the following circumstances,
5 notify the Authority of the circumstance:

(a) the carrying on of any business by the operator of the designated payment system other than —

(i) the business of operating a payment system;

(ii) a business incidental to operating a payment system; or

10 (iii) such business or class of businesses as the Authority may prescribe;

(b) the acquisition by the operator of the designated payment system of a substantial shareholding in a corporation which does not carry on —

15 (i) the business of operating a payment system;

(ii) a business incidental to operating a payment system; or

(iii) such business or class of businesses as the Authority may prescribe.

(2) An operator of a designated payment system shall, within 2 months after the designation of the payment system notify the Authority of its
20 substantial shareholding in a corporation which does not carry on —

(a) the business of operating a payment system;

(b) a business incidental to operating a payment system; or

25 (c) such business or class of businesses as the Authority may prescribe.

(3) Without prejudice to the generality of section 26(1), the Authority may, at any time after receiving the notification referred to under subsections (1) and (2), issue directions to the operator of the designated payment system —

30 (a) where the notification relates to a matter referred to in subsection (1)(a) —

(i) to cease carrying on the first-mentioned business referred to in subsection (1)(a); or

- 5 (ii) to carry on the first-mentioned business referred to in subsection (1)(a) on such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 26(1);
- (b) where the notification relates to a matter referred to in subsection (1)(b) or (2) —
- (i) to dispose of the shareholding referred to in subsection (1)(b) or subsection (2); or
- 10 (ii) to exercise its rights relating to such shareholding on such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 26(1),
- and the operator of the designated payment system shall comply with such directions.
- 15

(4) Any person who contravenes subsection (1), (2) or any direction issued by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

20

Obligation of operators and settlement institutions of designated payment systems to notify Authority of certain events

25 **21.—**(1) An operator or a settlement institution of a designated payment system shall, as soon as practicable after the occurrence of any of the following events, notify the Authority of the event:

- (a) an intention to make a material change to the nature of the operating rules, settlement procedures or activities of the designated payment system;
- 30 (b) an event or irregularity that affects or has affected the normal operations of the designated payment system or its settlement operations, as the case may be;
- (c) the operator or settlement institution, as the case may be, becoming, or likely to become, insolvent or unable to meet its financial, statutory, contractual or other obligations;
- 35

(d) any other event that the Authority may prescribe by regulations or specify by notice in writing to the operator or settlement institution of the designated payment system.

5 (2) Any operator or settlement institution of a designated payment system who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000.

Appointment of auditors

10 **22.**—(1) An operator and a settlement institution of a designated payment system shall appoint an auditor to audit the accounts of the operator or settlement institution, as the case may be, and where, for any reason, the auditor ceases to act for such operator or settlement institution, the operator or settlement institution shall, as soon as practicable thereafter, appoint another auditor.

15 (2) A person shall not be qualified for appointment as an auditor under subsection (1) unless he is a public accountant who is registered or deemed to be registered under the Accountants Act 2004 (Act 4 of 2004).

Additional powers of Authority in respect of auditors

20 **23.**—(1) If an auditor of an operator or a settlement institution of a designated payment system, in the course of the performance of his duties, becomes aware of —

- (a) any matter which, in his opinion, adversely affects or may adversely affect the financial position of the operator or settlement institution, as the case may be, to a material extent;
- 25 (b) any matter which, in his opinion, constitutes or may constitute a breach of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts of the operator or settlement institution, including any irregularity that affects or jeopardises, or may affect or
- 30 jeopardise, the interests of the participants of the designated payment system,

the auditor shall immediately send to the Authority a written report of the matter or the irregularity.

(2) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in his report under subsection (1).

(3) Subsection (2) shall not restrict or affect any right, privilege or immunity that the auditor may have, apart from this section, as a defendant in an action for defamation.

(4) The Authority may impose all or any of the following duties on an auditor of an operator or a settlement institution of a designated payment system:

(a) a duty to submit to the Authority such additional information and reports in relation to his audit as the Authority considers necessary;

(b) a duty to enlarge, extend or alter the scope of his audit of the business and affairs of the operator or settlement institution of the designated payment system, as the case may be;

(c) a duty to carry out any other examination or establish any procedure in any particular case;

(d) a duty to submit to the Authority a report on any matter arising out of his audit, examination or establishment referred to in paragraph (b) or (c),

and the auditor shall carry out such duties.

(5) The operator or settlement institution of the designated payment system shall remunerate the auditor in respect of the discharge by him of such duties as the Authority may impose under subsection (4).

(6) Any auditor of an operator or a settlement institution of a designated payment system who contravenes subsection (1) or fails to comply with any duty imposed under subsection (4) shall be guilty of an offence.

