



REPUBLIC OF SINGAPORE

**GOVERNMENT GAZETTE**

**ACTS SUPPLEMENT**

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The following Act was passed by Parliament on 15th March 2013 and assented to by the President on 11th April 2013:—

**REPUBLIC OF SINGAPORE**

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**No. 10 of 2013.**

I assent.

TONY TAN KENG YAM,  
*President.*  
*11th April 2013.*

(LS)

An Act to amend certain statutes of the Republic of Singapore relating to, or in connection with, the regulation of financial institutions, financial entities or financial instruments.

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

**Short title and commencement**

1. This Act may be cited as the Financial Institutions (Miscellaneous Amendments) Act 2013 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

**Amendment of Banking Act**

2. The Banking Act (Cap. 19) is amended —

(a) by deleting the words “Part VIIA” in section 20(1)(b) and (7) and substituting in each case the words “Part IVB of the Monetary Authority of Singapore Act (Cap. 186)”;

(b) by inserting, immediately after subsection (7) of section 38, the following subsection:

“(7A) A financial penalty collected by the Authority under subsection (7) shall be paid into the Consolidated Fund.”;

(c) by inserting, immediately after subsection (7) of section 39, the following subsection:

“(7A) A financial penalty collected by the Authority under subsection (7) shall be paid into the Consolidated Fund.”;

(d) by renumbering section 48 as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

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

(e) by repealing sections 54, 54A and 54B and substituting the following section:

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**“Disqualification or removal of director or executive officer**

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

- (a) a bank in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) a bank in Singapore which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 2(e) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
  - (A) involving fraud or dishonesty;
  - (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
  - (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a

compromise or scheme of arrangement that is still in operation;

(v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures Act (Cap. 289) made against him that remains in force; or

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

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

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

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

(a) has wilfully contravened or wilfully caused the bank to contravene any provision of this Act;

(b) has, without reasonable excuse, failed to secure the compliance of the bank with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; or

(c) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the public interest or for the protection of the depositors of the bank, by notice in writing to the bank, direct the bank to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the bank shall comply with the notice.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a bank in Singapore has failed to discharge the duties of his office for the purposes of subsection (2)(c), have regard to such criteria as may be prescribed.

(4) Before directing a bank in Singapore to remove a person from his office or employment under subsection (2), the Authority shall —

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

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

(5) If the bank and the person referred to in subsection (4) —

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

(b) fail to show sufficient cause,

the Authority may direct the bank to remove the person under subsection (2).

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

(7) Any bank in Singapore which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

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

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

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

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

- (f) by deleting subsection (4) of section 55 and substituting the following subsection:

“(4) It shall not be necessary to publish any notice in writing issued under this Act in the *Gazette*.”;

- (g) by deleting the Part heading to Part VIIA and substituting the following Part heading:

“VOLUNTARY TRANSFER OF BUSINESS”;

- (h) by repealing Divisions 2, 3 and 4 of Part VIIA;

- (i) by repealing section 55O;

- (j) by deleting subsection (2) of section 57D and substituting the following subsection:

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

- (k) by repealing section 65;

- (l) by inserting, immediately after subsection (1) of section 69, the following subsection:

“(1A) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision which has been repealed) which —

- (a) was compoundable under this section at the time the offence was committed; but

- (b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.”;

- (m) by deleting the words “such sum of money” in section 69(2) and substituting the words “the sum of money referred to in subsection (1) or (1A)”;

- (n) by deleting subsection (4) of section 69 and substituting the following subsection:

“(4) All sums collected by the Authority under subsection (1) or (1A) shall be paid into the Consolidated Fund.”;

- (o) by inserting, at the end of section 74(1)(a), the word “and”;

- (p) by deleting the word “; and” at the end of section 74(1)(b)(v) and substituting a full-stop;

- (q) by deleting paragraph (c) of section 74(1);

- (r) by inserting, immediately after subsection (1) of section 74, the following subsection:

“(1A) The Authority may recover on behalf of the Government any financial penalty imposed under section 38(7) or 39(7) on the bank concerned as though the financial penalty were a civil debt due to the Authority.”; and

- (s) by deleting items 4A, 4B and 4C of Part II of the Third Schedule and substituting the following items:

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<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<b>Purpose for which customer information may be disclosed</b>	<b>Persons to whom information may be disclosed</b>	<b>Conditions</b>
4A. Disclosure is solely in connection with the transfer or proposed transfer of the business of the bank to a company under Division 1 of Part VIIA, whether or not the transfer is subsequently carried out or completed.	Any — (a) transferor or transferee, defined in section 55A; (b) person affected by the transfer; (c) professional adviser appointed by any person referred to in paragraph (a) or (b); or (d) independent assessor appointed by the Minister or the Authority under section 55B.	



