

Amendments to the Banking Act to Strengthen Supervisory Oversight by MAS over Banks in Singapore

The Banking (Amendment) Act 2016 ("**Amendment Act**") which amends the Banking Act, Chapter 19 of Singapore ("**Banking Act**") has come into force on 30 November 2018 except for the provisions relating to **Objection to existing control of designated financial institutions** (section 15E of the Banking Act) and **Power of Authority to obtain information** (section 18 of the Banking Act).

The Amendment Act may be accessed [here](#) and the Commencement Notification may be accessed [here](#).

The Amendment Act addresses the following areas:

- Prudential safeguards;
- Corporate governance;
- Risk management controls;
- Duty to inform the Monetary Authority of Singapore ("**MAS**") of material adverse developments; and
- Other technical amendments.

This Update highlights the provisions of the Amendment Act which have come into force.

Prudential Safeguards

The Amendment Act incorporates two measures to strengthen prudential safeguards and enhance depositor protection by providing MAS with the following powers:

- To require foreign banks to locally incorporate all or part of their banking business pursuant to the new section 55BA (**Power to require incorporation and transfer of business**) of the Banking Act.

MAS may only make such a direction if it is of the opinion that:

- it is necessary or expedient in the public interests;
- it is in the interest of the depositors of the bank; or
- it is in the interest of the financial system in Singapore.

The local incorporation requirement is part of MAS' suite of policy measures to address the risks posed by domestic systemically important banks ("**D-SIBs**"), announced by MAS on 30 April 2015.

- To impose prudential requirements to cap banks' leverage and to ensure that sufficient liquidity is maintained.

By virtue of the new section 10A (Leverage ratio requirement) of the Banking Act, MAS may, by notice in writing, require any bank incorporated in Singapore or any class of banks incorporated in Singapore to maintain a minimum leverage ratio of a specified percentage and to carry out other acts relating to this.

Corporate Governance

The Amendment Act will also enhance the corporate governance of banks by empowering MAS:

- To approve and remove certain key appointment holders of a bank.

Under the new section 53A (**Appointment of chief executive officer and other persons**) of the Banking Act, a bank is required to seek MAS' approval before it appoints certain key appointment holders such as the directors,

the chairman of the board of directors, the chief executive officer, the deputy chief executive officer, and a person holding such appointment in the bank as may be prescribed.

This includes the power to prescribe the duties of the appointment holders and to specify the maximum term of each appointment.

Under amendments to section 54 (**Disqualification or removal of director or executive officer**) of the Banking Act, MAS is empowered to remove key appointment holders, including its chief executive officer and deputy chief executive officer, if they are found to be not fit and proper. The grounds of removal are aligned with the criteria for approving their appointments.

To give effect to this power, banks are required to notify MAS as soon as they become aware of any material information which may negatively affect the fitness or propriety of any director or executive officer whose appointment was approved by MAS.

- To direct a bank to terminate, prohibit and restrict transactions that the bank enters into with its related parties, if these are deemed detrimental to depositors' interests. This new power is set out in the amended section 27 (**Action to be taken if credit facilities or exposures are against interests of depositors**) of the Banking Act.

In order to provide more effective oversight over banks' related party transactions ("**RPTs**"), banks are required to obtain board approval before entering into RPTs that pose material risks to the bank as prescribed by the updated MAS Notice 643 (which took effect on 21 November 2018).

- To direct a bank to remove its external auditors if MAS is not satisfied with the performance of their statutory duties. This

new power is set out in amended section 58 (**Auditing**) of the Banking Act.

The complementary role of external auditors in assessing a bank's risks and internal controls is reinforced in the new subsection (10) of section 58, by providing immunity to an auditor for making a disclosure in good faith to MAS as part of their reporting obligations.

Risk Management Controls

The amendments have also formalised MAS' expectation for banks to establish risk management systems and controls that are commensurate with their business profiles and operations, failing which, penalties will be imposed.

To this effect, banks are now obliged, via the new section 57EA (**Place of business**), to seek MAS' approval before establishing new places of business where certain non-banking activities are conducted. For example, MAS will require banks to seek approval for places of business which conduct money-changing and remittance business. This seeks to ensure that proper control measures are in place, such as to address money laundering and terrorist financing risks.

Duty to inform MAS of material adverse developments

The new section 48AA (**Information of material adverse development, etc.**), imposes a statutory obligation which requires banks to immediately inform MAS of adverse developments that may materially affect them. In the case of a bank incorporated in Singapore, this extends to any adverse developments that may materially affect related entities of the bank. This will enable MAS to take the appropriate supervisory action in a timely manner.

A development would be regarded as a material adverse development if it is likely to materially affect adversely:

- the financial soundness or reputation of the bank;
- the ability of the bank to conduct any business referred to in subsection (1) of section 30 (**Businesses which banks in Singapore may carry out**) of the Banking Act, which includes banking business, any business the conduct of which is regulated or authorised by MAS or, if carried on in Singapore, would be regulated or authorised by MAS under any written law, and any business or class of business as MAS may prescribe); or
- such other matters as MAS may prescribe.

Other technical amendments

The Amendment Act also introduces several technical amendments which include:

- **Inspection of subsidiaries:** MAS is empowered to inspect the local and overseas

subsidiaries of a bank incorporated in Singapore, through the amended section 43 (**Inspection of banks and their local subsidiaries**) and the new section 46B (**Inspection outside Singapore of subsidiaries of banks incorporated in Singapore**). The amendments will also allow the parent supervisory authority of a foreign bank or merchant bank to inspect all financial activities of the bank or merchant bank in Singapore, upon MAS' approval. These amendments facilitate the consolidated supervision of internationally active banks and merchant banks.

- **Alignment of penalty provisions** – The amendments will align the range of penalties in the Banking Act to ensure consistency throughout the various requirements in the Act.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or the following partner:



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