



THE STATUTES OF THE REPUBLIC OF SINGAPORE

MONETARY AUTHORITY OF SINGAPORE ACT

(CHAPTER 186)

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Monetary Authority of Singapore Act

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An Act to establish a corporation to be known as the Monetary Authority of Singapore, to provide for the exercise of control over and the resolution of financial institutions and their related entities by the Monetary Authority of Singapore and other authorities, and to establish a framework for the issue of securities by the Monetary Authority of Singapore and the regulation of primary dealers of such securities, and for matters incidental thereto and connected therewith.

[13/2007 wef 30/06/2007]

[Act 9 of 2013 wef 18/04/2013]

[26th December 1970: Parts I, II and VI ;
1st January 1971: Parts III and IV ;
8th October 1999: Part V]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Monetary Authority of Singapore Act.

Interpretation

2. In this Act, unless the context otherwise requires —
- “Authority” means the Monetary Authority of Singapore established under section 3;
- “bank” means a bank licensed under the Banking Act (Cap. 19);
- “board” means the board of directors of the Authority;
- “corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

[Act 9 of 2013 wef 18/04/2013]

“director” means a director appointed under section 8(1) and the chairman and the deputy chairman of the board;

[Deleted by Act 4 of 2017 wef 08/10/2018]

“managing director” means a director appointed under section 9(1);

[24/2003 wef 01/01/2004]

“money market operations” means any transaction undertaken by the Authority as the central bank to manage liquidity in the banking system;

[24/2003 wef 01/01/2004]

“officer”, in relation to the Authority, includes any person employed by the Authority in an executive capacity;

[24/2003 wef 01/01/2004]

[26/84]

[Act 9 of 2013 wef 18/04/2013]

“primary dealer” means a person appointed under section 145 as a primary dealer for securities issued by the Authority.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

PART II

ESTABLISHMENT, CAPITAL AND ADMINISTRATION OF AUTHORITY

Establishment of Authority

3.—(1) There shall be established an Authority to be called the Monetary Authority of Singapore which shall be a body corporate and shall have perpetual succession and may sue and be sued in its own name.

(2) The Authority shall have a common seal and the seal may, from time to time, be broken, changed, altered and made anew as to the Authority seems fit, and, until a seal is provided under this section, a stamp bearing the inscription “The Monetary Authority of Singapore” may be used as the common seal.

(3) All deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the common seal of the Authority, by the authority of the Authority, in the presence of the managing director and of some other person duly authorised by the Authority to act in that behalf and shall be signed by the managing director and by such duly authorised person.

(3A) The managing director may, subject to such terms and conditions as the managing director thinks fit, appoint an officer of the Authority who holds the appointment of deputy managing director or its equivalent, to exercise the power and perform the duty of the managing director under subsection (3), and that officer must exercise that power and perform that duty under the direction and control of the managing director.

[Act 31 of 2017 wef 15/08/2017]

(3B) To avoid doubt, the managing director —

- (a) remains responsible for the exercise of the power, and the performance of the duty, by the deputy managing director (or equivalent) delegated under subsection (3A); and
- (b) may continue to exercise the power and perform the duty, despite the delegation under subsection (3A).

[Act 31 of 2017 wef 15/08/2017]

(4) Such signing by the managing director or officer appointed by the managing director under subsection (3A) shall be sufficient evidence that the common seal of the Authority has been duly and properly affixed and that the seal is the lawful common seal of the Authority.

[Act 31 of 2017 wef 15/08/2017]

(5) The Authority may, by resolution or otherwise, appoint an officer of the Authority or any other agent either generally or in a particular case to execute or sign on behalf of the Authority any agreement or other instrument not under seal in relation to any matter coming within the powers of the Authority.

Principal objects and functions of Authority

4.—(1) The principal objects of the Authority shall be —

- (a) to maintain price stability conducive to sustainable growth of the economy;
- (b) to foster a sound and reputable financial centre and to promote financial stability;
[Act 9 of 2013 wef 18/04/2013]
- (c) to ensure prudent and effective management of the official foreign reserves of Singapore; and
- (d) to grow Singapore as an internationally competitive financial centre.

[13/2007 wef 30/06/2007]

(1A) The Authority, when giving effect to its objects under subsection (1), is to act on the basis that the object in paragraph (b) prevails over the object in paragraph (d) of that subsection.

[Act 31 of 2017 wef 15/08/2017]

(2) The functions of the Authority shall be —

- (a) to act as the central bank of Singapore, conduct monetary policy, issue currency, oversee payment systems and serve as banker to and financial agent of the Government;
[Act 9 of 2013 wef 18/04/2013]
- (b) to conduct integrated supervision of the financial services sector and financial stability surveillance;
[Act 9 of 2013 wef 18/04/2013]
- (c) to manage the official foreign reserves of Singapore; and
- (d) to develop Singapore as an international financial centre.

[13/2007 wef 30/06/2007]

Paid-up capital

5.—(1) The paid-up capital of the Authority shall be \$100 million.

(2) The paid-up capital may be revised from time to time by such amount as the Government and the board may agree.

[Act 31 of 2017 wef 15/08/2017]

(3) For the purpose of subsection (2), the board must consider the Authority's capital and reserves necessary for the Authority to carry out its principal objects and functions.

[Act 31 of 2017 wef 15/08/2017]

(4) Any reduction of or increase in the paid-up capital may be effected by way of transfers to or from the General Reserve Fund, or by such other means as the Government and the board may from time to time agree.

[Act 31 of 2017 wef 15/08/2017]

General Reserve Fund

6.—(1) There shall be a General Reserve Fund of the Authority.

(2) At the end of each financial year, the net profit of the Authority for that year shall be determined after allowing for the expenses of operation and after provision has been made for bad and doubtful debts, depreciation in assets, contributions to staff and pension funds and such other contingencies or purposes as the Authority may determine.

[24/2003 wef 01/01/2004]

(3) Subject to subsection (4), such part of the net profit for each financial year as the Authority may determine shall be paid to the Government and the remainder of the net profit, if any, shall be credited to the General Reserve Fund.

[24/2003 wef 01/01/2004]

(3A) Notwithstanding subsection (3), the Authority may pay to the Government such amount from the General Reserve Fund over and above the net profit, if any, as the Authority may determine.

[24/2003 wef 01/01/2004]

(4) Where the General Reserve Fund is in deficit at the end of a financial year —

- (a) if the Authority's net profit for that financial year is larger than the deficit, an amount of not less than the net profit necessary to offset the deficit, as determined by the Authority, must be credited to the General Reserve Fund;
- and

- (b) if the Authority's net profit for that financial year is smaller than or equal to the deficit, the whole of the net profit must be credited to the General Reserve Fund.

[Act 31 of 2017 wef 15/08/2017]

Transfer of Currency Fund to Authority's accounts

6A.—(1) For the purposes of section 21 of the Currency Act (Cap. 69), the Authority must, starting from the date of commencement of section 6 of the Monetary Authority of Singapore (Amendment) Act 2017, commence transferring all of the assets (including external assets) and liabilities of the Currency Fund established under section 21(1) of the Currency Act as in force immediately before that date, to such of the accounts holding the Authority's assets and liabilities as the Authority may determine.

(2) Upon the completion of the transfer mentioned in subsection (1), the Authority must publish a notification in the *Gazette* of the completion and the date of the completion.

[Act 31 of 2017 wef 15/08/2017]

Board of directors

7.—(1) There shall be a board of directors of the Authority which shall be responsible for the policy and general administration of the affairs and business of the Authority.

(2) The board shall, from time to time, inform the Government of the regulatory, supervisory and monetary policies of the Authority.

[13/2007 wef 30/06/2007]

(3) The board shall consist of —

- (a) a chairman who shall be appointed by the President on the recommendation of the Cabinet; and
- (b) not less than 4 and not more than 13 other directors, one of whom shall be the deputy chairman, appointed in accordance with sections 8 and 9.

[26/84; 11/91; 28/98]

[Act 9 of 2013 wef 18/04/2013]

(4) The board shall furnish the Minister with such information as the Minister may require in respect of the duties and functions of the Authority.

[13/2007 wef 30/06/2007]

Appointment of directors

8.—(1) The directors referred to in section 7(3)(b) shall be appointed by the President who shall, on the recommendation of the Minister, also appoint the deputy chairman.

[26/84]

(2) The directors so appointed —

- (a) shall not act as delegates on the board from any commercial, financial, agricultural, industrial or other interests with which they may be connected;
- (b) shall hold office for a term not exceeding 3 years and shall be eligible for reappointment; and
- (c) may be paid by the Authority out of the funds of the Authority such remuneration and allowances as may be determined by the President.

(3) Subsection (2)(b) and (c) shall not apply to a director who is appointed managing director under section 9.

Appointment of managing director

9.—(1) The President shall, if he concurs with the advice or recommendation of the Public Service Commission, appoint one of the directors appointed under section 8 to be the managing director.

[11/91]

(2) The managing director shall be an employee of the Authority on such terms and conditions of service as the President may decide.

(3) The managing director shall be entrusted with the day-to-day administration of the Authority, and may, subject to this Act, make decisions and exercise all powers and do all acts which may be exercised or done by the Authority under this Act or any other written law.

[24/2003 wef 01/01/2004]

(4) The managing director shall be answerable to the board for his acts and decisions.

(5) In the event of the absence or inability to act of the managing director, the Minister may appoint —

- (a) a director; or
- (b) with the President's concurrence, an officer of the Authority who holds the appointment of assistant managing director or its equivalent or above,

to discharge the duties of the managing director during the period of his absence or inability to act.

[13/2007 wef 30/06/2007]

(6) The managing director may, subject to such terms and conditions as he thinks fit, appoint any officer or employee of the Authority, or form any committee comprising officers or employees of the Authority or both, to exercise any of his powers or perform any of his functions or duties conferred or imposed upon him by virtue of subsection (3), and that officer, employee or committee shall exercise those powers or perform those functions or duties under the direction and control of the managing director.

(7) For the avoidance of doubt, the managing director —

- (a) shall remain responsible for any exercise of his powers or any performance of his functions or duties by any officer or employee appointed or by any committee formed under subsection (6); and
- (b) may continue to exercise his powers or perform his functions or duties conferred or imposed upon him by virtue of subsection (3), notwithstanding the delegation of the power, function or duty under subsection (6).

[24/2003 wef 01/01/2004]

Disqualification of directors

10.—(1) No person may be appointed as or remain a director of the Authority who is a director or salaried official of any financial institution licensed or approved by the Authority under any written law.

[28/98]

(2) The President may terminate the appointment of any director appointed under section 8(1) if the director —

- (a) resigns his office;
- (b) becomes mentally disordered and incapable of managing himself or his affairs;
- (c) becomes bankrupt or suspends payment to or compounds with his creditors;
- (d) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (e) is guilty of serious misconduct in relation to his duties;
- (f) is absent, without leave, from 3 consecutive meetings of the board; or
- (g) fails to comply with his obligations under section 13.

[21/2008 wef 01/03/2010]

Vacancies in office of director

11. If any director appointed under section 8(1) dies or resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by the President for the unexpired period of the term of office of the director in whose place he is appointed.

Presidential concurrence

11A. The President, acting in his discretion, may refuse to appoint any person as chairman, deputy chairman, director or managing director or to revoke any such appointment if the President does not concur with the advice or recommendation of the Minister, the Cabinet, a Minister acting under the general authority of the Cabinet or the Public Service Commission, as the case may be, and may refuse to concur with an appointment by the Minister under section 9(5)(b).

[11/91]

[13/2007 wef 30/06/2007]

Meetings and decisions of board

12.—(1) The chairman of the board shall summon meetings as often as may be required but not less frequently than once in 3 months.

(2) At every meeting of the board, a quorum shall consist of 4 directors or a simple majority of the directors, whichever is the larger, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that in the case of an equality of votes the chairman shall have a casting vote.

[28/98]

(3) For the avoidance of doubt, a decision of the board may be made by way of a resolution passed by a simple majority of the directors by written or electronic means.

[24/2003 wef 01/01/2004]

Director's interest in contract to be made known

13.—(1) A director who is, directly or indirectly, interested in a contract made, or proposed to be made, by the Authority shall disclose the nature of his interest at the first meeting of the board at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the board and, after the disclosure, the director —

(a) shall not take part in any deliberation or decision of the board with respect to that contract; and

(b) shall be disregarded for the purpose of constituting a quorum of the board for any such deliberation or decision.

(3) No act or proceeding of the board shall be questioned on the ground that a director has contravened this section.

Appointment of committees and delegation of powers

13A.—(1) The Authority may appoint from among its directors or other persons who are not directors such number of committees as it thinks fit for purposes which, in the opinion of the Authority, would be better regulated and managed by means of such committees.

[24/2003 wef 01/01/2004]

(2) The Authority may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee or any director any of the powers, functions or duties of the Authority under this Act or any other written law, except the power of delegation conferred by this subsection and the power to make subsidiary legislation unless expressly provided under any written law.

[24/2003 wef 01/01/2004]

(3) Any power, function or duty delegated under subsection (2) may be exercised or performed by such committee or director, as the case may be, in the name and on behalf of the Authority.

[24/2003 wef 01/01/2004]

(4) The Authority may continue to exercise a power conferred upon it, or perform a function or duty under this Act or any other written law, notwithstanding the delegation of the power, function or duty under this section.

[24/2003 wef 01/01/2004]

Appointment of assistants

13B.—(1) The Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power of appointment conferred by this subsection, the power of delegation conferred by section 13A(2) and the power to make subsidiary legislation.

(2) Any person appointed by the Authority under subsection (1) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

[Act 9 of 2013 wef 18/04/2013]

Preservation of secrecy

14.—(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no person who is or has been a director, officer, employee, consultant or agent of the Authority shall disclose to any person any information relating to the

affairs of the Authority or of any person which he has acquired in the performance of his duties or the exercise of his functions.

[25/2002 wef 01/10/2002]

[26/84]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both.

[26/84]

Remuneration not to be related to profits

15. No salary, fee, wage or other remuneration or allowance paid by the Authority shall be computed by reference to the profits of the Authority.

Public servants and public officers

16.—(1) The directors, including the managing director, and the officers and employees of the Authority of every description shall be deemed to be public servants within the meaning of the Penal Code (Cap. 224).

[Act 9 of 2013 wef 18/04/2013]

(2) The directors, including the managing director, and the officers and employees of the Authority shall, in relation to their administration, collection and enforcement of payment of any moneys to be paid to or into the Consolidated Fund under this Act or any of the written laws set out in the Schedule, be deemed to be public officers for the purposes of the Financial Procedure Act (Cap. 109), and section 20 of that Act shall apply to such persons notwithstanding that they are not or were not in the employment of the Government.

[Act 9 of 2013 wef 18/04/2013]

PART III

PROVISIONS RELATING TO STAFF, ETC.

[13/2007 wef 30/06/2007]

Appointment of employees

17.—(1) The Authority may appoint such employees as it thinks fit and determine all matters relating to their remuneration and terms and conditions of appointment and employment.

[26/84]

(2) The Authority may engage the services of advisers in such manner and on such terms and conditions as it thinks fit.

[26/84]

(3) The Authority may make rules, not inconsistent with this Act, for the appointment, promotion, conduct and discipline and terms and conditions of service of its employees.

[26/84]

Transfer of employees

18.—(1) On 1st January 1971, such persons, as the Minister may decide, who were employed by the Government immediately prior to that date and were exercising any of the powers or were discharging any of the functions or duties vested in the Authority by this Act, shall be deemed to be transferred to the service of the Authority on terms not less favourable than those they enjoyed immediately prior to their transfer.

(2) Such terms (which shall be determined by the Authority) shall take into account the salaries and conditions of service including any accrued rights to leave enjoyed by them while in the employment of the Government.

Pension schemes, provident fund, etc.

19.—(1) The Authority may, with the approval of the President, make rules for the establishment of a scheme or schemes for the payment of pensions, gratuities, provident fund or other superannuation benefits to such employees or classes of employees of the Authority as it may determine, or to their legal personal representatives or dependants, on the death or retirement of those employees from the service of the Authority or on their otherwise leaving the service of the Authority.

(2) The Authority in making under subsection (1) any pension, provident fund or other superannuation rules which affect any

persons transferred to the service of the Authority under section 18 shall in those rules provide for the payment to those persons or their dependants of benefits not less in value than the amount of any pension, provident fund, gratuity or allowance for which those persons would have been eligible under the Pensions Act (Cap. 225) had they continued in the service of the Government.

(3) Any such pension, provident fund or superannuation rules relating to length of service of persons shall provide for the recognition as service under the Authority by persons so transferred of service by them under the Government.

(4) Nothing in the rules to be made under subsection (1) shall adversely affect any conditions that would have been applicable to persons transferred to the service of the Authority from their service with the Government as regards any pension, gratuity or allowance under the Pensions Act (Cap. 225).

(5) Where any person in the service of the Authority whose case does not come within the scope and effect of any pension or other schemes established under this section retires or dies in the service of the Authority or is discharged from that service, the Authority may grant to him or to such other person or persons wholly or partly dependent on him, as the Authority may think fit, such allowance or gratuity as the Authority may determine.

No entitlement in respect of abolition or reorganisation of office

20. Notwithstanding the Pensions Act, no person who is transferred to the service of the Authority under section 18 shall be entitled to claim any benefits under this Act on the ground that he has been retired from the service of the Government on account of abolition or reorganisation of office.

21. [*Deleted by Act 13/2007 wef 30/06/2007*]

Immunity of Authority, directors and employees, etc.

22. No action, suit or other legal proceedings shall lie against —

(a) the Authority;

- (b) any director, officer or employee of the Authority;
- (c) any public officer;
- (d) any person who is on secondment or attachment to the Authority; or
- (e) any person appointed, approved or directed by the Minister or the Authority to exercise the Authority's power, perform the Authority's functions or duties or to assist the Authority in the exercise of its powers or performance of its functions or duties under this Act or any other written law,

for anything done (including any statement made) or omitted to be done in good faith in the course of or in connection with —

- (i) the exercise or purported exercise of any power under this Act or any other written law;
- (ii) the performance or purported performance of any function or duty under this Act or any other written law; or
- (iii) the compliance or purported compliance with this Act or any other written law.

[24/2003 wef 01/01/2004]

Indemnity for Authority's officers against cost of action to which section 22 applies

22A.—(1) The Authority must indemnify a person mentioned in subsection (2) against all costs and expenses reasonably incurred by the person in connection with any action, suit or other legal proceedings to which the person is a party by reason of anything done (including any statement made) or omitted to be done in good faith in the course of or in connection with any of the matters mentioned in section 22(i), (ii) or (iii).

(2) Subsection (1) applies to a person who was a person mentioned in section 22(b), (d) or (e) at the time of the alleged act or omission giving rise to the action, suit or proceeding.

[Act 31 of 2017 wef 15/08/2017]

PART IV

POWERS, DUTIES AND FUNCTIONS OF AUTHORITY

Powers, duties and functions of Authority

23.—(1) The Authority may, in addition to the functions referred to in section 4(2), exercise and discharge the following powers, duties and functions:

- (a) accept deposits of money and pay interest on such deposits;
- (b) issue demand drafts and other kinds of remittances made payable at its own office or the offices of agencies or correspondents;
- (c) purchase, repurchase, accept on deposit and sell gold coin or bullion;

[Act 9 of 2013 wef 18/04/2013]

- (d) purchase, repurchase, sell, discount and re-discount Treasury bills of the Government;

[Act 9 of 2013 wef 18/04/2013]

- (e) purchase, repurchase and sell securities of the Government or of any public authority which have been publicly offered for sale or form part of an issue which is being made to the public at the time of acquisition;

[Act 9 of 2013 wef 18/04/2013]

- (ea) grant any loan, advance, overdraft or other credit facility to the Government on such terms and conditions as the Authority thinks fit;

[13/2007 wef 30/06/2007]

- (f) purchase, repurchase, sell, discount and re-discount bills of exchange and promissory notes arising out of bona fide commercial transactions bearing 2 or more good signatures and maturing within 3 months (exclusive of days of grace) from the date of acquisition;

[Act 9 of 2013 wef 18/04/2013]

- (g) grant loans, advances or other credit facilities for the purposes of money market operations, on such terms and conditions as the Authority thinks fit, to such financial

institutions or class of financial institutions as the Authority may from time to time determine;

[24/2003 wef 01/01/2004]

(ga) for the purposes of money market operations —

(i) issue securities in the name of the Authority in accordance with Part VA;

(ii) purchase, repurchase, sell, redeem, discount and re-discount such securities; and

(iii) do all things which the Authority may do under Part VA in connection with such securities;

[Act 9 of 2013 wef 18/04/2013]

(h) invest in securities of the Government or of any public authority for any amount, and to mature at any time on behalf of staff and pension funds and other internal funds of the Authority;

(i) acquire, hold and sell shares of any corporation set up with the approval of, or under the authority of, the Government for the purpose of promoting the development of a money market or securities market in Singapore or for the financing of economic development in Singapore;

(j) purchase, repurchase and sell currency, and purchase, repurchase, sell, discount and re-discount bills of exchange and Treasury bills drawn in or on places outside Singapore;

[Act 9 of 2013 wef 18/04/2013]

(k) borrow money, establish credits and give guarantees in any currency, inside and outside Singapore, on such terms and conditions as the Authority may think fit;

(l) maintain accounts with central banks outside Singapore and with other banks inside and outside Singapore;

(m) purchase, repurchase and sell securities of, or guaranteed by, such guarantor, governments or international financial institutions as may be approved by the board, or purchase, repurchase and sell such other securities, financial

instruments and investments as may be approved by the board;

[13/2007 wef 30/06/2007]

[Act 9 of 2013 wef 18/04/2013]

- (n) act as correspondent, banker or agent for any central bank or other monetary authority and for any international bank or international monetary authority established under governmental auspices;
 - (o) open accounts for, and accept deposits from, the Government, public authorities, companies in which the Government or a public authority has a substantial interest, and companies which are deemed to be related to those companies by virtue of section 6 of the Companies Act (Cap. 50), banks and other credit institutions in Singapore;
 - (p) underwrite loans in which the Authority may invest;
 - (q) undertake the issue and management of securities issued by the Government or by any public authority;
- [31/2005 wef 18/10/2005]*
- (qa) form or participate in the formation of any company or in any joint venture as a shareholder or partner or in any other capacity, for purposes that are necessary or expedient for the purpose of discharging its functions or achieving its objects; and
- [31/2005 wef 18/10/2005]*
- (r) do generally all such things as may be commonly done by bankers and are not inconsistent with the exercise of its powers or the discharge of its duties under this Act.

[31/72; 26/84]

[13/2007 wef 30/06/2007]

(2) For the purposes of subsection (1)(o) and section 30(d), the Government or a public authority shall have a substantial interest in a company if it, either by itself or together with any other public authority, has an interest or interests in one or more voting shares in the company and the vote or votes attached to that share, or the total votes attached to those shares either held by itself or together with any

other public authority, is not less than 20% of the total votes attached to all the voting shares in the company.

[21/2005 wef 30/01/2006]

(3) In subsection (1), a reference to the purchase of any securities or Treasury bills includes subscribing for such securities or Treasury bills.

[13/2007 wef 30/06/2007]

(4) Notwithstanding subsection (1), the Authority shall not grant any loan, advance, overdraft or other credit facility to the Government, or underwrite any loan to the Government, unless the Authority is satisfied that such loan, advance, overdraft or credit facility is required by the Government to meet unexpected and temporary shortfall in the Government's revenue relative to its expenditure.

[13/2007 wef 30/06/2007]

(5) Notwithstanding subsection (1), the Authority shall not directly subscribe for any securities issued by the Government or any public authority.

[13/2007 wef 30/06/2007]

(6) Subsection (5) shall not apply to any subscription for debt securities issued by the Government or any public authority that is made in connection with —

- (a) in the case of debt securities (including Treasury bills) issued by the Government, the conduct of monetary policy or the development of the bond market in Singapore; or
- (b) in the case of debt securities issued by any public authority, the development of the bond market in Singapore,

but only insofar as the subscription does not compromise the object of the Authority referred to in section 4(1)(a).

[13/2007 wef 30/06/2007]

(7) Nothing in this section shall be construed as authorising the Authority to —

- (a) grant any loan, advance, overdraft or other credit facility to any public authority; or
- (b) underwrite any loan to any public authority.

[13/2007 wef 30/06/2007]

(7A) For the purposes of Part IVB, the Authority may (in addition to its other powers) —

- (a) grant a loan to a trustee of a resolution fund within the meaning of Division 5B of that Part; and
- (b) do all such things as are necessary or expedient to be done for the orderly resolution of a financial institution.

[Act 31 of 2017 wef 29/10/2018]

(8) The Authority may, in addition to the powers, duties and functions set out in this Part, exercise all powers and perform all functions and duties conferred or imposed on the Authority under this Act, the written laws set out in the Schedule, and any other written law.

[13/2007 wef 30/06/2007]

(9) The Minister may, from time to time, by order published in the *Gazette*, amend the Schedule.

[13/2007 wef 30/06/2007]

(10) Notwithstanding section 56 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the Authority may, for the purposes of performing the Authority's functions and duties under this Act, the written laws set out in the Schedule and any other written law, require a relevant Suspicious Transaction Reporting Officer to disclose to the Authority any information or matter which he has obtained in the performance of his duties or the exercise of his functions under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

[Act 9 of 2013 wef 18/04/2013]

(11) In this section —

“relevant Suspicious Transaction Reporting Officer” means a Suspicious Transaction Reporting Officer who is an officer or employee of the Authority;

“Suspicious Transaction Reporting Officer” has the same meaning as in section 2(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

[Act 9 of 2013 wef 18/04/2013]

Investment of funds

24. The funds of the Authority may be invested in all or any of the following:

- (a) gold coin or bullion;
- (b) notes, coins, money at call and deposits in such country or countries as may be approved by the board;
- (c) Treasury bills of such government or governments as may be approved by the board;
- (d) securities of, or guaranteed by, such government or governments or international financial institutions as may be approved by the board;
- (e) such other securities, financial instruments and investments as may be approved by the board.

[26/84]

[13/2007 wef 30/06/2007]

Authority as a banker to, and financial agent of, Government and manager of its external assets

25.—(1) The Authority shall act as a banker to, and a financial agent of, the Government.

(2) Whenever the Authority receives and disburses Government moneys, the Authority shall keep account thereof and may be paid an agency fee for its services.

(3) The Authority may act generally as agent for the Government on such terms and conditions as may be agreed between the Authority and the Government where the Authority can do so appropriately and consistently with the provisions of this Act and with its duties and functions as a monetary authority.

(4) The Authority shall, subject to the Financial Procedure Act (Cap. 109) and any other written law, manage the external assets of the Government.

Special loans to banks, financial institutions, etc.

26. The Authority may, if it thinks such action is necessary to safeguard —

- (a) the stability of the financial system; or
- (b) public confidence in the financial system,

make any loan or advance to any bank carrying on business under the Banking Act (Cap. 19) or to such financial institutions or class of financial institutions or such other persons as the Authority may from time to time determine, on such terms and conditions as the Authority thinks fit.

[24/2003 wef 01/01/2004]

Power to issue directions to financial institutions

27.—(1) The Authority may, if it thinks it necessary in the public interest, request information from and make recommendations to such financial institutions as the Authority may, from time to time, determine and may issue directions for the purpose of securing that effect is given to any such request or recommendation.

[31/72; 26/84]

(2) Before issuing any direction under subsection (1), the financial institution or financial institutions concerned shall, unless the Authority in respect of any particular direction decides that it is not practicable or desirable, be given an opportunity to make representations with regard to the proposed direction within such time as the Authority shall specify.

[31/72]

(3) Upon receipt of any representations referred to in subsection (2), the Authority shall consider them and may —

- (a) reject the representations; or
- (b) amend or modify the proposed direction in accordance with the representations, or otherwise,

and in either event, the Authority shall thereupon issue a direction in writing to such financial institution or financial institutions, as the case may be, requiring that effect be given to the proposed direction or to the proposed direction as subsequently amended or modified by

it within a reasonable time, and the financial institution or financial institutions, as the case may be, shall comply with that direction.

[31/72]

(4) Any financial institution that fails or refuses to comply with a direction given under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

[31/72; 26/84]

(5) It shall not be necessary to publish any direction issued under this section or section 27A, 27B or 28 in the *Gazette*.

[Act 9 of 2013 wef 18/04/2013]

Directions or regulations to discharge Government's international obligations

27A.—(1) The Authority may, from time to time —

(a) issue such directions to a financial institution or class of financial institutions; and

(b) make such regulations concerning any financial institution or class of financial institutions or relating to the activities of any financial institution or class of financial institutions,

as the Authority considers necessary in order to discharge or facilitate the discharge of any obligation binding on Singapore by virtue of a decision of the Security Council of the United Nations.

[16/2002 wef 30/09/2002]

(2) A financial institution to which a direction is issued under subsection (1)(a) or which is bound by any regulations made under subsection (1)(b) shall comply with the direction or regulations notwithstanding any other duty imposed on the financial institution by any rule of law, written law or contract.

[16/2002 wef 30/09/2002]

(3) A financial institution shall not in carrying out any act in compliance with any direction or regulations made under subsection (1) be treated as being in breach of any such rule of law, written law or contract.

[16/2002 wef 30/09/2002]

(4) A financial institution shall not disclose any direction issued under subsection (1)(a) if the Authority notifies the financial

institution that the Authority is of the opinion that the disclosure of the direction is against the public interest.

[16/2002 wef 30/09/2002]

(5) A financial institution which —

- (a) fails or refuses to comply with a direction issued to it;
- (b) contravenes any regulations made under subsection (1)(b);
or
- (c) discloses a direction issued to it in contravention of subsection (4),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million.

[16/2002 wef 30/09/2002]

[13/2007 wef 30/06/2007]

[42/2007 wef 01/11/2007]

(6) In this section, “financial institution” means —

- (a) any bank licensed under the Banking Act (Cap. 19);
- (b) any finance company licensed under the Finance Companies Act (Cap. 108);
- (c) any person that is approved as a financial institution under section 28;

[13/2007 wef 30/06/2007]

- (d) any money-changer licensed to conduct money-changing business, or any remitter licensed to conduct remittance business, under the Money-changing and Remittance Businesses Act (Cap. 187);
- (e) any insurer licensed or regulated under the Insurance Act (Cap. 142);
- (f) any insurance intermediary registered or regulated under the Insurance Act;
- (g) any licensed financial adviser under the Financial Advisers Act (Cap. 110);
- (h) any approved holding company, approved exchange, recognised market operator, licensed trade repository,

[Act 11 of 2013 wef 18/04/2013]

licensed foreign trade repository, approved clearing house, recognised clearing house or holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);

[Act 4 of 2017 wef 08/10/2018]

[Act 34 of 2012 wef 01/08/2013]

- (i) any trustee for a collective investment scheme authorised under section 286 of the Securities and Futures Act, that is approved under that Act;
- (j) any trustee-manager of a business trust that is registered under the Business Trusts Act (Cap. 31A);
- (k) any licensed trust company under the Trust Companies Act (Cap. 336);
- (ka) any holder of a stored value facility under the Payment Systems (Oversight) Act (Cap. 222A);
[42/2007 wef 01/11/2007]
[Act 14 of 2015 wef 26/06/2015]
- (kb) any designated financial holding company under the Financial Holding Companies Act 2013 (Act 13 of 2013);
[Act 14 of 2015 wef 26/06/2015]
- (kc) any person licensed under the Banking Act (Cap. 19) to carry on the business of issuing credit cards or charge cards in Singapore; and
[Act 14 of 2015 wef 26/06/2015]
- (l) any other person licensed, approved, registered or regulated by the Authority under any written law,

but does not include such person or class of persons as the Authority may, by regulations made under this section, prescribe.

[16/2002 wef 30/09/2002]

[13/2007 wef 30/06/2007]

(7) For the purpose of subsection (6), a reference to a person being licensed, approved, registered or regulated under any of the laws referred to in that subsection includes a person who is exempted under the relevant law from being licensed, approved, registered or

regulated, but does not include such person or class of persons as the Authority may, by regulations made under this section, prescribe.

[16/2002 wef 30/09/2002]

[13/2007 wef 30/06/2007]

Requirements for prevention of money laundering and terrorism financing

27B.—(1) The Authority may, from time to time, issue such directions or make such regulations concerning any financial institution or class of financial institutions as the Authority considers necessary for the prevention of money laundering or for the prevention of the financing of terrorism.

