

RESPONSE TO FEEDBACK RECEIVED –

CONSULTATION PAPER ON REVIEW OF THE BANKING ACT

1 Introduction

1.1 On 28 November 2013, MAS issued a public consultation paper (“the Consultation Paper”) on proposed amendments to the Banking Act (“BA”). The consultation closed on 15 January 2014, with feedback received from several financial institutions, and audit, advisory and law firms.¹ We would like to thank all respondents for their comments.

1.2 MAS has carefully considered the feedback received and has incorporated them, where appropriate, in the draft Banking Act (Amendment) Bill which has been published for consultation on 15 January 2015. Comments that are of wider interest, together with our responses, are set out below.

2 Duty to Inform MAS of Material Developments

(a) Material adverse developments affecting banks and their related entities

Scope of application

2.1 A number of respondents were concerned that it would be challenging for banks, especially banks incorporated outside Singapore, to notify MAS of all material adverse developments affecting one or more entities in their groups. Respondents suggested that banks be required to notify MAS only where the adverse development is likely to affect the bank in Singapore. Some respondents sought clarification on the extent to which events that occur outside Singapore, in relation to other branches and affiliated companies of

¹ The respondents are listed in the [Annex](#).

banks incorporated outside Singapore, have to be reported to MAS and the rationale for this reporting requirement.

MAS' Response

2.2 The proposed notification requirement is to ensure that MAS is kept apprised of any developments that could have a material adverse impact on the bank in Singapore in a timely manner, so as to be able to identify early risks emanating from, and which may have implications on, the bank. In addition, as a supervisor, MAS would need to consider a bank and its risk profile not just on a bank-solo basis, but also on a consolidated group basis, including taking into account the potential risks posed by its affiliated entities on the bank or bank group. This is consistent with the Core Principles for Effective Banking Supervision ("BCP").

2.3 However, MAS notes the respondents' concerns and agrees that not all material adverse developments affecting a group entity would materially affect the bank in Singapore. Accordingly, for banks incorporated outside Singapore (for which MAS is not a consolidated supervisor), MAS will only require that they report if the bank has reasonable grounds to believe that the adverse development is likely to materially and adversely affect the branch in Singapore. This would allow MAS to effectively exercise its supervisory role, while addressing the banks' concerns over potential difficulties they may face if they are required to report *all* material adverse developments affecting any entity in their groups.

2.4 For Singapore-incorporated banks, MAS will require the bank to immediately notify MAS of any adverse development that the bank has reasonable grounds to believe is likely to materially and adversely affect:

- (a) the bank in Singapore; or
- (b) any entity or trust (including associates) in its bank group or designated financial holding company ("FHC") group^{2,3,4}.

² This includes the bank's and designated FHC's subsidiaries, branches and associates.

³ In the Financial Holding Companies Act ("FHC Act"), an FHC is defined as a Singapore-incorporated holding company that has at least one bank or insurance company incorporated in Singapore, and whose subsidiaries

2.5 The wider scope of notification for Singapore-incorporated banks is necessary to enable MAS to conduct effective consolidated supervision of the bank group or designated FHC group.

2.6 For the avoidance of doubt, the entities referred to within the proposed scope of paragraphs 2.3 and 2.4 could be a bank or a non-bank entity or trust.

Definition of material adverse developments

2.7 Some respondents sought greater clarity on the definition of “material adverse developments”. One respondent asked if non-regulatory operational breaches would have to be reported to MAS.

MAS’ Response

2.8 Banks should notify MAS as soon as they become aware of, or have information which reasonably suggests that a breach of any laws or regulations administered by MAS, or any requirements imposed by MAS has occurred, may have occurred, or is likely to occur in the foreseeable future. For breaches and potential breaches of other laws or regulations, business rules, codes of conduct, or industry guidelines, including those of other jurisdictions, banks would only have to notify MAS if the breach or potential breach is believed to result in a material adverse impact on the bank in Singapore or, in the case of a Singapore-incorporated bank, any entity or trust in the bank group or designated FHC group.

which are financial institutions contribute 50% or more of the assets, capital, liabilities or revenue of the group. In the BA, the FHC group in relation to the FHC means the FHC, its associates, and any other entity or trust treated as part of the FHC’s group of companies according to the applicable Accounting Standards.

