

Banking (Amendment) Bill

Bill No. 13/2006.

Read the first time on 8th November 2006.

A BILL

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An Act to amend the Banking Act (Chapter 19 of the 2003 Revised Edition) and to make consequential amendments to the Companies Act (Chapter 50 of the 2006 Revised Edition) and the Deposit Insurance Act 2005 (Act 31 of 2005).

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

Short title and commencement

1. This Act may be cited as the Banking (Amendment) Act 2006 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of long title

2. The long title to the Banking Act is amended by inserting, immediately after the words “financial institutions,”, the words “and the credit card and charge card business of banks and other institutions,”.

Amendment of section 2

10 3. Section 2(1) of the Banking Act is amended —

(a) by deleting “, 11” in the definition of “bank”;

(b) by inserting, immediately after the definition of “banking business”, the following definitions:

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

20 “business day” means any calendar day other than a Saturday, Sunday, public holiday or bank holiday;”;

(c) by deleting the definition of “capital funds” and substituting the following definitions:

““capital funds” means —

25 (a) in the case of a bank incorporated in Singapore —

(i) in sections 31 and 33, its capital used for the purposes of calculating its capital adequacy ratio under section 10; or

30 (ii) in other sections of the Act, the aggregate of its paid-up capital (excluding any amount represented by treasury shares) and its published reserves (excluding such reserves as the Authority may specify by notice in writing), deduction having been

made for any loss appearing in the accounts of the bank; or

(b) in the case of a bank incorporated outside Singapore, such net head office funds and such other liabilities as the Authority may, by notice in writing, specify;

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

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

(b) is principally responsible for the management and conduct of the business of the company;”;

(d) by inserting, immediately after the definition of “employee”, the following definition:

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

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

(b) is concerned with or takes part in the management of the company on a day-to-day basis;”;

(e) by inserting, immediately after the definition of “financial holding company”, the following definitions:

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

“foreign company” has the same meaning as in section 4(1) of the Companies Act;

“foreign-owned bank incorporated in Singapore” means a bank incorporated in Singapore, the parent bank of which is incorporated outside Singapore;”;

(f) by deleting “, 11” in the definition of “licence”;

(g) by inserting, immediately after the definition of “officer”, the following definitions:

““parent bank”, in relation to a bank, means a financial institution which is able to exercise a significant

influence over the direction and management of the bank or which has a controlling interest in the bank;

“parent supervisory authority” means —

5 (a) in relation to a bank incorporated outside Singapore, the supervisory authority which is responsible, under the laws of the country or territory where the bank or its parent bank is incorporated, formed or established, for supervising the bank or its parent bank, as the case may be; or

10 (b) in relation to a foreign-owned bank incorporated in Singapore, the supervisory authority which has consolidated supervision authority over the bank;”;

15 (h) by deleting the definition of “qualifying subsidiary” and substituting the following definitions:

““qualifying subsidiary” means a company which is a subsidiary of a bank incorporated in Singapore where such bank meets the requirements under section 9(1);

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

(i) by deleting the definition of “share” and substituting the following definition:

25 ““share” has the same meaning as in section 4(1) of the Companies Act and includes an interest in a share;”;

(j) by inserting, immediately after the definition of “sight liabilities”, the following definitions:

““subsidiary” has the same meaning as in section 5 of the Companies Act;

30 ““substantial shareholder” has the same meaning as in section 81 of the Companies Act;”;

(k) by deleting the full-stop at the end of the definition of “time liabilities” and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

“total number of issued shares”, in relation to a company,
does not include treasury shares;

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

5 **Amendment of section 3**

4. Section 3 of the Banking Act is amended —

(a) by deleting the word “The” in subsection (1) and substituting the
words “Subject to subsection (1A), the”; and

10 (b) by inserting, immediately after subsection (1), the following
subsection:

15 “(1A) The Authority may, by notification in the *Gazette*,
appoint one or more of its officers to exercise the power to
grant an exemption to any person (not being an exemption
granted to a class of persons) under a provision of this Act
specified in the Fourth Schedule, or to revoke any such
exemption.”.

Amendment of section 4A

5. Section 4A of the Banking Act is amended —

20 (a) by deleting the words “Subject to subsection (7), no” in
subsection (2) and substituting the word “No”; and

(b) by deleting subsections (7) and (8).

Amendment of section 4B

6. Section 4B of the Banking Act is amended —

25 (a) by deleting subsection (4) and substituting the following
subsections:

“(4) Subject to the provisions of this section, for the purposes
of section 4A, “deposit” means —

(a) a sum of money paid on terms —

30 (i) under which it will be repaid, with or without
interest or a premium, or with any consideration
in money or money’s worth, either on demand or
at a time or in circumstances agreed by or on

behalf of the person making the payment and the person receiving it; and

(ii) which are not referable to the provision of property or services or to the giving of security; and

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(b) such other product as may be prescribed.

(4A) The Authority may, by regulations, exclude any product from the definition of “deposit” in subsection (4)(a).”;

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(b) by deleting the words “subsection (4)(b)” in subsection (5) and substituting the words “subsection (4)(a)(ii)”; and

(c) by deleting the words “issued share capital of” in subsection (6)(c) and substituting the words “total number of issued shares in”.

Amendment of section 4C

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7. Section 4C of the Banking Act is amended —

(a) by deleting the words “, accounts and records” wherever they appear in subsection (1); and

(b) by deleting the words “, accounts or records” in subsection (2).

Amendment of section 5

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8. Section 5 of the Banking Act is amended by deleting subsection (2) and substituting the following subsections:

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“(2) Subject to subsection (2B), nothing in this section shall prohibit the following persons or bodies of persons from using the word “bank” or any of its derivatives in any language, or any other word indicating the transaction of banking business, as a part of its name or title or in the description of its activities:

(a) any representative office of a foreign company which is not a bank in Singapore if —

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(i) the foreign company is licensed, registered, approved or otherwise regulated as a bank under the law of the foreign country or territory in which it is incorporated, formed or established; and

(ii) the following information is provided in every advertisement made by the representative office which is directed at the public or a section of the public in Singapore:

5 (A) the country or territory in which the foreign company is incorporated, formed or established; and

(B) the fact that the foreign company is licensed, registered, approved or otherwise regulated as a
10 bank in that country or territory;

(b) any central bank of a foreign country or territory;

(c) any association of banks formed for the protection of common interests;

(d) any related corporation of a bank in Singapore which does
15 not carry on banking business in Singapore or elsewhere and which carries on any business referred to in section 30(1)(b), (c) or (d) if the word “bank” or any of its derivatives in any language, or any other word indicating the transaction of banking business —

20 (i) is used in a manner to indicate or represent that the corporation is a related corporation of the bank; and

(ii) is used together with any other word to indicate or represent that the related corporation is not a bank in Singapore;

25 (e) any person or body of persons that does not transact banking business or the business of a financial institution in Singapore or elsewhere, if the word “bank” or any of its derivatives in any language, or any other word indicating the transaction of banking business, is used together with any
30 other word to indicate or represent that the person or body of persons is not a bank in Singapore;

(f) any merchant bank approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186); and

35 (g) such international financial institution as may be prescribed.

(2A) Sections 4A(3) and 4B(1), (2) and (3) shall apply, with the necessary modifications, to an advertisement made by a representative office referred to in subsection (2)(a).

(2B) If the Authority is satisfied that a person or body of persons to whom subsection (2) applies has misled or is likely to mislead the public or a section of the public as to whether the person or body of persons is a bank in Singapore, the Authority may, by notice in writing to the person or body of persons, direct the person or body of persons to cease —

(a) using the word “bank” or any of its derivatives in any language, or any other word indicating the transaction of banking business, in the name, description or title under which the person or body of persons is transacting business in Singapore; and

(b) making any representation to that effect in any bill head, letter paper, notice, advertisement or in any other manner,

from the date specified by the Authority in the notice, and subsection (1) shall apply to the person or body of persons as from that date.

(2C) The Authority shall publish in the *Gazette* such particulars as it thinks fit in respect of every person or body of persons to whom a notice is issued under subsection (2B).”.

Amendment of section 5A

9. Section 5A of the Banking Act is amended by deleting the words “or (c)” wherever they appear in subsections (1), (2) and (4) and substituting in each case the words “, (c) or (d)”.

Amendment of section 6

10. Section 6 of the Banking Act is amended by deleting the words “, accounts and records” wherever they appear in subsections (1) and (2).

Amendment of section 9

11. Section 9 of the Banking Act is amended —

(a) by deleting paragraphs (a) and (b) of subsection (1) and substituting the following paragraph:

“(a) in the case of a bank incorporated in Singapore, its paid-up capital is not less than \$1,500 million or such other amount as may be prescribed, and its capital funds are not less than that amount; or”;

5 (b) by deleting the word “; and” at the end of subsection (1)(c)(i) and substituting a full-stop;

(c) by deleting sub-paragraph (ii) of subsection (1)(c);

(d) by deleting subsections (2), (4) and (5);

10 (e) by deleting subsection (6) and substituting the following subsection:

“(6) A bank incorporated in Singapore shall not reduce its paid-up capital, or purchase or otherwise acquire shares issued by the bank if such shares are to be held as treasury shares, without the approval of the Authority.”; and

15 (f) by deleting subsection (9) and substituting the following subsection:

“(9) In this section —

20 “head office capital funds”, in relation to a bank incorporated outside Singapore, means the aggregate of its paid-up capital (or its equivalent recognised by the Authority as applicable to the bank under the laws of the country or territory in which the bank is incorporated, formed or established) and its published reserves (excluding such reserves as the Authority may specify in writing), deduction having been made for any
25 loss appearing in the accounts of the bank;

“paid-up capital” does not include any amount that is represented by treasury shares.”.

Amendment of section 9A

30 **12.** Section 9A of the Banking Act is amended —

(a) by deleting the words “or 11” in subsection (1);

(b) by deleting the words “issued and” in subsection (1)(b);

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

“(2) A bank which is a qualifying subsidiary shall not reduce its paid-up capital, or purchase or otherwise acquire shares issued by the bank if such shares are to be held as treasury shares, without the approval of the Authority.”;

5 (d) by deleting the words “, during the currency of its licence,” in subsection (3); and

(e) by inserting, immediately after subsection (6), the following subsection:

10 “(7) In this section, “paid-up capital” does not include any amount that is represented by treasury shares.”.

Repeal of section 11

13. Section 11 of the Banking Act is repealed.

Amendment of section 11A

15 **14.** Section 11A of the Banking Act is amended by deleting the words “or 11”.

Amendment of section 14

15. Section 14 of the Banking Act is amended by deleting subsection (2) and substituting the following subsections:

20 “(2) The Minister may approve an application made under subsection (1) if —

(a) the Authority is satisfied that —

(i) the body corporate or unincorporate is a fit and proper person or body of persons; and

25 (ii) having regard to the likely influence of the body corporate or unincorporate, the business of the bank will be or will continue to be conducted prudently and the provisions of this Act will be or will continue to be complied with in relation to such business; and

30 (b) the Minister is satisfied that it is in the national interest to do so.

(2A) The parties to a proposed merger or consolidation, in respect of which an application is made under this section, shall furnish such

information as the Minister or the Authority may require for the purposes of subsection (2).”.

Amendment of section 15

5 **16.** Section 15(2) of the Banking Act is amended by deleting the definitions of “share” and “substantial shareholder”.

Amendment of section 15C

17. Section 15C of the Banking Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

10 “(1) The Minister may approve an application made by any person under section 15A or 15B if —

(a) the Authority is satisfied that —

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

15 (ii) having regard to the likely influence of the person, the designated financial institution will or will continue to conduct its business prudently and comply with the provisions of this Act; and

(b) the Minister is satisfied that it is in the national interest to do so.”; and

20 (b) by inserting, immediately after subsection (2), the following subsection:

“(2A) The Minister may at any time add to, vary or revoke any condition imposed under subsection (2).”.

Amendment of section 15E

25 **18.** Section 15E of the Banking Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) The Minister may serve a written notice of objection on any person referred to in section 15A or 15B if —

(a) the Minister is satisfied that —

30 (i) any condition of approval imposed on the person under section 15C has not been complied with;

- 5 (ii) it is no longer in the national interest to allow the person to continue to be a party to the agreement or arrangement described in section 15A(3) or (4), or to continue to be a substantial shareholder, a 12% controller, a 20% controller or an indirect controller, as the case may be;
- (iii) the person has furnished any false or misleading information or document in connection with an application under section 15A or 15B; or
- 10 (iv) he would not have granted his approval under section 15C had he been aware, at that time, of circumstances relevant to the person's application for such approval; or
- (b) the Authority is satisfied that —
- 15 (i) the person ceases to be a fit and proper person;
- (ii) having regard to the likely influence of the person, the designated financial institution is no longer likely to conduct its business prudently or to comply with the provisions of this Act; or
- 20 (iii) it would not have been satisfied as to any of the matters specified in section 15C(1)(a) had it been aware, at that time, of circumstances relevant to the person's application under section 15A or 15B.”.

Amendment of section 18

- 25 **19.** Section 18 of the Banking Act is amended —
- (a) by inserting, immediately after the words “transmit to the Authority” in subsection (1), the words “any information relating to its shareholders which the Minister or the Authority may require for the purpose of ascertaining or investigating into the control of shareholding or voting power in the designated financial institution, or exercising any power or function under sections 15A to 17, including”;
- 30 (b) by deleting the words “inform the Authority” in subsection (2) and substituting the words “provide to the Authority any information relating to the shareholder or the person, as the case
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may be, which the Minister or the Authority may require for the purpose of ascertaining or investigating into the control of shareholding or voting power in the designated financial institution, or exercising any power or function under sections 15A to 17, including”;

(c) by deleting the words “the person shall comply” in the 16th line of subsection (2) and substituting the words “the shareholder or the person shall comply”; and

(d) by deleting the words “makes a statement which is false” in subsection (3)(b) and substituting the words “furnishes any information or document that is false or misleading”.

Amendment of section 20

20. Section 20 of the Banking Act is amended —

(a) by deleting the words “taking action under section 49(2)” in subsection (1)(b) and substituting the words “the Authority exercising any power under section 49(2) or the Minister exercising any power under Division 2, 3 or 4 of Part VIIA in relation to the bank”; and

(b) by deleting subsection (7) and substituting the following subsection:

“(7) The making of an appeal by a bank under this section shall in no way affect the exercise of any power by the Authority under section 49, 50, 51, 52 or 53, or the exercise of any power by the Minister under Division 2, 3 or 4 of Part VIIA, in relation to the bank.”.

Repeal of section 22

21. Section 22 of the Banking Act is repealed.

Amendment of section 26

22. Section 26 of the Banking Act is amended by inserting, immediately after subsection (6), the following subsection:

“(6A) Nothing in subsection (6) shall preclude the Authority from disclosing any information, not being customer information as defined in section 40A, received from a bank under this section if —

- (a) the information is in the public domain;
- (b) the information is disclosed in such a manner that the bank's identity cannot be ascertained;
- 5 (c) the bank or the person from whom the bank has obtained the information consents to the disclosure;
- (d) the person to whom the information relates consents to the disclosure; or
- 10 (e) the disclosure of the information is necessary for the performance of any principal object or function, or the exercise of any power, of the Authority under this Act or any other written law.”.

