Country Guides: Securities and Banking

Regulators in Singapore made a number of changes to the law and/or rules that govern the securities and banking industries in 2018. Some of these developments are described below.

PRIMARY REGULATORS OF THE SECURITIES AND BANKING INDUSTRIES

Monetary Authority of Singapore (MAS)

The MAS is Singapore's central bank as well as the regulator of the securities and banking industries. The MAS administers the main statutes that govern these industries.

Singapore Exchange Securities Trading Ltd (SGX-ST)

The SGX-ST is Asia-Pacific's first demutualised and integrated securities and derivatives exchange. The SGX-ST regulates companies listed on the main board of the SGX-ST (Mainboard) and monitors such companies for ongoing compliance with its listing rules.

Catalist, SGX-ST's second board, is a sponsor-supervised listing platform for fast-growing local and international companies.

Securities Industry Council (SIC)

The SIC is a non-statutory body whose main functions are to administer and enforce the Singapore Code on Takeovers and Mergers.

SECURITIES REGULATION

Securities legislation

The main statutes that govern the securities industry are the Securities and Futures Act (SFA) and the Financial Advisers Act (FAA).

The Securities and Futures (Amendment) Act 2017 (SF(A)A) was passed by the Singapore Parliament on January 9, 2017 and came into force on October 8, 2018. The SF(A)A introduces legislative amendments to the SFA to, among other things, enhance regulatory safeguards for retail investors, extend the regulation of over-the-counter (OTC) derivatives to capital markets intermediaries, provide for the regulation of the setting of financial benchmarks and strengthen regulatory enforcement regime against market misconduct.

Offering of securities

Prospectus and Product Highlights Sheet (PHS)

A prospectus is usually required when a person makes an offer of securities, unless the offer falls within one of the safe harbour provisions in the SFA. Where a prospectus is required to be issued, the SFA requires that it be made available on the MAS web site (on a section of the site called "OPERA" or "Offers and Prospectuses Electronic Repository and Access") for a minimum exposure period of seven days.

As noted above, however, an offer of securities does not require a prospectus to be issued if it falls into one of the safe harbour provisions in the SFA. These safe harbours include offers made to institutional investors or accredited investors (AIs).

Where a prospectus is required to be issued, issuers will also have to issue a PHS in addition to the prospectus. This requirement applies to any offer of plain vanilla debentures, preference shares, perpetual securities, convertible bonds, ordinary shares, units in a real estate investment trust, or units in a business trust.

Prior to this, a PHS only had to be issued for debentures in the form of asset-backed securities and structured notes (including exchange-traded notes), unlisted collective investment schemes, and exchange-traded funds. A PHS must set out key information on the investment product that the investor will reasonably need to decide whether to invest in it, and must not exceed the maximum number of pages specified for that product.

The PHS must also comply with the templates prescribed by the MAS. The MAS has, on October 8, 2018, revised its guidelines to provide further clarification on the type of information that should be disclosed in the PHS, including information that would give a fair and balanced view of the nature, material benefits and material risks of the investment product.

To aid investors in making informed investment decisions, the MAS has also issued guidelines in 2015 on good drafting practices for prospectuses. The guidelines stipulate that information should be presented in prospectuses and profile statements in plain English and in a clear, comprehensive and well-organised manner. The MAS has also issued guidelines in 2018 on, among others, the disclosure of financial information in prospectuses which set out how audited, pro forma and interim financial information should be presented in prospectuses.

In order to broaden the investment options available to retail investors, the MAS introduced, on May 19, 2016, regulations to facilitate corporate bond offerings to retail investors:

- under the new bond seasoning framework, wholesale bonds issued by issuers that meet eligibility criteria stipulated by the Singapore Exchange (SGX) can be offered to retail investors without a prospectus after the bonds have been listed on SGX for six months, subject to certain conditions. Such "seasoned" bonds can be re-denominated into smaller lot sizes and offered to retail investors on the secondary market; and

- subject to certain conditions, issuers that satisfy certain eligibility criteria can offer bonds directly to retail investors without the need for a prospectus.

Under these regulations, issuers may nevertheless still have to issue a PHS and/or a simplified disclosure document depending on the type of investors targeted.

Under the SF(A)A, the prospectus requirements relating to securities, securities-based derivatives contracts and units or derivatives of units in a business trust were amended:

- to permit information to be incorporated in the prospectus by reference to another document (i.e. the reference document) that is lodged with the MAS together with the prospectus; and

- to empower the MAS to declare that the provision of an offer information statement in lieu of a prospectus relating to an offer of securities would not be prejudicial to the interests of investors of such securities where the offer of securities meets certain criteria.

The MAS has also clarified that the offering and issuing of digital tokens in Singapore will be regulated insofar as they constitute products under the SFA. In particular, where such tokens fall within the definition of "securities", issuers of such tokens would be required to lodge and register a prospectus with MAS prior to the offer of such tokens. In this regard, MAS circulated a paper in November 2018 setting out general guidance on the application of the securities laws administered by MAS in relation to offers or issues of digital tokens in Singapore.

As part of its endeavours to improve access to securities-based crowd funding (SCF) for start-ups and SMEs, the MAS has also simplified pre-qualifications currently allowing issuers raising less than $5 million within 12 months to do so without having to issue a prospectus. For investor-safeguarding purposes, SCF platform operators are expected to enhance their practices and controls in relation to due diligence conducted on issuers, management of defaults, and disclosures to investors. The measures that MAS expects licensed SCF operators to have in place were released in 2018. These measures also serve to enhance transparency to investors to help them make better informed investment decisions on SCF offers.