⁴ The FHC Act sets out the criteria that MAS will consider in assessing whether an FHC should be designated for regulation. First, where the FHC is the ultimate parent of a financial group with a bank and/or insurance subsidiary in Singapore, MAS will be the home supervisor of the FHC and its financial group. Second, where the FHC is the intermediate holding company, the significance of its bank and/or insurance subsidiary in Singapore to the Singapore financial system, or to the intermediate FHC group will be evaluated. For foreign-owned FHCs, an additional consideration will be the extent to which the parent holding company based overseas is subject to effective group-wide supervision by its home supervisor.

2.9 In addition, banks should notify MAS when the bank becomes aware that any of the following has occurred, or is likely to occur in the foreseeable future:

- (a) any development which the bank has reasonable grounds to believe may have a material adverse impact on the relevant entity's financial soundness or reputation; or
- (b) any development which the bank has reasonable grounds to believe may have a material adverse impact on the relevant entity's ability to serve its customers on a business-as-usual basis.⁵

MAS will set out the aforesaid in regulations to be made available for public consultation at a later stage.

2.10 In determining whether MAS should be notified of a development that may occur in the foreseeable future, banks should consider both the probability of it happening and the severity of the outcome, should it happen.

2.11 A bank is not expected to notify MAS of non-regulatory operational breaches of their own internal policies or guidelines, unless they lead to adverse developments which materially affect the bank as set out in paragraphs 2.8 or 2.9 above.

Implementation matters

2.12 Several respondents asked if banks would be required to set up a framework for information sharing within their groups, in order to comply with the requirement to report material adverse developments affecting their group entities to MAS.

⁵ The "relevant entity" refers to the bank in Singapore and, for Singapore-incorporated banks, any entity or trust in the bank group or designated FHC group. See paragraphs 2.3 and 2.4 above for more information.

MAS' Response

2.13 Banks have the flexibility to implement appropriate measures to assist it in complying with the requirement. MAS will not prescribe the way in which banks should implement those measures.

Duplication of reporting requirements

2.14 A respondent highlighted that the new requirement may duplicate the requirement to report suspicious activities and incidents of fraud under MAS Notice 641 "Reporting of Suspicious Activities & Incidents of Fraud".

MAS' Response

2.15 For an incident that has to be reported under both this requirement and MAS Notice 641, a single report to MAS will suffice to fulfil both requirements, i.e. banks do not have to file separate reports for each requirement.

(b) Material information affecting the fitness and propriety of key appointment holders ("KAHs")

List of KAHs to which the notification requirement applies

2.16 One respondent sought clarification on the KAHs in relation to whom the notification requirement applies.

MAS' Response

2.17 The notification requirement will apply to information relating to all persons whose appointments were approved by MAS. In this connection, for all banks in Singapore, MAS' prior approval is required for the following appointments:

- (a) the Chief Executive Officer ("CEO");
- (b) the Deputy CEO; and
- (c) the Head of Treasury⁶.

⁶ The existing requirement to seek approval for the appointment of the Head of Treasury, which is currently set out under MAS Notice 753, will be set out in a new set of Regulations.

2.18 For Singapore-incorporated banks, MAS' approval is required for the following appointments:

- (a) all directors;
- (b) the chairman of the board of directors;
- (c) members of the Nominating Committee of the board⁷;
- (d) the Chief Financial Officer⁸; and
- (e) the Chief Risk Officer.

Definition of material information affecting fitness and propriety

2.19 Several respondents sought clarification on what would constitute material information affecting fitness and propriety, and whether banks are required to notify MAS of investigations into allegations that have yet to be concluded.

MAS' Response

2.20 Banks should assess whether the information casts doubt on the fitness and propriety of the KAH, and notify MAS only where they are of the view that the information impinges on his fitness and propriety. Banks are responsible to ensure that their employees, especially their KAHs, are fit and proper on an ongoing basis. For example, MAS would expect to be notified of any information that could give rise to the grounds for disqualification as set out in section 54 of the BA, or on wilful contravention of provisions of the BA. Banks should also take reference from the Guidelines on Fit and Proper Criteria ("Fit and Proper Guidelines") in assessing whether the information affects the KAH's fitness and propriety. This would include, for example, the situation where a KAH is subject to any proceedings, whether pending or potential, of a regulatory, disciplinary or criminal nature.

