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Monetary Authority of Singapore (Amendment) Bill

Bill No. /2014.

Read the first time on

2014.

A BILL

i n t i t u l e d

An Act to amend the Monetary Authority of Singapore Act
(Chapter 186 of the 1999 Revised Edition).

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

Short title and commencement

1. This Act may be cited as the Monetary Authority of Singapore (Amendment) Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 27A**

2. Section 27A(6) of the Monetary Authority of Singapore Act (referred to in this Act as the principal Act) is amended —

(a) by deleting the word “and” at the end of paragraph (ka); and

10 (b) by inserting, immediately after paragraph (ka), the following paragraph:

“(kb) any designated financial holding company under the Financial Holding Companies Act 2013 (Act 13 of 2013); and”.

Amendment of section 27B

15 3. Section 27B of the principal Act is amended —

(a) by inserting, immediately after subsection (1), the following subsections:

20 “(1A) Without prejudice to the generality of subsection (1), the regulations and directions under that subsection may provide for —

(a) customer due diligence measures to be conducted by financial institutions to detect or prevent money laundering and the financing of terrorism; and

25 (b) the records to be kept for that purpose.

(1B) A financial institution shall —

30 (a) conduct such customer due diligence measures as may be prescribed by the regulations referred to in subsection (1A) that are applicable to it, or as may be specified by the directions referred to in that subsection that are issued to it; and

5 (b) maintain records on transactions and information obtained through the conduct of those measures for such period and in such manner as may be prescribed by the regulations referred to in subsection (1A) that are applicable to it, or as may be specified by the directions referred to in that subsection that are issued to it.”;

(b) by deleting subsection (2) and substituting the following subsection:

10 “(2) Any financial institution which —

(a) fails to comply with a direction issued to it under subsection (1);

(b) contravenes any regulation made under subsection (1); or

15 (c) contravenes subsection (1B),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.”; and

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(c) by deleting the section heading and substituting the following section heading:

“Requirements for prevention and detection of money laundering and financing of terrorism”.

25 **New Part VC**

4. The principal Act is amended by inserting, immediately after section 30W, the following Part:

“PART VC

ASSISTANCE TO FOREIGN AUTHORITIES AND
DOMESTIC AUTHORITIES FOR THEIR SUPERVISORY
AND OTHER ACTIONS IN RESPECT OF MONEY
LAUNDERING, FINANCING OF TERRORISM, AND
OTHER OFFENCES

Division 1 — Preliminary Provisions

Interpretation of this Part

30X. In this Part, unless the context otherwise requires —

“agent” means an insurance agent in respect of policies which relate to general business within the meaning of section 2(1)(b) of the Insurance Act (Cap. 142);

“applicable offence” means a drug trafficking offence or a serious offence within the meaning of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A);

“chief executive”, in relation to a financial institution, means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the financial institution; and

(b) is principally responsible for the management and conduct of the business of the financial institution;

“corresponding authority” means a public authority of a foreign country which exercises a function that corresponds to a regulatory function of the Authority under any prescribed written law;

“counterpart authority” means a public authority in a foreign country which is responsible for the supervision of foreign financial institutions in that country;

“director”, in relation to a financial institution, includes —

- (a) any person, by whatever name described, occupying the position of a director of the financial institution;
- 5 (b) a person in accordance with whose directions or instructions the directors of the financial institution are accustomed to act; and
- (c) an alternate director, or a substitute director, of the financial institution;

10 “domestic authority” means an organ of state or a ministry or department of the Government, or a statutory body (other than the Authority) established by or under a public Act for a public purpose;

15 “employee” includes an individual seconded or temporarily transferred from another employer;

20 “enforcement action” means any criminal or civil action taken by a domestic authority against a person for an applicable offence, including the restraining of dealing with, or the seizure or confiscation of, any property in connection with an applicable offence;

“executive officer”, in relation to a financial institution, means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the financial institution; and
- 25 (b) is concerned with or takes part in the management of the financial institution on a day-to-day basis;

“financial institution” has the same meaning as in section 27A(6) read with section 27A(7);

30 “foreign country” means any country, or territory, other than Singapore;

“foreign financial institution” means an institution in a foreign country that is licensed, approved, registered or otherwise regulated under any law administered by a

corresponding authority in that country to carry on any financial activities, or that is exempted from such licensing, approval, registration or regulation for the carrying on of those financial activities;

