

Government Securities (Amendment) Bill

Bill No. 25/2009.

Read the first time on 23rd November 2009.

A BILL

intituled

An Act to amend the Government Securities Act (Chapter 121A of the 2002 Revised Edition).

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

Short title and commencement

1. This Act may be cited as the Government Securities (Amendment) Act 2009 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 2**

2. Section 2 of the Government Securities Act (referred to in this Act as the principal Act) is amended —

(a) by inserting, immediately after the definition of “book-entry Government securities”, the following definition:

10 ““financial institution” means any person licensed, approved, registered or regulated by the Authority, or exempted from such licensing, approval, registration or regulation, under any written law administered by the Authority;” and

15 (b) by inserting, immediately after the definition of “Government securities”, the following definition:

 ““primary dealer” means a person approved under Part VIIA to be a primary dealer;”.

New section 11A

20 3. The principal Act is amended by inserting, immediately after section 11, the following section:

“Securities lending arrangements

25 **11A.**—(1) The Authority may, from time to time, enter into securities lending arrangements by lending Government securities issued under this Act to primary dealers.

(2) Lending Government securities shall include an arrangement under which Government securities are sold and repurchased.

30 (3) Nothing in this section affects the power of the Minister to make investments under section 7 of the Financial Procedure Act (Cap. 109).”.

Amendment of section 24

4. Section 24 of the principal Act is amended —

(a) by deleting the words “Government securities” in the 1st line of subsection (1) and substituting the words “Subject to subsection (1A) and section 24A, Government securities”; and

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

“(1A) In the case of Government securities that are held by the Authority for the purpose of securities lending to primary dealers under section 11A, such Government securities shall be redeemable on such conditions as are agreed upon between the Government and the Authority.”.

New section 24A

5. The principal Act is amended by inserting, immediately after section 24, the following section:

“Early redemption

15 **24A.**—(1) The Authority may, from time to time, by public notice invite the public to apply to redeem any Government securities specified in the public notice before the date of maturity of those Government securities.

(2) The public notice referred to in subsection (1) may specify —

20 (a) the terms and conditions relating to the early redemption of the Government securities specified in the public notice, including the manner in which any offer for early redemption shall be made; and

(b) such other information as the Authority may consider
25 necessary.

(3) The Authority may refuse any application to redeem any Government securities before the date of maturity of those Government securities without assigning any reason.

30 (4) Section 24(2) and (3) shall apply, with the necessary modifications, to any redemption of Government securities under this section.

(5) This section shall apply to Government securities issued on, before or after the date of commencement of section 5 of the Government Securities (Amendment) Act 2009.”.

New Part VIIA

6. The principal Act is amended by inserting, immediately after section 29, the following Part:

“PART VIIA

PRIMARY DEALERS

Appointment as primary dealers

29A.—(1) The Authority may, on application, appoint as a primary dealer any financial institution which carries on or intends to carry on, or holds itself out as carrying on or willing to carry on the business of either or both of the following:

- (a) applying to the Authority to purchase Government securities on behalf of another person in pursuance of any public invitation under section 30;
- (b) offering to redeem any Government securities on behalf of another person in pursuance of any public invitation under section 24A or otherwise.

(2) In determining whether to appoint a financial institution as a primary dealer, the Authority shall consider the following:

- (a) the financial standing of the financial institution;
- (b) the experience of that financial institution in carrying on the business referred to in subsection (1), and its ability to perform the duties which would be imposed on it by or under this Act; and
- (c) the public interest.

(3) The Authority may, in any particular case, require the financial institution applying to be appointed as a primary dealer (referred to in this section as an applicant) to furnish such information or document as the Authority deems relevant to its considerations under subsection (2).

(4) The Authority may refuse an application if —

- (a) the applicant does not furnish the Authority with such information or document as are required under subsection (3);
- 5 (b) in the opinion of the Authority, the applicant does not meet, or is unlikely to be able to continue to meet, such requirements as may be prescribed in relation to carrying on any business referred to in subsection (1); or
- 10 (c) the applicant makes any statement, or furnishes any information or document, in relation to its application that is false or misleading in any material particular, or omits to state any matter or thing without which its application is false or misleading in a material particular.

15 (5) Every appointment as a primary dealer under this section shall continue in force for such period as may be specified by the Authority, unless the appointment is earlier cancelled or suspended.

(6) If a person who is not a primary dealer carries on or holds himself out as carrying on or willing to carry on any business referred to in subsection (1), the person shall be guilty of an offence and shall
20 be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction;
25 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
30 which the offence continues after conviction.

Conditions of appointment as primary dealers

29B.—(1) The Authority may appoint any financial institution as a primary dealer subject to such conditions or restrictions as the Authority thinks fit.

(2) Without prejudice to the generality of subsection (1), the Authority may impose such conditions or restrictions with respect to the type of services which may or may not be provided by the primary dealer as the Authority may consider appropriate.

