

# Monetary Authority of Singapore (Amendment) Bill

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**Bill No. 3/2013.**

*Read the first time on 4th February 2013.*

A BILL

*i n t i t u l e d*

An Act to amend the Monetary Authority of Singapore Act (Chapter 186 of the 1999 Revised Edition) and to make related amendments to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A of the 2000 Revised Edition).

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

## Short title and commencement

1. This Act may be cited as the Monetary Authority of Singapore (Amendment) Act 2013 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

## Amendment of long title

2. The long title to the Monetary Authority of Singapore Act (referred to in this Act as the principal Act) is amended by inserting, immediately after the words “the Monetary Authority of Singapore”, the words “, to provide for the exercise of control over and the resolution of financial institutions and their related entities by the Monetary Authority of Singapore and other authorities, and to establish a framework for the issue of securities by the Monetary Authority of Singapore and the regulation of primary dealers of such securities,”.

## Amendment of section 2

3. Section 2 of the principal Act is amended —

(a) by inserting, immediately after the definition of “board”, the following definition:

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

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

““primary dealer” means a person appointed under section 30Q as a primary dealer for securities issued by the Authority.”.

## Amendment of section 4

4. Section 4 of the principal Act is amended —

(a) by inserting, immediately after the words “reputable financial centre” in subsection (1)(b), the words “and to promote financial stability”;

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

“(a) to act as the central bank of Singapore, conduct monetary policy, issue currency, oversee payment systems and serve as banker to and financial agent of the Government;”;

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- (c) by deleting the words “financial services” in subsection (2)(b) and substituting the words “the financial services sector”.

### **Amendment of section 7**

5. Section 7(3) of the principal Act is amended by deleting the words “9 other directors” in paragraph (b) and substituting the words “13 other directors”.

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### **New section 13B**

6. The principal Act is amended by inserting, immediately after section 13A, the following section:

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#### **“Appointment of assistants**

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

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

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### **Amendment of section 16**

7. Section 16 of the principal Act is amended —

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

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“(2) The directors, including the managing director, and the officers and employees of the Authority shall, in

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

(b) by inserting, immediately after the words “Public servants” in the section heading, the words “and public officers”.

### **Amendment of section 23**

8. Section 23 of the principal Act is amended —

(a) by inserting, immediately after the word “purchase” wherever it appears in subsection (1)(c), (d), (e), (f), (j) and (m), the word “, repurchase”;

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

“(ga) for the purposes of money market operations —

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

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

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

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

“(10) Notwithstanding section 56 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), the Authority may, for the purposes of performing the

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

(11) In this section —

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

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

### **Amendment of section 27**

9. Section 27 of the principal Act is amended by deleting subsection (5) and substituting the following subsection:

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

### **New Parts IVA and IVB**

10. The principal Act is amended by inserting, immediately after section 30, the following Parts:

#### **“PART IVA**

#### **CONTROL OVER FINANCIAL INSTITUTIONS**

#### **Application and interpretation of this Part**

30AA.—(1) This Part shall apply to, and in relation to, every relevant financial institution.

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

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

5           (a) is in the direct employment of, or acting for or by arrangement with, the relevant financial institution; and

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

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

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

15           (a) any person, by whatever name described, occupying the position of director of the relevant financial institution;

          (b) a person in accordance with whose directions or instructions the directors of the relevant financial institution are accustomed to act; and

20           (c) an alternate director, or a substitute director, of the relevant financial institution;

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

25           (a) is in the direct employment of, or acting for or by arrangement with, the relevant financial institution; and

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

30           “relevant financial institution” means a financial institution that —

          (a) is approved by the Authority under section 28; and

(b) belongs to a class of financial institutions that is prescribed by regulations made under section 30AAJ for the purposes of this definition.

(3) In this subsection and sections 30AAB to 30AAF, unless the context otherwise requires —

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“business” includes affairs and property;

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

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

(a) which the Authority has assumed control of under section 30AAB; or

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(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 30AAB;

“statutory adviser” means a statutory adviser appointed under section 30AAB;

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“statutory manager” means a statutory manager appointed under section 30AAB.

(4) In this subsection and sections 30AAG and 30AAH, unless the context otherwise requires —

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

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

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

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“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and

includes any Deputy or Assistant Registrar of Companies appointed under that Act;

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

“transferee” means any person (being a person who is, or who has applied or will be applying to be, approved, authorised, designated, recognised, registered, licensed or otherwise regulated, under this Act or any of the written laws set out in the Schedule, to carry on the significant business of the transferor) to which the whole or any part of a transferor’s business is, is to be, or is proposed to be transferred under section 30AAG(1);

“transferor” means a relevant financial institution the whole or any part of the business of which is, is to be, or is proposed to be transferred under section 30AAG(1).

### **Information of insolvency, etc.**

**30AAA.**—(1) Any relevant financial institution which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

(2) Any relevant financial institution which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

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

**30AAB.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —



- (a) a relevant financial institution informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
  - (b) a relevant financial institution becomes unable to meet its obligations, or is insolvent, or suspends payments; 5
  - (c) the Authority is of the opinion that a relevant financial institution —
    - (i) is carrying on its business in a manner likely to be detrimental to the interests of such persons as may be prescribed by regulations made under section 30AAJ in relation to the relevant financial institution; 10
    - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments; 15
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition attached to its approval under section 28; or 20
  - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the relevant financial institution immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary; 25
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the relevant financial institution on the proper management of such of the business of the relevant financial institution as the Authority may determine; or 30
  - (c) assume control of and manage such of the business of the relevant financial institution as the Authority may determine, or appoint one or more persons as statutory

manager to do so on such terms and conditions as the Authority may specify.

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

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

(b) the property of the relevant financial institution located in Singapore, or reflected in the books of the relevant financial institution in Singapore, as the case may be, in relation to its operations in Singapore.

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

(a) may be discharged or exercised by such persons jointly and severally;

(b) shall be discharged or exercised by such persons jointly; and

(c) shall be discharged or exercised by a specified person or such persons.

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

(a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;

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

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

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

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act; or
- (c) the compliance or purported compliance with this Act.

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

### **Effect of assumption of control under section 30AAB**

**30AAC.**—(1) Upon assuming control of the relevant business of a relevant financial institution, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

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

- (a) shall manage the relevant business of the relevant financial institution in the name of and on behalf of the relevant financial institution; and
- (b) shall be deemed to be an agent of the relevant financial institution.

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

(a) shall take into consideration the interests of such persons as may be prescribed by regulations made under section 30AAJ in relation to the relevant financial institution; and

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

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

20 (a) where the relevant financial institution is established or incorporated in Singapore, any appointment of a person as the chief executive or a director of the relevant financial institution which was in force immediately before the assumption of control; or

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

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

35 (5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a relevant financial institution, except

with the approval of the Authority, no person shall be appointed —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) no person shall exercise any voting or other right attached to any share in the relevant financial institution in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect. 5

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction. 10

(11) In this section, “constitution”, in relation to a relevant financial institution, means the memorandum of association and articles of association of the relevant financial institution, or any other instrument under which the relevant financial institution is established or incorporated. 15

### **Duration of control**

**30AAD.**—(1) The Authority shall cease to be in control of the relevant business of a relevant financial institution when the Authority is satisfied that — 20

(a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or

(b) it is no longer necessary for the protection of the persons prescribed by regulations made under section 30AAJ for the purposes of section 30AAB(1)(c)(i) in relation to the relevant financial institution. 25

(2) A statutory manager shall be deemed to have assumed control of the relevant business of a relevant financial institution on the date of his appointment as a statutory manager. 30

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

(a) if the Authority is satisfied that —

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

(ii) it is no longer necessary for the protection of the persons prescribed by regulations made under section 30AAJ for the purposes of section 30AAB(1)(c)(i) in relation to the relevant financial institution; or

(b) on any other ground,

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

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

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

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

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

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

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

**30AAE.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of a relevant financial institution —

(a) the Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive, director, member, executive officer, employee, agent, banker, auditor or



office holder of, or trustee for, the relevant financial institution to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the Court may specify, any property, book, accounts, record or other documents, whether in electronic, print or other form, of the relevant financial institution which is comprised in, forms part of or relates to the relevant business of the relevant financial institution, and which is in the person's possession or control; and

- (b) any person who has ceased to be or who is still any chief executive, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the relevant financial institution shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the relevant financial institution, within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

## **Remuneration and expenses of Authority and others in certain cases**

**30AAF.** The Authority may at any time fix the remuneration and expenses to be paid by a relevant financial institution —

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

## **Voluntary transfer of business of relevant financial institution**

**30AAG.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the significant business of the transferor) to a transferee, if —

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

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

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

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

(b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act. 5

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under subsection (1), whether the transferor is incorporated in or outside Singapore. 10

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

(6) The Authority shall serve a copy of any report furnished under subsection (4) on the transferor and the transferee. 15

(7) The Authority may require a person to furnish, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this section and section 30AAH. 20

(8) Any person who —

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

(b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular, 25

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction. 30

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish

under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

### **Approval of transfer of business of relevant financial institution**

**30AAH.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under section 30AAG(1).

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

(a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;

(b) where the transferor is incorporated in Singapore, the transferor shall obtain the consent of the Authority under section 30AAG(1)(a);

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

(d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed by regulations made under section 30AAJ;

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

(f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c). 5

(3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —

(a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and 10

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

(4) Where the transferor is incorporated in Singapore, the Court shall not approve the transfer if the Authority has not consented under section 30AAG(1)(a) to the transfer. 15

(5) The Court may, after taking into consideration the views, if any, of the Authority on the transfer —

(a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or 20

(b) refuse to approve the transfer.

(6) Where the transferee is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated, under this Act or any of the written laws set out in the Schedule, to carry on in Singapore the significant business of the transferor, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee becoming so approved, authorised, designated, recognised, registered, licensed or regulated, as the case may be. 25

(7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters: 30

(a) the transfer to the transferee of the whole or any part of the business of the transferor;

(b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

5 (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;

(d) the dissolution, without winding up, of the transferor;

(e) the provisions to be made for persons who are affected by the transfer;

10 (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

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

15 (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;

(b) make provision in relation to any property which is held by the transferor as trustee; and

20 (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

25 (9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

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

(11) If any business specified in an order under subsection (7) is governed by the law of any foreign country or territory, the Court may order the transferor to take all necessary steps for securing that the transfer of the business to the transferee is fully effective under the law of that country or territory. 5

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

(a) a copy of the order with the Registrar of Companies and with the Authority; and 10

(b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor or transferee (as the case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction. 15 20

(14) In subsection (13), “officer”, in relation to a transferor or transferee, includes — 25

(a) a director, a secretary or an executive officer of the transferor or transferee (as the case may be);

(b) a receiver or manager of any part of the undertaking of the transferor or transferee (as the case may be) appointed under a power contained in any instrument; and 30

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

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

**30AAI.**—(1) Notwithstanding the provisions of any other written law —

(a) a relevant financial institution shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and

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

if the person —

(i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 10 of the Monetary Authority of Singapore (Amendment) Act 2013, being an offence —

(A) involving fraud or dishonesty;

(B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or

(C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);

(ii) is an undischarged bankrupt, whether in Singapore or elsewhere;

(iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;

(iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;

(v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the



Securities and Futures Act (Cap. 289) made against him that remains in force; or

- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere — 5

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

(B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory. 10

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of a relevant financial institution which is established or incorporated in Singapore, or an executive officer of a relevant financial institution — 15

(a) has wilfully contravened or wilfully caused the relevant financial institution to contravene any provision of this Act; 20

(b) has, without reasonable excuse, failed to secure the compliance of the relevant financial institution with this Act or any of the written laws set out in the Schedule; or 25

(c) has failed to discharge any of the duties of his office, the Authority may, if it thinks it necessary in the public interest or for the protection of such persons as may be prescribed by regulations made under section 30AAJ for the purposes of this subsection in relation to the relevant financial institution, by notice in writing to the relevant financial institution, direct the relevant financial institution to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, 30

and the relevant financial institution shall comply with the notice.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a relevant financial institution has failed to discharge the duties of his office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed by regulations made under section 30AAJ.