[13/2007 wef 30/06/2007]

(1A) In particular, the directions and regulations under subsection (1) may provide for —

- (a) customer due diligence measures to be conducted by financial institutions to prevent money laundering and the financing of terrorism; and
- (b) the records to be kept for that purpose.

[Act 14 of 2015 wef 26/06/2015]

(1B) A financial institution must —

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

[Act 14 of 2015 wef 26/06/2015]

(2) A 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
- (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 or part of a day during which the offence continues after conviction.

[Act 14 of 2015 wef 26/06/2015]

(3) In this section, “financial institution” has the same meaning as in section 27A(6) read with section 27A(7).

[13/2007 wef 30/06/2007]

[Act 14 of 2015 wef 26/06/2015]

Inspection of financial institutions for compliance with directions and regulations under sections 27A and 27B

27C.—(1) The Authority may, from time to time, inspect under conditions of secrecy the books of —

- (a) a financial institution; or
- (b) any subsidiary, branch, agency or office outside Singapore of a financial institution incorporated or established in Singapore,

for the purpose of determining the extent of compliance by the financial institution with the directions issued and the regulations made under sections 27A and 27B.

(2) The Authority may appoint any person, including an auditor (not being an auditor of the financial institution), to carry out an inspection under this section.

(3) If the inspection is carried out on the ground that the Authority has reason to believe that the financial institution has contravened or is contravening any direction issued or regulation made under section 27A or 27B, and if the Authority so directs, then the financial institution is liable to pay for the remuneration and expenses of any person appointed under subsection (2) for the inspection.

(4) The Authority may recover from the financial institution the remuneration and expenses referred to in subsection (3) as a civil debt due to the Authority.

(5) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (3).

(6) Where, in the course of an inspection under subsection (1), the Authority obtains any protected information as defined in section 152(1), and that information is not necessary for taking any action regarding non-compliance with any direction issued or regulation made under section 27A or 27B, then the Authority must treat that information as secret.

[Act 31 of 2017 wef 04/06/2018]

(7) Subsection (6) does not prevent the transmission under section 27F, 155, 157 or 160 by the Authority of any information to any authority referred to in the applicable section.

[Act 31 of 2017 wef 04/06/2018]

(8) In this section and section 27D, “book” has the same meaning as in section 152(1).

[Act 31 of 2017 wef 04/06/2018]

(9) In this section and sections 27D, 27E and 27F, “financial institution” has the same meaning as in section 27A(6) read with section 27A(7).

[Act 14 of 2015 wef 26/06/2015]

Obligation of financial institution under inspection

27D.—(1) For the purposes of an inspection under section 27C(1), the financial institution must —

- (a) give the Authority access to such of the books of the financial institution as the Authority may reasonably require to conduct the inspection;
- (b) procure a person who is in possession of such of the books of the financial institution as the Authority may reasonably require to conduct the inspection, to give the Authority access to the books;
- (c) provide such information (including information relating to the internal control systems of the financial institution) and facilities as the Authority may reasonably require to conduct the inspection; and

- (d) procure a person who is in possession of such information (including information relating to the internal control systems of the financial institution) and facilities as the Authority may reasonably require to conduct the inspection, to provide the information and facilities to the Authority.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the financial institution or any of its officers, or on any person referred to in subsection (1)(b) or (d), by any prescribed written law as defined in section 152(1) or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

[Act 31 of 2017 wef 04/06/2018]

(3) A financial institution which refuses or neglects, without reasonable excuse, to comply with 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 of a day during which the offence continues after conviction.

(4) No civil or criminal liability is incurred by a financial institution or any of its officers, or by any person referred to in subsection (1)(b) or (d), in respect of any obligation or restriction referred to in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(5) A financial institution or any of its officers, or any person referred to in subsection (1)(b) or (d), that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (2).

[Act 14 of 2015 wef 26/06/2015]

Confidentiality of inspection reports

27E.—(1) Except as provided in subsection (2), where a written report has been produced in respect of a financial institution by the

Authority following an inspection under section 27C, the report must not be disclosed to any person by —

- (a) the financial institution; or
- (b) any officer or auditor of the financial institution.

(2) Disclosure of the report may be made —

- (a) by the financial institution to any officer or auditor of that financial institution solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that financial institution;
- (b) by any officer or auditor of the financial institution to any other officer or auditor of that financial institution, solely in connection with the performance of their respective duties in that financial institution; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the financial institution, any officer or auditor of that financial institution or the person to whom disclosure is approved, and that financial institution, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.

(4) The obligations of an officer or auditor under subsections (1) and (3) continue after the termination or cessation of the employment or appointment of the officer or auditor by the financial institution.

(5) Any person who contravenes subsection (1), or fails to comply with any condition or restriction imposed by the Authority under subsection (3), shall be guilty of an offence and shall be liable on conviction —

- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction —

(a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

(a) the disclosure was made contrary to the person's desire;

(b) where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the report surrendered, or taken all reasonable steps to surrender, the report and all copies of the report to the Authority; and

(c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the Authority.

[Act 14 of 2015 wef 26/06/2015]

Authority may transmit information from inspection to corresponding authority

27F.—(1) The Authority or any person authorised by the Authority may, on the Authority's own motion, and subject to the satisfaction of such conditions as the Authority may determine, transmit any information obtained by the Authority from an inspection under section 27C to a corresponding authority as defined in section 152(1) of a foreign country that exercises consolidated supervision authority (whether or not for compliance with any AML/CFT requirement as

defined in section 30X(1)) over the financial institution to which the inspection relates.

[Act 31 of 2017 wef 04/06/2018]

(2) Subsection (1) applies despite the provisions of any prescribed written law as defined in section 152(1) or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct, and is without prejudice to section 160 or any other written law or rule of law authorising the Authority, or a person authorised by the Authority, to disclose information in the Authority's or the person's possession to another person.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Power to approve financial institutions and control their operations

28.—(1) The Authority may require any financial institution or class or classes of financial institutions whose operations are considered by the Authority to affect —

- (a) monetary stability and credit and exchange conditions in Singapore;
- (b) the development of Singapore as a financial centre; or
- (c) the financial situation of Singapore generally,

to be approved by the Authority for the purpose of carrying on business in Singapore.

[26/84]

(2) On an application in writing for approval under subsection (1), the Authority may —

- (a) grant approval;
- (b) refuse to grant approval and shall not be obliged to give reasons for its refusal; or
- (c) grant approval subject to such conditions as it sees fit to impose.

[26/84]

(3) Without prejudice to the generality of section 27, the Authority may, if it thinks it necessary or expedient in the public interest, give

directions either of a general or special nature, to approved financial institutions or any class or classes of approved financial institutions in relation to —

- (a) the range of activities that they may engage in or the range of services that they may provide;
- (b) the terms and conditions under which they may carry on a particular activity or provide a particular service; and
- (c) all matters in which it appears to the Authority that the activities that they engage in or the services that they provide affect or are likely to affect monetary or economic policy or credit conditions or the development of Singapore as a financial centre,

and the financial institutions concerned shall comply with such directions.

[26/84]

(4) The Authority may, from time to time, issue guidelines to and impose conditions of operation on such financial institutions as it thinks fit and may amend or revise those guidelines and conditions.

[26/84]

(5) The Authority may withdraw approval of a financial institution if it appears to the Authority that —

- (a) any information required to be furnished in connection with an application for approval was false or misleading in a material particular;
- (b) the financial institution has failed to comply with any direction or guideline issued or condition attached to an approval or conditions of operation imposed under this section;
- (c) the financial institution has conducted its affairs so as to threaten the interests of its depositors or customers; or
- (d) it is in the public interest to do so.

[26/84]

(6) Any financial institution, which is aggrieved by a decision of the Authority to withdraw approval, may appeal against the decision to the Minister whose decision shall be final.

[26/84]

(7) A financial institution, required under subsection (1) to obtain the Authority's approval, that carries on its business without first obtaining that approval shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine of \$3,000 for every day during which the offence continues after conviction.

[26/84]

(8) An approved financial institution that fails to comply with any direction given under subsection (3) or any condition subject to which an approval is granted under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues after conviction.

[26/84]

Power of Authority in relation to dispute resolution schemes

28A.—(1) The Authority may approve any dispute resolution scheme for the resolution of disputes arising from or relating to the provision of financial services by financial institutions.

[13/2007 wef 30/06/2007]

(2) The Authority may by regulations require a financial institution registered, licensed, approved or regulated by the Authority under any written law to be a member of such approved dispute resolution scheme and to comply with such terms of membership of the scheme as may be prescribed.

[13/2007 wef 30/06/2007]

(3) Any financial institution which, without reasonable excuse, contravenes any regulations made under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[13/2007 wef 30/06/2007]

(4) Where the Authority is satisfied that a financial institution has contravened any regulations made under subsection (2), the Authority may do one or both of the following:

- (a) if it thinks it necessary in the public interest or for the protection of consumers, reprimand the financial institution;
- (b) impose on the financial institution under the written law under which the financial institution was registered, licensed or approved, such conditions or restrictions of registration, licence or approval as the Authority thinks fit, including restricting the scope of the activities which the financial institution is allowed to conduct under the written law; and the financial institution shall comply with such conditions or restrictions.

[13/2007 wef 30/06/2007]

(5) Any power of the Authority under the written law referred to in subsection (4)(b) to impose conditions or restrictions of registration, licence or approval shall, notwithstanding anything to the contrary in that written law, be deemed to include the power to impose the conditions or restrictions referred to in subsection (4)(b).

[13/2007 wef 30/06/2007]

(6) The Authority may make regulations —

- (a) to provide for the matters that the Authority may have regard to in determining whether to approve a dispute resolution scheme under subsection (1);
- (b) to prescribe a list of dispute resolution schemes approved under subsection (1);
- (c) to provide for suspension or cancellation of approvals under subsection (1);
- (d) to provide for matters relating to the operations of an operator of an approved dispute resolution scheme, including the standards or requirements of its operations, the fees that may be charged for its dispute resolution services, the records that must be kept, the period of retention of the records, the reports that are to be submitted

to the Authority, the time for such submission, the terms of membership with the scheme, the procedure for dispute resolution and other matters relating to the administration of the scheme; and

- (e) generally to give effect to or for carrying out the purposes of this section.

[13/2007 wef 30/06/2007]

(7) Regulations made under this section may provide that any contravention thereof shall be an offence punishable with a fine not exceeding \$50,000.

[13/2007 wef 30/06/2007]

(8) The Authority may issue, and in its discretion publish by notification in the *Gazette* or in such other manner as it considers appropriate, such guidelines as it considers appropriate for providing guidance in relation to the operation of this section or any regulations made under this section.

[13/2007 wef 30/06/2007]

Corporate offenders and unincorporated associations

28B.—(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[42/2007 wef 01/11/2007]

(2) Where the affairs of the body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

[42/2007 wef 01/11/2007]

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[42/2007 wef 01/11/2007]

(4) Where an offence under this Act committed by a limited liability partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or manager of the limited liability partnership, the partner or manager (as the case may be) as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[42/2007 wef 01/11/2007]

(5) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the unincorporated association or a member of its governing body, the officer or member (as the case may be) as well as the unincorporated association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[42/2007 wef 01/11/2007]

(6) In this section —

“body corporate” and “partnership” exclude a limited liability partnership within the meaning of the Limited Liability Partnerships Act (Cap. 163A);

“officer” —

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate, and includes a person purporting to act in any such capacity; or
- (b) in relation to an unincorporated association (other than a partnership), means the president, the secretary or a member of the committee of the unincorporated association or a person holding a position analogous to that of president, secretary or member of a committee, and includes a person purporting to act in any such capacity;

“partner”, in relation to a partnership, includes a person purporting to act as a partner.

[42/2007 wef 01/11/2007]

(7) The Authority may make regulations to provide for the application of any provision of this section, with such modifications as the Authority considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

[42/2007 wef 01/11/2007]

Fees

29.—(1) Every financial institution approved by the Authority under section 28 may be required to pay such fees in respect of anything done under or by virtue of that section as the Authority may by notification in the *Gazette* prescribe.

[26/84]

(2) The Authority may prescribe different fees in respect of different classes of financial institutions and such fees shall apply uniformly to such classes.

[26/84]

(3) The manner of payment shall be as specified by the Authority.

[26/84]

Real-time gross settlement system

29A.—(1) The Authority may establish and operate one or more real-time gross settlement systems for the transfer of funds, settlement of payment obligations and the transfer and settlement of book-entry securities and instruments between or among participants approved by the Authority.

[39/2002 wef 09/12/2002]

(2) A settlement system may be linked to another system in Singapore or elsewhere for the clearing or settlement of payment obligations, securities or instruments and whether or not such system is operated on a real-time gross settlement basis.

[39/2002 wef 09/12/2002]

(3) The Authority may enter into agreements with participants of a settlement system and issue to the participants in writing rules for the

operation of the settlement system and such rules shall not be deemed to be subsidiary legislation.

[39/2002 wef 09/12/2002]

(4) Without prejudice to the generality of subsection (3), such rules may provide —

- (a) for the appointment of the Authority as a certification authority for the purpose of issuing certificates for participants;
- (b) for the conduct of participants;
- (c) for the authentication of transactions carried out electronically;
- (d) for the Authority, if it considers it necessary in the interests of the system, to stop or suspend the operation of the system or to stop or suspend the privileges or rights of any participant or class of participants;
- (e) for the appointment of auditors or inspectors for the auditing or inspection of the operating systems of participants in respect of the settlement system; and
- (f) for the payment of fees to the Authority.

[39/2002 wef 09/12/2002]

(5) The Authority, any officer or employee of the Authority, or any person acting under the direction of the Authority, shall not be liable for any loss or damage suffered by any person or participant arising from, directly or indirectly, the use of a settlement system by any participant unless such loss or damage results from a reckless act or omission or any intentional misconduct of any officer or employee of the Authority or any person acting under the direction of the Authority.

[39/2002 wef 09/12/2002]

(6) The Payment and Settlement Systems (Finality and Netting) Act 2002 shall have effect in relation to a settlement system established and operated by the Authority under this section if the settlement system is designated under section 3 of that Act.

[39/2002 wef 09/12/2002]

(7) A settlement system established and operated by the Authority under section 59A of the Banking Act (Cap. 19) before the date of commencement of the Payment and Settlement Systems (Finality and Netting) Act 2002 shall continue and be deemed to have been established and operated by the Authority under this section.

[39/2002 wef 09/12/2002]

(8) In this section —

“book-entry securities and instruments” means any securities and instruments that are transferable by a book-entry on a register or otherwise, and are —

- (a) issued by the Government under any written law; or
- (b) approved by the Authority for clearing, settlement or transfer through or under a settlement system;

“certificate” has the same meaning as in the Third Schedule to the Electronic Transactions Act 2010 (Act 16 of 2010);

[Act 2 of 2012 wef 01/07/2010]

“certification authority” has the same meaning as in the Third Schedule to the Electronic Transactions Act 2010;

[Act 2 of 2012 wef 01/07/2010]

“participant” means a person approved by the Authority to be a participant of a settlement system and shall include the Authority where it participates in the settlement system;

[Act 2 of 2012 wef 01/07/2010]

“real-time gross settlement system” means a system which can effect final settlement of funds, payment obligations and book-entry securities and instruments on a continuous basis during such operating hours of a processing day as the Authority may determine and on a transaction-by-transaction basis;

“settlement system” means any real-time gross settlement system established under subsection (1).

[39/2002 wef 09/12/2002]

Agents

30. In the exercise of its powers and the performance of its functions under this Act, the Authority may —

- (a) establish agencies at such places outside Singapore as it thinks fit;
- (b) arrange with and authorise a person to act as agent of the Authority outside Singapore;
- (c) act as agent of a bank carrying on business inside or outside Singapore; and
- (d) act as agent of any public authority or any company in which the Government or a public authority has a substantial interest or any company which is deemed to be related to that company by virtue of section 6 of the Companies Act (Cap. 50) either generally or for a particular purpose inside or outside Singapore.

[26/84]

PART IVA**CONTROL OVER FINANCIAL INSTITUTIONS**

[Act 9 of 2013 wef 18/04/2013]

*Division 1 — General provisions***Application and interpretation of this Part**

31.—(1) This Part shall apply to, and in relation to, every relevant financial institution.

(2) In this Part, unless the context otherwise requires —

“chief executive”, in relation to a relevant 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 relevant financial institution; and

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

“Court” means the High Court or a Judge thereof;

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

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

“executive officer”, in relation to a relevant 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 relevant financial institution; and
- (b) is concerned with or takes part in the management of the relevant financial institution on a day-to-day basis;

“pertinent financial institution” has the same meaning as in section 49;

[Act 31 of 2017 wef 05/06/2018]

“relevant financial institution” means a financial institution that —

- (a) is approved by the Authority under section 28; and
- (b) belongs to a class of financial institutions that is prescribed by regulations made under section 41 for the purposes of this definition.

[Act 31 of 2017 wef 04/06/2018]

(3) In this subsection and sections 33 to 37, unless the context otherwise requires —

“business” includes affairs and property;

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

“relevant business” means any business of a relevant financial institution —

(a) which the Authority has assumed control of under section 33; or

[Act 31 of 2017 wef 04/06/2018]

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 33;

[Act 31 of 2017 wef 04/06/2018]

“statutory adviser” means a statutory adviser appointed under section 33;

[Act 31 of 2017 wef 04/06/2018]

“statutory manager” means a statutory manager appointed under section 33.

[Act 31 of 2017 wef 04/06/2018]

(4) In this subsection and sections 38 and 39, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

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

“property” includes property, right and power of every description;

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“significant business”, in relation to a relevant financial institution, means the usual business of a financial institution belonging to the same class of financial institutions as that relevant financial institution;

“transferee” means any person (being a person who is, or who has applied or will be applying to be, approved, authorised, designated, recognised, registered, licensed or otherwise regulated, under this Act or any of the written laws set out in the Schedule, to carry on the significant business of the transferor) to which the whole or any part of a transferor’s business is, is to be, or is proposed to be transferred under section 38(1);

[Act 31 of 2017 wef 04/06/2018]

“transferor” means a relevant financial institution the whole or any part of the business of which is, is to be, or is proposed to be transferred under section 38(1).

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Information of insolvency, etc.

32.—(1) Any relevant financial institution which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

(2) Any relevant financial institution which contravenes 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.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Action by Authority if relevant financial institution unable to meet obligations, etc.

33.—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) a relevant financial institution informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) a relevant financial institution becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that a relevant financial institution —
 - (i) is carrying on its business in a manner likely to be detrimental to the interests of such persons as may be prescribed by regulations made under section 41 in relation to the relevant financial institution;
[Act 31 of 2017 wef 04/06/2018]
 - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
 - (iii) has contravened any of the provisions of this Act; or
 - (iv) has failed to comply with any condition attached to its approval under section 28; or

(d) the Authority considers it in the public interest to do so.

(2) Subject to subsections (1) and (3), the Authority may —

- (a) require the relevant financial institution immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
- (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the relevant financial institution on the proper

management of such of the business of the relevant financial institution as the Authority may determine; or

- (c) assume control of and manage such of the business of the relevant financial institution as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

(3) In the case of a relevant financial institution incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the relevant financial institution under subsection (2) shall only be in relation to —

- (a) the business or affairs of the relevant financial institution carried on in, or managed in or from, Singapore; or
- (b) the property of the relevant financial institution located in Singapore, or reflected in the books of the relevant financial institution in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of a relevant financial institution, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 28(5)(c) and (d), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of

such power, on such terms and conditions as it may specify;

(b) further exercise any of the powers under subsection (2);

(c) add to, vary or revoke any term or condition specified by the Authority under this section.

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

(a) the exercise or purported exercise of any power under this Act;

(b) the performance or purported performance of any function or duty under this Act; or

(c) the compliance or purported compliance with this Act.

(7) Any relevant financial institution that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Effect of assumption of control under section 33

34.—(1) Upon assuming control of the relevant business of a relevant financial institution, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of a relevant financial institution, the Authority or statutory manager —

(a) shall manage the relevant business of the relevant financial institution in the name of and on behalf of the relevant financial institution; and

- (b) shall be deemed to be an agent of the relevant financial institution.

(3) In managing the relevant business of a relevant financial institution, the Authority or statutory manager —

- (a) shall take into consideration the interests of such persons as may be prescribed by regulations made under section 41 in relation to the relevant financial institution; and

[Act 31 of 2017 wef 04/06/2018]

- (b) shall have all the duties, powers and functions of the members of the board of directors of the relevant financial institution (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the relevant financial institution, including powers of delegation, in relation to the relevant business of the relevant financial institution; but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the relevant financial institution under the Companies Act or the constitution of the relevant financial institution.

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of a relevant financial institution by the Authority or statutory manager —

- (a) where the relevant financial institution is established or incorporated in Singapore, any appointment of a person as the chief executive or a director of the relevant financial institution which was in force immediately before the assumption of control; or
- (b) where the relevant financial institution is established or incorporated outside Singapore, any appointment of a person as the chief executive of the relevant financial institution (in so far as the appointment relates to the relevant business of the relevant financial institution) which was in force immediately before the assumption of control,

shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the relevant financial institution, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a relevant financial institution, except with the approval of the Authority, no person shall be appointed —

- (a) where the relevant financial institution is established or incorporated in Singapore, as the chief executive or a director of the relevant financial institution; or
- (b) where the relevant financial institution is established or incorporated outside Singapore, as the chief executive of the relevant financial institution (in so far as the appointment relates to the relevant business of the relevant financial institution).

(6) Where the Authority has given its approval under subsection (4) or (5) to a person to remain in the appointment of, or to be appointed as, the chief executive or a director of a relevant financial institution, the Authority may at any time, by notice in writing to the person and the relevant financial institution, revoke that approval, and the appointment shall be deemed to be revoked on the date specified in the notice.

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive or a director of a relevant financial institution is revoked under subsection (4) or (6), acts or purports to act after the revocation —

- (a) where the relevant financial institution is established or incorporated in Singapore, as the chief executive or a director of the relevant financial institution; or
- (b) where the relevant financial institution is established or incorporated outside Singapore, as the chief executive of the relevant financial institution in relation to the relevant business of the relevant financial institution,

during the period when the Authority or statutory manager is in control of the relevant business of the relevant financial institution —

(i) the act or purported act of the person shall be invalid and of no effect; and

(ii) the person shall be guilty of an offence.

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive or a director of a relevant financial institution in contravention of subsection (5) acts or purports to act —

(a) where the relevant financial institution is established or incorporated in Singapore, as the chief executive or a director of the relevant financial institution; or

(b) where the relevant financial institution is established or incorporated outside Singapore, as the chief executive of the relevant financial institution in relation to the relevant business of the relevant financial institution,

during the period when the Authority or statutory manager is in control of the relevant business of the relevant financial institution —

(i) the act or purported act of the person shall be invalid and of no effect; and

(ii) the person shall be guilty of an offence.

(9) During the period when the Authority or statutory manager is in control of the relevant business of a relevant financial institution —

(a) if there is any conflict or inconsistency between —

(i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and

(ii) a direction or decision given by any chief executive, director, member, executive officer, employee, agent or office holder, or the board of directors, of the relevant financial institution,

the direction or decision referred to in sub-paragraph (i) shall, to the extent of the conflict or inconsistency, prevail

over the direction or decision referred to in sub-paragraph (ii); and

- (b) no person shall exercise any voting or other right attached to any share in the relevant financial institution in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$125,000 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 \$12,500 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to a relevant financial institution, means the memorandum of association and articles of association of the relevant financial institution, or any other instrument under which the relevant financial institution is established or incorporated.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Duration of control

35.—(1) The Authority shall cease to be in control of the relevant business of a relevant financial institution when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary for the protection of the persons prescribed by regulations made under section 41 for the purposes of section 33(1)(c)(i) in relation to the relevant financial institution.

[Act 31 of 2017 wef 04/06/2018]

(2) A statutory manager shall be deemed to have assumed control of the relevant business of a relevant financial institution on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of a relevant financial institution may be revoked by the Authority at any time —

(a) if the Authority is satisfied that —

(i) the reasons for the appointment have ceased to exist;
or

(ii) it is no longer necessary for the protection of the persons prescribed by regulations made under section 41 for the purposes of section 33(1)(c)(i) in relation to the relevant financial institution; or

[Act 31 of 2017 wef 04/06/2018]

(b) on any other ground,

and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the relevant financial institution.

(4) The Authority shall, as soon as practicable, publish in the *Gazette* the date, and such other particulars as the Authority thinks fit, of —

(a) the Authority's assumption of control of the relevant business of a relevant financial institution;

(b) the cessation of the Authority's control of the relevant business of a relevant financial institution;

(c) the appointment of a statutory manager in relation to the relevant business of a relevant financial institution; and

(d) the revocation of a statutory manager's appointment in relation to the relevant business of a relevant financial institution.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Responsibilities of officers, member, etc., of relevant financial institution

36.—(1) During the period when the Authority or statutory manager is in control of the relevant business of a relevant financial institution —

- (a) the Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the relevant financial institution to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the Court may specify, any property, book, accounts, record or other documents, whether in electronic, print or other form, of the relevant financial institution which is comprised in, forms part of or relates to the relevant business of the relevant financial institution, and which is in the person's possession or control; and
- (b) any person who has ceased to be or who is still any chief executive, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the relevant financial institution shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the relevant financial institution, within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly furnishes any information or document 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 \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further

fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Remuneration and expenses of Authority and others in certain cases

37. The Authority may at any time fix the remuneration and expenses to be paid by a relevant financial institution —

- (a) to a statutory manager or statutory adviser appointed in relation to the relevant financial institution, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the relevant financial institution, to the Authority and any person appointed by the Authority under section 13B in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Voluntary transfer of business of relevant financial institution

38.—(1) A transferor may transfer the whole or any part of its business (including any business that is not the significant business of the transferor) to a transferee, if —

- (a) where the transferor is incorporated in Singapore, the Authority has consented to the transfer;
- (b) where the transferor is incorporated outside Singapore, the business to be transferred is reflected in the books of the transferor in Singapore in relation to its operations in Singapore;
- (c) the transfer involves the whole or any part of the business of the transferor that is the significant business of the transferor; and
- (d) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of a relevant financial institution to transfer the whole or any part of its business under any law.

(3) The Authority may consent to a transfer under subsection (1)(a) if the Authority is satisfied that —

(a) the transferee is a fit and proper person; and

(b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under subsection (1), whether the transferor is incorporated in or outside Singapore.

(5) The remuneration and expenses of any person appointed under subsection (4) shall be paid by the transferor and the transferee jointly and severally.

(6) The Authority shall serve a copy of any report furnished under subsection (4) on the transferor and the transferee.

(7) The Authority may require a person to furnish, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this section and section 39.

[Act 31 of 2017 wef 04/06/2018]

(8) Any person who —

(a) without reasonable excuse, fails to comply with any requirement under subsection (7); or

(b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document 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 \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further

fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Approval of transfer of business of relevant financial institution

39.—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under section 38(1).

[Act 31 of 2017 wef 04/06/2018]

(2) Before making an application under subsection (1) —

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) where the transferor is incorporated in Singapore, the transferor shall obtain the consent of the Authority under section 38(1)(a);

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- (c) the transferor and the transferee shall, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed by regulations made under section 41;

[Act 31 of 2017 wef 04/06/2018]

- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
 - (f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).
- (3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —
- (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
 - (b) may make any application to the Court in relation to the transfer.
- (4) Where the transferor is incorporated in Singapore, the Court shall not approve the transfer if the Authority has not consented under section 38(1)(a) to the transfer.
- [Act 31 of 2017 wef 04/06/2018]*
- (5) The Court may, after taking into consideration the views, if any, of the Authority on the transfer —
- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
 - (b) refuse to approve the transfer.
- (6) Where the transferee is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated, under this Act or any of the written laws set out in the Schedule, to carry on in Singapore the significant business of the transferor, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee becoming so approved, authorised,

designated, recognised, registered, licensed or regulated, as the case may be.

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

(8) Any order under subsection (7) may —

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

(9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case

of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

(10) No order under subsection (7) shall have any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory.

(12) Where an order is made under this section, the transferor and the transferee shall each lodge within 7 days after the order is made —

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(14) In subsection (13), “officer”, in relation to a transferor or transferee, includes —

- (a) a director, a secretary or an executive officer of the transferor or transferee (as the case may be);
- (b) a receiver or manager of any part of the undertaking of the transferor or transferee (as the case may be) appointed under a power contained in any instrument; and

- (c) a liquidator of the transferor or transferee (as the case may be) appointed in a voluntary winding up.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Disqualification or removal of director or executive officer of relevant financial institution

40.—(1) Notwithstanding the provisions of any other written law —

- (a) a relevant financial institution shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) a relevant financial institution which is established or incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 10 of the Monetary Authority of Singapore (Amendment) Act 2013, being an offence —
- (A) involving fraud or dishonesty;
- (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
- (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) 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;

- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A or 123ZZC of the Securities and Futures Act (Cap. 289) made against him that remains in force; or

[Act 31 of 2017 wef 05/06/2018]

- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —

- (A) which is being or has been wound up by a court; or

- (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of a relevant financial institution which is established or incorporated in Singapore, or an executive officer of a relevant financial institution —

- (a) has wilfully contravened or wilfully caused the relevant financial institution to contravene any provision of this Act;

- (b) has, without reasonable excuse, failed to secure the compliance of the relevant financial institution with this Act or any of the written laws set out in the Schedule; or

- (c) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the public interest or for the protection of such persons as may be prescribed by regulations made under section 41 for the purposes of this subsection in relation to the relevant financial institution, by notice in writing to the relevant financial institution, direct the relevant financial institution to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority

in the notice, and the relevant financial institution shall comply with the notice.

[Act 31 of 2017 wef 04/06/2018]

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a relevant financial institution has failed to discharge the duties of his office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed by regulations made under section 41.

[Act 31 of 2017 wef 04/06/2018]

(4) Before directing a relevant financial institution to remove a person from his office or employment under subsection (2), the Authority shall —

- (a) give the relevant financial institution and the person notice in writing of its intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the relevant financial institution and the person to show cause, within such time as may be specified in the notice, why the person should not be removed.

(5) If the relevant financial institution and the person referred to in subsection (4) —

- (a) fail to show cause within the time specified under subsection (4)(b) or within such extended period of time as the Authority may allow; or
- (b) fail to show sufficient cause,

the Authority may direct the relevant financial institution to remove the person under subsection (2).

(6) Any relevant financial institution which, or any director or executive officer of a relevant financial institution who, is aggrieved by a direction of the Authority under subsection (2) may, within 30 days after receiving the direction, appeal in writing to the Minister, whose decision shall be final.

(7) Any relevant financial institution which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on

conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(8) No criminal or civil liability shall be incurred by a relevant financial institution, or any person acting on behalf of the relevant financial institution, in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the relevant financial institution under this section.

(9) In this section, unless the context otherwise requires —

“regulated financial institution” means a person who carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act or any of the written laws set out in the Schedule.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Power of Authority to make regulations for this Part

41.—(1) The Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide that any contravention of any specified provision of the regulations shall be an offence punishable —

(a) in the case of an individual, with a fine not exceeding \$125,000 or with imprisonment for a term not exceeding 3 years or with both and, in the case of a continuing offence, with a further fine not exceeding \$12,500 for every day or

part thereof during which the offence continues after conviction; or

- (b) in any other case, with a fine not exceeding \$250,000 and, in the case of a continuing offence, with a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(3) For the purposes of sections 33(1)(c)(i) and 34(3)(a), the Authority may prescribe different persons and different classes of persons in relation to different relevant financial institutions and different classes of relevant financial institutions.

[Act 31 of 2017 wef 05/06/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Division 2 — Recovery and resolution planning

Notice concerning recovery and resolution plans

42.—(1) The Authority may issue a notice to pertinent financial institutions requiring each pertinent financial institution to which a direction is issued under section 43(1) —

- (a) to prepare, in the form and manner and containing the information specified in the notice, a plan to restore the financial strength and viability of the financial institution in the event it suffers financial pressure or stress (called in this section and section 43 a recovery plan);
- (b) to review and keep up-to-date its recovery plan, at a frequency specified in the direction;
- (c) to adopt various procedures in preparing its recovery plan, including the oversight of the process and endorsement of the plan;
- (d) to notify the Authority of the occurrence of any event that may necessitate the implementation of its recovery plan;
- (e) to maintain information to enable it to prepare, review and keep up-to-date its recovery plan, and to comply with any direction of the Authority under section 44;

- (f) to have in place a management information system that is necessary for the maintenance and production of the information mentioned in paragraph (e);
- (g) to ensure that its outsourcing arrangements for its critical functions and critical shared services will continue in the event it comes under resolution; and
- (h) to take such other action as in the Authority's opinion will facilitate compliance with any notice or direction issued by the Authority under this Division, or the effective implementation of the recovery plan of the pertinent financial institution or a plan of the Authority under section 44.

