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Banking Regulation 2021

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Lexology Getting The Deal Through is delighted to publish the fourteenth edition of *Banking Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Greece.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Gregory J Lyons, Alison M Hashmall, Chen Xu, Josie Dikkers and Amy Aixi Zhang of Debevoise & Plimpton LLP, for their assistance with this volume.



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REGULATORY FRAMEWORK

Key policies

- 1 | What are the principal governmental and regulatory policies that govern the banking sector?

Strong local banks will continue to remain at the core of the Singapore banking sector, and the government's policy of maintaining the local banks' market share at no less than 50 per cent of the total resident deposits remains unchanged. Local banks will also continue to be subject to more stringent capital adequacy requirements than those required under Basel III to reflect their systemic importance to the Singapore economy and financial system.

However, the Singapore government has also progressively liberalised the sector to allow greater competition from foreign banks in wholesale banking and retail banking in order to spur dynamism and innovation. The progressive liberalisation of the banking sector has led to the grant of qualifying full bank (QFB) licences to 10 foreign banks, which allow them to engage in retail banking. Existing QFBs, which are important to the local market, are also required to incorporate their retail operations.

Further, as part of the move towards banking liberalisation, in particular the delivery of financial services to underserved segments, the Monetary Authority of Singapore (MAS) awarded two digital full banking licences and two digital wholesale banking licences in December 2020. These new digital banks are expected to commence operations from early 2022. MAS also kept open the possibility of granting additional digital banking licences in the future.

Regulated institutions

- 2 | What are the defining characteristics of a bank to be caught by the banking laws and regulations? Is non-bank fintech regulated differently?

The defining characteristic of a bank is that it is a company that carries on 'banking business' in Singapore. In this regard, 'banking business' refers to the conduct of *all* of the following activities: the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers *and* making advances to customers. Another defining characteristic of a bank is that it is one of a few types of financial institutions that are permitted to accept deposits from the public.

Whether non-bank fintech companies are regulated as banks would depend on whether they carry on banking business in Singapore – and if so, they would be regulated in the same way as other traditional banks. For example, while MAS recently handed out two digital full banking licences to applicants that were from non-bank corporate groups, these applicants will still be subject to largely the same regulatory requirements as existing full banks.

- 3 | Do the rules vary depending on the size or complexity of the banking institution?

If a bank that is licensed in Singapore is designated by MAS to be a domestic systemically important bank (D-SIB), they will be subject to additional supervisory measures, such as higher capital requirements, recovery and resolution planning requirements, liquidity coverage ratio requirements, and enhanced disclosures. These would depend on the bank's operating model and structure, as well as the type of D-SIB the bank is (for example, a locally incorporated bank, a foreign bank branch in Singapore or a foreign bank group comprising a locally incorporated bank).

MAS looks at four main indicators to assess a bank's systemic importance – size, interconnectedness, substitutability and complexity. Broadly speaking, size refers to the bank's share of domestic activity, interconnectedness refers to the bank's linkages and contagion potential with other financial institutions, substitutability refers to potential for widespread disruption if the bank's services were to be interrupted, and complexity refers to the bank's business, structural and operational complexity.

Primary and secondary legislation

- 4 | Summarise the primary statutes and regulations that govern the banking industry.

Banks in Singapore are primarily governed by the Banking Act (BA) (Chapter 19 of Singapore) and various pieces of subsidiary legislation promulgated under the BA. Banks that provide capital markets and financial advisory services will also be governed under the Securities and Futures Act (Chapter 289 of Singapore), the Financial Advisers Act (Chapter 110 of Singapore), and subsidiary legislation promulgated under these Acts. The resolution regime that banks in Singapore are subject to is set out in the BA as well as the Monetary Authority of Singapore Act (the MAS Act) (Chapter 186 of Singapore). Aside from the above, banks in Singapore are also subject to other applicable regulatory instruments issued by MAS including directives, notices, guidelines, codes, practice notes and circulars.

Regulatory authorities

- 5 | Which regulatory authorities are primarily responsible for overseeing banks?

MAS is the primary regulator having oversight of banks in Singapore.

