



# Banking Regulation

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; supervision and enforcement; resolution; capital requirements; ownership restrictions and implications; changes in control; and recent trends.

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## REGULATORY FRAMEWORK

### Key policies

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 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 in 2022. MAS also kept open the possibility of granting additional digital banking licences in the future.

*Law stated - 12 February 2022*

### Regulated institutions

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 accounts;
- 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 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. 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.

*Law stated - 12 February 2022*

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 that 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 the 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.

*Law stated - 12 February 2022*

### **Primary and secondary legislation**

Summarise the primary statutes and regulations that govern the banking industry.

Banks in Singapore are primarily governed by the Banking Act 1970 (BA) 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 2001, the Financial Advisers Act 2001 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 in the Monetary Authority of Singapore Act 1970. 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.

*Law stated - 12 February 2022*

### **Regulatory authorities**

Which regulatory authorities are primarily responsible for overseeing banks?

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

*Law stated - 12 February 2022*

### **Government deposit insurance**

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 (the DI Scheme) up to an aggregate of S\$75,000 per depositor per bank in the event that a full bank or finance company fails. All licensed full banks and finance companies are required to be DI 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 2011.

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).

*Law stated - 12 February 2022*

### Transactions between affiliates

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:

- global systemically important banks (G-SIBs) 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 entities) do not exceed 25 per cent of its Tier 1 capital;
- banks incorporated in Singapore (that are G-SIBs and headquartered in Singapore) must ensure that their aggregate exposure to any other G-SIB or any other connected counterparty group (a connected counterparty group refers to a group of persons where at least one person in the group is a counterparty to the bank and one person in the group controls every other person in that group or every other person in the group is economically dependent on one person in the group) do not exceed 15 per cent of its Tier 1 capital;
- 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 (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 10 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 the following.

- 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 also relaxed certain aspects of the anti-commingling framework for banks (eg, allowing banks to engage in certain prescribed non-financial businesses, such as the operation of digital online e-commerce platforms, and providing advice on the social impact or environmental impact of a person's investments or activities, provided the restrictions and requirements imposed by MAS, in relation to such non-financial businesses are satisfied). MAS has also indicated that, as the banking landscape evolves, it will update the list of permissible non-financial businesses periodically.
- 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, provided that such investments do not, in aggregate, exceed 20 per cent of their capital funds (as defined in the BA). Banks are also 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.
- 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 total eligible assets (as defined in the Banking Regulations).

*Law stated - 12 February 2022*

## Regulatory challenges

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 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. MAS has also relaxed certain aspects of the anti-commingling framework for banks (eg, allowing banks to engage in certain prescribed non-financial businesses, such as the operation of digital online e-commerce platforms, and providing advice on the social impact or environmental impact of a person's investments or activities, provided that the restrictions and requirements imposed by MAS in relation to such non-financial businesses are satisfied).

### Cybersecurity

As more financial services are delivered over the internet, the frequency, scale and complexity of cyberattacks on financial institutions 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 focus 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.

### Remote working risks

The covid-19 pandemic and the public health measures implemented by the government to mitigate human-to-human transmissions resulted in businesses adopting work-from-home arrangements on a scale and at a speed that has been described as unprecedented. Given that large-scale ongoing remote working is a relatively recent development, MAS and the Association of Banks in Singapore (ABS) have cautioned that the changes to policies and operational

processes necessitated by remote working could lead to new risks and risk management challenges that may only emerge over time.

In addition, the forms that remote working will take and the resultant risks will also continue to evolve over time. MAS thus highlighted the importance for financial institutions to consider and monitor remote working risks closely, so as to take pre-emptive steps to mitigate them. In this regard, MAS and ABS jointly published an information paper in March 2021 to:

- raise awareness of key remote working risks in the financial sector;
- share good practices adopted by financial institutions to mitigate key remote working risks; and
- encourage all financial institutions to adopt good practices on risk mitigation, on a risk-proportionate basis according to their risk profiles and business activities.

Both MAS and ABS have also indicated that they will continue to work together to understand emerging remote working trends and any corresponding risks, as well as to identify best practices to maintain high standards of risk management for Singapore's financial sector.

## Anti-money laundering and countering the financing of terrorism

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 anti-money laundering and countering the financing of terrorism (AML/CFT) programmes, MAS encourages financial institutions to emphasise AML/CFT as an organisational priority by implementing proper oversight from board and senior management, strong risk awareness measures, and proper AML/CFT controls. MAS has also been proactively engaging banks on their AML/CFT control measures through ongoing dialogue and thematic inspections conducted on banks in Singapore. Where material lapses in a bank's AML/CFT control processes were detected, MAS has also taken formal enforcement actions against errant banks.

