

Banking (Amendment) Bill

Bill No. 1/2016.

Read the first time on 47 January 2016.

A BILL

intituled

An Act to amend the Banking Act (Chapter 19 of the 2008 Revised Edition) and to make a consequential amendment to the Income Tax Act (Chapter 134 of the 2014 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 is the Banking (Amendment) Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Repeal and re-enactment of long title

2. The long title to the Banking Act is repealed and the following long title substituted therefor:

10 “An Act to provide for the licensing and regulation of the businesses of banks, merchant banks and related institutions, and the credit card and charge card business of banks, merchant banks and other institutions, and matters related thereto.”.

Amendment of section 2

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

15 (a) by deleting the words “calculating its capital adequacy ratio” in paragraph (a)(i) of the definition of “capital funds” and substituting the words “complying with the capital adequacy requirements imposed”;

20 (b) by inserting, immediately after the word “established” in the definition of “company”, the words “in or”;

(c) by inserting, immediately after the definition of “foreign-owned bank incorporated in Singapore”, the following definition:

25 “ “Guidelines on Fit and Proper Criteria” means the document by that title issued by the Authority and published on its website, as revised from time to time;”;

(d) by inserting, immediately after the definition of “limited liability partnership”, the following definition:

30 “ “merchant bank” means a merchant bank approved as a financial institution under section 28 of the

Monetary Authority of Singapore Act
(Cap. 186);”;

(e) by deleting the words “the supervisory authority” in paragraphs (a) and (b) of the definition of “parent supervisory authority” and substituting in each case the words “a supervisory authority”;

(f) by deleting the definition of “place of business” and substituting the following definition:

““place of business”, in relation to a bank, includes a head or main office, a branch, an agency, a mobile branch of the bank, any office established and maintained for a limited period only, and any other place used by the bank for the conduct of any business of the bank;”;

(g) by inserting, immediately after the definition of “related corporation”, the following definition:

““representative office” means an office established by a person to carry out liaison work, market research or feasibility studies, in relation to banking business, for use by the person;”.

Amendment of section 7

4. Section 7 of the Banking Act is amended —

(a) by deleting subsection (2);

(b) by inserting, immediately after subsection (4), the following subsection:

“(4A) Without limiting the generality of subsections (3) and (4), the conditions that may be imposed include —

(a) a condition as to the type of banking business that may be carried out; and

(b) a condition placing limits on the banking business that may be carried out.”;

(c) by inserting, immediately after subsection (7), the following subsections:

5 “(8) A bank which desires to vary a condition referred to in subsection (4A) in its licence must apply to the Authority in writing, and the application must be accompanied by such information as the Authority may require.

10 (9) An application under subsection (1) or (8) must be accompanied by a non-refundable application fee of such amount as the Authority may, by notification in the *Gazette*, prescribe, which must be paid in the manner specified by the Authority.

15 (10) Any person who furnishes any document or information in connection with an application under subsection (1) or (8), knowing or reckless that the document or information is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction —

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

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

25 (d) by inserting, immediately after the word “licence” in the section heading, the words “or variation of condition as to banking business”.

Amendment of section 9

5. Section 9 of the Banking Act is amended —

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

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

“(2) Subject to subsection (2A), the paid-up capital and capital funds of a bank incorporated in Singapore

must be denominated in Singapore dollars or any currency approved by the Authority, and must be in ordinary shares.

(2A) Any amount of paid-up capital or capital funds of a bank incorporated in Singapore above the amount referred to in subsection (1)(a) may be denominated in any currency, and may be in any type of shares.”;

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

“(3A) A bank must at all times maintain —

(a) if it is a bank incorporated in Singapore, capital funds of not less than the amount referred to in subsection (1)(a); or

(b) if it is a bank incorporated outside Singapore, head office capital funds of not less than the equivalent of the amount referred to in subsection (1)(b).”;

(d) by deleting the words “subsection (1)” in subsection (4) and substituting the words “subsection (2) or (3A)”;

(e) by deleting the words “section 71” in subsection (5) and substituting the words “subsection (5A)”;

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

“(5A) Any bank which fails to comply with —

(a) subsection (2), (3), (3A) or (4); or

(b) any restriction or suspension imposed by the Authority, or any direction of the Authority, under subsection (5),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.”.

Amendment of section 9A

6. Section 9A of the Banking Act is amended —

(a) by deleting the words “and hold” in subsection (1);

(b) by deleting paragraph (a) of subsection (1);

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

“(3A) Subject to subsection (3B), the paid-up capital and capital funds of a bank which is a qualifying subsidiary must be denominated in Singapore dollars or any currency approved by the Authority, and must be in ordinary shares.

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(3B) Any amount of paid-up capital or capital funds of a bank which is a qualifying subsidiary above the amount referred to in subsection (1)(b), or such other amount as may be prescribed by the Authority in substitution, may be denominated in any currency, and may be in any type of shares.”;

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(d) by deleting the words “subsection (1)” in subsection (5) and substituting the words “subsection (3) or (3A)”;

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(e) by deleting the words “section 71” in subsection (6) and substituting the words “subsection (6A)”;

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

“(6A) Any bank which fails to comply with —

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(a) subsection (2), (3), (3A) or (5); or

(b) any restriction or suspension imposed by the Authority, or any direction of the Authority, under subsection (6),

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shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.”.

Amendment of section 10

7. Section 10 of the Banking Act is amended —

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

“(2) The Authority may, by notice in writing to any bank incorporated in Singapore or any class of banks incorporated in Singapore, impose capital adequacy requirements on them. 5

(2A) Without limiting the generality of subsection (2), a notice under that subsection may prescribe — 10

(a) the appropriate level (which may be expressed in the form of a ratio) and quality of capital that is commensurate with the type, amount and concentration of risk of the bank or class of banks; 15

(b) the manner and process for calculating the level or quality of capital of each bank;

(c) the internal processes of each bank in assessing the adequacy of its level and quality of capital, having regard to the risks arising from the activities of the bank and such other factors as the Authority considers relevant; 20

(d) the reports to be submitted by each bank; and

(e) restrictions on the distributions by a bank of dividends, bonuses, commissions, payments as a result of a buyback of shares, and any other payment, in the event that it fails to maintain the level or quality of capital prescribed under paragraph (a).”; 25 30

- (b) by deleting the words “the capital adequacy ratio applicable to that bank” in subsection (3) and substituting the words “any capital adequacy requirement imposed by a notice under subsection (2) on that bank”; and

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

“(4) Without prejudice to subsection (5), the Authority may restrict or suspend the operations of a bank which fails to comply with a notice under subsection (1) or (2).

(5) A bank which fails to comply with —

(a) a notice under subsection (1) or (2); or

(b) any restriction or suspension imposed by the Authority under subsection (4),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.”.

New sections 10A and 10B

8. The Banking Act is amended by inserting, immediately after section 10, the following sections:

“Leverage ratio requirement

10A.—(1) The Authority may, by notice in writing, require any bank incorporated in Singapore or any class of banks incorporated in Singapore, to maintain a minimum leverage ratio of a specified percentage, and to carry out other acts relating to this.

(2) Without limiting the generality of subsection (1), a notice under that subsection may prescribe the manner of and process for calculating the leverage ratio.

(3) Where the Authority issues a notice under subsection (1) to a class of banks incorporated in Singapore, the Authority may by another notice —

(a) impose additional leverage ratio on the class of banks;

(b) impose restrictions on distributions by a bank of dividends, bonuses, commissions, payments as a result of a buyback of shares, and any other payment, in the event that the bank fails to comply with a requirement imposed under subsection (1); or 5

(c) vary the requirements for different banks within that class 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. 10

(4) Any bank which fails to comply with a notice under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction. 15

(5) In this section and section 10B, “leverage ratio” means the ratio of the capital to the exposures of the bank.

Public disclosure requirement

10B.—(1) For the purposes of enhancing market discipline, the Authority may, by notice in writing to a bank in Singapore or a class of banks in Singapore, require — 20

(a) the bank or each bank in the class to disclose to the public, in the form and manner specified by the Authority, any information relating to its operations and activities, and the manner it complies with any provision of this Act or a notice or direction issued under this Act; or 25

(b) the bank or each bank in the class, if incorporated in Singapore, to disclose to the public, in the form and manner specified by the Authority, any information relating to the operations and activities of any entity in its bank group within the meaning of section 48AA. 30

(2) Without limiting the generality of subsection (1), a notice under that subsection may require a bank to disclose one or more of the following information of the bank or an entity in the bank group of the bank (as the case may be):

- 5 (a) its risk profile and risk management process;
- (b) aspects of its corporate governance;
- (c) its capital adequacy, including various components used to calculate its capital adequacy;
- (d) its leverage ratio;
- 10 (e) the manner it complies with any requirement imposed on it under section 38 (if applicable);
- (f) the aggregation of —
 - 15 (i) its assets, liabilities, profits or losses, and any other information whether or not on its balance-sheet; and
 - (ii) the assets, liabilities, profits or losses, and any other information whether or not on the balance-sheet or balance-sheets, of all or any of its related corporations, and the entities in which it holds, directly or indirectly, a major stake as defined in section 32(7).
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(3) Any bank which fails to comply with a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(4) Any bank which, in purported compliance with a notice under subsection (1), provides to the public any information, knowing or reckless that the information is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(5) Where a bank is guilty of an offence under subsection (3) or (4), any individual charged with the duty of securing the bank's

compliance with the notice and was in the position to discharge that duty, shall also be guilty of an offence and shall be liable on conviction —

- (a) if the individual committed the offence wilfully, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) if the individual did not commit the offence wilfully, to a fine not exceeding \$125,000.”.

Repeal and re-enactment of section 12

9. Section 12 of the Banking Act is repealed and the following section substituted therefor:

“New place of business and change of location of existing place of business

12.—(1) Except with the approval of the Authority, a bank must not —

- (a) open a new place of business in Singapore for the conduct of any business referred to in subsection (2);
 - (b) change the location of an existing place of business in Singapore for the conduct of any business referred to in subsection (2); or
 - (c) conduct any business referred to in subsection (2) from the new place of business referred to in paragraph (a) or the relocated place of business referred to in paragraph (b).
- (2) Subsection (1) applies to the following businesses:
- (a) the dispensing or acceptance of money on account;
 - (b) the conduct of other banking business;
 - (c) such business referred to in section 30(1)(b) to (e) as may be prescribed.