Inspection by Authority

24.—(1) The Authority may inspect, under conditions of secrecy, the books of an operator or a settlement institution of a designated payment system.

(2) For the purposes of an inspection under this section —

(a) an operator or a settlement institution of a designated payment system or any person in possession of the books, shall produce

such books, accounts to the Authority and give such information and facilities as may be required by the Authority; and

(b) an operator or a settlement institution of a designated payment system shall procure that any person who is in possession of the books referred to in paragraph (a) produce such books to the Authority and give such information and facilities as may be required by the Authority.

(3) Nothing in subsection (2) shall require the production of any of the books of an operator or a settlement institution of a designated payment system at such times or at such places as would unduly interfere with the conduct of the normal daily operations of the designated payment system.

(4) The Authority may —

(a) make copies of, or take possession of, any of the books;

(b) use, or permit the use of, any of the books for the purposes of any proceedings under this Act; and

(c) retain possession of any of the books for so long as is necessary —

(i) for the purposes of exercising a power conferred by this section (other than subsection (7));

(ii) for a decision to be made about whether or not any proceedings under this Act to which the books concerned would be relevant should be instituted; or

(iii) for such proceedings to be instituted and carried on.

(5) No person shall be entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(6) While the books are in the possession of the Authority, the Authority —

(a) shall permit another person to inspect at all reasonable times such of the books (if any) as the other person would be entitled to inspect if they were not in the Authority's possession; and

(b) may permit another person to inspect any of the books.

(7) The Authority may require a person who produced any of the books to the Authority to explain to the best of his knowledge and belief any matter about the compilation of the books or to which the books relate.

(8) Any person who fails, without reasonable excuse, to comply with subsection (2) or with a requirement of the Authority under subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further
 5 fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Emergency powers of the Authority

25.—(1) Where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the
 10 public or a section of the public, the Authority may direct, by notice in writing, an operator or a settlement institution of a designated payment system to take such action as it considers necessary to maintain or restore safe and efficient operations of the designated system.

(2) Without prejudice to the generality of subsection (1), the actions
 15 which the Authority may direct an operator or a settlement institution of a designated payment system to take include modifying or suspending any of the rules of the designated payment system.

(3) Where an operator or a settlement institution of a designated payment system fails to comply with a direction of the Authority under
 20 subsection (1) within such time as is specified by the Authority, the Authority may —

- (a) appoint a person to advise the operator or settlement institution in the proper conduct of its operations;
- (b) assume control of and carry on the operations of the operator or
 25 settlement institution (or both) or direct some other person to do so on behalf of the Authority;
- (c) present a petition to the High Court for the winding up or bankruptcy, as the case may be, of the operator or settlement institution;
- (d) require the operator to cease operation of the designated payment
 30 system; or
- (e) take such other action as the Authority thinks fit to maintain or restore safe and efficient operations of the designated payment system.

35 (4) In this section, “emergency” means —

- (a) any situation which prevents a designated payment system from carrying out its functions;
- (b) any situation in which, in the opinion of the Authority, a designated payment system is carrying on its operations in a manner likely to be detrimental to the interests of its participants;
5 or
- (c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

10 (5) The Authority may, upon representation made to it or on its own motion, modify or cancel any action taken by it under subsection (1), and in so modifying or canceling any action, the Authority may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

15 (6) Where the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (3)(b), the Authority shall remain in control of, and continue to carry on, the operations in the name of the operator or settlement institution, as the case may be, and on its behalf until such time as the Authority is satisfied that the reasons for which it assumed control
20 have ceased to exist or that it is no longer necessary that the Authority should remain in control.

25 (7) Where the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (3)(b) or ceased to control the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (6), the Authority shall notify that fact in the *Gazette*.

30 (8) Where the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system pursuant to subsection (3)(b), the operator or settlement institution shall submit its operations to the control of the Authority and shall provide the Authority with such facilities as the Authority may require to carry on its operations.

35 (9) Any operator or settlement institution which fails to comply with a direction issued under subsection (1), or with subsection (8) or with any requirement of the Authority under that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000

and, in the case of a continuing offence, to a further fine of \$15,000 for every day or part thereof during which the offence continues after conviction.

5 (10) The Authority may at any time (whether or not the appointment of the person has terminated) fix the remuneration and expenses to be paid by the operator or settlement institution of the designated payment system to any person appointed by the Authority under subsection (3)(a) to advise the operator or settlement institution in the proper conduct of its operations.