Investor protection

The new opt-in / opt-out regime for AIs will come into force with effect from April 8, 2019 and financial institutions are obliged to:

- treat new investors qualifying as AIs as retail investors by default, unless such investors specifically opt-in to AI status in accordance with prescribed requirements; and

- notify existing clients qualifying as AIs that they have the right to opt-out of their AI status.

An AI who chooses to "opt-in" to AI status or chooses "not to opt-out" of AI status may be one who is willing to forgo the benefits of regulatory safeguards available to retail investors, in return for the ability to access a wider range of complex and risky investment products.

Furthermore, the wealth threshold to qualify for AI status has, with effect from October 8, 2018, been amended such that an individual's primary residence will only account for a maximum of S$ 1 million of his/her net personal assets in fulfilling the individual’s wealth threshold for designation as an AI.

The MAS has extended (with effect from October 8, 2018) current regulatory safeguards available to investors to buy-back arrangements involving the exchange of precious metals and schemes which have the elements of a regulated collective investment scheme but do not pool investors' contributions (e.g., land banking investment schemes).

Licensing of capital markets intermediaries, financial advisers and their representatives

Regulated activities

The SF(A)A has also introduced legislative amendments to extend the regulatory oversight of MAS to over-the-counter (OTC) derivatives in order to align regulations in this area to the latest international and best practices.

Other amendments implemented by way of the SF(A)A include the amalgamation of the previous regulated activities of "dealing in securities" and "dealing in futures contracts" and "leveraged foreign exchange trading" into a single regulated activity of "dealing in capital markets products", which also encompasses the new activity of "dealing in over-the-counter derivatives" and "dealing in units in a CIS".

The following activities are regulated under the SFA:

- Dealing in capital markets products that are:

    - securities;

- units in a collective investment scheme;
- exchange-traded derivatives contracts;
- over-the-counter derivatives contracts;
- spot foreign exchange contracts for the purposes of leveraged foreign exchange trading;

- Advising on corporate finance;
- Fund management;
- Real estate investment trust management;
- Product financing;
- Providing custodial services; and
- Providing credit rating services.

Licensing requirements

Persons who carry on business in any of these regulated activities, or provide any financial advisory service specified in the FAA, must hold a capital markets services licence (CMS licence) or a financial adviser's licence (FA licence) respectively, unless exempted. While licence holders are not required to renew their licences, they are supervised on a continual basis by the MAS, which has, as the regulator, the power to revoke licences.

CMS licence holders (and financial institutions exempt from holding a CMS licence) and FA licence holders (and exempt financial advisers) are required to certify that any individuals they employ to conduct regulated activities are fit and proper persons.

Their particulars must, under a representative notification framework, be notified to the MAS. These representatives are only permitted to conduct regulated activities after MAS has included their particulars in the public register of representatives maintained by MAS.

Raising standards and professionalism

To raise the standards and professionalism of financial institutions, the MAS has issued a consultation paper on April 26, 2018 with proposals on guidelines relating to financial institutions' individual accountability and conduct.

The proposed guidelines aim to reinforce financial institutions' responsibilities in a number of key areas, including the promotion of individual accountability of senior managers, strengthening the oversight of employees in material risk functions (i.e. employees with authority or mandates which may lead to significant impact on financial institutions' safety and soundness), and embedding standards of proper conduct among employees of financial institutions.

Digital advisory services

In relation to the provision of digital advisory services through direct access to automated, algorithm-based tools by clients with limited or no human adviser interaction, MAS has on October 8, 2018, issued guidelines relating to the provision of such services.

The guidelines address licensing requirements for digital advisers, and other regulatory requirements relevant to digital advisers such as algorithm governance standards, information protection and control, technology risk management, and standards on prevention of money-laundering and counter-terrorism financing.

Regulatory framework for financial benchmarks

A new regulatory framework relating to the setting of financial benchmarks was introduced with effect from October 8, 2018 with the coming into force of the SF(A)A.

Among other things, the new framework empowers MAS to designate financial benchmarks as designated benchmarks, provides for the regulation of benchmark administrators and benchmark submitters of designated benchmarks and also empowers MAS to designate certain persons as designated benchmark submitters. In particular, benchmark administrators of designated benchmarks must be authorised by the MAS before commencing the business or administering a designated benchmark. Currently MAS has prescribed the Singapore Interbank Offered Rate (SIBOR) and Singapore Dollar Swap Offer Rate (SOR) as designated financial benchmarks.

Takeovers and mergers

A takeover of a CMS or FA licence holder is subject to the MAS' approval, as is an arrangement in relation to the shares of a CMS or FA licence holder which would result in another person gaining effective control of that holder.

Under the current regime, a potential controller may need to seek MAS' approval prior to entering into an "arrangement" which would result in him obtaining effective control of a CMS or FA licence holder.

An "arrangement" may be deemed to have been entered into where there is an element of "understanding" between the CMS or FA licence holder and the potential controller, which may also exist at the early stage of negotiations for the acquisition.

The MAS has issued a response to an earlier public consultation on the proposal to amend the SFA and FAA for a potential acquirer of a CMS or FA licence holder to only seek MAS approval prior to taking effective control of said CMS or FA licence holder.

Recognizing the time-sensitive nature of negotiations, the MAS has agreed in its response to feedback issued in July 2018, that potential acquirers need only obtain MAS' approval before taking effective control of a licensee, and may enter into a conditional sale and purchase agreement without obtaining MAS' prior approval, provided that completion of the acquisition must be subject to MAS' approval being obtained.