(3) Except with the approval of the Authority, a bank incorporated in Singapore must not open a new branch, agency or office in a place outside Singapore.

(4) An application for approval under subsection (1) or (3) must be made in such form and manner as the Authority may specify.

(5) On receiving an application, the Authority may —

- 5 (a) approve the application, with or without conditions; or
 (b) reject the application.

(6) The Authority may at any time vary or revoke any existing condition, or impose conditions or additional conditions.

10 (7) A bank which contravenes subsection (1) or (3), or fails to comply with any condition imposed under subsection (5) or (6), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after
 15 conviction.”.

New section 13A

10. The Banking Act is amended by inserting, immediately after section 13, the following section:

“Registration of representative office

20 **13A.—**(1) A person must not establish or operate a representative office in Singapore that is not registered with the Authority.

(2) Any person who desires to establish or operate a representative office must —

- 25 (a) apply in writing to the Authority for registration of the office;
- (b) furnish such information or documents as the Authority may require; and
- 30 (c) pay the Authority in the manner specified by the Authority, a non-refundable fee of such amount as the Authority may, by notification in the *Gazette*, prescribe.

(3) On receiving an application under subsection (2), the Authority is to consider the application, and may register the representative office, with or without conditions, or refuse to register the representative office.

(4) The Authority may at any time vary or revoke any existing condition of registration, or impose conditions or additional conditions of registration.

(5) A registered person must furnish such information or documents in relation to its representative office as the Authority may require from time to time, within such time as the Authority may specify.

(6) The Authority may cancel the registration of a representative office if the registered person contravenes —

(a) any condition of registration imposed by the Authority;
or

(b) any provision of this Act.

(7) Any person who contravenes subsection (1) or (5), fails to comply with any condition of registration imposed by the Authority under subsection (3) or (4), or operates a representative office which has had its registration cancelled by the Authority under subsection (6), shall be guilty of an offence and shall be liable on conviction —

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

(b) in any other case, to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(8) Any person who furnishes any document or information under subsection (2)(b) or (5), knowing or reckless that the

document or information is false or misleading in a material particular, 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 \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

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

(9) Where —

10 (a) before the date of commencement of section 10 of the Banking (Amendment) Act 2016, a person notifies the Authority in writing of the person's intention to establish a representative office in Singapore; and

 (b) either —

 (i) before that date; or

15 (ii) if before that date the Authority, on the person's request, set a later date for the person to establish and commence operating the representative office in Singapore, by that later date,

20 the person established and commenced operating the representative office in Singapore,

then that representative office is taken to be registered under this section for the purposes of the establishment (if applicable) and operation of that representative office in Singapore on or after the firstmentioned date.

25 (10) A registration under subsection (9) is subject to such conditions as the Authority may at any time by notice in writing impose on the person referred to in that subsection.

 (11) Subsections (4) to (8) apply in relation to a representative office that is taken as registered under subsection (9).”.

30 **Amendment of section 14**

11. Section 14 of the Banking Act is amended by inserting, immediately after subsection (3), the following subsections:

“(4) Any person which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(5) Any person who in purported compliance with any requirement under subsection (2A), furnishes any information, knowing or reckless that the information is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction —

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

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

Amendment of section 15E

12.—(1) Section 15E of the Banking Act is amended —

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

“(6) A designated financial institution must immediately inform the Authority after the institution becomes aware that —

(a) a person has contravened section 15A(1) or (3) or 15B(1) in relation to the institution;

(b) a person is, in accordance with the Guidelines on Fit and Proper Criteria, not a fit and proper person to be a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the institution; or

(c) the institution is not likely to be able to conduct its business prudently or to comply with the provisions of this Act having regard to the likely influence over the institution of a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the institution.

(7) A designated financial institution which fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(8) In this section, “12% controller”, “20% controller” and “indirect controller” have the meaning given to those expressions in section 15B.”; and

(b) by inserting, immediately after the word “institutions” in the section heading, the words “, and notification of Authority of contravention, etc.”.

(2) Section 15E of the Banking Act, as amended by subsection (1), is amended —

(a) by deleting the words “designated financial institution” in subsections (6) and (7) and substituting in each case the words “bank incorporated in Singapore”; and

(b) by deleting the word “institution” wherever it appears in subsection (6) and substituting in each case the word “bank”.

Amendment of section 18

13.—(1) Section 18 of the Banking Act is amended by inserting, immediately after subsection (4), the following subsection:

“(5) Where a person claims, before providing any information to a designated financial institution under subsection (1) or to the Authority under subsection (2), that the information might tend to incriminate the person, the information is not admissible in evidence against the person in criminal proceedings, other than proceedings for an offence under section 17 or this section.”.

(2) Section 18(5) of the Banking Act, as amended by subsection (1), is amended by deleting the words “designated financial institution” and substituting the words “bank incorporated in Singapore”.

Amendment of section 19

14. Section 19(3) of the Banking Act is amended by inserting, immediately after the words “every day”, the words “or part of a day”.

Amendment of section 25

15. Section 25(5) of the Banking Act is amended by inserting, immediately after the words “every day”, the words “or part of a day”.

Amendment of section 26

16. Section 26 of the Banking Act is amended —

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- (a) by deleting the word “or” at the end of subsection (6A)(d);
- (b) by deleting the full-stop at the end of paragraph (e) of subsection (6A) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(f) the disclosure of the information is required under any written law.”;

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- (c) by inserting, immediately after subsection (6A), the following subsection:

“(6B) Nothing in subsection (6) prevents the Authority from disclosing any information received from a bank under this section if the disclosure is pursuant to an order of court in Singapore.”; and

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- (d) by deleting subsection (8) and substituting the following subsections:

“(8) Any bank which contravenes subsection (1) or (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 \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

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(9) Any bank which in purported compliance with this section furnishes any information to the Authority, knowing or reckless that the information is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

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(10) Where a bank is guilty of an offence under subsection (8) or (9), any individual charged with the duty of securing the bank's compliance with the subsection or requirement, and was in the position to discharge that duty, shall also be guilty of an offence and shall be liable on conviction —

(a) if the individual committed the offence wilfully, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) if the individual did not commit the offence wilfully, to a fine not exceeding \$125,000.

(11) Any bank which fails to take reasonable care that any information furnished to the Authority in purported compliance with this section is accurate, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.”.

Amendment of section 27

17. Section 27 of the Banking Act is amended —

(a) by deleting the words “and all the exposures of the bank to” in subsection (1) and substituting the words “, all the exposures of the bank to, and all the transactions of the bank with”;

(b) by deleting the words “or exposures” in subsection (1)(i) and substituting the words “, exposures or transactions”;

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

“(3) If it appears to the Authority, whether from a statement submitted under subsection (2)(c) or otherwise, that any credit facility from, any exposure of the bank to, or any transaction of a bank with, any person referred to in subsection (1) is detrimental to 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:

(a) direct the bank to do any of the following within such time and to such extent as may be specified in the notice: 5

(i) secure repayment of the credit facility;

(ii) reduce or eliminate the exposure;

(iii) terminate the transaction;

(b) prohibit the bank from granting any new credit facility, creating any new exposure, or entering into any new transaction to or with the person; 10

(c) impose such restrictions as the Authority considers appropriate on the grant of any new credit facility, the creation of any new exposure, or the entering into of any new transaction to or with the person. 15

(3A) A bank which fails to comply with a notice under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.”; 20

(d) by deleting the full-stop at the end of the definition of “substantial shareholder group” in subsection (4) and substituting a semi-colon, and by inserting immediately thereafter the following definition: 25

““transaction” has the meaning given to it in the Fifth Schedule.”; and

(e) by deleting the section heading and substituting the following section heading: 30

“(a) disapply this section to any entity or class of entities, subject to such conditions as may be prescribed;”;

(d) by deleting paragraph (c) of subsection (5) and substituting the following paragraph: 5

“(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 an entity in which a bank has, directly or indirectly, a major stake is to be treated as acquired or held by the bank.”; 10

(e) by deleting the definition of “major stake” in subsection (7) and substituting the following definitions:

““company” means a company incorporated under the Companies Act (Cap. 50) or any corresponding previous written law, or a company incorporated outside Singapore; 15

“entity” means any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore; 20

“limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A), and includes a limited liability partnership formed or established outside Singapore; 25

“major stake”, in relation to an entity, means —

(a) any beneficial interest exceeding 10% of the total number of issued shares or such other measure corresponding to shares in a company as may be prescribed; 30

(b) control of over more than 10% of the voting power or such other measure corresponding to voting power in a company as may be prescribed; or

(c) any interest in the entity, by reason of which the management of the entity is accustomed or under an obligation, whether formal or informal, to act in accordance with the bank's directions, instructions or wishes, or where the bank is in a position to determine the policy of the entity;

“management”, in relation to an entity, means —

- (a) if the entity is a company, its directors;
- (b) if the entity is a limited liability partnership, its partners or managers;
- (c) if the entity is any other partnership, its partners;
- (d) if the entity is a cooperative society, the members of its committee of management; or
- (e) if the entity is any other society, its officers,

and includes such other person of the entity as the Authority may prescribe;” and

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

“Major stake in entity”.

Repeal of section 36

21. Section 36 of the Banking Act is repealed.

Amendment of section 38

22. Section 38 of the Banking Act is amended —

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

“(1A) For the purposes of subsection (1), the Authority may impose different requirements for different types of liquid assets.”;

(b) by deleting subsection (5);

(c) by deleting the definition of “liquid assets” in subsection (9) and substituting the following definition:

“ “liquid assets” means any asset that can be easily sold or converted into cash at little or no loss in value, as specified in the notice referred to in subsection (1);”; and

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

“Liquid assets requirement”.

Amendment of section 39

23. Section 39 of the Banking Act is amended by inserting, immediately after subsection (8), the following subsection:

“(9) Any bank which fails to comply with any direction of the Authority under subsection (4) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.”.