10 (11) Where, under subsection (3)(b), the Authority has assumed control of the operations of an operator or a settlement institution of a designated payment system or directed some other person to do so, the Authority may, at any time, whether or not the Authority or that other person has ceased to be in control of the operations of the operator or settlement
15 institution, fix the remuneration and expenses to be paid by the operator or settlement institution to the Authority and to any person employed or authorised by it to assist the Authority in the control of, and the carrying on of the operations of the operator or settlement institution, as the case may be.

20 **Power of Authority to issue directions to participant, operator or settlement institution**

26.—(1) The Authority may, if it thinks —

- (a) it is necessary or expedient for ensuring the integrity of, and proper management of a designated payment system; or
- 25 (b) it is otherwise in the interests of the public or a section of the public,

issue directions by notice in writing either of a general or specific nature to —

- (i) any participant or class of participants in;
- 30 (ii) any operator of; or
- (iii) any settlement institution of,

a designated payment system, and that person or class of persons shall comply with such directions.

(2) Without prejudice to the generality of subsection (1), any direction issued under subsection (1) may be with respect to —

- 5 (a) the appropriate actions to be taken by the participant or class of participants, or the operator or settlement institution, in relation to its business;
- (b) the appointment of a person approved by the Authority to advise the participant or class of participants, or the operator or settlement institution, on the proper conduct of its business;
- 10 (c) the conditions that will apply if any function of the operator or settlement institution is outsourced; and
- (d) such other matters as the Authority may consider necessary or expedient or in the interests of the public or a section of the public.

15 (3) Any person who fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

PART V

20 STORED VALUE FACILITIES

Provision of information to Authority

25 **27.**—(1) The Authority may, by notice in the form and manner prescribed, require any holder of the stored value in respect of a stored value facility to provide to the Authority, within a reasonable period specified in the notice, all such information relating to the stored value facility as may be required by the Authority.

(2) Without prejudice to the generality of subsection (1), the Authority may in a notice issued under that subsection, require any holder of the stored value to provide, whether in the form of a return to be provided on
30 a periodic basis or otherwise —

- (a) information relating to the operation of the stored value facility;
- (b) information relating to the amount of money received for the stored value facility;

(c) information relating to the number of users of the stored value facility; and

(d) such other information as the Authority may require for the purposes of this Act.

5 (3) Any holder of the stored value to whom a notice is issued under subsection (1) shall comply with the notice.

(4) Any holder of the stored value who fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both and, in a case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Authority to approve certain stored value facilities

15 **28.**—(1) No person shall be the holder of the stored value in respect of a stored value facility in excess of \$30 million, unless the Authority has approved that stored value facility as a widely accepted stored value facility under section 29.

(2) The Authority may by order published in the *Gazette* vary the stored value referred to in subsection (1).

20 (3) Where any person is the holder of more than one stored value facility, the stored value held by that person for the purposes of subsection (1) shall be the aggregate amount of the stored values of all the stored value facilities held by that person.

25 (4) For the purposes of subsection (1), where any holder of the stored value in respect of any stored value facility is under the control or influence of, or financially interdependent on, any other person, that other person is deemed to be a holder of the stored value in respect of all the stored value facilities held by the first-mentioned holder of the stored value.

30 (5) The Authority may prescribe the circumstances in which a holder of the stored value in respect of a stored value facility shall be deemed to be under the control or influence of, or financially interdependent on any person for the purposes of subsection (4).

35 (6) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000

and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Approval of widely accepted stored value facility

5 **29.**—(1) A bank in Singapore may, in such form and manner as the Authority may prescribe, apply to the Authority for approval for a stored value facility to be a widely accepted stored value facility.

10 (2) The Authority may require the applicant to provide the Authority with such further information as it considers necessary in relation to the application, in such form and manner as the Authority may direct.

15 (3) The Authority may, subject to such conditions or restrictions as it may think fit to impose, approve a stored value facility as a widely accepted stored value facility if the bank applying to the Authority for approval under subsection (1) undertakes to be fully liable for the stored value in respect of that stored value facility in such manner as the Authority may require.

(4) The Authority may impose different conditions or restrictions, or give different directions, with respect to different applications for approval to be a widely accepted stored value facility.

20 (5) The Authority shall, from time to time, prepare and publish in the *Gazette* a list of all the widely accepted stored value facilities and their dates of approval.

(6) The Authority may, at any time, by notice in writing to the relevant bank —

25 (a) impose additional conditions or restrictions; or

(b) vary or revoke any condition or restriction previously imposed.