Insolvency or likely insolvency of financial institutions

The MAS has powers of resolution and control over financial institutions such as banks, insurers and capital markets intermediaries that it may exercise under certain circumstances, such as in the event of their insolvency or likely insolvency.

Accordingly, the MAS is empowered to carry out any of the following actions:

- Take control of a financial institution;
- Sell or transfer its business assets;
- Sell or transfer its shares; and
- Carry out a restructuring of the financial institution.

The MAS' power to take control of a financial institution may be exercised when, as noted, the financial institution is or is likely to become insolvent. It may also do so in other circumstances, such as, if the financial institution becomes unable to meet its obligations or suspends payments, or if the MAS is of the opinion that this is likely to occur. Upon taking control of the financial institution, the MAS may appoint a statutory manager to manage its business.

The MAS may exercise its resolution powers to sell or transfer the financial institution or its business if it determines that it should do so. The powers are essentially intended to be exercised if the MAS is of the view that this is needed to prevent any systemic risk of contagion arising from the failure of the financial institution.

In addition, the MAS may also institute a moratorium over the affairs of the financial institution, including applying to the courts for an order against the bringing or continuation of any proceedings against the financial institution.

In a bid to strengthen its resolution regime powers for financial institutions, the MAS had in early 2016 proposed legislative amendments to strengthen its powers to require financial institutions which have been notified by the MAS to prepare recovery plans, submit information to the MAS for resolution planning, and where necessary adopt measures to address deficiencies in their recovery plans and remove impediments to resolvability. These legislative amendments have come into force on June 5, 2018

The MAS is also, subject to certain exceptions, empowered to temporarily stay the termination rights of counterparties to financial and non-financial contracts entered into with financial institutions over which the MAS has exercised its resolution powers. The duration of the temporary stay is limited to two business days (except in the case of re-insurance contracts) and subject to safeguards.

Other features which relate to the resolution regime for financial institutions that have come into force in 2018 include:

- the establishment of a statutory bail-in regime for Singapore-incorporated banks and bank holding companies;
- cross-border recognition of resolution actions by foreign authorities;
- a creditor compensation framework for creditors and shareholders pursuant to a financial institution's resolution;
- resolution funding arrangements to ensure timely access to funds to implement resolution measures; and
- statutory protection to ensure that set-off and netting arrangements will not be affected by the MAS' exercise of resolution powers.

Market misconduct

The SFA contains provisions that prohibit insider trading and other market misconduct. The person committing the offence is subject to criminal and civil penalties under the SFA, and may also be subject to civil liability to compensate persons who have suffered loss as a result of the commission of the offence.

In addition, a corporate body may be made liable for acts of market misconduct by its employees, officers, partners, or managers if the misconduct was committed for its benefit. Misconduct will attract criminal liability if it occurred with consent or connivance, and this may be established by the following:

- The board of directors or a high managerial agent of the corporate body intentionally, knowingly or recklessly carried out the relevant conduct;
- The board of directors or a high managerial agent of the corporate body expressly, tacitly or impliedly authorised or permitted the contravention; or
- A corporate culture existed within the corporate body that directed or encouraged non-compliance.

Alternatively, civil penalty liability may be imposed where a corporate body has, through its negligence, failed to prevent or detect the employee's market misconduct. In determining whether there has been negligence, the following may be taken into account:

- Whether the corporation has established adequate policies and procedures for the purposes of preventing and detecting market misconduct; and

- Whether the corporation has consistently enforced compliance with such policies and procedures.

With effect from 8 October 2018, the market misconduct provisions under Part XII of the SFA were amended by the SF(A)A. In particular:

- It has been clarified that the prohibition against the making of a statement that is false or is misleading in a material particular, which is likely to have an effect on the market price of securities, securities-based derivative contracts, or units in a collective investment schemes, is applicable regardless whether the statement results in a material price impact.

- With respect to the insider trading regime, the MAS has introduced a new definition of "persons who commonly invest" to reflect a section of the public who are accustomed or more likely to deal in securities, securities-based derivatives contracts, and CIS units. Whether or not information is considered as generally available or having a material effect on price, will be determined with reference to such "persons who commonly invest".

- According to applicable guidelines, "persons who commonly invest" may comprise of different types of investors depending on the product in question. In particular, the particularities of any given class of "persons who commonly invest" (i.e. accredited investors, retail investors, etc.) such as dormant or exceptionally risk-averse investors, shall not be taken into account when identifying the common investor classes.

- The civil penalty ceiling for civil penalty cases has been standardised- the new amount that may be imposed as a civil penalty may be the greater of either S$2 million or three times the amount of profit gained or loss avoided obtained in all cases. This is intended to allow the civil penalty quantum to be commensurate with the gravity of the misconduct, even when the profit gained or loss avoided happens to be of a small value and further, to stipulate that any sums imposed as civil penalties should take preference of payment over any other debts owed by the person upon whom the civil penalty has been imposed.

- MAS' civil penalty claims and disgorgement orders will take priority over private unsecured claims which accrue subsequent to the contravention. Any sums payable pursuant to a civil penalty will be treated as debts due to the government.

It should also be noted that pursuant to the SF(A)A, the manipulation of any financial benchmark will be a market misconduct offence attracting criminal or civil penalty action.

Regulation of OTC derivatives

Singapore is in the process of implementing a regulatory framework to govern dealings in OTC derivatives. Parts of the regulatory framework, notably the reporting requirements, have come into effect, while other parts are still undergoing consultation.