New section 39A

24. The Banking Act is amended by inserting, immediately after section 39, the following section:

“Use of minimum cash balances in liquidity stress situation

39A.—(1) Despite section 39 but subject to subsection (6), a bank may utilise its minimum cash balances, if the bank —

(a) is in a liquidity stress situation;

(b) is solvent immediately before, and will remain solvent after, the utilisation of its minimum cash balances; and

(c) is permitted by a notice under subsection (2) to utilise its minimum cash balances.

5 (2) The Authority may, by notice in writing to any bank in Singapore or class of banks in Singapore, permit the bank or a bank within the class to use its minimum cash balances in the event that it is in a liquidity stress situation.

(3) When deciding whether to issue a notice under subsection (2) to a bank or class of banks, the Authority may have regard to —

10 (a) the risks arising from the activities of the bank or class of banks; and

(b) such other factors as the Authority considers relevant.

15 (4) The Authority may in a notice under subsection (2) impose on the bank or a bank within the class requirements in relation to the utilisation by the bank of its minimum cash balances, including —

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

20 (b) the manner in which the bank may utilise its minimum cash balances.

25 (5) A bank that has purportedly used its minimum cash balances in a liquidity stress situation must, within such time as may be specified by the Authority, provide such information as the Authority may require concerning —

(a) the liquidity stress situation and the utilisation of its minimum cash balances; or

(b) the bank's compliance with any requirement imposed under subsection (4).

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

(a) a bank that has used or is about to use its minimum cash balance —

(i) is not in a liquidity stress situation;

(ii) has failed to comply with any requirement imposed under subsection (4); or

(iii) is or is likely to become insolvent or unable to meet its obligations, or is about to suspend payments; or

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

the Authority may by notice in writing to the bank direct the bank to do the applicable act or acts mentioned in subsection (7).

(7) For the purposes of subsection (6), the acts are —

(a) if the bank has already utilised its minimum cash balances, to comply with any requirement imposed under section 39(1) within such time as may be specified by the Authority in the notice; or

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(b) if the bank has not utilised or has not fully utilised its minimum cash balances, one or more of the following:

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(i) not to use the bank's minimum cash balances;

(ii) to stop utilising the bank's minimum cash balances;

(iii) to comply with any requirement imposed under section 39(1) within such time as may be specified by the Authority in the notice under subsection (6).

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(8) A bank which fails to comply with any direction or requirement of the Authority under subsection (4), (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

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(9) In this section —

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

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“minimum cash balances”, in relation to a bank, means its minimum cash balances maintained on deposit with the Authority under section 39.”.

Amendment of section 40

5 **25.** Section 40 of the Banking Act is amended —

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

10 “(1) The Authority may, from time to time, by notice in writing to any bank in Singapore or any class of banks in Singapore, impose requirements in relation to the minimum amount or amounts of assets in Singapore that the bank or each bank in the class is to hold, for the purpose of meeting its liabilities.”; and

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

20 “(3) Where the Authority issues a notice under subsection (1) to a class of banks, the Authority may impose different requirements on different banks, 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.”.

Amendment of heading to Part VII

25 **26.** Part VII of the Banking Act is amended by inserting, immediately after the word “BANKS” in the Part heading, the word “, ETC.”.

Amendment of section 43

27. Section 43 of the Banking Act is amended —

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

30 “(2) The Authority may, from time to time, inspect under conditions of secrecy, the books of each subsidiary incorporated in Singapore of a bank

incorporated in Singapore, not being a subsidiary that is regulated or licensed by the Authority under any other Act.”; and

- (b) by inserting, immediately after the word “banks” in the section heading, the words “and their local subsidiaries”. 5

Amendment of section 44A

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

- (a) by inserting, immediately after the word “bank” in subsections (1), (2) and (5), the words “or subsidiary”;
- (b) by deleting paragraphs (a) and (b) of subsection (1) and substituting the following paragraphs: 10
- “(a) produce its books to the Authority and afford the Authority access to them;
 - (b) provide such information or facilities as may be required by the Authority to conduct the inspection or investigation; and 15
 - (c) procure any person who is in possession of the books or information referred to in paragraph (a) or (b) to produce the books or provide the information to the Authority.”; 20
- (c) by inserting, immediately after subsection (3A), the following subsection:
- “(3B) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (3A).”; and 25
- (d) by inserting, immediately after subsection (5), the following subsection:
- “(5A) Where the offence under subsection (5) is proved to have been committed with the consent of, or to be attributable to any negligence on the part of, an officer of the bank or subsidiary, that officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a 30

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

5 **Amendment of section 45**

29. Section 45 of the Banking Act is amended —

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

10 “(1A) Without limiting the generality of subsection (1), and subject to subsection (2), the inspection may be conducted in respect of any activity of the bank besides banking business.”; and

(b) by inserting, immediately after subsection (7), the following subsection:

15 “(8) Where the offence under subsection (6) is proved to have been committed with the consent of, or to be attributable to any negligence on the part of, an officer of the bank, that officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding
20 \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.”.

25 **Amendment of section 46**

30. Section 46 of the Banking Act is amended —

(a) by inserting, immediately after the words “bank in Singapore” in subsections (1) and (2)(a) and (b), the words
30 “or subsidiary incorporated in Singapore of a bank incorporated in Singapore”;

(b) by inserting, immediately after the words “the bank” wherever they appear in subsections (1) and (4), the words “or subsidiary”;

- (c) by inserting, immediately after the words “that bank” wherever they appear in subsection (2)(a) and (b), the words “or subsidiary”;
- (d) by deleting subsection (3) and substituting the following subsection: 5
- “(3) In granting written approval for any disclosure under subsection (2)(d), the Authority may impose such conditions or restrictions as it thinks fit on the bank, the subsidiary, any officer or auditor of the bank or subsidiary, or the person to whom disclosure is approved, and the bank, subsidiary, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.”; and 10
- (e) by deleting the words “subsection (1)” in subsection (4) and substituting the words “subsections (1) and (3)”. 15

New sections 46A and 46B

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

“Application of section 45 to merchant banks

46A.—(1) Sections 45 and 46 apply, with such modifications as may be prescribed, in relation to an inspection by a parent supervisory authority of — 20

- (a) a merchant bank incorporated outside Singapore; or
- (b) a foreign-owned merchant bank incorporated in Singapore, 25

of the books of any branch or office of that merchant bank, as they apply in relation to an inspection by a parent supervisory authority of a bank incorporated outside Singapore, or a foreign-owned bank incorporated in Singapore, of the books of any branch or office of the bank in Singapore. 30

(2) In this section —

“foreign-owned merchant bank incorporated in Singapore” means a merchant bank incorporated in Singapore, the

parent bank of which is incorporated, formed or established outside Singapore;

“merchant bank incorporated outside Singapore” means a merchant bank incorporated, formed or established outside Singapore;

“parent bank”, in relation to a foreign-owned merchant bank incorporated in Singapore or a merchant bank incorporated outside Singapore, means a financial institution incorporated, formed or established outside Singapore of which the merchant bank is a subsidiary;

“parent supervisory authority” means —

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

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

Inspection outside Singapore of subsidiaries of banks incorporated in Singapore

46B.—(1) The Authority may, in a country or territory outside Singapore, from time to time, inspect under conditions of secrecy, the books of a subsidiary of a bank incorporated in Singapore.

(2) Without limiting the generality of subsection (1), the inspection may be conducted in respect of activities that correspond to activities that are regulated or licensed by the Authority under this Act or any other Act.

(3) The Authority may appoint an auditor, other than the auditor appointed by the bank or by the Authority under section 58, to exercise the power of inspection.

(4) If the inspection is carried out on the ground that the Authority has reason to believe that the subsidiary of the bank incorporated in Singapore is carrying on its business in a manner likely to be detrimental to the interest of the depositors and other creditors of the bank and if the Authority so directs, then the bank is liable to pay for the remuneration and expenses of the auditor appointed under subsection (3).

(5) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (4).”.

Amendment of section 47

32. Section 47 of the Banking Act is amended —

- (a) by deleting the words “approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186)” in subsection (10); and
- (b) by deleting the section heading and substituting the following section heading:

“Privacy of customer information”.

Amendment of section 48

33. Section 48(2) of the Banking Act is amended —

- (a) by deleting “\$100,000” and substituting “\$250,000”; and
- (b) by deleting “\$10,000” and substituting “\$25,000”.

New section 48AA

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

“Information of material adverse development, etc.

48AA.—(1) When a bank in Singapore becomes aware of any development that has occurred or is likely to occur which the

bank has reasonable grounds to believe has materially affected adversely, or is likely to materially affect adversely —

- (a) the financial soundness or reputation of the bank;
- (b) the ability of the bank to conduct any business referred to in section 30(1); or
- (c) such other matters as the Authority may prescribe,

the bank must immediately inform the Authority of the development.

(2) When a bank incorporated in Singapore becomes aware of any development that has occurred or is likely to occur which the bank has reasonable grounds to believe has materially affected adversely, or is likely to materially affect adversely —

- (a) the financial soundness or reputation of any entity in the bank group of the bank or any entity or trust in the FHC group of the designated financial holding company of the bank (if applicable);
- (b) the ability of any entity in the bank group of the bank or any entity or trust in the FHC group of the designated financial holding company of the bank (if applicable), to conduct its business; or
- (c) such other matters as the Authority may prescribe,

the bank must immediately inform the Authority of the development.

(3) A bank in Singapore must immediately inform the Authority when it is aware that it has contravened or is likely to contravene, any provision of any Act administered by the Authority or any requirement imposed on it by the Authority under any such Act.