(2) A notice under this section may make different provisions for different classes of pertinent financial institutions.

[Act 31 of 2017 wef 05/06/2018]

Direction for recovery plan and its implementation

43.—(1) The Authority may issue a direction to a pertinent financial institution —

- (a) requiring it to comply with the requirements of a notice issued under section 42; and
- (b) specifying the dates for the submission of the recovery plan and the submission of any other document, and the frequency for the action mentioned in section 42(1)(b).

(2) The Authority may issue a further direction to a pertinent financial institution to which a direction was issued under subsection (1) —

- (a) to make such amendment to the institution's recovery plan as the Authority may reasonably require, including an amendment to address any deficiency in the plan; or
- (b) to remove any impediment to the implementation of the recovery plan.

(3) Without affecting the generality of subsection (2)(b), the direction in that subsection may require the pertinent financial

institution to make changes to its practices, organisation and structure (including its operational, legal and financial structures).

(4) The Authority may issue a further direction to a pertinent financial institution to which a direction was issued under subsection (1) —

- (a) to implement a specified part of the institution's recovery plan; and
- (b) to implement such other arrangements or measures as may be necessary to restore the institution's financial strength and viability.

[Act 31 of 2017 wef 05/06/2018]

Resolution planning

44. The Authority may prepare plans for the orderly resolution of a pertinent financial institution, and may for that purpose issue a direction to the pertinent financial institution requiring it to furnish, within the time and in the form and manner set out in the direction, any information or document that the Authority may reasonably require for that purpose.

[Act 31 of 2017 wef 05/06/2018]

Power to direct removal of impediments

45.—(1) This section applies if the Authority is of the opinion that an impediment exists to the orderly resolution of a pertinent financial institution in accordance with a plan of the Authority under section 44.

(2) The Authority may issue a direction to the pertinent financial institution, requiring the financial institution to take, within the time specified in the direction, measures specified in the direction for the purpose of addressing or removing the impediment.

(3) Without affecting the generality of subsection (2), the direction may require the financial institution to make changes to its practices, organisation and structure (including its operational, legal and financial structures).

[Act 31 of 2017 wef 05/06/2018]

Appeal against direction to remove impediment

46.—(1) A pertinent financial institution that is aggrieved by a direction to it under section 43(2)(b) or 45(2) may, within 30 days after receiving the direction, appeal to the Minister whose decision is final.

(2) An appeal may only be made if the direction requires the pertinent financial institution to make a change that will significantly affect its practices, organisation or operations.

(3) For the purposes of subsection (2), a change will significantly affect the practices, organisation or operations of a pertinent financial institution if it —

(a) changes any part of its legal or financial structure; or

(b) satisfies such other criterion as may be prescribed by regulations under subsection (7).

(4) If an appeal is lodged, the pertinent financial institution need not comply with the direction until the appeal is determined.

(5) The Minister may determine an appeal by confirming, varying or reversing the direction.

(6) If the Minister is satisfied that an appeal is made without reasonable ground, the Minister may, without calling for a reply from the Authority, but after giving the pertinent financial institution an opportunity to be heard, determine the appeal by confirming the direction.

(7) The Minister may make regulations to prescribe the criterion for the purposes of subsection (3)(b).

[Act 31 of 2017 wef 05/06/2018]

Provisions concerning directions and notices under this Division

47.—(1) A direction or notice under this Division must be in writing.

(2) It is not necessary to publish a direction or notice under this Division in the *Gazette*.

[Act 31 of 2017 wef 05/06/2018]

Offences under this Division

48.—(1) A pertinent financial institution that does not comply with a direction or notice of the Authority under this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(2) A pertinent financial institution that, in purported compliance with a direction or notice under this Division, knowingly or recklessly furnishes to the Authority any information or document 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 \$250,000.

[Act 31 of 2017 wef 05/06/2018]

PART IVB**RESOLUTION OF FINANCIAL INSTITUTIONS**

[Act 9 of 2013 wef 18/04/2013]

*Division 1 — General provisions***Interpretation of this Part**

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

“affected person”, in relation to a specified financial institution, means any person prescribed by regulations made under section 126 as an affected person for that specified financial institution;

[Act 31 of 2017 wef 04/06/2018]

“business” includes affairs and property;

“co-operative society” means a co-operative society registered under the Co-operative Societies Act (Cap. 62);

“Court” means the High Court or a Judge thereof;

“director”, in relation to a specified financial institution or a significant associated entity referred to in section 121, includes —

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

[Act 31 of 2017 wef 04/06/2018]

“excluded financial institution” means any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule, and is prescribed by regulations made under section 126 as an excluded financial institution;

[Act 31 of 2017 wef 04/06/2018]

“executive officer”, in relation to a specified financial institution or a significant associated entity referred to in section 121, means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the specified financial institution or significant associated entity (as the case may be); and
- (b) is concerned with or takes part in the management of the specified financial institution or significant associated entity (as the case may be) on a day-to-day basis;

[Act 31 of 2017 wef 04/06/2018]

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

“pertinent financial institution” means any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule, and is prescribed by regulations made under section 126 as a pertinent financial institution;

[Act 31 of 2017 wef 04/06/2018]

“PPF Agency” means the company designated as the deposit insurance and policy owners’ protection fund agency under section 56 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);

[Act 31 of 2017 wef 29/10/2018]

“PPF Funds” means the Policy Owners’ Protection Life Fund and the Policy Owners’ Protection General Fund established under section 34 of the Deposit Insurance and Policy Owners’ Protection Schemes Act;

[Act 31 of 2017 wef 29/10/2018]

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act (Cap. 50) and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“Registrar of Co-operative Societies” means the Registrar of Co-operative Societies appointed under the Co-operative Societies Act and includes any Assistant Registrar of Co-operative Societies appointed under that Act;

“relevant Act”, in relation to a specified financial institution, means the Act under which that specified financial institution is approved, authorised, designated, recognised, registered, licensed or otherwise regulated;

“relevant provisions”, in relation to any specified financial institution, or any person who is carrying on or has carried on the significant business of a specified financial institution, means such provisions of written law as may be prescribed by regulations made under section 126 as relevant provisions for that specified financial institution or person, as the case may be;

[Act 31 of 2017 wef 04/06/2018]

“significant business”, in relation to a specified financial institution, means the usual business of a financial institution belonging to the same class of financial institutions as that specified financial institution;

“specified financial institution” means a pertinent financial institution or an excluded financial institution;

“Take-over Code” means the Singapore Code on Take-overs and Mergers which is referred to in section 139 of the Securities and Futures Act (Cap. 289) and is issued by the Authority under section 321(1) of that Act.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Exercise of powers under Divisions 2, 3, 4 and 4A of this Part

50. In determining whether to exercise its powers under Divisions 2, 3, 4 and 4A of this Part in relation to a pertinent financial institution, the Authority may have regard to one or more of the following matters:

- (a) whether a failure of the pertinent financial institution would have a widespread adverse effect on the financial system in Singapore or the economy of Singapore, or both, whether or not that widespread adverse effect occurs directly or indirectly as a result of the impact of the failure on the financial system in Singapore, on the financial markets in Singapore or on other financial institutions in Singapore;
- (b) whether it is in the public interest to do so;

- (c) any other matter that the Authority considers relevant.

[Act 31 of 2017 wef 29/10/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Directions or regulations concerning persons that have ceased to be specified financial institutions

51.—(1) The Authority may, from time to time, issue such directions or make such regulations concerning any person that has ceased to be a specified financial institution, or any class of persons that has ceased to be a class of specified financial institutions, as the Authority considers necessary —

- (a) in order to discharge, or to facilitate the discharge of, any binding obligation of the person or class of persons, as the case may be; or
- (b) where it is in the public interest to do so.

(2) Subsection (1) applies, to a person that has ceased to be a specified financial institution, regardless of whether the reason for the cessation is one or more of the following matters:

- (a) the withdrawal by the Authority of any approval, authorisation, designation or recognition of the person;
- (b) the cancellation by the Authority, or the expiration, of any registration of the person;
- (c) the revocation by the Authority, or the expiration, of any licence of the person;
- (d) the cessation of the regulation of the person by the Authority;
- (e) the cessation of any business of the person, being a business which is regulated under this Act or any of the written laws set out in the Schedule.

(3) A person to whom any direction is issued under subsection (1), or to whom any regulations made under subsection (1) applies, shall comply with the direction or regulations, notwithstanding any other

duty imposed on the person by any rule of law, written law or contract.

(4) A person shall not in carrying out any act in compliance with any direction issued or regulations made under subsection (1) be treated as being in breach of any such rule of law, written law or contract.

(5) A person shall not disclose any direction issued under subsection (1) if the Authority notifies the person that the Authority is of the opinion that the disclosure of the direction is against the public interest.

(6) Any person who —

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

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

(c) contravenes subsection (5),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

(7) It shall not be necessary to publish any direction issued under subsection (1) in the *Gazette*.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

**Directions and notices issued under Act or written laws in
Schedule to continue to apply to persons who cease to be
specified financial institutions**

52.—(1) Where a person ceases to be a specified financial institution, any direction or notice issued under this Act or any of the written laws set out in the Schedule (being a direction or notice which was in force, and which applied to that person, immediately before that person ceased to be a specified financial institution) shall, notwithstanding any rule of law or written law to the contrary, continue to apply to that person, until that direction or notice is cancelled by the Authority.

(2) Subsection (1) applies, to a person that has ceased to be a specified financial institution, regardless of whether the reason for the cessation is one or more of the following matters:

- (a) the withdrawal by the Authority of any approval, authorisation, designation or recognition of the person;
- (b) the cancellation by the Authority, or the expiration, of any registration of the person;
- (c) the revocation by the Authority, or the expiration, of any licence of the person;
- (d) the cessation of the regulation of the person by the Authority;
- (e) the cessation of any business of the person, being a business which is regulated under this Act or any of the written laws set out in the Schedule.

(3) Any person referred to in subsection (1) who, after ceasing to be a specified financial institution, fails to comply with a direction or notice referred to in that subsection 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 not exceeding \$100,000 for every day or part thereof during which the offence continues after conviction.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Moratorium

53.—(1) The Authority may, if it considers it to be in the interests of the affected persons of a specified financial institution, make an order prohibiting that specified financial institution from carrying on its significant business or from doing or performing any act or function connected with its significant business or any aspect thereof that may be specified in the order.

(2) The Authority may, if it considers it to be in the interests of the affected persons of a specified financial institution, apply to the High Court for, and the High Court may make, one or more of the following orders:

- (a) that no resolution shall be passed, and no order shall be made, for the winding up of the specified financial institution;
 - (b) that no judicial management order under Part VIIIA of the Companies Act (Cap. 50) shall be made in relation to the specified financial institution, or that any judicial management order which is in force in relation to the specified financial institution shall be discharged;
 - (c) that no proceedings shall be commenced or continued by or against the specified financial institution in respect of any business of the specified financial institution;
 - (d) that no execution, distress or other legal process shall be commenced, levied or continued against any property of the specified financial institution;
 - (e) that no steps shall be taken to enforce any security over any property of the specified financial institution or to repossess from the specified financial institution any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement;
 - (f) that no steps shall be taken by any person, other than a person specified in the order, to sell, transfer, assign or otherwise dispose of any property of the specified financial institution.
- (3) Any sale, transfer, assignment or other disposition of any property of the specified financial institution in contravention of any order made under subsection (2)(f) shall be void.
- (4) Any order made under subsection (2) shall be valid for a period not exceeding 6 months.
- (5) So long as an order under subsection (1) remains in force, the Authority may, by notice in writing to that specified financial institution, suspend the approval, authorisation, designation, recognition, registration or licence of that specified financial institution under the relevant Act.

(6) A specified financial institution that contravenes an order under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 05/06/2018]

(7) It is not necessary to publish any order under subsection (1) in the *Gazette*.

[Act 31 of 2017 wef 05/06/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

General provisions as to winding up

54.—(1) On the application of the Authority, the Court may, in addition to the grounds specified in section 254(1) of the Companies Act (Cap. 50), order under that Act the winding up of a company incorporated in Singapore which is carrying on or has carried on the significant business of a specified financial institution in Singapore, if —

- (a) the Authority has exercised any power under the relevant provisions in relation to the company; or
- (b) the company has contravened any provision of this Act or any of the written laws set out in the Schedule.

(2) On the application of the Authority, the Court may, in addition to the grounds specified in section 351(1) of the Companies Act, order under that Act the winding up of an unregistered company which is carrying on or has carried on the significant business of a specified financial institution in Singapore, if —

- (a) the Authority has exercised any power under the relevant provisions in relation to the unregistered company;
- (b) the unregistered company has been approved, authorised, designated, recognised, registered, licensed or otherwise regulated under this Act or any of the written laws set out in the Schedule, and any of the following applies:

- (i) the approval, authorisation, designation or recognition of the unregistered company has been withdrawn;
 - (ii) the registration of the unregistered company has been cancelled or has expired;
 - (iii) the licence of the unregistered company has been revoked or has expired;
 - (iv) the regulation of the unregistered company by the Authority has ceased; or
- (c) the unregistered company is carrying on or has carried on the significant business of a specified financial institution in Singapore in contravention of any provision of this Act or any of the written laws set out in the Schedule.

(3) Notwithstanding sections 254(2) and 351(2) of the Companies Act, on the application of the Authority for the winding up, on the ground specified in section 254(1)(e) or 351(1)(c)(ii) of the Companies Act, of a company which is carrying on or has carried on the significant business of a specified financial institution in Singapore, any statement of account lodged by the company with the Authority, at any time during the period beginning with the close of the last financial year of the company and ending with the making of the application for the winding up, which shows that the company is insolvent, shall be evidence that the company —

- (a) was insolvent at the close of that financial year; and
- (b) continues to be unable to pay its debts.

(4) Notwithstanding any written law or rule of law —

- (a) no person shall be appointed as an office holder, or as a liquidator under the Companies Act, of a company, which is carrying on or has carried on the significant business in Singapore of a specified financial institution, without the prior written approval of the Authority; and
- (b) in the case of a foreign company which is carrying on or has carried on the significant business in Singapore of a specified financial institution, a liquidator appointed for its

liquidation or dissolution at its place of incorporation or origin shall not have or exercise any power or function of a liquidator in Singapore, unless the liquidator has been approved by the Authority.

(5) For the avoidance of doubt, subsection (4)(a) shall not affect the operation of section 263(a), (d), (da) or (e) of the Companies Act.

(6) Any approval of the Authority under subsection (4)(b) may be granted subject to such conditions as the Authority may determine, and the Authority may add to, vary or revoke any such condition.

(6A) The specified financial institution or the liquidator, as the case may be, mentioned in subsection (4)(b) must comply with the conditions in subsection (6).

[Act 31 of 2017 wef 05/06/2018]

(7) Notwithstanding any written law or rule of law, where a company which is carrying on or has carried on the significant business of a specified financial institution in Singapore is being wound up under the Companies Act, the Authority shall, subject to such modifications as may be necessary, have the same powers and rights as a creditor of the company under that Act, including the right to appear and be heard before the Court in any proceedings in the winding up.

(8) Without prejudice to subsections (6) and (7) and notwithstanding any written law or rule of law, where a company which is carrying on or has carried on the significant business in Singapore of a specified financial institution is being wound up, its liquidator (whether appointed under the Companies Act or, in the case of a foreign company, appointed at its place of incorporation or origin) shall give the Authority such information as the Authority may from time to time require about the affairs of the company and the winding up.

(8A) Any liquidator who —

- (a) without reasonable excuse, fails to comply with subsection (6A) or (8); or

- (b) in purported compliance with subsection (8), knowingly or recklessly furnishes any information or document 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 \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 05/06/2018]

- (9) In this section —

“liquidator” includes a provisional liquidator;

“unregistered company” has the same meaning as in section 350 of the Companies Act.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Power of Court to take action against directors and executive officers

55.—(1) Without prejudice to any provision of this Act or any of the written laws set out in the Schedule, if, in the course of exercising the Authority’s powers under this Part or the relevant provisions, it appears to the Authority that any past or present director or executive officer of a specified financial institution has failed to discharge the duties of his office, has misapplied or retained, or become liable or accountable for, any money or property of the specified financial institution, or has been guilty of any misfeasance or breach of trust or duty in relation to the specified financial institution, the Authority may apply to the Court for, and the Court may make —

- (a) an order that any salary, remuneration or other benefits received by the director or executive officer from the specified financial institution during the relevant period be repaid or returned to the specified financial institution;
- (b) an order that the director or executive officer shall cease to be entitled to receive any deferred salary, remuneration or other benefits that the specified financial institution had agreed to pay to him during the relevant period;

- (c) an order that any deferred salary, remuneration or other benefits to be paid by the specified financial institution to the director or executive officer be reduced by such amount as the Court thinks just;
- (d) the orders referred to in paragraphs (a) and (b); or
- (e) the orders referred to in paragraphs (a) and (c).

(2) Where it appears to the Authority that the director or executive officer has acted recklessly, fraudulently or dishonestly in relation to the specified financial institution, the Authority may apply to the Court to extend, and the Court may order the extension of, the length of the relevant period.

(3) In this section, “relevant period” means the period of 2 years immediately preceding the date on which the Authority began to exercise its powers under this Part or the date on which the Authority began to exercise its powers under the relevant provisions, whichever is the earlier.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Division 2 — Compulsory transfer of business of pertinent financial institution

Interpretation of this Division

56. In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“certificate” means a certificate of transfer issued by the Minister under section 58(1);

[Act 31 of 2017 wef 04/06/2018]

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

“determination” means a determination made by the Authority under section 57(1);

[Act 31 of 2017 wef 04/06/2018]

“guaranteed policy moneys” has the same meaning as in section 1A of the Insurance Act (Cap. 142);

[Act 31 of 2017 wef 29/10/2018]

“property” includes property, right and power of every description;

“specified business” means any part of the business of a transferor which is specified or identified in a certificate;

“transferee” means any person to which the whole or any part of a transferor’s business is, is to be, or is proposed to be transferred under this Division;

[Act 31 of 2017 wef 29/10/2018]

“transferor” means a pertinent financial institution the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Compulsory transfer of business

57.—(1) Subject to subsections (2), (2A) and (6), the Authority may make a determination that the whole or any part of the business of a transferor shall be transferred to a transferee, if —

- (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the transferor, whether or not the Authority has exercised the power;
- (b) the board of directors of the transferee (in any case where the transferee is a corporation), or the committee of management of the transferee (in any case where the transferee is a co-operative society), has consented to the transfer;
- (c) the Authority is satisfied that the transfer is appropriate, having regard to —
 - (i) in any case where the transferor is a bank licensed under the Banking Act (Cap. 19) —

- (A) the interests of the depositors of the transferor given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
 - (B) if the transferee is a bank licensed under the Banking Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
 - (C) the stability of the financial system in Singapore; and
 - (D) any other matter that the Authority considers relevant;
- (ii) in any case where the transferor is a finance company licensed under the Finance Companies Act (Cap. 108) —
- (A) the interests of the depositors of the transferor given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
 - (B) if the transferee is a finance company licensed under the Finance Companies Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
 - (C) the stability of the financial system in Singapore; and
 - (D) any other matter that the Authority considers relevant;
- [Act 31 of 2017 wef 29/10/2018]*
- (iia) in any case where the transferor is an insurer licensed under the Insurance Act (Cap. 142) —

- (A) the interests of the policy owners of the transferor given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;
- (B) if the transferee is an insurer licensed under the Insurance Act, the interests of the policy owners of the transferee given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;
- (C) the stability of the financial system in Singapore;
- (D) whether the PPF Agency has to make a payout from any of the PPF Funds to the transferee and the amount of such payout, if any; and
- (E) any other matter that the Authority considers relevant; or

[Act 31 of 2017 wef 29/10/2018]

(iii) in any other case —

- (A) the interests of the affected persons of the transferor;
- (B) the interests of the affected persons of the transferee;
- (C) the stability of the financial system in Singapore; and
- (D) any other matter that the Authority considers relevant;

[Act 31 of 2017 wef 29/10/2018]

(d) the transfer involves the whole or part of the significant business of the transferor; and

[Act 31 of 2017 wef 29/10/2018]

(e) where the transferee is to carry on the whole or part of the significant business of the transferor, the transferee is, or will be applying to be, approved, authorised, designated, recognised, registered, licensed or otherwise regulated,

under this Act or any of the written laws set out in the Schedule, to carry on the significant business of the transferor.

[Act 31 of 2017 wef 29/10/2018]

(2) Where the transferor is a pertinent financial institution incorporated or established outside Singapore, any determination shall only be in respect of the transferor's business (or any part thereof) which is reflected in the books of the transferor in Singapore in relation to the transferor's operations in Singapore, and the references to depositors, policy owners and affected persons in subsection (1)(c) shall be construed accordingly.

[Act 31 of 2017 wef 29/10/2018]

(2A) Where the transferor is an insurer licensed under the Insurance Act, any determination made by the Authority for the purpose of subsection (1) may include a determination as to whether guaranteed policy moneys in relation to any policy should be adjusted upon the proposed transfer so as to achieve an orderly resolution of the transferor.

[Act 31 of 2017 wef 29/10/2018]

(3) The Authority may, before making a determination, appoint one or more persons —

(a) to perform an independent assessment of —

(i) the proposed transfer of the business (or any part thereof) of the transferor;

[Act 31 of 2017 wef 29/10/2018]

(ii) the consideration, if any, that should be paid by the transferee; and

(iii) where the transferor is an insurer licensed under the Insurance Act, whether guaranteed policy moneys in relation to any policy should be adjusted upon the proposed transfer so as to achieve an orderly resolution of the transferor; and

[Act 31 of 2017 wef 29/10/2018]

(b) to furnish to the Authority a report on the assessment and on the proposed transfer.

(4) The remuneration and expenses of any person appointed under subsection (3) shall be paid by the transferor.

(5) The Authority shall serve a copy of any report furnished under subsection (3) on the transferor and the transferee.

(6) A determination may provide for the transfer of the business (or any part thereof) of the transferor to a transferee for the purpose mentioned in subsection (1)(e), where the transferee is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated under any of the written laws set out in the Schedule to carry on in Singapore the significant business of the transferor, on terms that the transfer shall take effect only in the event of the transferee becoming so approved, authorised, designated, recognised, registered, licensed or regulated, as the case may be.

[Act 31 of 2017 wef 29/10/2018]

(7) Upon making a determination, the Authority shall submit the determination to the Minister for his approval.

(8) Before approving the determination, the Minister shall, unless he decides that it is not practicable or desirable to do so —

- (a) publish in the *Gazette* and in such newspaper or newspapers as he may determine a notice of his intention to approve the determination, specifying such particulars as he considers appropriate; and
- (b) cause to be given to the transferor notice in writing of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which the transferor may make written representations to him.

(9) In determining the period within which written representations have to be made under subsection (8), the Minister shall take into account the need for the transfer to be effected expeditiously in the interest of the stability of the financial system in Singapore.

(10) Upon receipt of any written representation, the Minister shall consider the representation for the purpose of deciding whether to approve the determination.

(11) Where the transferor is a bank incorporated in Singapore, the Minister shall not approve the determination unless he is satisfied that it is in the national interest to do so.

(12) The Minister may —

- (a) approve the determination without modification;
- (b) approve the determination subject to any modification the Minister considers appropriate, if either the board of directors of the transferee (if it is a corporation) or the committee of management of the transferee (if it is a co-operative society) has agreed to the modification; or

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- (c) refuse to approve the determination.

(13) Any approval under subsection (12) shall be subject to such conditions as the Minister may determine to give effect to the determination, and the Minister may add to, vary or revoke any such condition.

[Act 31 of 2017 wef 29/10/2018]

(13A) The transferor or transferee, as the case may be, must comply with every condition mentioned in subsection (13) that applies to it and of which it has been given written notice by the Authority.

[Act 31 of 2017 wef 29/10/2018]

(13B) A person that contravenes subsection (13A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 29/10/2018]

(14) A determination, an approval under subsection (12) of a determination or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the transferor.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Certificate of transfer

58.—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of transfer, which shall come into effect on the date specified by him in the certificate.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 126.

[Act 31 of 2017 wef 04/06/2018]

(3) The certificate may make provision for all or any of the following matters:

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) any property which is held by the transferor as trustee;
- (d) any future or contingent right or liability of the transferor;
- (e) the coming into effect of the transfer of any specified business on a date other than the date on which the certificate comes into effect;
- (f) the consideration, if any, to be paid by the transferee to the transferor, and the period within which the consideration is to be paid;
- (fa) where the transferor is an insurer licensed under the Insurance Act (Cap. 142), whether guaranteed policy moneys in relation to any policy should be adjusted upon the proposed transfer so as to achieve an orderly resolution of the transferor;

[Act 31 of 2017 wef 29/10/2018]

- (g) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the transfer is fully effective, including conditions relating to the transfer.

(4) The Minister may at any time before the certificate comes into effect add to, vary or revoke any matter specified in the certificate.

(5) On or before the date on which the certificate comes into effect, the Authority shall cause the certificate and any addition, variation or revocation referred to in subsection (4) to be served on the transferor and the transferee and published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Subject to subsection (7), unless otherwise specified in the certificate, the transfer of the business (or any part thereof) of the transferor under the certificate shall take effect on the date on which the certificate comes into effect.

(7) Where the transferee is to carry on the whole or part of the significant business of the transferor, and is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated, under this Act or any of the written laws set out in the Schedule, to carry on in Singapore the significant business of the transferor, the transfer of the business (or any part thereof) shall not come into effect unless the transferee becomes so approved, authorised, designated, recognised, registered, licensed or regulated, as the case may be.

[Act 31 of 2017 wef 29/10/2018]

(8) Notwithstanding any written law or rule of law, upon the date on which the transfer of the business (or any part thereof) of the transferor comes into effect under the certificate —

(a) subject to subsection (10) —

(i) the business (or any part thereof) shall be transferred to and vest in the transferee without other or further assurance, act or deed; and

(ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected;

(b) no deed, bond, agreement or other arrangement subsisting immediately before that date —

(i) which relates to the business (or any part of the business); and

(ii) to which the transferor is a party,

is considered terminated by reason only of the transfer, but each of these continues in full force and effect, and is enforceable by or against the transferee (as the case may be), as from that date, as if the transferee had been named in it or had been a party to it instead of the transferor; and

[Act 31 of 2017 wef 29/10/2018]

- (c) any proceedings or cause of action, by or against the transferor, pending or existing immediately before that date and relating to the business (or any part thereof) may be continued and shall be enforced by or against the transferee as from that date.

(8A) Subsection (8)(b) does not apply to a contract of employment.

[Act 31 of 2017 wef 29/10/2018]

(8B) To avoid doubt, this section does not affect the operation of section 18A of the Employment Act (Cap. 91).

[Act 31 of 2017 wef 29/10/2018]

(9) For the avoidance of doubt, the business (or any part thereof) of the transferor shall be transferred to and vest in the transferee in accordance with subsection (8), notwithstanding any incapacity of the transferor.

(9A) Where the transferor is an insurer licensed under the Insurance Act and guaranteed policy moneys under a policy have been adjusted under the certificate —

- (a) the policy owner or claimant continue to have recourse against the transferor for the difference between the original guaranteed policy moneys and the adjusted guaranteed policy moneys; and
- (b) any agreement or other arrangement mentioned in subsection (8)(b) has effect as if the guaranteed policy moneys have been so adjusted.

[Act 31 of 2017 wef 29/10/2018]

(10) The certificate shall not have any effect or operation in transferring or otherwise vesting land in Singapore until the appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

(11) Section 259 of the Companies Act (Cap. 50) shall not apply to the transfer of any property under the certificate.

(12) If any specified business is governed by the law of any foreign country or territory, and the transferee so requires, the transferor shall take all necessary steps for securing that the transfer of the specified business to the transferee is fully effective under the law of that country or territory.

(13) The transferee and the transferor shall each lodge, within 7 days after being served with the certificate —

- (a) a copy of the certificate with the Registrar of Companies;
- (b) where the transferor or transferee is a co-operative society, a copy of the certificate with the Registrar of Co-operative Societies; and
- (c) where the certificate relates to land in Singapore, an office copy of the certificate with the appropriate authority concerned with the registration or recording of dealings in that land.

(14) A transferor or transferee which fails to comply with any provision in the certificate shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(15) A transferor which contravenes subsection (12) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(16) A transferor or transferee which contravenes subsection (13), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a

continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(17) In subsection (16), “officer”, in relation to a transferor or transferee, includes —

- (a) a director, a secretary or an executive officer of the transferor or transferee (as the case may be);
- (b) a receiver or manager of any part of the undertaking of the transferor or transferee (as the case may be) appointed under a power contained in any instrument; and
- (c) a liquidator of the transferor or transferee (as the case may be) appointed in a voluntary winding up.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Moratorium, avoidance of disposition of property, etc.

59.—(1) Notwithstanding section 53(2) but subject to section 125, no resolution shall be passed, and no order shall be made, for the winding up of a transferor, and no judicial management order under Part VIIIA of the Companies Act (Cap. 50) shall be made in relation to a transferor, during the period —

(a) beginning on —

- (i) the date on which the Minister publishes the notice under section 57(8) in the *Gazette* on the transfer of the business (or any part thereof) of the transferor; or

[Act 31 of 2017 wef 04/06/2018]

- (ii) where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under section 58(5) in the *Gazette* on the transfer of the business (or any part thereof) of the transferor; and

[Act 31 of 2017 wef 04/06/2018]

(b) ending on —

- (i) the date on which the certificate comes into effect; or
- (ii) where the certificate specifies a different date for the coming into effect of the transfer of any specified

business, the last day on which the transfer of every specified business has come into effect.

[Act 31 of 2017 wef 04/06/2018]

(2) Notwithstanding section 53(2) but subject to section 125, during the period beginning on the date on which the Minister publishes the notice under section 57(8) in the *Gazette* on the transfer of a specified business of the transferor or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under section 58(5) in the *Gazette* on the transfer of the specified business, and ending on the date on which the transfer of the specified business comes into effect —

- (a) no proceedings shall be commenced or continued against the transferor in respect of the specified business;
- (b) no execution, distress or other legal process shall be commenced, levied or continued against the specified business;
- (c) no steps shall be taken to enforce any security over the specified business or to repossess from the transferor the specified business under any hire-purchase agreement, chattels leasing agreement or retention of title agreement; and
- (d) any sale, transfer, assignment or other disposition of the specified business shall be void, except for (where the transferor is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who are related corporations of the transferor.

[Act 31 of 2017 wef 29/10/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

*Division 2A — Reverse transfer of business and
onward transfer of business*

Interpretation of this Division**60.** In this Division —

“2nd transferee” means the person to which the whole or part of a transferor’s business that was transferred to a transferee by a certificate of transfer, is or is to be transferred from the transferee in accordance with an onward transfer certificate under section 64;

“business” includes affairs, property, right, obligation and liability;

“certificate of transfer” means a certificate of transfer issued under section 58;

“onward transfer” means the transfer by the transferee to the 2nd transferee, in accordance with an onward transfer certificate under section 64, of the whole or part of the business transferred to the transferee by a certificate of transfer;

“reverse transfer” means the transfer by the transferee to the transferor in accordance with a reverse transfer certificate under section 62, of the whole or part of the transferor’s business that was transferred to the transferee by a certificate of transfer;

“transferee” means the person to which the whole or part of a transferor’s business has been transferred by a certificate of transfer;

“transferor” means a pertinent financial institution the whole or part of the business of which has been transferred by a certificate of transfer.

[Act 31 of 2017 wef 29/10/2018]

Reverse transfer of business

61.—(1) Subject to this section, the Authority may, at any time after the transfer of any business under a certificate of transfer, make a

determination that the whole or any part of the business transferred to the transferee by the certificate be transferred back to the transferor.

(2) The Authority may make such determination if —

- (a) the board of directors of the transferee (if it is a corporation), or the committee of management of the transferee (if it is a co-operative society), consents to the reverse transfer; and
- (b) the conditions prescribed by regulations made under section 126 are met.

(3) The Authority must submit every determination under subsection (1) to the Minister for approval.

(4) The Minister may —

- (a) approve a determination under subsection (1) without modification;
- (b) approve a determination under subsection (1) subject to any modification the Minister considers appropriate, if the board of directors of the transferee (if it is a corporation), or the committee of management of the transferee (if it is a co-operative society), agrees to the modification; or
- (c) refuse to approve the determination.