Government deposit insurance

6 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

Deposits made by non-bank depositors are insured under the deposit insurance scheme (DI Scheme) up to an aggregate of S\$75,000 per depositor per bank in the event a full bank or finance company fails. All licensed full banks and finance companies are required to be scheme members, unless otherwise exempted. The DI Scheme is administered by the Singapore Deposit Insurance Corporation Limited in accordance with the Deposit Insurance and Policy Owners' Protection Schemes Act (Chapter 77B of Singapore).

The Singapore government's ownership interests in the banking sector are largely held through its sovereign wealth fund (GIC Private Limited) and private investment company (Temasek Holdings (Private) Limited).

Transactions between affiliates

7 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

The key limitations that apply to transactions between banks and their related parties or affiliates are:

- banks incorporated in Singapore must ensure that their aggregate exposure to their directors, shareholders with at least 5 per cent voting rights in the bank (substantial shareholders) and entities in which the bank owns or controls more than 10 per cent of shares or voting rights respectively (major stake companies), do not exceed 25 per cent of its total eligible capital;
- banks are not allowed to grant unsecured credit facilities to:
 - their directors (other than an executive director) and, among others, entities controlled or managed by such directors, which exceed S\$5,000; and
 - their officers (other than directors) or employees that in aggregate and outstanding at any one time exceed one year's emoluments of that officer or employee;
- banks must establish separate materiality thresholds on an aggregate basis for each type of transaction with related parties (eg, mortgages, unsecured lending and trade finance facilities) and processes for independent approval or review are required for any transaction that exceeds such thresholds. The related parties generally include, among others, the bank's directors, key credit approvers, senior management and their family members and entities that are owned or controlled by them, related corporations, substantial shareholders and major stake companies; and
- affiliated entities of Singapore-incorporated banks (its subsidiaries, companies in which the bank holds more than 20 per cent interest and companies under the control of the bank) are not permitted to hold in aggregate more than 2 per cent voting power over the bank.

The range of activities that banks are generally prohibited or restricted from conducting are:

- non-financial business (ie, business not regulated or authorised by MAS). There are, however, certain prescribed exemptions to this prohibition or restriction – for instance, banks may engage in certain non-financial businesses related or complementary to their core financial businesses. MAS has, however, announced that

it will relax certain aspects of the anti-commingling framework for banks – eg, allowing banks to engage in operation of digital online e-commerce platforms;

- banks must obtain MAS' approval before acquiring or holding a major stake in any entity. Such approval is generally not granted if the entity carries on non-financial business unless MAS is satisfied that there are clear synergies with the bank's financial business;
- banks are, however, allowed to purchase non-controlling stakes (generally 10 per cent or less) in the share capital of any company. However, to limit concentration risks, equity investments in any single company are limited to 2 per cent of the bank's capital funds;
- banks can invest in immovable properties, as long as such investments do not, in aggregate, exceed 20 per cent of their capital funds (as defined in the BA), but they are not allowed to engage in property development or management. However, banks are permitted to manage investment properties that are owned by their banking groups; properties that have been foreclosed by their banking groups in satisfaction of debts owed to them; and properties used in the business of their banking groups; and
- to minimise the vulnerability of the banking sector in a property market downturn, all banks are required to limit their property exposure to 35 per cent of their eligible assets (as defined in the Banking Regulations).

Regulatory challenges

8 What are the principal regulatory challenges facing the banking industry?

Shadow banking

The growth of shadow banks continues to be a prominent regulatory challenge facing the banking industry. The increased capital and liquidity requirements under Basel III coupled with technological innovations may drive the conduct of shadow banking by non-financial players that provide services that mirror traditional banking services provided by banks (eg, payment systems and peer-to-peer lending systems). This will increase the competition for clients between banks and such non-financial players and heighten the risks associated with consumer protection in relation to the provision of innovative products and services. In line with these concerns, efforts have been made by MAS to enhance the competitiveness of the banking industry. For example, MAS recently awarded four digital banking licences in December 2020. These new digital banks bring with them unique value propositions, such as the innovative use of technology to serve customer needs, and access underserved segments of the financial industry.