⁷ This is a requirement under the Corporate Governance (Banking) Regulations.

⁸ The existing requirement to seek approval for the appointments of the Chief Financial Officer and Chief Risk Officer, which is currently set out under the Corporate Governance (Banking) Regulations, will be set out in a new set of Regulations.

Concept of fitness and propriety

2.21 A few respondents raised concerns that given the subjectivity of the concept of fitness and propriety, having the requirement codified in legislation may limit the flexibility accorded by the Fit and Proper Guidelines.

MAS' Response

2.22 While the requirement to inform MAS of any material information that may affect a KAH's fitness and propriety will be codified in legislation, the Fit and Proper Guidelines will continue to be applicable in providing guidance to banks on assessing whether an individual is fit and proper. In this connection, the factors listed within the Guidelines are not exhaustive. Fitness and propriety should also be assessed in relation to the facts of the case, the seriousness of the infringing event or situation affecting the fitness and propriety of a person, the impact of the infringing event or situation on the person's fitness and propriety in light of the role that he performs, as well as other relevant factors. These considerations are encapsulated in paragraph 9 of the Fit and Proper Guidelines.

Processes that banks should adopt in assessing fitness and propriety

2.23 Several respondents sought guidance as to how a bank in Singapore is expected to fulfil the notification requirement, for example, whether a Singapore branch of a bank incorporated outside Singapore would be required to establish an independent committee to determine if its KAHs are fit and proper.

MAS' Response

2.24 Banks are expected to establish a sufficiently robust due diligence process as appropriate for their circumstances to ensure that all KAHs are fit and proper on an ongoing basis. MAS will not specify the processes that banks have to adopt to comply with the requirement.

(c) Information on substantial shareholders and controllers

Monitoring of information and scope of notification

2.25 Several respondents raised concerns about banks having to actively, and on an ongoing basis, seek information on whether their substantial shareholders and controllers have obtained the prior approval of the Minister-in-charge of MAS (“Minister”) for their shareholdings, as well as information that may negatively affect their suitability. One respondent sought clarification on whether the requirement to obtain the Minister’s prior approval for any acquisition of substantial or controlling interests in a Singapore-incorporated bank applies to its parent bank.

MAS’ Response

2.26 Only Singapore-incorporated banks are subject to the notification requirement. These requirements serve as a safeguard to ensure that substantial shareholders and controllers of Singapore-incorporated banks are properly verified, and that they remain fit and proper on an ongoing basis. To clarify, banks should inform MAS only if they become aware of any person who has become their substantial shareholder or controller without obtaining the Minister’s prior approval, or of material information which the bank assesses may negatively affect the suitability of an existing substantial shareholder or controller.

2.27 For the purpose of sections 15A and 15B of the BA, “substantial shareholder” and “controller” should be interpreted in accordance with sections 2, 15B(3) and 15B(5) of the BA, read with section 7 of the Companies Act (“CA”). Unless an exemption is granted, the requirement to seek prior approval of the Minister will also apply to the parent bank of the bank incorporated in Singapore.

Definition of “suitability”

2.28 Several respondents sought clarification on the definition of “suitability” in relation to the requirement for banks to inform MAS of

information that may negatively affect the suitability of a bank's substantial shareholders and controllers.

MAS' Response

2.29 Under section 15C of the BA, the Minister may approve an application by a person to become a substantial shareholder or controller of a bank incorporated in Singapore if MAS is satisfied that:

- (a) the person is fit and proper; and
- (b) having regard to the likely influence of the person, that the bank will or will continue to conduct its business prudently and comply with the provisions of the BA.⁹

2.30 In assessing whether the information may negatively affect a person's suitability as a substantial shareholder or controller, banks should therefore similarly consider if that information could potentially result in the shareholder not being able to meet the above criteria. In this connection, banks should also take guidance from the Fit and Proper Guidelines in assessing the fitness and propriety of a substantial shareholder or controller.