*Law stated - 12 February 2022*

## Consumer protection

### 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 2003 (CPFTA). A breach will give consumers a right under the CPFTA to take civil action against a supplier of such products and services. The CPFTA is administered by the Competition and Consumer Commission of Singapore.

Separately, in view of a recent spate of online message phishing scams targeting bank customers, MAS and ABS have put in place a set of additional measures to bolster the security of digital banking. These measures have been substantially implemented by banks in Singapore, thus providing a significant added layer of security to protect customers' funds. Banks in Singapore, in consultation with MAS, will also be working together to evaluate long-term measures to be implemented. MAS has also indicated that it would be intensifying its scrutiny of major financial institutions' fraud surveillance mechanisms to ensure that they are adequately equipped to deal with the growing threat of online scams. In addition, the Payments Council, chaired by MAS, will also be publishing a consultation paper on a proposed framework to provide clarity on how losses arising from scams are to be shared among consumers and

financial institutions. Generally speaking, the proportion of losses that each party bears will depend on whether and how the party has fallen short of its responsibilities.

*Law stated - 12 February 2022*

## **Future changes**

**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 financial institutions, 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.

### **Enhancing the resolution regime for financial institutions in Singapore**

In October 2021, MAS published its response to feedback received on proposed regulations to enhance the resolution regime for financial institutions in Singapore. Banks incorporated in Singapore (and their subsidiaries) will be required to include an enforceable provision in their foreign law-governed financial contracts, which contain early termination rights (the Contractual Recognition Requirement) such that all parties would agree that their exercise of termination rights will be subject to MAS' temporary stay powers in the event of a resolution of the bank. This would provide greater legal certainty and serve to support an orderly resolution of a distressed bank. The Contractual Recognition Requirement will apply to:

1. a contract that is a financial contract, which is governed by foreign law and contains a termination right; and
2. any contract that falls within (1) above entered into, or any transaction executed under a contract which falls within (1) above, on or after such a date that falls three years after the commencement of the Contract Recognition Requirement.

The three-year transitional period to implement the Contractual Recognition Requirement is expected to provide banks with sufficient lead time to make the necessary preparations to comply with the new regulations. In addition, MAS also indicated that it will engage the International Swaps and Derivatives Association (ISDA) to explore the possibilities of putting in place an ISDA jurisdictional module for Singapore in due course.

### **Amendments to MAS' investigative and other powers**

In July 2021, MAS published a consultation paper on proposed amendments to MAS' investigative and other powers under the various acts. In relation to banks, MAS proposes to introduce the following new powers, among others, under the BA.

- The power for MAS to require information, including information in electronic form, from any person for the purposes of an investigation. This is an extension of MAS' existing powers, which only enable MAS to obtain information from banks or subsidiaries under inspection or investigation.
- The power for MAS to require any person to appear for examination and statement recording. This new power under the BA would allow an investigator to obtain first-hand information from individuals on matters that may not be recorded in documentary form and thus cannot be procured by compelling the production of documents.
- The power for MAS to obtain a court warrant if an examinee fails to appear for an examination. This is to ensure

that MAS' power to examine witnesses is effective.

- The power for any MAS investigator or authorised officer to enter any premises without a warrant, if the investigator has reasonable grounds to suspect that the premises are or have been used by a person being investigated by MAS.
- The power for MAS to obtain a warrant from the Magistrate to seize evidence, including electronic evidence, from premises when:
  - a person has failed to comply with an order to produce such evidence; or
  - if there is a risk that the evidence will be concealed, removed, tampered with or destroyed if an order is made for the same to be produced.

The new powers that will be granted to MAS over banks in Singapore are still in the consultation stage.

*Law stated - 12 February 2022*

## **SUPERVISION**

### **Extent of oversight**

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 inspections may be determined by MAS according to the bank's impact and risk exposure. For foreign-incorporated banks, the parent supervisory authorities of such banks may also conduct inspections in Singapore of the books of any branch or office of those banks in Singapore, subject to MAS approval and other prescribed conditions under the Banking Act 1970 (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.

*Law stated - 12 February 2022*

## **Enforcement**

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.

*Law stated - 12 February 2022*

### 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 anti-money laundering and countering the financing of terrorism (AML/CFT) requirements continue to remain three key areas of focus in terms of enforcement issues concerning financial institutions in Singapore.