(4) Any bank which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(5) In this section —

“accounting standards” means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Act (Cap. 2B);

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“associate”, in relation to an entity (called in this definition the first entity), means —

(a) any entity in which the first entity controls the composition of the board of directors or such corresponding officers as may be prescribed;

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(b) any entity in which the first entity controls more than half of the voting power or such measure corresponding to voting power as may be prescribed;

(c) any entity in which the first entity holds more than half of the total number of issued shares or such corresponding interest as may be prescribed;

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(d) a subsidiary of any other entity which is an associate by reason of paragraph (a), (b) or (c);

(e) any entity (called in this paragraph the second entity) in which —

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(i) the first entity; or

(ii) any entity which is an associate by reason of paragraph (a), (b), (c) or (d),

has, or the entities in sub-paragraphs (i) and (ii) together have, an interest in shares entitling the beneficial owners of those interests 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 second entity, or such corresponding interest as may be prescribed; or

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(f) any entity (not being one which is an associate by reason of paragraph (a), (b), (c), (d) or (e)) the policies of which —

(i) the first entity; or

(ii) any entity which is an associate by reason of paragraph (a), (b), (c), (d) or (e),

or the entities in sub-paragraphs (i) and (ii) together are able to control or influence materially;

“bank group”, in relation to a bank, means a group of entities comprising the bank and —

(a) any of its associates; and

(b) any other entity treated as part of the bank’s group of companies according to the accounting standards applicable to the bank;

“designated financial holding company” has the meaning given to it in section 2(1) of the Financial Holding Companies Act 2013 (Act 13 of 2013);

“entity” means any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore;

“FHC group”, in relation to a designated financial holding company, means a group of entities and trusts comprising the financial holding company and —

(a) any of its associates; and

(b) any other entity or trust treated as part of the financial holding company’s group of companies according to the accounting standards applicable to the financial holding company;

“subsidiary” means an entity prescribed as a subsidiary for the purposes of this section.”.

Amendment of section 49

35. Section 49 of the Banking Act is amended by inserting, immediately after subsection (6), the following subsection:

“(7) A bank which fails to comply with any requirement imposed under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.”.

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New section 53A

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36. The Banking Act is amended by inserting, immediately after section 53, the following section:

“Appointment of chief executive officer and other persons

53A.—(1) A bank incorporated in Singapore must obtain the prior approval of the Authority for the appointment of any of the following:

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- (a) all directors;
- (b) the chairman of the board of directors;
- (c) the chief executive officer and the deputy chief executive officer;
- (d) a person holding such appointment in the bank as may be prescribed.

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(2) A bank incorporated outside Singapore must obtain the prior approval of the Authority for the appointment of the following persons for its bank in Singapore:

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- (a) the chief executive officer and the deputy chief executive officer;
- (b) a person holding such appointment in the bank as may be prescribed.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority, in determining whether to grant its approval under subsection (1) or (2), must have regard to

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whether the person is a fit and proper person to hold the office or appointment in accordance with the Guidelines on Fit and Proper Criteria.

(4) The Authority may —

- 5 (a) grant its approval under subsection (1) or (2), with or without conditions; and
- (b) at any time vary or revoke any existing condition or impose conditions or additional conditions.

10 (5) Without limiting the generality of section 78, the Authority may prescribe —

- (a) the duties of a person appointed under subsection (1) or (2); and
- (b) the maximum term for which a person appointed under subsection (1) or (2) may hold such office or
- 15 appointment.

 (6) A bank incorporated in Singapore must immediately inform the Authority after the bank becomes aware that a person who holds an office or appointment referred to in subsection (1) is, in accordance with the Guidelines on Fit and Proper Criteria, no longer a fit and proper person to hold that office or appointment.

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 (7) A bank incorporated outside Singapore must immediately inform the Authority after the bank becomes aware that a person who holds an office or appointment referred to in subsection (2) is, in accordance with the Guidelines on Fit and Proper Criteria, no longer a fit and proper person to hold that office or appointment.

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 (8) Any bank which contravenes subsection (1) or (2), or fails to comply with any condition imposed by the Authority under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

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(9) Any bank which contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.”.

Amendment of section 54

37. Section 54 of the Banking Act is amended by deleting subsections (2) and (3) and substituting the following subsections: 5

“(2) Despite the provisions of any other written law, where the Authority is satisfied that —

(a) a director of a bank in Singapore which is incorporated in Singapore; or 10

(b) an executive officer of a bank in Singapore,

is not a fit and proper person to be a director or an executive officer (as the case may be), the Authority may, by notice in writing to the bank, direct the bank to remove the director or executive officer from his office or employment within such period as may be specified by the Authority in the notice, and the bank must comply with the notice. 15

(3) In assessing whether to direct a bank to remove a director or an executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether — 20

(a) he has wilfully contravened or wilfully caused the bank to contravene any provision of this Act;

(b) he has, without reasonable excuse, failed to secure the compliance of the bank with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; 25

(c) he has failed to discharge any of the duties of his office or employment; or

(d) his removal is necessary in the public interest or for the protection of the depositors of the bank.”. 30

Amendment of section 55

38. Section 55(2) of the Banking Act is amended —

- (a) by deleting paragraph (h); and
- (b) by deleting paragraph (n) and substituting the following paragraph:

“(n) the opening of new places of business and representative offices and the change of location of any place of business or representative office;”.

Amendment of heading to Part VIIA

39. The heading of Part VIIA of the Banking Act is amended by deleting the word “VOLUNTARY”.

Amendment of Division 1 heading of Part VIIA

40. Part VIIA of the Banking Act is amended by deleting the words “*Voluntary transfer*” in the heading of Division 1 and substituting the word “*Transfer*”.

Amendment of section 55B

41. Section 55B of the Banking Act is amended —

- (a) by inserting, immediately after the words “A transferor may” in subsection (1), the word “voluntarily”;
- (b) by inserting, immediately after subsection (1), the following subsection:

“(1A) A transferor must transfer the whole or any part of its banking business in Singapore to a company incorporated by the bank or its parent bank under the Companies Act (Cap. 50) for the purpose of carrying on that business or that part of the business, if —

- (a) it is directed by the Authority under section 55BA to do so; and
- (b) the Court has approved the transfer.”;

- (c) by deleting the words “Subsection (1) is” in subsection (2) and substituting the words “Subsections (1) and (1A) are”; and
- (d) by deleting the section heading and substituting the following section heading:

5

“Conditions for transfer of business”.

New section 55BA

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

“Power to require incorporation and transfer of business

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55BA.—(1) The Authority may, by notice in writing to a bank incorporated outside Singapore, direct the bank to transfer the whole or any part of its banking business in Singapore to a company incorporated or to be incorporated by the bank or its parent bank under the Companies Act (Cap. 50).

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(2) The bank that is so directed by the Authority must —

- (a) apply to the Court, within the period specified in the notice (including any extension approved by the Authority), for the Court’s approval of the transfer of the whole or any part of its banking business in Singapore to a company incorporated or to be incorporated by the bank or its parent bank under the Companies Act for the purpose of carrying on that business or that part of the business, and use all reasonable efforts to obtain such approval; and
- (b) upon approval of the Court, incorporate such company (if applicable), and transfer that business or that part of the business to the company in accordance with the terms of the approval and within such time as the Authority may specify in the notice (including any extension approved by the Authority).

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(3) The Authority may only make the direction in subsection (1) if it is of the opinion that —

(a) it is necessary or expedient in the public interest;
 (b) it is in the interest of the depositors of the bank; or
 (c) it is in the interest of the financial system in Singapore,
 for the bank to carry out the acts mentioned in that subsection.

5 (4) A bank which fails to comply with a notice under
 subsection (1) shall be guilty of an offence and shall be liable
 on conviction to a fine not exceeding \$250,000 and, in the case of
 a continuing offence, to a further fine not exceeding \$25,000 for
 every day or part of a day during which the offence continues
 10 after conviction.”.

Amendment of section 55C

43. Section 55C of the Banking Act is amended —

(a) by deleting subsection (5) and substituting the following
 subsections:

15 “(5) The Court may, after taking into consideration
 the views, if any, of the Minister and the Authority —

(a) approve the transfer without modification or
 subject to any modification agreed to by the
 transferor and the transferee; or

20 (b) refuse to approve the transfer.

(5A) In an application made on a direction issued
 under section 55BA(1) by the Authority, the transferor
 must notify the Authority immediately if the Court —

25 (a) approved the transfer of business subject to
 any modification; or

(b) refused to approve the transfer of business.”;
 and

(b) by inserting, immediately after subsection (13), the
 following subsection:

30 “(14) For the purposes of this section, where the
 transfer is one referred to in section 55B(1A) and the

transferee has yet to be incorporated when the application is made to the Court —

- (a) subsections (2), (5), (12) and (13) apply as if there is no reference to the transferee;
- (b) the reference in subsection (6) to the transferee becoming licensed to carry on banking business in Singapore is a reference to the transferee at the time it is incorporated and so licensed; and
- (c) a reference in subsections (7), (9) and (11) to the transferee is a reference to the transferee when it is incorporated.”.

Amendment of section 55N

44. Section 55N of the Banking Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (1); or
- (b) in purported compliance with any requirement under subsection (1), furnishes any information knowing or reckless that the information is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction —

- (i) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or
- (ii) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(3) Where a person claims, before furnishing the Authority with any information that the person is required to furnish under subsection (1), that the information might tend to incriminate the person, the information is not admissible in evidence against the person in criminal proceedings other than proceedings under this section.”.

Amendment of section 56

45. Section 56 of the Banking Act is amended by deleting the full-stop at the end of the definition of “licensee” and substituting a semi-colon, and by inserting immediately thereafter the following definition:

“ “place of business”, in relation to a licensee, includes a head or main office, a branch, an agency, a mobile branch of the licensee, any office established and maintained for a limited period only, and any other place used by the licensee for the conduct of any business of the licensee.”.

New sections 57EA and 57EB

46. The Banking Act is amended by inserting, immediately after section 57E, the following sections:

“Place of business

57EA.—(1) Except with the approval of the Authority, a licensee must not —

- (a) open a new place of business in Singapore for the conduct of any business referred to in subsection (2);
- (b) change the location of an existing place of business in Singapore for the conduct of any business referred to in subsection (2); or
- (c) conduct any business referred to in subsection (2) from the new place of business referred to in paragraph (a) or the relocated place of business referred to in paragraph (b).

(2) Subsection (1) applies to the following businesses:

- (a) the business of issuing credit cards or charge cards;
- (b) such other business as may be prescribed.

(3) An application for approval under subsection (1) must be made in such form and manner as the Authority may specify. 5

(4) On receiving an application, the Authority may —

- (a) approve the application, with or without conditions; or
- (b) reject the application.