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

(a) give the relevant financial institution and the person notice in writing of its intention to do so; and

(b) in the notice referred to in paragraph (a), call upon the relevant financial institution and the person to show cause, within such time as may be specified in the notice, why the person should not be removed.

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

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

(b) fail to show sufficient cause,

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

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

(7) Any relevant financial institution which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a

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

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

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

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

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

### **Power of Authority to make regulations for this Part**

**30AAJ.**—(1) The Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

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

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

every day or part thereof during which the offence continues after conviction; or

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

(3) For the purposes of sections 30AAB(1)(c)(i) and 30AAC(3)(a), the Authority may prescribe different persons and different classes of persons in relation to different relevant financial institutions and different classes of relevant financial institutions.

## PART IVB

### RESOLUTION OF FINANCIAL INSTITUTIONS

#### *Division 1 — General provisions*

#### **Interpretation of this Part**

**30AAK.** In this Part, unless the context otherwise requires —

“affected person”, in relation to a specified financial institution, means any person prescribed by regulations made under section 30AAZN as an affected person for that specified financial institution;

“business” includes affairs and property;

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

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

“director”, in relation to a specified financial institution or a significant associated entity referred to in section 30AAZI, includes —

- (a) any person, by whatever name described, occupying the position of director of the specified financial institution or significant associated entity (as the case may be);

(b) a person in accordance with whose directions or instructions the directors of the specified financial institution or significant associated entity (as the case may be) are accustomed to act; and

(c) an alternate director, or a substitute director, of the specified financial institution or significant associated entity (as the case may be);

“excluded financial institution” means any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule, and is prescribed by regulations made under section 30AAZN as an excluded financial institution;

“executive officer”, in relation to a specified financial institution or a significant associated entity referred to in section 30AAZI, means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the specified financial institution or significant associated entity (as the case may be); and

(b) is concerned with or takes part in the management of the specified financial institution or significant associated entity (as the case may be) on a day-to-day basis;

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

“pertinent financial institution” means any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule,

and is prescribed by regulations made under section 30AAZN as a pertinent financial institution;

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

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

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

“relevant provisions”, in relation to any specified financial institution, or any person who is carrying on or has carried on the significant business of a specified financial institution, means such provisions of written law as may be prescribed by regulations made under section 30AAZN as relevant provisions for that specified financial institution or person, as the case may be;

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

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

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

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

**30AAL.** In determining whether to exercise its powers under Divisions 2, 3 and 4 of this Part in relation to a pertinent financial institution, the Authority may have regard to one or more of the following matters:

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(a) whether a failure of the pertinent financial institution would have a widespread adverse effect on the financial system in Singapore or the economy of Singapore, or both, whether or not that widespread adverse effect occurs directly or indirectly as a result of the impact of the failure on the financial system in Singapore, on the financial markets in Singapore or on other financial institutions in Singapore;

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(b) whether it is in the public interest to do so;

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

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

**30AAM.**—(1) The Authority may, from time to time, issue such directions or make such regulations concerning any person that has ceased to be a specified financial institution, or any class of persons that has ceased to be a class of specified financial institutions, as the Authority considers necessary —

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(a) in order to discharge, or to facilitate the discharge of, any binding obligation of the person or class of persons, as the case may be; or

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(b) where it is in the public interest to do so.

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

(a) the withdrawal by the Authority of any approval, authorisation, designation or recognition of the person;

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(b) the cancellation by the Authority, or the expiration, of any registration of the person;

(c) the revocation by the Authority, or the expiration, of any licence of the person;

(d) the cessation of the regulation of the person by the Authority;

5 (e) the cessation of any business of the person, being a business which is regulated under this Act or any of the written laws set out in the Schedule.

10 (3) A person to whom any direction is issued under subsection (1), or to whom any regulations made under subsection (1) applies, shall comply with the direction or regulations, notwithstanding any other duty imposed on the person by any rule of law, written law or contract.

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

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

(6) Any person who —

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

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

(c) contravenes subsection (5),

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

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



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

**30AAN.**—(1) Where a person ceases to be a specified financial institution, any direction or notice issued under this Act or any of the written laws set out in the Schedule (being a direction or notice which was in force, and which applied to that person, immediately before that person ceased to be a specified financial institution) shall, notwithstanding any rule of law or written law to the contrary, continue to apply to that person, until that direction or notice is cancelled by the Authority. 5 10

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

- (a) the withdrawal by the Authority of any approval, authorisation, designation or recognition of the person; 15
- (b) the cancellation by the Authority, or the expiration, of any registration of the person;
- (c) the revocation by the Authority, or the expiration, of any licence of the person; 20
- (d) the cessation of the regulation of the person by the Authority;
- (e) the cessation of any business of the person, being a business which is regulated under this Act or any of the written laws set out in the Schedule. 25

(3) Any person referred to in subsection (1) who, after ceasing to be a specified financial institution, fails to comply with a direction or notice referred to in that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part thereof during which the offence continues after conviction. 30

## Moratorium

5       **30AAO.**—(1) The Authority may, if it considers it to be in the interests of the affected persons of a specified financial institution, make an order prohibiting that specified financial institution from carrying on its significant business or from doing or performing any act or function connected with its significant business or any aspect thereof that may be specified in the order.

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

      (a) that no resolution shall be passed, and no order shall be made, for the winding up of the specified financial institution;

15       (b) that no judicial management order under Part VIIIA of the Companies Act (Cap. 50) shall be made in relation to the specified financial institution, or that any judicial management order which is in force in relation to the specified financial institution shall be discharged;

20       (c) that no proceedings shall be commenced or continued by or against the specified financial institution in respect of any business of the specified financial institution;

25       (d) that no execution, distress or other legal process shall be commenced, levied or continued against any property of the specified financial institution;

30       (e) that no steps shall be taken to enforce any security over any property of the specified financial institution or to repossess from the specified financial institution any goods under any hire-purchase agreement, chattels leasing agreement or retention of title agreement;

      (f) that no steps shall be taken by any person, other than a person specified in the order, to sell, transfer, assign or otherwise dispose of any property of the specified financial institution.

(3) Any sale, transfer, assignment or other disposition of any property of the specified financial institution in contravention of any order made under subsection (2)(f) shall be void.

(4) Any order made under subsection (2) shall be valid for a period not exceeding 6 months.

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(5) So long as an order under subsection (1) remains in force, the Authority may, by notice in writing to that specified financial institution, suspend the approval, authorisation, designation, recognition, registration or licence of that specified financial institution under the relevant Act.

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### **General provisions as to winding up**

**30AAP.**—(1) On the application of the Authority, the Court may, in addition to the grounds specified in section 254(1) of the Companies Act (Cap. 50), order under that Act the winding up of a company incorporated in Singapore which is carrying on or has carried on the significant business of a specified financial institution in Singapore, if —

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(a) the Authority has exercised any power under the relevant provisions in relation to the company; or

(b) the company has contravened any provision of this Act or any of the written laws set out in the Schedule.

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

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(a) the Authority has exercised any power under the relevant provisions in relation to the unregistered company;

(b) the unregistered company has been approved, authorised, designated, recognised, registered, licensed or otherwise regulated under this Act or any of the written laws set out in the Schedule, and any of the following applies:

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(i) the approval, authorisation, designation or recognition of the unregistered company has been withdrawn;

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(ii) the registration of the unregistered company has been cancelled or has expired;

(iii) the licence of the unregistered company has been revoked or has expired;

(iv) the regulation of the unregistered company by the Authority has ceased; or

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(c) the unregistered company is carrying on or has carried on the significant business of a specified financial institution in Singapore in contravention of any provision of this Act or any of the written laws set out in the Schedule.

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

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(a) was insolvent at the close of that financial year; and

(b) continues to be unable to pay its debts.

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

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

(b) in the case of a foreign company which is carrying on or has carried on the significant business in Singapore of a specified financial institution, a liquidator appointed for its liquidation or dissolution at its place of incorporation or origin shall not have or exercise any power or function of a liquidator in Singapore, unless the liquidator has been approved by the Authority.

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

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

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

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

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(9) In this section —

“liquidator” includes a provisional liquidator;

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

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## **Power of Court to take action against directors and executive officers**

**30AAQ.**—(1) Without prejudice to any provision of this Act or any of the written laws set out in the Schedule, if, in the course of exercising the Authority’s powers under this Part or the relevant provisions, it appears to the Authority that any past or present director or executive officer of a specified financial institution has failed to discharge the duties of his office, has misapplied or retained, or become liable or accountable for, any money or property of the specified financial institution, or has been guilty of any misfeasance or breach of trust or duty in relation to the specified financial institution, the Authority may apply to the Court for, and the Court may make —

(a) an order that any salary, remuneration or other benefits received by the director or executive officer from the specified financial institution during the relevant period be repaid or returned to the specified financial institution;

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

(c) an order that any deferred salary, remuneration or other benefits to be paid by the specified financial institution to the director or executive officer be reduced by such amount as the Court thinks just;

(d) the orders referred to in paragraphs (a) and (b); or

(e) the orders referred to in paragraphs (a) and (c).

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

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

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*Division 2 — Compulsory transfer of business  
of pertinent financial institution*

**Interpretation of this Division**

**30AAR.** In this Division, unless the context otherwise requires —

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

“certificate” means a certificate of transfer issued by the Minister under section 30AAT(1);

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

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“determination” means a determination made by the Authority under section 30AAS(1);

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

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

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

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

### **Compulsory transfer of business**

**30AAS.**—(1) Subject to subsections (2) and (6), the Authority may make a determination that the whole or any part of the business of a transferor shall be transferred to a transferee, if —

- 5           (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the transferor, whether or not the Authority has exercised the power;
- 10           (b) the board of directors of the transferee (in any case where the transferee is a corporation), or the committee of management of the transferee (in any case where the transferee is a co-operative society), has consented to the transfer;
- 15           (c) the Authority is satisfied that the transfer is appropriate, having regard to —
  - (i) in any case where the transferor is a bank licensed under the Banking Act (Cap. 19) —
    - 20           (A) the interests of the depositors of the transferor given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
    - 25           (B) if the transferee is a bank licensed under the Banking Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 62 of the Banking Act;
    - 30           (C) the stability of the financial system in Singapore; and
    - (D) any other matter that the Authority considers relevant;
  - (ii) in any case where the transferor is a finance company licensed under the Finance Companies Act (Cap. 108) —



- (A) the interests of the depositors of the transferor given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
  - (B) if the transferee is a finance company licensed under the Finance Companies Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;
  - (C) the stability of the financial system in Singapore; and
  - (D) any other matter that the Authority considers relevant; or
- (iii) in any other case —
- (A) the interests of the affected persons of the transferor;
  - (B) the interests of the affected persons of the transferee;
  - (C) the stability of the financial system in Singapore; and
  - (D) any other matter that the Authority considers relevant; and
- (d) the transfer involves the whole or part of the significant business of the transferor.
- (2) Where the transferor is a pertinent financial institution incorporated or established outside Singapore, any determination shall only be in respect of the transferor's business (or any part thereof) which is reflected in the books of the transferor in Singapore in relation to the transferor's operations in Singapore, and the references to depositors and affected persons in subsection (1)(c) shall be construed accordingly.
- (3) The Authority may, before making a determination, appoint one or more persons —

(a) to perform an independent assessment of —

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

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

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

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

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

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

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

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

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

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

(9) In determining the period within which written representations have to be made under subsection (8), the Minister shall take into account the need for the transfer to be effected expeditiously in the interest of the stability of the financial system in Singapore. 5

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

(11) Where the transferor is a bank incorporated in Singapore, the Minister shall not approve the determination unless he is satisfied that it is in the national interest to do so. 10

(12) The Minister may —

(a) approve the determination without modification;

(b) approve the determination subject to any modification he considers appropriate, if the board of directors of the transferee has agreed to the modification; or 15

(c) refuse to approve the determination.