More recently in April 2021, MAS also imposed a composition penalty of S\$1 million on Bank J Safra Sarasin Ltd, Singapore branch (BJS), for its failure to comply with MAS' AML/CFT requirements. It was found that these breaches resulted from material lapses in BJS' AML/CFT control processes during customer onboarding and in the ongoing monitoring of business relations with customers, which had placed BJS at higher risk of being used as a conduit for illicit activities. In doing so, MAS highlighted the need for the board and senior management of financial institutions to exercise strong oversight of the execution of key AML/CFT controls.

In addressing such issues, MAS has also conducted thematic inspections on selected banks, targeted at different regulatory issues. From these 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.

*Law stated - 12 February 2022*

## RESOLUTION

### Government takeovers

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 others, 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 that relates 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 and functions of the board of directors of the bank.

## Bank failure

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 that require 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 the 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.

Law stated - 12 February 2022

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 for 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 previous 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.

Law stated - 12 February 2022

## Planning exercises

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.

Recovery plans outline the actions that 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;
- immediately inform 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.

*Law stated - 12 February 2022*

## CAPITAL REQUIREMENTS

### Capital adequacy

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 is prescribed. 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. Singapore-incorporated banks that hold a merchant bank licence are only required to have a minimum paid-up capital of \$15 million.
- Risk-based capital requirements are 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 packages 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 1 capital adequacy ratio (CAR) of 6.5 per cent;
  - a minimum Tier 1 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; and
  - a countercyclical buffer of 2.5 per cent comprising common equity Tier 1 capital above minimum capital adequacy requirement.
- Minimum liquidity coverage ratio (LCR) requirements are 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.

- Minimum cash balance requirements are 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, which 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.

*Law stated - 12 February 2022*

### How are the capital adequacy guidelines enforced?

MAS has the authority under the Banking Act 1970 (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 banks. 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 others, 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. This may constitute grounds on which MAS may revoke the bank's licence, or restrict or suspend the bank's operations.

*Law stated - 12 February 2022*

## Undercapitalisation

### What happens in the event that a bank becomes undercapitalised?

A licensed bank's failure to meet capital adequacy requirements 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 a 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 capital adequacy requirements, where such director or executive officer has failed to take all reasonable steps to secure compliance by the bank with such requirements. In these cases, MAS may also direct the bank to remove the director or executive officer from his or her office or employment.



## Insolvency

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 (IRDA) in the event that 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-incorporated banks

Foreign-incorporated banks that operate in Singapore are registered as foreign companies under the Companies Act 1967. 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 others, a licensed bank becomes insolvent or is likely to become insolvent. MAS' powers include:

- assuming control 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.

Law stated - 12 February 2022

## Recent and future changes

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 14 June, 17 August and 2 December 2021. Collectively, these amendments:

- set out an alternative treatment for the measurement of derivative exposures for leverage ratio calculation, using a modified version of the standardised approach for counterparty credit risk (SA-CCR);
- incorporate clarifications by the BCBS to the SA-CCR and the revised capital requirements for bank exposures to central counterparties;
- implement other technical revisions to the credit risk and disclosure frameworks;

- implement a framework for the treatment of major stake investments in financial institutions at the solo level;
- incorporate edits to the standardised approach to credit risk and the internal ratings-based approach (IRBA) relating to the insertion of a new charge to be held by the Housing and Development Board under the Prime Location Public Housing model; and
- implements technical revisions to the IRBA application process.

The final Basel III reforms have been published by the BCBS and include revised standards for:

- revised standards for credit risk;
- revised standards for credit valuation adjustment;
- revised standards for operational risk;
- revised standards for the 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. To this end, in March 2021, MAS also published a consultation paper on draft standards for credit risk capital and output floor requirements for Singapore-incorporated banks. The draft provisions take into account standards relating to credit risk capital and output floor requirements in the consolidated Basel framework that will take effect from 1 January 2023. In implementing such standards on Singapore-incorporated banks, MAS mentioned that it will implement the revised standards for credit risk capital and output floor from 1 January 2023, with transitional arrangements provided for implementation of the output floor until 1 January 2028.

More recently, in September 2021, MAS published its response to feedback received on the proposed implementation of the final Basel III reforms in Singapore relating to market risk capital requirements. In its response, MAS indicated that it would permit banks that maintain small and simple market risk portfolios to use the simplified standardised approach for calculating market risk capital requirements, although this would be subject to MAS approval.

*Law stated - 12 February 2022*

## OWNERSHIP RESTRICTIONS AND IMPLICATIONS

### Controlling interest

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.

In this regard, the Minister of Finance's approval is required before an entity or individual would be able to obtain certain prescribed thresholds of ownership interests in a Bank incorporated in Singapore.