Cybersecurity

As more financial services are delivered over the internet, the frequency, scale and complexity of cyberattacks on financial institutions (FIs) have also increased. Cybersecurity is a very real and ongoing regulatory challenge, especially in light of the regulatory obligations to protect the privacy of customers' information and personal data. In light of this, in January 2021, MAS issued a revised set of Technology Management Guidelines to keep pace with emerging technologies and shifts in the cyber threat landscape. The revised Guidelines focuses on the technology and cyber risks arising from the growing use of cloud technologies, application programming interfaces, and rapid software development by financial institutions in general.

Anti-money laundering (AML) and countering the financing of terrorism (CFT)

In the course of serving customers, financial institutions have the responsibility to ensure that they do not inadvertently help to disguise or legitimise ill-gotten gains, particularly where technological advances

offer more effective, efficient and inclusive financial services, but also more challenging and complex financial crime risks. In building its AML/CFT programmes, MAS encourages financial institutions to emphasise AML/CFT as an organisational priority, with implementing proper oversight from board and senior management, strong risk awareness measures and proper AML/CFT controls. In the 2020 Terrorism Financing National Risk Assessment Report, MAS once again highlighted the need for banks to remain vigilant to the risk of Singapore's banking system being used as a conduit by terrorists and their financiers, given Singapore's position as an international financial centre, which exposes it to large international money flows, and the difficulty in detecting terrorism financing activities among small transactions. On the regulator's front, MAS has also been proactively engaging banks on their AML/CFT control measures, through ongoing dialogue and thematic inspections conducted on banks in Singapore.

Consumer protection

9 | Are banks subject to consumer protection rules?

Banks providing common financial products and services such as bank deposits, loans, unit trusts and securities must ensure that their sales practices do not breach the provisions for fair trading under the Consumer Protection (Fair Trading) Act (CPFTA) (Chapter 52A of Singapore). A breach will give consumers a right under the CPFTA to take civil action against a supplier of such products and services.

Future changes

10 | In what ways do you anticipate the legal and regulatory policy changing over the next few years?

MAS' policies on financial sector supervision are unlikely to change fundamentally and will remain focused on pre-empting systemic risks to the financial system, promoting the safety and soundness of Singapore FIs, and ensuring resilient and well-functioning financial markets. That said, the following are some ways in which legal and regulatory policy will or is likely to change in the future.

Environmental risk management

Recognising that environmental risks are key global risks, MAS intends to issue a set of guidelines to enhance the environmental risk management practices of the various types of financial institutions, so as to build resilience against the impact of environmental risks. Under these guidelines, banks will be required to integrate environmental risk considerations into their financing and investment decisions, and promote new opportunities for green financing. MAS also expects the bank's board and senior management to oversee the bank's environmental risk management and to implement robust policies and processes to identify, assess, mitigate and monitor material environmental risk at both a customer and portfolio level.

Management of outsourced relevant services by banks and merchant banks

MAS has proposed to issue notices containing requirements on (1) ongoing outsourced relevant services of banks and merchant banks in Singapore, with a focus on services that are material; and (2) outsourced relevant services that involve the disclosure of customer information to service providers. In this regard, MAS has further listed out a subset of requirements that banks and merchant banks have to comply with, in order to protect customer information. This new notice is intended to replace the existing Guidelines on Outsourcing.

Simplifying the anti-commingling framework

MAS has also announced that it will be relaxing certain aspects of the anti-commingling policy framework for banks (ie, the policy of separating financial and nonfinancial businesses of banks in Singapore), as part of the next round of amendments to the Banking Regulations expected in 2021. The revised anti-commingling policy measures would allow banks to more easily conduct or invest in permissible non-financial businesses related or complementary to their core financial businesses and engage in the operation of e-commerce platforms focusing on the trade of consumer goods or services (subject to prescribed restrictions and risk management related requirements). This would allow banks to broaden and better integrate their range of services and compete effectively against non-financial players delivering financial services.