(5) An approval under subsection (4) is subject to such conditions as the Minister may determine to be necessary to give effect to the determination, and the Minister may add to, vary or revoke any such condition.

(6) The transferor or transferee, as the case may be, must comply with every condition mentioned in subsection (5) that applies to it and of which it has been given written notice by the Authority.

(7) A person that contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(8) A determination under subsection (1) or an approval under subsection (4) of the determination does not prevent the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the transferor.

[Act 31 of 2017 wef 29/10/2018]

Reverse transfer certificate

62.—(1) If the Minister approves a determination under section 61, the Minister must, as soon as practicable, issue a certificate (called in this section the reverse transfer certificate), which is to come into effect on the date specified in the certificate.

(2) The reverse transfer certificate must specify such information as may be prescribed by regulations made under section 126.

(3) The reverse transfer certificate may make provision for one or more of the following matters:

- (a) the reverse transfer approved by the Minister;
- (b) the effective date of the reverse transfer, if different from the date on which the reverse transfer certificate comes into effect;
- (c) the consideration, if any, to be returned by the transferee to the transferor and the period within which the consideration is to be returned;
- (d) the rescission of provisions made for any of the matters mentioned in section 58(3)(c) and (d) in the certificate of transfer concerned;
- (e) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the reverse transfer is fully effective, including any condition mentioned in section 61(5).

(4) The Minister may, at any time before the reverse transfer certificate comes into effect, add to, vary or revoke any matter specified in the reverse transfer certificate.

(5) On or before the date on which the reverse transfer certificate comes into effect, the Authority must cause the reverse transfer

certificate, and any addition, variation or revocation mentioned in subsection (4) to be —

- (a) served on the transferor and the transferee; and
- (b) published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Subject to subsection (7), unless otherwise specified in the reverse transfer certificate, the effective date of the reverse transfer is the date on which the reverse transfer certificate comes into effect.

(7) Despite any written law or rule of law (including section 58 as it applies to the certificate of transfer in question), on the effective date of the reverse transfer —

- (a) subject to subsection (10) —
 - (i) the business that is the subject of the reverse transfer is transferred back to and vests in the transferor without other or further assurance, act or deed; and
 - (ii) the reverse transfer certificate has effect according to its tenor and is binding on any person affected by it;
- (b) no deed, bond, agreement or other arrangement mentioned in section 58(8)(b) which relates to the business that is the subject of the reverse transfer is considered terminated by reason only of the reverse transfer, but each of these continues in full force and effect and is once again enforceable by or against the transferor (as the case may be);
- (c) no deed, bond, agreement or other arrangement —
 - (i) that is entered into by the transferee after the transfer of business under the certificate of transfer under section 58, but before the effective date of the reverse transfer; and
 - (ii) which relates to the business that is the subject of the reverse transfer,is considered terminated by reason only of the reverse transfer, but each of these continues in full force and effect,

and is enforceable by or against the transferor (as the case may be), as if the transferor had been named in it or had been a party to it instead of the transferee; and

- (d) any proceedings or cause of action, by or against the transferee, pending or existing immediately before the effective date of the reverse transfer (including those mentioned in section 58(8)(c)), and relating to the business that is the subject of the reverse transfer may be continued and enforced by or against the transferor as from that date.

(8) Subsection (7)(b) and (c) does not apply to a contract of employment.

(9) To avoid doubt, this section does not affect the operation of section 18A of the Employment Act (Cap. 91).

(10) Section 58(9) to (17) applies in relation to a reverse transfer as it applies to a transfer of business under that section as if —

- (a) a reference to the business to be transferred is a reference to the business that is the subject of the reverse transfer;
- (b) a reference to the transferor is a reference to the transferee;
- (c) a reference to the transferee is a reference to the transferor; and
- (d) a reference to the certificate of transfer is a reference to the reverse transfer certificate.

[Act 31 of 2017 wef 29/10/2018]

Onward transfer of business

63.—(1) Subject to this section, the Authority may, at any time after the transfer of any business under a certificate of transfer, make a determination that the whole or any part of the business transferred to the transferee by the certificate be transferred to another transferee.

(2) The Authority may make such determination if —

- (a) the board of directors of the 2nd transferee (if it is a corporation), or the committee of management of the 2nd transferee (if it is a co-operative society), consents to the transfer; and

- (b) the transferee is an entity established or incorporated to do one or both of the following:
 - (i) temporarily hold and manage the assets and liabilities of the transferor;
 - (ii) do any other act for the orderly resolution of the transferor.
- (3) The Authority must submit every determination under subsection (1) to the Minister for approval.
- (4) The Minister may —
 - (a) approve a determination under subsection (1) without modification;
 - (b) approve a determination under subsection (1) subject to any modification the Minister considers appropriate, if the board of directors of the 2nd transferee (if it is a corporation), or the committee of management of the 2nd transferee (if it is a co-operative society), agrees to the modification; or
 - (c) refuse to approve the determination.
- (5) An approval under subsection (4) is subject to such conditions as the Minister may determine to be necessary to give effect to the determination, and the Minister may add to, vary or revoke any such condition.
- (6) The transferee or 2nd transferee, as the case may be, must comply with every condition mentioned in subsection (5) that applies to it and of which it has been given written notice by the Authority.
- (7) A person that contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.
- (8) A determination under subsection (1) or an approval under subsection (4) of the determination does not prevent the exercise of

any power by the Authority or the Minister under this Act or the relevant Act applicable to the transferor.

[Act 31 of 2017 wef 29/10/2018]

Onward transfer certificate

64.—(1) If the Minister approves a determination under section 63, the Minister must, as soon as practicable, issue a certificate (called in this section the onward transfer certificate), which is to come into effect on the date specified in the certificate.

(2) The onward transfer certificate must specify such information as may be prescribed by regulations made under section 126.

(3) The onward transfer certificate may make provision for all or any of the following matters:

- (a) the onward transfer approved by the Minister;
- (b) the effective date of the onward transfer, if different from the date on which the onward transfer certificate comes into effect;
- (c) the consideration, if any, to be paid by the 2nd transferee to the transferee and the period within which the consideration is to be paid;
- (d) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the onward transfer is fully effective, including any condition mentioned in section 63(5).

(4) The Minister may, at any time before the onward transfer certificate comes into effect, add to, vary or revoke any matter specified in the onward transfer certificate.

(5) On or before the date on which the onward transfer certificate comes into effect, the Authority must cause the onward transfer certificate and any addition, variation or revocation mentioned in subsection (4) —

- (a) to be served on the transferee and the 2nd transferee; and
- (b) to be published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Subject to subsection (7), unless otherwise specified in the onward transfer certificate, the effective date of the onward transfer is the date on which the onward transfer certificate comes into effect.

(7) Despite any written law or rule of law (including section 58 as it applies to the certificate of transfer in question), on the effective date of the onward transfer —

(a) subject to subsection (10) —

- (i) the business that is the subject of the onward transfer is transferred to and vests in the 2nd transferee without other or further assurance, act or deed; and
- (ii) the onward transfer certificate has effect according to its tenor and is binding on any person affected by it;

(b) no deed, bond, agreement or other arrangement (including any deed, bond, agreement or other arrangement mentioned in section 58(8)(b)) which relates to the business that is the subject of the onward transfer, is considered terminated by reason only of the onward transfer, but each of these continues in full force and effect and is enforceable by or against the 2nd transferee (as the case may be) as if the 2nd transferee had been named in it or had been a party to it instead of the transferee; and

(c) any proceedings or cause of action, by or against the transferee, pending or existing immediately before the effective date of the onward transfer (including those mentioned in section 58(8)(c)) and relating to the business that is the subject of the onward transfer may be continued and enforced by or against the 2nd transferee as from that date.

(8) Subsection (7)(b) does not apply to a contract of employment.

(9) To avoid doubt, this section does not affect the operation of section 18A of the Employment Act (Cap. 91).

(10) Section 58(9) to (17) applies in relation to an onward transfer as it applies to a transfer of business under this section as if —

- (a) a reference to the business to be transferred is a reference to the business that is the subject of the onward transfer;
- (b) a reference to the transferor is a reference to the transferee;
- (c) a reference to the transferee is a reference to the 2nd transferee; and
- (d) a reference to the certificate of transfer is a reference to the onward transfer certificate.

[Act 31 of 2017 wef 29/10/2018]

*Division 3 — Compulsory transfer of shares
of pertinent financial institution*

General provisions

65.—(1) In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“certificate” means a certificate of transfer issued by the Minister under section 67(1);

[Act 31 of 2017 wef 04/06/2018]

“determination” means a determination made by the Authority under section 66(2);

[Act 31 of 2017 wef 04/06/2018]

“property” includes property, right and power of every description;

“significant shareholder”, in relation to a pertinent financial institution, means any person prescribed by regulations made under section 126 as a significant shareholder for that pertinent financial institution;

[Act 31 of 2017 wef 04/06/2018]

“significant shareholder provisions”, in relation to any pertinent financial institution, means such provisions of written law as may be prescribed by regulations made under section 126 as

significant shareholder provisions for that pertinent financial institution;

[Act 31 of 2017 wef 04/06/2018]

“transferee” means any person to whom a transferor’s shares are, are to be, or are proposed to be, transferred under this Division;

“transferor” means a shareholder of a pertinent financial institution whose shares in the pertinent financial institution are, are to be, or are proposed to be, transferred under this Division.

[Act 31 of 2017 wef 29/10/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

(2) This Division does not apply where the pertinent financial institution is a co-operative society.

[Act 31 of 2017 wef 29/10/2018]

Compulsory transfer of shares

66.—(1) The Authority may make a determination that all or any of the shares held by a transferor in a pertinent financial institution incorporated in Singapore shall be transferred to a transferee, if —

- (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the pertinent financial institution, whether or not the Authority has exercised the power;
- (b) the transferee or, where the transferee is a corporation or co-operative society, the board of directors of the transferee (in any case where the transferee is a corporation), or the committee of management of the transferee (in any case where the transferee is a co-operative society), has consented to the transfer; and
- (c) the Authority is satisfied that the transfer is appropriate, having regard to —
 - (i) in any case where the pertinent financial institution is a bank licensed under the Banking Act (Cap. 19) —

- (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
 - (B) if the transferee is a bank licensed under the Banking Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
 - (C) the stability of the financial system in Singapore; and
 - (D) any other matter that the Authority considers relevant;
- (ii) in any case where the pertinent financial institution is a finance company licensed under the Finance Companies Act (Cap. 108) —
- (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
 - (B) if the transferee is a finance company licensed under the Finance Companies Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
 - (C) the stability of the financial system in Singapore; and
 - (D) any other matter that the Authority considers relevant;
- [Act 31 of 2017 wef 29/10/2018]*
- (iia) in any case where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142) —

- (A) the interests of the policy owners of the insurer given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;
- (B) if the transferee is an insurer licensed under the Insurance Act, the interests of the policy owners of the transferee given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;
- (C) the stability of the financial system in Singapore;
- (D) whether the PPF Agency has to make a payout from any of the PPF Funds to the transferee and the amount of such payout, if any; and
- (E) any other matter that the Authority considers relevant; or

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(iii) in any other case —

- (A) the interests of the affected persons of the pertinent financial institution;
- (B) the interests of the affected persons, if any, of the transferee;
- (C) the stability of the financial system in Singapore; and
- (D) any other matter that the Authority considers relevant.

(2) The Authority may, before making a determination, appoint one or more persons —

(a) to perform an independent assessment of —

- (i) the proposed transfer of shares; and
- (ii) the consideration, if any, that should be paid by the transferee; and

- (b) to furnish to the Authority a report on the assessment and on the proposed transfer.
- (3) The remuneration and expenses of any person appointed under subsection (2) shall be paid by the pertinent financial institution.
- (4) The Authority shall serve a copy of any report furnished under subsection (2) on the transferor and the transferee.
- (5) Upon making a determination, the Authority shall submit the determination to the Minister for his approval.
- (6) Before approving the determination, the Minister shall, unless he decides that it is not practicable or desirable to do so —
 - (a) publish in the *Gazette* and in such newspaper or newspapers as he may determine a notice of his intention to approve the determination, specifying such particulars as he considers appropriate; and
 - (b) cause to be given to the transferor notice in writing of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which the transferor may make written representations to him.
- (7) In determining the period within which written representations have to be made under subsection (6), the Minister shall take into account the need for the transfer to be effected expeditiously in the interest of the stability of the financial system in Singapore.
- (8) Upon receipt of any written representation, the Minister shall consider the representation for the purpose of deciding whether to approve the determination.
- (9) Where the determination, if approved, will result in the transferee becoming a significant shareholder of the pertinent financial institution, the Minister shall not approve the determination unless —
 - (a) the Authority is satisfied that —
 - (i) the transferee is a fit and proper person; and

- (ii) having regard to the likely influence of the transferee, the pertinent financial institution will or will continue to conduct its business prudently and comply with the provisions of this Act and the relevant Act applicable to the pertinent financial institution; and

(b) the Minister is satisfied that —

- (i) in any case where the pertinent financial institution is a bank incorporated in Singapore, it is in the national interest to do so; or
- (ii) in any other case, it is in the public interest to do so.

(10) The Minister may —

- (a) approve the determination without modification;
- (b) approve the determination subject to any modification he considers appropriate, if the transferee or, where the transferee is a corporation or co-operative society, the board of directors of the transferee (in any case where the transferee is a corporation), or the committee of management of the transferee (in any case where the transferee is a co-operative society), has agreed to the modification; or
- (c) refuse to approve the determination.

(11) Any approval under subsection (10) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition.

(12) The transferor shall comply with every condition referred to in subsection (11) that applies to the transferor and of which it has been given written notice by the Authority.

[Act 31 of 2017 wef 29/10/2018]

(13) The transferee shall comply with every condition referred to in subsection (11) that applies to the transferee and of which it has been given written notice by the Authority.

[Act 31 of 2017 wef 29/10/2018]

(13A) A person that contravenes subsection (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 29/10/2018]

(14) A determination, an approval under subsection (10) of a determination or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the pertinent financial institution.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Certificate of transfer

67.—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of transfer, which shall come into effect on the date specified by him in the certificate.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 126.

[Act 31 of 2017 wef 04/06/2018]

(3) The certificate may make provision for all or any of the following matters:

- (a) the transfer to the transferee of all or any of the shares of the transferor in the pertinent financial institution;
- (b) any share in the pertinent financial institution which is held by the transferor as trustee;
- (c) the consideration, if any, to be paid by the transferee to the transferor, and the period within which the consideration is to be paid;
- (d) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the transfer is fully effective, including conditions relating to the transfer.

(4) The Minister may at any time before the certificate comes into effect add to, vary or revoke any matter specified in the certificate.

(5) On or before the date on which the certificate comes into effect, the Authority shall cause the certificate and any addition, variation or revocation referred to in subsection (4) to be served on the pertinent financial institution and published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Notwithstanding any written law or rule of law, or anything in the memorandum and articles of association of the pertinent financial institution, upon the certificate coming into effect —

- (a) any share of the transferor that is to be transferred under the certificate shall be transferred to and vest in the transferee, free from any claim or encumbrance, without other or further assurance, act or deed; and
- (b) the certificate shall have effect according to its tenor and be binding on any person thereby affected.

(7) For the avoidance of doubt, the shares of the transferor shall be transferred to and vest in the transferee in accordance with subsection (6), notwithstanding the death or dissolution, the bankruptcy or winding up, or the mental or other incapacity, of the transferor.

(8) Section 259 of the Companies Act (Cap. 50) shall not apply to the transfer of any share under the certificate.

(9) Where the transfer of shares under the certificate results in the transferee becoming a significant shareholder of the pertinent financial institution, upon the coming into effect of the certificate, the transferee —

- (a) shall be deemed to have obtained the approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the pertinent financial institution, in respect of the shares; and
- (b) shall not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the pertinent financial institution, notwithstanding the provisions of the Companies Act or the Take-over Code.

(10) A transferor or a transferee who fails to comply with any provision in the certificate shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(11) Where a person is charged with an offence under subsection (10), it shall be a defence for the person to prove that —

- (a) he was not aware he had contravened any provision in the certificate; and
- (b) he has complied with the provision within a reasonable time after becoming aware of the contravention.

(12) Except as provided in subsection (11), it shall not be a defence for a person charged with an offence under subsection (10) that he did not intend to or did not knowingly contravene any provision in the certificate.

(13) Notwithstanding section 53(2) but subject to section 125, during the period beginning on the date on which the Minister publishes the notice under section 66(6) in the *Gazette* on the transfer of any share in a pertinent financial institution or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under subsection (5) in the *Gazette* on the transfer of the share, and ending on the date on which the transfer of the share comes into effect —

- (a) no execution or other legal process shall be commenced or continued against the share;

- (b) no steps shall be taken to enforce any security over the share;
- (c) any sale, transfer, assignment or other disposition of the share shall be void;
- (d) no voting rights shall be exercisable in respect of the share, unless the Minister expressly permits such rights to be exercised;
- (e) no shares in the pertinent financial institution shall be issued or offered (whether by ways of rights, bonus or otherwise) in respect of the share, unless the Minister expressly permits such issue or offer;
- (f) no payment shall be made by the pertinent financial institution of any amount (whether by dividends or otherwise) in respect of the share, unless the Minister expressly authorises such payment;
- (g) no resolution shall be passed, and no order shall be made, for the winding up of the pertinent financial institution;
- (h) no judicial management order under Part VIIIA of the Companies Act shall be made in relation to the pertinent financial institution;
- (i) no proceedings shall be commenced or continued against the pertinent financial institution in respect of any business of the pertinent financial institution;
- (j) no execution, distress or other legal process shall be commenced, levied or continued against any property of the pertinent financial institution;
- (k) no steps shall be taken to enforce any security over any property of the pertinent financial institution; and
- (l) any sale, transfer, assignment or other disposition of any property of the pertinent financial institution shall be void, except for (where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other

than policy owners who are related corporations of the pertinent financial institution.

[Act 31 of 2017 wef 29/10/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

*Division 4 — Compulsory restructuring of share capital
of pertinent financial institution*

Interpretation of this Division

68. In this Division, unless the context otherwise requires —

“business” includes affairs, property, right, obligation and liability;

“certificate” means a certificate of restructuring of share capital issued by the Minister under section 70(1);

[Act 31 of 2017 wef 04/06/2018]

“determination” means a determination made by the Authority under section 69(1) or (2);

[Act 31 of 2017 wef 04/06/2018]

“property” includes property, right and power of every description;

“significant shareholder”, in relation to a pertinent financial institution, means any person prescribed by regulations made under section 126 as a significant shareholder for that pertinent financial institution;

[Act 31 of 2017 wef 04/06/2018]

“significant shareholder provisions”, in relation to any pertinent financial institution, means such provisions of written law as may be prescribed by regulations made under section 126 for that pertinent financial institution;

[Act 31 of 2017 wef 04/06/2018]

“subscriber” means any person to whom shares in a pertinent financial institution incorporated in Singapore are, are to be, or are proposed to be, issued under this Division.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Compulsory restructuring of share capital

69.—(1) The Authority may make a determination that the share capital of a pertinent financial institution incorporated in Singapore shall be reduced by the cancellation of the whole or any part of any share capital not paid up, or of any paid-up share capital, if —

- (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the pertinent financial institution, whether or not the Authority has exercised the power; and
- (b) the Authority is of the opinion that —
 - (i) the liability on any of the shares of the pertinent financial institution in respect of share capital not paid up ought to be extinguished or reduced; or
 - (ii) any paid-up share capital of the pertinent financial institution is lost or not represented by the available assets of the pertinent financial institution.

(2) The Authority may make a determination that shares shall be issued by a pertinent financial institution incorporated in Singapore to a subscriber, if —

- (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the pertinent financial institution, whether or not the Authority has exercised the power;
- (b) the subscriber or, where the subscriber is a corporation or co-operative society, the board of directors of the subscriber (in any case where the subscriber is a corporation), or the committee of management of the subscriber (in any case where the subscriber is a co-

operative society), has consented to subscribe for the shares; and

- (c) the Authority is satisfied that the issue of shares is appropriate, having regard to —
 - (i) in any case where the pertinent financial institution is a bank licensed under the Banking Act (Cap. 19) —
 - (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
 - (B) if the subscriber is a bank licensed under the Banking Act, the interests of the depositors of the subscriber given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
 - (C) the stability of the financial system in Singapore; and
 - (D) any other matter that the Authority considers relevant;
 - (ii) in any case where the pertinent financial institution is a finance company licensed under the Finance Companies Act (Cap. 108) —
 - (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
 - (B) if the subscriber is a finance company licensed under the Finance Companies Act, the interests of the depositors of the subscriber given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;

- (C) the stability of the financial system in Singapore; and
- (D) any other matter that the Authority considers relevant;

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(*ii*a) in any case where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142) —

- (A) the interests of the policy owners of the insurer given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;
- (B) if the subscriber is an insurer licensed under the Insurance Act, the interests of the policy owners of the subscriber given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;
- (C) the stability of the financial system in Singapore; and
- (D) any other matter that the Authority considers relevant; or

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(*ii*i) in any other case —

- (A) the interests of the affected persons of the pertinent financial institution;
- (B) the interests of the affected persons, if any, of the subscriber;
- (C) the stability of the financial system in Singapore; and
- (D) any other matter that the Authority considers relevant.

(3) The Authority may, before making a determination, appoint one or more persons —

(a) to perform an independent assessment of —

- (i) in the case of a determination to be made under subsection (1), the value of the assets of the pertinent financial institution and the extent to which the whole or any part of any share capital not paid up, or of any paid-up share capital, should be cancelled; and
- (ii) in the case of a determination to be made under subsection (2), the value of the assets of the pertinent financial institution in which the shares are proposed to be issued and the consideration, if any, that should be paid by the subscriber; and

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(b) to furnish to the Authority a report on the assessment and on the proposed restructuring of share capital.

(4) The remuneration and expenses of any person appointed under subsection (3) shall be paid by the pertinent financial institution in which the shares are proposed to be cancelled or issued, as the case may be.

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(5) The Authority shall serve a copy of any report furnished under subsection (3) on —

- (a) the pertinent financial institution in which the shares are proposed to be cancelled or issued, as the case may be; and

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- (b) where the report is in relation to a determination to be made under subsection (2), on the subscriber.

(6) Upon making a determination, the Authority shall submit the determination to the Minister for his approval.

(7) Before approving the determination, the Minister shall, unless he decides that it is not practicable or desirable to do so —

- (a) publish in the *Gazette* and in such newspaper or newspapers as he may determine a notice of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which any

shareholder of the pertinent financial institution in which the shares are proposed to be cancelled or issued, as the case may be, may make written representations to him; and

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- (b) cause to be given to the pertinent financial institution notice in writing of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which the pertinent financial institution may make written representations to him.

(8) In determining the period within which written representations have to be made under subsection (7), the Minister shall take into account the need for the restructuring of share capital to be effected expeditiously in the interest of the stability of the financial system in Singapore.

(9) Upon receipt of any written representation, the Minister shall consider the representation for the purpose of deciding whether to approve the determination.

(10) Where a determination under subsection (2), if approved, will result in the subscriber becoming a significant shareholder, the Minister shall not approve the determination unless —

- (a) the Authority is satisfied that —
 - (i) the subscriber is a fit and proper person; and
 - (ii) having regard to the likely influence of the subscriber, the pertinent financial institution will or will continue to conduct its business prudently and comply with the provisions of this Act and the relevant Act applicable to the pertinent financial institution; and
- (b) the Minister is satisfied that —
 - (i) in any case where the pertinent financial institution is a bank incorporated in Singapore, it is in the national interest to do so; or
 - (ii) in any other case, it is in the public interest to do so.

(11) The Minister may —

- (a) approve the determination without modification;
- (b) in the case of a determination under subsection (1), approve the determination subject to any modification he considers appropriate;
- (c) in the case of a determination under subsection (2), approve the determination subject to any modification he considers appropriate, if the subscriber or, where the subscriber is a corporation or co-operative society, the board of directors of the subscriber (in any case where the subscriber is a corporation), or the committee of management of the subscriber (in any case where the subscriber is a co-operative society), has agreed to the modification; or
- (d) refuse to approve the determination.

(12) Any approval under subsection (11) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition.

(13) The pertinent financial institution shall comply with every condition referred to in subsection (12) that applies to it and of which it has been given written notice by the Authority.

[Act 31 of 2017 wef 29/10/2018]

(14) The subscriber shall comply with every condition referred to in subsection (12) that applies to the subscriber and of which the subscriber has been given written notice by the Authority.

[Act 31 of 2017 wef 29/10/2018]

(14A) A person that contravenes subsection (13) or (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 29/10/2018]

(15) A determination, an approval under subsection (11) of a determination or the issue of a certificate shall not preclude the

exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the pertinent financial institution.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Certificate of restructuring of share capital

70.—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of restructuring of share capital, which shall come into effect on the date specified by him in the certificate.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 126.

[Act 31 of 2017 wef 04/06/2018]

(3) The certificate may make provision for all or any of the following matters:

- (a) the cancellation of the whole or any part of the share capital of the pertinent financial institution not paid up;
- (b) the cancellation of the whole or any part of the paid-up share capital of the pertinent financial institution which is lost or not represented by the available assets of the pertinent financial institution;
- (c) the shares to be issued by the pertinent financial institution to the subscriber, the consideration, if any, to be paid by the subscriber for the shares and the period within which the consideration is to be paid;
- (d) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the restructuring of share capital is fully effective, including conditions relating to the restructuring of share capital.

(4) The Minister may at any time before the certificate comes into effect add to, vary or revoke any matter specified in the certificate.

(5) On or before the date on which the certificate comes into effect, the Authority shall cause the certificate and any addition, variation or revocation referred to in subsection (4) to be served on the pertinent

financial institution and published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Notwithstanding any written law or rule of law, or anything in the memorandum and articles of association of the pertinent financial institution, upon the certificate coming into effect —

- (a) where the certificate provides for a reduction of the share capital of the pertinent financial institution —
 - (i) the reduction of the share capital shall take effect without other or further act by the pertinent financial institution; and
 - (ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected; or
- (b) where the certificate provides for the issue of shares by the pertinent financial institution —
 - (i) the pertinent financial institution shall issue the shares in accordance with the certificate; and
 - (ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected.

(7) Where the issue of shares under the certificate results in the subscriber becoming a significant shareholder of the pertinent financial institution, upon the coming into effect of the certificate, the subscriber —

- (a) shall be deemed to have obtained the approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the pertinent financial institution, in respect of the shares; and
- (b) shall not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the pertinent financial institution, notwithstanding the provisions of the Companies Act (Cap. 50) or the Take-over Code.

[Act 31 of 2017 wef 29/10/2018]

(8) The pertinent financial institution shall lodge a copy of the certificate with the Registrar of Companies within 7 days after being served the certificate.

(9) A pertinent financial institution which or a subscriber who fails to comply with any provision in the certificate shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(10) Where a person is charged with an offence under subsection (9), it shall be a defence for the person to prove that —

- (a) he was not aware he had contravened any provision in the certificate; and
- (b) he has complied with the provision within a reasonable time after becoming aware of the contravention.

(11) Except as provided in subsection (10), it shall not be a defence for a person charged with an offence under subsection (9) that he did not intend to or did not knowingly contravene any provision in the certificate.

(12) Any pertinent financial institution which contravenes subsection (8), and every officer of the pertinent financial institution who fails to take all reasonable steps to secure compliance by the pertinent financial institution with that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(13) Notwithstanding section 53(2) but subject to section 125, during the period beginning on the date on which the Minister publishes the notice under section 69(7) in the *Gazette* on the restructuring of the share capital of a pertinent financial institution or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under subsection (5) in the *Gazette* on the restructuring of the share capital, and ending on the date on which the certificate comes into effect —

- (a) no resolution shall be passed, and no order shall be made, for the winding up of the pertinent financial institution;
- (b) no judicial management order under Part VIIIA of the Companies Act shall be made in relation to the pertinent financial institution;
- (c) no proceedings shall be commenced or continued against the pertinent financial institution in respect of any business of the pertinent financial institution;
- (d) no execution, distress or other legal process shall be commenced, levied or continued against any property of the pertinent financial institution;
- (e) no steps shall be taken to enforce any security over any property of the pertinent financial institution; and
- (f) any sale, transfer, assignment or other disposition of any property of the pertinent financial institution shall be void, except for (where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who are related corporations of the pertinent financial institution.

[Act 31 of 2017 wef 29/10/2018]

[Act 31 of 2017 wef 04/06/2018]

(14) In subsection (12), “officer”, in relation to a pertinent financial institution, includes —

- (a) a director, a secretary or an executive officer of the pertinent financial institution;

- (b) a receiver or manager of any part of the undertaking of the pertinent financial institution appointed under a power contained in any instrument; and
- (c) a liquidator of the pertinent financial institution appointed in a voluntary winding up.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Division 4A — Bail-in powers

Interpretation of this Division

71.—(1) In this Division, unless the context otherwise requires —

“appointed date”, in relation to a bail-in certificate, means the date appointed for it to take effect, as specified in the notification under section 75(2);

“bail-in certificate” means a bail-in certificate issued under section 75(1);

“determination” means a determination made by the Authority under section 73(1);

“Division 4A FI” or “Division 4A financial institution”, means a pertinent financial institution that belongs to a class of pertinent financial institutions prescribed by regulations made under section 126 as Division 4A financial institutions;

“eligible instrument” means an instrument or a liability within a class of instruments or liabilities that are prescribed by regulations made under section 126 as eligible instruments;

“pre-resolution creditor” means any person who was a creditor of a Division 4A FI immediately before the date of publication in the *Gazette* of the bail-in certificate;

“pre-resolution shareholder” means any person who, immediately before the date of publication in the *Gazette* of the bail-in certificate, held shares or other instrument conferring or representing a legal or beneficial ownership interest in a Division 4A FI;

“resulting FI” or “resulting financial institution”, in relation to a Division 4A FI, means an entity established or incorporated to do one or both of the following:

- (a) temporarily hold and manage the assets and liabilities of the Division 4A FI;
- (b) do any act for the orderly resolution of the Division 4A FI,

and which issued or must issue a share or other similar instrument representing a legal or beneficial ownership interest, pursuant to a provision of a bail-in certificate issued for that Division 4A FI;

“significant shareholder”, in relation to a Division 4A FI or resulting FI, means any person falling within a description of shareholders of the Division 4A FI or resulting FI prescribed by regulations made under section 126 as its significant shareholders;

“significant shareholder provision” means a provision of any written law that is prescribed by regulations made under section 126 as a significant shareholder provision.

(2) For the purposes of this Division, a reference to cancelling an eligible instrument includes cancelling it in whole or in part.

(3) For the purposes of this Division, a reference to modifying, converting, or changing the form of an eligible instrument is a reference to —

- (a) converting the whole or a part of the eligible instrument from one form or class to another;
- (b) replacing the whole or a part of the eligible instrument with another instrument or liability of a different form or class;
- (c) creating a new instrument (of any form or class) or liability in connection with the modification of the eligible instrument; or

- (d) converting the whole or a part of the eligible instrument into shares or other similar instrument issued by a resulting FI.

[Act 31 of 2017 wef 29/10/2018]

Exercise of powers under this Division

72.—(1) In exercising any power under this Division, the Authority must have regard to the desirability of giving each pre-resolution creditor or pre-resolution shareholder of a Division 4A FI the priority and treatment the pre-resolution creditor or pre-resolution shareholder would have enjoyed had the Division 4A FI been wound up.

(2) In determining whether to exercise its powers in accordance with the priority and treatment a pre-resolution creditor or pre-resolution shareholder of a Division 4A FI would have enjoyed had the Division 4A FI been wound up, the Authority may consider the following:

- (a) any widespread adverse impact that the Division 4A FI's failure would have on the financial system in Singapore or the economy of Singapore, or both;
- (b) the need to maximise value for the benefit of all creditors of the Division 4A FI as a whole;
- (c) the public interest;
- (d) any other matter that the Authority considers relevant.

(3) Any exercise of a power under this Division does not prevent the exercise of any other power of the Authority or the Minister under this Act or the relevant Act applicable to the Division 4A FI or resulting FI.