(13) Any approval under subsection (12) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition. 20

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

### **Certificate of transfer** 25

**30AAT.**—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of transfer, which shall come into effect on the date specified by him in the certificate.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 30AAZN. 30

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

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) any property which is held by the transferor as trustee;
- (d) any future or contingent right or liability of the transferor;
- (e) the coming into effect of the transfer of any specified business on a date other than the date on which the certificate comes into effect;
- (f) the consideration, if any, to be paid by the transferee to the transferor, and the period within which the consideration is to be paid;
- (g) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the transfer is fully effective, including conditions relating to the transfer.

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

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

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

(7) Where the transferee is not approved, authorised, designated, recognised, registered, licensed or otherwise

regulated, under this Act or any of the written laws set out in the Schedule, to carry on in Singapore the significant business of the transferor, the transfer of the business (or any part thereof) shall not come into effect unless the transferee becomes so approved, authorised, designated, recognised, registered, licensed or regulated, as the case may be. 5

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

(a) subject to subsection (10) — 10

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

(ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected; 15

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

(c) any proceedings or cause of action, by or against the transferor, pending or existing immediately before that date and relating to the business (or any part thereof) may be continued and shall be enforced by or against the transferee as from that date. 25

(9) For the avoidance of doubt, the business (or any part thereof) of the transferor shall be transferred to and vest in the transferee in accordance with subsection (8), notwithstanding any incapacity of the transferor. 30

(10) The certificate shall not have any effect or operation in transferring or otherwise vesting land in Singapore until the 35

appropriate entries are made with respect to the transfer or vesting of that land by the appropriate authority.

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

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

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

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

(b) where the transferor or transferee is a co-operative society, a copy of the certificate with the Registrar of Co-operative Societies; and

15 (c) where the certificate relates to land in Singapore, an office copy of the certificate with the appropriate authority concerned with the registration or recording of dealings in that land.

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

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

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

case may be) with that subsection, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction. 5

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

(a) a director, a secretary or an executive officer of the transferor or transferee (as the case may be);

(b) a receiver or manager of any part of the undertaking of the transferor or transferee (as the case may be) appointed under a power contained in any instrument; and 10

(c) a liquidator of the transferor or transferee (as the case may be) appointed in a voluntary winding up. 15

### **Moratorium, avoidance of disposition of property, etc.**

**30AAU.**—(1) Notwithstanding section 30AAO(2) but subject to section 30AAZM, no resolution shall be passed, and no order shall be made, for the winding up of a transferor, and no judicial management order under Part VIIIA of the Companies Act (Cap. 50) shall be made in relation to a transferor, during the period — 20

(a) beginning on —

(i) the date on which the Minister publishes the notice under section 30AAS(8) in the *Gazette* on the transfer of the business (or any part thereof) of the transferor; or 25

(ii) where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under section 30AAT(5) in the *Gazette* on the transfer of the business (or any part thereof) of the transferor; and 30

(b) ending on —

(i) the date on which the certificate comes into effect; or

(ii) where the certificate specifies a different date for the coming into effect of the transfer of any specified business, the last day on which the transfer of every specified business has come into effect.

(2) Notwithstanding section 30AAO(2) but subject to section 30AAZM, during the period beginning on the date on which the Minister publishes the notice under section 30AAS(8) in the *Gazette* on the transfer of a specified business of the transferor or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under section 30AAT(5) in the *Gazette* on the transfer of the specified business, and ending on the date on which the transfer of the specified business comes into effect —

(a) no proceedings shall be commenced or continued against the transferor in respect of the specified business;

(b) no execution, distress or other legal process shall be commenced, levied or continued against the specified business;

(c) no steps shall be taken to enforce any security over the specified business or to repossess from the transferor the specified business under any hire-purchase agreement, chattels leasing agreement or retention of title agreement; and

(d) any sale, transfer, assignment or other disposition of the specified business shall be void.



*Division 3 — Compulsory transfer of shares  
of pertinent financial institution*

**Interpretation of this Division**

**30AAV.** In this Division, unless the context otherwise requires —

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

“certificate” means a certificate of transfer issued by the Minister under section 30AAX(1);

“determination” means a determination made by the Authority under section 30AAW(2);

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

“significant shareholder”, in relation to a pertinent financial institution, means any person prescribed by regulations made under section 30AAZN as a significant shareholder for that pertinent financial institution;

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“significant shareholder provisions”, in relation to any pertinent financial institution, means such provisions of written law as may be prescribed by regulations made under section 30AAZN as significant shareholder provisions for that pertinent financial institution;

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

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“transferor” means a shareholder of a pertinent financial institution whose shares in the pertinent financial institution are, are to be, or are proposed to be, transferred under this Division.

**Compulsory transfer of shares**

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**30AAW.**—(1) The Authority may make a determination that all or any of the shares held by a transferor in a pertinent financial

institution incorporated in Singapore shall be transferred to a transferee, if —

5           (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the pertinent financial institution, whether or not the Authority has exercised the power;

10           (b) the transferee or, where the transferee is a corporation or co-operative society, the board of directors of the transferee (in any case where the transferee is a corporation), or the committee of management of the transferee (in any case where the transferee is a co-operative society), has consented to the transfer; and

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

15               (i) in any case where the pertinent financial institution is a bank licensed under the Banking Act (Cap. 19) —

20                   (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 62 of the Banking Act;

25                   (B) if the transferee is a bank licensed under the Banking Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 62 of the Banking Act;

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

30                   (D) any other matter that the Authority considers relevant;

          (ii) in any case where the pertinent financial institution is a finance company licensed under the Finance Companies Act (Cap. 108) —

- (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act; 5
- (B) if the transferee is a finance company licensed under the Finance Companies Act, the interests of the depositors of the transferee given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act; 10
- (C) the stability of the financial system in Singapore; and
- (D) any other matter that the Authority considers relevant; or 15
- (iii) in any other case —
  - (A) the interests of the affected persons of the pertinent financial institution;
  - (B) the interests of the affected persons, if any, of the transferee; 20
  - (C) the stability of the financial system in Singapore; and
  - (D) any other matter that the Authority considers relevant.
- (2) The Authority may, before making a determination, appoint one or more persons — 25
  - (a) to perform an independent assessment of —
    - (i) the proposed transfer of shares; and
    - (ii) the consideration, if any, that should be paid by the transferee; and 30
  - (b) to furnish to the Authority a report on the assessment and on the proposed transfer.

(3) The remuneration and expenses of any person appointed under subsection (2) shall be paid by the pertinent financial institution.

(4) The Authority shall serve a copy of any report furnished under subsection (2) on the transferor and the transferee.

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

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

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

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

(7) In determining the period within which written representations have to be made under subsection (6), the Minister shall take into account the need for the transfer to be effected expeditiously in the interest of the stability of the financial system in Singapore.

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

(9) Where the determination, if approved, will result in the transferee becoming a significant shareholder of the pertinent financial institution, the Minister shall not approve the determination unless —

(a) the Authority is satisfied that —

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

(ii) having regard to the likely influence of the transferee, the pertinent financial institution will

or will continue to conduct its business prudently and comply with the provisions of this Act and the relevant Act applicable to the pertinent financial institution; and

(b) the Minister is satisfied that —

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(i) in any case where the pertinent financial institution is a bank incorporated in Singapore, it is in the national interest to do so; or

(ii) in any other case, it is in the public interest to do so.

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(10) The Minister may —

(a) approve the determination without modification;

(b) approve the determination subject to any modification he considers appropriate, if the transferee or, where the transferee is a corporation or co-operative society, the board of directors of the transferee (in any case where the transferee is a corporation), or the committee of management of the transferee (in any case where the transferee is a co-operative society), has agreed to the modification; or

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(c) refuse to approve the determination.

(11) Any approval under subsection (10) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition.

(12) The transferor shall comply with every condition referred to in subsection (11) that applies to the transferor.

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(13) The transferee shall comply with every condition referred to in subsection (11) that applies to the transferee.

(14) A determination, an approval under subsection (10) of a determination or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the pertinent financial institution.

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## Certificate of transfer

**30AAX.**—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of transfer, which shall come into effect on the date specified by him in the certificate.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 30AAZN.

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

- (a) the transfer to the transferee of all or any of the shares of the transferor in the pertinent financial institution;
- (b) any share in the pertinent financial institution which is held by the transferor as trustee;
- (c) the consideration, if any, to be paid by the transferee to the transferor, and the period within which the consideration is to be paid;
- (d) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the transfer is fully effective, including conditions relating to the transfer.

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

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

(6) Notwithstanding any written law or rule of law, or anything in the memorandum and articles of association of the pertinent financial institution, upon the certificate coming into effect —

- (a) any share of the transferor that is to be transferred under the certificate shall be transferred to and vest in the

transferee, free from any claim or encumbrance, without other or further assurance, act or deed; and

- (b) the certificate shall have effect according to its tenor and be binding on any person thereby affected.

(7) For the avoidance of doubt, the shares of the transferor shall be transferred to and vest in the transferee in accordance with subsection (6), notwithstanding the death or dissolution, the bankruptcy or winding up, or the mental or other incapacity, of the transferor.

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

(9) Where the transfer of shares under the certificate results in the transferee becoming a significant shareholder of the pertinent financial institution, upon the coming into effect of the certificate, the transferee —

- (a) shall be deemed to have obtained the approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the pertinent financial institution, in respect of the shares; and

- (b) shall not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the pertinent financial institution, notwithstanding the provisions of the Companies Act or the Take-over Code.

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

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

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

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

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

- 10 (b) he has complied with the provision within a reasonable time after becoming aware of the contravention.

(12) Except as provided in subsection (11), it shall not be a defence for a person charged with an offence under subsection (10) that he did not intend to or did not knowingly contravene any provision in the certificate.

15 (13) Notwithstanding section 30AAO(2) but subject to section 30AAZM, during the period beginning on the date on which the Minister publishes the notice under section 30AAW(6) in the *Gazette* on the transfer of any share in a pertinent financial institution or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under subsection (5) in the *Gazette* on the transfer of the share, and ending on the date on which the transfer of the share comes into effect —

- 25 (a) no execution or other legal process shall be commenced or continued against the share;

- (b) no steps shall be taken to enforce any security over the share;

- 30 (c) any sale, transfer, assignment or other disposition of the share shall be void;

- (d) no voting rights shall be exercisable in respect of the share, unless the Minister expressly permits such rights to be exercised;



- (e) no shares in the pertinent financial institution shall be issued or offered (whether by ways of rights, bonus or otherwise) in respect of the share, unless the Minister expressly permits such issue or offer;
- (f) no payment shall be made by the pertinent financial institution of any amount (whether by dividends or otherwise) in respect of the share, unless the Minister expressly authorises such payment; 5
- (g) no resolution shall be passed, and no order shall be made, for the winding up of the pertinent financial institution; 10
- (h) no judicial management order under Part VIIIA of the Companies Act shall be made in relation to the pertinent financial institution;
- (i) no proceedings shall be commenced or continued against the pertinent financial institution in respect of any business of the pertinent financial institution; 15
- (j) no execution, distress or other legal process shall be commenced, levied or continued against any property of the pertinent financial institution; 20
- (k) no steps shall be taken to enforce any security over any property of the pertinent financial institution; and
- (l) any sale, transfer, assignment or other disposition of any property of the pertinent financial institution shall be void. 25

*Division 4 — Compulsory restructuring of share capital  
of pertinent financial institution*

**Interpretation of this Division**

**30AAY.** In this Division, unless the context otherwise requires —

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

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“certificate” means a certificate of restructuring of share capital issued by the Minister under section 30AAZA(1);

“determination” means a determination made by the Authority under section 30AAZ(1) or (2);

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

10 “significant shareholder”, in relation to a pertinent financial institution, means any person prescribed by regulations made under section 30AAZN as a significant shareholder for that pertinent financial institution;

15 “significant shareholder provisions”, in relation to any pertinent financial institution, means such provisions of written law as may be prescribed by regulations made under section 30AAZN for that pertinent financial institution;

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

## 20 **Compulsory restructuring of share capital**

25 **30AAZ.**—(1) The Authority may make a determination that the share capital of a pertinent financial institution incorporated in Singapore shall be reduced by the cancellation of the whole or any part of any share capital not paid up, or of any paid-up share capital, if —

(a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the pertinent financial institution, whether or not the Authority has exercised the power; and

30 (b) the Authority is of the opinion that —

(i) the liability on any of the shares of the pertinent financial institution in respect of share capital not paid up ought to be extinguished or reduced; or

- (ii) any paid-up share capital of the pertinent financial institution is lost or not represented by the available assets of the pertinent financial institution.