SUPERVISION

Extent of oversight

11 | How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The Monetary Authority of Singapore (MAS) may inspect, from time to time, the books of banks in Singapore and of any branch, agency, subsidiary or office outside of Singapore opened by Singapore-incorporated banks. The frequency or necessity of such inspection may be determined by MAS according to the bank's impact and risk exposure. For foreign-incorporated banks, the parent supervisory authority of such bank may also conduct an inspection in Singapore of the books of any branch or office of that bank in Singapore subject to MAS' approval and other prescribed conditions under the Banking Act (BA). Further, MAS is also empowered to investigate the books of banks in Singapore if it has reason to believe that, among other things, the bank is carrying on business in a manner that contravenes the BA or is otherwise detrimental to the interest of depositors and creditors.

Aside from active inspections and investigations, MAS also requires banks to submit regulatory returns including statements of assets and liabilities, minimum liquid assets and information on exposures to single counterparty groups to assist with its regulatory oversight of these institutions. Banks in Singapore also have the duty to inform MAS immediately if they are aware of any development that may be likely to adversely and materially affect their financial soundness and the suitability of their key appointment holders. In the case of Singapore-incorporated banks, the requirement to inform MAS also extends to any material adverse developments that could affect their related entities or the suitability of their substantial shareholders and controllers.

Enforcement

12 | How do the regulatory authorities enforce banking laws and regulations?

MAS may apply a wide range of sanctions that include:

- warnings;
- private or public reprimands;
- administrative fines;
- imposition of supervisory conditions;
- licence suspensions or revocations;
- prohibition orders;
- compositions;
- civil penalties;
- removal of directors and officers from office;
- criminal fines; and
- custodial terms.

The type of regulatory sanction that MAS metes out depends on the nature and severity of the breach.

13 | What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

On 4 November 2020, MAS published its second enforcement report that sets out the enforcement actions taken by it for the reporting period of January 2019 to June 2020. Consistent with the previous enforcement reports market abuse, financial services misconduct, and breaches of AML and CFT requirements continue to remain three key areas of focus in terms enforcement issues concerning financial institutions in Singapore.

For example, on 14 November 2019, MAS imposed a civil penalty of \$11.2 million on UBS AG for acts conducted by its client advisors, in that such acts deceived or were likely to deceive UBS AG's clients. In doing so, MAS highlighted that such conduct had no place in the financial services industry where trust and integrity are paramount.

In addressing such issues, MAS has also conducted thematic inspections on selected banks, targeted at different regulatory issues. From such inspections, MAS would subsequently set out its supervisory expectations and good practices observed in the form of information papers. These information papers serve as useful guidance for banks to achieve the desired outcomes and good practices expected of them.

RESOLUTION

Government takeovers

14 | In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

The Monetary Authority of Singapore (MAS) may elect to exercise its statutory powers to, among other things, assume control of and manage a Singapore-incorporated bank's business, or appoint one or more statutory managers to do so, when the bank is, or is likely, to become insolvent, or where MAS is of such opinion. Directors or officers of the bank must surrender to MAS, or the statutory manager, any relevant property or book in their control relating to the bank's business if required to do so. In managing the bank's business, MAS or the statutory manager must take into consideration the interests of the depositors, and shall have all the duties, powers, functions of the board of directors of the bank.

Bank failures

15 | What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

In the event of a bank failure, the directors will need to act in a manner to minimise losses to creditors of the bank such as depositors. MAS may also issue directions requiring banks to implement recovery plans setting out the procedures and establishing the systems required to restore the bank's financial strength and vitality in times of financial pressure or stress.

For foreign banks, the foreign parent institution or head office must be involved in the preparation of such recovery plan, with the board and executive officers having the responsibility to develop and maintain the resolution plan and submission of input to facilitate resolution planning.

16 | Are managers or directors personally liable in the case of a bank failure?

Directors or executive officers of a Singapore-incorporated bank may be personally liable in a bank failure in certain circumstances (eg, where there was fraudulent or wrongful trading).

Further, MAS may, by court application, compel directors or executive officers (both past and present) of any bank to return any salary, remuneration or benefits received in the past two years if they have breached or failed to discharge their general duties towards the bank. The court also has the discretion to extend the two year 'clawback' period where the director or executive officer has acted recklessly, fraudulently or dishonestly.

Planning exercises

17 | Describe any resolution planning or similar exercises that banks are required to conduct.