Repeal and re-enactment of section 27

23. Section 27 of the Banking Act is repealed and the following section substituted therefor:

15 **“Action to be taken if credit facilities or exposures are against interest of depositors**

20 **27.**—(1) Every bank in Singapore shall prepare a statement in respect of each quarter of a year, in such form as may be specified by the Authority, showing as at the end of that quarter all the credit facilities from and all the exposures of the bank to —

- (a) any person in a director group of the bank;
- (b) any firm or limited liability partnership of which the bank is a partner, manager, agent, guarantor or surety;
- 25 (c) any company of which any of the directors of the bank is a director or agent;
- (d) any company of which the bank or any of its officers (other than directors), employees or other persons who receive remuneration from the bank (other than for professional services rendered to the bank) is a director, executive officer, agent, guarantor or surety;
- 30 (e) any of its officers (other than directors), employees or other persons who receive remuneration from the bank (other than for professional services rendered to the bank) in excess of one year's emoluments of the officer, employee or person;

- (f) in the case of a bank incorporated in Singapore, any person in a substantial shareholder group of the bank;
- (g) any person in the financial group of the bank;
- (h) any related corporation of the bank;
- 5 (i) any individual in whom, or any firm, limited liability partnership or company in which, any of the directors of the bank has an interest, directly or indirectly, as declared under section 28 other than the credit facilities or exposures particulars of which have already been supplied under this subsection; and
- 10 (j) such other person or class of persons as may be prescribed.

(2) A statement under subsection (1) —

- (a) shall be prepared within 7 days, or such other period as may be approved by the Authority, after the quarter of the year in respect of which it is to be prepared;
- 15 (b) shall —
 - (i) in the case of a bank incorporated in Singapore, be brought up and read at the next meeting of its board of directors after it is prepared; and
 - 20 (ii) in the case of a bank incorporated outside Singapore, be submitted to the head office of the bank; and
- (c) shall be submitted to the Authority within 7 days from the date on which it is read at the meeting of the board of directors or submitted to the head office of the bank, as the case may be.
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(3) If, on examination of any statement supplied by a bank under subsection (2)(c), it appears to the Authority that any credit facility from or any exposure of the bank to any person is to the detriment of the interests of the depositors of the bank, the Authority may by notice in writing to the bank do one or more of the following:

- 30 (a) direct the bank to secure repayment of the credit facility or reduce the exposure within such time and to such extent as may be specified in the notice;

(b) prohibit the bank from granting any further credit facility to the person or impose such restrictions on the grant thereof as the Authority thinks fit;

5 (c) direct the bank to cease any further exposure to the person or impose such restrictions on such further exposure as the Authority thinks fit.

(4) In this section —

“director”, in relation to a bank in Singapore, has the meaning given to it in the Fifth Schedule;

10 “director group” has the meaning given to it in the Fifth Schedule;

“exposure” has the meaning given to it in the Fifth Schedule;

“financial group” has the meaning given to it in the Fifth Schedule;

15 “substantial shareholder group” has the meaning given to it in the Fifth Schedule.”.

Amendment of section 28

24. Section 28 of the Banking Act is amended —

20 (a) by deleting the words “an advance, loan or credit facility or proposed advance, loan or credit facility from” in subsections (1) and (2) and substituting in each case the words “a credit facility from or an exposure of, or a proposed credit facility from or exposure of,”;

25 (b) by deleting subsection (3) and substituting the following subsection:

30 “(3) For the purposes of subsection (1), a general notice given to the board of directors of a bank by a director to the effect that he is an officer or a member of a specified company, or a partner or manager of a specified firm or specified limited liability partnership, and that he is to be regarded as having an interest in any credit facility or exposure which may, after the date of the notice, be granted to or acquired in respect of that company, firm or limited liability partnership, shall be deemed

to be a sufficient declaration of interest in relation to any credit facility so granted or any exposure so acquired if —

- (a) it specifies the nature and extent of his interest in that company, firm or limited liability partnership;
- 5 (b) his interest is not different in nature from or greater in extent than the nature and extent so specified in the notice at the time any credit facility is granted or any exposure is acquired; and
- 10 (c) it is given at a meeting of the board of directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the board of directors after it is given.”; and
- (c) by inserting, immediately after subsection (7), the following subsection:
- 15 “(8) In this section, “exposure” has the meaning given to it in the Fifth Schedule.”.

Repeal and re-enactment of section 29

25. Section 29 of the Banking Act is repealed and the following section substituted therefor:

20 “Exposures and credit facilities

29.—(1) The Authority may by notice in writing to any bank in Singapore, or any class of banks in Singapore, impose such requirements as may be necessary or expedient for the purposes of limiting the exposure of the bank, or a bank within the class of banks,
25 to any one or more of the following:

- (a) where the bank is incorporated in Singapore, a substantial shareholder group of the bank;
 - (b) the financial group of the bank;
 - (c) a director group of the bank;
 - 30 (d) any other person or class of persons as may be prescribed.
- (2) Without prejudice to the generality of subsection (1), the Authority may in a notice issued under that subsection —
- (a) specify the limit on any exposure;

- (b) exclude any exposure from any limit;
- (c) specify the method of measuring any exposure;
- (d) exclude any bank or class of banks from any requirement imposed under subsection (1); and
- 5 (e) vary any limit in a particular case.

(3) A bank in Singapore shall not grant any credit facility against the security of its own shares.

10 (4) The directors of a bank in Singapore shall, without prejudice to any liability of any of the directors under this Act or any law, jointly and severally indemnify the bank against any loss suffered by the bank arising from —

- (a) any unsecured credit facility granted to;
- (b) any credit facility granted, which subsequently becomes an unsecured credit facility, to; or
- 15 (c) any exposure to,

any person in the director group of the bank whether or not the bank has contravened any requirement imposed under subsection (1) in relation to the director group of the bank.

20 (5) A director of a bank in Singapore who resigns or vacates his office shall continue to be liable to indemnify the bank under subsection (4) against any loss which the bank suffers —

- (a) before the resignation or vacation; or
- (b) after the resignation or vacation if the unsecured credit facility is granted, or if the credit facility becomes an unsecured credit facility, or if the exposure is acquired, during the period when he is a director unless —
 - 25 (i) the bank suffers the loss after it approves the continuation of the credit facility or exposure; and
 - (ii) such approval is given by the bank after the resignation or vacation.
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(6) Any bank which fails to comply with subsection (3) or any requirement imposed under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not

exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(7) In this section —

“director group” has the meaning given to it in the Fifth Schedule;

“exposure” has the meaning given to it in the Fifth Schedule;

“financial group” has the meaning given to it in the Fifth Schedule;

“substantial shareholder group” has the meaning given to it in the Fifth Schedule.”.

Amendment of section 30

26. Section 30(1) of the Banking Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) any business the conduct of which is regulated or authorised by the Authority or, if carried on in Singapore, would be regulated or authorised by the Authority under any written law;”.

Amendment of section 31

27. Section 31 of the Banking Act is amended —

(a) by deleting paragraph (a) of subsection (3);

(b) by inserting, immediately after the word “company” in subsection (5), the words “, and such other investment, interest or right as may be prescribed”; and

(c) by deleting subsection (6).

Amendment of section 32

28. Section 32 of the Banking Act is amended —

(a) by inserting, immediately after the word “hold” in subsections (1) and (3), the words “, directly or indirectly;”;

(b) by deleting the words “, subject to such conditions as it may impose” in subsection (3);

- (c) by inserting, immediately after subsection (3), the following subsections:

“(3A) Any approval granted by the Authority under this section to a bank to acquire or hold, directly or indirectly, a major stake in a company may be subject to such conditions as the Authority may determine, including any condition relating to the operations or activities of the company.

“(3B) The Authority may at any time add to, vary or revoke any condition imposed under subsection (3A).”;

- (d) by deleting the word “and” at the end of subsection (4)(a);

- (e) by deleting the full-stop at the end of paragraph (b) of subsection (4) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(c) such other interest as may be prescribed.”;

- (f) by deleting the word “and” at the end of subsection (5)(a);

- (g) by deleting the full-stop at the end of paragraph (b) of subsection (5) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(c) provide that any interest or control referred to in the definition of “major stake” in subsection (7), that is acquired or held, directly or indirectly, by a company in which a bank has, directly or indirectly, a major stake shall be deemed to be acquired or held by the bank.”; and

- (h) by deleting the words “in the share capital of a company” in paragraph (a) of the definition of “major stake” in subsection (7) and substituting the words “of the total number of issued shares in a company”.

Amendment of section 36

29. Section 36(2) of the Banking Act is amended by deleting the words “the bank has” in paragraph (b) and substituting the words “the bank acquires or holds, directly or indirectly,”.

Repeal of section 37

30. Section 37 of the Banking Act is repealed.

Amendment of section 38

31. Section 38 of the Banking Act is amended —

(a) by deleting subsection (2) and substituting the following subsections:

5 “(2) Without prejudice to the generality of subsection (1), the Authority may, in a notice issued under that subsection, impose limits on each liquid asset or class of liquid assets to be held by a bank or class of banks.

10 (2A) Where the Authority issues a notice under subsection (1) to a class of banks, the Authority may require different banks within the class of banks to hold different amount or amounts of liquid assets, having regard to the risks arising from the activities of each bank, the systemic impact of each bank on the financial sector and such other factors as the
15 Authority may consider relevant.”;

(b) by deleting the words “one month” in subsection (3) and substituting the words “3 business days”;

(c) by deleting the word “notice” in subsection (4) and substituting the words “requirement imposed”;

20 (d) by inserting, immediately after subsection (6), the following subsections:

25 “(6A) The Authority may, at any time, utilise the liquid assets of a bank held for the purposes of subsection (1) for the settlement of the bank’s payment obligations, book-entry securities and instruments under any real-time gross settlement system established and operated under section 29A of the Monetary Authority of Singapore Act (Cap. 186), notwithstanding that this may result in the bank failing to comply with any requirement imposed under subsection (1).

30 (6B) Notwithstanding subsection (1) and subject to subsection (6E), a bank may, in accordance with the requirements imposed under subsection (6C), utilise its liquid assets held for the purposes of subsection (1) if the bank —

(a) is in a liquidity stress situation; and

(b) is solvent immediately before, and will remain solvent after, the utilisation of its liquid assets.

(6C) For the purposes of subsection (6B), the Authority may, from time to time, by notice in writing to a bank impose requirements in relation to the utilisation by the bank of its liquid assets held for the purposes of subsection (1), including —

(a) the procedures which the bank must comply with before or after utilising, or during the utilisation of, its liquid assets; and

(b) the manner in which the bank may utilise its liquid assets.

(6D) A bank shall, within such time as may be specified by the Authority, provide any information required by the Authority in relation to its liquidity stress situation and the utilisation of its liquid assets held for the purposes of subsection (1).

(6E) Where the Authority is of the opinion that —

(a) a bank is not in a liquidity stress situation;

(b) a bank has failed to comply with any requirement imposed under subsection (6C);

(c) a bank is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments; or

(d) it is in the public interest to do so,

the Authority may by notice in writing to the bank —

(i) where the bank has already utilised its liquid assets held for the purposes of subsection (1), direct the bank to comply with any requirement imposed under subsection (1) within such time as may be specified by the Authority in the notice; or

(ii) where the bank has not, or has not fully, utilised its liquid assets held for the purposes of subsection (1), do one or more of the following:

- (A) refuse to allow the bank to utilise its liquid assets held for the purposes of subsection (1) which are within the control of the Authority;
- (B) direct the bank to cease utilising its liquid assets held for the purposes of subsection (1);
- (C) direct the bank to comply with any requirement imposed under subsection (1) within such time as may be specified by the Authority in the notice.”;
- (e) by deleting subsections (7) and (8) and substituting the following subsections:
- “*(7)* Any bank which fails to comply with any requirement imposed under subsection (1) shall be liable to pay, on being called upon to do so by the Authority, for every day or part thereof of such failure, a financial penalty in accordance with such formula as the Minister may, by order published in the *Gazette*, prescribe.
- (8)* For the avoidance of doubt, for the purposes of subsections (4) and (7), a bank shall be treated as having failed to comply with a requirement imposed under subsection (1) even if such failure is the result of an action of the Authority under subsection (6A).
- (8A)* Any bank which fails to comply with —
- (a) subsection (4) or (6D);
- (b) any requirement of the Authority under subsection (6) or (6C); or
- (c) any direction of the Authority under subsection (6E),
- 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 of \$25,000 for every day or part thereof during which the offence continues after conviction.”;
- and
- (f) by deleting subsection (9) and substituting the following subsection:

“(9) In this section —

“liquid assets” means —

- 5 (a) notes and coin which are legal tender in Singapore other than assets maintained and held for the purposes of section 40;
- (b) balances with the Authority other than cash balances maintained for the purposes of section 39 and assets maintained and held for the purposes of section 40; and
- 10 (c) such other assets as the Authority may from time to time approve;

“liquidity stress situation” has the meaning given to it in the Fifth Schedule.”.

Amendment of section 39

15 **32.** Section 39 of the Banking Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:

20 “(1) The Authority may, from time to time, by notice in writing to any bank in Singapore, or any class of banks in Singapore, require the bank or banks to maintain minimum cash balances, not exceeding 30% of its or their deposit and other liabilities, on deposit with the Authority as reserves against its or their deposit and other liabilities.”;

- 25 (b) by deleting the comma at the end of subsection (2)(b) and substituting a full-stop;
- (c) by deleting the words “but the ratios shall be uniform for all banks in Singapore.” in subsection (2);
- (d) by inserting, immediately after subsection (2), the following subsection:

30 “(2A) Where the Authority issues a notice under subsection (1) to a class of banks, the Authority may require different banks within the class of banks to maintain different minimum cash balances, having regard to the risks arising from the activities of each bank, the financial soundness of each bank

and such other factors as the Authority may consider relevant.”; and

- (e) by deleting subsections (7) and (8) and substituting the following subsections:

5 “(7) Any bank which fails to comply with any requirement of the Authority under subsection (1) shall be liable to pay, on being called upon to do so by the Authority, for every day or part thereof of such failure, a financial penalty in accordance with such formula as the Minister may, by order published in
10 the *Gazette*, prescribe.

(8) The Authority may call upon a bank to pay a financial penalty under subsection (7) in addition to any action taken in relation to the bank under subsection (4) or (5).”.

Repeal and re-enactment of section 40

- 15 **33.** Section 40 of the Banking Act is repealed and the following section substituted therefor:

“Asset maintenance requirement

20 **40.**—(1) The Authority may, from time to time, by notice in writing to any bank in Singapore, or any class of banks in Singapore, require the bank or banks to maintain and hold such minimum amount or amounts of assets in Singapore as may be specified in the notice for the purpose of meeting its or their liabilities.