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
  - 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 he or she 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).

In relation to non-banks that are financial institutions, similar approval requirements would apply to individuals or entities seeking to acquire control over other types of regulated non-bank financial institutions, although the relevant thresholds and specific approval requirements would differ.

*Law stated - 12 February 2022*

## Foreign ownership

### 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, which 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).

*Law stated - 12 February 2022*

## Implications and responsibilities

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

Entities that control 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 the controllers of a Singapore-incorporated bank to take such steps necessary so as to cease to hold such control if, among others, MAS is satisfied that such a 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.

*Law stated - 12 February 2022*

### 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 the composition of its board of directors and various board committees). The Financial Holding Companies Act 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. As at February 2022, no information has yet been released regarding the date on which this act will come into force. In addition, MAS has also indicated that designated financial holding companies that hold domestic systemically important banks may become subject to capital adequacy and higher loss-absorbency requirements than will apply at the holding company's group level.

*Law stated - 12 February 2022*

**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. This may include 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.

*Law stated - 12 February 2022*

## **CHANGES IN CONTROL**

### **Required approvals**

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
  - 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 he or she 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.

*Law stated - 12 February 2022*

### **Foreign acquirers**

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 1970 (BA) 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 expects such digital full banks to be controlled by Singaporeans.

*Law stated - 12 February 2022*

**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 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.

*Law stated - 12 February 2022*

### **Factors considered by authorities**

**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.

*Law stated - 12 February 2022*

### **Filing requirements**

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

The Minister for Finance's prior written approval must be obtained for a person to become a substantial controller, a 12 per cent controller, a 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 for Finance 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 for Finance to seek such approval.

*Law stated - 12 February 2022*

### **Time frame for approval**

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 others, the identity of the acquirer, and the nature and complexity of the transaction.

*Law stated - 12 February 2022*

## **UPDATE AND TRENDS**

### **Key developments of the past year**

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

The Monetary Authority of Singapore (MAS) is currently in the exploratory stages of discussing the feasibility of developing a retail central bank digital currency (CBDC). In November 2021, MAS published an information paper that assessed the economic case for a retail CBDC in Singapore as well as its potential implications for financial stability and monetary policy. Two main inferences were drawn from the information paper:

- a review of the literature and assessment of the current payment landscape do not suggest strong economic motivations for, nor intractable monetary and financial stability considerations against, a retail CBDC in Singapore; and
- emerging digital complementarities and global competitive forces could shape a future monetary arrangement that includes the possibility of a digital form of the Singapore dollar issued by MAS for general use.

However, while MAS said that there is no need to issue a Singapore dollar retail CBDC at this point, MAS nevertheless acknowledged that it would be prudent to embark on exploratory work to develop the technical and policy capabilities for its possible issuance in the future.

More recently, in January 2022, MAS published an information paper on its Global CBDC Challenge Report. The Global CBDC Challenge was organised by MAS in partnership with:

- the International Monetary Fund;
- the World Bank;
- the Asian Development Bank;
- the United Nations (UN) Capital Development Fund;
- the UN High Commissioner for Refugees;
- the UN Development Programme; and
- the Organisation for Economic Co-operation and Development.

The Global CBDC Challenge sought innovative retail CBDC solutions to enhance payment efficiencies and promote financial inclusion. Following the Global CBDC Challenge, MAS observed that it would still have to determine if there is public demand for a state-issued currency that is as safe as cash but in digital form.



## Jurisdictions

	<b>Andorra</b>	Cases & Lacambra
	<b>Australia</b>	Piper Alderman
	<b>Ghana</b>	WTS Nobisfields
	<b>Greece</b>	Zepos & Yannopoulos
	<b>Hungary</b>	Nagy és Trócsányi
	<b>India</b>	Shardul Amarchand Mangaldas & Co
	<b>Ireland</b>	Dillon Eustace LLP
	<b>Israel</b>	Yigal Arnon - Tadmor Levy
	<b>Italy</b>	Ughi e Nunziante
	<b>Japan</b>	TMI Associates
	<b>Lebanon</b>	Abou Jaoude & Associates Law Firm
	<b>Luxembourg</b>	Loyens & Loeff
	<b>Monaco</b>	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	<b>Singapore</b>	WongPartnership LLP
	<b>South Africa</b>	White & Case LLP
	<b>Sri Lanka</b>	Tiruchelvam Associates
	<b>Switzerland</b>	Lenz & Staehelin
	<b>United Kingdom</b>	1 Crown Office Row
	<b>USA</b>	Debevoise & Plimpton LLP