<p>4B. Disclosure is solely in connection with the transfer or proposed transfer of the business of the bank to a company under Division 2 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186), whether or not the transfer is subsequently carried out or completed.</p>	<p>Any —</p> <p>(a) transferor or transferee, defined in section 30AAR of the Monetary Authority of Singapore Act;</p> <p>(b) person affected by the transfer;</p> <p>(c) professional adviser appointed by any person referred to in paragraph (a) or (b); or</p> <p>(d) independent assessor appointed by the Authority under section 30AAS of the Monetary Authority of Singapore Act.</p>	
<p>4C. Disclosure is solely in connection with the transfer or proposed transfer of the shares in the bank under Division 3 of Part IVB of the Monetary Authority of Singapore Act, whether or not the transfer is subsequently carried out or completed.</p>	<p>Any —</p> <p>(a) transferor or transferee, defined in section 30AAV of the Monetary Authority of Singapore Act;</p> <p>(b) professional adviser appointed by the transferor or transferee; or</p> <p>(c) independent assessor appointed by the Authority under section 30AAW of the Monetary Authority of Singapore Act.</p>	
<p>4D. Disclosure is solely in connection with the restructuring or proposed restructuring of the share capital of the bank under Division 4 of</p>	<p>Any —</p> <p>(a) shareholder of the bank;</p> <p>(b) subscriber defined in section 30AAY of the Monetary Authority of Singapore Act;</p>	

Part IVB of the Monetary Authority of Singapore Act, whether or not the restructuring is carried out or completed.	(c) professional adviser appointed by the bank or any person referred to in paragraph (a) or (b); or  (d) independent assessor appointed by the Authority under section 30AAZ of the Monetary Authority of Singapore Act.	”.
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### **Amendment of Business Trusts Act**

3. The Business Trusts Act (Cap. 31A) is amended —

- (a) by deleting the words “section 130A” in the definition of “advocate and solicitor” in section 2 and substituting the words “section 2(1)”;
- (b) by deleting subsection (5) of section 26 and substituting the following subsection:
 

“(5) It shall not be necessary to publish any written direction issued under this section in the *Gazette*.”;
- (c) by deleting subsection (8) of section 98 and substituting the following subsection:
 

“(8) It shall not be necessary to publish any code, guideline or no-action letter issued under this section in the *Gazette*.”; and
- (d) by repealing section 111 and substituting the following section:

#### **“Composition of offences**

**111.—(1)** The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding

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one half of the amount of the maximum fine prescribed for that offence.

(2) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision which has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

(3) On payment of the sum of money referred to in subsection (1) or (2), no further proceedings shall be taken against that person in respect of the offence.

(4) The Authority may make regulations to prescribe the offences which may be compounded.

(5) All sums collected by the Authority under subsection (1) or (2) shall be paid into the Consolidated Fund.”.

#### **Amendment of Companies Act**

4. Section 145(6) of the Companies Act (Cap. 50) is amended —

(a) by deleting “54B,” and substituting “54,”;

(b) by inserting, immediately after the words “Insurance Act (Cap. 142),”, the words “section 30AAI of the Monetary Authority of Singapore Act (Cap. 186), section 12A of the Money-changing and Remittance Businesses Act (Cap. 187),”; and

(c) by deleting the words “or 97” and substituting the words “; 97 or 292A”.