(2) Without prejudice to the generality of subsection (1), the Authority may, in a notice issued under that subsection, specify —

- 25 (a) the types of liabilities in respect of which assets are to be maintained and held in Singapore;
- (b) the types of assets that are to be treated as assets maintained and held in Singapore and the minimum amount or amounts in respect of each asset for the purpose of any requirement
30 of the Authority under that subsection; and
- (c) the method for the valuation of assets maintained and held in Singapore, including any deductions to be made in respect of the assets.

(3) Where the Authority issues a notice under subsection (1) to a class of banks, the Authority may require different banks within the class of banks to maintain and hold different minimum amount or amounts of assets in Singapore, having regard to the financial soundness of each bank, the risk profile of each bank and such other factors as the Authority may consider relevant.

(4) Any bank which fails to comply with any requirement of the Authority 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 thereof during which the offence continues after conviction.”.

Amendment of section 40A

34. Section 40A of the Banking Act is amended —

- (a) by deleting the semi-colon at the end of the definition of “funds of a customer under management” and substituting a full-stop; and
- (b) by deleting the definitions of “parent bank” and “parent supervisory authority”.

Amendment of section 43

35. Section 43(1) of the Banking Act is amended by deleting the words “, accounts and transactions”.

Amendment of section 44

36. Section 44 of the Banking Act is amended by deleting the words “, accounts and transactions”.

Amendment of section 44A

37. Section 44A of the Banking Act is amended —

- (a) by deleting the words “, accounts and documents” in subsections (1)(a) and (2);
- (b) by inserting, immediately after subsection (3), the following subsection:

“(3A) The remuneration and expenses of any auditor appointed under subsection (3) shall be paid by the bank.”;

(c) by inserting, immediately after the words “a bank incorporated outside Singapore” in subsection (4), the words “or a foreign-owned bank incorporated in Singapore”; and

(d) by inserting, immediately after subsection (5), the following subsection:

“(6) For the purposes of this section, a reference to a parent bank in the definition of “foreign-owned bank incorporated in Singapore” in section 2(1) is a reference to a bank incorporated outside Singapore of which the foreign-owned bank is a subsidiary.”.

Amendment of section 45

38. Section 45 of the Banking Act is amended —

(a) by inserting, immediately after the words “bank incorporated outside Singapore” in subsection (1), the words “or a foreign-owned bank incorporated in Singapore”;

(b) by deleting the words “, accounts and transactions” in subsection (1);

(c) by deleting the words “, accounts and documents” wherever they appear in subsection (3);

(d) by deleting subsection (4) and substituting the following subsection:

“(4) A parent supervisory authority may, with the prior written approval of the Authority —

(a) in the case of the bank incorporated outside Singapore, request the auditors of its head office or appoint any person; or

(b) in the case of a foreign-owned bank incorporated in Singapore, request the auditors of its parent bank or appoint any person,

to conduct the inspection under subsection (1) and in such event, this section (other than this subsection) shall apply to the auditors or the person, as the case may be, as if a reference to

the parent supervisory authority or any official of the parent supervisory authority in this section includes a reference to the auditors or the person.”;

(e) by deleting the words “, account or document” in subsection (6);
and

(f) by inserting, immediately after subsection (6), the following subsection:

“(7) In this section, “parent bank”, in relation to a foreign-owned bank incorporated in Singapore, means a bank incorporated outside Singapore of which the foreign-owned bank is a subsidiary.”.

Repeal and re-enactment of section 48

39. Section 48 of the Banking Act is repealed and the following section substituted therefor:

“Information of insolvency, etc.

48. Any bank which is or is likely to become insolvent, or 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.”.

New section 48A

40. The Banking Act is amended by inserting, immediately after section 48, the following section:

“Interpretation of sections 49 to 53

48A. In sections 49 to 53, unless the context otherwise requires —

“business” includes affairs and property;

“office-holder”, in relation to a bank, means any person acting in relation to the bank as its liquidator, provisional liquidator, receiver, receiver and manager or an equivalent person;

“relevant business” means any business of a bank —

(a) which the Authority has assumed control of under section 49; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 49;

“statutory adviser” means a statutory adviser appointed under section 49;

5 “statutory manager” means a statutory manager appointed under section 49.”.

Amendment of section 49

41. Section 49 of the Banking Act is amended —

10 (a) by deleting paragraph (a) of subsection (1) and substituting the following paragraph:

“(a) a bank 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;”;

15 (b) by deleting the words “after an inspection or investigation is made under section 43 or 44,” in subsection (1)(c);

(c) by deleting sub-paragraph (ii) of subsection (1)(c) and substituting the following sub-paragraph:

20 “(ii) is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;”;

(d) by deleting paragraphs (b) and (c) of subsection (2) and substituting the following paragraphs:

25 “(b) subject to subsection (3), appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the bank on the proper management of such of the business of the bank as the Authority may determine; or

30 (c) subject to subsection (3), assume control of and manage such of the business of the bank 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.”; and

(e) by deleting subsection (3) and substituting the following subsections:

“(3) In the case of a bank 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 bank under subsection (2) shall only be in relation to —

(a) the business or affairs of the bank carried on, or managed in or from, Singapore; or

(b) the property of the bank located in Singapore, or reflected in the books of the bank in Singapore in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as statutory manager of a bank, it 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 of 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 20(1)(b), 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) 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 action, suit or other legal proceedings shall lie against —

(a) a statutory manager; or

(b) 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 —

- 5 (i) the exercise or purported exercise of any power under this Act;
- (ii) the performance or purported performance of any function or duty under this Act; or
- 10 (iii) the compliance or purported compliance with this Act.”.

Repeal and re-enactment of sections 50 to 53

42. Sections 50 to 53 of the Banking Act are repealed and the following sections substituted therefor:

“Effect of assumption of control under section 49

15 **50.**—(1) Upon assuming control of the relevant business of a bank, 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 bank, the Authority or statutory manager shall manage the relevant business of the bank in the name of and on behalf of the bank and shall be deemed to be an agent of the bank.

20

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

- 25 (a) shall take into consideration the interests of the depositors of the bank; and
- (b) shall have all the duties, powers and functions of the members of the board of directors of the bank (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the bank, including powers of delegation, in relation to the relevant business of the bank; but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the
- 30

bank under the Companies Act (Cap. 50) or the constitution of the bank.

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

(a) where the bank is incorporated in Singapore, any appointment of a person as chief executive or director of the bank; or

(b) where the bank is incorporated outside Singapore, any appointment of a person as chief executive of the bank, in so far as the appointment relates to the relevant business of the bank,

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 bank, 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 bank, no person shall be appointed —

(a) where the bank is incorporated in Singapore, as chief executive or director of the bank; or

(b) where the bank is incorporated outside Singapore, as chief executive of the bank, in so far as the appointment relates to the relevant business of the bank,

except with the approval of the Authority.

(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, chief executive or director of a bank, the Authority may at any time, by notice in writing to the person, revoke its approval and such 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 chief executive or director of a bank is revoked under subsection (4) or (6) acts or purports to act after the revocation —

(a) where the bank is incorporated in Singapore, as chief executive or director of the bank; or

(b) where the bank is incorporated outside Singapore, as chief executive of the bank in relation to the relevant business of the bank,

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

(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 chief executive or director of a bank in contravention of subsection (5) acts or purports to act —

(a) where the bank is incorporated in Singapore, as chief executive or director of the bank; or

(b) where the bank is incorporated outside Singapore, as chief executive of the bank in relation to the relevant business of the bank,

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

(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 bank —

(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 bank, or any trustee for the bank,

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

5 (b) no person shall exercise any voting or other right attached to any share in the bank 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 (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 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
15 continues after conviction.

(11) In this section, “constitution of the bank” means the memorandum of association and articles of association of the bank or other instrument under which the bank is incorporated.

Duration of control

20 **51.**—(1) The Authority shall cease to be in control of the relevant business of a bank when the Authority is satisfied that the reasons for its assumption of control of the relevant business have ceased to exist or that it is no longer necessary for the protection of the depositors of the bank.

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

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

(a) if the Authority is satisfied that the reasons for the appointment have ceased to exist or that it is no longer necessary for the protection of the depositors of the bank; or

(b) on any other ground,

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

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

- (a) its assumption of control of the relevant business of a bank;
- (b) the cessation of its control of the relevant business of a bank;
- (c) the appointment of a statutory manager in relation to the relevant business of a bank; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a bank.

Responsibilities of officers, member, etc., of bank

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

- (a) the High Court may, on an application of the Authority or statutory manager, direct any person who has ceased to be or who is still a chief executive, director, member, executive officer, employee, agent, banker, auditor or office-holder of, or trustee for, the bank to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the bank which is comprised in, forms part of or relates to the relevant business of the bank, and which is in his possession or control; and
- (b) any person who has ceased to be or who is still a chief executive, director, member, executive officer, employee, agent, banker, auditor or office-holder of, or trustee for, the bank shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of its or his duties or functions, or the exercise of its or his powers, in relation to the bank, 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.

Remuneration and expenses of Authority and others in certain cases

53. The Authority may at any time fix the remuneration and expenses to be paid by a bank —

- (a) to a statutory adviser or statutory manager appointed in relation to the bank, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the bank, to the Authority and any person employed or authorised by the Authority under section 3 in relation to its assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.”.

Amendment of section 54

43. Section 54 of the Banking Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) The High Court may, on the application of the Authority, if it considers it to be in the interests of the depositors of a bank, 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 bank;
- (b) that no proceedings shall be commenced or continued by or against the bank in respect of any business of the bank;

- (c) that no execution, distress or other legal process shall be commenced, levied or continued against any property of the bank;
- 5 (d) that no steps shall be taken to enforce any security over any property of the bank or to repossess from the bank any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement;
- 10 (e) 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 bank.

(2A) Any sale, transfer, assignment or other disposition of any property of the bank in contravention of any order made under subsection (2)(e) shall be void.”.

New sections 54A and 54B

- 15 **44.** The Banking Act is amended by inserting, immediately after section 54, the following sections:

“General provisions as to winding up

20 **54A.**—(1) On an 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 banking business in Singapore if the Authority has exercised any power under section 49(2) in relation to the company.

25 (2) On an 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 banking business in Singapore if —

- 30 (a) the Authority has exercised any power under section 49(2) in relation to the company;
- (b) the company has held a licence under this Act or under any written law repealed by this Act, and that licence has been revoked or has expired and has not been renewed; or

(c) the company is carrying on or has carried on banking business in Singapore in contravention of any provision of this Act.

5 (3) Notwithstanding sections 254(2) and 351(2) of the Companies Act (Cap. 50), on an 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 banking business in Singapore, any statement of account lodged by the company with the Authority, at any time during the period
10 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 is unable to pay its debts unless the Court, in its discretion, calls for further evidence on this issue.

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

(a) no person shall be appointed as a liquidator under the Companies Act of a company, which is carrying on or has carried on banking business in Singapore, without the prior written approval of the Authority; and

20 (b) in the case of a foreign company which is carrying on or has carried on banking business in Singapore, a liquidator appointed for its liquidation or dissolution at its place of incorporation or origin shall not have the powers and functions of a liquidator for Singapore unless the liquidator
25 has been approved by the Authority, and the exercise of any power or function by the liquidator in contravention of this paragraph shall be invalid and of no effect.

(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.

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

35 (7) Notwithstanding any written law or rule of law, where a company which is carrying on or has carried on banking business in Singapore is being wound up, the Authority shall, subject to such modifications as may be necessary, have the same powers and rights as a creditor of the company under the Companies Act including the

right to appear and be heard before the Court in any proceedings in the winding up.

(8) Without prejudice to subsection (7) and notwithstanding any written law or rule of law, where a company which is carrying on or has carried on banking business in Singapore is being wound up, its liquidator (whether appointed under the Companies Act (Cap. 50) 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 or the winding up.

(9) Any liquidator who —

(a) without reasonable excuse, fails to comply with subsection (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 thereof during which the offence continues after conviction.

(10) In this section —

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

“liquidator” includes a provisional liquidator;

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

Disqualification and removal of directors

54B.—(1) Notwithstanding any other written law, any person who —

(a) 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;

- (b) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (c) is an undischarged bankrupt, whether in Singapore or elsewhere;
- 5 (d) has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly;
- 10 (e) 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 95 of the Securities and Futures Act (Cap. 289) made against him that remains in force; or
- 15 (f) has been a director of, or directly concerned in the management of, a bank licensed under this Act or under any written law repealed by this Act —
 - (i) which is being or has been wound up by a court; or
 - (ii) the licence of which has been revoked,

shall not, without the consent in writing of the Authority, act or continue to act as a director of any bank incorporated in Singapore.

20 (2) Notwithstanding any other written law, where the Authority is satisfied that a director of a bank incorporated in Singapore —

- (a) has wilfully contravened or wilfully caused the bank to contravene any provision of this Act;
- 25 (b) has, without reasonable excuse, failed to secure the compliance of the bank with any provision of this Act; or
- (c) has failed to discharge any of the duties of his office,

30 the Authority may, if it thinks it necessary in the public interest or for the protection of depositors of the bank, by notice in writing to the bank, direct the bank to remove the director from office or employment within such period as may be specified by the Authority in the notice, and the bank shall comply with the notice.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether a director of a bank 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.

(4) Before directing a bank to remove its director under subsection (2), the Authority shall —

- 5 (a) give the bank and the director notice in writing of its intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the bank and the director to show cause, within such time as may be specified by the Authority in the notice, why the director
- 10 should not be removed.

(5) If the bank and the director referred to in subsection (4) —

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

the Authority may direct the bank to remove the director under subsection (2).

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

25 (7) Any person who contravenes subsection (1) 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.

30 (8) Any bank which 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 \$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.

(9) No criminal or civil liability shall be incurred by a bank, or any person acting on behalf of the bank, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the bank under this section.”.

Amendment of section 55

45. Section 55 of the Banking Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) The Authority may, if it appears to the Authority to be necessary or expedient in the public interest, or in the interest of depositors or the financial system in Singapore, by notice in writing to a bank in Singapore or a class of banks in Singapore give directions or impose requirements on or relating to the operations or activities of, or the standards to be maintained by, the bank or banks.”;

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

“(h) the appointment or removal of chief executives, deputy chief executives and other principal officers of a bank incorporated outside Singapore;”;

(c) by deleting subsection (3) and substituting the following subsection:

“(3) A bank in Singapore shall comply with any direction given to the bank or any requirement imposed on the bank by any notice issued under this Act.”.

New Part VIIA

46. The Banking Act is amended by inserting, immediately after section 55, the following Part:

“PART VIIA

TRANSFER OF BUSINESS AND SHARES
AND RESTRUCTURING OF SHARE CAPITAL*Division 1 — Voluntary transfer of business of bank*5 **Interpretation of this Division**

55A. In this Division, unless the context otherwise requires —

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

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

10 “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;

15 “transferee” means a bank in Singapore, or a company which has applied for or will be applying for a licence to carry on banking business in Singapore, to which the whole or part of a transferor’s business is, or is to be, or is proposed to be, transferred under this Division;

20 “transferor” means a bank in Singapore, the whole or part of the business of which is, or is to be, or is proposed to be, transferred under this Division.