5 “investigation”, in relation to a domestic authority, means an investigation by that authority to determine if a specified person has committed or is committing an applicable offence;

10 “information” includes any information, book, document or other record in any form whatsoever (including an electronic form), as well as any container or article containing any information or record;

“insurance agent” has the same meaning as in section 1A of the Insurance Act;

15 “ML – prevention or TF – prevention requirement” —

(a) in relation to a foreign country, means a law or regulatory requirement of that country for the detection or prevention of money laundering or the financing of terrorism;

20 (b) in relation to Singapore, means a written law or a regulatory requirement imposed under a written law, for the detection or prevention of money laundering or the financing of terrorism;

25 “office holder”, in relation to a financial institution, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the financial institution, or acting in an equivalent capacity in relation to the financial institution;

30 “policy” has the same meaning as in the First Schedule to the Insurance Act;

“prescribed written law” means the following Acts and the subsidiary legislation made under those Acts:

(a) this Act;

- (b) the Banking Act (Cap. 19);
- (c) the Business Trusts Act (Cap. 31A);
- (d) the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B);
- 5 (e) the Finance Companies Act (Cap. 108);
- (f) the Financial Advisers Act (Cap. 110);
- (g) the Financial Holding Companies Act 2013 (Act 13 of 2013);
- (h) the Insurance Act;
- 10 (i) the Money-changing and Remittance Businesses Act (Cap. 187);
- (j) the Payment Systems (Oversight) Act (Cap. 222A);
- (k) the Securities and Futures Act (Cap. 289);
- 15 (l) the Trust Companies Act (Cap. 336);
- (m) such other Act or Acts as the Authority may prescribe by regulations made under section 42;

20 "protected information" means information that is protected from unauthorised disclosure under any prescribed written law;

"public authority" includes a financial supervisor established as an independent non-governmental authority under a law of a foreign country;

"supervision" —

- 25 (a) in relation to a counterpart authority of a foreign country, means the supervision by the counterpart authority of foreign financial institutions in that country for compliance with the ML – prevention or TF – prevention requirements of that country
- 30 applicable to those institutions; or

(b) in relation to a domestic authority, means the supervision by the domestic authority of persons regulated by it for compliance with the applicable ML – prevention or TF – prevention requirements;

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“supervisory action” —

(a) in relation to a counterpart authority, means any action taken by the counterpart authority for or in connection with its supervision of foreign financial institutions; or

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(b) in relation to a domestic authority, means any action taken by the domestic authority for or in connection with its supervision of persons regulated by it.

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Purpose of this Part

30Y. The purpose of this Part is to enable the Authority to provide information —

(a) to a counterpart authority of a foreign country in connection with its supervision of foreign financial institutions in that country for compliance with the ML – prevention or TF – prevention requirements of that country applicable to those institutions, including the taking of supervisory action against them for a contravention of such requirements; and

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(b) to a domestic authority in connection with —

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(i) an investigation into the commission or an alleged commission of an applicable offence by a person;

(ii) an enforcement action against a person for the commission or an alleged commission of an applicable offence; or

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- (iii) a supervisory action against a person regulated by it for a contravention of an applicable ML – prevention or TF – prevention requirement.

Division 2 — Assistance to Counterpart Authorities

5 **Conditions for provision of assistance to counterpart authority**

10 **30Z.**—(1) The Authority may provide the assistance referred to in section 30ZA to a counterpart authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request for assistance is received by the Authority on or after [*date of commencement of Part*];
- (b) the assistance is intended to enable the foreign counterpart authority to carry out supervision or take supervisory action;
- (c) the counterpart authority has given a written undertaking that any information or copy thereof obtained as a result of its request will not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (d) the counterpart authority has given a written undertaking not to disclose to a third party any information or copy thereof obtained as a result of the request unless the counterpart authority is compelled to do so by the law or a court of the foreign country, and that the counterpart authority will inform the Authority promptly if the counterpart authority is so compelled;
- (e) the counterpart authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any information or copy thereof obtained as a result of the request to a third party, and to make such disclosure only in accordance

with such conditions as may be imposed by the Authority;