(5) The Authority may at any time vary or revoke any existing condition, or impose conditions or additional conditions. 10

(6) A licensee which contravenes subsection (1) or fails to comply with any condition imposed under subsection (4) or (5) 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 of a day during which the offence continues after conviction. 15

Information to be furnished on business of issuing credit cards or charge cards

57EB.—(1) The Authority may, by notice in writing, require — 20

- (a) any licensee;
- (b) any bank in Singapore; or
- (c) any person prescribed under section 57(9),

to furnish to the Authority such information or statement relating to its business of issuing credit cards or charge cards, at such time and in such manner as the Authority may specify, if, in the opinion of the Authority, it requires that information or statement for the proper discharge of its functions under this Act. 25

(2) The Authority may require any information or statement submitted to it under subsection (1) to be accompanied by — 30

(a) in the case of a bank —

(i) a certificate of the auditor appointed by the bank under section 58(1); or

(ii) a certificate of any auditor appointed by the Authority under section 58(3); or

(b) in the case of any other person, a certificate of an auditor appointed by that person,

as to whether, in the opinion of the auditor, the information or statement is correct.

(3) Any information received from any person under this section must be treated as secret by the Authority.

(4) The Authority may disclose any information or statement received under this section if —

(a) it is in the public domain;

(b) it is disclosed in such a manner that the identity of the person who furnished it cannot be ascertained;

(c) the person who furnished it, or the person from whom it is obtained, consents to the disclosure;

(d) the person to whom the information or statement relates consents to the disclosure;

(e) its disclosure 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; or

(f) its disclosure is pursuant to any requirement under any written law or order of court in Singapore.

(5) Nothing in this section prevents the Authority from preparing and publishing consolidated statements aggregating information furnished under subsection (1).

(6) Any person who fails to comply with a requirement under subsection (1) or (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 of a day during which the offence continues after conviction.

(7) Where a person referred to in subsection (1)(a), (b) or (c), in purported compliance with a requirement in subsection (1) or (2), furnishes any information to the Authority, knowing or reckless that the information is false or misleading in a material particular, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(8) Where a person referred to in subsection (1)(a), (b) or (c) is guilty of an offence under subsection (6), any individual charged with the duty of securing the person's compliance with the requirement under subsection (1) or (2), and was in the position to discharge that duty, shall also be guilty of an offence and shall be liable on conviction —

(a) if the individual committed the offence wilfully, to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 12 months or to both; or

(b) if the individual did not commit the offence wilfully, to a fine not exceeding \$12,500.

(9) Where a person referred to in subsection (1)(a), (b) or (c) is guilty of an offence under subsection (7), any individual charged with the duty of securing the person's compliance with the requirement under subsection (1) or (2), and was in the position to discharge that duty, shall also be guilty of an offence and shall be liable on conviction —

(a) if the individual committed the offence wilfully, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) if the individual did not commit the offence wilfully, to a fine not exceeding \$125,000.

(10) A person referred to in subsection (1)(a), (b) or (c) who fails to take reasonable care that any information furnished to the Authority in purported compliance with a requirement under

subsection (1) or (2) is accurate, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.”.

Amendment of section 58

47. Section 58 of the Banking Act is amended —

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

“(1) Despite the provisions of the Companies Act (Cap. 50), every bank must —

10 (a) on an annual basis, appoint an auditor and obtain the approval of the Authority to such appointment; and

15 (b) where, for any reason, the auditor ceases to act for the bank, as soon as practicable thereafter, appoint another auditor and obtain the approval of the Authority to such appointment.”;

(b) by deleting the words “banks unless he” in subsection (2) and substituting the words “a bank unless the auditor”;

20 (c) by inserting, immediately after the words “The Authority may” in subsection (5), the words “, by notice in writing,”;

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

25 “(5A) An auditor to whom a notice is given under subsection (5) must comply with each direction specified in the notice.”;

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

30 “(6A) Despite any other provision of this Act or the provisions of the Companies Act, the Authority may, if it is not satisfied with the performance of any duty by an auditor of a bank, at any time —

(a) direct the bank to remove the auditor; and

(b) direct the bank to appoint another auditor approved by the Authority, as soon as practicable after the removal,

and the bank must comply with the directions.”;

(f) by deleting paragraphs (b), (c) and (d) of subsection (8) and substituting the following paragraphs: 5

“(b) losses have been incurred which reduce the capital funds of the bank by at least 50%;

(c) serious irregularities have occurred, including irregularities that jeopardise the security of the creditors of the bank; or 10

(d) the auditor is unable to confirm that the claims of creditors of the bank are still covered by the assets,”; and

(g) by inserting, immediately after subsection (9), the following subsections: 15

“(10) Where an auditor discloses in good faith to the Authority —

(a) any information referred to in subsection (5)(a) or report referred to in subsection (5)(d); 20

(b) any of the matters referred to in subsection (8); or

(c) any information in support of that matter,

the disclosure is not to be treated as a breach of any restriction on the disclosure imposed by any law, contract or rules of professional conduct, and the auditor is not liable for any loss arising from the disclosure or any act or omission as a result of the disclosure. 25 30

(11) A bank which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a

continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

5 (12) A bank which fails to comply with a direction under subsection (6A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

10 (13) Any auditor who fails to carry out any duty referred to in subsection (4), or who fails to comply with subsection (5A) or (8), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.”.

Amendment of section 60

20 **48.** Section 60 of the Banking Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsection:

25 “(1) The Authority may, at any time by notice published in the *Gazette*, declare any day or days as a bank holiday or holidays, and prohibit banks in Singapore from conducting, during the bank holiday or holidays —

(a) such activities as may be specified in the notice; or

30 (b) all activities other than such activities as may be specified in the notice.”; and

(b) by inserting, immediately after subsection (4), the following subsections:

“(5) Any bank which contravenes any prohibition under a notice referred to in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

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(6) In this section, “day” includes a part of a day.”.

Amendment of section 62

49. Section 62 of the Banking Act is amended —

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(a) by inserting, immediately after the words “section 77” in subsection (1)(d), the words “other than liabilities referred to in paragraph (b)”;

(b) by deleting sub-paragraph (B) of subsection (3)(i) and substituting the following sub-paragraph:

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“(B) the terms of which comply with the criteria for the treatment of the liabilities as capital in determining whether the bank complies with the capital adequacy requirements under section 10, whether or not the entire amount of such liabilities is treated as capital in the determination.”.

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New section 65

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50. The Banking Act is amended by inserting, immediately after section 64, the following section:

“Power of Authority to secure compliance with Act

65.—(1) A bank in Singapore, if called upon at any time by the Authority in writing to do so, must satisfy the Authority by the production of such evidence or information as the Authority may require, that the bank is not in contravention of any of the provisions of, or any regulation, notice or direction made or

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issued under, section 10, 10A, 23, 27, 29, 31, 32, 33, 35, 38, 39, 40, 42 or this section.

5 (2) Without prejudice to sections 10, 10A, 23, 27, 29, 31, 32, 33, 35, 38, 39, 40 and 42 or any other subsection of this section, the Authority may, for the purpose of securing compliance with any of those provisions, or any regulation, notice or direction made or issued under any of those sections (other than this section), on a consolidated basis, from time to time by notice in writing, require any bank to aggregate, in such manner as may be specified in the notice —

(a) its assets, liabilities, profits or losses, and any other information whether or not on its balance-sheet; and

(b) the assets, liabilities, profits or losses, and any other information whether or not on the balance-sheets of —

15 (i) the bank's related corporations; and

(ii) the entities in which the bank holds, directly or indirectly, a major stake as defined in section 32(7).

20 (3) A notice under subsection (2) may vary a requirement of a notice issued under any of the sections mentioned in that subsection.

(4) The bank must comply with the notice under subsection (2) within such time as may be specified in the notice.

25 (5) Any bank which fails to comply with a 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 of a day during which the offence continues after conviction.

30 (6) Any bank which contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to the same punishment as that provided for a contravention of the section of this Act, or of a notice or direction under the section of this Act, for the compliance with which the notice was given.”

Amendment of section 66

51. Section 66 of the Banking Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) Any person who —

(a) provides any information or document to the Minister or the Authority 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 reasonable care to ensure that the information or document is not false or misleading in any material particular,

shall, if the provision 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 —

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

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

Repeal and re-enactment of section 70

52. Section 70 of the Banking Act is repealed and the following section substituted therefor:

“Publication of information on banks

70.—(1) The Authority is to publish and maintain on its website at all times, a list of banks licensed under this Act.

(2) If any licence is issued, revoked or surrendered, or the name of any bank is changed, the Authority is to publish notice of this in the *Gazette*.”.

Amendment of section 74

53. Section 74(1) of the Banking Act is amended by deleting the words “section 44A(3)” in paragraph (b)(i) and substituting the words “sections 44A(3) and 46B(3)”.

Amendment of section 77

54. Section 77(4) of the Banking Act is amended —

- (a) by deleting the words “approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186),” in paragraph (a);
- (b) by deleting “, 38” in paragraph (a)(ii); and
- (c) by deleting the words “sections 38 and 39” in paragraph (b) and substituting the words “section 39”.

Amendment of section 78

55. Section 78 of the Banking Act is amended —

- (a) by deleting the word “companies” in subsection (3)(a) and substituting the word “entities”;
- (b) by deleting the word “and” at the end of subsection (3)(a);
- (c) by deleting paragraph (b) of subsection (3) and substituting the following paragraphs:
 - “(b) the prohibition or restriction on mutual holding of shares or other interests between the banks, related corporations or other entities referred to in paragraph (a); and
 - (c) the risk management of banks, whether or not relating to banking business.”; and
- (d) by deleting subsection (5) and substituting the following subsections:

“(5) Except as otherwise expressly provided in this Act, regulations made under this section may provide that any contravention of any of those regulations is an offence punishable —

- (a) in the case of an individual, with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 2 years or with both and, in the case of a continuing offence, with a further fine not exceeding \$5,000 for every day or part

of a day during which the offence continues after conviction; or

- (b) in any other case, with a fine not exceeding \$100,000 and, in the case of a continuing offence, with a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

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(6) Regulations made under subsection (3)(c) may provide that a contravention of any of those regulations shall be an offence punishable —

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

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

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Amendment of Fifth Schedule

56. The Fifth Schedule to the Banking Act is amended —

- (a) by deleting the Schedule heading and substituting the following Schedule heading:

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“DEFINITIONS IN SECTIONS 27, 28, 29, 38 AND 39A”;

- (b) by deleting the words “any company” wherever they appear in the definition of “affiliate” in paragraph 1 and substituting in each case the words “any entity”;

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- (c) by inserting, immediately after the definition of “associate” in paragraph 1, the following definition:

““child” includes a stepchild and a child who has been de facto adopted by the person in question, whether or not such adoption has been registered in accordance with the provisions of any written law;”;

5 (d) by deleting the words “group of companies” in the definition of “financial group” in paragraph 1 and substituting the words “group of entities”;

10 (e) by deleting the words “every company” in paragraphs (a) and (b) of the definition of “financial group” in paragraph 1 and substituting in each case the words “every entity”;

(f) by deleting the full-stop at the end of the definition of “substantial shareholder group” in paragraph 1 and substituting a semi-colon, and by inserting immediately thereafter the following definition:

15 ““transaction” means any type of transaction including (but not limited to) any contract, agreement and arrangement and any transaction forming part of a contract, agreement or arrangement, and includes a write-off of a debt, loan or any other similar arrangement.”;

20 (g) by deleting the words “section 38” in paragraph 6 and substituting the words “sections 38 and 39A”; and

(h) by deleting paragraph 7 and substituting the following paragraph:

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

25 (a) a reference to an entity is a reference to any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore; and

30 (b) a reference to an entity in which another entity acquires or holds, directly or indirectly, a major stake is a reference to an entity in which the other entity has a major stake as defined in section 32(7).”.