Voluntary transfer of business

25 **55B.**—(1) A transferor may transfer the whole or any part of its business (including its non-banking business) to a transferee which is licensed to carry on banking business in Singapore, if —

(a) where the transferor is a bank incorporated in Singapore, the Minister has consented to the transfer or has certified that his consent is not required;

30 (b) where the transferor is a bank 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 part of the banking business of the transferor; and

5 (d) the Court has approved the transfer.

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

(3) The Minister may consent to a transfer under subsection (1)(a) if —

10 (a) the Authority is satisfied that —

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

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

15 (b) the Minister is satisfied that it is in the national interest to do so.

(4) The Minister or 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 this Division, whether the transferor is a bank
20 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.

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

Approval of transfer

30 **55C.**—(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 a transferee under this Division.

(2) Before making the application —

(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;

5 (b) where the transferor is a bank incorporated in Singapore, the transferor shall obtain the consent of the Minister or the certification of the Minister that his consent is not required;

10 (c) the transferor and the transferee shall, if they intend to serve on their respective customers a summary of the transfer, obtain the approval of the Authority of the summary;

15 (d) the transferor shall, at least 15 days before the application is made, publish in the *Gazette* and in such newspaper or newspapers as may be determined by the Authority a notice of its intention to make the application and containing such other particulars as may be prescribed, not earlier than one month after the report is lodged with the Authority under paragraph (a);

20 (e) the transferor and the transferee shall keep at their respective offices in Singapore a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice in the *Gazette* under paragraph (d), for the purpose of inspection by any person who may be affected by the transfer; and

25 (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).

30 (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 and be heard before the Court in any proceedings relating to the transfer; and

35 (b) may make any application to the Court in relation to the transfer.

(4) Where the transferor is a bank incorporated in Singapore, the Court shall not approve the transfer if the Minister has not consented to the transfer and has not certified that his consent is not required.

(5) The Court may —

- 5 (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee after taking into consideration the views, if any, of the Minister and the Authority on the modification; or
- (b) refuse to approve the transfer.

10 (6) If the transferee is not licensed to carry on banking business in Singapore, the Court may approve the transfer on terms that it shall take effect only in the event of the transferee becoming so licensed.

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

- 15 (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;
- 20 (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;
- 25 (f) such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the transfer is fully effective.

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

- 30 (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 such right or liability may arise.

5 (9) Subject to subsection (10), if an order is made under subsection (7), then by virtue of the order the business (or any 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 is by virtue of the transfer to cease
10 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.

15 (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.

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

(a) a copy of the order with the Registrar and with the Authority; and

25 (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.

30 (13) A transferor or a transferee which fails to comply with subsection (12) and every officer of the transferor or the transferee who fails to take all reasonable steps to secure compliance by the transferor or the transferee, as the case may be, 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.

Division 2 — Compulsory transfer of business of bank

Interpretation of this Division

55D. In this Division, unless the context otherwise requires —

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

“certificate” means a certificate of transfer issued by the Minister under section 55F(1);

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

10 “determination” means a determination of the Authority under section 55E(1);

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

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

“transferee” means a bank in Singapore, or a company which has applied for or will be applying for a licence to carry on banking business in Singapore, to which the whole or part of a transferor’s business is, or is to be, or is proposed to be, transferred under this Division;

20

“transferor” means a bank in Singapore, the whole or part of the business of which is, or is to be, or is proposed to be, transferred under this Division.

Compulsory transfer of business

25 **55E.**—(1) Subject to subsections (2) and (6), the Authority may make a determination that the whole or any part of the business of a transferor (including its non-banking business) shall be transferred to a transferee which is licensed to carry on banking business in Singapore if —

30 (a) any ground exists for the Authority to exercise any power under section 49(2) in relation to the transferor, whether or not the Authority has exercised the power;

(b) the board of directors of the transferee has consented to the transfer;

(c) the Authority is satisfied that the transfer is appropriate, having regard to —

5 (i) the interests of the depositors of the transferor given priority and the order of priority of each class of depositors under section 62;

10 (ii) the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 62;

(iii) the stability of the financial system in Singapore; and

(iv) any other matter that the Authority considers relevant; and

15 (d) the transfer involves the whole or part of the banking business of the transferor.

20 (2) Where the transferor is a bank incorporated 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 reference to depositors in subsection (1)(c)(i) shall be construed accordingly.

25 (3) The Authority may, before making a determination, appoint one or more persons to perform an independent assessment of the proposed transfer of the business (or any part thereof) of the transferor, including the compensation, if any, that should be paid by the transferee, and furnish a report on the transfer.

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

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

35 (6) A determination may provide for the transfer of the business (or any part thereof) of the transferor to a transferee who is not licensed to carry on banking business in Singapore on terms that the transfer shall take effect only in the event of the transferee becoming so licensed.

(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 —

5 (a) publish in the *Gazette* and in such newspaper or newspapers as the Minister may determine a notice of his intention to approve the determination, specifying such particulars as the Minister considers appropriate; and

10 (b) cause to be given to the transferor notice in writing of his intention to approve the determination, specifying such particulars as the Minister considers appropriate and the date by which the transferor may make written representations to the Minister.

15 (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.

20 (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 —

25 (a) approve the determination without modification;

(b) approve the determination subject to any modification he considers appropriate if the board of directors of the transferee has agreed to the modification; or

(c) refuse to approve the determination.

30 (13) Any approval under subsection (12) shall be subject to such conditions as the Minister may determine.

(14) A determination, the approval of a determination under this section or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act.

Certificate of transfer

55F.—(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 the Minister in the certificate.

5 (2) The certificate shall specify such information as may be prescribed.

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

10 (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;

15 (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;

20 (f) the compensation, if any, to be paid by the transferee to the transferor and the period within which the compensation is to be paid;

25 (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.

30 (5) 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, on or before the date on which the certificate comes into effect.

(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.

5 (7) Where the transferee is not licensed to carry on banking business in Singapore, the transfer of the business (or any part thereof) of the transferor shall not come into effect until the transferee becomes so licensed.

10 (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 —

15 (a) subject to subsection (10), the business (or the part thereof) shall be transferred to and vest in the transferee without other or further assurance, act or deed and the certificate shall have effect according to its tenor and be binding on any person thereby affected;

20 (b) all deeds, bonds, agreements and other arrangements subsisting immediately before that date which relate to the business (or the part thereof) and to which the transferor is a party shall continue in full force and effect, and shall be enforceable by or against the transferee, as from that date as if the transferee had been named therein or had been a party thereto instead of the transferor; and

25 (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 the part thereof) may be continued and shall be enforced by or against the transferee as from that date.

30 (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.

35 (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, the certificate may require the transferor, if the transferee so requires, to 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 of being served with the certificate —

(a) a copy of the certificate with the Registrar; and

(b) 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 a 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 fails to comply with 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 a transferee which fails to comply with subsection (13) and every officer of the transferor or the transferee who fails to take all reasonable steps to secure compliance by the transferor or the transferee, as the case may be, 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.

Moratorium, avoidance of disposition of property, etc.

5 **55G.**—(1) Notwithstanding section 54(2) and subject to section 55O, no resolution shall be passed, and no order shall be made, for the winding up of a transferor during the period beginning with the date on which the Minister publishes the notice under section 55E(8) in the *Gazette* on the transfer of the business (or any part thereof) of the transferor or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under section 55F(5) in the *Gazette* on the transfer of the business (or any part
10 thereof) of the transferor and ending with —

- (a) the date on which the certificate comes into effect; or
- (b) where the certificate specifies a different date for the coming into effect of the transfer of any specified business, the last date on which the transfer of every specified business has
15 come into effect.

(2) Notwithstanding section 54(2) and subject to section 55O, during the period beginning with the date on which the Minister publishes the notice under section 55E(8) in the *Gazette* on the transfer of a specified business of a transferor or, where the notice is
20 not published in the *Gazette*, the date on which the Authority publishes the certificate under section 55F(5) in the *Gazette* on the transfer of the specified business and ending with 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;
25
- (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 repossess from the transferor the specified business under any hire-purchase agreement, chattels leasing agreement or retention of title agreement;
30 and
- (d) any sale, transfer, assignment or other disposition of the specified business shall be void.
35

Division 3 — Compulsory transfer of shares in bank

Interpretation of this Division

55H. In this Division, unless the context otherwise requires —

“12% controller” has the same meaning as in section 15B(3);

5 “20% controller” has the same meaning as in section 15B(3);

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

“certificate” means a certificate of transfer issued by the Minister under section 55J(1);

10 “determination” means a determination of the Authority under section 55I(1);

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

15 “transferee” means a person to whom a transferor’s shares are, or are to be, or are proposed to be, transferred under this Division;

“transferor” means a shareholder of a bank incorporated in Singapore, whose shares in the bank are, or are to be, or are proposed to be, transferred under this Division.

20 **Compulsory transfer of shares**

55I.—(1) The Authority may make a determination that all or any of the shares held by a transferor in a bank incorporated in Singapore shall be transferred to a transferee if —

25 (a) any ground exists for the Authority to exercise any power under section 49(2) in relation to the bank, whether or not the Authority has exercised the power;

(b) the transferee or, where the transferee is a corporation, its board of directors has consented to the transfer; and

30 (c) the Authority is satisfied that the transfer is appropriate, having regard to —

- (i) the interests of the depositors of the bank given priority and the order of priority of each class of its depositors under section 62;
- 5 (ii) where the transferee is a bank in Singapore, the interests of the depositors of the transferee given priority and the order of priority of each class of its depositors under section 62;
- (iii) the stability of the financial system in Singapore; and
- (iv) any other matter that the Authority considers relevant.
- 10 (2) The Authority may, before making a determination, appoint one or more persons to perform an independent assessment of the proposed transfer of shares, including the compensation, if any, that should be paid by the transferee, and furnish a report on the transfer.
- (3) The remuneration and expenses of any person appointed under
15 subsection (2) shall be paid by the bank.
- (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
20 determination to the Minister for his approval.
- (6) Before approving the determination, the Minister shall, unless
25 he decides that it is not practicable or desirable to do so, cause to be given to the transferor notice of his intention to approve the determination by publication in the *Gazette* and in such newspaper or newspapers as the Minister may determine, specifying such
particulars as the Minister considers appropriate and the date by
which the transferor may make written representations to the
Minister.
- (7) In determining the period within which written representations
30 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.

- (a) the transfer to the transferee of all or any of the shares of the transferor in the bank;
- (b) any share in the bank which is held by the transferor as trustee;
- 5 (c) the compensation, if any, to be paid by the transferee to the transferor and the period within which the compensation 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.

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

20 (6) Notwithstanding any written law or rule of law, upon the certificate coming into effect, 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 the certificate shall have effect according to its tenor and be binding on any person thereby affected.

25 (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, or the bankruptcy or winding up, or the mental or other incapacity, of the transferor.

30 (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 substantial shareholder, a 12% controller or a 20% controller of the bank, the transferee shall, upon the coming into effect of the certificate —

(a) be deemed to have obtained the approval of the Minister under section 15A or 15B, as the case may be, in respect of the shares; and

5 (b) not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the bank notwithstanding the provisions of the Companies Act (Cap. 50) or the Take-over Code.

10 (10) A transferor or a transferee who contravenes any provision in the certificate shall be guilty of an offence and shall be liable on conviction —

15 (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

20 (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 —

25 (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.

30 (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.

35 (13) Notwithstanding section 54(2) and subject to section 55O, during the period beginning with the date on which the Minister publishes the notice under section 55I(6) in the *Gazette* on the transfer of any share in a bank 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 with 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;
- 5 (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;
- 10 (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 bank shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the share unless the Minister expressly permits such issue or offer;
- 15 (f) no payment shall be made by the bank 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 bank;
- 20 (h) no proceedings shall be commenced or continued against the bank in respect of any business of the bank;
- (i) no execution, distress or other legal process shall be commenced, levied or continued against any property of bank;
- 25 (j) no steps shall be taken to enforce any security over any property of the bank; and
- (k) any sale, transfer, assignment or other disposition of any property of the bank shall be void.

Division 4 — Compulsory restructuring of share capital of bank

30 **Interpretation of this Division**

55K. In this Division, unless the context otherwise requires —

“12% controller” has the same meaning as in section 15B(3);

“20% controller” has the same meaning as in section 15B(3);

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

5 “certificate” means a certificate of restructuring issued by the Minister under section 55M(1);

“determination” means a determination of the Authority under section 55L(1) or (2);

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

10 “subscriber” means any person to whom shares in a bank incorporated in Singapore are, or are to be, or are proposed to be, issued under this Division.

Compulsory restructuring of share capital

15 **55L.**—(1) If any ground exists for the Authority to exercise any power under section 49(2) in relation to a bank incorporated in Singapore, whether or not the Authority has exercised the power, and the Authority is of the opinion that —

20 (a) the liability on any of the shares of the bank in respect of share capital not paid up ought to be extinguished or reduced; or

(b) any paid-up share capital of the bank is lost or unrepresented by the available assets of the bank,

25 the Authority may make a determination that the share capital of the bank shall be reduced by the cancellation of the whole or any part of its share capital not paid up, or of its paid-up share capital which is lost or unrepresented by its available assets.

(2) The Authority may, in writing, make a determination that shares shall be issued by a bank incorporated in Singapore to a subscriber if —

30 (a) any ground exists for the Authority to exercise any power under section 49(2) in relation to the bank, whether or not the Authority has exercised the power;

(b) the subscriber or, where the subscriber is a corporation, its board of directors has consented to subscribe for the shares; and

(c) the Authority is satisfied that the issue of shares is appropriate, having regard to —

(i) the interests of the depositors of the bank given priority and the order of priority of each class of its depositors under section 62;

(ii) where the subscriber is a bank in Singapore, the interests of the depositors of the subscriber given priority and the order of priority of each class of its depositors under section 62;

(iii) the stability of the financial system in Singapore; and

(iv) any other matter that the Authority considers relevant.

(3) The Authority may, before making a determination, appoint one or more persons to perform an independent assessment of the value of the assets of the bank and, in the case of a determination to be made under subsection (2), the consideration, if any, that should be paid by the subscriber, and furnish a report on the restructuring.

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

(5) The Authority shall serve a copy of any report furnished under subsection (3) on the bank and, 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 may be determined by the Minister a notice of his intention to approve the determination, specifying such particulars as the Minister considers appropriate and the date by which any shareholder of the bank may make written representations to the Minister; and

(b) cause to be given to the bank notice in writing of his intention to approve the determination, specifying such particulars as the Minister considers appropriate and the date by which the bank may make written representations to the Minister.

5

(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 to be effected expeditiously in the interest of the stability of the financial system in Singapore.

10

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

15

(10) Where the determination under subsection (2), if approved, will result in the subscriber becoming a substantial shareholder, a 12% controller or a 20% controller of the bank, the Minister shall not approve the determination unless —

(a) the Authority is satisfied that —

(i) the subscriber is a fit and proper person; and

20

(ii) having regard to the likely influence of the subscriber, the bank will or will continue to conduct its business prudently and comply with the provisions of this Act; and

(b) the Minister is satisfied that it is in the national interest to do so.