30 (7) Any relevant bank which contravenes any of the conditions or restrictions imposed under subsection (3) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

Revocation of approval

30.—(1) The Authority may, by order published in the *Gazette*, revoke any approval granted under section 29 if the Authority is satisfied that —

- 5 (a) the relevant bank has ceased, or is likely to cease, to be fully liable to the users of the widely accepted stored value facility;
- (b) the relevant bank has contravened any condition or restriction imposed by the Authority;
- (c) the relevant bank applies to the Authority for revocation of the approval; or
- 10 (d) the Authority considers it appropriate to do so.

(2) The Authority shall not revoke any approval under subsection (1)(a), (b) or (d) without giving the relevant bank an opportunity to be heard.

(3) A relevant bank that is aggrieved by the decision of the Authority to revoke the approval under subsection (1)(a), (b) or (d) may, within 30 days after being notified of the decision, appeal in writing to the Minister whose decision is final.

(4) The Authority may, in an order published under subsection (1) revoking the approval for a stored value facility to be a widely accepted stored value facility, specify any conditions relating to the stored value facility and the period for compliance with such conditions.

(5) The Authority shall give notice in writing of any revocation of approval under this section to the holder of the stored value in respect of a widely accepted stored value facility for which approval is revoked.

(6) Any revocation of approval under this section shall not operate so as to —

- 25 (a) avoid or affect any agreement, transaction or arrangement entered into by the holder of the stored value in respect of the widely accepted stored value facility for which approval is revoked, whether the agreement, transaction or arrangement was entered into before or after the revocation of the approval;
- 30 (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement; or
- (c) render any person guilty of an offence under section 28 if the conditions specified under subsection (4) are satisfied in respect

of the stored value facility within the period for compliance specified in the order published under subsection (1), or within such further period as the Authority may in writing notify the holder of the stored value in respect of that stored value facility.

5 **Power of Authority to issue directions to relevant bank**

31.—(1) The Authority may issue directions by notice in writing, either of a general or specific nature, to a relevant bank in relation to a widely accepted stored value facility if it thinks it is necessary or expedient for ensuring the integrity of the widely accepted stored value facility.

10 (2) Without prejudice to the generality of subsection (1), a direction issued under that subsection may relate to the obligations of the relevant bank to the users of a widely accepted stored value facility.

(3) Any relevant bank to which a direction is issued under this section shall comply with the direction.

15 (4) Any relevant bank that fails to comply with a direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

20 **Section 14 of Currency Act not to apply to certain stored value facilities**

32. Section 14 of the Currency Act (Cap. 69) shall not apply to the issue of a stored value facility, other than a single purpose stored value facility.

PART VI

25 ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

33. In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal or administrative proceedings;

30 “enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the payment systems or

stored value facilities of the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

5 “investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the payment systems or stored value facilities of the foreign country of the regulatory authority concerned;

10 “material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

15 “regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

20 “supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of an operator, settlement institution, or participant of a designated payment system, or any other person regulated by the regulatory authority.

Conditions for provision of assistance

34.—(1) The Authority may provide the assistance referred to in section 36 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- 25 (a) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;
- 30 (b) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (c) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (d)) any material

received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;

- 5 (d) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;
- 10 (e) the material requested for is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
- (f) the matter to which the request relates is of sufficient gravity; and
- 15 (g) the rendering of assistance will not be contrary to the public interest.

(2) For the purposes of subsection (1)(c) and (d), “designated third party”, in relation to a foreign country, means —

- 20 (a) any person or body responsible for supervising the regulatory authority in question;
- (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
- (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

25 **Other factors to consider for provision of assistance**

35. In deciding whether to grant a request for assistance referred to in section 36 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

- 30 (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;
- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request

by the Authority to the regulatory authority for similar assistance; and

- 5 (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested for.

Assistance that may be rendered

10 **36.**—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- 15 (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- 20 (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- 25 (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

30 (2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law or

any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section shall compel an advocate and solicitor —

(a) to furnish or transmit any material or copy thereof that contains;
5 or

(b) to disclose,

a privileged communication made by or to him in that capacity.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged
10 communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement
15 might tend to incriminate him.

Offences under this Part

37. Any person who —

(a) without reasonable excuse refuses or fails to comply with an order under section 36(1)(b), (c) or (d);

20 (b) in purported compliance with an order under section 36(1)(b) or (c), furnishes to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or

25 (c) in purported compliance with an order made under section 36(1)(d), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Immunities

38.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 37, shall lie against any person for —

- 5 (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 36(1) (b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 36(1) (d); or
- 10 (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.
- (2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract
15 or any rule of professional conduct.

PART VII

MISCELLANEOUS

Duty not to provide false or misleading information

20 **39.**—(1) Any person who provides the Authority with any information under this Act which is false or misleading in any material particular shall be guilty of an offence unless he has exercised due care to ensure that the information is not false or misleading in any material particular.