Miscellaneous amendments

57. The Banking Act is amended —

- (a) by deleting the words “approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186)” in sections 4A(6)(d) and 5(2)(f); and 5
- (b) by deleting the definition of “merchant bank” in Part III of the Third Schedule.

Savings and transitional provisions for amendments to section 32 of Banking Act

58.—(1) An approval — 10

- (a) granted under section 32 of the Banking Act before the commencement date; and
- (b) in force immediately before that date,

is treated as an approval granted under the amended section 32 of the Banking Act, and is subject to all the conditions which it was subject to immediately before that date. 15

(2) If on the day immediately before the commencement date —

- (a) a bank in Singapore held, directly or indirectly, a major stake in an entity other than a company; and
- (b) the entity only carried on, whether in Singapore or elsewhere, one or more of the businesses mentioned in section 30(1)(a) to (d) of the Banking Act, 20

then, so long as the entity only carries on one or more of those businesses on or after that date, the amended section 32 of the Banking Act does not apply to the continued holding of such major stake in the entity, or the acquisition or holding, directly or indirectly, of any other major stake in the entity, by the bank in Singapore on or after that date. 25

(3) If on the day immediately before the commencement date —

- (a) a bank in Singapore held, directly or indirectly, a major stake in an entity other than a company; and 30
- (b) the entity carried on, whether in Singapore or elsewhere (and whether as its principal business or otherwise), any business

other than the businesses mentioned in section 30(1)(a) to (d) of the Banking Act,

then the amended section 32 of the Banking Act does not apply to the continued holding of such major stake by the bank in Singapore on or after that date for the period mentioned in subsection (4).

(4) In subsection (3), the period is —

(a) 3 months after the commencement date; or

(b) if, before the expiry of the period in paragraph (a), the bank in Singapore applies for approval under the amended section 32 of the Banking Act for the holding of that major stake —

(i) until the date the approval is given; or

(ii) if the application is refused, 12 months, or such longer period as the Authority may specially allow, after the date the application is refused.

(5) In this section —

“amended section 32 of the Banking Act” means section 32 of the Banking Act as amended by section 20 of the Banking (Amendment) Act 2016;

“commencement date” means the date of commencement of section 20 of the Banking (Amendment) Act 2016.

Savings and transitional provisions for new section 53A of Banking Act

59.—(1) A person whose appointment as a director, the chairman of the board of directors, the chief executive officer, or the deputy chief executive officer of a bank incorporated in Singapore —

(a) has been approved by the Authority under regulation 18 of the Banking (Corporate Governance) Regulations 2005 (G.N. No. S 583/2005) in force immediately before the commencement date; and

(b) has not expired or been revoked before that date,

is taken to be so appointed with the approval of the Authority under section 53A of the Banking Act.

(2) A person whose appointment as a chief executive or deputy chief executive of a bank incorporated outside Singapore —

(a) has been approved by the Authority under paragraph 4 of Notice 622A in force immediately before the commencement date; and 5

(b) has not expired or been revoked before that date,

is taken to be so appointed with the approval of the Authority under section 53A of the Banking Act. 10

(3) Any condition to which the approval of the Authority under subsection (1)(a) or (2)(a) is subject and that is in force immediately before the commencement date, continues to have effect as a condition of the approval of the Authority under section 53A of the Banking Act referred to in subsection (1) or (2), as the case may be. 15

(4) In this section —

“commencement date” means the date of commencement of section 36 of the Banking (Amendment) Act 2016;

“Notice 622A” means the notice commonly known as MAS Notice 622A that is issued by the Authority under section 55 of the Banking Act, and includes any notice that replaces it. 20

Savings and transitional provision

60. For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a savings or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient. 25

Consequential amendment to Income Tax Act

61. Section 100(2) of the Income Tax Act (Cap. 134) is amended by deleting the words “36(2) and 55” in the definition of “MAS Notice 637” and substituting the words “55 and 65(2)”. 30

EXPLANATORY STATEMENT

This Bill seeks to amend the Banking Act (Cap. 19) for the following main purposes:

- (a) to enable the Monetary Authority of Singapore (MAS) to impose certain prudential requirements on banks, in order to implement the international banking regulatory framework known as Basel III;
- (b) to enable MAS to impose public disclosure requirements on banks for the purposes of enhancing market discipline;
- (c) to require banks and credit card and charge card issuers to obtain the approval of MAS for places where they intend to conduct certain businesses;
- (d) to implement a registration regime for the establishment of representative offices for banking business;
- (e) to require a bank incorporated in Singapore or a financial holding company to notify MAS when it becomes aware that a person became its substantial shareholder or controller without first seeking the Minister's approval, or that a substantial shareholder or controller of the bank or company is not a fit and proper person to be such substantial shareholder or controller;
- (f) to provide that a bank needs to seek approval for acquiring a major stake in any entity;
- (g) to allow certain banks to utilise their minimum cash balances if they are in a liquidity stress situation;
- (h) to enable MAS to conduct supervisory inspections of local subsidiaries of banks in Singapore and merchant banks, and to conduct overseas inspections of subsidiaries of banks incorporated in Singapore;
- (i) to require a bank to inform MAS of any development that may materially affect adversely the bank, its bank group or its financial holding company group;
- (j) to enhance MAS' oversight of a bank's key appointment holders and external auditors and to introduce a safe harbour provision for auditors who disclose information to MAS;
- (k) to empower MAS to require a bank to incorporate its banking business in Singapore in order to enhance depositor protection;
- (l) to empower MAS to collect information from persons carrying on the business of issuing credit cards and charge cards;

- (m) to enable a part of a day to be declared as a bank holiday, and to enable MAS to prohibit specific activities, rather than all activities, by a bank during a bank holiday;
- (n) to empower MAS to make regulations to require banks to implement risk management systems and controls;
- (o) to empower MAS to direct a bank to take certain actions in relation to transactions which are detrimental to the interests of depositors of banks.

The Bill also makes a consequential amendment to the Income Tax Act (Cap. 134).

Clause 1 relates to the short title and commencement.

Clause 2 repeals and re-enacts the long title of the Act because the amended Act will regulate both the banking and non-banking businesses of banks and merchant banks.

Clause 3 introduces new definitions and amends certain definitions in section 2 (Interpretation). In particular —

- (a) the definition of “capital funds” is amended because of the amendments made to section 10 by clause 7;
- (b) a definition for “Guidelines on Fit and Proper Criteria” (being an MAS document by that title published on its website) is introduced for the purposes of amended section 15E and the new section 53A;
- (c) a definition of “merchant bank” is introduced as it occurs in many places in the Act;
- (d) the definition of “place of business” is amended to include any place used by the bank for the conduct of any business of the bank, whether or not it is banking business, and to exclude a representative office which is to be regulated separately under the new section 13A; and
- (e) the definition of “parent supervisory authority” is amended to reflect the fact that a bank may have more than one parent supervisory authority.

Clause 4 amends section 7 (Application for licence) to clarify that the conditions that may be imposed on a banking licence include a condition on the type of banking business that may be carried out as well as restrictions on that business. Further, the section is amended to provide for the procedure for varying such a condition.

Clause 5 amends section 9 (Minimum capital requirements) —

- (a) to remove the requirement that a bank can only continue holding a licence if the bank satisfies the capital requirements in subsection (1), as action

against a bank for failing to do so can be taken under section 20 (Revocation of licence);

- (b) to provide that the minimum paid-up capital and the minimum capital funds of a bank incorporated in Singapore must be denominated in Singapore dollars or any currency approved by MAS, and must be in ordinary shares;
- (c) to repeal section 9(2) (exempting a bank incorporated outside Singapore from the condition for its head office capital funds to be at least \$200 million before it may be granted a licence or for it to continue to hold a licence) as it is no longer needed;
- (d) to provide that a bank incorporated in Singapore must maintain at all times capital funds of not less than \$1,500 million (or any other prescribed amount), and that a bank incorporated outside Singapore must maintain at all times head office capital funds of not less than \$200 million; and
- (e) to provide for enhanced penalties (as compared to the penalties in the current section 71) for a breach of a requirement of the section.

Clause 6 amends section 9A (Capital requirements for qualifying subsidiaries) —

- (a) to remove the requirement that a qualifying subsidiary can only continue to hold a licence if the qualifying subsidiary satisfies the requirements in subsection (1), as action against the qualifying subsidiary for failing to do so can be taken under section 20 (Revocation of licence);
- (b) to remove, as a condition for holding the licence, that a licensed qualifying subsidiary must continue to be a qualifying subsidiary. A company that ceases to be a qualifying subsidiary must maintain the paid-up capital and capital funds under section 9 (Minimum capital requirements) if it wishes to continue holding the licence;
- (c) to provide that the minimum paid-up capital and the minimum capital funds of a bank which is a qualifying subsidiary must be denominated in Singapore dollars or any currency approved by MAS, and must be in ordinary shares; and
- (d) to provide for enhanced penalties (as compared to the penalties in the current section 71) for a breach of a requirement of the section.