5 (3) Subject to subsections (4), (5) and (6), the Authority may at any time add to, vary or revoke any condition or restriction of any financial institution's appointment as a primary dealer.

10 (4) Before making any modification to the conditions or restrictions of any financial institution's appointment as a primary dealer under this section, the Authority shall, unless the Authority in respect of any particular case considers that it is not practicable or desirable to do so, give notice to the financial institution concerned —

- (a) stating that the Authority proposes to make the modification in the manner specified in the notice;
- 15 (b) stating the reasons why the Authority proposes to make the modification; and
- (c) specifying the time (being not less than 28 days from the date of service of notice on the financial institution) within which written representations with respect to the proposed
20 modification may be made.

(5) Where the Authority receives any written representation under subsection (4)(c), the Authority shall consider the representation and may —

- (a) reject the representation; or
- 25 (b) withdraw or amend the proposed modification in accordance with the representation or otherwise,

and, in either case, the Authority shall thereupon issue a notice in writing to the primary dealer concerned requiring that effect be given within a reasonable time to the proposed modification specified in the
30 notice or to such modification as may subsequently be amended by the Authority.

(6) If no written representation is received by the Authority within the time specified under subsection (4)(c) or if any written representation made under that subsection is subsequently withdrawn,
35 the modification shall take effect as specified in the notice given under that subsection.

Directions to primary dealers

29C.—(1) The Authority may give directions to be observed by any primary dealer or class of primary dealers —

5 (a) to ensure the continuity or reliability of the provision of services by the primary dealer or class of primary dealers to its customers; or

(b) in the public interest.

(2) A direction under subsection (1) —

10 (a) shall require the primary dealer or every primary dealer in that class of primary dealers concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the direction or are of a description as specified therein, including but not limited to the manner in which the primary dealer conducts the business referred to
15 in section 29A(1) with its customers;

(b) shall take effect at such time, being the earliest practicable time, as is determined by or under that direction; and

(c) may be varied or revoked at any time by the Authority.

20 (3) Every primary dealer shall comply with every direction of the Authority given to the dealer under this section.

(4) It shall not be necessary to publish any direction in the *Gazette*.

Cancellation, etc., of appointment as primary dealer

29D.—(1) If the Authority is satisfied that —

25 (a) a primary dealer is contravening, or is likely to contravene or has contravened —

(i) any provision of this Act applicable to the primary dealer; or

(ii) any condition or restriction of its appointment as a primary dealer;

30 (b) a primary dealer has not complied with any direction issued by the Authority under section 29C;

- (c) a primary dealer has gone or is likely to go into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;
- 5 (d) a receiver, a receiver and manager or an equivalent person has been appointed, whether in Singapore or elsewhere, in relation to or in respect of any property of the primary dealer;
- (e) a primary dealer has obtained his appointment as such by fraud or misrepresentation;
- 10 (f) a primary dealer has failed to satisfy any of its obligations under or arising from this Act;
- (g) a primary dealer has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly;
- 15 (h) a primary dealer is no longer in a position to effectively carry out his duties or responsibilities as a primary dealer under this Act and the regulations made thereunder; or
- (i) a primary dealer is carrying on its business referred to in section 29A(1) in a manner that is likely to be detrimental to its clients or contrary to the public interest,
- 20

the Authority may by order cancel the appointment as a primary dealer.

25 (2) The Authority may, if it considers it desirable to do so, in lieu of an order cancelling the appointment as a primary dealer, by order do all or any of the following:

- (a) suspend the appointment for such period (not exceeding 6 months) as it thinks fit;
- (b) reprimand the primary dealer in writing.

30 (3) In the case of a failure by a primary dealer to comply with any direction issued by the Authority under section 29C, the Authority may, in addition to any order that may be made under subsection (2), order the primary dealer to pay to the Authority, for every day or part thereof of such failure, a financial penalty in accordance with such

formula as the Minister may, by notification published in the *Gazette*, prescribe.

(4) The Authority shall not make any order under subsection (1), (2) or (3) unless an opportunity of being heard by a representative in writing had been given to the primary dealer against which the Authority intends to exercise its powers, being a period of at least 21 days but not more than 28 days.

(5) Where the Authority has made any order under subsection (1), (2) or (3) against any primary dealer, it shall serve on the primary dealer concerned a notice of its order.

(6) Subject to subsections (7) and (8), any order made by the Authority under subsection (1), (2) or (3) against any primary dealer shall not take effect until the expiration of 21 days after the Authority has served the notice of the order on the primary dealer concerned.

(7) Any order cancelling or suspending an appointment as a primary dealer shall not operate so as to —

(a) prejudice the enforcement by any person of any right or claim against the financial institution formerly appointed as a primary dealer, or by the financial institution formerly so appointed, of any right or claim against any person; or

(b) affect the validity or enforceability of any agreement, transaction or arrangement in respect of Government securities or Treasury bills entered into (whenever) by the primary dealer.