25 (2) Subsection (1) shall apply only to a requirement in relation to which no other provision of this Act creates an offence in connection with the provision of information.

(3) Any person who signs any document provided to the Authority which is false or misleading in any material particular shall be guilty of an offence unless he has exercised due care to ensure that the document is not false or misleading in any material particular.

30 (4) Any person who is guilty of an offence under subsection (1) or (3) shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or both.

Duty not to disclose or misuse information

5 **40.**—(1) Subject to Part VI, no person who is or has been a member, an officer, an employee or an agent of the Authority shall disclose any information relating to the affairs of the Authority or of any other person which has been obtained by him in the performance of his duties or the exercise of his functions under this Act unless such disclosure is made —

10 (a) with the permission of the person from whom the information was obtained or, where the information is the confidential information of a third person, with the permission of that third person;

(b) for the purpose of the administration or enforcement of this Act or any written law administered and enforced by the Authority;

(c) in compliance with the requirement of any court or the provisions of any written law;

15 (d) for the purpose of assisting any public officer or officer of any other statutory board in the investigation or prosecution of any offence under any written law; or

(e) where it is in the interests of the public or a section of the public to do so.

20 (2) No person who is or has been a member, an officer, an employee or an agent of the Authority shall, for his own personal benefit or for the personal benefit of any other person, make use of any information, whether directly or indirectly, which has been obtained by him in the performance of his duties or the exercise of his functions.

25 (3) For the purpose of this section, the reference to a person disclosing or making use of any information includes his permitting any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been a member, an officer, an employee or an agent of the Authority or a member of a committee of the Authority.

30 (4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

35 (5) The provisions of this section are in addition to, and not in derogation of, any provision in any written law administered and enforced

by the Authority that regulates or restricts the disclosure of information by any member, officer, employee, agent or member of a committee of the Authority.

(6) Nothing in this section shall prevent the Authority from preparing and publishing —

(a) consolidated statements aggregating any information provided under this Act; or

(b) for statistical purposes, statements that relate to or are derived from any information provided under this Act in respect of a payment system or a stored value facility, being the only such payment system or stored value facility in its class.

Jurisdiction of District Court

41. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence.

Composition of offences

42.—(1) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the maximum fine prescribed for that offence.

(2) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.

(3) The Authority may make regulations to prescribe the offences which may be compounded.

(4) All sums collected under this section shall be paid to the Authority.

Offences by officers

43.—(1) Any person, being an officer of —

(a) a participant in, an operator or a settlement institution of, a payment system; or

(b) a holder of the stored value in respect of a widely accepted stored value facility,

who fails to take all reasonable steps to secure —

- (i) compliance by the participant, operator, settlement institution or holder of the stored value, as the case may be, with any provision of this Act; or
- 5 (ii) the accuracy and correctness of any information provided by the participant, operator, settlement institution or holder of the stored value, as the case may be, to the Authority under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years
10 or to both.

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the defendant to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring
15 that the information was accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the court trying the offence, he committed the offence wilfully.

20 **General penalty**

44. Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$50,000.

General exemption

25 **45.** The Authority may by regulations, either permanently or for such period as it may think fit, exempt any person or class of persons, any payment system or class of payment systems, any stored value facility or class of stored value facilities, from all or any of the provisions of this Act subject to such conditions or restrictions as may be prescribed.

30 **Opportunity to be heard**

46. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person shall be given an opportunity to be heard.

Directions and notices not subsidiary legislation

47. Any direction or notice in writing given by the Authority under this Act shall be deemed not to be subsidiary legislation.

Regulations

- 5 **48.**—(1) The Authority may make such regulations for —
- (a) carrying out the purposes and provisions of this Act;
 - (b) all matters necessary and expedient to ensure that the relevant bank is fully liable to users of a widely accepted stored value facility; and
 - 10 (c) prescribing all matters or things which are required or permitted to be prescribed by this Act, or which may be necessary or expedient to be prescribed to give effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the Authority may make regulations in the case of a designated payment system, for or
- 15 with respect to —
- (a) any imposition, variation or revocation of an access regime, and such transitional or savings provisions as the Authority may consider necessary or expedient;
 - (b) the standards to be maintained by a participant, or an operator or
 - 20 a settlement institution;
 - (c) the responsibilities and duties of the chief executive officer and directors of an operator;
 - (d) the preparation and publication of reports on the performance of the designated payment system;
 - 25 (e) the acquisition or holding of shares or any other interest in an operator;
 - (f) the acquisition or holding of shares or any other interest by an operator in any other person;
 - (g) different requirements for the audit of accounts in relation to
 - 30 different designated payment systems;
 - (h) the responsibilities of an operator or a settlement institution relating to the audit of its accounts;