- 5 (f) the counterpart authority has given a written undertaking to otherwise protect the confidentiality of any information or copy thereof obtained pursuant to the request;
- (g) the request for assistance specifies —
- 10 (i) the purpose of the request and the nature of the assistance being sought;
- (ii) the identity of the financial institution which has in its possession the information requested for;
- (iii) the relevance of the information requested to the supervision or supervisory action (as the case may be) of the counterpart authority; and
- 15 (iv) any other information that may assist in giving effect to the request;
- (h) the type and amount of information requested for is proportionate to, and is of sufficient importance to, the carrying out of supervision or the taking of the supervisory action by the counterpart authority;
- 20 (i) the matter to which the request relates is of sufficient gravity;
- (j) that the counterpart authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the counterpart authority for similar assistance; and
- 25 (k) the rendering of assistance will not be contrary to national interest or public interest.

30 (2) Notwithstanding subsection (1)(c), (d), (e) and (f), the Authority may provide the assistance sought without any of the undertakings referred to in one or more of those provisions if —

- (a) none of the information requested for is protected information; and
- (b) the Authority considers it appropriate to provide the assistance in the circumstances of the case.

5 (3) In considering whether to provide the assistance referred to in section 30ZA to a counterpart authority, the Authority may also have regard to the following:

- 10 (a) if the request concerns a contravention of an ML – prevention or TF – prevention requirement of a foreign country, whether the act or omission that is alleged to constitute the contravention would, if it had occurred in Singapore, have constituted a contravention of any regulation or measure that provides for a matter referred to in section 27B(1A); and
- 15 (b) whether the counterpart authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance.

20 **Assistance that may be rendered to counterpart authority**

30ZA.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct, the Authority or any person authorised by the Authority may, in relation to a request by a counterpart authority for assistance, do one or more of the following:

- 25 (a) transmit to the counterpart authority any information in the possession of the Authority that is requested by the counterpart authority or a copy thereof;
- 30 (b) order any financial institution or any person who is or used to be a chief executive or director, or an executive officer, employee, agent or office holder, of a financial institution to furnish to the Authority any information requested by the counterpart authority

which is in the possession or control of the financial institution or person (as the case may be), or a copy thereof, and transmit the information or copy to the counterpart authority; or

- 5 (c) request a domestic authority to furnish to the Authority any information that is requested by the counterpart authority or a copy thereof, and transmit that information or copy to the counterpart authority.

10 (2) An order under subsection (1)(b) shall have effect notwithstanding any obligation as to confidentiality 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.

15 (3) Nothing in this section shall compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97) —

(a) to provide or transmit any information or a copy thereof that contains; or

20 (b) to disclose,

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

25 (4) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to provide or transmit any information or copy thereof that contains, or to disclose, any privileged communication shall nevertheless 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.

Division 3 — Assistance to domestic authorities

30 **Conditions for providing of assistance to domestic authorities**

30ZB. The Authority may provide the assistance referred to in section 30ZC to a domestic authority if the Authority is

satisfied that all of the following conditions, and all such other conditions as the Authority may determine, are fulfilled:

- (a) the request for assistance is received by the Authority on or after [*date of commencement of Part*];
- 5 (b) the assistance requested for is intended to enable the domestic authority to carry out any investigation, or take any supervisory or enforcement action;
- (c) the type and amount of information requested for is commensurate with, and is of sufficient importance to, the investigation or enforcement or supervisory action;
- 10 (d) the matter to which the request relates is of sufficient gravity.

Assistance that may be rendered to domestic authority

30ZC.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct, the Authority or any person authorised by the Authority may, in relation to a request by a domestic authority for assistance, do one or more of the following:

- 20 (a) transmit to the domestic authority any information in the possession of the Authority that is requested by the domestic authority or a copy thereof; or
- (b) order any financial institution or any person who is or used to be a chief executive or director, or an executive officer, employee, agent or office holder, of a financial institution to furnish to the Authority any information requested by the domestic authority which is in the possession or control of the financial institution or person (as the case may be), or a copy thereof, and transmit the information or copy to the domestic authority.
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(2) An order under subsection (1)(b) shall have effect notwithstanding any obligation as to confidentiality 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.