(2) The Authority may make a determination that shares shall be issued by a pertinent financial institution incorporated in Singapore to a subscriber, if — 5

- (a) any ground exists for the Authority to exercise any power under the relevant provisions in relation to the pertinent financial institution, whether or not the Authority has exercised the power; 10

- (b) the subscriber or, where the subscriber is a corporation or co-operative society, the board of directors of the subscriber (in any case where the subscriber is a corporation), or the committee of management of the subscriber (in any case where the subscriber is a co-operative society), has consented to subscribe for the shares; and 15

- (c) the Authority is satisfied that the issue of shares is appropriate, having regard to — 20

- (i) in any case where the pertinent financial institution is a bank licensed under the Banking Act (Cap. 19) —

- (A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 62 of the Banking Act; 25

- (B) if the subscriber is a bank licensed under the Banking Act, the interests of the depositors of the subscriber given priority and the order of priority of each class of depositors under section 62 of the Banking Act; 30

- (C) the stability of the financial system in Singapore; and 35

(D) any other matter that the Authority considers relevant;

(ii) in any case where the pertinent financial institution is a finance company licensed under the Finance Companies Act (Cap. 108) —

(A) the interests of the depositors of the pertinent financial institution given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;

(B) if the subscriber is a finance company licensed under the Finance Companies Act, the interests of the depositors of the subscriber given priority and the order of priority of each class of depositors under section 44A of the Finance Companies Act;

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

(D) any other matter that the Authority considers relevant; or

(iii) in any other case —

(A) the interests of the affected persons of the pertinent financial institution;

(B) the interests of the affected persons, if any, of the subscriber;

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

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

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

- (a) to perform an independent assessment of —
    - (i) the value of the assets of the pertinent financial institution in which the shares are proposed to be issued; and
    - (ii) in the case of a determination to be made under subsection (2), the consideration, if any, that should be paid by the subscriber; and
  - (b) to furnish to the Authority a report on the assessment and on the proposed restructuring of share capital.
- (4) The remuneration and expenses of any person appointed under subsection (3) shall be paid by the pertinent financial institution in which the shares are proposed to be issued.
- (5) The Authority shall serve a copy of any report furnished under subsection (3) on —
- (a) the pertinent financial institution in which the shares are proposed to be issued; and
  - (b) where the report is in relation to a determination to be made under subsection (2), on the subscriber.
- (6) Upon making a determination, the Authority shall submit the determination to the Minister for his approval.
- (7) Before approving the determination, the Minister shall, unless he decides that it is not practicable or desirable to do so —
- (a) publish in the *Gazette* and in such newspaper or newspapers as he may determine a notice of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which any shareholder of the pertinent financial institution in which the shares are proposed to be issued may make written representations to him; and
  - (b) cause to be given to the pertinent financial institution notice in writing of his intention to approve the determination, specifying such particulars as he considers appropriate and the date by which the

pertinent financial institution may make written representations to him.

(8) In determining the period within which written representations have to be made under subsection (7), the Minister shall take into account the need for the restructuring of share capital to be effected expeditiously in the interest of the stability of the financial system in Singapore.

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

(10) Where a determination under subsection (2), if approved, will result in the subscriber becoming a significant shareholder, the Minister shall not approve the determination unless —

(a) the Authority is satisfied that —

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

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

(b) the Minister is satisfied that —

(i) in any case where the pertinent financial institution is a bank incorporated in Singapore, it is in the national interest to do so; or

(ii) in any other case, it is in the public interest to do so.

(11) The Minister may —

(a) approve the determination without modification;

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

(c) in the case of a determination under subsection (2), approve the determination subject to any modification he considers appropriate, if the subscriber or, where the subscriber is a corporation or co-operative society, the board of directors of the subscriber (in any case where the subscriber is a corporation), or the committee of management of the subscriber (in any case where the subscriber is a co-operative society), has agreed to the modification; or

(d) refuse to approve the determination.

(12) Any approval under subsection (11) shall be subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any such condition.

(13) The pertinent financial institution shall comply with every condition referred to in subsection (12) that applies to it.

(14) The subscriber shall comply with every condition referred to in subsection (12) that applies to the subscriber.

(15) A determination, an approval under subsection (11) of a determination or the issue of a certificate shall not preclude the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the pertinent financial institution.

### **Certificate of restructuring of share capital**

**30AAZA.**—(1) If the Minister approves a determination, he shall, as soon as practicable, issue a certificate of restructuring of share capital, which shall come into effect on the date specified by him in the certificate.

(2) The certificate shall specify such information as may be prescribed by regulations made under section 30AAZN.

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

(a) the cancellation of the whole or any part of the share capital of the pertinent financial institution not paid up;

(b) the cancellation of the whole or any part of the paid-up share capital of the pertinent financial institution which is lost or not represented by the available assets of the pertinent financial institution;

(c) the shares to be issued by the pertinent financial institution to the subscriber, the consideration, if any, to be paid by the subscriber for the shares and the period within which the consideration is to be paid;

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

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

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

(6) Notwithstanding any written law or rule of law, or anything in the memorandum and articles of association of the pertinent financial institution, upon the certificate coming into effect —

(a) where the certificate provides for a reduction of the share capital of the pertinent financial institution —

(i) the reduction of the share capital shall take effect without other or further act by the pertinent financial institution; and

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



(b) where the certificate provides for the issue of shares by the pertinent financial institution —

(i) the pertinent financial institution shall issue the shares in accordance with the certificate; and

(ii) the certificate shall have effect according to its tenor and be binding on any person thereby affected. 5

(7) Where the issue of shares under the certificate results in the subscriber becoming a significant shareholder of the pertinent financial institution, upon the coming into effect of the certificate, the transferee — 10

(a) shall be deemed to have obtained the approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the pertinent financial institution, in respect of the shares; and 15

(b) shall not be required to make a take-over offer or be required to acquire the shares of the other shareholders of the pertinent financial institution, notwithstanding the provisions of the Companies Act (Cap. 50) or the Take-over Code. 20

(8) The pertinent financial institution shall lodge a copy of the certificate with the Registrar of Companies within 7 days after being served the certificate.

(9) A pertinent financial institution which or a subscriber who fails to comply with any provision in the certificate shall be guilty of an offence and shall be liable on conviction — 25

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

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

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

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

- 10 (b) he has complied with the provision within a reasonable time after becoming aware of the contravention.

(11) Except as provided in subsection (10), it shall not be a defence for a person charged with an offence under subsection (9) that he did not intend to or did not knowingly contravene any provision in the certificate.

15 (12) Any pertinent financial institution which contravenes subsection (8), and every officer of the pertinent financial institution who fails to take all reasonable steps to secure compliance by the pertinent financial institution with that subsection, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

25 (13) Notwithstanding section 30AAO(2) but subject to section 30AAZM, during the period beginning on the date on which the Minister publishes the notice under section 30AAZ(7) in the *Gazette* on the restructuring of the share capital of a pertinent financial institution or, where the notice is not published in the *Gazette*, the date on which the Authority publishes the certificate under subsection (5) in the *Gazette* on the restructuring of the share capital, and ending on the date on which the certificate comes into effect —

- 30 (a) no resolution shall be passed, and no order shall be made, for the winding up of the pertinent financial institution;
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- (b) no judicial management order under Part VIIIA of the Companies Act shall be made in relation to the pertinent financial institution;
  - (c) no proceedings shall be commenced or continued against the pertinent financial institution in respect of any business of the pertinent financial institution; 5
  - (d) no execution, distress or other legal process shall be commenced, levied or continued against any property of the pertinent financial institution;
  - (e) no steps shall be taken to enforce any security over any property of the pertinent financial institution; and 10
  - (f) any sale, transfer, assignment or other disposition of any property of the pertinent financial institution shall be void.
- (14) In subsection (12), “officer”, in relation to a pertinent financial institution, includes — 15
- (a) a director, a secretary or an executive officer of the pertinent financial institution;
  - (b) a receiver or manager of any part of the undertaking of the pertinent financial institution appointed under a power contained in any instrument; and 20
  - (c) a liquidator of the pertinent financial institution appointed in a voluntary winding up.

*Division 5 — Assistance to foreign resolution authorities  
and domestic authorities*

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**Interpretation of this Division**

**30AAZB.** In this Division, unless the context otherwise requires —

“domestic authority” means any ministry or department of the Government, any Organ of State in Singapore and any statutory body (other than the Authority) established under a public Act for a public function, and includes the

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company designated to be the deposit insurance and policy owners' protection fund agency under section 56 of the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B);

5 “material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“prescribed written law” means the following Acts and the subsidiary legislation made under those Acts:

- 10 (a) this Act;
- (b) the Banking Act (Cap. 19);
- (c) the Deposit Insurance and Policy Owners' Protection Schemes Act;
- (d) the Finance Companies Act (Cap. 108);
- 15 (e) the Financial Advisers Act (Cap. 110);
- (f) the Insurance Act (Cap. 142);
- (g) the Money-changing and Remittance Businesses Act (Cap. 187);
- (h) the Payment Systems (Oversight) Act (Cap. 222A);
- 20 (i) the Securities and Futures Act (Cap. 289);
- (j) the Trust Companies Act (Cap. 336); and
- (k) such other Act or Acts as the Authority may prescribe by regulations made under
- 25 section 30AAZN;

“resolution” means any action by an authority (being an authority charged with responsibility for such action) to do either or both of the following:

- (a) to maintain financial stability;
- 30 (b) to deal with any serious problem in a financial institution which affects the ability of the financial institution to continue its business or operations as

a financial institution, and which, if not dealt with, may cause the financial institution to be no longer able to continue its business or operations as a financial institution;

“resolution authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory which, whether alone or together with one or more other authorities of the foreign country or territory, is responsible for the resolution, or for preparing plans for dealing with the resolution, of a financial institution. 5 10

### **Conditions for provision of assistance to foreign resolution authority**

**30AAZC.**—(1) The Authority may provide the assistance referred to in section 30AAZE to a resolution authority of a foreign country or territory, if the Authority is satisfied that all of the following conditions are fulfilled: 15

- (a) the request by the resolution authority for assistance is received by the Authority on or after the date of commencement of section 10 of the Monetary Authority of Singapore (Amendment) Act 2013; 20
- (b) the assistance is intended to enable the resolution authority, or any other authority of the foreign country or territory, to deal with the resolution of a financial institution;
- (c) the resolution authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority; 25
- (d) the resolution authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country or territory in accordance with paragraph (e)) any material or copy thereof obtained pursuant to the request, unless the 30

resolution authority is compelled to do so by the law or a court of the foreign country or territory;

(e) the resolution authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;

(f) the material requested for is of sufficient importance to the resolution of a financial institution and cannot reasonably be obtained by any other means;

(g) the matter to which the request relates is of sufficient gravity; and

(h) the rendering of assistance will not be contrary to the public interest or the interests of the affected persons of the financial institution.