- (i) the responsibilities of the auditor for the accounts of an operator or a settlement institution; and
- (j) procedures applicable in the event of a default in payment obligations, including the suspension and readmission of participants.
- 5
- (3) Except as otherwise expressly provided in this Act, the regulations —
- (a) may be of general or specific application;
- (b) may provide that any contravention of any specified provision thereof shall be an offence; and
- 10
- (c) may provide for penalties not exceeding a fine of \$150,000 or imprisonment for a term not exceeding 12 months or both for each offence, and in the case of a continuing offence, a further penalty not exceeding a fine of 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.
- 15

Repeal of sections 59(2) to (5) and 77A of Banking Act

49. Subsections (2) to (5) of section 59 and section 77A of the Banking Act (Cap. 19) are repealed.

20 **Transitional, savings and consequential provisions**

50. The Authority may, by regulations, prescribe such transitional, savings and other consequential provisions as it may consider necessary or expedient within 2 years of the date of commencement of this Act.

EXPLANATORY STATEMENT

This Bill seeks to provide for the oversight of payment systems and stored value facilities, and for matters connected therewith.

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 provides that Parts III and IV of the Bill do not apply to the Monetary Authority of Singapore (the Authority) in its capacity as a participant in, or an operator or a settlement institution, of any payment system.

PART II

POWERS OF THE AUTHORITY

Clause 4 sets out the powers of the Authority in relation to the oversight of payment systems and stored value facilities.

Clause 5 provides that the Authority must have regard to public interests when exercising its powers in relation to payment systems.

PART III

INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS

Clause 6 empowers the Authority to issue notices to participants in, or operators or settlement institutions of payment systems, requiring them to furnish to the Authority information relating to the payment systems and their participants.

PART IV

OVERSIGHT OF DESIGNATED PAYMENT SYSTEMS

Clause 7 empowers the Authority to designate a payment system as a designated payment system. The clause also sets out the considerations that the Authority would take into account in deciding whether to designate a payment system as a designated payment system.

Clause 8 empowers the Authority to revoke the designation of a designated payment system when the considerations for designating a payment system as a designated payment system are no longer valid or satisfied.

Clause 9 empowers the Authority to impose annual fees on an operator of a designated payment system.

Clause 10 empowers the Authority to impose an access regime in respect of a designated payment system on the person who determines access to the designated payment system, whether he is a participant in or an operator of the designated payment system. The clause also sets out the considerations that the Authority would take into account in deciding whether to impose an access regime.

Clause 11 empowers the Authority to vary an access regime. The clause also sets out the considerations that the Authority would take into account in deciding whether to vary an access regime.

Clause 12 specifies when an access regime ceases to be in force. The clause also empowers the Authority to revoke an access regime in specified circumstances.

Clause 13 confers a right on a person who has been denied access to a designated payment system to apply to the High Court for an order. The orders that the High Court may make are specified in the clause.

Clause 14 empowers the Authority to impose conditions or restrictions on an operator, settlement institution or participants of a designated payment system.

Clause 15 provides that the approval of the Authority is required for appointments to the positions of chief executive officer and director of an operator of a designated payment system.

Clause 16 empowers the Authority to direct the removal of the chief executive officer or a director of an operator of a designated payment system under certain circumstances.

Clause 17 provides that a person shall obtain the approval of the Authority before acquiring a substantial shareholding in an operator of a designated payment system or becoming a 12% or 20% controller of an operator of a designated payment system.

Clause 18 provides for the grant of approval by the Authority of the matters referred to in clause 17.

Clause 19 provides that a contravention of clause 17(1) or (2), or any condition or restriction under clause 18(1), is an offence.

Clause 20 sets out the notification obligations imposed on operators of designated payment systems in relation to the carrying on of or investing in any business other than the business of operating a payment system, any business that is incidental to the operation of a payment system or a prescribed business. The clause also empowers the Authority to direct operators of designated payment systems to cease carrying on such business or to dispose of the investment in such business.

Clause 21 imposes an obligation on operators and settlement institutions of designated payment systems to notify the Authority of certain events.

Clause 22 imposes an obligation on operators and settlement institutions of designated payment systems to appoint auditors. The clause also sets out the qualifications of an auditor.

Clause 23 imposes certain duties on an auditor of an operator or a settlement institution of a designated payment system.

Clause 24 empowers the Authority to inspect, under conditions of secrecy, the books of an operator or a settlement institution of a designated payment system.

Clause 25 provides for the powers of the Authority to take emergency action when necessary in an emergency.