Clause 7 amends section 10 (Risk-based capital requirements) —

- (a) to enable MAS to impose other capital adequacy requirements on a bank or class of banks (besides capital adequacy ratio), such as requiring a level of capital (which may be expressed in the form of a ratio) and quality of capital, that is commensurate with the risks of a bank, and specifying the manner and process for calculating the level or quality of such capital; and

- (b) to provide for a criminal penalty for a failure to comply with a notice under the section as well as any restriction or suspension of operation imposed by MAS under the section.

Clause 8 inserts new sections 10A and 10B.

The new section 10A enables MAS to impose minimum leverage ratio requirements on a bank or class of banks, and impose restrictions on distributions of payments by a bank which fails to comply with any such requirement.

The new section 10B enables MAS, in order to enhance market discipline, to require a bank or a bank within a class of banks in Singapore to disclose to the public any information concerning its operations and activities and the manner it complies with any part of the Act or an MAS notice or direction, or to disclose to the public information concerning the operations and activities of an entity in the bank's bank group.

Clause 9 repeals and re-enacts section 12. The current section 12 regulates the opening of new places for conducting banking business and the change of location of places used for conducting banking business. The new section 12 extends the provision to places used to conduct other types of businesses such as businesses regulated by MAS and businesses incidental to banking business and other businesses regulated by MAS. Furthermore, a bank cannot conduct banking business or any of the above businesses from the new or relocated place without the approval of MAS.

Clause 10 inserts a new section 13A to regulate the establishment and operation of a representative office in Singapore, namely, an office to carry out liaison work, market research or feasibility studies concerning banking business. A person desiring to establish or operate such an office must be registered with MAS. The new section contains a savings provision for a person who notified MAS before the commencement date of the new section of the person's intention to establish a representative office, and has done so either before the commencement date or at such later date set by MAS.

Clause 11 amends section 14 (Mergers) to enhance the maximum fine that may be imposed where a bank incorporated in Singapore merges or consolidates with any other entity without the prior approval of the Minister. It also criminalises the giving of false or misleading information to the Minister or MAS in relation to an application for such approval.

Clause 12(1) amends section 15E (Objection to existing control of designated financial institutions) to require a designated financial institution to notify MAS of certain occurrences. These include —

- (a) a failure by a person to get the Minister's approval before becoming a substantial shareholder, a 12% controller, a 20% controller, or an indirect controller of the institution;

- (b) a failure by a person to get the Minister's approval before entering into an agreement to act together with another concerning the acquisition, holding or disposal of, or the exercise of rights in relation to, a specified amount of voting shares in the institution;
- (c) a person is not a fit and proper person to be a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the institution; and
- (d) the institution is not likely to be able to conduct its business prudently or comply with the Act having regard to the likely influence of a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the institution.

Clause 12(2) makes amendments to section 15E which are necessary when section 78 of the Financial Holding Companies Act 2013 (Act 13 of 2013) comes into force.

Clause 13(1) amends section 18 (Power of Authority to obtain information) to provide for a limited right against self-incrimination for a person required by a designated financial institution or MAS to provide information for the purpose of ascertaining or investigating any control of shareholding or voting power in the institution, or the exercise by MAS of any of its powers for controlling such shareholding or voting power. If the person claims that the information might tend to incriminate that person, the information is inadmissible in evidence against the person, save for proceedings for offences under sections 17 (which sets out offences for contravention of sections 15A, 15B, 15C, 15E and 16) and 18.

Clause 13(2) amends section 18 for a similar purpose as that of clause 12(2).

Clauses 14 and 15 make technical amendments to sections 19 (Amendment of bank's constitution) and 25 (Publication and exhibition of audited balance-sheet), respectively, to clarify that, in the case of a continuing offence, the further daily fine may be imposed for a full day or part of a day in which the offence continues after conviction.

Clause 16 amends section 26 (Information to be furnished by banks) to allow MAS to disclose information it receives from a bank under the section if the disclosure is required by written law or by order of court. The clause also amends section 26 to enhance the maximum fine for not providing information to MAS as required by the section. It also criminalises the failure to comply with a requirement of MAS to submit an auditor certificate along with certain information, the failure to use reasonable care in ensuring the accuracy of information provided to MAS, and the provision of false or misleading information knowingly or recklessly to MAS under the section. Where a bank is guilty of an offence under the section (other than for not using care to ensure information given to MAS is accurate), an individual charged with the duty of securing the bank's compliance with the

requirements of the section and is in a position to discharge the duty, will also be guilty of an offence.

Clause 17 amends section 27 (Action to be taken if credit facilities or exposures are against interests of depositors) —

- (a) to expand its scope to cover all types of transactions (including transactions which have no exposures such as a service contract and a debt write-off) that a bank may enter into with any of its related parties;
- (b) to provide MAS with the power (in addition to its existing powers in the section) —
 - (i) to direct a bank to eliminate any exposure or terminate a transaction with its related party;
 - (ii) to prohibit a bank from granting a new facility to, entering into a new transaction with, or creating any new exposure to its related party; and
 - (iii) to impose restrictions on a bank on granting a new facility to, creating any new exposure to, or entering into a new transaction with, its related party; and
- (c) to increase the maximum fines for failure to comply with an MAS notice under the section (from those currently prescribed in section 71).

Clause 18 amends section 29 (Exposures and credit facilities) by deleting subsections (4) and (5). With the deletion of these subsections, bank directors will no longer be liable for their banks' losses arising from the granting of unsecured credit or exposures to the banks' director groups.

Clause 19 amends the section heading of section 30 (Non-financial businesses) as the businesses which a bank in Singapore may carry out under that section include both financial and non-financial businesses.

Clause 20 amends section 32 (Investments in companies undertaking non-financial businesses) to provide that a bank must obtain the approval of MAS to acquire a major stake in any type of entity, and not just companies.

Clause 21 repeals section 36 (Power of Authority to secure compliance with sections 10, 23, 29, 31, 32, 33, 35 and 42) as its subject matter is covered by the new section 65.

Clause 22 amends section 38 (Minimum liquid assets) —

- (a) to redefine “liquid assets” as any asset that can easily be sold or converted into cash at little or no loss in value, as specified in an MAS notice; and

- (b) to remove subsection (5) (which treats a branch or office of a bank in Singapore as a separate bank for purposes of computing the amount of assets held by a bank for the purposes of the section and section 40).

Clause 23 amends section 39 (Minimum cash balances) to criminalise the failure of a bank to comply with a direction by MAS to make good its failure to maintain a sufficient minimum cash balance, or (if it is a bank with which a defaulting bank has a credit balance) to transfer to MAS an amount needed to cover the deficiency in the minimum cash balance of the defaulting bank.

Clause 24 inserts a new section 39A to allow a bank to utilise its minimum cash balances if the bank is in a liquidity stress situation, is solvent before and will remain solvent after such utilisation, and is permitted by an MAS notice to utilise those balances. This is consistent with the banks' right to utilise their minimum liquid assets if the bank is in a liquidity stress situation, as set out in section 38(6B) to (6E).

Clause 25 amends section 40 (Asset maintenance requirement) to provide that MAS may, besides requiring a bank to hold a minimum amount of assets in Singapore, impose other requirements in relation to such minimum amount. Examples of such other requirements are requirements on the types of liabilities in respect of which assets are to be maintained and held in Singapore, the types of assets that are to be held, and the method for valuing such assets. A breach of any such requirement is an offence.

Clause 26 amends the heading of Part VII as the Part deals with not just powers of control over banks but also other entities like their subsidiaries.

Clause 27 amends section 43 (Inspection of banks) to empower MAS to inspect not only the books of a bank in Singapore and its branches, agencies and offices, but also the books of the local subsidiaries of a bank incorporated in Singapore.

Clause 28 makes amendments to section 44A (Provisions supplementary to sections 43 and 44) that are consequential on the amendments to section 43. It also makes the following amendments to section 44A:

- (a) require a bank or subsidiary under inspection or investigation to procure a person in possession of its books or any information required by MAS for its inspection or investigation, to produce the books or information to MAS;
- (b) enable MAS to waive payment by a bank of any remuneration and expenses of an auditor appointed by MAS to conduct an inspection or investigation;
- (c) to make an officer of a bank or subsidiary under inspection or investigation guilty of an offence if an offence by the bank or subsidiary for failing to provide any books, information or facilities to MAS for its inspection or investigation, or to procure another person to do

so, is committed with the officer's consent or is attributable to the officer's negligence.

Clause 29 amends section 45 (Inspection in Singapore by parent supervisory authority) to clarify that a parent supervisory authority of a bank incorporated, formed or established outside Singapore or a foreign-owned bank incorporated in Singapore may inspect the books of the bank whether they are kept for banking or non-banking activities. The clause also amends section 45 to provide that where a bank commits an offence for not giving its parent supervisory authority access to its books or providing to the authority any information or facility for the purpose of the authority's inspection, an officer of the bank is also guilty of an offence if the first offence was committed with the officer's consent or is attributable to the officer's negligence.

Clause 30 amends section 46 (Confidentiality of inspection and investigation reports) to extend the duty under that section to maintain confidentiality of inspection reports, to reports done on the inspection of bank subsidiaries incorporated in Singapore under the amended section 43.

Clause 31 inserts new sections 46A and 46B.

The new section 46A regulates and enables (by applying with modifications sections 45 and 46) an inspection of the books of a merchant bank incorporated, formed or established outside Singapore, or a foreign-owned merchant bank incorporated in Singapore, by its parent supervisory authority.

The new section 46B enables MAS to conduct an inspection outside Singapore of the books of a subsidiary of a bank incorporated in Singapore. If the inspection is carried out because MAS has reason to believe that the subsidiary is carrying on business in a manner likely to be detrimental to the interest of the depositors and other creditors of the bank, and the inspection is carried out by an auditor appointed by MAS, then MAS may direct the remuneration and expenses of the auditor to be paid by the bank.

Clause 32 amends the heading of section 47 (Banking secrecy) to "Privacy of customer information" to align with international nomenclature, and amends the reference to "merchant bank" in view of the new definition of that term in section 2.

Clause 33 amends section 48 (Information of insolvency, etc.) to increase the maximum fine for an offence of the failure of a bank to inform MAS that it is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or has suspended or is about to suspend payments.