(2) For the purposes of subsection (1)(d) and (e), “designated third party”, in relation to a foreign country or territory, means such person in, or body or authority of, the foreign country or territory as the Authority may approve, upon an application to the Authority, if the Authority is satisfied that the disclosure —

(a) is necessary, in the interests of the resolution of a financial institution; and

(b) is necessary for the performance of the duties and functions of that person, body or authority, as the case may be.

### **Other factors to consider for provision of assistance to foreign resolution authority**

**30AAZD.** In deciding whether to grant a request for assistance referred to in section 30AAZE from a resolution authority of a foreign country or territory, the Authority may also have regard to the following:

(a) whether the resolution authority is preparing plans for dealing with the resolution of any financial institution, or

is in the process of determining whether to exercise, or is exercising, any resolution powers in relation to the financial institution;

- (b) whether the resolution authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the resolution authority for similar assistance; 5
- (c) whether the resolution authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the resolution authority has requested for. 10

**Assistance that may be rendered to foreign resolution authority**

**30AAZE.**—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a resolution authority of a foreign country or territory for assistance — 15

- (a) transmit to the resolution authority any material in the possession of the Authority that is requested by the resolution authority or a copy thereof; 20
- (b) order any person to furnish to the Authority any material that is requested by the resolution authority or a copy thereof, and transmit the material or copy to the resolution authority; 25
- (c) order any person to make an oral statement to the Authority on any information requested by the resolution authority, record such statement, and transmit the recorded statement to the resolution authority; or 30
- (d) request any ministry or department of the Government, or any statutory authority in Singapore, to furnish to the Authority any material that is requested by the resolution

authority or a copy thereof, and transmit the material or copy to the resolution authority.

(2) An order under subsection (1)(b) or (c) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(3) Nothing in this section shall compel an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), to furnish or transmit any material or copy thereof that contains, or to disclose, a privileged communication made by or to him in that capacity.

(4) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act, who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(5) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him but, where the person claims before making the statement that the statement might tend to incriminate him, that statement shall not be admissible in evidence against him in criminal proceedings other than proceedings for an offence under section 30AAZG.

### **Assistance to domestic authority**

**30AAZF.**—(1) Notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct, the Authority may, on its own motion or upon receiving a written request from a domestic authority for any material in relation to the resolution of a specified financial



institution, transmit to the domestic authority any such material that is in the possession of the Authority or a copy thereof.

(2) In deciding whether to transmit any material to a domestic authority under subsection (1), the Authority may have regard to the following:

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(a) whether the assistance is intended to enable the domestic authority —

- (i) to prepare plans for dealing with the resolution of a specified financial institution;
- (ii) to avoid having to exercise any resolution powers in relation to a specified financial institution; or
- (iii) to determine whether or when to exercise resolution powers in relation to a specified financial institution;

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(b) whether the domestic authority has given or is willing to give a written undertaking —

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- (i) that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority; or
- (ii) that any material or copy thereof transmitted by the Authority on its own motion shall not be used for any purpose other than a purpose that is specified by the Authority;

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(c) whether the domestic authority has given a written undertaking not to disclose to a third party any material or copy thereof obtained pursuant to the request or transmitted by the Authority on its own motion, unless the domestic authority is compelled to do so by the law or the Court.

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## Offences under this Division

**30AAZG.** Any person who —

- (a) without reasonable excuse, refuses or fails to comply with an order under section 30AAZE(1)(b) or (c);
- 5 (b) in purported compliance with an order under section 30AAZE(1)(b), furnishes to the Authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- 10 (c) in purported compliance with an order made under section 30AAZE(1)(c), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

## Immunity for furnishing material, etc.

**30AAZH.**—(1) No liability, other than for an offence under section 30AAZG, shall lie against any person for —

- 20 (a) furnishing to the Authority any material or copy thereof, if he had furnished that material or copy with reasonable care and in good faith in compliance with an order made under section 30AAZE(1)(b);
- 25 (b) making a statement to the Authority with reasonable care and in good faith and in compliance with an order made under section 30AAZE(1)(c); or
- (c) doing or omitting to do any act, if he had done or omitted to do the act with reasonable care and in good faith and as a result of complying with an order made under section 30AAZE(1)(b) or (c).

30 (2) Any person who complies with an order made under section 30AAZE(1)(b) or (c) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement

imposed thereunder, any rule of law, any contract or any rule of professional conduct.

*Division 6 — Miscellaneous*

**Notices to significant associated entities of specified financial institutions**

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**30AAZI.**—(1) The Authority may, if it thinks it necessary or expedient in the public interest, in the interests of any affected person or class of affected persons of a specified financial institution or in the interests of the financial system in Singapore, by notice in writing to a significant associated entity of the specified financial institution, give directions or impose requirements on or relating to the operations or activities of the significant associated entity, including directions that the significant associated entity —

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(a) take such action, or do or not do such act or thing, as the Authority may specify in the notice; or

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(b) continue to provide such services as the Authority may specify in the notice to —

(i) the specified financial institution; or

(ii) all or any of the entities treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution.

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(2) A significant associated entity of a specified financial institution shall comply with any direction given to the significant associated entity, or any requirement imposed on the significant associated entity, by any notice issued to the significant associated entity under subsection (1).

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

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(4) Any significant associated entity (of a specified financial institution) which contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

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

(5) In this section —

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

“group of companies”, in relation to a specified financial institution, means —

(a) the specified financial institution;

10 (b) the entities that are subsidiaries of the specified financial institution; and

(c) the entity that is the holding company of the specified financial institution, and the entities that are subsidiaries of that holding company;

15 “significant associated entity”, in relation to a specified financial institution, means an entity incorporated, formed or established in Singapore —

(a) which is treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution;

20 (b) which is not approved, authorised, designated, recognised, registered, licensed or otherwise regulated under this Act or any of the written laws set out in the Schedule; and

25 (c) which —

(i) is significant to the business of —

(A) the specified financial institution; or

30 (B) all or any of the entities which are treated, for accounting purposes according to the Accounting Standards, as part of the group of

companies of the specified financial institution; or

(ii) provides any service which is essential or necessary for the continued operation of —

(A) the specified financial institution; or 5

(B) all or any of the entities which are treated, for accounting purposes according to the Accounting Standards, as part of the group of companies of the specified financial institution. 10

### **Modification of law of insolvency**

**30AAZJ.** Notwithstanding anything to the contrary in this Act, the Bankruptcy Act (Cap. 20) and the Companies Act (Cap. 50) — 15

(a) any sale, transfer, assignment or other disposition of any property or business of a pertinent financial institution pursuant to section 30AAS shall not be reversed, repaid or set aside; and

(b) no order shall be made by any court for the rectification or stay of any such sale, transfer, assignment or other disposition. 20

### **Power to obtain information under this Part**

**30AAZK.**—(1) The Minister or the Authority may require a person to furnish, within the period and in the manner specified by the Minister or the Authority, any information or document that the Minister or the Authority may reasonably require for the discharge of his or its duties or functions, or the exercise of his or its powers, under this Part. 25

(2) Any person who — 30

(a) without reasonable excuse, fails to comply with any requirement under subsection (1); or

(b) in purported compliance with any requirement under subsection (1), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction.

(3) Where a person claims, before furnishing the Minister or the Authority with any information or document that the person is required to furnish under subsection (1), that the information or document might tend to incriminate the person, the information or document shall not be admissible in evidence against the person in criminal proceedings other than proceedings under subsection (2).

### **Immunity for officer of specified financial institution or significant associated entity**

**30AAZL.**—(1) No criminal or civil liability shall be incurred by an officer of a specified financial institution, or of a significant associated entity referred to in section 30AAZI, for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in complying with any provision of this Part or any direction given, notice issued or requirement imposed by the Minister or the Authority under this Part.

(2) In this section, “officer”, in relation to a specified financial institution or a significant associated entity referred to in section 30AAZI, includes —

- (a) a director, a secretary or an executive officer of the specified financial institution or significant associated entity (as the case may be);
- (b) a receiver or manager of any part of the undertaking of the specified financial institution or significant

associated entity (as the case may be) appointed under a power contained in any instrument; and

- (c) a liquidator of the specified financial institution or significant associated entity (as the case may be) appointed in a voluntary winding up.

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### **Cessation of moratorium, etc., under this Part**

**30AAZM.**—(1) The Minister may, by order published in the *Gazette*, direct that section 30AAU(1) or (2), 30AAX(13) or 30AAZA(13), or any provision thereof, shall cease to apply to any pertinent financial institution, any business (or any part thereof) of any pertinent financial institution or any share in any pertinent financial institution, and on the date specified by the Minister in the order, section 30AAU(1) or (2), 30AAX(13) or 30AAZA(13), or the provision thereof, as the case may be, shall cease to apply to the pertinent financial institution, the business (or the part thereof) of the pertinent financial institution or the share in the pertinent financial institution, as the case may be.

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

### **Regulations for this Part**

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**30AAZN.**—(1) The Minister may make such regulations as may be necessary or expedient for carrying out the purposes and provisions of this Part and for prescribing anything that may be required to be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may —

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- (a) restrict, or impose conditions on, any transfer of only part (but not the whole) of the business (as defined in section 30AAR) of a pertinent financial institution under Division 2;

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- (b) provide for either or both of the following:

- (i) that any arrangement is exempted from any provision of this Part;

- (ii) that the Minister or the Authority shall not exercise any power under this Part in relation to any arrangement;

(c) prescribe —

- (i) any set-off arrangement, netting arrangement or other type of arrangement as an arrangement referred to in paragraph (b)(i) or (ii);
- (ii) for any arrangement referred to in paragraph (b)(i), each provision of this Part which that arrangement is exempted from; and
- (iii) for any arrangement referred to in paragraph (b)(ii), each power which the Minister or the Authority shall not exercise in relation to that arrangement;

(d) provide for any transaction to be void or voidable, or for any other consequence (including a consequence affecting any business, affairs, property, right, obligation, liability or power of any person under this Part, or affecting the operation of any provision of this Part) to arise, if any specified provision of the regulations is contravened;

(e) provide that any contravention of any specified provision of the regulations shall be an offence punishable —

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



every day or part thereof during which the offence continues after conviction; and

- (f) exempt any person or class of persons from all or any of the provisions of this Part and the regulations, subject to such conditions or restrictions as may be prescribed. 5

(3) For the purposes of the definition of “affected person” in section 30AAK, the Minister may prescribe, in relation to any specified institution, different persons for different purposes.

(4) For the purposes of the definitions of “excluded financial institution” and “pertinent financial institution” in section 30AAK, the Minister may prescribe different financial institutions for different purposes. 10

(5) All regulations made under this section shall be presented to Parliament as soon as possible after publication in the *Gazette*.

(6) In this section — 15

“netting arrangement” means an arrangement under which 2 or more claims or obligations can be converted into a net claim or obligation, and includes a close-out netting arrangement (under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set-off against each other or to be converted into a net debt); 20

“set-off arrangement” means an arrangement under which 2 or more debts, claims or obligations can be set-off against each other.”. 25

## **New Parts VA and VB**

**11.** The principal Act is amended by inserting, immediately after section 30D, the following Parts:

“PART VA

BOOK-ENTRY SECURITIES ISSUED BY AUTHORITY

**Interpretation of this Part**

**30E.** In this Part, unless the context otherwise requires —

“book-entry MAS securities” means any securities issued by the Authority under this Part in the form of an entry in the records of the Authority;

“depository institution” means a financial institution approved by the Authority which regularly —

(a) accepts in the course of its business book-entry MAS securities by way of a custodial service for its customers; and

(b) maintains accounts in the names of its customers reflecting ownership or interest in such book-entry MAS securities;

“depositor” means any person in whose name an account is established and maintained on the records of the Authority;

“pledge” includes a pledge of, or any security interest in, book-entry MAS securities —

(a) as collateral for loans or advances; or

(b) to secure the performance of an obligation;

“security interest” means an interest, not being an interest arising from a trust, in property which secures the payment of a debt or performance of an obligation.