25

(11) The Minister may —

(a) approve the determination without modification;

(b) approve the determination —

30

(i) in the case of a determination under subsection (1), subject to any modification he considers appropriate; or

(ii) in the case of a determination under subsection (2), subject to any modification he considers appropriate if the subscriber or, where the subscriber is a corporation, its board of directors has agreed to the modification; or

(c) refuse to approve the determination.

(12) Any approval under subsection (11) shall be subject to such conditions as the Minister may determine.

(13) A determination, the approval of a determination under this section or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act.

Certificate of restructuring

55M.—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of restructuring which shall come into effect on the date specified by the Minister in the certificate.

(2) The certificate shall specify such information as may be prescribed.

(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 bank not paid up;

(b) the cancellation of the whole or any part of the paid-up share capital of the bank lost or unrepresented by the available assets of the bank;

(c) the shares to be issued by the bank to the subscriber, the compensation, if any, to be paid by the subscriber for the shares and the period within which the compensation is to be paid;

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

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

(6) Notwithstanding any written law or rule of law (including anything in the memorandum or articles of association of the bank) —

5 (a) where the certificate provides for a reduction of the share capital of the bank, upon the certificate coming into effect, the reduction of the share capital shall take effect and the certificate shall have effect according to its tenor without other or further act by the bank and be binding on any person thereby affected; and

10 (b) where the certificate provides for the issue of shares by the bank, the bank shall issue the shares in accordance with the certificate and the certificate shall have effect according to its tenor and be binding on any person thereby affected.

15 (7) Where the issue of shares results in the subscriber becoming a substantial shareholder, a 12% controller or a 20% controller of the bank, the subscriber shall, upon the coming into effect of the certificate —

20 (a) be deemed to have obtained the approval of the Minister under section 15A or 15B, as the case may be, in respect of the shares; and

(b) not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the bank notwithstanding the provisions of the Companies Act (Cap. 50) or the Take-over Code.

25 (8) The bank shall lodge a copy of the certificate with the Registrar within 7 days of being served with the certificate.

(9) A bank or a subscriber that contravenes any provision in the certificate shall be guilty of an offence and shall be liable on conviction —

30 (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;
35 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.

5 (10) Where a subscriber is charged with an offence under subsection (9), it shall be a defence for the subscriber to prove that —

(a) he was not aware he had contravened any provision in the certificate; and

10 (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 subscriber charged with an offence under subsection (9) that he did not intend to or did not knowingly contravene any provision in the certificate.

15 (12) Any bank which fails to comply with subsection (8) and every officer of the bank who fails to take all reasonable steps to secure compliance by the bank 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
20 exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(13) Notwithstanding section 54(2) and subject to section 55O, during the period beginning with the date on which the Minister publishes the notice under section 55L(7) in the *Gazette* on the
25 restructuring of the share capital of a bank 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 with the date on which the certificate comes into effect —

30 (a) no resolution shall be passed, and no order shall be made, for the winding up of the bank;

(b) no proceedings shall be commenced or continued against the bank in respect of any business of the bank;

35 (c) no execution, distress or other legal process shall be commenced, levied or continued against any property of the bank;

- (d) no steps shall be taken to enforce any security over any property of the bank; and
- (e) any sale, transfer, assignment or other disposition of any property of the bank shall be void.

5

Division 5 — Miscellaneous

Power to obtain information under this Part

10 **55N.**—(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 that the Minister or the Authority may reasonably require for the discharge of his or its duties or functions, or the exercise of his or its powers, under this Part.

(2) Any person who —

- 15 (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,

20 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.

Cessation of moratorium, etc., under this Part

25 **55O.**—(1) The Minister may, by order published in the *Gazette*, direct that section 55G, 55J(13) or 55M(13), or any provision thereof, shall cease to apply to any bank, any business (or any part thereof) of any bank or any share in any bank and on the date specified by the Minister in the order, the relevant section, or the provision thereof, shall cease to apply to the bank, the business (or the part thereof) of
30 the bank or the share in the bank, as the case may be.

(2) In this section, “business” includes affairs, property, right, obligation and liability.

Regulations for this Part

5 **55P.** 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.”.

Repeal and re-enactment of Part VIII

47. Part VIII of the Banking Act is repealed and the following Part substituted therefor:

“PART VIII

CREDIT CARD AND CHARGE CARD BUSINESSES

Interpretation of this Part

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

15 “advertisement” means the dissemination or conveyance of information, or an invitation or solicitation by any means or in any form, including by means of —

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of posters or notices;
- (c) circulars, handbills, brochures, pamphlets, books or other documents;
- (d) letters addressed to individuals or bodies;
- (e) photographs or cinematograph films; or
- (f) sound broadcasting, television, the Internet or other media;

25 “credit card” or “charge card” means any article, whether in physical or electronic form, of a kind commonly known as a credit card or charge card or any similar article intended for use in purchasing goods or services on credit, whether or not the card is valid for immediate use;

30 “licence” means a licence to carry on the business of issuing credit cards or charge cards in Singapore;

“licensee” means a person who is granted a licence under section 57B.

Restrictions on issuing and promoting credit card and charge card

5 **57.**—(1) No person shall, in the course of carrying on (whether in Singapore or elsewhere) a business of issuing credit cards or charge cards, accept or receive in Singapore any application for a credit card or charge card unless he is a licensee.

10 (2) No person shall accept or receive in Singapore any application for a credit card or charge card on behalf of any person other than a licensee or a person specified in subsection (9).

15 (3) No person shall, whether in Singapore or elsewhere, offer or invite or issue any advertisement containing any offer or invitation to the public or any section of the public in Singapore to apply for a credit card or charge card except where the credit card or charge card is to be issued by a licensee or a person specified in subsection (9).

20 (4) Subject to subsection (5), any advertisement containing information which is intended or might reasonably be presumed to be intended to lead, directly or indirectly, to an application for a credit card or charge card shall be treated as an advertisement referred to in subsection (3).

(5) Any advertisement issued outside Singapore shall not be treated as an advertisement referred to in subsection (3) if it is made available —

25 (a) in a newspaper, magazine, journal or other periodical published and circulating principally outside Singapore;

(b) in a sound or television broadcast transmitted principally for reception outside Singapore; or

30 (c) by any other means of broadcasting or communication principally for circulation or reception outside Singapore.

(6) For the purposes of subsection (3), in determining whether an offer, invitation or advertisement is made or issued to the public or any section of the public in Singapore, regard shall be had to such considerations as may be prescribed.

(7) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction —

- 5 (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction; or
- 10 (b) in any other case, to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(8) A person whose business it is to publish or to arrange for the publication of advertisements shall not be guilty of an offence under subsection (7) if he proves that —

- 15 (a) he received the advertisement for publication in the ordinary course of his business;
- (b) the matters contained in the advertisement were not, wholly or in part, devised or selected by him or by any person under his direction or control; and
- 20 (c) he did not know and had no reason for believing that the publication of the advertisement would constitute an offence.

(9) Subsection (1) shall not apply to —

- (a) any bank in Singapore; and
- 25 (b) such other person or class of persons as may be prescribed, subject to such conditions as may be prescribed.

Application to be licensed credit card or charge card issuer

30 **57A.**—(1) An application for a licence to carry on the business of issuing credit cards or charge cards in Singapore shall be made in such manner as may be required by the Authority.

(2) An application under subsection (1) shall be accompanied by a non-refundable application fee of a prescribed amount, which shall be paid in the manner specified by the Authority.

(3) The Authority may require an applicant to furnish it with such information as it considers necessary in relation to the application.

Requirements for grant of licence

5 **57B.**—(1) The Authority may grant a licence subject to such conditions or restrictions as it thinks fit, or refuse to grant a licence.

(2) The Authority may at any time add to, vary or revoke any condition or restriction of a licence.

10 (3) Any licensee who contravenes any condition or restriction imposed by the Authority under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Licence fees

15 **57C.**—(1) Every licensee shall pay to the Authority such licence fees as may be prescribed.

(2) Any licence fee paid to the Authority under this Act shall not be refunded or remitted if, during the period to which the licence fee relates —

20 (a) the licence is revoked under section 57E; or

(b) the licensee ceases to carry on the business of issuing credit cards or charge cards in Singapore.

(3) Subject to subsection (2), the Authority may, where it considers appropriate, refund or remit the whole or part of any licence fee paid or payable to it.

25

Power of Authority to issue written directions

57D.—(1) The Authority may, if it thinks necessary or expedient in the public interest, issue written directions, either of a general or specific nature, to —

30 (a) any licensee or class of licensees; or

(b) any person or class of persons specified in section 57(9),

to comply with such requirements as the Authority may specify in the directions, or for any other purpose.

(2) For the avoidance of doubt, any direction issued under subsection (1) shall be deemed not to be subsidiary legislation.

5 (3) The Authority may at any time vary or revoke any direction issued under subsection (1).

(4) Any person who fails to comply with any direction issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Revocation of licence

57E.—(1) The Authority may revoke a licence if —

- 15 (a) the licensee has contravened —
- (i) any provision of this Part;
 - (ii) any regulation made by the Authority with respect to the operations or activities of issuers of credit cards or charge cards;
 - 20 (iii) any condition or restriction imposed by the Authority under section 57B; or
 - (iv) any direction issued by the Authority under section 57D;
- (b) it appears to the Authority that the licensee is carrying on its business in a manner that is contrary to the public interest;
- 25 (c) any information or document furnished by the licensee to the Authority is false or misleading; or
- (d) the licensee ceases to carry on the business for which it was licensed.

30 (2) Upon the revocation of a licence under this section, the licensee shall not permit any credit card or charge card issued by the licensee prior to the revocation to be used to purchase any goods or services on credit.

(3) Any revocation of a licence shall not operate so as to affect any right, obligation or liability arising under any transaction before the revocation of the licence on a credit card or charge card issued by the licensee.

5 (4) Any person who, without reasonable excuse, contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after
10 conviction.

Inspection and investigation

57F.—(1) The Authority may from time to time inspect, under conditions of secrecy, the books of a licensee for the purpose of ensuring that —

- 15 (a) any provision of this Part;
- (b) any regulation made by the Authority with respect to the operations or activities of issuers of credit cards or charge cards;
- 20 (c) any condition or restriction imposed by the Authority under section 57B; or
- (d) any direction issued by the Authority under section 57D,
- has been or is being complied with.

(2) The Authority may at any time make an investigation, under conditions of secrecy, of the books of any licensee, if it has reason to
25 believe that the licensee is contravening —

- (a) any provision of this Part;
- (b) any regulation made by the Authority with respect to the operations or activities of issuers of credit cards or charge cards;
- 30 (c) any condition or restriction imposed by the Authority under section 57B; or
- (d) any direction issued by the Authority under section 57D.

(3) For the purposes of an inspection or investigation under this section, the licensee 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 or investigation.

5 (4) The books referred to in subsection (3) shall not be required to be produced at such times or at such places as shall unduly interfere with the proper conduct of the normal daily business of the licensee.

(5) The Authority may appoint an auditor, other than the auditor appointed by the licensee or by the Authority under section 58, to exercise the powers of the Authority under subsection (1) or (2).

10 (6) The remuneration and expenses of any auditor appointed under subsection (5) shall be paid by the licensee.

(7) Any licensee who, without reasonable excuse, contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Non-application of this Part

20 **57G.** This Part shall not apply to any credit card or charge card issued or to be issued by a person if —

- (a) the credit card or charge card is for purchasing goods or services on credit with and from the person only and the person bears the whole credit risk of the cardholder;
- 25 (b) the aggregate credit limit that is granted by the person and, where the person is a corporation, the related corporations of the person to the cardholder does not exceed \$500; or
- (c) the issue of the credit card or charge card satisfies such other criteria as may be prescribed.”.

Amendment of section 62

30 **48.** Section 62 of the Banking Act is amended —

- (a) by deleting paragraphs (c) to (f) of subsection (1) and substituting the following paragraphs:

“(c) thirdly, deposit liabilities incurred by the bank with non-bank customers other than those specified in paragraphs (b) and (d);

(d) fourthly, deposit liabilities incurred by the bank with non-bank customers when operating an Asian Currency Unit approved under section 77.”; and

(b) by deleting subsections (3) and (4) and substituting the following subsections:

“(3) For the purposes of section 61 and this section, “deposit liabilities of a bank” means the liabilities of the bank in respect of —

(a) sums of money paid to the bank on terms —

(i) under which they will be repaid, with or without interest or at a premium, or with any consideration in money or money’s worth, either on demand or at a time or in circumstances agreed by or on behalf of the persons making the payments and the bank; and

(ii) which are not referable to the provision of property or services or to the giving of security; and

(b) such other product as may be prescribed,

but does not include —

(i) in the case of a bank incorporated in Singapore, liabilities of the bank arising from loans —

(A) granted by creditors whose claims are fully subordinated to the claims of all un-subordinated creditors; and

(B) the terms of which comply with the criteria for the treatment of the liabilities as capital in the computation of the bank’s capital adequacy ratio under section 10, whether or not the entire amount of such liabilities is treated as capital in the computation; and

(ii) liabilities of the bank in respect of such other product as may be prescribed.

(4) For the purposes of subsection (3)(a)(ii), money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if —

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of the contract; or

(c) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(4A) For the avoidance of doubt, any liability of a bank excluded from the definition of “deposit liabilities of a bank” in subsection (3) shall rank *pari passu* with all other unsecured liabilities of the bank.”.

New section 62A

49. The Banking Act is amended by inserting, immediately after section 62, the following section:

“Priorities for set-off in winding up of bank

62A. Notwithstanding any written law or rule of law relating to the winding up of companies, in the event of the winding up of a bank in Singapore, a liquidator shall first set-off a depositor’s liabilities to the bank (whether or not incurred in the Asian Currency Unit of the bank) against any deposit of the depositor placed with the bank other than with the Asian Currency Unit of the bank.”.

Amendment of section 65

50. Section 65 of the Banking Act is amended —

(a) by deleting the words “director, manager, secretary or other officer” and substituting the words “executive officer, secretary or other officer (other than a director)”;

(b) by deleting paragraph (b) and substituting the following paragraph:

“(b) who has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly; or”;

(c) by re-numbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Any person who contravenes subsection (1) 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.”; and

(d) by deleting the word “directors” in the section heading and substituting the words “executive officers”.

Repeal and re-enactment of section 66

51. Section 66 of the Banking Act is repealed and the following section substituted therefor:

“Offences by director and executive officers of bank and false or misleading information

66.—(1) Subject to subsection (5), any director or executive officer of a bank in Singapore who fails to take all reasonable steps to secure compliance by the bank with any provision of this Act or any other written law applicable to banks in Singapore shall, if such failure is not already an offence under any other provision of this Act, 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.

(2) Any person who —

(a) furnishes the Minister or the Authority with any information or document under or for the purposes of any provision of this Act which is false or misleading in a material particular;
and

(b) does not use due care to ensure that the information or document is not false or misleading in any material particular,

shall, if the furnishing of such information or document which is false or misleading in a material particular is not already an offence under any other provision of this Act, 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.

(3) In any proceedings against a person under subsection (1) or (2), it shall be a defence for him to prove that —

(a) he had reasonable grounds for believing that a competent and reliable person was charged with the duty of securing compliance with the provision of this Act or any other written law applicable to banks in Singapore, or with the duty of ensuring that the information or document is not false or misleading in any material particular, as the case may be; and

(b) the person was in a position to discharge that duty.