MAS has the power to direct banks that are incorporated in Singapore; or (for foreign-incorporated banks) the branches and offices of the bank located within Singapore, to prepare, maintain and submit to MAS recovery and resolution plans (RRP).

Recovery plans outline actions banks may take to stabilise and restore their financial strength and viability under situations of severe stress, whereas resolution plans facilitate the effective use of MAS' resolution powers and the bank's resolution without disrupting the bank's systemically important functions.

MAS has the power to direct the bank to:

- amend its recovery plan (to address deficiencies therein);
- furnish information and documents that MAS may require to implement its resolution plan;
- remove impediments to the implementation of its recovery plan and resolution plan (eg, changing its practices, organisation and structure (such as its operational, legal and financial structures)); and
- implement specific parts of the bank's recovery plan or other arrangements or measures necessary to restore the bank's financial strength and viability.

In this connection, MAS also expects the bank to:

- appoint (and inform MAS of the appointment of) an executive officer as the key person to oversee the recovery planning process and facilitate the maintenance and submission of the required information for resolution planning;
- notify MAS where the bank assesses that its viability is or potentially threatened, or of any event that may necessitate the bank implementing its recovery plan;
- maintain information systems that are able to produce in a timely manner the information required for recovery and resolution planning, resolvability assessment, and the conduct of resolution; and
- put in place adequate measures such that outsourcing arrangements that support critical functions and critical shared services can be maintained in crisis situations and in resolution.

CAPITAL REQUIREMENTS

Capital adequacy

18 | Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

The capital requirements imposed on banks in Singapore differ depending on whether the bank is Singapore-incorporated or if it is a branch of a foreign incorporated bank.

Singapore-incorporated banks

Singapore-incorporated banks are required to comply with the following capital adequacy requirements:

- minimum paid-up capital of S\$1.5 billion. However, Singapore-incorporated banks that hold a wholesale banking licence or are subsidiaries of another locally incorporated licensed bank, are only required to have a minimum paid-up capital of S\$100 million;
- risk-based capital requirements prescribed by the Monetary Authority of Singapore (MAS). These requirements incorporate the capital adequacy standards published by the Basel Committee of Banking Supervision (BCBS) in June 2004, as well as the subsequent Basel II and Basel III package of reforms announced by BCBS in 2009 and 2010 respectively. However, the capital adequacy requirements imposed by MAS are higher than the Basel III standards, namely:
 - a minimum common equity Tier I capital adequacy ratio (CAR) of 6.5 per cent;
 - a minimum Tier I CAR of 8 per cent;
 - a minimum total CAR of 10 per cent;
 - a capital conservation buffer of 2.5 per cent above the minimum capital adequacy requirement.
- minimum liquidity coverage ratio (LCR) requirements prescribed by MAS. These requirements were introduced to implement the Basel III liquidity rules. Banks that are incorporated and headquartered in Singapore are required to comply with such minimum LCR requirements. Further, Singapore-incorporated banks that are designated by MAS as domestic systematically important banks (D-SIBs) will also be required to comply with further LCR disclosure requirements prescribed by MAS; and
- minimum cash balance requirements prescribed by MAS.

Foreign-incorporated banks

Foreign banks that hold banking licences in Singapore are required to comply with the following capital adequacy requirements:

- minimum head office capital funds of S\$200 million;
- minimum LCR requirements or minimum liquid asset (MLA) requirements as prescribed by MAS. In this regard, MAS has allowed foreign-incorporated banks that are not D-SIBs to choose between complying with its LCR or MLA requirements. D-SIBs, which do not have such an option, are required to comply with MAS' LCR requirements;
- minimum cash balance requirements prescribed by MAS; and
- minimum asset maintenance requirements prescribed by MAS.

Contingent capital arrangements

There is no specific requirement for banks in Singapore to make contingent capital arrangements.

19 | How are the capital adequacy guidelines enforced?