[Act 31 of 2017 wef 29/10/2018]

Determination by Authority

73.—(1) Subject to subsection (2), the Authority may make one or more of the following determinations concerning one or more eligible instruments issued by a Division 4A FI, or to which it is a party or is subject:

- (a) that the eligible instrument or instruments should be cancelled;
 - (b) that the eligible instrument or instruments should be modified, converted or changed in form;
 - (c) that the eligible instrument or instruments should have effect as if a right of modification, conversion or change of its or their form had been exercised.
- (2) The Authority may make the determination in subsection (1) if —
 - (a) any ground exists for the Authority to exercise any power under the relevant provisions applicable to the Division 4A FI, whether or not the Authority has exercised the power; and
 - (b) the Authority is of the opinion that —
 - (i) the eligible instrument or instruments ought to be bailed in to facilitate the orderly resolution of the Division 4A FI; or
 - (ii) the Division 4A FI's available assets do not or are unlikely to support payment of its liabilities, as they become due and payable.
- (3) The Authority may, before making a determination, appoint one or more persons —
 - (a) to perform an independent assessment of the extent to which the acts mentioned in subsection (1)(a), (b) and (c) should be carried out for all or any eligible instruments; and
 - (b) to furnish to the Authority a report on the assessment.
- (4) The remuneration and expenses of any person appointed under subsection (3) are to be paid by the Division 4A FI.
- (5) The Authority must serve a copy of any report furnished under subsection (3) on the Division 4A FI.

(6) Upon making a determination, the Authority must submit the determination to the Minister for approval.

[Act 31 of 2017 wef 29/10/2018]

Approval by Minister of determination

74.—(1) Before approving a determination of the Authority, the Minister must, unless the Minister decides that it is not practicable or desirable to do so —

(a) publish in the *Gazette* and in such newspaper or newspapers as the Minister determines, a notice specifying —

- (i) the Minister's intention to approve the determination;
- (ii) the date by which the holder of an eligible instrument that is the subject of the determination may make written representations to the Minister; and
- (iii) such other particulars as the Minister considers appropriate; and

(b) give to the Division 4A FI written notice specifying —

- (i) the Minister's intention to approve the determination;
- (ii) the date by which the Division 4A FI may make written representations to the Minister; and
- (iii) such other particulars as the Minister considers appropriate.

(2) In determining the period within which written representations have to be made under subsection (1), the Minister must take into account the need for the measures proposed by the determination to be effected expeditiously in the interest of the stability of the financial system in Singapore.

(3) The Minister must consider all written representations for the purpose of deciding whether to approve the determination.

(4) The Minister may —

- (a) approve the determination without modification;
- (b) approve the determination subject to any modification the Minister considers appropriate; or
- (c) refuse to approve the determination.

(5) Any approval under subsection (4) may be subject to such conditions as the Minister may determine to be necessary to give effect to the determination, and the Minister may add to, vary or revoke any such condition.

(6) The Division 4A FI must comply with every condition mentioned in subsection (5) that applies to it and of which it has been given written notice by the Authority.

(7) A person that contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 29/10/2018]

Bail-in certificate

75.—(1) If the Minister approves a determination, the Minister must, as soon as practicable, issue a bail-in certificate.

(2) The bail-in certificate comes into effect on such date as the Minister appoints by notification in the *Gazette*.

(3) The bail-in certificate may make provision for one or more of the following:

- (a) the cancellation of one or more eligible instruments;
- (b) the modification, conversion, or change in form of one or more eligible instruments;
- (c) that one or more eligible instruments is or are to have effect as if a right of modification, conversion or change of its or their form had been exercised under it or them;

- (d) where provision under paragraph (c) is made, the details of the modification, conversion or change of the form of the eligible instrument or instruments;
 - (e) incidental, consequential and supplementary matters, including a requirement that the Division 4A FI or any other person must comply with a general or specific direction set out in the certificate.
- (4) The bail-in certificate must include such information as may be prescribed by regulations made under section 126.
- (5) The bail-in certificate may —
- (a) make provision generally or only for specified purposes, cases or circumstances; and
 - (b) make different provision for different purposes, cases or circumstances.
- (6) The Minister may, at any time before the appointed date, add to, vary or revoke any matter specified in the bail-in certificate.
- (7) On or before the appointed date, the Authority must cause the bail-in certificate and every addition, variation or revocation mentioned in subsection (6) to be —
- (a) served on the Division 4A FI; and
 - (b) published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

[Act 31 of 2017 wef 29/10/2018]

Effects of bail-in certificate

76.—(1) A provision in a bail-in certificate has effect despite any restriction arising by reason of contract, any written law or rule of law in force before the appointed date of the bail-in certificate, or the constitution of the Division 4A FI.

(2) Where a bail-in certificate provides for the cancellation of an eligible instrument —

- (a) the cancellation takes effect without other or further act by the Division 4A FI; and

- (b) the certificate has effect according to its tenor and is binding on any person affected by it.
- (3) Where a bail-in certificate provides for the modification, conversion, or change in form of an eligible instrument —
 - (a) the modification, conversion, or change in form takes effect without other or further act by the Division 4A FI or resulting FI; and
 - (b) the certificate has effect according to its tenor and is binding on any person affected by it.
- (4) Where a bail-in certificate provides that an eligible instrument is to have effect as if a specified right had been exercised under it —
 - (a) the eligible instrument has effect as if the specified right had been exercised under it without other or further act by the Division 4A FI or resulting FI; and
 - (b) the certificate has effect according to its tenor and is binding on any person affected by it.
- (5) A reference in subsections (1) to (4) to anything taking or having effect is a reference to that thing taking or having effect from (and including) the appointed date.
- (6) A person that fails to comply with any direction given to the person in the bail-in certificate shall be guilty of an offence and shall be liable on conviction —
 - (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or
 - (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.
- (7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

- (a) the person was not aware of the contravention of the direction; and
- (b) the person complied with the direction within a reasonable time after becoming aware of the contravention.

(8) Except as provided in subsection (7), it is not a defence for the person mentioned in that subsection that the person did not intend to or did not knowingly contravene the direction.

[Act 31 of 2017 wef 29/10/2018]

Moratorium

77.—(1) Despite section 53(2) but subject to section 125, during the period beginning on the date of publication of the notice in section 74(1)(a) in the *Gazette* or, where the notice is not published in the *Gazette*, the date of publication of the bail-in certificate in the *Gazette* under section 75(7), and ending on the appointed date of the certificate —

- (a) no resolution may be passed, and no order may be made, for the winding up of the Division 4A FI;
- (b) no judicial management order under Part VIIIA of the Companies Act (Cap. 50) may be made in relation to the Division 4A FI;
- (c) no civil proceedings may be commenced or continued against the Division 4A FI in respect of any business of the Division 4A FI;
- (d) no execution, distress or other legal process may be commenced, levied or continued against any property of the Division 4A FI;
- (e) no steps may be taken to enforce any security over any property of the Division 4A FI; and
- (f) any sale, transfer, assignment or other disposition of any property of the Division 4A FI is void, except for (where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who are related corporations of the Division 4A FI.

(2) No shareholder of a Division 4A FI or resulting FI may exercise any voting power in the Division 4A FI or resulting FI during the period beginning on —

- (a) the date the notice in section 74(1)(a) is published in the *Gazette*; or
- (b) where that notice is not published in the *Gazette*, the date the bail-in certificate is published in the *Gazette* under section 75(7),

and ending on the date on which the Minister publishes a notice in the *Gazette* that this subsection ceases to apply.

(3) Subsection (2) has effect despite anything in the Companies Act or the constitution of the Division 4A FI or resulting FI.

[Act 31 of 2017 wef 29/10/2018]

Significant shareholder by reason of bail-in certificate

78.—(1) Where any person becomes a significant shareholder of a Division 4A FI or resulting FI as a result of a provision of a bail-in certificate, that person —

- (a) is treated as having obtained the approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the Division 4A FI or the resulting FI, in respect of the person becoming a significant shareholder; and
- (b) is not required to make a take-over offer or to acquire the shares of the other shareholders of the Division 4A FI or resulting FI (as the case may be), despite anything in the Companies Act (Cap. 50) or the Take-over Code.

(2) The person mentioned in subsection (1) must comply with such conditions as the Minister may reasonably impose on the person, including but not limited to the following:

- (a) a condition restricting the person's disposal or further acquisition of shares or voting power in the Division 4A FI or resulting FI, as the case may be;

- (b) a condition restricting the person's exercise of voting power in the Division 4A FI or resulting FI, as the case may be.

(3) The Minister may, at any time, add to, vary or revoke any condition imposed under subsection (2).

(4) Any condition imposed under subsection (2) has effect despite anything in the Companies Act or the constitution of the Division 4A FI or resulting FI.

(5) Despite subsection (1)(a), the Minister may serve a written notice on the person mentioned in subsection (1) if —

- (a) the Authority is not satisfied that —
 - (i) the person is, in accordance with the Guidelines on Fit and Proper Criteria, a fit and proper person to be a significant shareholder; and
 - (ii) having regard to the likely influence of the person on it, the Division 4A FI or resulting FI will or will continue to conduct its business prudently and comply with the provisions of this Act and the relevant Act applicable to it; or
- (b) the Minister is not satisfied that —
 - (i) in a case where the Division 4A FI or resulting FI is a bank incorporated in Singapore, it is in the national interest for the person to remain a significant shareholder of the Division 4A FI or resulting FI, as the case may be; or
 - (ii) in any other case, it is in the public interest for the person to remain a significant shareholder of the Division 4A FI or resulting FI, as the case may be.

(6) The written notice in subsection (5) is one that requires the person to take such steps within a reasonable time as are necessary to cease to be a significant shareholder of the Division 4A FI or resulting FI, as the case may be.

(7) Before serving the notice in subsection (5), the Minister must (unless the Minister decides that it is not practicable or desirable to do

so) cause to be given to the person a written notice of the Minister's intention to serve the notice in that subsection, and specifying a date by which the person may make written representations.

(8) Upon receipt of any written representation, the Minister must consider it for the purpose of determining whether to serve the notice in subsection (5).

(9) Where the Minister has served a notice in subsection (5) on a person, then, until the person has disposed of or transferred the shares specified in the notice and in accordance with the notice —

- (a) no voting rights are exercisable in respect of the specified shares except with the permission of the Minister, whether or not a notice under section 77(2) is published that the provision has ceased to apply;
- (b) no shares of the Division 4A FI or resulting FI (as the case may be) may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares except with the permission of the Minister; and
- (c) except in a liquidation of the Division 4A FI or resulting FI (as the case may be), the Division 4A FI or resulting FI may not make any payment (whether by way of dividends or otherwise) in respect of the specified shares except with the permission of the Minister.

(10) Subsection (9) has effect despite anything in the Companies Act or the constitution of the Division 4A FI or resulting FI.

(11) In this section, “Guidelines on Fit and Proper Criteria” means the document by that title issued by the Authority and published on its website, as revised from time to time.

[Act 31 of 2017 wef 29/10/2018]

Directions for disposal

79.—(1) If the Minister is satisfied that any person has failed to comply with a condition imposed on the person in section 78(2), or if the Minister has served a notice on the person in section 78(5), the Minister may, by notice in writing —

- (a) direct the transfer or disposal of all or any of the shares in the Division 4A FI or resulting FI held by the person within such time and in such manner as the Minister considers appropriate;
- (b) restrict the transfer or disposal of those shares; or
- (c) make such other direction as the Minister considers appropriate.

(2) Any person to whom a notice is given under subsection (1) must comply with each direction specified in the notice.

[Act 31 of 2017 wef 29/10/2018]

Offence

80. A person that fails to comply with a condition imposed on the person in section 78(2), or a notice served on the person in section 78(5) or 79(1), shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 29/10/2018]

Restriction on eligible instruments

81.—(1) To ensure the effective operation of the provisions of this Division on an eligible instrument, the Authority may make regulations under section 126 to impose a requirement on a Division 4A FI to ensure that the contract governing the eligible instrument contains a provision to the effect that the parties to the contract agree for the eligible instrument to be the subject of a bail-in certificate.

(2) The regulations may —

- (a) specify the eligible instruments or class of eligible instruments, and Division 4A FI or class of Division 4A FIs, to which the requirement applies;
- (b) require a Division 4A FI bound by the requirement to provide a legal opinion as to the enforceability of the provision required to be included in the contract in a specified jurisdiction; and
- (c) provide for incidental, consequential or transitional matters.

[Act 31 of 2017 wef 29/10/2018]

Division 4B — Termination rights

Interpretation of this Division

82. In this Division, unless the context otherwise requires —

- “approved clearing house” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);
- “basic substantive obligation”, in relation to a contract, means an obligation provided by the contract for payment, delivery or the provision of collateral;
- “business day” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);
- “designated payment system” means a payment system within the meaning of the Payment Systems (Oversight) Act (Cap. 222A) that is designated under section 7 of that Act;
- “foreign resolution” means any action by a foreign resolution authority of a foreign country or territory to do either or both of the following:
 - (a) to maintain financial stability;
 - (b) to deal with any serious problem in a financial institution of that country or territory which affects the ability of the financial institution to continue its business or operations as a financial institution, and

which, if not dealt with, may cause the financial institution to be no longer able to continue its business or operations as a financial institution;

“foreign resolution authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory which, whether alone or together with one or more other authorities of the foreign country or territory, is responsible for a foreign resolution, or for preparing plans for a foreign resolution;

“group of companies”, in relation to a pertinent financial institution, means —

- (a) the pertinent financial institution;
- (b) the entities that are subsidiaries of the pertinent financial institution; and
- (c) the entity that is the holding company of the pertinent financial institution, and the entities that are subsidiaries of that holding company;

“operator” and “settlement institution” have the meanings given to those terms in section 2(1) of the Payment Systems (Oversight) Act;

“reinsurance contract” means any contract or arrangement involving the reinsurance of liabilities under insurance policies;

“resolution measure” means —

- (a) the making of a determination under Division 2, 3, 4, 4A or 5A, the issue of any certificate under Division 2, 3, 4 or 4A, the making of an order under Division 5A, or the exercise of any power under any such certificate or order; or
- (b) the exercise of any power under any relevant provision applicable to the pertinent financial institution concerned;

“termination right” means —

- (a) a right to terminate a contract;
- (b) a right to accelerate, close out, set off or net an obligation under a contract that would result in a suspension or modification or the extinguishment of the obligation;
- (c) a right to suspend, modify or extinguish an obligation of a party to a contract; or
- (d) in the case of a reinsurance contract, a right of the reinsurer to terminate or not to reinstate coverage under the contract.

[Act 31 of 2017 wef 29/10/2018]

Effect of resolution measure on contracts where substantive obligations continue to be performed

83.—(1) This section applies to a contract that satisfies both of the following:

- (a) one of the parties to the contract is —
 - (i) a pertinent financial institution that is the subject of a resolution measure; or
 - (ii) an entity that is part of the same group of companies as that of a pertinent financial institution where —
 - (A) the pertinent financial institution is the subject of a resolution measure; and
 - (B) the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution;
- (b) the substantive obligations of the contract (including all applicable basic substantive obligations) continue to be performed by the parties to the contract.

(2) Despite any provision of any rule of law, written law or contract —

- (a) the resolution measure, and the occurrence of any event directly linked to it, are to be disregarded in determining the applicability of a provision in the contract enabling a party to exercise a termination right; and
- (b) any purported exercise of that termination right in reliance on that provision in the contract on the basis of either of those grounds in paragraph (a) has no effect.

(3) For the purposes of subsection (1)(b), a basic substantive obligation of a pertinent financial institution (being an approved clearing house or an operator or a settlement institution of a designated payment system) under a contract is not considered to be no longer performed, by reason only that the institution allocates any loss to its participants, or uses collateral provided by or on behalf of its participants —

- (a) under its margin rules or default arrangements; or
- (b) pursuant to a resolution measure.

[Act 31 of 2017 wef 29/10/2018]

Right to temporarily suspend termination right for contracts because of resolution measure

84.—(1) This section applies to a contract one of the parties to which is —

- (a) a pertinent financial institution that is the subject or proposed subject of a resolution measure;
- (b) a pertinent financial institution in respect of which a foreign resolution authority of a foreign country or territory has carried out, or has informed the Authority that it has grounds to carry out, a foreign resolution; or
- (c) an entity that is part of the same group of companies as that of a pertinent financial institution where —
 - (i) the pertinent financial institution is the subject or proposed subject of a resolution measure;
 - (ii) the contract has a termination right that is exercisable if the pertinent financial institution becomes insolvent or is in a certain financial condition; and

- (iii) the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution.

(2) The Authority may, by notice in writing to the parties to the contract, suspend the exercise of any termination right in the contract for a specified period.

(3) The notice under subsection (2) does not apply to —

- (a) a termination right under the contract which becomes exercisable for a breach of a basic substantive obligation only;
- (b) a termination right under a contract between the pertinent financial institution and a person prescribed for the purposes of this paragraph by regulations made under section 126; or
- (c) a termination right under a contract, or a contract within a class of contracts, prescribed for the purposes of this paragraph by regulations made under section 126.

(4) When exercising a power under subsection (2), the Authority must have regard to its impact on the safe and orderly functioning of the financial market and financial market infrastructures operating in Singapore.

(5) The notice under subsection (2) —

- (a) may relate to all or any class or description of parties to a contract;
- (b) may make different provisions for different classes or descriptions of parties to a contract; and
- (c) may be of general or specific application.

(6) A copy of the notice under subsection (2) must be published —

- (a) by the Authority in the *Gazette* and on its website; and
- (b) by the pertinent financial institution on its website.

(7) In this section, a pertinent financial institution is a proposed subject of a resolution measure if the Authority is satisfied that there

is a basis for that action under section 50 in relation to that pertinent financial institution.

[Act 31 of 2017 wef 29/10/2018]

When suspension takes effect

85.—(1) A suspension by a notice under section 84 takes effect from (and including) the time of publication of the notice under that section in the *Gazette* or a time on another date specified in the notice, and —

(a) if the contract is not a reinsurance contract, expires no later than the same time on the second business day after —

(i) the date of publication of the notice; or

(ii) the other date specified in the notice,

as the case may be; or

(b) if the contract is a reinsurance contract, expires no later than the time and date prescribed for the purposes of this paragraph by regulations made under section 126.

(2) During the period of suspension of a termination right under a contract and despite any provision of any rule of law, written law or contract, any purported exercise of that right has no effect.

(3) A person whose termination right under a contract is suspended under section 84 may (in accordance with the terms of the contract) exercise that right before the expiry of the suspension if the Authority gives the person written notice that the person may exercise that right because —

(a) the contract does not or will not form part of the business of the pertinent financial institution to be transferred under section 58; or

(b) the Authority has decided not to make a determination under Division 4A in relation to the pertinent financial institution.

(4) On the expiry of the period of suspension under section 84 of a termination right under a contract, the person who holds that right may (if it had not already been exercised under subsection (3))

exercise that right in accordance with the terms of the contract, but not on any of the following grounds:

- (a) a resolution measure taken in relation to the pertinent financial institution;
- (b) the occurrence of an event directly linked to such resolution measure;
- (c) if the contract forms part of any business of the pertinent financial institution that has been transferred to another person pursuant to a certificate of transfer under section 58 or an onward transfer certificate under section 64, any act of the pertinent financial institution before the transfer;
- (d) the suspension itself.

[Act 31 of 2017 wef 29/10/2018]

*Division 5 — Assistance to foreign resolution authorities
and domestic authorities*

Interpretation of this Division

86. In this Division, unless the context otherwise requires —

“domestic authority” means any ministry or department of the Government, any Organ of State in Singapore and any statutory body (other than the Authority) established under a public Act for a public function, and includes the company designated to be the deposit insurance and policy owners’ protection fund agency under section 56 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);

“foreign resolution authority” means an authority of a foreign country or territory which, whether alone or together with one or more other authorities of the foreign country or territory, is responsible for the resolution, or for preparing plans for dealing with the resolution, of a financial institution;

[Act 31 of 2017 wef 05/06/2018]

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

“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 Deposit Insurance and Policy Owners’ Protection Schemes Act;
- (d) the Finance Companies Act (Cap. 108);
- (e) the Financial Advisers Act (Cap. 110);
- (f) the Insurance Act (Cap. 142);
- (g) the Money-changing and Remittance Businesses Act (Cap. 187);
- (h) the Payment Systems (Oversight) Act (Cap. 222A);
- (i) the Securities and Futures Act (Cap. 289);
- (j) the Trust Companies Act (Cap. 336); and
- (k) such other Act or Acts as the Authority may prescribe by regulations made under section 126;

[Act 31 of 2017 wef 04/06/2018]

“resolution” means any action by an authority (being an authority charged with responsibility for such action) to do either or both of the following:

- (a) to maintain financial stability;
- (b) to deal with any serious problem in a financial institution which affects the ability of the financial institution to continue its business or operations as a financial institution, and which, if not dealt with, may cause the financial institution to be no longer able to continue its business or operations as a financial institution.

[Act 31 of 2017 wef 05/06/2018]

[Deleted by Act 31 of 2017 wef 05/06/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Conditions for provision of assistance to foreign resolution authority

87.—(1) The Authority may provide the assistance referred to in section 89 to a foreign resolution authority, if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request by the foreign resolution authority for assistance is received by the Authority on or after the date of commencement of section 10 of the Monetary Authority of Singapore (Amendment) Act 2013;

[Act 31 of 2017 wef 05/06/2018]

- (b) the assistance is intended to enable the foreign resolution authority, or any other authority of the foreign country or territory, to deal with the resolution of a financial institution;

[Act 31 of 2017 wef 05/06/2018]

- (c) the foreign resolution 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;

[Act 31 of 2017 wef 05/06/2018]

- (d) the foreign resolution authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country or territory in accordance with paragraph (e)) any material or copy thereof obtained pursuant to the request, unless the foreign resolution authority is compelled to do so by the law or a court of the foreign country or territory;

[Act 31 of 2017 wef 05/06/2018]

- (e) the foreign resolution 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;

[Act 31 of 2017 wef 05/06/2018]

- (f) the material requested for is of sufficient importance to the resolution of a financial institution and cannot reasonably be obtained by any other means;
- (g) the matter to which the request relates is of sufficient gravity; and
- (h) the rendering of assistance will not be contrary to the public interest or the interests of the affected persons of the financial institution.

[Act 31 of 2017 wef 05/06/2018]

[Act 31 of 2017 wef 04/06/2018]

(2) For the purposes of subsection (1)(d) and (e), “designated third party”, in relation to a foreign country or territory, means such person in, or body or authority of, the foreign country or territory as the Authority may approve, upon an application to the Authority, if the Authority is satisfied that the disclosure —

- (a) is necessary, in the interests of the resolution of a financial institution; and
- (b) is necessary for the performance of the duties and functions of that person, body or authority, as the case may be.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Other factors to consider for provision of assistance to foreign resolution authority

88. In deciding whether to grant a request for assistance referred to in section 89 from a foreign resolution authority, the Authority may also have regard to the following:

- (a) whether the foreign resolution authority is preparing plans for dealing with the resolution of any financial institution, or is in the process of determining whether to exercise, or is exercising, any resolution powers in relation to the financial institution;

[Act 31 of 2017 wef 05/06/2018]

- (b) whether the foreign resolution authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the foreign resolution authority for similar assistance;

[Act 31 of 2017 wef 05/06/2018]

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

[Act 31 of 2017 wef 05/06/2018]

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Assistance that may be rendered to foreign resolution authority

89.—(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 foreign resolution authority for assistance —

- (a) transmit to the foreign resolution authority any material in the possession of the Authority that is requested by the foreign resolution authority or a copy thereof;

[Act 31 of 2017 wef 05/06/2018]

- (b) order any person to furnish to the Authority any material that is requested by the foreign resolution authority or a copy thereof, and transmit the material or copy to the foreign resolution authority;

[Act 31 of 2017 wef 05/06/2018]

- (c) order any person to make an oral statement to the Authority on any information requested by the foreign resolution authority, record such statement, and transmit the recorded statement to the foreign resolution authority; or

[Act 31 of 2017 wef 05/06/2018]

- (d) request any ministry or department of the Government, or any statutory authority in Singapore, to furnish to the Authority any material that is requested by the foreign resolution authority or a copy thereof, and transmit the material or copy to the foreign resolution authority.

[Act 31 of 2017 wef 05/06/2018]

(2) An order under subsection (1)(b) or (c) shall have effect notwithstanding any obligation as to secrecy or other restriction 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.

(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), to furnish or transmit any material or copy thereof that contains, or to disclose, 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 furnish or transmit any material 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.

(5) 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 might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 91.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Assistance to domestic authority

90.—(1) Notwithstanding any obligation as to secrecy or other restriction 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, the Authority may, on its own motion or upon receiving a written request from a domestic authority for any material in relation to the resolution of a specified financial institution, transmit to the domestic authority any such material that is in the possession of the Authority or a copy thereof.

(2) In deciding whether to transmit any material to a domestic authority under subsection (1), the Authority may have regard to the following:

- (a) whether the assistance is intended to enable the domestic authority —
 - (i) to prepare plans for dealing with the resolution of a specified financial institution;
 - (ii) to avoid having to exercise any resolution powers in relation to a specified financial institution; or
 - (iii) to determine whether or when to exercise resolution powers in relation to a specified financial institution;
- (b) whether the domestic authority has given or is willing to give a written undertaking —
 - (i) 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; or
 - (ii) that any material or copy thereof transmitted by the Authority on its own motion shall not be used for any purpose other than a purpose that is specified by the Authority;
- (c) whether the domestic authority has given a written undertaking not to disclose to a third party any material or copy thereof obtained pursuant to the request or transmitted by the Authority on its own motion, unless the domestic authority is compelled to do so by the law or the Court.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Offences under this Division

91. Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 89(1)(b) or (c);

[Act 31 of 2017 wef 04/06/2018]

- (b) in purported compliance with an order under section 89(1)(b), furnishes to the Authority any material or copy thereof known to the person to be false or misleading in a material particular; or

[Act 31 of 2017 wef 04/06/2018]

- (c) in purported compliance with an order made under section 89(1)(c), makes a statement to the Authority that is false or misleading in a material particular,

[Act 31 of 2017 wef 04/06/2018]

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.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Immunity for furnishing material, etc.

92.—(1) No liability, other than for an offence under section 91, shall lie against any person for —

- (a) furnishing to the Authority any material or copy thereof, if he had furnished that material or copy with reasonable care and in good faith in compliance with an order made under section 89(1)(b);

[Act 31 of 2017 wef 04/06/2018]

- (b) making a statement to the Authority with reasonable care and in good faith and in compliance with an order made under section 89(1)(c); or

[Act 31 of 2017 wef 04/06/2018]

- (c) doing or omitting to do any act, if he had done or omitted to do the act with reasonable care and in good faith and as a result of complying with an order made under section 89(1)(b) or (c).

[Act 31 of 2017 wef 04/06/2018]

(2) Any person who complies with an order made under section 89(1)(b) or (c) 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.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Division 5A — Recognition of foreign resolutions

General provisions

93.—(1) In this Division, unless the context otherwise requires —

“determination” means a determination made under section 94;

“foreign financial institution” means a financial institution incorporated, formed or established in a foreign country or territory that has —

(a) a branch located in Singapore; or

(b) a subsidiary incorporated in Singapore,

that is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule;

“foreign resolution” means any action by a foreign resolution authority of a foreign country or territory to do either or both of the following:

(a) to maintain financial stability;

(b) to deal with any serious problem in a foreign financial institution of that country or territory which affects the ability of the financial institution to continue its business or operations as a financial institution, and which, if not dealt with, may cause the financial institution to be no longer able to continue its business or operations as a financial institution;

“foreign resolution authority”, in relation to a foreign country or territory, means an authority of that country or territory which, whether alone or together with one or more other authorities of that country or territory, is responsible for a

foreign resolution, or for preparing plans for a foreign resolution;

“Singapore creditor”, in relation to a foreign financial institution, means —

- (a) a creditor of the foreign financial institution, in respect of a liability incurred by the operations of its branch located in Singapore; or
- (b) a creditor of a subsidiary incorporated in Singapore of the foreign financial institution;

“Singapore shareholder”, in relation to a foreign financial institution, means the holder of shares or similar instruments of a subsidiary incorporated in Singapore of the foreign financial institution.

(2) The exercise of any power under this Division does not prevent the exercise of any other power of the Minister or the Authority under this Act or the relevant Act applicable to the foreign financial institution or to the subsidiary incorporated in Singapore of a foreign financial institution, as the case may be.

[Act 31 of 2017 wef 29/10/2018]

Determination over foreign resolution

94.—(1) This section applies where a foreign resolution authority of a foreign country or territory makes a request to the Authority to recognise a foreign resolution in relation to a foreign financial institution by the foreign resolution authority.

(2) The Authority must make a determination that —

- (a) the foreign resolution should be recognised in whole or in part; or
- (b) the foreign resolution should not be recognised.

(3) The Authority may make a determination that the foreign resolution should be recognised in whole or in part if it is satisfied that all of the following conditions are fulfilled:

- (a) recognition of the foreign resolution or part would not have a widespread adverse effect on the financial system in

Singapore or the economy of Singapore, whether or not that effect occurs directly or indirectly as a result of the effects of recognising the resolution or part;

- (b) recognition of the foreign resolution or part would not result in inequitable treatment of any Singapore creditor relative to any other creditor of the foreign financial institution with similar rights, or of any Singapore shareholder relative to any shareholder of the foreign financial institution;
- (c) recognition of the foreign resolution or part would not be contrary to the national interest or public interest;
- (d) recognition of the foreign resolution or part would not have material fiscal implications for Singapore;
- (e) any other condition that is prescribed by regulations made under section 126 for the purposes of this paragraph.

(4) Upon making a determination, the Authority must submit the determination to the Minister for approval.

(5) The Minister may —

- (a) approve the determination without modification;
- (b) approve the determination subject to any modification the Minister considers appropriate; or
- (c) refuse to approve the determination.

(6) The Minister must not approve the determination under subsection (5)(a) or (b) unless satisfied that all of the conditions mentioned in subsection (3) are fulfilled.

(7) An approval under subsection (5) is subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any condition.

(8) Any person to which a condition mentioned in subsection (7) applies, and who has been given written notice of that condition by the Authority, must comply with the condition.

(9) A person that contravenes subsection (8) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

[Act 31 of 2017 wef 29/10/2018]

Order to give effect to foreign resolution

95.—(1) If the Minister approves a determination that a foreign resolution should be recognised in whole or in part, the Minister must, as soon as practicable, by order in the *Gazette*, declare that the foreign resolution is to be recognised.

(2) The order may make provision for any of the following matters, to take effect from a date specified in the order:

- (a) matters that may be set out in a certificate of transfer pursuant to section 58(3);
- (b) matters that may be set out in a certificate of transfer of shares pursuant to section 67(3);
- (c) matters that may be set out in a certificate of restructuring of share capital pursuant to section 70(3);
- (d) matters that may be set out in a bail-in certificate pursuant to section 75(3).

(3) The matters mentioned in paragraphs (a) to (d) of subsection (2) may be modified for the purposes of giving effect to the foreign resolution.

(4) To avoid doubt, provision may be made in the order for matters mentioned in subsection (2)(d) affecting instruments or liabilities entered into or accruing before the effective date of the order.

(5) With effect from the effective date of the order, sections 58(8) to (17) and 59, section 67(6) to (13), section 70(6) to (14), or sections 76 to 80 (as the case may be), together with the regulations that are made under section 126 for the purpose of implementing those provisions, apply in relation to an order that provides for the matters mentioned in paragraph (a), (b), (c) or (d) of subsection (2), as they apply in relation to the certificate mentioned in that paragraph.

(6) The provisions of this Act mentioned in subsection (5) apply subject to such modifications as the order may prescribe.

[Act 31 of 2017 wef 29/10/2018]

Directions

96. The Authority may, from time to time, issue such directions to any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule, as the Authority considers necessary for the purposes of giving full effect to the order mentioned in section 95.

[Act 31 of 2017 wef 29/10/2018]

Offence

97.—(1) A person that refuses or fails to comply with a provision of the order under section 95 that applies to the person, or a direction issued to the person under section 96, shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(2) Where a person is charged with an offence under subsection (1), it is a defence for the person to prove that —

- (a) the person was not aware of the contravention of the provision of the order or the direction; and
- (b) the person has complied with the provision of the order or the direction within a reasonable time after becoming aware of the contravention.

(3) Except as provided in subsection (2), it is not a defence for a person charged with an offence under subsection (1) that the person did not intend to or did not knowingly contravene the provision of the order or the direction.