(4) A person shall not be sentenced to imprisonment for any offence under subsection (1) or (2) unless, in the opinion of the court, he committed the offence wilfully.

(5) Notwithstanding subsection (1), no director or executive officer shall be guilty of an offence under that subsection where the non-compliance by the bank with any provision of this Act or any other written law applicable to banks results in the imposition of only a financial penalty on the bank.”.

Amendment of section 67

52. Section 67 of the Banking Act is amended by deleting the word “manager” and substituting the words “executive officer”.

Repeal and re-enactment of section 69

53. Section 69 of the Banking Act is repealed and the following section substituted therefor:

“Composition of offences

5 **69.**—(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 that is prescribed for the offence.

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

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

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

Amendment of section 74

54. Section 74 of the Banking Act is amended —

(a) by deleting paragraphs (b) and (c) and substituting the following paragraphs:

20 “(b) any remuneration and expenses payable by the bank to —

 (i) an auditor appointed under section 44A(3);

 (ii) a statutory adviser appointed under section 49;

 (iii) a statutory manager appointed under section 49;

25 (iv) the Authority or any person employed or authorised by the Authority under section 3 in relation to the Authority assuming control of any business of the bank under section 49; and

30 (v) any person appointed to perform any independent assessment under Part VIIA; and

 (c) any financial penalty payable by the bank under this Act.”; and

(b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

“*(2)* Any remuneration and expenses payable by a licensee defined in section 56 to an auditor appointed under section 57F(5) shall be recoverable as a civil debt due to the Authority from the licensee.

(3) Notwithstanding any provision in the Limitation Act (Cap. 163), an action to recover any financial penalty recoverable by virtue of this section shall not be brought after the expiration of 3 years from the date on which the cause of action accrued.”.

Amendment of section 74A

55. Section 74A of the Banking Act is amended —

(a) by deleting the words “penalty interest charge” wherever they appear and in the section heading and substituting in each case the words “financial penalty”; and

(b) by deleting the words “, 39(7), 40(3) or 77A(3)” and substituting the words “or 39(7)”.

New section 75B

56. The Banking Act is amended by inserting, immediately after section 75A, the following section:

“Electronic service

75B.—*(1)* The Authority may provide an electronic service for the service of any document that is required or authorised by this Act to be served on any person.

(2) For the purposes of the electronic service, the Authority may assign to any person —

(a) an authentication code; and

(b) an account with the electronic service.

(3) Notwithstanding section 75A, where any person has given his consent for any document to be served on him through the electronic service, the Authority may serve the document on that person by

transmitting an electronic record of the document to that person's account with the electronic service.

(4) Where a person has given his consent for a document to be served on him through the electronic service, the document shall be deemed to have been served at the time when an electronic record of the document enters his account with the electronic service.

(5) Notwithstanding any other written law, in any proceedings under this Act —

(a) an electronic record of any document that was served through the electronic service; or

(b) any copy or print-out of that electronic record,

shall be admissible as evidence of the facts stated or contained therein if that electronic record, copy or print-out —

(i) is certified by the Authority to contain all or any information served through the electronic service in accordance with this section; and

(ii) is duly authenticated in the manner specified in subsection (7) or is otherwise authenticated in the manner provided in the Evidence Act (Cap. 97) for the authentication of computer output.

(6) For the avoidance of doubt —

(a) an electronic record of any document that was served through the electronic service; or

(b) any copy or print-out of that electronic record,

shall not be inadmissible in evidence merely because the document was served without the delivery of any equivalent document or counterpart in paper form.

(7) For the purposes of this section, a certificate —

(a) giving the particulars of —

(i) any person whose authentication code was used to serve the document; and

(ii) any person or device involved in the production or transmission of the electronic record of the document, or the copy or print-out thereof;

(b) identifying the nature of the electronic record or copy or print-out thereof; and

(c) purporting to be signed by the Authority or by a person occupying a responsible position in relation to the operation of the electronic service at the relevant time,

shall be sufficient evidence that the electronic record, copy or print-out has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(8) Where the electronic record of any document, or a copy or print-out of that electronic record, is admissible under subsection (5), it shall be presumed, until the contrary is proved, that the electronic record, copy or print-out accurately reproduces the contents of that document.

(9) The Authority may make regulations which are necessary or expedient for carrying out the purposes of this section, including regulations prescribing the procedure for the use of the electronic service, including the procedure in circumstances where there is a breakdown or interruption of the electronic service.

(10) In this section —

“account with the electronic service”, in relation to any person, means a computer account within the electronic service which is assigned by the Authority to that person for the storage and retrieval of electronic records relating to that person;

“authentication code”, in relation to any person, means an identification or identifying code, a password or any other authentication method or procedure which is assigned to that person for the purposes of identifying and authenticating the access to and use of the electronic service by that person;

“document” includes notice and order;

“electronic record” has the same meaning as in section 2 of the Electronic Transactions Act (Cap. 88).”.

Amendment of section 76

57. Section 76 of the Banking Act is amended by inserting, immediately after the words “activity or business”, the words “(other than an activity or a business referred to in Part VIII)”.

New section 76A

58. The Banking Act is amended by inserting, immediately after section 76, the following section:

“Authority’s powers of exemption

5 **76A.**—(1) The Authority may, by regulations, exempt any person or class of persons from all or any of the provisions of this Act, subject to such conditions as may be prescribed.

10 (2) The Authority may, on the application of any person, by notice in writing, exempt the person from all or any of the provisions of this Act or any direction issued or requirement imposed by the Authority under this Act if the Authority considers it appropriate to do so in the circumstances of the case.

 (3) An exemption under subsection (2) —

15 (a) may be granted subject to such conditions as the Authority may specify by notice in writing; and

 (b) need not be published in the *Gazette*.

 (4) The Authority may at any time —

 (a) revoke any exemption granted; or

20 (b) add to, vary or revoke any condition imposed, under this section.”.

Amendment of section 77

59. Section 77 of the Banking Act is amended by deleting subsection (4) and substituting the following subsection:

“**(4)** If the person referred to in subsection (3) is —

25 (a) a merchant bank (whether incorporated in or outside Singapore) approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186), or a corporation incorporated outside Singapore, it shall not be subject to —

30 (i) any requirement imposed under section 29(1) in relation to any person or group of persons specified in paragraphs (a) and (b) of that provision; and

 (ii) sections 31, 33, 38 and 39; or

- (b) a corporation incorporated in Singapore (other than a merchant bank specified in paragraph (a)), it shall not be subject to sections 38 and 39.”.

New section 77A

- 5 **60.** The Banking Act is amended by inserting, immediately after section 77, the following section:

“Amendment of Schedules

77A.—(1) The Minister may from time to time, by order published in the *Gazette*, amend, add to or vary the Fourth or Fifth Schedule.

- 10 (2) The Minister may, in any order under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

(3) Any order made under subsection (1) shall be presented to Parliament as soon as possible after publication in the *Gazette*.”.

Amendment of section 78

- 15 **61.** Section 78 of the Banking Act is amended —

- (a) by deleting subsection (2) and substituting the following subsection:

20 “(2) Without prejudice to the generality of subsection (1), regulations may be made for or with respect to the operations or activities of any person issuing a credit card or charge card including the minimum qualifying criteria for the issue of a credit card or charge card, the standards to be maintained in the conduct of the credit card or charge card business and the duties to be undertaken when soliciting or issuing a credit card or charge card”; and

- (b) by deleting paragraph (a) of subsection (3) and substituting the following paragraph:

30 “(a) the corporate governance, and the appointment and removal of principal officers, of banks in Singapore, their related corporations or other companies in which the banks acquire or hold, directly or indirectly, a major stake as defined in section 32(7); and”.

Repeal and re-enactment of First Schedule

62. The First Schedule to the Banking Act is repealed and the following Schedule substituted therefor:

“FIRST SCHEDULE

5

Section 79

BANKS

1. ABN AMRO (formerly known as Algemene Bank Nederland N.V)
2. Bangkok Bank Public Company Limited (formerly known as Bangkok Bank, Limited)
- 10 3. Bank of America, National Association (formerly known as Bank of America National Trust and Savings Association)
4. Bank of China Limited (formerly known as Bank of China)
5. The Bank of East Asia, Limited
6. Bank of India
- 15 7. Bank of Singapore, Limited
8. The Bank of Tokyo-Mitsubishi UFJ, Ltd (formerly known as The Bank of Tokyo, Limited)
9. Calyon (formerly known as Banque Indosuez)
10. Citibank N.A. (formerly known as First National City Bank)
- 20 11. DBS Bank Ltd (formerly known as The Development Bank of Singapore, Limited)
12. Far Eastern Bank, Limited
13. HL Bank (formerly known as Kwong Lee Bank)
14. The Hongkong and Shanghai Banking Corporation
- 25 15. Indian Bank
16. Indian Overseas Bank
17. JPMorgan Chase Bank, N.A. (formerly known as The Chase Manhattan Bank National Association)
18. Malayan Banking, Berhad
- 30 19. P.T. Bank Negara Indonesia (Persero) Tbk (formerly known as Bank Negara Indonesia 1946)
20. Oversea-Chinese Banking Corporation, Limited

21. RHB Bank Berhad (formerly known as United Malayan Banking Corporation, Berhad)
22. Southern Bank Berhad (formerly known as Ban Hin Lee Bank, Berhad)
23. Standard Chartered Bank (formerly known as The Chartered Bank)
- 5 24. Sumitomo Mitsui Banking Corporation (formerly known as The Mitsui Bank, Limited)
25. UCO Bank (formerly known as United Commercial Bank)
26. United Overseas Bank, Limited.”.

Amendment of Third Schedule

10 **63.** The Third Schedule to the Banking Act is amended —

(a) by deleting item 8 of Part I and substituting the following item:

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purpose for which customer information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
<p>“8. Where the bank is a bank incorporated outside Singapore or a foreign-owned bank incorporated in Singapore, the disclosure is strictly necessary for compliance with a request made by its parent supervisory authority.</p>	<p>The parent supervisory authority of the bank incorporated outside Singapore or the foreign-owned bank incorporated in Singapore, as the case may be.</p>	<p>(a) No deposit information shall be disclosed to the parent supervisory authority.</p> <p>(b) The parent supervisory authority is prohibited by the laws applicable to it from disclosing the customer information obtained by it to any person unless compelled to do so by the laws or courts of the</p>

country or
territory
where it is
established. ”;

(b) by deleting item 1 of Part II and substituting the following item:

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purpose for which customer information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
<p>“1. Disclosure is solely in connection with the performance of duties as an officer or a professional adviser of the bank.</p>	<p>Any —</p> <p>(a) officer of the bank in Singapore;</p> <p>(b) officer designated in writing by the head office of the bank in Singapore or, in the case of a foreign-owned bank incorporated in Singapore, its parent bank;</p> <p>(c) lawyer, consultant or other professional adviser appointed or engaged by the bank in Singapore under a contract for service;</p> <p>(d) auditor appointed or engaged by the bank in</p>	<p>No disclosure shall be made to any auditor referred to in paragraph (d), other than an auditor appointed or engaged by the bank in Singapore, unless the auditor has given to the bank a written undertaking that he will not disclose any customer information obtained by him in the course of the performance of audit to any person except the head office of the bank in Singapore or, in the case of a foreign owned-bank incorporated in Singapore, its parent bank.</p>

Singapore, the head office of the bank in Singapore or, in the case of a foreign owned-bank incorporated in Singapore, its parent bank, under a contract for service. ”;

- (c) by deleting the word “or” at the end of paragraph (a)(iii) of item 2 of Part II;
- (d) by inserting, immediately after the words “incorporated in Singapore” in paragraph (b) of item 2 of Part II, the words “, not being a foreign-owned bank incorporated in Singapore”;
- (e) by deleting the full-stop at the end of paragraph (b)(ii) of item 2 of Part II and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(c) a foreign-owned bank incorporated in Singapore —
 (i) the parent bank; or
 (ii) any related corporation of the bank designated in writing by the parent bank.”; and

- (f) by inserting, immediately after item 4 of Part II, the following items:

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Purpose for which customer information may be disclosed</i>	<i>Persons to whom information may be disclosed</i>	<i>Conditions</i>
“4A. Disclosure is solely in connection with the transfer or proposed transfer of the business of the bank to a company under Division 1 or 2 of Part VIIA,	Any — (a) transferor or transferee, defined in section 55A or 55D; (b) person affected by the transfer;	

- whether or not the transfer is subsequently carried out or completed.
- (c) professional adviser appointed by any person referred to in paragraph (a) or (b); or
 - (d) independent assessor appointed by the Minister or the Authority under section 55B or by the Authority under 55E.
- 4B. Disclosure is solely in connection with the transfer or proposed transfer of the shares in the bank under Division 3 of Part VIIA, whether or not the transfer is subsequently carried out or completed.
- Any —
 - (a) transferor or transferee, defined in section 55H;
 - (b) professional adviser appointed by the transferor or transferee; or
 - (c) independent assessor appointed by the Authority under section 55I.
- 4C. Disclosure is solely in connection with the restructuring or proposed restructuring of the share capital of the bank under Division 4 of Part VIIA, whether or
- Any —
 - (a) shareholder of the bank;
 - (b) subscriber defined in section 55K;
 - (c) professional adviser

not the restructuring is carried out or completed.

appointed by the bank or any person referred to in paragraph (a) or (b); or

(d) independent assessor appointed by the Authority under section 55L.

”.