(8) An order of reprimand under subsection (2) shall take effect on the date it is served on the primary dealer concerned.

(9) The financial penalty ordered under subsection (3) shall be recoverable by the Authority as a civil debt.

Appeal to Minister

29E.—(1) Any primary dealer who is aggrieved by —

(a) any notice of a condition or restriction of any financial institution's appointment as a primary dealer under section 29B;

- (b) any direction given by the Authority under section 29C or variation of any such direction; or
- (c) any order of the Authority under section 29D(1), (2) or (3) except an order of reprimand,

5 may, within 14 days of the receipt by the primary dealer of the notice of the condition or restriction, the direction (or variation thereof) or order, as the case may be, appeal to the Minister whose decision shall be final.

(2) Where an appeal is lodged under this section —

- 10 (a) the order under section 29D cancelling the appointment as a primary dealer shall not take effect unless the order is confirmed by the Minister or the appeal is for any reason dismissed by the Minister or withdrawn; and
- (b) all other notices, directions (or variation thereof) or orders
15 appealed against shall take effect and be complied with until the determination of the appeal.

(3) Subject to subsection (4), the Minister may determine an appeal under this section by confirming, varying or reversing the notice, direction (or variation thereof) or order of the Authority that is
20 appealed against.

(4) If the Minister is satisfied that an appeal by a primary dealer is instituted or pursued without reasonable ground, the Minister may, without calling for a reply from the Authority, but after giving the primary dealer an opportunity to be heard, determine the appeal by
25 confirming the notice, direction (or variation thereof) or order of the Authority that is appealed against.

Inspection of books

29F.—(1) The Authority may from time to time inspect, under conditions of secrecy, the books of a primary dealer relating to its
30 business referred to in section 29A(1) for the purposes of ensuring that —

- (a) any condition or restriction imposed by the Authority under section 29B on the primary dealer is complied with;
- 35 (b) any direction given by the Authority under section 29C to the primary dealer is complied with; or

(c) the primary dealer has satisfied or satisfies any of its obligations under or arising from this Part.

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

(a) a primary dealer, and any person who is in possession of the books of the primary dealer relating to its business referred to in section 29A(1), shall produce such books (and afford the Authority access thereto) and provide such information and facilities as may be required by the Authority to conduct the inspection;

(b) the primary dealer shall procure that any such person in paragraph (a) who is in possession of its books produce the books to the Authority and give such information or facilities as may be required by the Authority; and

(c) the Authority may —

(i) make copies of, or take possession of, any of such books; and

(ii) retain possession of any of such books for so long as is necessary for the purposes of exercising a power conferred by this section (except subsection (4)).

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

(4) While the books of a primary dealer are in the possession of the Authority, the Authority —

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

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

(5) The Authority may require a person who produced any book to the Authority to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a

term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

5 (7) In this section, “books” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in any electronic form or otherwise.”.

Amendment of section 31

7. Section 31 of the principal Act is amended —

- 10 (a) by deleting the word “and” at the end of subsection (1)(b);
- (b) by deleting the full-stop at the end of paragraph (c) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:
- 15 “(d) prescribing the manner in which applications to be appointed as a primary dealer are to be made;
- (e) prescribing the duties and obligations of a primary dealer;
- 20 (f) providing that section 75B of the Banking Act (Cap. 19) shall apply to primary dealers as if the primary dealer were a bank licensed under that Act, with such prescribed exceptions, modifications and adaptations as the differences between Part IV and that Act require; and
- 25 (g) exempting any financial institution or class of financial institutions from all or any of the provisions of Part VIIA.”; and
- (c) by inserting, immediately after subsection (2), the following subsection:
- 30 “(3) The regulations may also provide that any contravention of any provision of the regulations shall be an offence punishable —
- (a) in the case of an individual, with a fine not exceeding \$12,500 or with imprisonment for a term not exceeding 12 months or with both and, in the case of

a continuing offence, with a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction; or

- 5 (b) in any other case, with a fine not exceeding \$25,000 and, in the case of a continuing offence, with a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.”.

Savings and transitional provisions

10 **8.**—(1) Every person who, immediately before the date of commencement of section 6 of this Act, is carrying on the business of —

- (a) purchasing from the Authority Government securities on behalf of another person in pursuance of any public invitation under section 30 of the principal Act; or
- 15 (b) offering to redeem any Government securities on behalf of another person,

or both shall be deemed to be appointed as a primary dealer under the principal Act as amended by this Act, subject to such requirements to which it was subject immediately before that date as if the requirement

20 were a condition or restriction imposed under the principal Act as amended by this Act.