[Act 31 of 2017 wef 29/10/2018]

Division 5B — Resolution funding

Interpretation of this Division

98. In this Division, unless the context otherwise requires —

“Agency” means the company designated by the Minister under section 56 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B) as the deposit insurance and policy owners’ protection fund agency;

“DI Fund” means the Deposit Insurance Fund reconstituted under section 9 of the Deposit Insurance and Policy Owners’ Protection Schemes Act;

“financial institution” means any person that is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule;

“financial institution under resolution” means the pertinent financial institution that is the subject of a resolution measure and, in relation to a resolution fund, means the pertinent financial institution that is the subject of the resolution measure for which the fund is established;

“market infrastructure” means a pertinent financial institution that performs the functions of a market, a central clearing counterparty, a trade repository, a central securities depository, or a securities settlement system;

“participant” —

(a) in relation to a market infrastructure, means a participant of the market infrastructure, and includes a client of such participant; and

- (b) in relation to a payment system operator, means a participant of the payment system (within the meaning of the Payment Systems (Oversight) Act (Cap. 222A)) operated by the payment system operator;

“payment system operator” means a person who operates a payment system within the meaning of the Payment Systems (Oversight) Act;

“provisional entity”, in relation to a resolution fund, means an entity established or incorporated to do one or more of the following:

- (a) temporarily hold and manage the assets and liabilities of the financial institution under resolution;
- (b) to be the transferee of any part of the business of the financial institution under resolution under Division 2;
- (c) do any other act for the orderly resolution of the financial institution under resolution;

“resolution fund” means a fund established under section 99;

“resolution measure” means —

- (a) the making of a determination under Division 2, 2A, 3, 4, 4A or 5A, the issue of any certificate under Division 2, 2A, 3, 4 or 4A, the making of an order under Division 5A, or the exercise of any power under any such certificate or order; or
- (b) the exercise of any power under any relevant provision applicable to the financial institution concerned;

“resolution measure”, in relation to a resolution fund, means the resolution measure or measures for which the fund was established;

“similar financial institution” means a financial institution that is prescribed by regulations made under section 126 for the

purposes of section 102(1)(b)(i), as belonging to the same category as the financial institution under resolution;

“trustee”, in relation to a resolution fund, means the entity appointed under section 99(2) as the trustee of the fund.

[Act 31 of 2017 wef 29/10/2018]

Establishment of resolution fund

99.—(1) For the purposes of supporting a resolution measure undertaken for a financial institution and other matters relating to the measure, the Minister may, on the recommendation of the Authority, establish a resolution fund.

(2) The Minister must appoint a body corporate or unincorporate established or incorporated in Singapore, or established under any Act, to be the trustee of the resolution fund.

(3) The Authority must publish a notification in the *Gazette* and in such newspaper or newspapers as the Minister determines, of the establishment of a resolution fund and the trustee of the fund.

(4) The trustee of a resolution fund may obtain a loan from the Authority for the purpose of constituting the fund.

(5) In addition to the loan in subsection (4), the following are to be paid into a resolution fund:

- (a) all payments, levies and late payment fees collected or recovered under sections 103, 105, 106 and 107;
- (b) any interest from a loan made out of moneys withdrawn from the fund;
- (c) any other income from the use of moneys withdrawn from the fund;
- (d) any proceeds from the exercise of the resolution measure;
- (e) any moneys paid out of the DI Fund under section 29A of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B) and given to the trustee of the fund;
- (f) any additional loan obtained from the Authority.

(6) The moneys mentioned in subsection (5)(e) must be put in a separate account of the resolution fund from the other moneys, and moneys from that separate account may not be used to make any payment of compensation and associated costs under Division 5C.

(7) The trustee of a resolution fund must keep proper accounts and records of transactions in respect of the fund.

(8) The accounts and records of the resolution fund are to be audited by an auditor appointed by the trustee in consultation with the Minister.

(9) The first audit of the resolution fund must take place as soon as practicable after the end of the first year in which the first withdrawal from the fund is made, and the fund must be audited every year thereafter until it is dissolved.

[Act 31 of 2017 wef 29/10/2018]

Trustee of resolution fund

100.—(1) The duty of the trustee of a resolution fund is to administer and manage the fund, and in particular —

- (a) to make withdrawals from the fund in accordance with sections 101 and 109(1) and to apply the moneys withdrawn for the purposes mentioned in those provisions;
- (b) to collect and recover payments, levies and late payment fees under sections 103, 105, 106 and 107 and pay these into the fund;
- (c) to collect proceeds in relation to the resolution measure and pay these into the fund;
- (d) at the direction of the Minister (being one made on the Authority's recommendation), to give a guarantee to any person for, or enter into any agreement with any person to share, any liability of the financial institution under resolution, a provisional entity, or a person to whom any asset or business of the financial institution under resolution is transferred;
- (e) to deal with the balance in the resolution fund after the fund is no longer needed for the purposes in section 101(1) or

109(1), in accordance with the regulations made for the purposes of section 109(2); and

(f) do any other thing that is incidental or conducive to the discharge of its duties under paragraphs (a) to (e).

(2) The trustee of a resolution fund may be paid such fees for carrying out its duties and exercising its powers under this Division as the Minister may determine, and such fees are to be paid out of the fund.

(3) The expenses incurred by the trustee of a resolution fund in carrying out its duties and exercising its powers under this Division are, with the Minister's approval, to be paid out of the fund.

(4) The trustee of a resolution fund may, with the Minister's approval and subject to such conditions as the Minister may impose, appoint any person to discharge any part of its duties or exercise any part of its powers.

(5) No action, suit or other legal proceedings lie against —

(a) any current or former trustee of a resolution fund;

(b) any current or former director, officer, employee or agent of the trustee; or

(c) any person acting under the direction of the trustee,

as a result of anything done (including any statement made) or omitted to be done in good faith in carrying out any of the trustee's duties or exercising any of the trustee's powers under this Division.

[Act 31 of 2017 wef 29/10/2018]

Withdrawal from resolution fund

101.—(1) The trustee of a resolution fund must, at the Minister's direction, make one or more withdrawals from the fund and apply the moneys withdrawn for one or more of the following purposes:

(a) to pay the operating costs of a provisional entity;

(b) to discharge a guarantee for, or an obligation under an agreement to share, a liability of the financial institution under resolution, a provisional entity or a person to whom

any asset or business of the financial institution has been transferred;

- (c) to pay the costs of transferring the whole or any part of the business of the financial institution under resolution pursuant to the resolution measure;
- (d) to make or provide a loan, advance, overdraft or other credit facility to the financial institution under resolution or a provisional entity;
- (e) to pay any other costs reasonably incurred in the resolution measure, such as interest costs, legal cost, cost of any advisory services, and the cost of an independent valuation of the financial institution under resolution;
- (f) to make any payment of compensation and associated costs under Division 5C;
- (g) to pay the remuneration and expenses of a valuer mentioned in section 115(9);
- (h) to provide capital to the financial institution under resolution or the provisional entity;
- (i) such other purposes in support of the resolution measure as may be prescribed by regulations made under section 126.

(2) The Minister may only give a direction to the trustee under subsection (1) on a recommendation of the Authority.

(3) In determining whether to make a recommendation to the Minister to direct a trustee of a resolution fund to make a withdrawal under subsection (1), the Authority must have regard to all of the following:

- (a) whether losses are imposed on shareholders and unsecured creditors of the financial institution under resolution under Division 4 or 4A;
- (b) whether funding from the private sector can be obtained for the resolution measure;
- (c) such other factors as may be prescribed by regulations made under section 126.

(4) The Authority may only make a recommendation to the Minister under subsection (1)(h) to make a withdrawal to provide capital to the financial institution under resolution —

- (a) if the Authority is of the view that the provision of the capital is necessary for the orderly resolution of the financial institution under resolution; and
- (b) after the Authority has taken into account whether appropriate losses have been imposed on shareholders and unsecured creditors of the financial institution under resolution under Division 4 or 4A.

(5) Where a direction has been made to the trustee under subsection (1), the Authority must, as soon as practicable, publish a notice of that fact in the *Gazette* and in such newspaper or newspapers as the Minister determines.

[Act 31 of 2017 wef 29/10/2018]

Recovery of sums withdrawn

102.—(1) Where one or more withdrawals have been made from a resolution fund under section 101, the Minister may direct the trustee of the resolution fund to recover the sum or sums withdrawn in one or both of the following ways:

- (a) by making a claim for all or part of that sum or those sums from the financial institution under resolution;
- (b) by imposing a levy, in accordance with section 104 and the regulations made under section 126 for that section, on the following persons (called in this Part levy payers):
 - (i) financial institutions that have been prescribed by regulations made under section 126 as belonging to the same category as the financial institution under resolution;
 - (ii) if the financial institution under resolution is a market infrastructure, those participants of the market infrastructure and of other market infrastructures, that have been prescribed by regulations made under section 126 as levy payers;

- (iii) if the financial institution under resolution is a payment system operator, those participants of the payment system operator that have been prescribed by regulations made under section 126 as levy payers.

(2) In addition to the purpose in subsection (1), the Minister may direct the trustee of a resolution fund to impose a levy, in accordance with section 104 and the regulations made under section 126 for section 104, on levy payers for the purpose of meeting any shortfall in the amount of the levy collected to make good the amount withdrawn from the account, or for any other prescribed purpose.

(3) The Minister may only give a direction under subsection (1) or (2) on a recommendation of the Authority.

(4) The Authority must, as soon as practicable after the Minister has given a direction under subsection (1) or (2), publish a notice in the *Gazette* and in such newspaper or newspapers as the Minister determines, of the direction.

[Act 31 of 2017 wef 29/10/2018]

Claim from financial institution under resolution

103.—(1) Where a direction has been given under section 102(1)(a), the trustee of the resolution fund must make a claim mentioned in that provision on the financial institution under resolution to pay the sum mentioned in the direction, at such time and in such manner as the trustee determines, and the sum claimed is recoverable as a debt due from the financial institution under resolution to the trustee.

(2) Any sum recovered from the financial institution under resolution must be paid into the resolution fund.

[Act 31 of 2017 wef 29/10/2018]

Computation and notice of levy

104.—(1) After the Minister has given a direction under section 102(1)(b) or (2), the Authority must, in accordance with the regulations made under section 126 for the purpose of this section —

(a) compute the amount of levy payable by every levy payer; and

(b) give a written notice to the trustee of the amount of levy payable by every levy payer.

(2) After receipt of the notice mentioned in subsection (1)(b), the trustee must give the notices mentioned in subsection (3), (4), (5) or (6) (whichever is applicable) to the levy payers and in the manner set out in that subsection.

(3) Where the levy is to be imposed on a similar financial institution, the trustee must give each similar financial institution a notice in writing stating —

(a) the amount of the levy;

(b) the date by which the levy is to be paid;

(c) the manner of payment of the levy; and

(d) such other matters as may be prescribed by regulations made under section 126.

(4) Where the levy is to be imposed on participants of a market infrastructure on a transaction basis, the trustee must give —

(a) a notice to the market infrastructure stating —

(i) the description of the participants on which the levy is imposed;

(ii) the amount of the levy it is to collect from each participant, or the rate of computation of that amount;

(iii) the period and manner of collection;

(iv) the date by which the market infrastructure is to pay the total amount of the levy imposed on the participants to the trustee;

(v) the information and documents it is to provide to the trustee when making the payment under sub-paragraph (iv); and

- (vi) such other matters as may be prescribed by regulations made under section 126; and
- (b) a general notice to those participants, to be published on such medium as may be determined by the trustee, stating —
 - (i) the matters in paragraph (a)(i), (ii) and (iii); and
 - (ii) such other matters as may be prescribed by regulations made under section 126.
- (5) Where the levy is to be imposed on participants of a market infrastructure on a lump sum basis, the trustee must give to each participant of the market infrastructure a notice in writing stating —
 - (a) the amount of the levy;
 - (b) the date by which the levy is to be paid;
 - (c) the manner of payment of the levy; and
 - (d) such other matters as may be prescribed by regulations made under section 126.
- (6) Where the levy is to be imposed on participants of a payment system operator, the trustee must give to each participant a notice in writing stating —
 - (a) the amount of the levy;
 - (b) the date by which the levy is to be paid;
 - (c) the manner of payment of the levy; and
 - (d) such other matters as may be prescribed by regulations made under section 126.
- (7) The notice under subsection (3), (5) or (6) may require the levy payer to pay an amount of levy regularly over a period of time.
- (8) The trustee may, at any time, vary a notice mentioned in subsection (3), (4), (5) or (6), and give the notice of the variation to every person to whom the initial notice was given, and each reference in section 105 or 106 to a notice given to a person under this section

includes a reference to the notice of the variation given to the person under this subsection.

[Act 31 of 2017 wef 29/10/2018]

Payment of levy by similar financial institutions, participants of market infrastructure on lump sum basis, or participants of payment system operator

105.—(1) This section applies where a notice under section 104(3), (5) or (6) is given to a levy payer that is a similar financial institution or a participant of a market infrastructure or payment system operator.

(2) The levy payer must pay to the trustee of the resolution fund on or before the date of payment specified in the notice, the amount of the levy specified in the notice.

(3) If the levy payer fails to comply with subsection (2) —

- (a) the trustee may, by notice in writing to the levy payer, impose on it such late payment fee as may be prescribed by regulations made under section 126; and
- (b) the levy payer must pay to the trustee the late payment fee together with the amount of the unpaid levy on or before the date specified in the notice under paragraph (a), and in the manner specified in the notice.

(4) The late payment fee under subsection (3) must not exceed the amount of the unpaid levy.

[Act 31 of 2017 wef 29/10/2018]

Payment of levy by participants of market infrastructure on transaction basis

106.—(1) This section applies where a notice under section 104(4) is given to a market infrastructure.

(2) The market infrastructure must —

- (a) during the period of collection specified in the notice, collect from each participant on whom the levy is imposed under the notice and in the manner specified in the notice, an amount equal to the levy so imposed;

- (b) pay to the trustee of the resolution fund the total amount of the levy it is to collect from its participants by the date of payment specified in the notice; and
 - (c) together with the payment, give a notice to the trustee setting out how the amount of levy is arrived at and providing such other details as the trustee may reasonably require.
- (3) A market infrastructure does not incur any civil liability for doing anything with reasonable care and in good faith in compliance with subsection (2).
- (4) If a market infrastructure fails to comply with subsection (2)(b) —
 - (a) the trustee may, by notice in writing to the market infrastructure, impose on it such late payment fee as may be prescribed by regulations made under section 126; and
 - (b) the market infrastructure must pay to the trustee the late payment fee, together with the amount of the unpaid levy, on or before the date specified in the notice under paragraph (a), and in the manner specified in the notice.
- (5) A market infrastructure that —
 - (a) fails to comply with subsection (2)(c); or
 - (b) in purported compliance with that provision, provides to the trustee of the resolution fund any information that the market infrastructure knows or has reason to believe is false or misleading,shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.
- (6) The late payment fee under subsection (4) must not exceed the amount of the unpaid levy.

[Act 31 of 2017 wef 29/10/2018]

Recovery, refund and remission of levies and late payment fees, etc.

107.—(1) The levy imposed on a person under section 104(3), (5) or (6), and any late payment fee imposed on the person under section 105(3), are both recoverable as a debt due from that person to the trustee of the resolution fund concerned.

(2) The amount of levy that a market infrastructure is required to collect from its participants under section 106(2), and any late payment fee imposed on the market infrastructure under section 106(4), are both recoverable as a debt due from the market infrastructure to the trustee of the resolution fund concerned.

(3) Where the trustee of a resolution fund has commenced any legal proceedings in a court in Singapore to recover any levy or late payment fee from a person, the trustee is entitled to claim costs on a full indemnity basis from that person.

(4) All levies and late payment fees collected or recovered are to be paid into the resolution fund concerned.

(5) Where a levy payer has paid an amount of levy that is in excess of the amount imposed on the levy payer under a notice under section 105, the trustee of the resolution fund concerned must make a withdrawal from the fund to refund the excess amount to the levy payer.

(6) In any particular case other than the one to which subsection (5) applies, the trustee of a resolution fund may, with the approval of the Minister —

- (a) make a withdrawal from the fund to refund in whole or in part any levy paid by a levy payer; or
- (b) remit in whole or in part any levy payable by a levy payer.

[Act 31 of 2017 wef 29/10/2018]

Disclosure of information on levy

108.—(1) This section applies to a notice given under section 104(3), (5) or (6) to a levy payer that is a similar financial institution or a participant of a market infrastructure or payment system operator.

(2) Subject to subsections (3) and (4), the levy payer, and any of its officers, must not disclose to any person —

- (a) the amount of the levy specified in the notice; and
- (b) any information which, if disclosed, would enable the amount of the levy to be identified or deduced.

(3) Despite subsection (2), the levy payer and any of its officers may disclose any information mentioned in subsection (4) to —

- (a) any officer of the levy payer;
- (b) where the levy payer is one that is established or incorporated in a foreign country or territory, its head office, parent corporation, parent supervisory authority, resolution authority, deposit insurance authority or policy owners' protection scheme authority, as the case may be;
- (c) where the levy payer is a financial institution that is a subsidiary of a foreign corporation, that corporation or the corporation's parent supervisory authority, resolution authority, deposit insurance authority or policy owners' protection scheme authority, as the case may be; or
- (d) such other person or class of persons as the Authority may approve in writing.

(4) The information that may be disclosed under subsection (3) is such information that is necessary for the performance of the duties of the person or authority mentioned in subsection (3)(a), (b), (c) or (d), as the case may be.

(5) A person to whom information is disclosed under subsection (3) must not disclose the information to any other person except as approved by the Authority.

(6) Any person who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both.

(7) This section does not apply to any information that is public information.

(8) In this section —

“deposit insurance authority”, in relation to a levy payer or foreign corporation, means an authority of the foreign country or territory in which the levy payer or foreign corporation is incorporated or established that, whether alone or together with one or more other authorities, is responsible for administering a deposit insurance scheme for deposits of the levy payer or foreign corporation;

“foreign corporation” means a corporation incorporated in a foreign country or territory;

“officer”, in relation to a levy payer, includes —

- (a) a director, secretary or an employee of the levy payer;
- (b) a receiver or manager of any part of the undertaking of the levy payer appointed under a power contained in any instrument; and
- (c) the liquidator of the levy payer appointed in a voluntary winding up;

“parent corporation”, in relation to a levy payer, means a corporation that is able to exercise a significant influence over the direction and management of the levy payer or that has a controlling interest in the levy payer;

“parent supervisory authority”, in relation to a levy payer or a foreign corporation, means the supervisory authority that is responsible, under the laws of the country or territory in which the levy payer or foreign corporation is incorporated or established, for supervising the levy payer or foreign corporation (as the case may be);

“policy owners’ protection scheme authority”, in relation to a levy payer or a foreign corporation, means an authority of the foreign country or territory in which the levy payer or foreign corporation is incorporated or established that, whether alone or together with one or more authorities, is responsible for administering a protection scheme for the policy owners of

insurance policies of the levy payer or foreign corporation (as the case may be);

“resolution authority”, in relation to a levy payer or a foreign corporation, means an authority of the foreign country or territory in which the levy payer or foreign corporation is incorporated or established that, whether alone or together with one or more other authorities, is responsible for the resolution, or for preparing plans for dealing with the resolution of, the levy payer or foreign corporation (as the case may be).

[Act 31 of 2017 wef 29/10/2018]

Use of resolution fund to pay loan, etc., and balance in resolution fund

109.—(1) The Minister may, from time to time, direct the trustee of a resolution fund to make a withdrawal from the resolution fund for any of the following purposes:

- (a) to repay the Authority all or any part of the loan made under section 23(7A), together with any interest on such loan;
- (b) to reimburse the Agency for any payment the trustee received under section 29A of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B).

(2) The Minister may by regulations made under section 126 provide for —

- (a) how the balance in a resolution fund is to be dealt with after the fund is no longer needed for any of the purposes mentioned in section 101(1) or subsection (1); and
- (b) the dissolution of the resolution fund after the balance of the fund has been dealt with in accordance with the regulations, and the publication of a notice of such dissolution.

[Act 31 of 2017 wef 29/10/2018]

Priority of debt of financial institution to trustee

110. Despite the provisions of any written law or rule of law relating to the winding up of companies, in the event of a winding up of a financial institution (other than one that is a bank, a finance company or a licensed insurer) —

- (a) any sum claimed by the trustee of a resolution fund from the financial institution under section 103; and
- (b) any levy and late payment imposed on the financial institution under section 104, 105 or 106 and due from the institution, and any levy which the financial institution is liable to collect under section 106(2) and due from the institution,

have priority over all unsecured liabilities of the financial institution other than preferential debts specified in section 328(1) of the Companies Act (Cap. 50).

[Act 31 of 2017 wef 29/10/2018]

Regulations for this Division

111.—(1) Regulations may be made under section 126 for the purposes of this Division.

(2) Without affecting the generality of subsection (1), regulations may be made in relation to the imposition and recovery of a levy and late payment fee under sections 104, 105, 106 and 107, and in particular in relation to one or more of the following:

- (a) the levy payers on and from whom the trustee of the resolution fund may impose and recover the levy;
- (b) the classification of the levy payers mentioned in paragraph (a) for the purpose of imposing different amounts of the levy;
- (c) the manner in which the amount of the levy for each class of levy payers is to be determined;
- (d) the amount of the late payment fee;
- (e) the manner and date of payment of the levy and late payment fee;

- (f) a duty of a financial institution under resolution, a levy payer, a market infrastructure or a payment system operator to provide such information as the Authority or trustee may reasonably require for the purposes of computing the levy or late payment fee or preparing a notice under section 104;
- (g) such other matters as the Authority considers necessary for the computation, imposition and recovery of the levy or late payment fees.

[Act 31 of 2017 wef 29/10/2018]

Division 5C — Compensation

Interpretation of this Division

112. In this Division, unless the context otherwise requires —

- “2nd transferee” has the same meaning as in section 60;
- “Division 5C FI” or “Division 5C financial institution” means a pertinent financial institution within a class of pertinent financial institutions prescribed by regulations made under section 126 for the purposes of this Division;
- “Division 5C FI under resolution” means a Division 5C FI that is the subject of a resolution action;
- “pre-resolution creditor”, in relation to a Division 5C FI under resolution, means any person who was a creditor of the Division 5C FI immediately before the resolution date;
- “pre-resolution shareholder”, in relation to a Division 5C FI under resolution, means any person who held shares or instruments conferring or representing a legal or beneficial ownership interest in the Division 5C FI, immediately before the resolution date;
- “prescribed written law” has the same meaning as in section 86;
- “resolution action” means —
 - (a) the issue of a certificate of transfer under section 58 or any action to be taken under that certificate;

- (b) the issue of a certificate of transfer under section 67 or any action to be taken under that certificate;
- (c) the issue of a certificate of restructuring of share capital under section 70 or any action to be taken under that certificate;
- (d) the issue of a bail-in certificate under section 75 or any action to be taken under that certificate; or
- (e) the making of an order under section 95 that provides for any of the matters mentioned in section 95(2);

“resolution date”, in relation to a Division 5C FI under resolution, means —

- (a) if the Division 5C FI is the subject of the issue of a certificate of transfer under section 58, a certificate of transfer under section 67, a certificate of restructuring of share capital under section 70, or a bail-in certificate under section 75, the date the certificate is published in the *Gazette*;
- (b) if the Division 5C FI is the subject of 2 or more actions mentioned in paragraphs (a) to (d) of the definition of “resolution action”, the earlier or earliest of the dates of publication of the relevant certificates in the *Gazette*;
- (c) if the Division 5C FI is the subject of an action mentioned in paragraph (e) of the definition of “resolution action”, the date of publication of the order in the *Gazette*; or
- (d) if the Division 5C FI is the subject of one or more actions mentioned in paragraphs (a) to (d) of the definition of “resolution action”, as well as the action mentioned in paragraph (e) of that definition, the earlier of the following dates:
 - (i) the date of publication in the *Gazette* of the relevant certificate or, if there is more than one relevant certificate, the earlier or earliest of the

dates of publication in the *Gazette* of the relevant certificates;

(ii) the date of publication in the *Gazette* of the order;

“transferee” has the same meaning as in section 56;

“valuation report” means a report issued by a valuer under section 116(3);

“valuer” means a person appointed under section 115 as a valuer.

[Act 31 of 2017 wef 29/10/2018]

Meaning of “worse off as a result of the resolution”

113.—(1) In this Division, a pre-resolution creditor or pre-resolution shareholder of a Division 5C FI under resolution is worse off as a result of the resolution if, by reason of one or more of the actions mentioned in subsection (2) taken in relation to the Division 5C FI, the pre-resolution creditor or pre-resolution shareholder has received, is receiving or is likely to receive less favourable treatment than what the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date.

(2) In subsection (1), the actions are —

- (a) any resolution action;
- (b) the issue of a reverse transfer certificate under section 62 or any action taken under that certificate; and
- (c) the issue of an onward transfer certificate under section 64 or any action taken under that certificate.

(3) In any of the following cases, it is a rebuttable presumption that a pre-resolution creditor or pre-resolution shareholder of a Division 5C FI under resolution is not worse off as a result of the resolution:

- (a) the liability or instrument concerned is transferred to a transferee under section 58 and the transferee is subject to

the same terms for that liability or instrument as those to which the Division 5C FI under resolution was subject;

- (b) the liability or instrument concerned is transferred under section 58 and is then transferred back to the Division 5C FI under section 62, and the Division 5C FI is subject to the same terms for that liability or instrument as it was subject to immediately before the transfer under section 58;
- (c) the liability or instrument concerned is transferred under section 58 and is then transferred to a 2nd transferee under section 64, and the 2nd transferee is subject to the same terms for that liability or instrument as those to which the Division 5C FI under resolution was subject;
- (d) the only resolution action to which the Division 5C FI is subject is the issue of a bail-in certificate within the meaning of Division 4A or any action under the certificate, and the instrument or liability concerned is not one to be bailed in under that certificate;
- (e) the only resolution action to which the Division 5C FI is subject is the making of an order under Division 5A, and the pre-resolution creditor or pre-resolution shareholder is eligible for compensation under the law of a foreign country or territory by reason of the resolution to which the order gives effect.

[Act 31 of 2017 wef 29/10/2018]

Eligibility for compensation

114.—(1) A pre-resolution creditor or pre-resolution shareholder of a Division 5C FI under resolution that is worse off as a result of the resolution, is eligible for compensation of the amount mentioned in subsection (2).

(2) The amount of compensation that the pre-resolution creditor or pre-resolution shareholder is eligible for is the difference between —

- (a) what the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI

under resolution immediately before the resolution date;
and

- (b) what the pre-resolution creditor or pre-resolution shareholder has received, is receiving, or is likely to receive —
 - (i) as a result of one or more of the actions mentioned in section 113(2); and
 - (ii) as compensation under the law of a foreign country or territory governing the foreign resolution (if applicable).

(3) Subject to section 120, the Authority must recommend to the Minister to make a direction to the trustee of the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI, to make a withdrawal from the fund to pay to the pre-resolution creditor or pre-resolution shareholder, the amount set out in the valuation report as the amount mentioned in subsection (2).

(4) Payment of the compensation to the pre-resolution creditor or pre-resolution shareholder is to be made in the form and manner, and within the time, prescribed by regulations made under section 126.

[Act 31 of 2017 wef 29/10/2018]

Appointment of valuer

115.—(1) The Minister must, as soon as practicable, after the resolution date of a Division 5C FI under resolution, appoint a valuer for the Division 5C FI.

(2) The role of a valuer appointed under this section is to make a valuation in relation to the Division 5C FI in accordance with section 116, and decide whether any pre-resolution creditor or pre-resolution shareholder of the Division 5C FI is eligible for compensation and the amount of the compensation.

(3) The Minister may only appoint a person as a valuer if the Minister is satisfied that the person satisfies the criteria prescribed by regulations made for the purposes of this subsection under section 126.

(4) The appointment of a valuer is to be made on such conditions as the Minister may determine, and the Minister may at any time add to, vary or revoke any such condition.

(5) The Minister may on any prescribed ground revoke the appointment of a valuer, and may, subject to subsections (3) and (4), appoint a new valuer.

(6) Where the appointment of a valuer is revoked and a new valuer appointed under subsection (5), the Authority may direct the previous valuer to provide such information and documents to the new valuer as the Authority considers necessary for the new valuer to conduct the valuation.

(7) A valuer that does not comply with a direction issued under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(8) The Authority may at any time fix the remuneration and expenses to be paid to a valuer.

(9) The remuneration and expenses of a valuer may be paid out of the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI.

[Act 31 of 2017 wef 29/10/2018]

Valuation

116.—(1) A valuer for a Division 5C FI under resolution must conduct the valuation of the Division 5C FI in accordance with the valuation principles that are prescribed by regulations made under section 126, and any other valuation principles specified by the Authority by written notice to the valuer.

(2) The valuer must determine the amount of compensation to be paid to each pre-resolution creditor or pre-resolution shareholder of the Division 5C FI, or each one that is within a class of pre-resolution creditors or pre-resolution shareholders of the Division 5C FI, by reference to the difference between —

- (a) the valuer's assessment of what the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date; and
 - (b) the valuer's assessment of what the pre-resolution creditor or pre-resolution shareholder has received, is receiving, or is likely to receive —
 - (i) as a result of one or more of the actions mentioned in section 113(2); and
 - (ii) as compensation under the law of a foreign country or territory governing the foreign resolution (if applicable).
- (3) After conducting the valuation, the valuer for a Division 5C FI under resolution must issue a report setting out the valuer's decision on —
 - (a) whether each pre-resolution creditor or pre-resolution shareholder of the Division 5C FI is eligible for compensation; and
 - (b) the amount of compensation to be paid to each pre-resolution creditor or pre-resolution shareholder.
- (4) The valuation report must specify the information that is prescribed by regulations made under section 126 and any other valuation principles specified by the Authority by written notice to the valuer.
- (5) The valuer must provide the valuation report to the Minister and the Authority by such date as may be determined by the Minister.
- (6) On receiving a copy of the valuation report, where the Authority is of the view that —
 - (a) the valuation report was not prepared in accordance with this section; or
 - (b) the valuer should have had regard to any additional circumstances not taken into account in the valuation report,

the Authority may, by notice in writing, request the valuer to reconsider the valuation report or any aspect of the report by such date as the Authority may specify in the notice.

(7) The Authority may cause the valuation report or any part of it to be published in the manner determined by the Authority.

[Act 31 of 2017 wef 29/10/2018]

Access to information by valuer

117.—(1) A Division 5C FI under resolution for which a valuer is appointed must —

- (a) give the valuer access to such of its records and documents as the valuer may reasonably require to conduct the valuation;
- (b) procure a person who is in possession of such records and documents to give the valuer access to them;
- (c) provide such information and facilities as the valuer may reasonably require to conduct the valuation; and
- (d) procure a person who is in possession of such information or facilities to provide the information or facilities to the valuer.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the Division 5C FI under resolution or any of its officers, or on any person mentioned in subsection (1)(b) or (d), by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(3) A Division 5C FI under resolution that refuses or neglects, without reasonable excuse, to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(4) No civil or criminal liability is incurred by a Division 5C FI under resolution or any of its officers, or by any person mentioned in

subsection (1)(b) or (d) or any of the person's officers, in respect of any obligation or restriction mentioned in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with or giving effect to subsection (1).

(5) A Division 5C FI under resolution or any of its officers, or any person mentioned in subsection (1)(b) or (d), that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with or giving effect to subsection (1) is not to be treated as being in breach of any obligation or restriction mentioned in subsection (2).

[Act 31 of 2017 wef 29/10/2018]

Confidentiality and use of information

118.—(1) A valuer must not use or disclose any information obtained under this Division other than for the performance of its functions under this Division.

(2) Any person who comes to know of any information in the course of assisting another person to perform a function under this Division must not use or disclose the information for any purpose other than for such assistance.

(3) Except as provided under sections 116(5) and 119, a valuer must not disclose any part of the valuation report issued by the valuer to any person.

(4) The duties of a valuer under subsections (1) and (3) continue after the revocation or cessation of the valuer's appointment.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom any information is disclosed, who knows or has reasonable grounds for believing at the time of the disclosure, that the information was disclosed to the person in contravention of

subsection (1), (2) or (3), shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

(a) the disclosure was made contrary to the person's desire;

(b) where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the information, surrendered, or taken all reasonable steps to surrender, the information and all copies of the information to the Authority; and

(c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the information, taken all reasonable steps to ensure the deletion of all electronic copies of the information and the surrender of the information and all copies of the information in other forms to the Authority.

[Act 31 of 2017 wef 29/10/2018]

Disclosure of valuation report

119.—(1) A valuer of a Division 5C FI under resolution may, with the Authority's approval, disclose the whole or any part of the valuation report of the Division 5C FI to the Division 5C FI, any pre-resolution creditor or pre-resolution shareholder of the Division 5C FI, or the public.