MAS has the authority under the BA to inspect the books of banks incorporated in Singapore and their subsidiaries (whether located in Singapore or out of Singapore), and the books of any branch, agency, or office outside Singapore opened by such bank. For foreign banks, the BA provides that parent supervisory authorities may inspect the books of any branch or office of the bank in Singapore subject to certain conditions being fulfilled. MAS also has the general authority to investigate the books of any bank in Singapore where it has reason to believe, among other things, that the bank is contravening any provisions of the BA (including any capital adequacy requirements), or has insufficient assets to cover its liabilities to the public.

A licensed bank's failure to meet the capital adequacy requirements may, in some cases, amount to an offence under the BA, which

may subject the bank to financial penalties, and may constitute grounds on which MAS may revoke the bank's licence or restrict or suspend the bank's operations.

Undercapitalisation

20 | What happens in the event that a bank becomes undercapitalised?

A licensed bank's failure to meet the various capital adequacy requirements described above may in some cases amount to an offence under the BA. Such a breach may also constitute grounds on which MAS may revoke the bank's licence, and restrict or suspend the bank's operations during such period that a bank remains undercapitalised. Further, directors or executive officers of a licensed bank in Singapore may also be criminally liable under the BA for the bank's breach of such capital adequacy requirements, where such director or executive officer has failed to take all reasonable steps to secure compliance by the bank with such requirement. In such cases, MAS may also direct the bank to remove the director or executive officer from his office or employment.

Insolvency

21 | What are the legal and regulatory processes in the event that a bank becomes insolvent?

Singapore-incorporated banks

Singapore-incorporated banks may be wound up under the Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018) (IRDA) in the event they become insolvent. The winding-up process may be initiated by, among others, MAS, a creditor of the bank, or the bank itself. In a winding-up, there are specified preferential liabilities of a bank prescribed under the BA that are accorded priority over unsecured liabilities of the bank, for example, deposit liabilities incurred with non-bank customers.

Foreign banks

Foreign-incorporated banks that operate in Singapore are registered as foreign companies under the CA. In the event that such a foreign bank goes into liquidation in its home jurisdiction, the IRDA requires the liquidator of the Singapore branch to recover and realise the bank's assets in Singapore and satisfy all liabilities incurred in Singapore before paying the remainder to the liquidator in the foreign bank's home jurisdiction. The priority accorded to the preferential liabilities prescribed by the BA will also apply to the liquidation of a foreign bank that has registered a branch in Singapore.

MAS' resolution powers

MAS is empowered to exercise various resolution powers if, among other things, a licensed bank becomes insolvent (or is likely to become insolvent). MAS' powers include:

- assuming control of and managing the business of the bank;
- ordering the transfer of the whole or part of the bank's business to another licensed entity regulated by MAS;
- ordering the transfer of the bank's shares to a third party; and
- ordering the reduction of the bank's share capital.

Recent and future changes

22 | Have capital adequacy guidelines changed, or are they expected to change in the near future?

MAS Notice 637 (which prescribes the risk-based capital requirements for Singapore incorporated banks) was amended on 31 March and 23 September 2020. Collectively, these amendments:

- allow full recognition of balances maintained in regulatory loss allowance reserve accounts as Tier 2 Capital;
- allows the exercise of a national discretion to assign a zero per cent default risk weight to claims on public sector entities that would receive a zero per cent risk weight under the revised standardised approach for credit risk; and
- implement other technical revisions to enhance the risk sensitivity of the credit and market risk framework.

Following publication of the final Basel III reforms by the BCBS, which include revised standards for credit risk, credit valuation adjustment, operational risk, output floor and the leverage ratio (published in December 2017) and a set of revisions to the market risk framework (published in January 2019), MAS intends to revise the capital requirements applicable to Singapore-incorporated banks to align with the Basel III reforms. These revisions, which include amendments to the risk-based capital requirements and leverage ratio requirements for Singapore-incorporated banks, are aimed at improving the robustness and comparability of risk-based capital requirements across banks in line with the Basel III reforms, and are projected to be implemented from 1 January 2023, a delay from the previously announced start date of 1 January 2022 – this is to ease the operational burden on financial institutions in light of the covid-19 situation. MAS has also since issued a draft amendment notice to Notice 637 in December 2020, to incorporate the revised standards.