Mandatory reporting of OTC derivatives

The following types of OTC derivatives contracts are/will be regarded as specified derivatives contracts which will be subject to reporting requirements depending on the type of institution that is trading or booking the contract:

- any interest rate derivatives contract which is traded in Singapore or booked in Singapore;

- any credit derivatives contract which is traded in Singapore or booked in Singapore;

- with effect from April 1, 2018, any foreign exchange derivatives contract which is traded in Singapore or booked in Singapore (excluding certain FX contracts such as spot FX contracts and FX contracts arising due to sale and purchase of securities in a different currency);

- with effect from April 1, 2018, any commodity derivative contracts; and

- with effect from April 1, 2018, any equity derivative contracts.

The specific reporting commencement dates will differ depending on the type of contract, type of information to be reported, and the type of financial institution trading or booking the contract. All reporting obligations (in respect of banks, non-bank financial institutions and significant derivatives holders) are scheduled to be phased in by October 2020.

Mandatory clearing of OTC derivatives

As of October 1, 2018, MAS has introduced regulations requiring OTC derivatives to be cleared on central counterparties. Central clearing aims to render trading of OTC derivatives safer by mitigating counterparty credit risk inherent in these trades.

The mandatory clearing requirement will apply to banks whose gross notional outstanding OTC derivatives exceed SGD $20 billion, and will apply to SGD and USD fixed-floating interest rate swaps (as these are the most widely traded derivatives in Singapore).

Margin requirements for non-centrally cleared OTC derivatives

As part of the broader global reforms to make the trading of OTC derivatives safer and to reduce counterparty credit risks from uncleared derivatives, the MAS has in October 2018 implemented margin requirements for all OTC derivatives that are not cleared by a qualifying central counterparty save for physically-settled foreign-exchange forwards and swaps, commodity derivatives contracts entered into for commercial purposes, uncleared derivatives contracts without a legally enforceable netting agreement or collateral agreement, and securities-based derivative contracts. In October 2018, MAS has also updated guidelines to clarify the scope and extent of such margin requirements. These guidelines apply to banks and merchant banks licensed by the MAS.

Eligible collateral which may be used to meet margin requirements are cash, gold, certain equity and debt securities, and units in a collective investment scheme.

Other proposals in respect of trading in OTC derivatives

The MAS has on February 2018 proposed for public consultation: (a) new regulations to require the trading of OTC derivatives on organized markets to improve market transparency, and to complete MAS' implementation of the G20 OTC derivative reforms; and (b) plans to seek equivalence determinations from the US and EU for exchanges and other centralised trading facilities in Singapore.

The consultation paper sets out MAS' policy considerations on the following aspects of the mandatory trading regime: (a) the types of OTC derivative contracts subject to trading obligations; (b) persons who are subject to or exempt from trading obligations; and (c) circumstances under which trading obligations apply, and implementation details.

In particular, MAS is proposing to apply trading obligations to the more active banks trading OTC derivatives, consistent with that of the OTC clearing obligations above.

Updates to SGX-ST Listing Rules

As part of SGX-ST's efforts to improve overall market quality and facilitate investors' participation, the Listing Manual has been amended on a number of separate occasions since June 2016:

- In July 2016, the Listing Manual was amended to require annual sustainability reporting on a "comply or explain" basis, effective from any financial year ending on or after December 31, 2017. The SGX also issued a practice note providing guidance to issuers on the expected structure, contents and preparation of the sustainability report. In accordance with these amendments, issuers are required to publish a sustainability report on an annual basis, no later than 12 months after the end of the financial year and include in the report discussions on five primary components: material environmental, social and governance (ESG) issues; policies, practices and performance in relation to the material ESG factors; targets for the coming year; the reporting framework being used; and the board of directors' statement that it has considered sustainability issues as part of its strategic formulation, determined the material ESG factors and overseen the management and monitoring of the material ESG factors.

- From December 2016, Mainboard listed issuers will only be placed on the watch list if it has recorded a volume weighted average price of less than S$0.20 and an average daily market capitalisation of less than S$40.0 million over the last six months. Issuers will be able to exit from the watch list if their six-month volume weighted average price is at least $0.20 and their average daily market capitalisation is S$40.0 million or more over the six months preceding SGX's review of the watch list.
- In March 2017, the SGX amended its Listing Manual to align it with recent amendments to the Companies Act. These amendments included allowing issuers to transmit certain types of documents (such as circulars and annual reports) electronically with consent from shareholders, formalising the position that insurance coverage and indemnities provided for directors are not considered as interested person transactions under the Listing Manual, requiring a statement to be included in shareholder circulars where a person's voting rights is restricted pursuant to a court order and the treatment of shares held by a subsidiary in its holding company.

- From May 2017, initial public offerings on the Mainboard are required to allocate at least five percent of the total offer size, up to a maximum of S$50 million, to retail investors. The purpose of these amendments was to facilitate greater retail participation in Singapore's capital markets.

- In June 2018, the SGX amended its Listing Manual to introduce requirements for the listing of companies with dual class share structures on the Mainboard of the SGX-ST as well as certain safeguards to mitigate the entrenchment and expropriation risks commonly associated with dual class share structures.

- In August 2018, the SGX amended its Listing Manual to facilitate the listing of mineral, oil and gas companies. These amendments included introducing requirements for companies to establish reserves and demonstrating plans to proceed with development before being eligible for listing, streamlining and simplifying the contents of the qualified person's report and removing the materiality rule for farm-in or farm-out transactions that only alter the company's beneficial interest.