New Fourth and Fifth Schedules

64. The Banking Act is amended by inserting, immediately after the Third Schedule, the following Schedules:

“FOURTH SCHEDULE

Section 3(1A)

SPECIFIED PROVISIONS

1. Section 76A(2).

FIFTH SCHEDULE

Sections 27(4), 28(8), 29(7) and 38(9)

DEFINITIONS IN SECTIONS 27, 28, 29 AND 38

1. For the purposes of sections 27, 28 and 29 and this Schedule —

“affiliate” means —

- (a) in relation to a substantial shareholder of a bank incorporated in Singapore, any corporation which is an associate of the substantial shareholder, other than —
 - (i) the bank and any company in which the bank acquires or holds, directly or indirectly, a major stake;
 - (ii) the parent bank of the bank and any company in which the parent bank acquires or holds, directly or indirectly, a major stake; or

- (iii) where the bank is the subsidiary of a financial holding company, the financial holding company and any company in which the financial holding company acquires or holds, directly or indirectly, a major stake;
- 5 (b) in relation to a substantial shareholder of a financial holding company, any corporation which is an associate of the substantial shareholder, other than —
- (i) the financial holding company and any company in which the financial holding company acquires or holds, directly or indirectly, a major stake; or
- 10 (ii) where the financial holding company is the subsidiary of another financial holding company, the second-mentioned financial holding company and any company in which the second-mentioned holding company acquires or holds, directly or indirectly, a major stake; and
- 15 (c) in relation to a substantial shareholder of a parent bank, any corporation which is an associate of the substantial shareholder, other than the parent bank and any company in which the parent bank acquires or holds, directly or indirectly, a major stake;
- 20 “associate”, in relation to a substantial shareholder, means —
- (a) any corporation in which the substantial shareholder controls the composition of the board of directors;
- (b) any corporation in which the substantial shareholder controls more than half of the voting power;
- 25 (c) any corporation in which the substantial shareholder holds more than half of the total number of issued shares;
- (d) any corporation which is a subsidiary of any other corporation which is an associate by virtue of paragraph (a), (b) or (c);
- 30 (e) any corporation in which the substantial shareholder or any other corporation which is an associate by virtue of paragraph (a), (b), (c) or (d) has, or the substantial shareholder and such other corporation together have, an interest in shares entitling the beneficial owners thereof the right to cast, whether by proxy or in person, not less than 20% but not more than 50% of the total votes able to be cast at a general meeting of the first-mentioned corporation; or
- 35 (f) any corporation (not being a corporation which is an associate by virtue of paragraph (a), (b), (c), (d) or (e)) the policies of which the substantial shareholder or any other corporation which is an associate by virtue of paragraph (a), (b), (c), (d) or (e) is, or the substantial shareholder together with such other corporation are, able to control or influence
- 40 materially;

“counterparty”, in relation to a bank, means a person —

- (a) who has an obligation to the bank as a result of the bank’s contractual or other arrangements; or
- (b) in relation to whom the bank is at risk as a result of the bank’s contractual or other arrangements or investments;

“director”, in relation to a bank in Singapore, includes the spouse, parent and child of a director of the bank;

“director group”, in relation to a bank in Singapore, means a group of persons comprising —

- (a) any director of the bank;
- (b) every firm or limited liability partnership in which the director is a partner, manager, agent, guarantor or surety;
- (c) every individual of whom, and every company of which, the director is a guarantor or surety; and
- (d) every company in which the director —
 - (i) is an executive officer;
 - (ii) owns more than half of the total number of issued shares, whether legally or beneficially;
 - (iii) controls more than half of the voting power; or
 - (iv) controls the composition of the board of directors;

“exposure” means the maximum loss that a bank may incur as a result of the failure of a counterparty to meet any of its obligations;

“family member”, in relation to an individual, means the individual’s spouse, parent or child;

“financial group”, in relation to a bank in Singapore, means a group of companies comprising —

- (a) where the bank is incorporated in Singapore, every company in which the bank acquires or holds, directly or indirectly, a major stake in accordance with section 32(1); or
- (b) where the bank is incorporated outside Singapore, every company in which the bank acquires or holds, directly or indirectly, a major stake in accordance with section 32(1) and which is reflected as an investment in the books of the bank in Singapore in relation to its operations in Singapore;

“parent bank”, in relation to a bank, means a bank incorporated in or outside Singapore of which the first-mentioned bank is a subsidiary;

“substantial shareholder group”, in relation to a bank incorporated in Singapore, means a group of persons comprising —

- (a) any substantial shareholder of the bank;
- (b) every affiliate of the substantial shareholder of the bank; and
- (c) where the bank is a subsidiary of a financial holding company or a parent bank —

- 5 (i) any substantial shareholder of the financial holding company or the parent bank; and
- (ii) every affiliate of the substantial shareholder referred to in sub-paragraph (i).

2. For the purposes of the definitions of “associate” and “substantial shareholder group”, a reference to a substantial shareholder shall, where the substantial shareholder is an individual, include a reference to a family member of the substantial shareholder.

3. For the purposes of the definition of “associate”, a substantial shareholder is deemed to control the composition of the board of directors of a corporation if he has any power, exercisable by him without the consent or concurrence of any other person, to appoint or remove all or a majority of the directors of the corporation.

4. For the purposes of the definition of “director group”, a director of a bank is deemed to control the composition of the board of directors of a company if he has any power, exercisable by him without the consent or concurrence of any other person, to appoint or remove all or a majority of the directors of the company.

5. For the purposes of the definition of “exposure”, in determining the maximum loss that a bank may incur as a result of the failure of a counterparty to meet any of its obligations —

- (a) any collateral available to the bank; and
- (b) any likelihood of recovery from the counterparty in the event of the bankruptcy or winding up, or its equivalent, of the counterparty,

shall not be taken into account.

6. For the purposes of section 38, “liquidity stress situation” means a situation where a bank, having exhausted all reasonable sources or avenues for obtaining funds, is unable to meet its obligations, as and when they fall due, without incurring significant costs or losses.

7. In this Schedule, unless the context otherwise requires —

- (a) any reference to a company in which a bank acquires or holds, directly or indirectly, a major stake is a reference to a company in which the bank has a major stake as defined in section 32(7); and
- 35 (b) any reference to a company in which a financial holding company or a parent bank (referred to in this sub-paragraph as the major stakeholder) acquires or holds, directly or indirectly, a major stake is a reference to a company —
 - (i) in which the major stakeholder has any beneficial interest exceeding 10% of the total number of issued shares in the company;

- (ii) in which the major stakeholder has control over more than 10% of the voting power in the company; or
- (iii) the directors of which are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the major stakeholder, or the policies of which the major stakeholder is in a position to determine.”.

Consequential amendments to Companies Act

65. The Companies Act (Cap. 50) is amended —

(a) by deleting the words “sections 65,” in section 145(6) and substituting the words “sections 50, 54B,”;

(b) by inserting, immediately after subsection (3) of section 210, the following subsection:

“(3A) Where the company is a banking corporation, the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186) shall have the same powers and rights as a creditor of the company under the Companies Act including the right to appear and be heard before a Court in any proceedings under this section, but shall not have the right to vote at any meeting summoned under this section.”;

(c) by deleting the words “The Court” in section 210(4) and substituting the words “Subject to subsection (4A), the Court”;

(d) by inserting, immediately after subsection (4) of section 210, the following subsection:

“(4A) The Court shall not approve any compromise or arrangement which has been proposed for the purposes of or in connection with any scheme referred to in section 212(1) under which the whole or any part of the undertaking or the property of a banking corporation incorporated in Singapore is to be transferred, unless the Minister charged with the responsibility for banking matters has consented to the compromise or arrangement or has certified that his consent is not required.”;

(e) by inserting, immediately after the words “the Court may” in section 212(1), the words “, subject to subsection (1A),”;

(f) by inserting, immediately after subsection (1) of section 212, the following subsection:

“(1A) Without prejudice to section 210(4A), the Court shall not make any order providing for the transfer of the whole or any part of the undertaking or the property of a banking corporation incorporated in Singapore unless the Minister charged with the responsibility for banking matters has consented to the transfer or has certified that his consent is not required.”;

(g) by deleting the words “Minister charged with the responsibility for finance” in section 253(1)(g) and substituting the words “Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186)”; and

(h) by inserting, immediately after the words “the company” in section 254(1)(k), the words “is carrying on or”.

Consequential amendment to Deposit Insurance Act 2005

66. Section 30(1) of the Deposit Insurance Act 2005 (Act 31 of 2005) is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) the Authority is of the opinion that a Scheme member is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments.”.

Transitional and savings provisions

67.—(1) Any regulations made under old section 4A(7) or 31(3)(a) of the Banking Act and which were in force immediately before the appointed day shall, unless revoked, continue in force as if they were made under section 76A(1) of the Banking Act.

(2) Any exemption granted by the Authority under old section 4A(8) of the Banking Act and which was in force immediately before the appointed day shall —

(a) be deemed to be an exemption granted under section 76A(2) of the Banking Act; and

(b) be subject to any condition which it was subject to immediately before that day as if the condition was imposed under section 76A(3) of the Banking Act.

(3) Any licence granted under old section 11 of the Banking Act and which was in force immediately before the appointed day shall —

(a) be deemed to be a licence granted under section 7 of the Banking Act; and

5 (b) be subject to any condition which it was subject to immediately before that day as if the condition was imposed under section 7 of the Banking Act.

(4) Any reserve fund held by a bank under old section 22(1) of the Banking Act immediately before the appointed day shall be distributed or
10 utilised by the bank in such manner and within such period as the Authority may, by regulations, prescribe.

(5) Subject to subsection (6), sections 27, 28 and 29 of the Banking Act shall not apply, and those sections in force immediately before the appointed day shall continue to apply, to a bank holding a licence to carry
15 on banking business which was in force immediately before that day, for a period of 2 years from that day or such longer period as may be approved by the Authority (referred to in this section as the specified period).

(6) A bank to which subsection (5) applies may at any time before the expiry of the specified period elect to comply with sections 27, 28 and 29
20 of the Banking Act by giving written notice of this to the Authority at least 14 days before the intended date of compliance as specified in the notice; and as from the intended date of compliance, sections 27, 28 and 29 of the Banking Act shall apply to the bank.

(7) Subject to subsection (8), any order made by the Authority under old
25 section 37 of the Banking Act relieving any bank from any restriction or limitation imposed by old section 29, 31 or 33 of the Banking Act and which was in force immediately before the appointed day shall —

(a) be deemed to be an exemption from such restriction or limitation granted under section 76A(2) of the Banking Act; and

30 (b) be subject to any condition which it was subject to immediately before that day as if the condition was imposed under section 76A(3) of the Banking Act.

(8) A bank that is exempted from any restriction or limitation imposed by old section 29 of the Banking Act by virtue of subsection (7) shall
35 cease to be so exempted from the expiry of the specified period or from

the intended date of compliance specified in a notice given under subsection (6), whichever is earlier.

(9) Subject to subsection (10), section 29 of the Banking Act shall not apply, and the provisions of that section (other than subsection (1)(a), (b) and (d)(iv)) in force immediately before the appointed day shall continue to apply, to a person incorporated outside Singapore that was operating an Asian Currency Unit with the approval of the Authority which was in force immediately before that day, for a period of 2 years from that day or such longer period as may be approved by the Authority (referred to in this section as the relevant period).

(10) A person to whom subsection (9) applies may at any time before the expiry of the relevant period elect to comply with the provisions of section 29 (other than subsection (1)(a) and (b)) of the Banking Act by giving written notice of this to the Authority at least 14 days before the intended date of compliance as specified in the notice; and as from the intended date of compliance, the provisions of section 29 (other than subsection (1)(a) and (b)) of the Banking Act shall apply to the person.

(11) An election under subsection (6) or (10) shall be void unless it is made in accordance with that subsection.

(12) Old section 40 of the Banking Act shall continue to apply to a bank holding a licence to carry on banking business which was in force immediately before the appointed day, for a period of 6 months from that day or such longer period as may be approved by the Authority.

(13) Any approval granted by the Authority under section 28 of the Monetary Authority of Singapore Act (Cap. 186) in force immediately before the appointed day to carry on the business of issuing credit cards or charge cards in Singapore and which was in force immediately before that day shall be —

- (a) deemed to be a licence granted under section 57B of the Banking Act; and
- (b) subject to any condition or restriction specified in the approval, to the extent that the condition or restriction is consistent with the provisions of the Banking Act, as if the condition or restriction was imposed as a condition under section 57B of the Banking Act.

(14) The Authority may, by regulations, prescribe such transitional, savings and other consequential, incidental and supplemental provisions as it may consider necessary or expedient.

5 (15) In this section, a reference to an old provision of the Banking Act is a reference to that provision of that Act in force immediately before the appointed day in question.

(16) In this section, “appointed day”, in relation to any provision of the Banking (Amendment) Act 2006, means the date of commencement of that provision.

EXPLANATORY STATEMENT

This Bill seeks to amend the Banking Act (Cap. 19) —

- (a) to strengthen prudential safeguards;
- (b) to expand the powers of the Monetary Authority of Singapore (the Authority) to deal with a distressed or an insolvent bank;
- (c) to facilitate risk-based supervision and the operational efficiency of banks;
- (d) to expand the regulation of credit card and charge card businesses; and
- (e) to make miscellaneous amendments for the better administration of the Act.

The Bill also makes consequential amendments to the Companies Act (Cap. 50) and the Deposit Insurance Act 2005 (Act 31 of 2005).

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title to expand the scope of the Act to include the regulation of credit card and charge card businesses of banks and other institutions.

Clause 3 amends certain definitions and introduces new definitions in section 2(1) for the purposes of the Act.

Clause 4 amends section 3 to empower the Authority to appoint its officers to exercise its power to grant or revoke exemptions on a case-by-case basis under the provisions of the Act specified in the new Fourth Schedule (inserted by clause 64).

Clause 5 amends section 4A to remove the power to grant exemptions under that section as a new section (section 76A) on a general power to grant exemptions under the Act is inserted by clause 58.

Clause 6 amends section 4B to empower the Authority to prescribe by regulations any product to be included in or excluded from the definition of “deposit”.

Clause 7 makes consequential amendments to section 4C in light of the new definition of “book” (inserted by clause 3).

Clause 8 amends section 5 —

- (a) to allow a specified person or body of persons to use the word “bank” or any derivative of that word, or any word indicating the transaction of banking business, as part of its name or title or in the description of its activities, subject to certain conditions; and
- (b) to empower the Authority to direct a person or body of persons referred to in paragraph (a) to cease using the word “bank” or any derivative of that word, or any word indicating the transaction of banking business if the person or body of persons has misled or is likely to mislead the public or a section of the public as to whether the person or the body of persons is a bank in Singapore.

Clause 9 amends section 5A to include any business prescribed under section 30(1)(d) as a business to which section 5A applies.

Clause 10 makes consequential amendments to section 6 in light of the new definition of “book” (inserted by clause 3).

Clause 11 amends section 9 —

- (a) to empower the Authority to prescribe the amount of paid-up capital that a bank incorporated in Singapore has to maintain;
- (b) to require a bank to seek the Authority’s approval before it purchases or otherwise acquires its own shares if such shares are to be held as treasury shares; and
- (c) to explain that a reference to the paid-up capital of a bank in that section does not include any amount that is represented by treasury shares.

Clause 12 amends section 9A —

- (a) to require a bank which is a qualifying subsidiary to seek the Authority’s approval before it purchases or otherwise acquires its own shares if such shares are to be held as treasury shares; and
- (b) to explain that a reference to the paid-up capital of a bank in that section does not include any amount that is represented by treasury shares.

Clause 13 repeals section 11 in light of the enhancements to the regulatory framework and the streamlining of the licensing regime for foreign government-owned banks and commercial banks.

Clause 14 makes a consequential amendment to section 11A in light of the repeal of section 11 (by clause 13).

Clause 15 amends section 14 —

- (a) to provide that the Minister may only approve an application for a merger or consolidation of a bank with another bank or some other body if the Authority is satisfied as to the matters set out in that section and the Minister is satisfied that the merger or consolidation is in the national interest; and

- (b) to empower both the Minister and the Authority to require the parties to a proposed merger or consolidation to furnish information.

Clause 16 amends section 15(2) to delete the definitions of “share” and “substantial shareholder” as these definitions are inserted in section 2(1) (by clause 3).

Clause 17 amends section 15C —

- (a) to provide that the Minister may only approve an application made by a person under section 15A or 15B (to become a substantial shareholder, 12% controller, 20% controller or indirect controller of a bank incorporated in Singapore or a financial holding company) if the Authority is satisfied that the person is a fit and proper person and, having regard to the likely influence of the person, the bank or financial holding company will continue to conduct its business prudently and comply with the Act, and the Minister is satisfied that it is in the national interest to approve the application; and
- (b) to empower the Minister to add to, vary or revoke any condition imposed on an approved substantial shareholder, 12% controller, 20% controller or indirect controller of a bank incorporated in Singapore or a financial holding company.