5 (3) Nothing in this section shall compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97) —

(a) to provide or transmit any information or copy thereof that contains; or

(b) to disclose,

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

(4) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to provide or transmit any information or copy thereof that contains, or to disclose, any privileged 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.

Division 4 — Miscellaneous Provisions

Offences under this Part

20 **30ZD.**—(1) A person shall be guilty of an offence if he —

(a) without reasonable excuse refuses or fails to comply with an order under section 30ZA(1)(b) or 30ZC(1)(b);

25 (b) without reasonable excuse refuses or fails to comply with section 30ZA(4) or 30ZC(4); or

(c) in purported compliance with an order under section 30ZA(1)(b) or 30ZC(1)(b) or with section 30ZA(4) or 30ZC(4), furnishes to the Authority any information or copy thereof known to the person to be false or misleading in a material particular.

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(2) Any person who is guilty of an offence under subsection (1)(a) or (b) shall be liable on conviction —

5 (a) in the case of an individual, to a fine not exceeding \$50,000 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 \$5,000 for every day or part thereof during which the offence continues after conviction; or

10 (b) in any other case, 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.

15 (3) Any person who is guilty of an offence under subsection (1)(c) shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or

(b) in any other case, to a fine not exceeding \$100,000.

20 **Immunities**

30ZE.—(1) No civil or criminal liability shall be incurred by any person for —

25 (a) providing to the Authority any information or copy thereof, if he had provided the information or copy in good faith and in compliance with an order under section 30ZA(1)(b) or 30ZC(1)(b) or with section 30ZA(4) or 30ZC(4); or

30 (b) 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 an order under section 30ZA(1)(b) or 30ZC(1)(b) or with section 30ZA(4) or 30ZC(4).

(2) Any person who complies with an order made under section 30ZA(1)(b) or 30ZC(1)(b), or with section 30ZA(4) or

30ZC(4), 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 or any rule of professional conduct.

Authority may provide assistance

30ZF. Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct, the Authority or any person authorised by the Authority may, on its own motion, and subject to the satisfaction of such conditions as it may determine, transmit any information in the possession of the Authority or a copy thereof, to —

- (a) a counterpart authority in connection with any supervision or supervisory action by the counterpart authority; or
- (b) a domestic authority in connection with an investigation, an enforcement action or a supervisory action of the domestic authority.”.

Consequential amendments to other written laws

5. The provisions of the Acts specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

THE SCHEDULE

Section 5

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

<i>First column</i>	<i>Second column</i>
1. Financial Advisers Act (Cap. 110, 2007 Ed.)	Insert, immediately after section 77, the following section: “ Application of Part 77A. This Part does not apply

<i>First column</i>	<i>Second column</i>
	to any request for assistance referred to in section 30Z(1) of the Monetary Authority of Singapore Act (Cap. 186).”.
2. Financial Holding Companies Act 2013 (Act 13 of 2013)	<p>Insert, immediately after section 53, the following section:</p> <p>“Application of Part</p> <p>53A. This Part does not apply to any request for assistance referred to in section 30Z(1) of the Monetary Authority of Singapore Act (Cap. 186).”.</p>
3. Insurance Act (Cap. 142, 2002 Ed.)	<p>Insert, immediately after section 49A, the following section:</p> <p>“Application of Part</p> <p>49AA. This Part does not apply to any request for assistance referred to in section 30Z(1) of the Monetary Authority of Singapore Act (Cap. 186).”.</p>
4. Payment Systems (Oversight) Act (Cap. 222A, 2007 Ed.)	<p>Insert, immediately after section 41, the following section:</p> <p>“Application of Part</p> <p>41A. This Part does not apply to any request for assistance referred to in section 30Z(1) of the Monetary Authority of Singapore Act (Cap. 186).”.</p>
5. Securities and Futures Act (Cap. 289, 2006 Ed.)	<p>Insert, immediately after section 169, the following section:</p> <p>“Application of Part</p> <p>169A. This Part does not apply to any request for assistance referred to in section 30Z(1) of the Monetary Authority of Singapore Act (Cap. 186).”.</p>

EXPLANATORY STATEMENT

This Bill seeks to

EXPENDITURE OF PUBLIC MONEY

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

Note 1:LCH/MAS (Amd) Bill 2014 (v19) (fb 2.5.14)