- As part of MAS' efforts to streamline the Code of Corporate Governance (Code), certain important requirements and baseline corporate governance practices stipulated in the Code were shifted to the Listing Manual, rendering compliance with these requirements mandatory. These included: (i) with effect from January 1, 2019, tests for independence of directors, requirements relating to board committees, appointment and re-appointment of directors, training for directors and internal audit functions; and (ii) with effect from January 1, 2022, requirements relating to board composition and the re-appointment of independent directors after nine years by way of a two-tier vote by shareholders.

In addition, the SGX announced the establishment of three independent Listings Committees in September 2015, namely the Listings Advisory Committee, the Listings Disciplinary Committee, and the Listings Appeals Committee. The purpose of establishing these committees is to fortify the listing policymaking and review process and enhance enforcement of the Listing Manual.

The Listings Disciplinary Committee and Listings Appeals Committee will hear and determine charges and appeals for cases involving more serious breaches (and which entail more severe sanctions). The Listings Advisory Committee, on the other hand, is intended to give the SGX the benefit of an independent, industry-led body that can help it to better handle complex or unusual listing applications.

In April 2017, the SGX announced the establishment of an independent regulatory subsidiary, Singapore Exchange Regulation Pte. Ltd. (SGX RegCo). The formation of SGX RegCo, which began operations in September 2017, is aimed at enhancing the governance of SGX as a self-regulatory organisation and makes more explicit the segregation of SGX RegCo's regulatory functions from SGX's commercial and operating activities. SGX RegCo will undertake all front-line regulatory functions previously undertaken by SGX's Regulation unit and have a separate board of directors from SGX.

Since June 2016, the SGX has also issued various consultation papers proposing amendments to the Listing Manual:

- In December 2017, the SGX proposed changes to the Listing Manual aimed at enhancing disclosures in relation to, among others, rights issue fund raising, transactions with interested persons, provision of financial assistance to third parties as well as significant disposal of assets.

- In January 2018, the SGX announced plans to review the mandatory quarterly reporting framework. This was in line with a global move to abolish or refine the requirements of quarterly reporting in other markets. The SGX proposed plans to either completely abolish the requirement for quarterly reporting or to refine the existing criteria for mandatory quarterly reporting by introducing two new criteria based on shareholding and market capitalisation respectively.

- In November 2018, the SGX proposed changes to the Listing Manual relating to two aspects of voluntary delisting: the voluntary delisting resolution and the exit offer. Under the proposed changes, only minority shareholders, and directors and controlling shareholders who are not the offeror or who are not acting in concert with the offeror, can vote on the voluntary delisting resolution at the shareholder meeting. The SGX also proposed the removal of the block provision where the delisting will not proceed if it is voted against by holders of more than 10% of the total number of issued shares present and voting. The proposed changes aims to better align the interests of the offeror and minority shareholders.

- In November 2018, the SGX proposed changes to the Listing Manual relating to the regulation of issue managers. The proposed amendments include elaborating on the roles and responsibilities of issue managers that manage initial public offerings or reverse takeovers on the Mainboard and requiring issue managers to be independent of a listing applicant. To provide guidance on SGX's assessment of the factors affecting an issue manager's independence, the SGX also proposed to introduce a new practice note setting out the circumstances and the relevant threshold limits in considering whether an issue manager is considered independent.

- In November 2018, the SGX proposed changes to the order of the listings review process. The proposed changes aim to improve efficiency, while preserving its intent and outcome. Under the proposed changes, non-referral applications will be submitted to the Listings Advisory Committee after the issuance of the eligibility-to-list letter, rather than before. The Listings Advisory Committee can still continue to review and advise on non-referral cases if they so decide but their advice will apply prospectively to similar cases.

BANKING REGULATION

Licensing of banks

Commercial banks

The Banking Act licences and governs commercial banks in Singapore as full banks, wholesale banks or offshore banks. All wholesale and offshore banks operate as branches of foreign banks.

Foreign banks may also apply to be qualifying full banks (QFBs), which will allow them to have greater branching privileges than other foreign banks operating in Singapore. In particular:

- Existing QFBs that are important to the local market will be required to operate as local subsidiaries;

- Of the QFBs that set up local subsidiaries, those that become significantly rooted in Singapore over time may be granted an additional 25 places of business, bringing their total allowable places of business to 50; and

- New QFBs may be awarded under Free Trade Agreements where there are substantial benefits to Singapore and these new QFBs will be required to first locally incorporate before they may establish up to 25 places of business.

Merchant banks

Apart from these three categories of banks, banks may also operate as merchant banks, which the MAS separately regulates as approved financial institutions under the MAS Act.

Scope of banking business

The scope of banking business allowed to be carried on differs among the different categories of banks. Commercial banks may also carry on other business which the MAS regulates or authorises, such as financial advisory services, insurance broking and capital markets services.

Banks and their representatives are not required to be separately licensed to carry out such activities, but they must comply with the business conduct requirements in other applicable statutes. In addition, all representatives of banks which carry out regulated activities that fall under the SFA and FAA will also be subject to the representative notification framework which was described earlier.

Regulatory framework for domestic systemically important banks

The MAS implemented in 2015 a more stringent regulatory framework for banks that are assessed to be systemically important to the Singapore financial system.

This framework allows the MAS to assess and designate domestic systemically important banks (D-SIBs). Under the framework, the MAS assesses locally-incorporated banks, including subsidiaries of foreign banks, and foreign bank branches to determine if they should be designated as D-SIBs.