Clause 26 empowers the Authority to issue directions to participants in, and operators and settlement institutions of, designated payment systems.

PART V

STORED VALUE FACILITIES

Clause 27 empowers the Authority to issue notices to holders of the stored value in respect of stored value facilities, requiring them to furnish to the Authority information relating to the stored value facilities.

Clause 28 prohibits any person from being the holder of the stored value in respect of a stored value facility where the amount of the stored value exceeds \$30 million unless the stored value facility has been approved as a widely accepted stored value facility by the Authority.

Clause 29 provides that a bank in Singapore may apply to the Authority for approval for a stored value facility to be a widely accepted stored value facility.

Clause 30 empowers the Authority to revoke any approval of a widely accepted stored value facility under certain circumstances. The clause also provides that the Authority must not revoke any approval without giving the relevant bank in respect of the widely accepted stored value facility concerned an opportunity to be heard. The clause further provides that an aggrieved relevant bank may within 30 days after it is notified of the Authority's decision appeal to the Minister whose decision is final.

Clause 31 empowers the Authority to issue directions to a relevant bank in relation to a widely accepted stored value facility.

Clause 32 provides that section 14 of the Currency Act (Cap. 69) shall not apply to the issue of certain types of stored value facilities.

PART VI

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Clause 33 defines the terms used in Part X.

Clause 34 sets out the conditions that must be fulfilled before assistance may be rendered under that Part. For example, the assistance must be intended for one of several specified purposes, the requesting authority must undertake not to disclose any acquired information to any person except to a designated third party with the prior consent of the Authority and in accordance with conditions imposed by the Authority, and the matter to which the request relates must be of sufficient gravity.

Clause 35 provides that in considering whether to grant the request, the Authority may also consider —

- (a) whether it would be an offence under the Act if the act or omission were committed in Singapore; and
- (b) whether the requesting authority is willing to extend similar assistance to the Authority and to contribute towards the cost of assistance.

Clause 36 lays down the heads of assistance that may be rendered. These include the transmission of material in the Authority's possession to the requesting authority and

the ordering of a person to furnish material or an oral statement to the Authority for onward transmission to the requesting authority or to furnish material directly to the requesting authority.

Clause 37 makes the doing of certain acts offences, namely, the non-compliance with an order made under clause 36(1) (b), (c) or (d), and the production to the Authority or transmission to the regulatory authority of material or a copy of material, or the making to the Authority of an oral statement, that contains anything that is false or misleading in a material particular.

Clause 38 provides certain immunities to a person who complies with an order made under clause 36(1) (b), (c) or (d).

PART VII

MISCELLANEOUS

Clause 39 imposes a duty on any person not to provide the Authority with information or document which is false or misleading in any material particular.

Clause 40 imposes a duty on members, officers, employees or agents of the Authority not to disclose or misuse any information obtained by them in the performance of their duties or the exercise of their functions.

Clause 41 provides that, notwithstanding any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court will have jurisdiction to try any offence under the Bill and may impose the full penalty or punishment in respect of the offence.

Clause 42 empowers the Authority to compound any offence under the Bill.

Clause 43 provides that any person being an officer of a participant in, an operator or a settlement institution of a payment system, or a holder of the stored value in respect of a widely accepted stored value facility, will be guilty of an offence if he fails to take reasonable steps to secure compliance by the participant, operator, settlement institution or holder of the stored value, as the case may be, with any provision of the Bill, or the accuracy or correctness of any information provided by the participant, operator, settlement institution or holder of the stored value, as the case may be, to the Authority under the Bill.

Clause 44 provides that where a person commits an offence under the Bill for which no penalty is expressly provided, the punishment on conviction will be a fine not exceeding \$50,000.

Clause 45 provides for a general power of exemption exercisable by the Authority.

Clause 46 provides that where any affected person is given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the affected person will be given the hearing.

Clause 47 provides that any direction or notice in writing given by the Authority under the Bill is deemed not to be subsidiary legislation.

Clause 48 empowers the Authority to make regulations either generally or for certain specified purposes.

Clause 49 repeals sections 59(2) to (5) and 77A of the Banking Act (Cap. 19).