**Issue of book-entry MAS securities**

**30F.—**(1) The Authority may —

(a) issue book-entry MAS securities upon such terms as may be prescribed by means of entries on its records which include the name of the depositor and the amount and description of the securities;

(b) maintain accounts of book-entry MAS securities —

(i) for any depositor on such terms and conditions as may be specified by the Authority for such securities the depositor holds for its own account and, where the depositor is a depositary institution, for the account of its customers;

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(ii) for the Government; and

(iii) for the Authority; and

(c) otherwise service and maintain book-entry MAS securities.

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(2) The Authority may take all action necessary in respect of book-entry MAS securities to enable the Authority to perform its obligations as depositary with respect to such securities.

### **Transfers and pledges effected by Authority under book-entry clearing system**

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**30G.**—(1) A transfer or a pledge of book-entry MAS securities to the Authority or to any transferee or pledgee eligible to maintain an appropriate account in its name with the Authority shall be effected, notwithstanding any written law to the contrary, by the Authority making an appropriate entry in its records of the securities transferred or pledged.

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(2) The making of an entry in the records of the Authority under subsection (1) shall —

(a) have the effect of delivery of the book-entry MAS securities as if the securities had been issued in the form of an engraved or printed certificate;

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(b) have the effect of a taking of delivery by the transferee or pledgee;

(c) constitute the transferee or pledgee a holder; and

(d) in the case of a pledge, have the effect of vesting a security interest in favour of the pledgee.

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(3) A transfer or pledge of any book-entry MAS securities effected in accordance with this section shall have priority over any transfer or pledge involving, or any interest in, the securities effected or created in any other manner before, on or after the date of the transfer or pledge in accordance with this section.

### **Transfers and pledges effected by other means**

**30H.**—(1) Notwithstanding section 30G, a transfer or pledge of book-entry MAS securities, or any interest therein, which is maintained by the Authority in an account may be effected by any means that would be effective to effect a transfer or pledge of book-entry MAS securities, or any interest therein, if the securities were issued by the Authority in the form of engraved or printed certificates.

(2) The Authority shall be deemed not to be —

- (a) a bailee for the purposes of notification of pledges of book-entry MAS securities not effected in accordance with section 30G; and
- (b) a person in possession of book-entry MAS securities for the purposes of acknowledgment of transfers of such securities not effected in accordance with section 30G.

(3) Where book-entry MAS securities are recorded on the books of a depository institution for account of the pledgor or transferor thereof and such securities are on deposit with the Authority in an account, that depository institution shall, for the purposes of effecting delivery of the securities to a purchaser or pledgee, be deemed to be —

- (a) the bailee to which notification of the pledge of the securities may be given; or
- (b) the person in possession from which acknowledgment of the holding of the securities may be obtained.

(4) The Authority shall not accept any notice or advice of a transfer or pledge of any book-entry MAS securities not effected in accordance with section 30G and any such notice or advice shall be void.

(5) The Authority may continue to deal with its depositor in accordance with this Part notwithstanding any transfer or pledge not effected in accordance with section 30G.

### **Authority to be discharged by action on instructions**

**30I.**—(1) The Authority shall not be liable for conversion or for participation in any breach of fiduciary duty where the Authority has, in respect of book-entry MAS securities maintained in accounts maintained by the Authority —

(a) made entries regarding the securities; or

(b) transferred or delivered the securities,

according to the instructions of its depositor, notwithstanding that the depositor had no right to dispose of or take any other action in respect of the securities.

(2) The Authority shall be fully discharged of its obligations under this Part by the transfer or delivery of book-entry MAS securities upon the instructions of its depositor.

### **Confirmation of transaction**

**30J.**—(1) The Authority shall, following any transaction affecting book-entry MAS securities maintained for any depositor under this Part, issue to each depositor a confirmation thereof in the form of an advice (serially numbered or otherwise).

(2) The advice referred to in subsection (1) shall specify the amount and description of the securities and any other pertinent transaction data.

### **Payment of interest**

**30K.**—(1) Subject to subsection (2), the interest payable on any book-entry MAS securities issued under this Part, if any, shall be paid half-yearly at the office of the Authority as shall be prescribed in regulations made under section 30P relating to the issue of the securities.

(2) Where any book-entry MAS securities that are redeemable at the election of the holder thereof at any time are redeemed before the date of maturity of the securities, a portion of the half-yearly interest payable on the securities (calculated on a pro-rata basis) shall be payable on such date as may be specified as the redemption date in the duly served notice of intention to redeem the securities.

### **Redemption of book-entry MAS securities**

**30L.**—(1) Subject to section 30M, book-entry MAS securities shall be redeemable at par —

(a) on such date as may be prescribed in regulations made under section 30P relating to the issue of such book-entry MAS securities (referred to in this Part as the date of maturity); or

(b) in the case of book-entry MAS securities that are redeemable at the election of the holder thereof at any time, on the earlier of the following dates:

(i) the date of maturity;

(ii) such date as may be specified as the redemption date in any notice of intention to redeem that is duly served in the manner prescribed by regulations made under section 30P.

(2) After the date of maturity of the book-entry MAS securities under subsection (1), all the interest on the principal sums payable on the securities shall cease and determine, whether or not payment of the principal sums has been demanded.

(3) Redemption proceeds of book-entry MAS securities shall be disposed of in accordance with the instructions from the depositor for whose account the securities shall have been maintained by the Authority.

### **Early redemption**

**30M.**—(1) The Authority may, from time to time, by public notice invite the public to apply to redeem any book-entry MAS

securities specified in the public notice before the date of maturity of those securities.

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

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

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

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

### **Invitation to take up book-entry MAS securities and refusal of application**

**30N.**—(1) The Authority may, from time to time, by public notice invite the public to apply to take up book-entry MAS securities issued under this Part.

(2) The Authority may refuse any application to take up book-entry MAS securities issued under this Part without assigning any reason.

### **Securities lending arrangements**

**30O.**—(1) The Authority may, from time to time, enter into securities lending arrangements by lending book-entry MAS securities issued under this Part to primary dealers.

(2) Lending book-entry MAS securities shall include an arrangement under which book-entry MAS securities are sold and repurchased.

### **Power of Authority to make regulations for this Part**

**30P.**—(1) The Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may prescribe —

- (a) the terms of issue of book-entry MAS securities;
- (b) the manner in which applications to take up book-entry MAS securities shall be made; and
- (c) the manner in which book-entry MAS securities shall be issued.

## PART VB

### PRIMARY DEALERS FOR SECURITIES ISSUED BY AUTHORITY

#### **Appointment as primary dealer**

**30Q.**—(1) The Authority may, on application, appoint as a primary dealer any financial institution which carries on or intends to carry on, or holds itself out as carrying on or willing to carry on, the business of either or both of the following:

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

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

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

(3) The Authority may, in any particular case, require a financial institution applying to be appointed as a primary



dealer (referred to in this section as an applicant) to furnish such information or document as the Authority deems relevant to its consideration under subsection (2).

(4) The Authority may refuse an application under subsection (1) if —

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(a) the applicant does not furnish the Authority with such information or document as is required under subsection (3);

(b) in the opinion of the Authority, the applicant does not meet, or is unlikely to be able to continue to meet, such requirements as may be prescribed by regulations made under section 30W in relation to carrying on any business referred to in subsection (1); or

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(c) the applicant makes any statement, or furnishes any information or document, in relation to its application that is false or misleading in any material particular, or omits to state any matter or thing without which its application is false or misleading in a material particular.

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

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(6) Any financial institution which, immediately before the date of commencement of section 11 of the Monetary Authority of Singapore (Amendment) Act 2013, was appointed as a primary dealer under section 29A of the Government Securities Act (Cap. 121A) shall, for so long as that appointment remains in force, be deemed —

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(a) to be appointed as a primary dealer under this section; and

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(b) to be subject, under section 30R, to the conditions and restrictions to which his appointment as a primary dealer under section 29A of the Government Securities Act is subject.

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

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

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

### **Conditions of appointment as primary dealer**

**30R.**—(1) The Authority may appoint any financial institution as a primary dealer subject to such conditions or restrictions as the Authority thinks fit.

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

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

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

(a) stating that the Authority proposes to make the modification in the manner specified in the notice;

(b) stating the reasons why the Authority proposes to make the modification; and

(c) specifying the time (being not less than 28 days after the date of service of the notice on the financial institution) within which written representations with respect to the proposed modification may be made.

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(5) Where the Authority receives any written representation under subsection (4)(c) —

(a) the Authority shall consider the representation and may —

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(i) reject the representation; or

(ii) withdraw or amend the proposed modification in accordance with the representation or otherwise; and

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

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

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### **Directions to primary dealers**

**30S.—**(1) The Authority may give directions to be observed by any primary dealer or class of primary dealers —

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

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(b) in the public interest.

(2) A direction under subsection (1) —

(a) shall require the primary dealer or every primary dealer in that class of primary dealers concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the direction or are of a description as specified therein, including but not limited to the manner in which the primary dealer conducts the business referred to in section 30Q(1) with its customers;

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

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

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

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

### **Cancellation, etc., of appointment as primary dealer**

**30T.**—(1) If the Authority is satisfied that —

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

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

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

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

(c) a primary dealer has gone or is likely to go into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;

(d) a receiver, a receiver and manager or a person in an equivalent capacity has been appointed, whether in

Singapore or elsewhere, in relation to or in respect of any property of the primary dealer;

- (e) a primary dealer has obtained his appointment as such by fraud or misrepresentation;
- (f) a primary dealer has failed to satisfy any of its obligations under or arising from this Act; 5
- (g) a primary dealer has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 11 of the Monetary Authority of Singapore (Amendment) Act 2013, involving fraud or dishonesty or the conviction for which involved a finding that it had acted fraudulently or dishonestly; 10
- (h) a primary dealer is no longer in a position to effectively carry out its duties or responsibilities as a primary dealer under this Act or under any regulations made under section 30W; or 15
- (i) a primary dealer is carrying on its business referred to in section 30Q(1) in a manner that is likely to be detrimental to its clients or contrary to the public interest, 20

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

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

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

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

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

(4) A financial penalty collected by the Authority under subsection (3) shall be paid into the Consolidated Fund.

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

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

15 (7) Subject to subsections (8) and (9), any order made by the Authority under subsection (1), (2) or (3) against any primary dealer shall not take effect until the expiration of 21 days after the Authority has served the notice of the order on the primary dealer.

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

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

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

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

(10) The Authority may recover on behalf of the Government any financial penalty ordered under subsection (3) as though the financial penalty were a civil debt due to the Authority.