(d) Other issues

Persons whose knowledge should be imputed to the bank

2.31 Several respondents sought clarification as to the individuals within a bank whose knowledge of the relevant information would be imputed to the bank, with some suggesting that it be limited to the directors and senior management of the bank in Singapore. One respondent also asked that the knowledge of the information for purpose of the notification requirement be limited to actual knowledge, and exclude constructive knowledge (i.e. the bank ought to have known).

⁹ The Minister also has to be satisfied that it is in the national interest to grant approval.

MAS' Response

2.32 As set out in section 66 of the BA, MAS expects directors and executive officers of banks in Singapore to take all reasonable steps to secure the bank's compliance with all applicable requirements. In this regard, banks are expected to have in place appropriate processes which would enable the directors and senior management of the bank to be kept apprised of the information which forms the basis for the notification requirement. The bank would be imputed to have known the particular information once the directors and senior management have been made aware of it. In determining whether the bank is said to have knowledge of the particular information, the threshold will be limited to that of actual knowledge if reasonable steps have been taken to ensure compliance with all applicable requirements; i.e., the directors and senior management involved would need to have actual knowledge of that piece of information.

Banks' confidentiality obligations

2.33 Several respondents highlighted that banks may be subject to confidentiality obligations, which could restrict or prohibit the disclosure of the relevant information to MAS. A respondent also cited an example in which a bank becomes aware of information relating to a substantial shareholder in the course of advising on a transaction, and highlighted that providing the information to MAS may be improper and could constitute unprofessional conduct. Several respondents also raised the need to accord protection to the bank and individuals, such as internal auditors, compliance officers and legal officers, who report such information in good faith in accordance with MAS' requirements, in the discharge of their statutory duties.

MAS' Response

2.34 MAS will take into account any confidentiality restrictions to which the bank may be subject to under the relevant laws, in assessing if a bank has breached the notification requirements under the BA. However, banks should ensure that any confidentiality agreements or undertakings that they enter into with other parties are subject to such disclosures as may be required by

law, including the BA. The bank, and any individuals acting on the bank's behalf, should ensure that they are contractually protected from any liability that may arise from the disclosure of the relevant information to MAS as required under the BA.

Basis for notification to MAS and presumption of culpability

2.35 A few respondents sought clarification on when the obligation to notify MAS is triggered, i.e. for example, whether hearsay should be reported to MAS. One respondent also expressed concern over banks being required to notify MAS of investigations into potential breaches once these are being commenced.

MAS' Response

2.36 MAS wishes to reiterate that the intent of the notification requirements is to enable MAS to have up-to-date information on the banks and hence be in a position to identify early risk factors which could have implications on the bank. The bank is expected to inform MAS only when it has reasonable grounds to believe the accuracy of the information. In this regard, banks should take reasonable steps to ascertain the accuracy of any information it becomes aware of, regardless of the source of the information. This may, in certain situations, include the analysis of hearsay information which the bank has been made aware of, and which may trigger the notification requirements. In relation to a situation where investigations have been initiated, the bank should assess if there are reasonable grounds to believe that a material adverse development has occurred. If so, MAS should be notified.

Timeframe for notification

2.37 Several respondents asked if banks would be required to notify MAS within a specified timeframe. Some suggested that an expected timeframe be stipulated.

MAS' Response

2.38 As the time required to assess the accuracy and reasonableness of information varies according to the type of information received as well as the particular circumstances of the case, MAS will not be setting a specific timeframe for the notification. Banks should, as soon as practicable, inform MAS when they become aware of information that would trigger a notification requirement.

3 MAS' Control over Key Officers and Auditors

(a) Directors and executive officers

Removal for being not fit and proper

3.1 A respondent requested further guidance on when a director or executive officer may be removed for being not fit and proper.

MAS' Response

3.2 Currently, MAS approves the appointment of a bank's KAH based primarily on whether the individual is fit and proper. In this regard, MAS will consider factors that are set out in the Fit and Proper Guidelines. Given that different appointments entail different responsibilities, MAS will also take into account the nature of responsibilities of the respective appointment holders in assessing whether the person is fit and proper for his office or employment. The current grounds for removal of bank directors and executive officers would be examples of situations in which bank directors and executive officers may be removed for being not fit and proper.