Banks so designated are subject to, among other things, stricter requirements as regards Higher Loss Absorbency, Liquidity Coverage Ratio (LCR), recovery and resolution planning, disclosure, effective risk data aggregation, and risk reporting. To try to facilitate market participants' understanding of D-SIBs' liquidity risk profile and management thereby promoting market discipline, D-SIB's are also required to publish quantitative and qualitative information about their LCR in their financial statements or disclose such information on their websites or regulatory reports.

Currently, the following banking groups have been designated by the MAS as D-SIBs: DBS Bank, Oversea-Chinese Banking Corporation, United Overseas Bank, Citibank, Malayan Banking Berhad, Standard Chartered Bank, and the Hongkong and Shanghai Banking Corporation.

Banking (Amendment) Act 2016

On October 30, 2018, the Banking (Amendment) Act 2016 (which introduces changes amending the Banking Act), has come into force. The changes aim to enhance corporate governance, and empowers the MAS to:

- require any bank that is incorporated outside Singapore which meets certain specified criteria, to be incorporated in Singapore, for the purpose of enhancing depositor protection;

- terminate, prohibit, or impose restrictions on a bank's transactions with related persons that are detrimental to depositors' interests;

- remove directors of Singapore-incorporated banks and executive officers of all banks where the person is "not fit and proper"; and

- give directions or impose requirements on or relating to the operations or activities of, or standards to be maintained by banks (insofar as such information relates to the bank's operations in Singapore), for the purpose of enhancing market discipline.

Pursuant to these changes, banks are also required to immediately notify the MAS of any material adverse developments that it has reasonable grounds to believe is likely to materially and adversely affect its financial soundness, reputation, or ability to conduct its business.

Domestic banking units/Asian currency units

Currently, Singapore-incorporated banks are required to segregate their domestic and offshore operations into domestic banking units (DBUs) (which are predominantly denominated in Singapore dollars), and Asian currency units (ACUs) (which are denominated in foreign currency) to differentiate regulatory requirements imposed on them so as to allow for more targeted incentives and risk management measures.

However, following major global regulatory developments that have often resulted in banks' offshore activities being subject to rules that are broadly similar to those governing domestic banking activities, MAS has in a response to an earlier public consultation on the removal of the DBU-ACU divide, confirmed that legislative amendments to remove the divide will take effect on October 1, 2020. In the interim period, banks will continue to maintain their DBU and ACU books to assess if they are able to merge their books prior to the October 1, 2020 deadline, and submit to MAS relevant data on their statistics and returns as prescribed by the MAS.

The MAS has on February 7, 2019 proposed in a new public consultation on amendments to the Banking Act, that auditors be required to report material adverse developments relating to banks' financial soundness. This proposal mirrors the requirement on banks to report material adverse developments (as introduced in the Banking Act in 2016), and arises out of necessity following the imminent removal of the DBU-ACU divide and the statutory deletion of the definition of "capital funds". Under the Banking Act, auditors are currently required to report to the MAS when the auditor is satisfied that the bank has incurred losses that reduce the bank’s capital funds by at least 50 percent.

Capital, reserves and asset requirements

The MAS prescribes minimum requirements that relate to capital, reserves, liquid assets and cash balances of banks and merchant banks. The prescribed requirements are in line with, and may in some cases exceed, the requirements recommended by the Basel Committee on Banking Supervision (BCBS), of which Singapore is a member.

On July 1, 2013, the MAS amended its prescribed capital requirements in order to implement the recommendations of the BCBS for capitalisation of bank exposures to central counterparties.

In view of the Basel III liquidity rules which aim to improve the short-term resilience of a bank's liquidity risk profile, the MAS prescribed in 2014 minimum LCR requirements for banks that are incorporated and headquartered in Singapore and D-SIBs. Foreign-incorporated banks that are not D-SIBs can, however, choose between complying with the LCR or minimum liquid asset requirements.

As a member of the BCBS, Singapore endeavours to keep up with new recommendations made by the BCBS. To this end, the MAS has amended the MAS Notice 637 to implement requirements for Singapore-incorporated banks consistent with the BCBS' final standards of the revised Basel III capital framework. The proposals, which took effect in January 2017, are aimed at enhancing the risk capture of banks' equity exposures and counterparty credit risk exposures (including exposures to central counterparties).

In addition, the revised minimum disclosure requirements in relation to capital adequacy (Pillar 3 disclosures) will enable market participants to better compare the banks' disclosures of risk-weighted assets and improve consistency of disclosures.

MAS has also revised Notice 637 with effect from January 2018, introducing among other amendments, a minimum leverage ratio requirement of 3% for reporting banks. MAS stated that it would further consult the industry before implementing further changes to the definition of the leverage ratio.

Prohibited and prescribed business

To prevent the co-mingling of risks associated with financial and non-financial operations of banks, banks in Singapore are prohibited from carrying on non-financial business pursuant to the Banking Act. The sister companies (but not the subsidiaries) of banks in Singapore may carry out non-financial business.

As from July 5, 2010, however, banks have been permitted to enter into any partnership, joint venture or any other arrangement to carry on any business which the banks have determined to have potential for high growth or value creation. This was to allow banks to make a wider range of private equity and venture capital investments.

The change was effected by the issue, by the MAS, of the Banking (Amendment No 2) Regulations 2010. The MAS clarified that the exempted activities may not include any business engaging in property related activities. It also clarified, among other things, that options granted to a bank and credit facilities extended by a bank to an investee company would, save in certain circumstances, be included as private equity/venture capital investments.