## Appeal to Minister

**30U.—**(1) Any primary dealer who is aggrieved by —

- (a) any notice of a condition or restriction of the appointment of any financial institution as a primary dealer under section 30R; 5
- (b) any direction given by the Authority under section 30S or variation of any such direction; or
- (c) any order of the Authority under section 30T(1), (2) or (3), except an order of reprimand,

may, within 14 days after the receipt by the primary dealer of the notice of the condition or restriction, the direction (or variation thereof) or the order, as the case may be, appeal to the Minister whose decision shall be final. 10

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

- (a) the order under section 30T cancelling the appointment as a primary dealer shall not take effect unless the order is confirmed by the Minister or the appeal is for any reason dismissed by the Minister or withdrawn; and 15
- (b) every other notice, direction (or variation thereof) or order appealed against shall take effect and be complied with until the determination of the appeal. 20

(3) Subject to subsection (4), the Minister may determine an appeal under this section by confirming, varying or reversing the notice, direction (or variation thereof) or order of the Authority that is appealed against. 25

(4) If the Minister is satisfied that an appeal by a primary dealer is instituted or pursued without reasonable ground, the Minister may, without calling for a reply from the Authority, but after giving the primary dealer an opportunity to be heard, determine the appeal by confirming the notice, direction (or variation thereof) or order of the Authority that is appealed against. 30

## Inspection of books

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

- (a) any condition or restriction imposed by the Authority under section 30R on the primary dealer is complied with;
- (b) any direction given by the Authority under section 30S to the primary dealer is complied with; or
- (c) the primary dealer has satisfied or satisfies any of its obligations under or arising from this Part.

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

- (a) a primary dealer, and any person who is in possession of the books of the primary dealer relating to its business referred to in section 30Q(1), shall produce such books (and afford the Authority access thereto) and provide such information and facilities as may be required by the Authority to conduct the inspection;
- (b) the primary dealer shall procure that any such person in paragraph (a) who is in possession of the primary dealer's books produce the books to the Authority and give such information or facilities as may be required by the Authority; and
- (c) the Authority may —
  - (i) make copies of, or take possession of, any of such books; and
  - (ii) retain possession of any of such books for so long as is necessary for the purposes of exercising a power conferred by this section (except subsection (4)).

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



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

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

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

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

(6) Any person who fails, without reasonable excuse, to comply with subsection (2) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

### **Power of Authority to make regulations for this Part**

**30W.**—(1) The Authority may make regulations for the purposes of this Part, including regulations to prescribe anything which may be prescribed under this Part.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may —

(a) prescribe the manner in which any application to be appointed as a primary dealer is to be made;

(b) prescribe the duties and obligations of a primary dealer; and

(c) provide that any contravention of any specified provision of the regulations shall be an offence punishable —

(i) in the case of an individual, with a fine not exceeding \$12,500 or with imprisonment for a term not exceeding 12 months or with both and, in the case of a continuing offence, with a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction; or

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

### **Amendment of section 41A**

**12.** Section 41A of the principal Act is amended —

(a) by inserting, immediately after the words “one half of” in subsection (1), the words “the amount of”;

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

“(1A) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.”;

(c) by deleting the words “such sum of money” in subsection (2) and substituting the words “the sum of money referred to in subsection (1) or (1A)”; and

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

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“(4) All sums collected by the Authority under subsection (1) or (1A) shall be paid into the Consolidated Fund.”.

### **New sections 41B and 41C**

**13.** The principal Act is amended by inserting, immediately after section 41A, the following sections:

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#### **“Recovery of fees, expenses, etc.**

**41B.** There shall be recoverable as a civil debt due to the Authority from the financial institution concerned —

(a) the amount of any fees payable to the Authority under section 29 or under any rules issued under section 29A; and

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(b) any remuneration and expenses payable by the financial institution to —

(i) a statutory adviser appointed under section 30AAB(2);

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(ii) a statutory manager appointed under section 30AAB(2);

(iii) the Authority or any person appointed by the Authority under section 13B in relation to the Authority’s assumption of control of any business of the financial institution under section 30AAB; and

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(iv) any person appointed to perform any independent assessment under Part IVA or IVB.

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## Exemption

**41C.**—(1) The Authority may, by regulations, exempt any person or class of persons from all or any of the provisions of Parts IVA, VA and VB and any regulations made under section 27A, 27B, 28A, 30AAJ, 30AAM, 30P or 30W, subject to such conditions or restrictions as may be prescribed.

(2) The Authority may, on the application of any person, by notice in writing exempt the person from —

(a) all or any of the provisions of Parts IVA, VA and VB and any regulations made under section 27A, 27B, 28A, 30AAJ, 30AAM, 30P or 30W; and

(b) all or any of the requirements specified in any direction made by the Authority under this Act,

subject to such conditions or restrictions as the Authority may specify by notice in writing.

(3) The Authority may at any time, by notice in writing to a person, add to, vary or revoke any condition or restriction imposed on the person under subsection (2).

(4) It shall not be necessary to publish any exemption granted under subsection (2) in the *Gazette*.”.

## Amendment of section 42

**14.** Section 42 of the principal Act is amended by inserting, immediately after the word “regulations” in the section heading, the words “relating to objects and purposes of Act”.

## Amendment of Schedule

**15.** The Schedule to the principal Act is amended by deleting the Schedule reference and substituting the following Schedule reference:

“Sections 16(2), 23(8), (9) and (10), 30AA(4), 30AAH(6), 30AAI(2) and (9), 30AAK, 30AAM(2), 30AAN(1) and (2), 30AAP(1) and (2), 30AAQ(1), 30AAR, 30AAS(6), 30AAT(7) and 30AAZI(5)”.

## **Savings and transitional provision**

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

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## **Related amendments to Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act**

**17.** Section 56 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) is amended —

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(a) by inserting, immediately after the word “Except” in subsection (1), the words “as provided in subsection (1A), or”; and

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

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“(1A) A Suspicious Transaction Reporting Officer who is an officer or employee of the Monetary Authority of Singapore may disclose to the Monetary Authority of Singapore any information or matter which he has obtained in the performance of his duties or the exercise of his functions under this Act.”.

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## **EXPLANATORY STATEMENT**

This Bill seeks to amend the Monetary Authority of Singapore Act (Cap. 186) —

- (a) to extend the principal objects, and to clarify certain functions, of the Monetary Authority of Singapore (the Authority);
- (b) to enhance the powers of the Authority to exercise control over, and to provide for the resolution by the Authority of, distressed or insolvent financial institutions and their related entities;
- (c) to establish a framework for the issue of securities by the Authority and the regulation of primary dealers of such securities; and

- (d) to make miscellaneous changes for greater clarity or consistency, or for the better administration of the Act.

The Bill also makes related amendments to section 56 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A).

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title to the Act to extend the scope of the Act to cover —

- (a) the exercise of control over, and the resolution of, financial institutions and their related entities by the Authority and other authorities; and
- (b) the establishment of a framework for the issue of securities by the Authority and the regulation of primary dealers of such securities.

Clause 3 amends section 2 by inserting new definitions for the terms “corporation” and “primary dealer”, which are used in the new Part IVB (inserted by clause 10) and the new Parts VA and VB (inserted by clause 11), respectively.

Clause 4 amends section 4 —

- (a) to extend the principal objects of the Authority to include the promotion of financial stability;
- (b) to clarify that the Authority’s function of conducting integrated supervision extends to the financial services sector, and is not restricted to financial services; and
- (c) to make changes of a technical nature.

Clause 5 amends section 7(3)(b) to increase the maximum number of directors (other than the chairman) of the Authority from 9 to 13.

Clause 6 inserts new section 13B —

- (a) to empower the Authority to appoint any person to exercise certain powers, or perform certain functions or duties, of the Authority under the Act; and
- (b) to deem a person so appointed by the Authority to be a public servant for the purposes of the Penal Code (Cap. 224).

Clause 7 amends section 16 —

- (a) to deem the directors (including the managing director), officers and employees of the Authority to be public officers for the purposes of the Financial Procedure Act (Cap. 109), in relation to their administration, collection and enforcement of payment of any moneys to be paid to or into the Consolidated Fund under the Act or certain written laws; and

(b) to provide for section 20 of the Financial Procedure Act to apply to them.

Clause 8(a) amends paragraphs (c), (d), (e), (f), (j) and (m) of section 23(1) to clarify that the Authority's powers, duties and functions under those paragraphs include engaging in repurchase transactions of the types specified in those paragraphs.

Clause 8(b) inserts new section 23(1)(ga) to extend the powers, duties and functions of the Authority to include the issuing of securities in its name, the dealing in such securities, and the doing of certain things in connection with such securities, for the purposes of money market operations.

Clause 8(c) inserts new section 23(10) and (11) to empower the Authority to require a Suspicious Transaction Reporting Officer (who is an officer or employee of the Authority) to disclose to the Authority any information or matter which he has obtained in the performance of his duties under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

Clause 9 replaces section 27(5). Instead of deeming any direction issued under section 27, 27A, 27B or 28 not to be subsidiary legislation, the amendment provides that it will not be necessary for any such direction to be published in the *Gazette* to have legal effect.

Clause 10 inserts new Parts IVA and IVB.

The new Part IVA (comprising new sections 30AA to 30AAJ) empowers the Authority to exercise certain forms of control over a relevant financial institution in certain circumstances.

The new section 30AA restricts the application of the new Part IVA to a relevant financial institution, and defines certain terms used in that Part.

The new section 30AAA requires a relevant financial institution which is distressed or insolvent to immediately inform the Authority of that fact.

The new section 30AAB empowers the Authority to do one or more of the following in certain circumstances:

- (a) impose requirements on a relevant financial institution;
- (b) appoint a statutory adviser to advise a relevant financial institution on the proper management of its business; or
- (c) assume control of and manage the business of a relevant financial institution, or appoint a statutory manager to do so.

The new section 30AAC sets out the effects of an assumption of control of the relevant business of a relevant financial institution by the Authority or a statutory manager, including the powers exercisable by the Authority or statutory manager, and the status of the chief executive or a director of the relevant financial institution.

The new section 30AAD provides for matters relating to the commencement and termination of the period when the Authority or a statutory manager is in control of the relevant business of a relevant financial institution.

The new section 30AAE requires the present or former holders of certain appointments in, or in relation to, a relevant financial institution to provide the Authority or a statutory manager with certain documents or information relating to the relevant financial institution.

The new section 30AAF empowers the Authority to fix the remuneration and expenses to be paid by a relevant financial institution to a statutory manager, a statutory adviser or the Authority.

The new sections 30AAG and 30AAH provide for the voluntary transfer of the business of a relevant financial institution in Singapore. A relevant financial institution may transfer the whole or part of its business (including any business that is not its significant business) to a transferee, if the new sections 30AAG and 30AAH are complied with and the High Court has approved the transfer. The new sections 30AAG and 30AAH do not affect the voluntary transfer of any business of a relevant financial institution under any other written law or under an agreement.

The new section 30AAI prohibits a relevant financial institution from permitting a person to act as its director or executive officer, without the prior written consent of the Authority, in certain circumstances. The section also provides for the removal of a director or an executive officer of a relevant financial institution from his office or employment in certain circumstances.

The new section 30AAJ empowers the Authority to make regulations for the purposes of the new Part IVA.

The new Part IVB (comprising new sections 30AAK to 30AAZN) —

- (a) provides for the resolution of certain financial institutions, and the exercise of control over the significant associated entities of such financial institutions, by the Authority in certain circumstances; and
- (b) enables the Authority to provide assistance to foreign resolution authorities, or to domestic authorities, in certain circumstances.

Division 1 of the new Part IVB (comprising new sections 30AAK to 30AAQ) contain general provisions applicable to the Part.

The new section 30AAK defines certain terms used in the new Part IVB.

The new section 30AAL specifies the matters which the Authority may have regard to when determining whether to exercise its powers under Divisions 2, 3 and 4 of the new Part IVB.

The new section 30AAM empowers the Authority to issue directions or make regulations concerning any person that has ceased to be a specified financial



institution, or any class of persons that has ceased to be a class of specified financial institutions, in certain circumstances.

The new section 30AAN provides for the continued application, to a person who has ceased to be a specified financial institution, of any direction or notice issued under the Act or any of the written laws set out in the Schedule (being a direction or notice which was in force, and which applied to the person, immediately before the person ceased to be a specified financial institution), until the direction or notice is cancelled by the Authority.