Removal based on the additional premise of the interest of the financial system

3.3 Several respondents sought clarification on the proposed inclusion of "interest of the financial system in Singapore" as an additional premise for the removal of bank directors and executive officers. Specifically, respondents would like to know how this additional limb differs from the existing premises for removal which are based on public interest and depositors' protection.

MAS' Response

3.4 The proposed additional premise for removal was intended to clarify that MAS can consider the reputation of, and stakeholder confidence in, the financial system in assessing whether there would be a need to remove a bank director or an executive officer. This would be another factor to be considered, in addition to (and not in replacement of) the primary criterion of the fitness and propriety of the bank director or executive officer.

3.5 Nonetheless, we agree with respondents that the additional premise for removal might not be distinct from the existing premises for removal. In addition, to avoid confusion, fitness and propriety will be prescribed as the sole criterion for the removal of bank directors and executive officers. The provision would then provide that in assessing whether to remove a bank director or executive officer, MAS may take into consideration a variety of factors, including whether the director or executive officer has wilfully caused the bank to breach the BA, the public interest and the need to protect depositors' interest.

(b) Auditors

Scope of the safe harbour provision

3.6 Some respondents sought clarification on whether the proposed safe harbour provision extends to the employees of the audit firm, in addition to the audit firm itself.

MAS' Response

3.7 The safe harbour provision will extend to both the audit firm and its employees.

MAS' power to impose penalties for bank auditors' failure to discharge their duties under the BA

3.8 Several respondents raised concerns about the disparity between the current obligations and standards required of auditors (for example, in the CA and Singapore Standards on Auditing) and the duties set out in the BA. In particular, they were concerned that the need to report to MAS matters regarding regulatory compliance or of prudential concern (as set out in section 58(8) of the BA¹⁰) would be an additional obligation for auditors, whose primary role is to perform audits.

3.9 A few respondents also stated that there was no need to criminalise the failure of auditors to discharge their statutory duties, as the bank can already take appropriate contractual action against such auditors. For example, under an auditor's letter of engagement with banks, auditors are already required to ensure that the work undertaken is completed in line with BA requirements. A failure by the auditors to discharge their statutory duties may thus already expose them to liability to the bank, and to any party that has suffered loss as a direct consequence. Respondents thus sought greater clarity and guidance on:

- (a) the duties imposed by MAS on bank auditors, especially where these duties exceed those imposed on auditors under the CA and Accounting Standards;
- (b) how auditors should assess whether a breach or non-observance of the BA is serious, such that it has to notify MAS under section 58(8) of the BA;
- (c) the need to criminalise bank auditors' failure to discharge their duties;

¹⁰ If an auditor, in the course of the performance of his duties as an auditor or a bank, is satisfied that –

- (a) there has been a serious breach or non-observance of the provisions (of the BA) or that otherwise a criminal offence involving fraud or dishonesty has been committed;
- (b) losses have been incurred which reduce the capital funds of the bank by 50%;
- (c) serious irregularities have occurred, including irregularities that jeopardise the security of the creditors; or
- (d) he is unable to confirm that the claims of creditors are still covered by the assets,

he shall immediately report the matter to the Authority.

- (d) whether the offence applies to the audit firm as an entity or the relevant audit partners; and
- (e) the process and criteria for determining when the auditor is deemed to have failed to discharge those duties.

MAS' Response

3.10 Under the CA, auditors are required to carry out an audit of the banks' accounts and to make a report on the banks' financial statements. Where necessary, MAS may, by notice in writing, require bank auditors to enlarge the scope of their audits. In addition, MAS expects auditors to report the matters set out in section 58(8) of the BA, where the auditors come across such information in the course of performing their audit duties. MAS considers a "serious" breach or non-observance of the BA to be one that could have a material adverse impact on the bank, i.e. capable of having a significant adverse impact on the bank's financial soundness or reputation, or its ability to serve its customers on a business-as-usual basis. Where a bank auditor is aware of such a breach or non-observance of the BA, it has to report the matter to MAS.