The MAS has on September 2017 issued a consultation paper inter alia, proposing to simplify the regulatory requirements and scope for banks seeking to conduct or invest in permissible non-financial businesses that are related are complementary to their core financial businesses, which will allow banks to broaden their ability to provide a broader suite of services to their customers. These include:

- the lifting of prohibition on banks from carrying on the business of selling consumer goods, in particular the operation of online locations and electronic platforms that matches buyers and sellers of consumer goods and services, sale of consumer goods and services via such locations and platforms, and any business incidental to the same above; and

- allowing banks to engage in property management for properties held by the bank or an entity in its banking group.

Islamic banking

Since:

- January 2009, banks in Singapore have been permitted to carry out certain Islamic banking transactions, including murabaha financing and ijara wa igtina financing;

- May 2009, banks in Singapore have been allowed to carry out diminishing and spot musharaka transactions; and

- April 13, 2010, banks have also been permitted to offer istisna financing transactions. This is a form of Islamic financing used to finance the construction of buildings, equipment, assets, etc.

The MAS has, pursuant to the Guidelines on Application of Banking Regulations to Islamic Banking, clarified that the same regulatory framework applies to all banks in Singapore, whether conventional or Islamic banking products are offered.

In determining the regulatory treatment of an Islamic banking product, the MAS considers its economic substance and risks and applies the same regulatory treatment as would be applied to a similar conventional banking product.

Anti-money laundering and the countering of terrorist financing

Singapore is a member of the Financial Action Task Force and has laws in place to combat money laundering and terrorist financing. The MAS has issued various notices to all financial institutions, which set out their obligations on know your customer principles, suspicious transaction reporting and internal control processes.

Financial institutions are also required to make a Suspicious Transaction Report pursuant to Section 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) if they hold any assets that they reasonably suspect are the proceeds of a crime designated as a serious crime under the Second Schedule to the CDSA.

Various tax crimes are classified under the definition of a "serious crime", and all foreign tax crimes committed with wilful intent are predicate offences under the CDSA (regardless of whether there is a corresponding equivalent tax offence in Singapore).

Accordingly, financial institutions will be required to make a suspicious transaction report if they hold any assets that they reasonably suspect are the proceeds of any foreign tax evasion offence, so long as the offence has been criminalised in the foreign jurisdiction and it is committed wilfully with intent to evade tax. The forms of evasion have been specified to be as follows:

- Omitting from, or understating or overstating in, a return made for the purposes of that tax any information which should be included in the return;

- Making any false statement or entry in any return, claim or application made, or any document or information required to be given, for the purposes of that tax;

- Giving any false answer, whether verbally or in writing, to any question or request for information asked or made for the purposes of that tax;

- Failing to inform the authority responsible for the collection of that tax, in the required manner, of any incorrect information appearing in any assessment made by the authority, when required to do so;

- Preparing or maintaining, or authorising the preparation or maintenance, of any false books of account or other records, or falsifying or authorising the falsification of any books of account or records; and

- Making use of any fraud, art or contrivance, or authorising the use of such fraud, art or contrivance.

As a member state of the United Nations (UN), Singapore is committed to implementing the UN Security Council Resolutions (UNSCRs). Among other measures, the UNSCRs may impose targeted financial sanctions against specific individuals and entities identified by the UN Security Council as contributing to a particular threat to, or breach of, international peace and security.

In this regard, the MAS gives effect to financial sanctions under the UNSCRs through MAS-issued regulations. These regulations apply to all financial institutions in Singapore and broadly require them to:

- immediately freeze funds, other financial assets or economic resources of designated individuals and entities;

- not enter into financial transactions or provide financial assistance or services in relation to: (i) designated individuals, entities or items; or (ii) proliferation and nuclear, or other sanctioned activities; and

- inform MAS of any fact or information relating to the funds, other financial assets or economic resources owned or controlled, directly or indirectly, by a designated individual or entity.

Given the importance which Singapore places on compliance with the UNSCRs, the Second Schedule to the CDSA was updated in June 2015 to include various new predicate offences as "serious offences", including:

- the failure or refusal to comply with directions, or contravention of regulations, issued by the MAS by virtue of decisions of the UN Security Council; and
- various acts of fraud, including fraudulent trading and alteration of documents, obtaining payment of moneys to a company by false promise, and giving false information to the Comptroller of Income Tax to obtain a financial gain.

Banking secrecy

Singapore has laws that require banks to maintain the confidentiality of customer information. Singapore has endorsed the Organisation for Economic Cooperation and Development (OECD) standard for transparency and exchange of information for tax matters.

On February 9, 2010, the Income Tax (Amendment) (Exchange of Information) Act 2009 came into effect to amend the Income Tax Act, bringing the level of assistance Singapore can provide to foreign jurisdictions under the Avoidance of Double Taxation Agreements (DTAs) in line with OECD's standard for the effective exchange of information.

Singapore has also announced a willingness to negotiate and conclude DTAs with other countries to assist on bona fide requests for tax information. On November 13, 2009, Singapore signed its twelfth DTA with France, bringing it into OECD's white list with regard to international cooperation on the exchange of information on tax matters.

On January 20, 2016, Singapore ratified the Convention on Mutual Administrative Assistance in Tax Matters, which expands Singapore's network of partners for exchange of information on request by 34 jurisdictions.

This is a multilateral agreement that Singapore signed on May 29, 2013 to enhance Singapore's international tax cooperation framework.

This ratification comes from a series of changes that Singapore has made in recent years to combat cross-border tax evasion, following Singapore's adoption of the internationally agreed standard for exchange of information on request in 2009.

Singapore has, as of January 2018, activated 61 Automatic Exchange of Financial Account Information (AEOI) under the Common Reporting Standard (CRS). The CRS is an internationally agreed standard for AEOI, endorsed by OECD and Global Forum for Transparency and Exchange of Information for Tax Purposes.