(2) For a period of 2 years after the date of commencement of this section, the Authority may, with the approval of the Minister, by regulations, prescribe such other additional provisions of a savings or

25 transitional nature consequent on the amendments to the principal Act by this Act, as it may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Government Securities Act (Cap. 121A) for the following purposes:

- (a) to enable early redemption of Government securities;
- (b) to expressly empower the Monetary Authority of Singapore (MAS) to regulate primary dealers who are in the business of applying on behalf of

others to purchase Government securities pursuant to a public invitation or offering to redeem Government securities on behalf of another, or both; and

- (c) to confer explicit authority for MAS to enter into securities lending arrangements involving the lending of Government securities.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 by inserting 2 new definitions of “financial institution” and “primary dealer”.

Clause 3 inserts a new section 11A to confer explicit authority on MAS to enter into securities lending arrangements involving the lending of Government securities to primary dealers. The clause specifies that lending Government securities is taken to include an arrangement under which it is sold and repurchased. This will enable financial market participants to borrow Government securities from the MAS for short periods when these are not readily available from other sources. Such a facility operated by the MAS will enhance the liquidity, efficiency and robustness of the Government securities market.

Clause 4 amends section 24 (which relates to redemption of Government securities) as a consequence of amendments in clause 3 and to deal with exception of early redemption in clause 5.

Clause 5 inserts a new section 24A which will enable the MAS, from time to time, by public notice, to invite the public to apply to redeem any Government securities (whenever issued) before the date of maturity of those Government securities. The MAS may also refuse any application to redeem any Government securities before the date of maturity of those Government securities, which may be necessary following a cancellation of the invitation for early redemption.

Clause 6 inserts a new Part VIIA on the appointment of primary dealers.

The new section 29A empowers the MAS to appoint financial institutions as primary dealers who are in the business of purchasing from the MAS Government securities on behalf of another person in pursuance of any public invitation under section 30, or are offering to redeem any Government securities on behalf of another person in pursuance of any public invitation under section 24A or otherwise, or both.

The new section 29B allows the MAS to make such appointments of financial institutions as primary dealers subject to certain conditions and restrictions, and to modify such conditions and restrictions from time to time after due process.

The new section 29C empowers the MAS to give directions to any primary dealer or class of primary dealers, which must observe the directions. The directions are given to ensure the continuity or reliability of the provision of services by the primary dealer or class of primary dealers to its customers, or in the public interest. A direction will require the primary dealer or every primary dealer in that class of primary dealers concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the direction or are of a description as specified therein. This can include the manner in which the primary dealer conducts business with its customers.

The new section 29D empowers the MAS to take regulatory action as regards primary dealers on a variety of grounds. These include a primary dealer who is contravening, or is likely to contravene or has contravened any provision of the Act applicable to the primary dealer, or any condition or restriction of its appointment as a primary dealer, a primary dealer who has not complied with any direction issued by the MAS under the new section 29C, and a primary dealer which has gone or is likely to go into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction. Regulatory action may also be taken if a primary dealer has failed to satisfy any of its obligations under or arising from the Act, or it is carrying on its business in a manner that is likely to be detrimental to its clients or contrary to the public interest. The regulatory action can either be an order cancelling the appointment as a primary dealer, or in lieu of cancellation, an order suspending the appointment for such period (not exceeding 6 months) as the MAS thinks fit or a written reprimand or both. In the case of non-compliance with directions given under the new section 29C, the MAS may also impose a financial penalty in lieu of cancelling the appointment as a primary dealer. A primary dealer must be given reasonable opportunity of being heard before regulatory action can be taken.

The new section 29E confers on primary dealers or former primary dealers aggrieved by the MAS' decisions under the new section 29B, 29C or 29D (except a reprimand) to appeal to the Minister. The appeal must be made within 14 days of the receipt by the primary dealer of the MAS' notice of the condition or restriction, the direction or the order of regulatory action. The Minister's decision to appeal is final. Pending the determination of an appeal, any order by the MAS under the new section 29D cancelling the appointment as a primary dealer will not take effect. All other notices, directions or orders appealed against will take effect and be complied with until the determination of the appeal.

The new section 29F empowers the MAS to inspect the books, records, registers, documents or other records of information, and any accounts or accounting records, of a primary dealer under conditions of secrecy for the purposes of ensuring that a primary dealer has satisfied or satisfies any of its obligations under or arising from the new Part VIIA.

Clause 7 amends the regulation-making powers as a consequence of the new Part VIIA.

Clause 8 is a savings and transitional provision that deems every person who, immediately before the date of commencement of clause 6 of the Bill, is carrying on the business of a primary dealer to be deemed to be appointed as a primary dealer under the principal Act as amended by the Bill, subject to such requirements to which it was subject immediately before that date as if the requirement were a condition or restriction imposed under the principal Act as amended by the Bill.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.