The new section 30AAO empowers the Authority to prohibit a specified financial institution from doing certain things, or to apply to the High Court for certain orders in relation to a specified financial institution, in certain circumstances.

The new section 30AAP provides additional grounds upon which the High Court may, on the application of the Authority, order the winding up of a company which is carrying on or has carried on the significant business of a specified financial institution in Singapore. The section also provides for certain matters relating to the winding of such a company.

The new section 30AAQ empowers the Authority to apply to the Court for, and empowers the Court to make, certain orders against any past or present director or executive officer of a specified financial institution who —

- (a) has failed to discharge the duties of his office;
- (b) has misapplied or retained, or become liable or accountable for, any money or property of the specified financial institution; or
- (c) has been guilty of any misfeasance or breach of trust or duty in relation to the specified financial institution.

Division 2 of the new Part IVB (comprising new sections 30AAR to 30AAU) empowers the Minister to transfer the whole or any part of the business of a pertinent financial institution (transferor) to a transferee in certain circumstances. The Minister will decide whether to transfer the business (or part thereof) if the Authority makes a determination that such business (or part thereof) ought to be transferred. The consent of the transferor is not required. However, the Minister will give the transferor a notice in writing of the Minister's intention to transfer the business and an opportunity to make written representations on the proposed transfer, unless the Minister decides that it is not practicable or desirable to do so. If the Minister decides to transfer the business (or part thereof), the Minister will issue a certificate of transfer setting out the details of the transfer and providing for any matter which is relevant to the transfer or necessary to secure that the transfer is fully effective. The transfer of the business (or part thereof) will take effect in accordance with the certificate. The certificate will be served on the transferor and transferee. The certificate will be binding on the transferor, the transferee and any

other person who is affected by the transfer. A transferor or transferee that fails to comply with any provision in the certificate will be guilty of an offence.

Division 3 of the new Part IVB (comprising new sections 30AAV to 30AAX) empowers the Minister to transfer the shares of a person (transferor) in a pertinent financial institution to another person (transferee) in certain circumstances. The Minister will decide whether to transfer the shares if the Authority makes a determination that such shares ought to be transferred. The consent of the transferor is not required. However, the Minister will give the transferor a notice in writing of the Minister's intention to transfer the shares and an opportunity to make written representations on the proposed transfer, unless the Minister decides that it is not practicable or desirable to do so. If the Minister decides to transfer the shares, the Minister will issue a certificate of transfer setting out the details of the transfer and providing for any matter which is relevant to the transfer or necessary to secure that the transfer is fully effective. The certificate will not be served on the transferor and transferee, but will be served on the pertinent financial institution and published in the *Gazette* and in such newspapers as the Minister may determine. The transfer of the shares will take effect in accordance with the certificate. The certificate will be binding on the transferor, the transferee and any other person who is affected by the transfer. A transferor or transferee that fails to comply with any provision in the certificate will be guilty of an offence.

Division 4 of the new Part IVB (comprising new sections 30AAY to 30AAZA) empowers the Minister to restructure the share capital of a pertinent financial institution, in certain circumstances —

- (a) by cancelling the whole or any part of the share capital of the pertinent financial institution which is not paid up;
- (b) by cancelling the whole or any part of the paid-up share capital of the pertinent financial institution, if such paid-up capital is lost or not represented by the available assets of the pertinent financial institution; or
- (c) by requiring the pertinent financial institution to issue new shares to specified subscribers.

The Minister will decide whether to restructure the share capital if the Authority makes a determination that the share capital ought to be restructured. The consent of the pertinent financial institution or its shareholders is not required. However, the Minister will give the shareholders (by publication in the *Gazette* and in such newspapers as the Minister may determine) a notice, and the pertinent financial institution a notice in writing, of his intention to restructure the share capital and an opportunity to make representations on the proposed restructuring, unless the Minister decides that it is not practicable or desirable to do so. If the Minister decides to restructure the share capital, the Minister will issue a certificate of restructuring setting out the details of the restructuring and providing for any matter which is relevant to the restructuring or necessary to secure that the

restructuring is fully effective. The certificate will be served on the pertinent financial institution and will be published in the *Gazette* and in such newspapers as the Minister may determine. The restructuring of the share capital of the pertinent financial institution will take effect in accordance with the certificate. The certificate will be binding on the pertinent financial institution, the shareholders, the subscribers and any other person who is affected by the restructuring of the share capital. A pertinent financial institution or subscriber that fails to comply with any provision in the certificate will be guilty of an offence.

Division 5 of the new Part IVB (comprising new sections 30AAZB to 30AAZH) —

- (a) specifies the conditions which must be fulfilled before the Authority may provide assistance to a foreign resolution authority;
- (b) specifies the factors which the Authority may have regard to when deciding whether to grant a request for assistance from a foreign resolution authority;
- (c) specifies the types of assistance that the Authority may render to a foreign resolution authority;
- (d) enables the Authority, on its own motion or upon receiving a request, to transmit to a domestic authority any material in relation to the resolution of a specified financial institution, notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information;
- (e) makes it an offence for a person to refuse or fail to comply with an order made by the Authority under the new section 30AAZE(1)(b) or (c), or to furnish any false or misleading material or statement in purported compliance with such an order; and
- (f) provides immunity from liability for doing certain things with reasonable care and in good faith in compliance with, or as a result of complying with, an order made by the Authority under the new section 30AAZE(1)(b) or (c).

Division 6 of the new Part IVB (comprising new sections 30AAZI to 30AAZN) contain miscellaneous provisions applicable to the Part.

The new section 30AAZI empowers the Authority to give directions or impose requirements on or relating to the operations or activities of a significant associated entity of a specified financial institution, by notice in writing to the significant associated entity, if the Authority thinks it necessary or expedient in the public interest, in the interests of any affected person or class of affected persons of the specified financial institution, or in the interests of the financial system in Singapore.

The new section 30AAZJ precludes the reversal, repayment, setting aside, rectification or stay of any sale, transfer, assignment or other disposition of any property or business of a pertinent financial institution pursuant to the new section 30AAS, notwithstanding anything to the contrary in the Act, the Bankruptcy Act (Cap. 20) or the Companies Act (Cap. 50).

The new section 30AAZK empowers the Minister and the Authority to require a person to furnish any information or document that the Minister or the Authority may reasonably require for the discharge of his or its duties or functions, or the exercise of his or its powers, under the new Part IVB.

The new section 30AAZL provides a director or an officer of a specified financial institution, or of a significant associated entity referred to in the new section 30AAZI, with immunity from criminal or civil liability for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in complying with any provision of the new Part IVB or any direction given, notice issued or requirement imposed by the Minister or the Authority under the Part.

The new section 30AAZM empowers the Minister to direct, by order published in the *Gazette*, that certain provisions in the new Part IVB will cease to apply to a pertinent financial institution, or any business (or part thereof) of or share in a pertinent financial institution.

The new section 30AAZN empowers the Minister to make regulations for the purposes of the new Part IVB.

Clause 11 inserts new Parts VA and VB.

The new Part VA (comprising new sections 30E to 30P) establishes a framework for the issue of securities by the Authority.

The new section 30E defines certain terms used in the new Part VA.

The new section 30F empowers the Authority to issue securities in the form of an entry in the records of the Authority (book-entry MAS securities), and provides for related matters.

The new sections 30G and 30H specify how a transfer or pledge of book-entry MAS securities may be effected.

The new section 30I protects the Authority from liability for conversion, or for participation in any breach of fiduciary duty, where the Authority has, in respect of any book-entry MAS securities, acted according to the instructions of the depositor of the securities.

The new section 30J requires the Authority to issue to each depositor a confirmation of any transaction affecting book-entry MAS securities maintained for the depositor.

The new section 30K provides for matters relating to the payment of interest on book-entry MAS securities.

The new section 30L provides for general matters relating to the redemption of book-entry MAS securities.

The new section 30M permits the Authority to invite the public to apply to redeem any book-entry MAS securities before the date of maturity of those securities, and provides for related matters.

The new section 30N permits the Authority to invite the public to apply to take up book-entry MAS securities.

The new section 30O empowers the Authority to enter into securities lending arrangements relating to book-entry MAS securities with primary dealers.

The new section 30P empowers the Authority to make regulations for the purposes of the new Part VA.

The new Part VB (comprising new sections 30Q to 30W) establishes a framework for the regulation of primary dealers of securities issued by the Authority.

The new section 30Q empowers the Authority to appoint a financial institution as a primary dealer of securities issued by the Authority, and provides for related matters.

The new section 30R permits the Authority to make the appointment of a financial institution as a primary dealer subject to certain conditions or restrictions, and to modify such conditions or restrictions from time to time after due process.

The new section 30S empowers the Authority to give directions to any primary dealer or class of primary dealers, which must observe the directions. The directions are given to ensure the continuity or reliability of the provision of services by the primary dealer or class of primary dealers to its customers, or in the public interest.

The new section 30T empowers the Authority, if it is satisfied of certain circumstances, to take the following types of regulatory actions against a primary dealer:

- (a) cancel the appointment of the primary dealer;
- (b) suspend the appointment of the primary dealer for a period not exceeding 6 months;
- (c) reprimand the primary dealer in writing; or
- (d) order the primary dealer to pay to the Authority a financial penalty.

A primary dealer must be given a reasonable opportunity of being heard before any such regulatory action is taken. Any financial penalty collected by the Authority will be paid into the Consolidated Fund.

The new section 30U confers on a primary dealer aggrieved by any decision of the Authority under the new section 30R, 30S or 30T (except a reprimand) a right to appeal to the Minister, and provides for related matters. The Minister's decision on the appeal is final. Pending the determination of an appeal, an order of the Authority under the new section 30T cancelling the appointment of a primary dealer will not take effect. Every other notice, direction or order appealed against will take effect and must be complied with until the determination of the appeal.

The new section 30V empowers the Authority to inspect the books, records, registers, documents and other records of information, and any accounts or accounting records, of a primary dealer, under conditions of secrecy, for the purposes of ensuring that the primary dealer has satisfied or satisfies any of its obligations under or arising from the new Part VB.

The new section 30W empowers the Authority to make regulations for the purposes of the new Part VB.

Clause 12 amends section 41A —

- (a) to enable the Authority to compound —
  - (i) offences under provisions of the Act that have been repealed; and
  - (ii) offences under the Act that were compoundable when the offences were committed, but have ceased to be compoundable;
- (b) to provide for all composition sums collected by the Authority to be paid into the Consolidated Fund; and
- (c) to make certain technical changes.

Clause 13 inserts new sections 41B and 41C.

The new section 41B enables the Authority to recover certain specified amounts from a financial institution as civil debts due to the Authority.

The new section 41C empowers the Authority to make regulations to exempt any person or class of persons from all or any of the provisions of the new Parts IVA, VA and VB and any regulations made under section 27A, 27B or 28A, or under the new sections 30AAJ, 30AAM, 30P or 30W. The new section 41C also empowers the Authority, on the application of any person, to exempt the person, by notice in writing, from all or any of the provisions of the new Parts IVA, VA and VB and any regulations made under section 27A, 27B or 28A, or under the new sections 30AAJ, 30AAM, 30P or 30W, and all or any of the requirements specified in any direction made by the Authority under the Act.

Clause 14 amends the section heading of section 42 to clarify that the Authority's power to make regulations under that section pertains only to regulations relating to the objects and purposes of the Act.

Clause 15 amends the Schedule by replacing the Schedule reference, so as to identify the new provisions of the Act that refer to the Schedule.

Clause 16 empowers the Minister to make regulations of a savings and transitional nature.

Clause 17 amends section 56 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act to enable a Suspicious Transaction Reporting Officer who is an officer or employee of the Authority to disclose any information or matter which he has obtained in the performance of his duties or the exercise of his functions under that Act, regardless of whether he is required by the Authority to do so.

## EXPENDITURE OF PUBLIC MONEY

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

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