OWNERSHIP RESTRICTIONS AND IMPLICATIONS

Controlling interest

- 23 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank (or non-bank). What constitutes 'control' for this purpose?

The acquisition and ownership of interests in Singapore-incorporated banks and non-banks that are financial institutions are subject to various approval requirements.

Foreign ownership

- 24 Are there any restrictions on foreign ownership of banks (or non-banks)?

While there are no express restrictions on foreign ownership of banks (save in respect of digital full banks that must remain controlled by Singaporeans), the acquisition and ownership of interests in Singapore-incorporated banks remain subject to various approval requirements. In addition, a Singapore-incorporated bank must have a minimum number of directors who are Singapore citizens or permanent residents.

As for other non-bank financial institutions regulated by the Monetary Authority of Singapore (MAS), there are generally no express foreign ownership requirements save for certain exceptions (eg, money-changing licensees have to ensure that more than 50 per cent of their equity shareholdings are beneficially owned and effectively controlled by Singapore citizens).

Implications and responsibilities

- 25 What are the legal and regulatory implications for entities that control banks?

Entities controlling Singapore-incorporated banks are expected to remain fit and proper in accordance with MAS-issued guidelines. For example, the Minister for Finance is empowered to require controllers of a Singapore-incorporated bank to take such steps necessary so as to

cease to hold such control if, among other things, MAS is satisfied that such controller is not fit and proper. The acquisition and ownership of interests in entities that control licensed banks in Singapore may also be subject to approval requirements.

- 26 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

An entity controlling a Singapore-incorporated bank that is designated as a 'financial holding company' will be subject to various governance requirements (eg, in relation to its composition of its board of directors and various board committees). The Financial Holding Companies Act 2013 (No. 13 of 2013) will impose further obligations on designated financial holding companies (eg, disclosure of interests of directors, exposure limits and capital adequacy requirements) when it comes into force. In addition, MAS has also indicated that designated financial holding companies that hold D-SIBs may become subject to capital-adequacy and higher loss-absorbency requirements that will apply at the holding company's group level.

- 27 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

MAS is empowered to exercise various resolution powers if a licensed bank becomes insolvent (or is likely to become insolvent), which may have an impact on the bank's shareholders, including the ordering of a transfer of a licensed bank's shares to a third party, and a reduction of the licensed bank's share capital.

CHANGES IN CONTROL

Required approvals

- 28 Describe the regulatory approvals needed to acquire control of a bank (or non-bank). How is 'control' defined for this purpose?

Approval from the Minister for Finance is required to acquire control over a Singapore-incorporated bank. A person must obtain approval prior to becoming:

- a substantial shareholder of a Singapore-incorporated bank: this broadly refers to a person who holds at least 5 per cent of the voting power in the licensed bank;
- a 12 per cent or 20 per cent controller: this refers to a person who holds at least 12 per cent or 20 per cent of the issued shares of the licensed bank or who is in a position to control at least 12 per cent or 20 per cent of the voting power in the licensed bank; and
- an indirect controller: this refers to any person who:
 - is in a position to determine the policy of the licensed bank; or
 - is in a position to cause the directors of the licensed bank to regularly act in accordance with his or her wishes.

It should be noted that for the purposes of the various control thresholds described above, a person may be deemed to 'hold' shares in a licensed bank even if it does not directly hold such shares (eg, a person who has entered into a contract to purchase or has the right to acquire shares in a licensed bank will be deemed to hold the relevant shares).

Similar approval requirements would apply to entities seeking to acquire control over other types of regulated non-bank financial institutions, although the relevant thresholds and specific approval requirements would differ.

Foreign acquirers

29 | Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

There are no restrictions in the Banking Act that currently apply specifically to foreign acquirers or foreign shareholders of Singapore-incorporated banks. However, one of the factors to be considered by the Minister for Finance and the Monetary Authority of Singapore (MAS) in reviewing an application to acquire control over a Singapore-incorporated bank is whether the acquisition is in the national interest. Further, in the context of the recently issued digital full bank licences, MAS does expect such digital full banks to be controlled by Singaporeans.

30 | Under what circumstances can a foreign bank (or non-bank) establish an office and engage in business? For example, can it establish a branch or must it form or acquire a locally chartered bank?