Clause 50 is a provision enabling transitional, savings and consequential provisions to be made by subsidiary legislation.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE OF DERIVATIONS

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
PRELIMINARY	PART I			
Short title and commencement	1			
Interpretation	2(1)			
	definition of “access”	7 (modified)	—	—
	definition of “access regime”	7	—	—
	definition of “bank in Singapore”	—	—	Section 2(1) of the Banking Act (Cap. 19)
	definition of “book”	—	2(1)	—
	definition of “chief executive officer”	—	—	Section 56(8) of the Financial Advisers Act (Cap. 110) Section 32ZJ (10) of the Insurance Act (Cap. 142) Section 86(10) of Business Trusts Act 2004
	definition of “payment system”	7 (modified)	—	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
	definition of “settlement institution”	—	—	Section 2 of the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231)
Parts III and IV not to apply to Authority	3	—	—	—
POWERS OF THE AUTHORITY	PART II			
Authority to exercise oversight over payment systems and stored value facilities	4	—	—	—
Authority to have regard to public interests	5	8 (modified)	—	—
INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS	PART III			
Provision of information to Authority	6	26 (modified)	—	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
OVERSIGHT OF DESIGNATED PAYMENT SYSTEMS	PART IV			
Designation of payment systems	7	8 (modified)	55 (1) (modified)	Section 3 of the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231)
Revocation of designation	8	—	58 (modified)	—
Annual fees payable by designated payment system	9	—	69	—
Power to impose an access regime	10	12 (modified)	—	—
Variation of access regime	11	14 (modified)	—	—
Cessation and revocation of access regime	12	15 (modified)	—	—
Right to apply to High Court	13	—	—	—
Power to impose conditions or restrictions	14	—	78 (modified)	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
Approval of chief executive officer and directors of operator of designated payment system	15(1)	—	96 (1)	—
	(2)	—	96 (1A)	—
	(3)	—	76 (3)	—
	(4)	—	76 (4)	Section 31(5) of the Insurance Act (Cap. 142)
	(5)	—	76 (5)	—
	(6)	—	96 (4) and 76 (6)	—
	(7)	—	96 (5) and 76 (7)	—
	(8)	—	76 (5)	—
	(9)	—	76 (12)	—
Removal of chief executive officer and directors	16	—	81A	—
Control of substantial shareholding in operators of designated payment systems	17	—	75 (1) to (4)	Section 15B of the Banking Act (Cap. 19) (modified) Section 36 of the Broadcasting Act (Cap. 28) (modified)
Approval of applications	18	—	75 (5) to (10)	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
Contravention of sections 17 and 18	19	—	75 (11) and (12)	—
Obligation of operators of designated payment systems to notify Authority of businesses and acquisition of corporations	20 (1) to (3)	—	60	—
	(4)	—	70	—
Obligation of operators and settlement institutions of designated payment systems to notify Authority of certain events	21	—	—	—
Appointment of auditors	22	—	106	—
Additional powers of Authority in respect of auditors	23	—	81B	—
Inspection by Authority	24	—	150 (modified)	Section 40 of the Insurance Act (Cap. 142)
Emergency powers of the Authority	25	—	81 (modified)	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
Power of Authority to issue directions to participant, operator or settlement institution	26	—	79	—
STORED VALUE FACILITIES	PART V			
Provisions of information to Authority	27	—	—	—
Authority to approve certain stored value facilities	28	—	—	—
Approval of widely accepted stored value facility	29 (5)	—	—	Section 30(1) of the Medical Registration Act (modified)
Revocation of approval	30	—	—	—
Power of Authority to issue directions to relevant bank	31	—	—	—
Section 14 of Currency Act not to apply to certain stored value facilities	32	—	—	—

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES	PART VI			
Interpretation of this Part	33	—	169	—
Conditions for provision of assistance	34	—	170	—
Other factors to consider for provision of assistance	35	—	171	—
Assistance that may be rendered	36	—	172	—
Offences under this Part	37	—	173	—
Immunities	38	—	174	—
MISCELLANEOUS	PART VII			
Duty not to provide false or misleading information	39	—	329 (modified)	Section 107 of the Business Trusts Act 2004
Duty not to disclose or misuse information	40	—	—	Section 34 of the Accounting and Corporate Regulatory Authority Act 2004

Payment Systems (Oversight) Act 2005		Derivations		
Section Heading	Clause	Australia Payment Systems (Regulation) Act 1998	Securities and Futures Act (Cap. 289) as amended by Securities and Futures (Amendment No. 2) Bill 2004	Others
		Section		
Jurisdiction of District Court	41	—	—	—
Composition of offences	42	—	336 (2) (modified)	—
Offences by officers	43	—	332	—
General penalty	44	—	335	—
General exemption	45	—	—	—
Opportunity to be heard	46	—	—	Section 96 of the Business Trusts Act 2004
Directions and notices not subsidiary legislation	47	—	—	—
Regulations	48	—	—	—
Repeal of sections 59(2) to (5) and 77A of Banking Act	49	—	—	—
Transitional, savings and consequential provisions	50	—	—	—