(2) In granting approval for a disclosure, the Authority may impose such conditions or restrictions as it thinks fit on the valuer as to the form or content of the valuation report or part of it to be disclosed.

(3) The Authority may also impose such conditions or restrictions as it thinks fit on the Division 5C FI under resolution or any pre-resolution creditor or pre-resolution shareholder of the Division 5C FI that the valuer discloses the valuation report to.

(4) Any person who contravenes any of the provisions of this section, or any condition or restriction imposed under subsection (2) or (3), shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

[Act 31 of 2017 wef 29/10/2018]

Appeals

120.—(1) The Authority may appeal to the Court against a valuation report if it is dissatisfied with —

(a) the valuer's decision on any person's eligibility for compensation; or

(b) the amount of compensation to be paid to any person pursuant to the valuation report.

(2) A person may appeal to the Court against a valuation report if the person is dissatisfied with —

(a) the valuer's decision on the person's eligibility for compensation; or

(b) the amount of compensation to be paid to the person pursuant to the valuation report.

(3) The Court may make an order that confirms or varies the valuation report in respect of the eligibility of a person for compensation or the amount of compensation to be paid to the person.

(4) No person may lodge an appeal after the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI has been dissolved in accordance with regulations made for the purposes of section 109(2).

(5) Rules of Court may provide for the manner in which appeals under this section may be made and the procedure for the appeal.

[Act 31 of 2017 wef 29/10/2018]

*Division 6 — Miscellaneous***Notices to significant associated entities of specified financial institutions**

121.—(1) The Authority may, if it thinks it necessary or expedient in the public interest, in the interests of any affected person or class of affected persons of a specified financial institution or in the interests of the financial system in Singapore, by notice in writing to a significant associated entity of the specified financial institution, give directions or impose requirements on or relating to the operations or activities of the significant associated entity, including directions that the significant associated entity —

- (a) take such action, or do or not do such act or thing, as the Authority may specify in the notice; or
- (b) continue to provide such services as the Authority may specify in the notice to —
 - (i) the specified financial institution; or
 - (ii) all or any of the entities treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution.

(2) A significant associated entity of a specified financial institution shall comply with any direction given to the significant associated entity, or any requirement imposed on the significant associated entity, by any notice issued to the significant associated entity under subsection (1).

(3) It shall not be necessary to publish any notice issued under subsection (1) in the *Gazette*.

(4) Any significant associated entity (of a specified financial institution) which contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(5) In this section —

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

“group of companies”, in relation to a specified financial institution, means —

- (a) the specified financial institution;
- (b) the entities that are subsidiaries of the specified financial institution; and
- (c) the entity that is the holding company of the specified financial institution, and the entities that are subsidiaries of that holding company;

“significant associated entity”, in relation to a specified financial institution, means an entity incorporated, formed or established in Singapore —

- (a) which is treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution;
- (b) which is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated under this Act or any of the written laws set out in the Schedule; and
- (c) which —
 - (i) is significant to the business of —
 - (A) the specified financial institution; or
 - (B) all or any of the entities which are treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution; or
 - (ii) provides any service which is essential or necessary for the continued operation of —
 - (A) the specified financial institution; or

- (B) all or any of the entities which are treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Modification of law of insolvency

122. Notwithstanding anything to the contrary in this Act, the Bankruptcy Act (Cap. 20) and the Companies Act (Cap. 50) —

- (a) any sale, transfer, assignment or other disposition of any property or business of a pertinent financial institution pursuant to section 58 or 64 must not be reversed, repaid or set aside, except where a certificate has been issued under section 62 to reverse such sale, transfer, assignment or other disposition; and

[Act 31 of 2017 wef 29/10/2018]

- (b) no order shall be made by any court for the rectification or stay of any such sale, transfer, assignment or other disposition.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Power to obtain information under this Part

123.—(1) The Minister or the Authority may require a person to furnish, within the period and in the manner specified by the Minister or the Authority, any information or document that the Minister or the Authority may reasonably require —

- (a) for the discharge or exercise of the Minister's or the Authority's duties, functions or powers under this Part; or
- (b) for transmission to a valuer appointed under section 115 in connection with the valuer's role under Division 5C.

[Act 31 of 2017 wef 29/10/2018]

(2) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (1); or
- (b) in purported compliance with any requirement under subsection (1), knowingly or recklessly furnishes any information or document 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 \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

(3) Where a person claims, before furnishing the Minister or the Authority with any information or document that the person is required to furnish under subsection (1), that the information or document might tend to incriminate the person, the information or document shall not be admissible in evidence against the person in criminal proceedings other than proceedings under subsection (2).

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Immunity for officer of specified financial institution or significant associated entity

124.—(1) No criminal or civil liability shall be incurred by an officer of a specified financial institution, or of a significant associated entity referred to in section 121, for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in complying with any provision of this Part or any direction given, notice issued or requirement imposed by the Minister or the Authority under this Part.

[Act 31 of 2017 wef 04/06/2018]

(2) In this section, “officer”, in relation to a specified financial institution or a significant associated entity referred to in section 121, includes —

- (a) a director, a secretary or an executive officer of the specified financial institution or significant associated entity (as the case may be);
- (b) a receiver or manager of any part of the undertaking of the specified financial institution or significant associated entity (as the case may be) appointed under a power contained in any instrument; and
- (c) a liquidator of the specified financial institution or significant associated entity (as the case may be) appointed in a voluntary winding up.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Cessation of moratorium, etc., under this Part

125.—(1) The Minister may, by order in the *Gazette*, direct that section 59(1) or (2), 67(13), 70(13) or 77, or any part of that provision, ceases to apply to a pertinent financial institution, any business (or any part of the business) of a pertinent financial institution, any share in a pertinent financial institution or any eligible instrument issued by a Division 4A FI or to which it is a party or is subject, and the order has effect according to its terms on the date specified by the Minister in the order.

[Act 31 of 2017 wef 29/10/2018]

(2) In this section, “business” includes affairs, property, right, obligation and liability.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Regulations for this Part

126.—(1) The Minister may make such regulations as may be necessary or expedient for carrying out the purposes and provisions of this Part and for prescribing anything that may be required to be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may —

- (a) restrict, or impose conditions on, any transfer of only part (but not the whole) of the business (as defined in section 56) of a pertinent financial institution under Division 2;

[Act 31 of 2017 wef 04/06/2018]

- (b) provide for either or both of the following:

- (i) that any arrangement, transaction or action is exempt from any provision of this Part;
- (ii) that the Minister or the Authority must not exercise any power under this Part in relation to any arrangement, transaction or action, or any matter for which any arrangement has been entered into, either in all circumstances or if specified conditions are not satisfied;

[Act 31 of 2017 wef 29/10/2018]

- (c) prescribe —

- (i) any set-off arrangement, netting arrangement or other type of arrangement as an arrangement referred to in paragraph (b)(i) or (ii);
- (ia) any transaction or action as a transaction or action in paragraph (b)(i) or (ii);
- (ii) for any arrangement, transaction or action referred to in paragraph (b)(i), each provision of this Part which that arrangement, transaction or action is exempted from; and

[Act 31 of 2017 wef 29/10/2018]

- (iii) for any arrangement, transaction, action or matter referred to in paragraph (b)(ii), each power which the Minister or the Authority shall not exercise in relation to that arrangement, transaction, action or matter;

[Act 31 of 2017 wef 29/10/2018]

- (d) provide for any transaction to be void or voidable, or for any other consequence (including a consequence affecting any business, affairs, property, right, obligation, liability or power of any person under this Part, or affecting the

operation of any provision of this Part) to arise, if any specified provision of the regulations is contravened;

(e) provide that any contravention of any specified provision of the regulations shall be an offence punishable —

(i) in the case of an individual, with a fine not exceeding \$125,000 or with imprisonment for a term not exceeding 3 years or with both and, in the case of a continuing offence, with a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

(ii) in any other case, with a fine not exceeding \$250,000 and, in the case of a continuing offence, with a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction;

[Act 31 of 2017 wef 29/10/2018]

(f) exempt any person or class of persons from all or any of the provisions of this Part and the regulations, subject to such conditions or restrictions as may be prescribed; and

[Act 31 of 2017 wef 29/10/2018]

(g) provide that a pertinent financial institution, any of its subsidiaries or any subsidiary within a class of its subsidiaries, must include a provision in a specified contract to which the pertinent financial institution or subsidiary is a party, the effect of which is that the parties to the contract agree to be bound by section 83 and by any suspension of a termination right in the contract by the Authority under section 84.

[Act 31 of 2017 wef 29/10/2018]

(3) For the purposes of the definition of “affected person” in section 49, the Minister may prescribe, in relation to any specified institution, different persons for different purposes.

[Act 31 of 2017 wef 04/06/2018]

(4) For the purposes of the definitions of “excluded financial institution” and “pertinent financial institution” in section 49, the

Minister may prescribe different financial institutions for different purposes.

[Act 31 of 2017 wef 04/06/2018]

(5) All regulations made under this section shall be presented to Parliament as soon as possible after publication in the *Gazette*.

(6) In this section —

“netting arrangement” means an arrangement under which 2 or more claims or obligations can be converted into a net claim or obligation, and includes a close-out netting arrangement (under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set-off against each other or to be converted into a net debt);

“set-off arrangement” means an arrangement under which 2 or more debts, claims or obligations can be set-off against each other.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

PART V

FINANCIAL SECTOR DEVELOPMENT FUND

Establishment of Financial Sector Development Fund

127.—(1) There shall be established a fund to be called the Financial Sector Development Fund (referred to in this Part as the Fund) which shall, subject to the directions of the Minister, be controlled and administered by the Authority.

[27/99]

(2) The Fund shall consist of —

- (a) such proceeds raised in connection with the sale of the transferee holding company’s shares as is referred to in section 10 of the Exchanges (Demutualisation and Merger) Act 1999 (Act 27 of 1999);
- (b) all moneys contributed by the Government to the Fund;
- (c) all donations and gifts accepted by the Authority for the Fund; and

- (d) any interest, dividend and other income derived from the investment of the moneys in the Fund.

[27/99]

(3) The Fund shall be used for the objects and purposes set out in section 128 and shall be deemed not to be a fund of the Authority for the purposes of any written law.

[27/99]

[Act 31 of 2017 wef 04/06/2018]

Objects of Fund and expenditure of moneys of Fund

128.—(1) The objects for which moneys of the Fund may be applied are as follows:

- (a) the promotion of Singapore as a financial centre;
- (b) the development and upgrading of skills and expertise required by the financial services sector;
- (c) the development and support of educational and research institutions, research and development programmes and projects relating to the financial services sector; and
- (d) the development of infrastructure to support the financial services sector in Singapore.

[27/99]

(2) In carrying out the objects of the Fund, the Authority may, from time to time, authorise moneys of the Fund to be paid out and expended for all or any of the following purposes carried out in Singapore or elsewhere:

- (a) establishing or expanding facilities or assisting in the maintenance of facilities for training courses and training programmes designed to promote the skills or expertise for purposes consistent with the objects of the Fund;
- (b) the provision of scholarships, grants, subsidies, rebates, loans or other financial assistance or incentives for purposes consistent with the objects of the Fund; and
- (c) such other purposes not inconsistent with the objects of the Fund as the Minister may approve.

[27/99]

(3) The Authority may also authorise moneys of the Fund to be used to pay the following:

- (a) all claims in satisfaction of any indemnity or warranty given by the Authority in relation to the sale of the transferee holding company's shares as defined in the Exchanges (Demutualisation and Merger) Act 1999 (Act 27 of 1999);
- (b) all expenses incurred by the Authority or its employees or agents in the administration of the Fund; and
- (c) the fees referred to in section 129(3).

[Act 31 of 2017 wef 04/06/2018]

[27/99]

(4) The Minister may, from time to time, approve the payment of such sums in the Fund to the Consolidated Fund as the Minister may determine.

[27/99]

[Act 31 of 2017 wef 04/06/2018]

Investment

129.—(1) The Authority may invest the moneys of the Fund in accordance with the standard investment power of statutory bodies as defined in section 33A of the Interpretation Act (Cap. 1).

[45/2004 wef 15/12/2004]

(2) The Authority may delegate all or any of its powers and functions under subsection (1) to any employee or agent as it may appoint.

[27/99]

(3) The Authority may pay to any person appointed under subsection (2) a fee for any service rendered in exercise of any power and function delegated to that person under that subsection.

[27/99]

[Act 31 of 2017 wef 04/06/2018]

Financial year of Fund

130. The financial year of the Fund begins on 1 April of each year and ends on 31 March of the succeeding year.

[Act 31 of 2017 wef 05/06/2018]

Audit

131. The accounts of the Fund are to be audited by the Auditor-General or such other auditor as may be appointed annually by the Minister in consultation with the Auditor-General.

[Act 31 of 2017 wef 05/06/2018]

Preparation and publication of financial statements and annual report of Fund

132.—(1) The Authority must, within 6 months from the close of the financial year of the Fund, send to the Minister —

- (a) a copy of the audited financial statements of the Fund, together with a copy of the auditor's report; and
- (b) a report on the activities concerning the Fund during that financial year.

(2) The Authority must publish the audited financial statements and the auditor's report mentioned in subsection (1)(a) in the *Gazette*.

(3) The Authority must publish the report mentioned in subsection (1)(b) in such manner as the Authority may determine.

(4) The Minister must, within 6 months from the close of the financial year of the Fund, cause a copy of the audited financial statements and a copy of the auditor's report mentioned in subsection (1)(a), and a copy of the report mentioned in subsection (1)(b), to be presented to Parliament.

[Act 31 of 2017 wef 05/06/2018]

PART VA**BOOK-ENTRY SECURITIES ISSUED BY AUTHORITY**

[Act 9 of 2013 wef 18/04/2013]

Interpretation of this Part

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

“book-entry MAS securities” means any securities issued by the Authority under this Part in the form of an entry in the records of the Authority;

“depository institution” means a financial institution approved by the Authority which regularly —

- (a) accepts in the course of its business book-entry MAS securities by way of a custodial service for its customers; and
- (b) maintains accounts in the names of its customers reflecting ownership or interest in such book-entry MAS securities;

“depositor” means any person in whose name an account is established and maintained on the records of the Authority;

“pledge” includes a pledge of, or any security interest in, book-entry MAS securities —

- (a) as collateral for loans or advances; or
- (b) to secure the performance of an obligation;

“security interest” means an interest, not being an interest arising from a trust, in property which secures the payment of a debt or performance of an obligation.

[Act 9 of 2013 wef 18/04/2013]

[Act 31 of 2017 wef 04/06/2018]

Issue of book-entry MAS securities

134.—(1) The Authority may —

- (a) issue book-entry MAS securities upon such terms as may be prescribed by means of entries on its records which include the name of the depositor and the amount and description of the securities;
- (b) maintain accounts of book-entry MAS securities —
 - (i) for any depositor on such terms and conditions as may be specified by the Authority for such securities the depositor holds for its own account and, where the depositor is a depository institution, for the account of its customers;
 - (ii) for the Government; and

(iii) for the Authority; and

(c) otherwise service and maintain book-entry MAS securities.

(2) The Authority may take all action necessary in respect of book-entry MAS securities to enable the Authority to perform its obligations as depositary with respect to such securities.

[Act 9 of 2013 wef 18/04/2013]

[Act 31 of 2017 wef 04/06/2018]

Transfers and pledges effected by Authority under book-entry clearing system

135.—(1) A transfer or a pledge of book-entry MAS securities to the Authority or to any transferee or pledgee eligible to maintain an appropriate account in its name with the Authority shall be effected, notwithstanding any written law to the contrary, by the Authority making an appropriate entry in its records of the securities transferred or pledged.

(2) The making of an entry in the records of the Authority under subsection (1) shall —

- (a) have the effect of delivery of the book-entry MAS securities as if the securities had been issued in the form of an engraved or printed certificate;
- (b) have the effect of a taking of delivery by the transferee or pledgee;
- (c) constitute the transferee or pledgee a holder; and
- (d) in the case of a pledge, have the effect of vesting a security interest in favour of the pledgee.

(3) A transfer or pledge of any book-entry MAS securities effected in accordance with this section shall have priority over any transfer or pledge involving, or any interest in, the securities effected or created in any other manner before, on or after the date of the transfer or pledge in accordance with this section.

[Act 9 of 2013 wef 18/04/2013]

[Act 31 of 2017 wef 04/06/2018]

Transfers and pledges effected by other means

136.—(1) Notwithstanding section 135, a transfer or pledge of book-entry MAS securities, or any interest therein, which is maintained by the Authority in an account may be effected by any means that would be effective to effect a transfer or pledge of book-entry MAS securities, or any interest therein, if the securities were issued by the Authority in the form of engraved or printed certificates.

[Act 31 of 2017 wef 04/06/2018]

(2) The Authority shall be deemed not to be —

- (a) a bailee for the purposes of notification of pledges of book-entry MAS securities not effected in accordance with section 135; and

[Act 31 of 2017 wef 04/06/2018]

- (b) a person in possession of book-entry MAS securities for the purposes of acknowledgment of transfers of such securities not effected in accordance with section 135.

[Act 31 of 2017 wef 04/06/2018]

(3) Where book-entry MAS securities are recorded on the books of a depositary institution for account of the pledgor or transferor thereof and such securities are on deposit with the Authority in an account, that depositary institution shall, for the purposes of effecting delivery of the securities to a purchaser or pledgee, be deemed to be —

- (a) the bailee to which notification of the pledge of the securities may be given; or
- (b) the person in possession from which acknowledgment of the holding of the securities may be obtained.

(4) The Authority shall not accept any notice or advice of a transfer or pledge of any book-entry MAS securities not effected in accordance with section 135 and any such notice or advice shall be void.

[Act 31 of 2017 wef 04/06/2018]

(5) The Authority may continue to deal with its depositor in accordance with this Part notwithstanding any transfer or pledge not effected in accordance with section 135.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Authority to be discharged by action on instructions

137.—(1) The Authority shall not be liable for conversion or for participation in any breach of fiduciary duty where the Authority has, in respect of book-entry MAS securities maintained in accounts maintained by the Authority —

(a) made entries regarding the securities; or

(b) transferred or delivered the securities,

according to the instructions of its depositor, notwithstanding that the depositor had no right to dispose of or take any other action in respect of the securities.

(2) The Authority shall be fully discharged of its obligations under this Part by the transfer or delivery of book-entry MAS securities upon the instructions of its depositor.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Confirmation of transaction

138.—(1) The Authority shall, following any transaction affecting book-entry MAS securities maintained for any depositor under this Part, issue to each depositor a confirmation thereof in the form of an advice (serially numbered or otherwise).

(2) The advice referred to in subsection (1) shall specify the amount and description of the securities and any other pertinent transaction data.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Payment of interest

139.—(1) Subject to subsection (2), the interest payable on any book-entry MAS securities issued under this Part, if any, shall be paid

half-yearly at the office of the Authority as shall be prescribed in regulations made under section 144 relating to the issue of the securities.

[Act 31 of 2017 wef 04/06/2018]

(2) Where any book-entry MAS securities that are redeemable at the election of the holder thereof at any time are redeemed before the date of maturity of the securities, a portion of the half-yearly interest payable on the securities (calculated on a pro-rata basis) shall be payable on such date as may be specified as the redemption date in the duly served notice of intention to redeem the securities.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Redemption of book-entry MAS securities

140.—(1) Subject to section 141, book-entry MAS securities shall be redeemable at par —

- (a) on such date as may be prescribed in regulations made under section 144 relating to the issue of such book-entry MAS securities (referred to in this Part as the date of maturity); or

[Act 31 of 2017 wef 04/06/2018]

- (b) in the case of book-entry MAS securities that are redeemable at the election of the holder thereof at any time, on the earlier of the following dates:

- (i) the date of maturity;
 - (ii) such date as may be specified as the redemption date in any notice of intention to redeem that is duly served in the manner prescribed by regulations made under section 144.

[Act 31 of 2017 wef 04/06/2018]

(2) After the date of maturity of the book-entry MAS securities under subsection (1), all the interest on the principal sums payable on the securities shall cease and determine, whether or not payment of the principal sums has been demanded.

(3) Redemption proceeds of book-entry MAS securities shall be disposed of in accordance with the instructions from the depositor for

whose account the securities shall have been maintained by the Authority.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Early redemption

141.—(1) The Authority may, from time to time, by public notice invite the public to apply to redeem any book-entry MAS securities specified in the public notice before the date of maturity of those securities.

(2) The public notice referred to in subsection (1) may specify —

- (a) the terms and conditions relating to the early redemption of the book-entry MAS securities specified in the public notice, including the manner in which any offer for early redemption shall be made; and
- (b) such other information as the Authority may consider necessary.

(3) The Authority may refuse any application to redeem any book-entry MAS securities before the date of maturity of those securities without assigning any reason.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Invitation to take up book-entry MAS securities and refusal of application

142.—(1) The Authority may, from time to time, by public notice invite the public to apply to take up book-entry MAS securities issued under this Part.

(2) The Authority may refuse any application to take up book-entry MAS securities issued under this Part without assigning any reason.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Securities lending arrangements

143.—(1) The Authority may, from time to time, enter into securities lending arrangements by lending book-entry MAS securities issued under this Part to primary dealers.

(2) Lending book-entry MAS securities shall include an arrangement under which book-entry MAS securities are sold and repurchased.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Power of Authority to make regulations for this Part

144.—(1) The Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may prescribe —

- (a) the terms of issue of book-entry MAS securities;
- (b) the manner in which applications to take up book-entry MAS securities shall be made; and
- (c) the manner in which book-entry MAS securities shall be issued.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

PART VB**PRIMARY DEALERS FOR
SECURITIES ISSUED BY AUTHORITY**

[Act 9 of 2013 wef 18/04/2013]

Appointment as primary dealer

145.—(1) The Authority may, on application, appoint as a primary dealer any financial institution which carries on or intends to carry on, or holds itself out as carrying on or willing to carry on, the business of either or both of the following:

- (a) applying to the Authority to purchase securities issued by the Authority on behalf of another person in pursuance of any public invitation under section 142;

[Act 31 of 2017 wef 04/06/2018]

- (b) offering to redeem any securities issued by the Authority on behalf of another person in pursuance of any public invitation under section 141 or otherwise.

[Act 31 of 2017 wef 04/06/2018]

(2) In determining whether to appoint a financial institution as a primary dealer, the Authority shall consider the following:

- (a) the financial standing of the financial institution;
- (b) the experience of that financial institution in carrying on the business referred to in subsection (1), and its ability to perform the duties which would be imposed on it by or under this Act; and
- (c) the public interest.

(3) The Authority may, in any particular case, require a financial institution applying to be appointed as a primary dealer (referred to in this section as an applicant) to furnish such information or document as the Authority deems relevant to its consideration under subsection (2).

(4) The Authority may refuse an application under subsection (1) if —

- (a) the applicant does not furnish the Authority with such information or document as is required under subsection (3);
- (b) in the opinion of the Authority, the applicant does not meet, or is unlikely to be able to continue to meet, such requirements as may be prescribed by regulations made under section 151 in relation to carrying on any business referred to in subsection (1); or

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- (c) the applicant makes any statement, or furnishes any information or document, in relation to its application that is false or misleading in any material particular, or

omits to state any matter or thing without which its application is false or misleading in a material particular.

(5) Every appointment as a primary dealer under this section shall continue in force for such period as may be specified by the Authority, unless the appointment is earlier cancelled or suspended.

(6) Any financial institution which, immediately before the date of commencement of section 11 of the Monetary Authority of Singapore (Amendment) Act 2013, was appointed as a primary dealer under section 29A of the Government Securities Act (Cap. 121A) shall, for so long as that appointment remains in force, be deemed —

- (a) to be appointed as a primary dealer under this section; and
- (b) to be subject, under section 146, to the conditions and restrictions to which his appointment as a primary dealer under section 29A of the Government Securities Act is subject.

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(7) If a person who is not a primary dealer carries on, or holds himself out as carrying on or willing to carry on, any business referred to in subsection (1), the person shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Conditions of appointment as primary dealer

146.—(1) The Authority may appoint any financial institution as a primary dealer subject to such conditions or restrictions as the Authority thinks fit.

(2) Without prejudice to the generality of subsection (1), the Authority may impose such conditions or restrictions with respect to the type of services which may or may not be provided by the primary dealer as the Authority may consider appropriate.

(3) Subject to subsections (4), (5) and (6), the Authority may at any time add to, vary or revoke any condition or restriction of the appointment of any financial institution as a primary dealer.

(4) Before making any modification to the conditions or restrictions of the appointment of any financial institution as a primary dealer under this section, the Authority shall, unless the Authority in respect of any particular case considers that it is not practicable or desirable to do so, give notice to the financial institution concerned —

- (a) stating that the Authority proposes to make the modification in the manner specified in the notice;
- (b) stating the reasons why the Authority proposes to make the modification; and
- (c) specifying the time (being not less than 28 days after the date of service of the notice on the financial institution) within which written representations with respect to the proposed modification may be made.

(5) Where the Authority receives any written representation under subsection (4)(c) —

- (a) the Authority shall consider the representation and may —
 - (i) reject the representation; or
 - (ii) withdraw or amend the proposed modification in accordance with the representation or otherwise; and
- (b) in either case, the Authority shall thereupon issue a notice in writing to the primary dealer concerned requiring that effect be given, within a reasonable time, to the proposed

modification specified in the notice or to such modification as may subsequently be amended by the Authority.

(6) If no written representation is received by the Authority within the time specified under subsection (4)(c), or if any written representation made under that subsection is subsequently withdrawn, the modification shall take effect as specified in the notice given under that subsection.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Directions to primary dealers

147.—(1) The Authority may give directions to be observed by any primary dealer or class of primary dealers —

- (a) to ensure the continuity or reliability of the provision of services by the primary dealer or class of primary dealers to its customers; or
- (b) in the public interest.

(2) A direction under subsection (1) —

- (a) shall require the primary dealer or every primary dealer in that class of primary dealers concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the direction or are of a description as specified therein, including but not limited to the manner in which the primary dealer conducts the business referred to in section 145(1) with its customers;

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- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under that direction; and
- (c) may be varied or revoked at any time by the Authority.

(3) Every primary dealer shall comply with every direction of the Authority given to the dealer under this section.

(4) It shall not be necessary to publish any direction under subsection (1) in the *Gazette*.

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[Act 9 of 2013 wef 18/04/2013]

Cancellation, etc., of appointment as primary dealer

148.—(1) If the Authority is satisfied that —

- (a) a primary dealer is contravening, is likely to contravene or has contravened —
 - (i) any provision of this Act applicable to the primary dealer; or
 - (ii) any condition or restriction of its appointment as a primary dealer;
- (b) a primary dealer has not complied with any direction issued by the Authority under section 147;
[Act 31 of 2017 wef 04/06/2018]
- (c) a primary dealer has gone or is likely to go into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;
- (d) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the primary dealer;
- (e) a primary dealer has obtained his appointment as such by fraud or misrepresentation;
- (f) a primary dealer has failed to satisfy any of its obligations under or arising from this Act;
- (g) a primary dealer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 11 of the Monetary Authority of Singapore (Amendment) Act 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- (h) a primary dealer is no longer in a position to effectively carry out its duties or responsibilities as a primary dealer under this Act or under any regulations made under section 151; or

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- (i) a primary dealer is carrying on its business referred to in section 145(1) in a manner that is likely to be detrimental to its clients or contrary to the public interest,

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the Authority may by order cancel the appointment as a primary dealer.

(2) The Authority may, if it considers it desirable to do so, in lieu of an order cancelling the appointment as a primary dealer, by order do either or both of the following:

- (a) suspend the appointment for such period (not exceeding 6 months) as the Authority thinks fit;
- (b) reprimand the primary dealer in writing.

(3) In the case of a failure by a primary dealer to comply with any direction issued by the Authority under section 147, the Authority may, in addition to any order that may be made under subsection (2), order the primary dealer to pay to the Authority, for every day or part thereof of such failure, a financial penalty in accordance with such formula as the Minister may, by notification published in the *Gazette*, prescribe.

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(4) A financial penalty collected by the Authority under subsection (3) shall be paid into the Consolidated Fund.

(5) The Authority shall not make any order under subsection (1), (2) or (3) against a primary dealer unless the Authority has given to the primary dealer an opportunity of being heard by a representative in writing, being a period of at least 21 days but not more than 28 days.

(6) Where the Authority has made any order under subsection (1), (2) or (3) against any primary dealer, it shall serve on the primary dealer a notice of the order.

(7) Subject to subsections (8) and (9), any order made by the Authority under subsection (1), (2) or (3) against any primary dealer shall not take effect until the expiration of 21 days after the Authority has served the notice of the order on the primary dealer.

(8) Any order cancelling or suspending an appointment as a primary dealer shall not operate so as to —

- (a) prejudice the enforcement by any person of any right or claim against the financial institution formerly appointed as a primary dealer, or by the financial institution formerly so appointed of any right or claim against any person; or
- (b) affect the validity or enforceability of any agreement, transaction or arrangement in respect of any securities issued by the Authority entered into (whenever) by the primary dealer.

(9) An order of reprimand under subsection (2) shall take effect on the date it is served on the primary dealer concerned.

(10) The Authority may recover on behalf of the Government any financial penalty ordered under subsection (3) as though the financial penalty were a civil debt due to the Authority.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Appeal to Minister

149.—(1) Any primary dealer who is aggrieved by —

- (a) any notice of a condition or restriction of the appointment of any financial institution as a primary dealer under section 146;
[Act 31 of 2017 wef 04/06/2018]
- (b) any direction given by the Authority under section 147 or variation of any such direction; or
[Act 31 of 2017 wef 04/06/2018]
- (c) any order of the Authority under section 148(1), (2) or (3), except an order of reprimand,
[Act 31 of 2017 wef 04/06/2018]

may, within 14 days after the receipt by the primary dealer of the notice of the condition or restriction, the direction (or variation thereof) or the order, as the case may be, appeal to the Minister whose decision shall be final.

(2) Where an appeal is lodged under this section —

- (a) the order under section 148 cancelling the appointment as a primary dealer shall not take effect unless the order is confirmed by the Minister or the appeal is for any reason dismissed by the Minister or withdrawn; and

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- (b) every other notice, direction (or variation thereof) or order appealed against shall take effect and be complied with until the determination of the appeal.

(3) Subject to subsection (4), the Minister may determine an appeal under this section by confirming, varying or reversing the notice, direction (or variation thereof) or order of the Authority that is appealed against.

(4) If the Minister is satisfied that an appeal by a primary dealer is instituted or pursued without reasonable ground, the Minister may, without calling for a reply from the Authority, but after giving the primary dealer an opportunity to be heard, determine the appeal by confirming the notice, direction (or variation thereof) or order of the Authority that is appealed against.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Inspection of books

150.—(1) The Authority may from time to time inspect, under conditions of secrecy, the books of a primary dealer relating to its business referred to in section 145(1) for the purposes of ensuring that —

- (a) any condition or restriction imposed by the Authority under section 146 on the primary dealer is complied with;

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- (b) any direction given by the Authority under section 147 to the primary dealer is complied with; or

[Act 31 of 2017 wef 04/06/2018]

- (c) the primary dealer has satisfied or satisfies any of its obligations under or arising from this Part.

[Act 31 of 2017 wef 04/06/2018]

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

- (a) a primary dealer, and any person who is in possession of the books of the primary dealer relating to its business referred to in section 145(1), shall produce such books (and afford the Authority access thereto) and provide such information and facilities as may be required by the Authority to conduct the inspection;

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- (b) the primary dealer shall procure that any such person in paragraph (a) who is in possession of the primary dealer's books produce the books to the Authority and give such information or facilities as may be required by the Authority; and

- (c) the Authority may —

- (i) make copies of, or take possession of, any of such books; and

- (ii) retain possession of any of such books for so long as is necessary for the purposes of exercising a power conferred by this section (except subsection (4)).

(3) 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.

(4) While the books of a primary dealer are in the possession of the Authority, the Authority —

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

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

(5) The Authority may require a person who produced any book to the Authority to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on

conviction 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.