3.11 An auditor's breach of the terms of its appointment enables the bank to take action for breach of contract, while a breach of professional standards may result in disciplinary proceedings. However, this does not allow MAS to take action for an auditor's failure to discharge its duties under the BA. To enable MAS to enforce the statutory provisions pertaining to the auditors' duties under the BA so that a penalty may be imposed, an auditor's failure to discharge his duties under the BA will be made a criminal offence. However, auditors would only be liable for the offence if they fail to carry out an audit, fail to make a report on the financial statements of the bank in accordance with the CA, fail to discharge additional audit duties imposed by MAS or, where they are satisfied that the matters set out in section 58(8) of the BA exist, fail to report the matters to MAS. In determining whether to impose a penalty for an auditor's failure to report a matter that it was aware of, MAS will consider whether the auditor's failure was wilful, reckless or careless.

3.12 The duties imposed on bank auditors are imposed on the audit firm as an entity, rather than the specific audit partners and employees involved in the audit. Therefore, any failure to discharge the auditors' statutory duties under the BA would constitute an offence by the audit firm, rather than the specific audit partners or employees involved in the audit.

MAS' power to remove bank auditors

3.13 Several respondents raised concerns that MAS' removal of a bank auditor under the BA might breach the CA, under which auditors may only be removed by shareholders' resolution at general meetings. Respondents were also of the view that the current regulatory regime for auditors was sufficient, citing MAS' power to approve annually the appointment of bank auditors, and Accounting and Corporate Regulatory Authority's ("ACRA") disciplinary power to revoke the registration of auditors whose conduct falls short of required standards. A respondent was also concerned of the serious implications on an audit partner who is removed.

3.14 Respondents also raised operational challenges, as the same audit firm may be appointed to audit the entire bank group to facilitate information sharing and to reap cost savings from economies of scale. The removal of the auditor in Singapore may affect its continued appointment in relation to other entities in the bank group, including entities outside Singapore. Respondents were also concerned about the disruption arising from the removal of an auditor in the middle of an audit cycle. One respondent also asked if the removal of an audit firm in relation to one bank would affect its appointment as the auditor of other banks.

MAS' Response

3.15 The provision in the BA will expressly provide that notwithstanding the provisions of the CA, MAS may direct a bank to remove its auditor. As such, a direction from MAS would prevail over the existing CA provision which mandates that auditors are to be removed only by shareholders' resolution at a general meeting. This removal power would give MAS the flexibility to direct

the bank to remove its auditor at any point in time (i.e. there is no need to wait until the next financial year) in the case where the auditor has failed to satisfactorily discharge its statutory duties under the BA, or where the auditor is deemed to have inadequate expertise or independence. This is also in line with BCP principle 27 on financial reporting and external audit. MAS' removal powers will only be exercised in relation to an audit firm, and not the audit partner specifically.

3.16 MAS notes the respondents' concerns on potential operational challenges and disruptions that could arise from the removal of an auditor. MAS will exercise its powers to direct the removal of auditors judiciously, after careful consideration of all relevant circumstances. The removal of an auditor for a bank in Singapore would be specific to the firm's duties in respect of a particular bank.

4 Duty to Implement Adequate Risk Management Systems and Controls

(a) Codification of requirement to implement adequate risk management systems and controls

4.1 A few respondents sought clarification on the rationale for codifying existing expectations on the need for banks to institute and maintain adequate risk management systems and controls. Several respondents were concerned that the requirement, when codified in the BA, may not be able to adequately reflect the fact that the adequacy of risk management systems and practices will depend on factors such as a bank's business model, nature and scale of operations. Respondents thus sought greater clarity on whether banks would still be able to retain the discretion to determine the appropriate policies that are commensurate with their business' nature, scale and complexity, including any reliance on global risk management policies.

MAS' Response

4.2 The proposed codification of expectations will allow MAS to enforce safe and sound practices in all banks, and impose penalties on non-compliant banks. In this regard, there will be no change to MAS' existing risk-relevant

approach i.e. banks will continue to be required to put in place risk management practices that are commensurate with the nature and scale of their operations. In assessing adequacy of banks' risk management systems, MAS will continue to take the principle of proportionality into account, taking reference from the existing Guidelines on Risk Management Practices ("Risk Management Guidelines"). Banks can rely on their groups' global risk management frameworks if the application of such frameworks is appropriate to the business in Singapore.