Foreign banks may establish a branch in Singapore or incorporate a Singapore subsidiary to seek a banking licence under the Banking Act (BA) – the former option is typically taken owing to the lower capital commitment required.

Notwithstanding the above, where a foreign bank operating in Singapore through a registered Singapore branch has a significant retail presence in Singapore, MAS may require the bank to operate its retail business through a locally incorporated entity.

As for other types of foreign non-bank financial institutions, whether it needs to establish a local presence would vary depending on the relevant regulatory regime governing their activities in Singapore.

Factors considered by authorities

31 | What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank (or non-bank)?

The key factors considered in the review of an application to acquire control over a Singapore-incorporated bank are:

- 1 the fitness and propriety of the controller;
- 2 the likelihood of the licensed bank continuing to conduct its business prudently and to comply with the BA having regard to the likely influence of the controller; and
- 3 whether the acquisition of interest is in the national interest.

The above factors in (1) and (2) are also generally relevant when MAS decides whether or not to approve the acquisition of other types of non-bank financial institutions regulated by MAS.

Filing requirements

32 | Describe the required filings for an acquisition of control of a bank.

The Minister of Finance's prior written approval must be obtained for a person to become a substantial controller, 12 per cent controller, 20 per cent controller or an indirect controller in a Singapore-incorporated bank. Such approval may (in addition to certain other factors being fulfilled) be granted if the Minister is satisfied that it is in the national interest to do so. There is no prescribed form or process for the purposes of such an application and the applicant would need to write to the Minister to seek such approval.

Time frame for approval

33 | What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The time frame required to obtain regulatory approval will depend on, among other things, the identity of the acquirer and the nature and the nature and complexity of the transaction.

UPDATE AND TRENDS

Key developments of the past year

34 | Are there any emerging trends or hot topics in banking regulation in your jurisdiction?

On 4 December 2020, the Monetary Authority of Singapore (MAS) announced four successful digital bank applicants, out of a total of 21 applicants. Two of the digital bank licences awarded were digital full bank licences, while the other two were digital wholesale bank licences. In a public statement, MAS mentioned that the applications were assessed on the following criteria:

- value proposition of business model, incorporating innovative use of technology to serve customer needs and reach under-served segments;
- ability to manage a prudent and sustainable digital banking business; and
- growth prospects and other contributions to Singapore's financial centre.

These new digital bank entrants should commence operations from early 2022, and MAS expects these digital banks to thrive alongside the incumbent banks and raise the industry's bar in delivering quality financial services, particularly for currently underserved businesses and individuals.

CORONAVIRUS

Coronavirus

35 | What emergency legislation, relief programmes and other initiatives specific to your practice area has been implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In light of the Covid-19 pandemic, MAS decided to adjust selected regulatory requirements and supervisory programmes, so as to enable banks (and financial institutions in general) to focus on dealing with issues related to the Covid-19 pandemic and supporting their customers during this period.

Adjusting capital and liquidity requirements

MAS announced that it would adjust the capital and liquidity requirements of banks to help sustain their lending activities. Furthermore, MAS also allows banks to recognise as capital more of their regulatory loss allowance reserves, as well as utilise their liquidity buffers to meet liquidity demands. These reliefs will apply until 30 September 2021, and may be extended if necessary. The temporary changes have been reflected in the relevant notices.

Deferring implementation of regulatory reform

MAS also announced that it would defer by one year the implementation of the final set of Basel III reforms for banks in Singapore, so as to ease their operational burdens. The new start date for the implementation of

the revised standards will be 1 January 2023. This deferment is also in line with the BCBS' announcement to delay the internally agreed start date for the revised standards.

Relief programmes

On top of adjusting regulatory and supervisory requirements, MAS has also introduced programmes to help the banking industry. In March 2020, MAS announced that it will provide up to US\$60 billion of funding to banks in Singapore through a new MAS USD Facility. Effected by way through a US\$60 billion swap facility between MAS and the US Federal Reserve, this facility will support more stable USD funding conditions in Singapore, as well as facilitate USD lending businesses in Singapore and the region.



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