It sets out, among others, the financial account information to be exchanged, the financial institutions required to report and the different types of accounts and taxpayers covered. Such information exchanges will be carried out on a bilateral basis with jurisdictions which Singapore has signed Competent Authority Agreements (CAA) with.

To this end, amendments have been made by the Ministry of Finance to the Income Tax Act to implement the CRS. Such amendments include the requirement and empowerment of all financial institutions to collect and retain the CRS information for all non-Singapore-tax-residents, instead of only from tax residents of jurisdictions with which Singapore has a CAA.

Banks are also obliged to comply with the Personal Data Protection Act (PDPA) which came into force in 2014. Personal data is data about an individual who can be identified from that data or from that data and other information to which the organisation has or is likely to have access.

In brief, the PDPA imposes restrictions on the collection, use, and disclosure of personal data, and gives individuals rights to access and correct any personal data held by an organisation. As banks come under various compulsory disclosure obligations for the purposes of the anti-money laundering and countering the financing of terrorism (AML/CFT) regulation, the obligations in the PDPA as they apply to banks have been modified to allow for compliance with AML/CFT.

These are set out in the Notice to Banks on the Prevention of Money Laundering and Countering the Financing of Terrorism and essentially allow banks to collect, use, and disclose personal data without customer consent for the purposes of meeting AML/CFT requirements.

Deposit insurance (DI) scheme

The DI scheme was implemented in 2006 with the primary objective of protecting small depositors. It covers deposits of individuals and other non-bank depositors such as sole proprietorships, partnerships, companies and unincorporated entities. The coverage limit under the scheme is S$50,000 per depositor per scheme member (i.e., full bank or finance company in Singapore).

In line with MAS' enhancements to the resolution regime of financial institutions as mentioned above, the MAS has the power to direct the Singapore Deposit Insurance Scheme (SDIC) (the administrator of the DI Fund) to use the DI Fund in resolution measures (that are exercised by the MAS under the MAS Act) for DI scheme members subject to certain safeguards. For example, the use of the DI fund in implementing resolution measures will strictly be limited to the resolution of DI scheme members.

In directing the SDIC to use the DI Funds for resolution measures, MAS will have regard to the protection of depositors and policy owners covered under the DI scheme members.

Developments on the horizon

Payment Services Act

The Payment Services Act (PSA), which implements a licensing framework for payment service providers and a designation framework for significant payment systems, was passed by the Singapore Parliament on January 14, 2019, and is likely to come into force at the end of 2019. The PSA aims to regulate: (a) account issuance; (b) domestic money transfer; (c) cross-border money transfer; (d) merchant acquisition; (e) issuance of electronic money (e-money) issuance; (f) dealing in digital payment tokens; and (g) money changing services, under the umbrella of "payment services".

The PSA prescribes three types of licences designating the licensee: (a) Money-changing (entity); (b) standard financial institution; and (c) major financial institution, the applicable designation depending on the scope and volume of payment services being provided by the licensee.

The MAS has also introduced the E-Payments User Protection Guidelines on February 13, 2018, which aim to set standards in the following areas: (a) setting out duties of financial institutions and users for secure e-payment transactions; (b) simplify error resolution processes when a user sends money to the wrong recipient; and (c) apportion liability between financial institutions and users for unauthorised transactions. The MAS has given banks up to June 30, 2019 to implement the guidelines.

MAS' powers to revoke banking licences

The MAS has, on February 7, 2019, issued a consultation paper to gather feedback on several proposed amendments to the Banking Act, including expanding the MAS' powers to revoke banking licences where the bank in question: (a) contravenes the provisions of the MAS Act (which contains requirements such as those relating to anti-money laundering); (b) is a foreign owned bank incorporated in Singapore with the parent bank's licence is withdrawn, or (c) where it appears to the MAS that it is in the public interest to do so.

Currently, MAS only has the power to revoke banking licenses where: (a) the licensee has ceased to transact banking business in Singapore; (b) is carrying on its business in a manner likely to be detrimental to the interests of the depositors of the public; (c) is contravening the provisions of the Banking Act; or (d) in the case of a foreign bank branch, has had its licence in its home jurisdiction withdrawn by its parent supervisory authority.

Outsourcing

The MAS has, as of February 7, 2019, also issued a consultation paper to gather feedback on proposed revisions to the regime governing outsourcing arrangements entered into by banks and merchant banks.

In particular, the revisions propose to inter alia:

- grant the MAS new powers to direct banks and merchant banks to comply with additional requirements in respect of their outsourcing arrangements (such as the inclusion of specified terms in their outsourcing arrangements, conducting due diligence checks on their service providers, and the maintenance of business continuity measures in the event of service disruption);
- expand the scope of the regulatory regime on outsourcing arrangements to apply to outsourcing arrangements that banks and/or merchant banks are not dependent on an ongoing basis; and
- impose more stringent expectations on financial institutions with regard to outsourcing arrangements involving disclosure of customer information, regardless of the tenure of the arrangements and the impact of unauthorised access or disclosure, loss, or theft of such customer information.

WONG PARTNERSHIP

Elaine Chan *is joint head of the financial services regulatory practice in WongPartnership LLP. Her main areas of practice are financial services regulatory compliance and advisory, regulatory compliance for companies listed on the Singapore Exchange and corporate governance.* ***Long Chee Shan*** *is deputy head of the equity capital markets practice in WongPartnership LLP. He has represented both issuers and underwriters in a wide range of capital markets transactions.*