4.3 MAS will set out detailed risk management requirements in regulations to be made available for public consultation at a later stage. In general, banks will be required to, in a manner that is commensurate with the nature, scale and complexity of their business:

- (a) put in place systems and processes to ensure compliance with effective written policies on all operational areas of the bank, including the bank's financial policies, accounting and internal controls, and internal auditing;
- (b) put in place compliance function and arrangements including specifying the roles and responsibilities of employees in helping to ensure its compliance with all applicable laws, codes of conduct, and standards of good practice, to reduce the risk of financial loss, reputational damage or the risk of incurring legal or regulatory sanctions that may be imposed by MAS or any other public authority;
- (c) ensure that there are sound risk management processes and operating procedures that integrate prudent risk limits with appropriate risk management systems for identifying, measuring, evaluating, monitoring, reporting and controlling of risks;
- (d) ensure that the business activities are subject to adequate internal audit;
- (e) set out in writing the limits of the discretionary powers of each officer, committee, sub-committee or other group of persons empowered to commit the bank to any financial undertaking or to expose the bank to any business risk;

- (f) keep a written record of the steps taken by the bank to monitor compliance with its policies, its accounting and operational procedures, and the limits on discretionary powers;
- (g) ensure the accuracy, correctness and completeness of any report, book or statement submitted to its head office (if applicable) or to MAS; and
- (h) ensure effective controls and segregation of duties to mitigate potential conflicts of interest that may arise from the operations.

4.4 Banks would be considered to be in breach of the requirement to implement adequate risk management systems and controls if MAS assesses that its risk management framework is not commensurate with the principles set out above, given the nature, scale and complexity of their business.

(b) Responsibility to institute adequate risk management systems and processes

4.5 Several respondents asked whether, in the case of banks incorporated outside Singapore, the responsibility for compliance with this requirement would lie with the bank's KAHs in Singapore or whether it would also extend to the bank's overseas directors and senior management.

MAS' Response

4.6 The requirement will be imposed on the bank in Singapore. In this regard, the directors of Singapore-incorporated banks, and senior management of all banks in Singapore, are expected to establish sound corporate governance processes and ensure a robust risk management culture. Notwithstanding this, as part of MAS' on-site and off-site supervision of banks, MAS will assess the adequacy of a bank's Head Office support and oversight in deciding on the supervisory engagement to be undertaken, where appropriate.

5 Implementation Issues

5.1 One respondent requested that sufficient lead time be provided for implementation of the proposed amendments, especially in relation to the risk

management requirements. Another respondent enquired about the consequences should banks fail to comply with the proposed new requirements set out in the consultation paper.

MAS' Response

5.2 The proposed requirements will take effect when the corresponding amendments to the BA are passed into law, and this is targeted to be in 2H 2015. As most of the proposed requirements reflect MAS' current expectations or practices (e.g. the need to notify MAS of information that concerns the fitness and propriety of its directors and executive officers, and for banks to institute adequate risk management systems and controls), we consider that there is sufficient time for banks to make the necessary preparations for compliance with the new requirements. Nonetheless, where there are areas in which banks require more time, we will consider providing for a longer transitional period.

5.3 The penalties for failure to comply with the new requirements are set out in the draft BA (Amendment) Bill, which has been published for public consultation on 15 January 2015.

**RESPONDENTS TO THE CONSULTATION PAPER ON REVIEW OF THE BANKING
ACT**

1. BDO Advisory Pte Ltd
2. Citibank Singapore Limited
3. CTBC Bank Co., Ltd
4. Deloitte & Touche LLP
5. First Commercial Bank, Ltd
6. KPMG LLP
7. Mizuho Bank Limited
8. RHTLaw Taylor Wessing LLP
9. Sandra Booyesen (Member, Centre for Banking and Finance Law)
10. Skandinaviska Enskilda Banken AB
11. State Street Bank and Trust Company
12. Sumitomo Mitsui Banking Corporation
13. WongPartnership LLP

7 other respondents requested confidentiality.