Clause 18 amends section 15E to revise the circumstances in which the Minister may serve a written notice of objection on an approved substantial shareholder, 12% controller, 20% controller or indirect controller of a bank incorporated in Singapore or a financial holding company, in light of the amendment to section 15C (by clause 17).

Clause 19 amends section 18 to expand the power of the Minister and the Authority to obtain information from a bank, a financial holding company or a shareholder (or any person who appears to have an interest in any share) of a bank or financial holding company.

Clause 20 amends section 20 to empower the Authority to revoke the licence of a bank if any action is taken in relation to the bank under Division 2, 3 or 4 of Part VIIA (inserted by clause 46).

Clause 21 repeals section 22 in light of the enhancements to the regulatory framework.

Clause 22 amends section 26 to clarify the circumstances in which the Authority may disclose information (other than customer information) which it receives from a bank.

Clause 23 repeals and re-enacts section 27 —

- (a) to require every bank to prepare quarterly statements showing all credit facilities from the bank and all exposures of the bank to specified persons; and
- (b) to empower the Authority to take certain actions if it appears to the Authority that any credit facility from a bank or any exposure of the bank is to the detriment of the interests of the depositors of the bank.

Clause 24 amends section 28 to expand the application of that section to exposures of a bank.

Clause 25 repeals and re-enacts section 29 to empower the Authority to impose requirements on a bank for the purposes of limiting the exposure of the bank to specified persons.

Clause 26 amends section 30(1) to permit a bank to carry on any business which, if carried on in Singapore, would be regulated or authorised by the Authority under any written law.

Clause 27 amends section 31 to empower the Authority to expand the definition of “equity investment” by regulations.

Clause 28 amends section 32 —

- (a) to clarify that any acquisition or holding of a major stake in a company by a bank, whether direct or indirect, is subject to the requirement for approval under that section;
- (b) to exclude any interest from the application of that section;
- (c) to expand the scope of the Authority’s regulation making power in relation to what constitutes a major stake; and
- (d) to amend the definition of “major stake”.

Clause 29 makes a consequential amendment to section 36(2) in light of the amendments to section 32 (by clause 28).

Clause 30 repeals section 37 as a new section (section 76A) on a general power to grant exemptions under the Act is inserted by clause 58.

Clause 31 amends section 38 —

- (a) to provide that the Authority may utilise the liquid assets of a bank held under that section for the settlement of the bank’s payment obligations, book-entry securities and instruments under any real-time gross settlement system established and operated under section 29A of the Monetary Authority of Singapore Act (Cap. 186);
- (b) to provide for the use by a bank of its liquid assets held under that section if the bank is in a liquidity stress situation and to empower the Authority to take certain actions in relation to the utilisation of the liquid assets; and
- (c) to empower the Authority to impose a financial penalty (to be prescribed by the Minister) on a bank for a breach of any requirement imposed by the Authority in relation to the liquid assets to be held by the bank.

Clause 32 amends section 39 to empower the Authority to require a bank within a class of banks to maintain additional cash balances above the minimum cash balances specified for that class of banks if the bank poses greater supervisory concerns and to empower the Authority to impose a financial penalty (to be prescribed by the Minister) on a bank for a breach of any requirement to maintain minimum cash balances.

Clause 33 repeals and re-enacts section 40 to empower the Authority to require a bank or class of banks to maintain and hold a minimum amount of assets in Singapore for the purpose of meeting its or their liabilities. The Authority may also require a bank within a class of banks to maintain and hold additional assets in Singapore above the minimum level specified for that class of banks if the bank poses greater supervisory concerns.

Clause 34 amends section 40A to remove the definitions of “parent bank” and “parent supervisory authority” as these definitions are inserted in section 2(1) (by clause 3).

Clauses 35 and 36 make consequential amendments to sections 43(1) and 44 in light of the new definition of “book” (inserted by clause 3).

Clause 37 amends section 44A to provide that provisions relating to customer information in that section apply also to foreign-owned banks incorporated in Singapore.

Clause 38 amends section 45 to allow a parent supervisory authority of a foreign-owned bank incorporated in Singapore to inspect the books of the bank in Singapore.

Clause 39 repeals and re-enacts section 48 to require a bank which is or is likely to become insolvent or unable to meet its obligations, or which has suspended or is about to suspend payments, to inform the Authority of that fact.

Clause 40 inserts a new section 48A to define certain expressions used in sections 49 to 53.

Clause 41 amends section 49 —

- (a) to empower the Authority to assume control and manage the business of a bank, or appoint a statutory manager to do so in certain circumstances;
- (b) to provide that where the Authority or statutory manager assumes control of the business of a bank incorporated outside Singapore, such control will only be in respect of the business or affairs of the bank carried on, managed in or from Singapore, or the property of the bank located in Singapore, or reflected in the books of the bank in Singapore in relation to its operations in Singapore;
- (c) to provide for the manner in which the duties, functions and powers of a statutory manager may be discharged or exercised; and
- (d) to confer on the statutory manager and statutory adviser immunity from any legal proceedings.

Clause 42 repeals and re-enacts sections 50 to 53 —

- (a) to specify the effects of an assumption of control of the business of a bank by the Authority or statutory manager under section 49, including the powers exercisable by the Authority or statutory manager and the status of a chief executive or director of the bank;

- (b) to specify the commencement and termination of the assumption of control of the business of a bank by the Authority or statutory manager under section 49;
- (c) to enable the Authority or statutory manager to apply to the High Court to direct certain persons to pay, deliver, convey, surrender or transfer to the Authority or statutory manager any property or book of a bank, the business of which is under the control of the Authority or statutory manager under section 49;
- (d) to require certain persons to provide information to the Authority or statutory manager; and
- (e) to empower the Authority to fix the remuneration and expenses of the Authority or statutory manager to be paid by the bank.

Clause 43 amends section 54 to expand the scope of the moratorium that the High Court may grant in relation to the bank on the application of the Authority.

Clause 44 inserts new sections 54A and 54B.

The new section 54A —

- (a) expands the grounds upon which the High Court may, on the application of the Authority, order the winding up of a company which is carrying on or has carried on banking business in Singapore;
- (b) provides that any statement of account lodged by a bank with the Authority which shows that the bank is insolvent will be evidence that the bank is unable to pay its debts when an application is made by the Authority for the winding up of the bank on the ground specified in section 254(1)(e) or 351(1)(c)(ii) of the Companies Act (Cap. 50);
- (c) prohibits the appointment of any person as liquidator of a company which is carrying on or has carried on banking business in Singapore, without the prior written approval of the Authority; and
- (d) prohibits the exercise of any power or function of a liquidator for Singapore, in respect of a foreign company which is carrying on or has carried on banking business in Singapore, by any person who is appointed as a liquidator of the foreign company at its place of incorporation or origin, unless the liquidator has been approved by the Authority.

The new section 54B prohibits a person from acting or continuing to act as a director of a bank incorporated in Singapore in certain circumstances without the written consent of the Authority, and empowers the Authority to direct the removal of a director of a bank where it is of the view that such removal is necessary in the public interest or for the protection of the depositors of the bank.

Clause 45 amends section 55 to fine-tune the powers of the Authority to issue notices to banks.

Clause 46 inserts a new Part VIIA relating to transfers of the business of banks and shares in banks and the restructuring of the share capital of banks.

Division 1 of Part VIIA provides for the voluntary transfer of the business of a bank in Singapore. A bank may transfer the whole or part of its business (including its non-banking business) to another bank if the provisions in Division 1 are complied with and the approval of the High Court is obtained for the transfer. Division 1 does not affect the voluntary transfer of any business of a bank under other written law or under an agreement.

Division 2 of Part VIIA empowers the Minister to transfer the business (including non-banking business) of a bank (transferor) to another bank (transferee) in certain circumstances. The Minister will decide whether to transfer the business if the Authority makes a determination that such business ought to be transferred. Consent of the transferor is not required. However, the Minister will give the transferor a notice of his intention to transfer the business and an opportunity to make representations on the proposed transfer unless the Minister decides that it is not practicable or desirable to give the transferor such notice and opportunity to make representations. If the Minister decides to transfer the business, the Minister will issue a certificate of transfer setting out the details of the transfer of the business and providing for any matter which is relevant to the transfer or necessary to ensure that the transfer is fully effective. The transfer of the business will take effect in accordance with the certificate. The certificate will be served on the transferor and transferee. The certificate will be binding on the transferor, transferee and any other person who is affected by the transfer. A transferor or transferee who fails to comply with any provision in the certificate will be guilty of an offence.

Division 3 of Part VIIA empowers the Minister to transfer the shares of a person (transferor) in a bank to another person (transferee) in certain circumstances. The Minister will decide whether to transfer the shares if the Authority makes a determination that such shares ought to be transferred. Consent of the transferor is not required. However, the Minister will give the transferor a notice (by publication in the *Gazette* and in such newspapers as the Minister may determine) of his intention to transfer the shares and an opportunity to make representations on the proposed transfer unless the Minister decides that it is not practicable or desirable to give the transferor such notice and opportunity to make representations. If the Minister decides to transfer the shares, the Minister will issue a certificate of transfer setting out the details of the transfer and providing for any matter which is relevant to the transfer or necessary to ensure that the transfer is fully effective. The certificate will not be served on the transferor and transferee but will be published in the *Gazette* and in such newspapers as the Minister may determine. The transfer of the shares will take effect in accordance with the certificate. The certificate will be binding on the transferor, transferee and any other person who is affected by the transfer. A transferor or transferee who fails to comply with any provision in the certificate will be guilty of an offence.

Division 4 of Part VIIA empowers the Minister to restructure the share capital of a bank in certain circumstances —

- (a) by cancelling the whole or any part of the share capital of the bank which is not paid up;

- (b) by cancelling the whole or any part of the paid-up share capital of the bank if such paid-up capital is lost or unrepresented by the available assets of the bank; or
- (c) by requiring the bank to issue new shares to specified subscribers.

The Minister will decide whether to restructure the share capital if the Authority makes a determination that the share capital ought to be restructured. Consent of the bank or its shareholders is not required. However, the Minister will give the bank and the shareholders (by publication in the *Gazette* and in such newspapers as the Minister may determine) a notice of his intention to restructure the share capital and an opportunity to make representations on the proposed restructuring unless the Minister decides that it is not practicable or desirable to give the bank or shareholders such notice and opportunity to make representations. If the Minister decides to restructure the share capital, the Minister will issue a certificate of restructuring setting out the details of the restructuring and providing for any matter which is relevant to the transfer or necessary to ensure that the restructuring is fully effective. The certificate will be served on the bank and will be published in the *Gazette* and in such newspapers as the Minister may determine. The restructuring of the bank's share capital will take effect in accordance with the certificate. The certificate will be binding on the bank, shareholders, subscribers and any other person who is affected by the restructuring of the share capital. A bank or subscriber who fails to comply with any provision in the certificate will be guilty of an offence.

Division 5 of Part VIIA contains general provisions applicable to Part VIIA.

Clause 47 repeals and re-enacts Part VIII to implement a licensing regime for the regulation of the business of credit cards and charge cards in Singapore. The prohibition against anonymous accounts set out in the repealed Part VIII will be consolidated with the other measures of the Authority pertaining to the prevention of money laundering.

Under new Part VIII, it is an offence for —

- (a) any person, in the course of carrying on a business of issuing credit cards or charge cards in Singapore or elsewhere, to accept or receive in Singapore any application for a credit card or charge card unless the person is a bank in Singapore or is licensed under the new section 57A to carry on the business of issuing credit cards or charge cards (licensee);
- (b) any person to accept or receive in Singapore any application for a credit card or charge card on behalf of any other person other than a licensee or a bank in Singapore; and
- (c) any person to make any offer or invitation to the public in Singapore to apply for a credit card or charge card except where the card is to be issued by a licensee or a bank in Singapore.

Clause 48 amends section 62 to confer priority on non-bank customers deposit liabilities ahead of inter-bank liabilities and other unsecured liabilities in the event of a winding up of a bank, and to revise the definition of “deposit liabilities of a bank”.

Clause 49 inserts a new section 62A to provide that in the event of a winding up of a bank, a liquidator of the bank has to first set-off a depositor's liabilities (whether or not incurred in the Asian Currency Unit of the bank) against any deposit of the depositor placed with the bank, other than with the Asian Currency Unit of the bank.

Clause 50 amends section 65 to extend the application of that section to executive officers of banks and to exclude directors of banks from the application of that section in light of the new section 54B (inserted by clause 44).

Clause 51 repeals and re-enacts section 66 to provide that —

- (a) any director or executive officer of a bank who fails to take all reasonable steps to secure compliance by the bank with any provision of the Act or any other written law applicable to banks is guilty of an offence; and
- (b) any person who furnishes the Minister or the Authority with any information or document which is false or misleading and fails to use due care to ensure that the information or document is not false or misleading is guilty of an offence.

Clause 52 amends section 67 to extend the application of that section to executive officers of banks.

Clause 53 repeals and re-enacts section 69 to empower the Authority to compound any offence under the Act that is prescribed as a compoundable offence.

Clause 54 amends section 74 to provide that the Authority may recover as a civil debt from a bank, financial penalties and other sums payable by the bank under the Act.

Clause 55 amends section 74A to substitute references to penalty interest charge with financial penalty.

Clause 56 inserts a new section 75B to provide for the service of documents by the Authority through an electronic service.

Clause 57 amends section 76 to provide that the exemption under that section does not apply to an activity or a business referred to in the new Part VIII (inserted by clause 47).

Clause 58 inserts a new section 76A to empower the Authority to exempt any person or class of persons from all or any of the provisions of the Act.

Clause 59 amends section 77 to provide that a merchant bank (whether incorporated in Singapore or elsewhere) approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186) is not subject to any requirement imposed under section 29(1) in relation to any person or group of persons specified in paragraphs (a) and (b) of section 29(1).

Clause 60 inserts a new section 77A to empower the Minister to amend the Fourth and Fifth Schedules by order published in the *Gazette*.

Clause 61 amends section 78 to empower the Authority to make regulations in relation to the operations or activities of any person issuing credit cards or charge cards.

Clause 62 repeals and re-enacts the First Schedule to update the list of banks specified in that Schedule.

Clause 63 amends the Third Schedule to permit a bank to disclose customer information when any action is being taken in relation to the bank under the new Part VIIA (inserted by clause 46).

Clause 64 inserts a new Fourth Schedule for the purposes of section 3(1A) (inserted by clause 4) and a new Fifth Schedule which contains certain definitions for the purposes of sections 27, 28, 29 and 38.

Clause 65 makes consequential amendments to the Companies Act (Cap. 50).

Clause 66 makes a consequential amendment to the Deposit Insurance Act 2005 (Act 31 of 2005).

Clause 67 provides for transitional and savings arrangements.

EXPENDITURE OF PUBLIC MONEY

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