Clause 34 inserts a new section 48AA to impose a duty on a bank in Singapore to inform MAS of any development that has occurred or is likely to occur which the bank has reasonable grounds to believe is likely to have a material adverse effect on its financial soundness or reputation, its ability to conduct its businesses, or other prescribed matters. A bank incorporated in Singapore must inform MAS of any

development that has occurred or is likely to occur which the bank has reasonable grounds to believe is likely to have a material adverse effect on the financial soundness or reputation, the ability to conduct business, or other prescribed matters, of an entity in the bank group of the bank, or an entity or trust in the financial holding company group of the designated financial holding company of the bank.

Clause 35 amends section 49 (Action by Authority if bank is unable to meet obligations, etc., or is conducting business to detriment of depositors) to make it a criminal offence for a bank for not complying with a requirement of MAS that the bank take any action or do or not do any act in relation to its business. MAS has the power to impose such a requirement under the section when, among other things, MAS learns that the bank is unable to meet its obligations, is insolvent or suspends payments, or if MAS is of the opinion that the bank is carrying on business in a manner that is detrimental to depositors' or creditors' interests.

Clause 36 inserts a new section 53A to require a bank to seek MAS' approval before the bank appoints certain key appointment holders of a bank. MAS may grant its approval with conditions and may at any time add to, vary or revoke any condition. In considering whether to grant an approval, MAS may consider if the person is fit and proper to hold the appointment, having regard to its Guidelines on Fit and Proper Criteria. A bank must also inform MAS if a key appointment holder whose appointment must be approved by MAS, is no longer a fit and proper person (in accordance with those Guidelines) to hold the appointment. Finally, the new section enables MAS to prescribe the duties of key appointment holders of banks whose appointments must be approved by MAS, and to specify the maximum term of each appointment.

Clause 37 amends section 54 (Disqualification or removal of director or executive officer) to replace the existing grounds on which MAS may direct a bank to remove a director or an executive officer, with a general ground that the director or executive officer is not a fit and proper person to hold the position, and to set out a list of non-exhaustive factors which MAS may consider in determining if the ground is made out.

Clause 38 amends section 55 (Notices to banks) to remove a matter which may be the subject of an MAS notice to a bank that is already covered by the new sections 53A and 54, and to add a new matter, viz. the opening of or relocation of places of business and representative offices.

Clauses 39 and 40 amend the headings to Part VIIA and Division 1 of Part VIIA, respectively, in view of the wider scope of the Part.

Clause 41 amends section 55B (Voluntary transfer of business) to state that the conditions for transfer of business by a bank in Singapore in subsection (1) apply to a voluntary transfer, and inserts a new subsection (1A) to provide for the transfer of a bank's banking business on the direction of MAS under the new section 55BA.

Clause 42 inserts a new section 55BA to empower MAS to direct a bank incorporated outside Singapore to incorporate a company in Singapore to carry on the whole or part of its banking business in Singapore. MAS may direct the bank to do so if it is of the opinion that this is necessary or expedient in the public interest, or that this is in the interest of the depositors of the bank or the financial system in Singapore. A bank so directed must apply to Court for its approval under section 55C within the time specified by MAS, and use all reasonable efforts to obtain the Court's approval. The bank must also incorporate a company (if it is to incorporate the company and has not done so) and transfer the relevant business to the company in accordance with the terms of the Court's approval and within the time specified by MAS.

Clause 43 makes various modifications to section 55C (Approval of transfer) for the purposes of a transfer of a bank's banking business on the direction of MAS under the new section 55BA.

Clause 44 amends section 55N (Power to obtain information under Part VIIA) to align the penalty amount for a person who fails to comply with a requirement of the Minister or MAS to furnish information, or knowingly or recklessly furnishes false or misleading information, with the penalties for contravening other similar provisions of the Act. The clause also amends section 55N to provide that any information provided by a person pursuant to such requirement is inadmissible in evidence against that person in criminal proceedings, save for proceedings under the section.

Clause 45 amends section 56 (Interpretation of Part VIII) to define the term "place of business" for the purpose of the new section 57EA.

Clause 46 inserts new sections 57EA and 57EB.

The new section 57EA requires a licensed credit card or charge card issuer to get the approval of MAS before it opens a new place to conduct a credit card or charge card issuing business or any prescribed business, relocates a place for the conduct of such business, or conducts such business from the new or relocated place.

The new section 57EB enables MAS to require a credit card or charge card issuer to furnish any information to MAS concerning its business of issuing credit cards or charge cards. MAS may require the information sought to be accompanied by a certificate of an auditor certifying the information's correctness. The new section requires information obtained by MAS to be kept secret except in certain circumstances.

Clause 47 amends section 58 (Auditing) —

- (a) to require a bank to appoint as soon as practicable a replacement auditor for one who ceases to act as an auditor for the bank, and to get MAS' approval to such appointment;

- (b) to enable MAS to direct a bank to remove an auditor if MAS is not satisfied with the performance of any duty by the auditor;
- (c) to criminalise the failure by an auditor to carry out any duty imposed on the auditor by MAS;
- (d) to provide immunity to an auditor for making a disclosure to MAS that is required under the section; and
- (e) to provide for separate penalties for contravening various provisions of the section from the general penalty in section 71.

Clause 48 amends section 60 (Declaration of holidays) —

- (a) to provide that MAS may declare a part of a day, instead of a whole day, as a bank holiday;
- (b) to enable MAS to prescribe in such declaration activities which a bank in Singapore may not conduct during a bank holiday. Currently, a bank in Singapore may not do any business except with MAS' approval during a bank holiday; and
- (c) to provide a separate penalty for a contravention of a prohibition in a notice declaring a bank holiday, from the general penalty in section 71.

Clause 49 amends section 62 (Priority of specified liabilities inter se) to clarify that insured deposits, regardless of currency, rank ahead of uninsured deposits in the event of the winding up of a bank. It also makes an amendment to that section that is consequential on the amendments to section 10.

Clause 50 inserts a new section 65, which is formerly section 36 but with an expanded scope. The new section enables MAS to call upon a bank in Singapore to satisfy MAS that it is not in contravention of any provision of, or of any regulation, notice or direction made or issued under, sections 10 (Risk-based capital requirements), 10A (Leverage ratio requirement), 23 (Maintenance of adequate provision for bad and doubtful debts), 27 (Information on exposures, etc., and actions if exposures, etc., detrimental to depositors' interests), 29 (Exposures and credit facilities), 31 (Limit on equity investments), 32 (Major stake in entity), 33 (Immovable property), 35 (Exposure to immovable property sector), 38 (Liquid assets requirement), 39 (Minimum cash balances), 40 (Asset maintenance requirement), 42 (Recommendations to banks concerning credits and investments) and 65 itself.

The new section 65 also enables MAS to require a bank to aggregate information about its assets, liabilities, profits and losses, and any other information whether or not on its balance-sheet, with those of its related corporations and entities in which it has a major stake, in order to secure compliance with any of those sections, regulations, notices or directions on a consolidated basis.

Clause 51 amends section 66 (Offences by director and executive officers of bank and false or misleading information) to change the penalty amount for providing, pursuant to a requirement of the Act to provide information or document to the Minister or MAS, any false or misleading information or document without using reasonable care to ensure it is not false or misleading.

Clause 52 repeals and re-enacts section 70 (Publication of list of banks) to enable MAS to publish and maintain a list of all licensed banks on its website at all times, instead of publishing the list in the *Gazette*. MAS must however publish in the *Gazette* the fact that a bank licence is issued, revoked or surrendered, or the name of a bank is changed.

Clause 53 amends section 74 (Recovery of fees, expenses, etc.) to enable MAS to recover as a civil debt any remuneration and expenses payable by a bank to an auditor appointed under section 46B(3) to carry out an inspection outside Singapore of the books of a bank subsidiary.

Clause 54 amends section 77 (Authority to approve operation of an Asian Currency Unit) —

- (a) to remove section 38 (Minimum liquid assets) from the list of provisions which a person operating an Asian Currency Unit is not subject to. Consequently, such a person will become subject to the requirements of section 38; and
- (b) to make an amendment consequential on the insertion of a definition of “merchant bank” in section 2.

Clause 55 amends section 78 (Regulations) —

- (a) to enable regulations to be made with respect to the risk management of banks;
- (b) to enable regulations to be made for the corporate governance of and the appointment and removal of principal officers of entities (and not just companies), and for the prohibition or restriction of mutual holdings of interests between banks, related corporations and other entities (and not just companies); and
- (c) to increase the penalties which the regulations may impose for a breach of those regulations.

Clause 56 amends the Fifth Schedule (Definitions in sections 27, 28, 29 and 38) —

- (a) to change references to companies to entities, in keeping with the enlarged scope of the amended section 32;

- (b) to insert a definition of “child” (which is included in the definition of “director” and “family member”) to include an adopted child, whether or not such adoption is registered under written law; and
- (c) to include a definition of “transaction” for the purposes of the amended section 27.

Clause 57 makes amendments to various provisions of the Act that are consequential on the insertion of a definition of “merchant bank” in section 2.

Clause 58 contains savings and transitional provisions for the amended section 32. It provides that an unexpired approval of MAS of the holding or acquisition by a bank in Singapore of a major stake in a company is treated as an approval granted under the amended section 32. It also provides that an existing holding of a major stake by a bank in Singapore in an entity that does not require MAS’ approval under the current section 32 (i.e. a non-corporate entity), is not subject to the amended section 32 if the entity only carried on and continues to only carry on businesses mentioned in section 30(1)(a) to (d). In relation to the holding by a bank in Singapore of a major stake in a non-corporate entity that carries on any other business, the amended section 32 only applies to such holding after the expiry of a grace period.

Clause 59 provides that existing appointment holders of banks whose appointments were approved by MAS are taken to have been appointed under the new section 53A, so as to apply the provisions of the new section 53A to those appointment holders.

Clause 60 empowers the Minister to make regulations to provide for other savings and transitional matters.

Clause 61 makes a consequential amendment to section 100(2) of the Income Tax Act arising from the repeal of section 36 of the Banking Act and the re-enactment of that provision as section 65.

EXPENDITURE OF PUBLIC MONEY

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