(7) In this section, “books” 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 electronic form or otherwise.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Power of Authority to make regulations for this Part

151.—(1) The Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may —

- (a) prescribe the manner in which any application to be appointed as a primary dealer is to be made;
- (b) prescribe the duties and obligations of a primary dealer; and
- (c) provide that any contravention of any specified provision of the regulations shall be an offence punishable —
 - (i) in the case of an individual, with a fine not exceeding \$12,500 or with imprisonment for a term not exceeding 12 months or with both and, in the case of a continuing offence, with a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction; or
 - (ii) in any other case, with a fine not exceeding \$25,000 and, in the case of a continuing offence, with a further fine not exceeding \$2,500 for every day or

part thereof during which the offence continues after conviction.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

PART VC

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

[Act 14 of 2015 wef 26/06/2015]

Division 1 — General provisions

Interpretation of this Part

152.—(1) 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);

“AML/CFT authority”, or Anti-Money Laundering/Countering the Financing of Terrorism authority, means a public authority of a foreign country which is responsible for the supervision of foreign financial institutions in that foreign country;

“AML/CFT requirement”, or Anti-Money Laundering/Countering the Financing of Terrorism requirement —

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

(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;

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

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

“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;

“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;
- (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;

“domestic authority” means a Law Officer, 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;

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

“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, and the offer of composition of the 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
- (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);

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

“foreign financial institution” means an institution that is licensed, approved, registered or otherwise regulated under any law administered by a corresponding authority in a foreign country to carry on any financial activities in that country, or that is exempted from such licensing, approval, registration or regulation for the carrying on of any financial activities in that country;

“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;

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

“Law Officer” means the Attorney-General, a Deputy Attorney-General, the Solicitor-General, a Deputy Public Prosecutor or a legally qualified member of the Attorney-General’s Chambers;

“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 that financial institution;

“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);
- (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;
- (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);
- (l) the Trust Companies Act (Cap. 336);
- (m) such other Act as the Authority may prescribe by regulations made under section 179;

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“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” —

- (a) in relation to an AML/CFT authority of a foreign country, means the supervision by the AML/CFT authority of foreign financial institutions carrying on any financial activities in that country for compliance with the AML/CFT requirements of that country 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 AML/CFT requirements of Singapore;

“supervisory action” —

- (a) in relation to an AML/CFT authority, means any action taken by the authority for or in connection with its supervision of foreign financial institutions; or
- (b) in relation to a domestic authority, means any action taken by the authority for or in connection with its supervision of persons regulated by it.

(2) In this Part, an AML/CFT authority exercises consolidated supervision authority over a financial institution if —

(a) the financial institution is either —

- (i) a foreign financial institution established or incorporated in the foreign country of the AML/CFT authority; or
- (ii) a subsidiary of such a foreign financial institution; and

- (b) the AML/CFT authority carries out consolidated supervision of the foreign financial institution mentioned in paragraph (a)(i) or (ii) (as the case may be), and its subsidiaries, branches, agencies and offices outside that foreign country, for compliance with the AML/CFT requirements of that foreign country that are applicable to the foreign financial institution.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Purposes of this Part

153. The purposes of this Part are —

- (a) to enable the Authority to provide information to an AML/CFT authority of a foreign country in connection with the AML/CFT authority's supervision of foreign financial institutions carrying on any financial activities in that country for compliance with the AML/CFT requirements of that country applicable to those institutions, including the taking of supervisory action against them for a contravention of those requirements;
- (b) to enable the Authority to provide information to a domestic authority in connection with —
- (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
 - (iii) a supervisory action against a person regulated by the domestic authority for a contravention of an applicable AML/CFT requirement of Singapore; and
- (c) to enable an AML/CFT authority of a foreign country to carry out an inspection in Singapore of a financial institution over which the AML/CFT authority exercises consolidated supervision authority.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

*Division 2 — Assistance to AML/CFT authorities***Conditions for provision of assistance to AML/CFT authority**

154.—(1) The Authority may, on the request of an AML/CFT authority of a foreign country, provide the assistance referred to in section 155 to the AML/CFT authority, if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the request is received by the Authority on or after the date of commencement of section 5 of the Monetary Authority of Singapore (Amendment) Act 2015;
- (b) the assistance is intended to enable the AML/CFT authority to carry out supervision or take supervisory action;
- (c) the AML/CFT authority has given a written undertaking that any information or copy of any information obtained as a result of the 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 AML/CFT authority has given a written undertaking that the AML/CFT authority will not disclose to a third party any information or copy of any information obtained as a result of the request, unless the AML/CFT authority is compelled to do so by the law or a court of the foreign country, and that the AML/CFT authority will inform the Authority promptly if the AML/CFT authority is so compelled;
- (e) the AML/CFT authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any information or copy of any information 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;
- (f) the AML/CFT authority has given a written undertaking to otherwise protect the confidentiality of any information or copy of any information obtained pursuant to the request;

- (g) the request specifies —
- (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 AML/CFT authority; and
 - (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 AML/CFT authority;
- (i) the matter to which the request relates is of sufficient gravity;
- (j) the AML/CFT authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the AML/CFT authority for similar assistance;
- (k) the rendering of assistance will not be contrary to the national interest or public interest.

[Act 31 of 2017 wef 04/06/2018]

(2) Despite 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.

(3) In considering whether to provide the assistance referred to in section 155 to an AML/CFT authority, the Authority may also have regard to the following:

- (a) if the request concerns a contravention of an AML/CFT 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 direction or regulation issued or made under section 27A or 27B;
- (b) whether the AML/CFT authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Assistance that may be rendered to AML/CFT authority

155.—(1) Despite the provisions of any prescribed written law or any requirement imposed under any such written law, 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 an AML/CFT authority for assistance, transmit to the AML/CFT authority any information in the possession of the Authority that is requested by the AML/CFT authority or a copy of the information.

(2) The Authority or any person authorised by the Authority may, in relation to a request by an AML/CFT authority for assistance —

- (a) 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 AML/CFT authority which is in the possession or control of the financial institution or person (as the case may be), or a copy of that information, for transmission to the AML/CFT authority; or
- (b) request a domestic authority to furnish to the Authority any information that is requested by the AML/CFT authority, or a copy of that information, for transmission to the AML/CFT authority.

(3) An order under subsection (2)(a) has effect despite any obligation of confidentiality or other restrictions on the disclosure

of information imposed by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section requires 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 of any information, that contains; or

(b) to disclose,

a privileged communication made by or to the advocate and solicitor or legal counsel in that capacity.

(5) 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 of any information, that contains, or to disclose, any privileged communication must nevertheless give the name and address (if known) of the person to whom, or by or on behalf of whom, the privileged communication was made.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Division 3 — Assistance to domestic authorities

Conditions for provision of assistance to domestic authority

156. The Authority may, on the request of a domestic authority, provide the assistance referred to in section 157 to the 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 is received by the Authority on or after the date of commencement of section 5 of the Monetary Authority of Singapore (Amendment) Act 2015;

(b) the assistance requested for is intended to enable the domestic authority to carry out any investigation, or take any enforcement action or supervisory action;

- (c) the type and amount of information requested for is proportionate to, and is of sufficient importance to, the investigation or enforcement action or supervisory action;
- (d) the matter to which the request relates is of sufficient gravity.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Assistance that may be rendered to domestic authority

157.—(1) Despite the provisions of any prescribed written law or any requirement imposed under any such written law, 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, transmit to the domestic authority any information in the possession of the Authority that is requested by the domestic authority or a copy of the information.

(2) The Authority or any person authorised by the Authority may, in relation to a request by a domestic authority for assistance, 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 of that information, for transmission to the domestic authority.

(3) An order under subsection (2) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(4) Nothing in this section requires 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 of any information, that contains; or
- (b) to disclose,

a privileged communication made by or to the advocate and solicitor or legal counsel in that capacity.

(5) 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 of any information, that contains, or to disclose, any privileged communication must nevertheless give the name and address (if known) of the person to whom, or by or on behalf of whom, the privileged communication was made.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Division 4 — Additional provisions for Divisions 2 and 3

Offences under this Part

158.—(1) A person shall be guilty of an offence if the person —

(a) without reasonable excuse, refuses or fails to comply with an order under section 155(2)(a) or 157(2);

[Act 31 of 2017 wef 04/06/2018]

(b) without reasonable excuse, refuses or fails to comply with section 155(5) or 157(5); or

[Act 31 of 2017 wef 04/06/2018]

(c) in purported compliance with an order under section 155(2)(a) or 157(2) or with section 155(5) or 157(5), furnishes to the Authority any information, or copy of any information, known to the person to be false or misleading in a material particular.

[Act 31 of 2017 wef 04/06/2018]

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

(a) in any case where the person is 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 of a day during which the offence continues after conviction; or

- (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 of a day during which the offence continues after conviction.

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

- (a) in any case where the person is 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.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Immunities

159.—(1) No civil or criminal liability is incurred by any person for —

- (a) providing to the Authority any information or copy of any information, if the person had provided the information or copy with reasonable care and in good faith and in compliance with an order under section 155(2)(a) or 157(2) or with section 155(5) or 157(5); or

[Act 31 of 2017 wef 04/06/2018]

- (b) doing or omitting to do any act, if the person had done or omitted to do the act with reasonable care and in good faith and for the purpose of complying with an order under section 155(2)(a) or 157(2) or with section 155(5) or 157(5).

[Act 31 of 2017 wef 04/06/2018]

(2) A person does not breach any restriction upon the disclosure of information imposed by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct, if the person makes the disclosure with reasonable care and in good faith and in compliance with an order made under section 155(2)(a) or 157(2) or with section 155(5) or 157(5).

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Authority may provide assistance

160. Despite the provisions of any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct, the Authority or any person authorised by the Authority may, on the Authority's own motion, and subject to the satisfaction of such conditions as the Authority may determine, transmit any information in the possession of the Authority or a copy of the information, to —

- (a) an AML/CFT authority in connection with any supervision or supervisory action by the AML/CFT authority; or
- (b) a domestic authority in connection with an investigation, an enforcement action or a supervisory action by the domestic authority.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Division 5 — Inspection by AML/CFT authority

Conditions for inspection by AML/CFT authority

161.—(1) An AML/CFT authority may, with the prior written approval of the Authority and under conditions of secrecy, conduct an inspection in Singapore of the books of a financial institution in accordance with this section, if all of the following conditions are satisfied:

- (a) the financial institution is one over which the AML/CFT authority exercises consolidated supervision authority, and the inspection is solely for the purpose of such consolidated supervision;
- (b) the AML/CFT authority —
 - (i) is prohibited by the laws applicable to it from disclosing information obtained by it in the course of the inspection to any other person, except when compelled to do so by the laws or a court of the country or territory where it is established; or

(ii) has given to the Authority such written undertaking to protect the confidentiality of the information obtained as the Authority may require;

(c) the AML/CFT authority has given a written undertaking to the Authority to comply with such conditions as the Authority may impose under subsection (3);

(d) the AML/CFT authority has provided or is willing to provide similar assistance to the Authority.

(2) The Authority may take into account other factors which it considers relevant, besides the satisfaction of the conditions under subsection (1), when deciding whether or not to give its approval under that subsection.

(3) The Authority may at any time, whether before, when or after giving its approval for an inspection under this section, impose conditions on the AML/CFT authority relating to —

(a) the classes of information to which the AML/CFT authority may or may not have access in the course of inspection;

(b) the conduct of the inspection;

(c) the use or disclosure of any information obtained in the course of the inspection; and

(d) such other matters as the Authority may determine.

(4) An AML/CFT authority may, with the prior written approval of the Authority, appoint any person to conduct the inspection under subsection (1), and in such event, this section (other than this subsection) and section 162 and 163 apply to the person, as if a reference to the AML/CFT authority in those sections includes a reference to the person.

[Act 31 of 2017 wef 04/06/2018]

(5) For the purposes of ensuring the confidentiality of any information obtained in the course of an inspection by an AML/CFT authority under this section, each provision set out in a paragraph below applies, with the necessary modifications, to any official of the AML/CFT authority, and any person referred to in

subsection (4), as if the official or person were a person set out against that provision in that paragraph:

- (a) section 47(1) of the Banking Act (Cap. 19) — an officer of a bank in Singapore (as defined in section 2(1) of that Act);
- (b) section 47(1) of the Banking Act as applied under section 47(10) of that Act — an officer of a merchant bank approved as a financial institution under section 28 of this Act;
- (c) section 49(1) of the Trust Companies Act (Cap. 336) — an officer of a licensed trust company (as defined in section 2 of that Act) in Singapore.

(6) The Authority may, in relation to an inspection by an AML/CFT authority conducted or to be conducted under this section on a financial institution, at any time, by notice in writing to the financial institution impose such conditions or restrictions on the financial institution as the Authority may think fit, and the financial institution must comply with such conditions or restrictions.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Duty of financial institution under inspection

162.—(1) For the purposes of an inspection under section 161, and subject to subsection (2), the financial institution must —

- (a) give the AML/CFT authority access to such of the books of the financial institution; and
- (b) provide such information (including information relating to the internal control systems of the financial institution) and facilities,

as the AML/CFT authority may require for the inspection.

[Act 31 of 2017 wef 04/06/2018]

(2) The financial institution need not give the AML/CFT authority access to the books of the financial institution, or provide information or facilities, at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the financial institution.

(3) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the financial institution or any of its officers by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(4) A financial institution which refuses or neglects, without reasonable excuse, to comply with 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 of a day during which the offence continues after conviction.

(5) No civil or criminal liability is incurred by a financial institution or any of its officers in respect of any obligation or restriction referred to in subsection (3) for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(6) A financial institution which or any of its officers who, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (3).

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

Confidentiality of inspection reports

163.—(1) Except as provided under subsection (2), where a written report has been produced by an AML/CFT authority in respect of a financial institution following an inspection under section 161, and is provided by the AML/CFT authority to the financial institution, the report must not be disclosed to any person by —

- (a) the financial institution; or
- (b) any officer or auditor of the financial institution.

[Act 31 of 2017 wef 04/06/2018]

(2) Disclosure of the report may be made —

- (a) by the financial institution to any officer or auditor of that financial institution solely in connection with the

performance of the duties of the officer or auditor, as the case may be, in that financial institution;

- (b) by any officer or auditor of the financial institution to any other officer or auditor of that financial institution, solely in connection with the performance of their respective duties in that financial institution;
- (c) to the Authority, if requested by the Authority; or
- (d) to such other person as the Authority may approve in writing.

(3) In granting approval for any disclosure under subsection (2)(d), the Authority may impose such conditions or restrictions as it thinks fit on the financial institution, any officer or auditor of that financial institution or the person to whom disclosure is approved, and that financial institution, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.

(4) The obligations on an officer or auditor under subsections (1) and (3) continue after the termination or cessation of the employment or appointment of the officer or auditor by the financial institution.

(5) Any person who contravenes subsection (1), or fails to comply with any condition or restriction imposed by the Authority under subsection (3), shall be guilty of an offence and shall be liable on conviction —

- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written or printed form, the person had, as soon as practicable after receiving the report, surrendered, or taken all reasonable steps to surrender, the report and all copies of the report to the Authority; and
- (c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the Authority.

[Act 31 of 2017 wef 04/06/2018]

[Act 14 of 2015 wef 26/06/2015]

PART VI

MISCELLANEOUS

Statistics

164.—(1) The Authority may, at any time, for the purpose of carrying out its functions under this Act request such persons or classes of persons as it may decide to collect and furnish such statistical information as the Authority may specify and those persons or classes of persons shall comply with that request.

(2) Statistical information received from the persons or classes of persons referred to in subsection (1) shall be regarded as secret between them and the Authority.

(3) Any person who fails to comply with a request of the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

[26/84]

[Act 31 of 2017 wef 04/06/2018]

Authority's financial year

165. The financial year of the Authority shall begin on 1st April of each year and end on 31st March of the succeeding year.

[Act 31 of 2017 wef 04/06/2018]

Budget

166.—(1) The Authority shall, in every financial year, prepare a budget containing estimates of income and expenditure of the Authority for the ensuing financial year and a supplementary budget (if necessary) for any financial year and present them to the President for his approval under Article 22B of the Constitution.

[11/91]

(2) The budget and supplementary budget (if any) when approved by the President shall be published in the *Gazette*.

[11/91]

[Act 31 of 2017 wef 04/06/2018]

Audit

167. The accounts of the Authority shall be audited by the Auditor-General.

[Act 31 of 2017 wef 04/06/2018]

Preparation and publication of financial statements and annual report

168.—(1) The Authority shall, within 6 months from the close of its financial year, transmit to the President —

- (a) a copy of the financial statements certified by the Auditor-General and those statements shall then be published in the *Gazette*; and
- (b) a report by the board on the performance of the functions and duties of the Authority throughout the financial year and that report shall be published by the Authority.

[24/2003 wef 01/01/2004]

[13/2007 wef 30/06/2007]

(2) The Authority shall, within 6 months from the close of its financial year, cause the financial statements and the annual report to be presented to Parliament.

[24/2003 wef 01/01/2004]

(3) In preparing the financial statements for the purpose of this section, the Authority may comply with accounting standards to the extent that it is, in the opinion of the Authority, appropriate to do so, having regard to the objects and functions of the Authority.

[24/2003 wef 01/01/2004]

[Act 31 of 2017 wef 04/06/2018]

Borrowing from Authority by employees

169. The Authority may grant loans to its employees for any purpose specifically approved by the Authority.

[26/84]

[Act 31 of 2017 wef 04/06/2018]

Power to appoint attorney

170.—(1) The Authority may, by instrument under its common seal, appoint a person (whether in Singapore or in a place outside Singapore) to be its attorney.

(2) The person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

[Act 31 of 2017 wef 04/06/2018]

Validity of acts and transactions of Authority

171. The validity of an act or transaction of the Authority shall not be called in question in any court on the ground that any provision of this Act has not been complied with.

[Act 31 of 2017 wef 04/06/2018]

Guarantee by Government

172.—(1) The Government shall be responsible for the payment of all moneys due by the Authority.

(2) Nothing in this section shall authorise a creditor or other person claiming against the Authority to sue the Government in respect of his claim.

[Act 31 of 2017 wef 04/06/2018]

Consent of Public Prosecutor

173. No prosecution in respect of any offence under this Act shall be instituted without the consent in writing of the Public Prosecutor.

[Act 31 of 2017 wef 04/06/2018]

[15/2010 wef 02/01/2011]

Legal officer of Authority may act for Authority in civil proceedings

174. Notwithstanding the provisions of any written law, a legal officer of the Authority who has been admitted as an advocate and solicitor under the Legal Profession Act (Cap. 161) or a State Counsel may —

- (a) appear in any civil proceedings on behalf of the Authority under the Securities and Futures Act 2001, including proceedings referred to in section 232 of that Act; and
- (b) make and do all acts and applications in respect of such proceedings on behalf of the Authority.

[2/2000 wef 06/03/2000]

[42/2001 wef 01/10/2002]

[Act 31 of 2017 wef 04/06/2018]

Jurisdiction of District Court

175. Notwithstanding the provisions of any other written law, a District Court shall have jurisdiction to try all offences under this Act and to impose the full penalty prescribed therefor.

[Act 31 of 2017 wef 04/06/2018]

Composition of offences

176.—(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 amount of the maximum fine prescribed for that offence.

[13/2007 wef 30/06/2007]

[Act 9 of 2013 wef 18/04/2013]

(1A) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

[Act 9 of 2013 wef 18/04/2013]

(2) On payment of the sum of money referred to in subsection (1) or (1A), no further proceedings shall be taken against that person in respect of the offence.

[13/2007 wef 30/06/2007]

[Act 9 of 2013 wef 18/04/2013]

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

[13/2007 wef 30/06/2007]

(4) All sums collected by the Authority under subsection (1) or (1A) shall be paid into the Consolidated Fund.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Recovery of fees, expenses, etc.

177. There shall be recoverable as a civil debt due to the Authority from the financial institution concerned —

(a) the amount of any fees payable to the Authority under section 29 or under any rules issued under section 29A; and

(b) any remuneration and expenses payable by the financial institution to —

- (i) a statutory adviser appointed under section 33(2);
[Act 31 of 2017 wef 04/06/2018]
- (ii) a statutory manager appointed under section 33(2);
[Act 31 of 2017 wef 04/06/2018]
- (iii) the Authority or any person appointed by the Authority under section 13B in relation to the Authority's assumption of control of any business of the financial institution under section 33; and
[Act 31 of 2017 wef 04/06/2018]
- (iv) any person appointed to perform any independent assessment under Part IVA or IVB.
[Act 31 of 2017 wef 04/06/2018]
[Act 9 of 2013 wef 18/04/2013]

Exemption

178.—(1) The Authority may, by regulations, exempt any person or class of persons from all or any of the provisions of Parts IVA, VA and VB and any regulations made under section 27A, 27B, 28A, 41, 51, 144 or 151, subject to such conditions or restrictions as may be prescribed.

[Act 31 of 2017 wef 04/06/2018]

(2) The Authority may, on the application of any person, by notice in writing exempt the person from —

- (a) all or any of the provisions of Parts IVA, VA and VB and any regulations made under section 27A, 27B, 28A, 41, 51, 144 or 151; and

[Act 31 of 2017 wef 04/06/2018]

- (b) all or any of the requirements specified in any direction made by the Authority under this Act,

subject to such conditions or restrictions as the Authority may specify by notice in writing.

(3) The Authority may at any time, by notice in writing to a person, add to, vary or revoke any condition or restriction imposed on the person under subsection (2).

(4) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Power of Authority to make regulations relating to objects and purposes of Act

179. The Authority may, with the approval of the President, make regulations for the better carrying out of the objects and purposes of this Act.

[Act 31 of 2017 wef 04/06/2018]

[Act 9 of 2013 wef 18/04/2013]

Operation of Act not to affect Currency Act

180. Nothing in this Act shall affect the operation of the Currency Act (Cap. 69).

[Act 31 of 2017 wef 04/06/2018]

[44

THE SCHEDULE

Sections 16(2), 23(8), (9) and (10),
31(4), 39(6), 40(2) and (9), 49, 51(2),
52(1) and (2), 54(1) and (2), 55(1), 56,
57(6), 58(7) and 121(5)

WRITTEN LAWS

1. Banking Act (Cap. 19)
- 1A. Bills of Exchange Act (Cap. 23)
2. Bretton Woods Agreements Act (Cap. 27)
3. Business Trusts Act (Cap. 31A)
4. Chit Funds Act (Cap. 39)
5. Currency Act (Cap. 69)
6. Deposit Insurance and Policy Owners' Protection Schemes Act 2011
7. Development Loan Act (Cap. 81)
8. Development Loan (1987) Act (Cap. 81A)
9. Exchange Control Act (Cap. 99)

THE SCHEDULE — *continued*

10. Exchanges (Demutualisation and Merger) Act (Cap. 99B)
11. Finance Companies Act (Cap. 108)
12. Financial Advisers Act (Cap. 110)
13. Government Securities Act (Cap. 121A)
14. Insurance Act (Cap. 142)
15. Local Treasury Bills Act (Cap. 167)
16. Money-changing and Remittance Businesses Act (Cap. 187)
17. Payment and Settlement Systems (Finality and Netting) Act (Cap. 231)
18. Payment Systems (Oversight) Act 2006 (Act 1 of 2006)
19. Securities and Futures Act (Cap. 289)
20. Trust Companies Act (Cap. 336).

[13/2007 wef 30/06/2007]

[21/2010 wef 15/01/2010]

[15/2011 wef 01/05/2011]

[Act 31 of 2017 wef 04/06/2018]

LEGISLATIVE HISTORY
MONETARY AUTHORITY OF SINGAPORE ACT
(CHAPTER 186)

This Legislative History is provided for the convenience of users of the Monetary Authority of Singapore Act. It is not part of this Act.

1. Act 42 of 1970 — Monetary Authority of Singapore Act 1970

Date of First Reading	: 22 July 1970 (Bill No. 30/70 published on 28 July 1970)
Date of Second and Third Readings	: 2 September 1970
Date of commencement	: 26 December 1970 (except Parts III and IV) 1 January 1971 (Parts III and IV)

2. Act 31 of 1972 — Monetary Authority of Singapore (Amendment) Act 1972

Date of First Reading	: 24 October 1972 (Bill No. 36/72 published on 25 October 1972)
Date of Second and Third Readings	: 3 November 1972
Date of commencement	: 22 December 1972

3. Act 35 of 1973 — Statutes of the Republic of Singapore (Miscellaneous Amendments) (No. 4) Act 1973

Date of First Reading	: 11 July 1973 (Bill No. 35/73 published on 16 July 1973)
Date of Second and Third Readings	: 26 July 1973
Date of commencement	: 1 September 1973

4. Act 26 of 1984 — Monetary Authority of Singapore (Amendment) Act 1984

Date of First Reading	: 24 July 1984 (Bill No. 23/84 published on 3 August 1984)
Date of Second and Third Readings	: 24 August 1984
Date of commencement	: 21 September 1984

5. 1985 Revised Edition — Monetary Authority of Singapore Act

Date of operation : 30 March 1987

6. Act 11 of 1991 — Statutes (Miscellaneous Amendments) Act 1991

Date of First Reading : 3 January 1991
(Bill No. 4/91 published on
4 January 1991)

Date of Second and Third Readings : 14 January 1991

Date of commencement : 30 November 1991

7. Act 28 of 1998 — Monetary Authority of Singapore (Amendment) Act 1998

Date of First Reading : 1 June 1998
(Bill No. 19/98 published on
2 June 1998)

Date of Second and Third Readings : 29 June 1998

Date of commencement : 10 July 1998

8. Act 27 of 1999 — Exchanges (Demutualisation and Merger) Act 1999
(Consequential amendments made by)

Date of First Reading : 6 July 1999
(Bill No. 20/99 published on
7 July 1999)

Date of Second and Third Readings : 4 August 1999

Date of commencement : 8 October 1999 (except
sections 19(a), (b) and (c) and
20(d), (e), (f), (h) and (i))

9. 1999 Revised Edition — Monetary Authority of Singapore Act

Date of operation : 30 December 1999

10. Act 2 of 2000 — Securities Industry (Amendment) Act 2000

Date of First Reading : 23 November 1999
(Bill No. 40/1999 published on
24 November 1999)

Date of Second and Third Readings : 17 January 2000

Date of commencement : 6 March 2000

11. Act 28 of 2000 — Statutes (Miscellaneous Amendments and Repeal) Act 2000

Date of First Reading : 25 August 2000
(Bill No. 22/2000 published on 26 August 2000)

Date of Second and Third Readings : 9 October 2000

Date of commencement : 1 November 2000

12. Act 16 of 2002 — Terrorism (Suppression of Financing) Act 2002

Date of First Reading : 23 May 2002

Date of Second and Third Readings : 8 July 2002

Dates of commencement : 30th September 2002
(section 39)

13. Act 25 of 2002 — Currency (Amendment) Act 2002

Date of First Reading : 8 July 2002
(Bill No. 23/2002 published on 9 July 2002)

Date of Second and Third Readings : 23 July 2002

Date of commencement : 1 October 2002

14. Act 42 of 2001 — Securities and Futures Act 2001

Date of First Reading : 25 September 2001
(Bill No. 33/2001 published on 26 September 2001)

Date of Second and Third Readings : 5 October 2001

Date of commencement : 1st October 2002 (Parts II to VII, XI and XII, sections 314 and 342 (1) and (3), Third Schedule and items (1) (b), (2), (3) (b), (4) (a) (ii), (d), (e), (j), (k), (n), (p), (r), (s) and (v), (5), (6) and (7) (a) and (d) and (8) to (11) of the Fourth Schedule)

15. Act 39 of 2002 — Payment and Settlement Systems (Finality and Netting) Act 2002

Date of First Reading : 31 October 2002
(Bill No. 41/2002 published on 1 November 2002)

Date of Second and Third Readings : 25 November 2002

Date of commencement : 9 December 2002

16. Act 24 of 2003 — Monetary Authority of Singapore (Amendment) Act 2003

Date of First Reading : 16 October 2003
(Bill No. 21/2003 published on 17 October 2003)

Date of Second and Third Readings : 10 November 2003

Date of commencement : 1 January 2004

17. Act 30 of 2004 — Business Trusts Act 2004

Date of First Reading : 20 July 2004
(Bill No. 28/2004 published on 21 July 2004)

Date of Second and Third Readings : 1 September 2004

Date of commencement : 12 October 2004

18. Act 45 of 2004 — Trustees (Amendment) Act 2004

Date of First Reading : 21 September 2004
(Bill No. 43/2004 published on 22 September 2004)

Date of Second and Third Readings : 19 October 2004

Date of commencement : 15 December 2004

19. Act 31 of 2005 — Deposit Insurance Act 2005

Date of First Reading : 15 August 2005
(Bill No. 21/2005 published on 16 August 2005)

Date of Second and Third Readings : 19 September 2005

Date of commencement : 18 October 2005

20. Act 21 of 2005 — Companies (Amendment) Act 2005

Date of First Reading : 18 April 2005
(Bill No. 11/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 30 January 2006

21. Act 13 of 2007 — Monetary Authority of Singapore (Amendment) Act 2007

Date of First Reading : 22 January 2007
(Bill No. 1/2007 published on 23 January 2007)

Date of Second and Third Readings : 12 February 2007

Date of commencement : 30 June 2007

22. Act 42 of 2007 — Monetary Authority of Singapore (Amendment No. 2) Act 2007

Date of First Reading : 27 August 2007
(Bill No. 30/2007 published on 28 August 2007)

Date of Second and Third Readings : 19 September 2007

Date of commencement : 1 November 2007

23. G. N. No. S 21/2010 — Monetary Authority of Singapore Act (Amendment of Schedule) Order 2010

Date of commencement : 15 January 2010

24. Act 21 of 2008 — Mental Health (Care and Treatment) Act 2008

Date of First Reading : 21 July 2008
(Bill No. 11/2008 published on 21 July 2008)

Date of Second and Third Readings : 16 September 2008

Date of commencement : 1 March 2010

25. Act 2 of 2012 — Statutes (Miscellaneous Amendments) Act 2012

Date of First Reading : 21 November 2011
(Bill No. 22/2011 published on 21 November 2011)

Date of Second and Third Readings : 18 January 2012

Date of commencement : 1 July 2010

26. Act 15 of 2010 — Criminal Procedure Code 2010

Date of First Reading : 26 April 2010
(Bill No. 11/2010 published on 26 April 2010)

Date of Second and Third Readings : 19 May 2010

Date of commencement : 2 January 2011

27. Act 15 of 2011 — Deposit Insurance and Policy Owners' Protection Schemes Act 2011

Date of First Reading : 10 March 2011
(Bill No. 10/2011 published on 10 March 2011)

Date of Second and Third Readings : 11 April 2011

Date of commencement : 1 May 2011

28. Act 9 of 2013 — Monetary Authority of Singapore (Amendment) Act

Date of First Reading : 4 February 2013
(Bill No. 3/2013 published on 4 February 2013)

Date of Second and Third Readings : 15 March 2013

Date of commencement : 18 April 2013

29. Act 11 of 2013 — Insurance (Amendment) Act 2013

(Consequential amendments made by)

Date of First Reading : 4 February 2013
(Bill No. 5/2013 published on 4 February 2013)

Date of Second and Third Readings : 15 March 2013

Date of commencement : 18 April 2013

30. Act 34 of 2012 — Securities and Futures (Amendment) Act 2012

(Consequential amendments made by)

Date of First Reading : 15 October 2012
(Bill No. 31/2012 published on 15 October 2012)

Date of Second and Third Readings : 15 November 2012

Date of commencement : 1 August 2013

31. Act 14 of 2015 — Monetary Authority of Singapore (Amendment) Act 2015

Date of First Reading : 13 April 2015 (Bill No. 11/2015 published on 13 April 2015)

Date of Second and Third Readings : 11 May 2015

Date of commencement : 26 June 2015

32. Act 4 of 2017 — Securities and Futures (Amendment) Act 2017

Date of First Reading : 7 November 2016
(Bill No. 35/2016)

Date of Second and Third Readings : 9 January 2017

Date of commencement : 8 October 2018

33. Act 31 of 2017 — Monetary Authority of Singapore (Amendment) Act 2017

Date of First Reading : 8 May 2017 (Bill No. 25/2017
published on 8 May 2017)

Date of Second and Third Readings : 4 July 2017

Date of commencement : 15 August 2017
4 June 2018
5 June 2018
29 October 2018

COMPARATIVE TABLE

MONETARY AUTHORITY OF SINGAPORE ACT (CHAPTER 186)

The following provisions in the 1985 Revised Edition of the Monetary Authority of Singapore Act have been renumbered by the Law Revision Commissioners in this 1999 Revised Edition.

This Comparative Table is provided for the convenience of users. It is not part of the Monetary Authority of Singapore Act.

1999 Ed.	1985 Ed.
3 — (3) and (4)	3 — (3)
(5)	(4)
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(4) and (5)	(3) and (4)
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