**Amendment of Finance Companies Act**

5. The Finance Companies Act (Cap. 108) is amended —

(a) by inserting, immediately after the definition of “capital funds” in section 2, the following definition:

“ “chief executive”, in relation to a finance company, means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the finance company; and

(b) is principally responsible for the management and conduct of the business of the finance company;”;

(b) by inserting, immediately after the definition of “director” in section 2, the following definition:

“ “executive officer”, in relation to a finance company, means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the finance company; and

(b) is concerned with or takes part in the management of the finance company on a day-to-day basis;”;

(c) by inserting, immediately after the definition of “Government securities” in section 2, the following definition:

“ “licence” means a licence granted under section 6;”;

(d) by deleting sub-paragraph (ii) of section 15(1)(c) and substituting the following sub-paragraph:

“(ii) if, upon the Authority exercising any power under section 35(2) or the

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Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the finance company, the Authority considers that it is in the public interest to revoke the licence.”;

(e) by deleting the words “directors, chief and deputy chief executive officers” in section 30(2)(d) and substituting the words “the directors, chief executive and deputy chief executive”;

(f) by inserting, immediately after subsection (3) of section 30, the following subsection:

“(4) It shall not be necessary to publish any notice in writing issued under this Act in the *Gazette*.”;

(g) by repealing section 34 and substituting the following sections:

**“Information of insolvency, etc.**

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

(2) Any finance company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

**Interpretation of sections 34A to 39**

**34A.** In this section and sections 35 to 39, unless the context otherwise requires —

“business” includes affairs and property;

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

“relevant business” means any business of a finance company —

(a) which the Authority has assumed control of under section 35; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 35;

“statutory adviser” means a statutory adviser appointed under section 35;

“statutory manager” means a statutory manager appointed under section 35.”;

(h) by repealing sections 35 to 39 and substituting the following sections:

**“Action by Authority if finance company unable to meet obligations, etc.**

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

(a) a finance company informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) a finance company becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that a finance company —

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- (i) is carrying on its business in a manner likely to be detrimental to the interests of its depositors or creditors;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition attached to its licence; or
- (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsection (1), the Authority may —
- (a) require the finance company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the finance company on the proper management of such of the business of the finance company as the Authority may determine; or
  - (c) assume control of and manage such of the business of the finance company as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.
- (3) Where the Authority appoints 2 or more persons as the statutory manager of a finance company, the Authority shall specify, in the terms and conditions of

the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(4) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 15(1)(c)(ii), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

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

(6) Any finance company that fails to comply with a requirement imposed by the Authority under



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subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

**Effect of assumption of control under section 35**

**36.**—(1) Upon assuming control of the relevant business of a finance company, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

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

(a) shall manage the relevant business of the finance company in the name of and on behalf of the finance company; and

(b) shall be deemed to be an agent of the finance company.

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

(a) shall take into consideration the interests of the depositors of the finance company; and

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

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of a finance company by the Authority or statutory manager, any appointment of a person as the chief executive or a director of the finance company, which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the finance company, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a finance company, except with the approval of the Authority, no person shall be appointed as the chief executive or a director of the finance company.

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive or a director of a finance company is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive or a director of the finance company during the period when the Authority or statutory manager is in control of the relevant business of the finance company —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

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(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive or a director of a finance company in contravention of subsection (5) acts or purports to act as the chief executive or a director of the finance company during the period when the Authority or statutory manager is in control of the relevant business of the finance company —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(9) During the period when the Authority or statutory manager is in control of the relevant business of a finance company —

- (a) if there is any conflict or inconsistency between —
  - (i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and
  - (ii) a direction or decision given by any chief executive, director, member, executive officer, employee, agent or office holder, or the board of directors, of the finance company,

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

- (b) no person shall exercise any voting or other right attached to any share in the finance company in any manner that may defeat or interfere with any duty, function or power of

the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to a finance company, means the memorandum of association and articles of association of the finance company.

### **Duration of control**

**37.—**(1) The Authority shall cease to be in control of the relevant business of a finance company when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary for the protection of the depositors of the finance company.

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

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

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or

(ii) it is no longer necessary for the protection of the depositors of the finance company; or

(b) on any other ground,

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

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

- (a) the Authority's assumption of control of the relevant business of a finance company;
- (b) the cessation of the Authority's control of the relevant business of a finance company;
- (c) the appointment of a statutory manager in relation to the relevant business of a finance company; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a finance company.

**Responsibilities of officers, member, etc., of  
finance company**

**38.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of a finance company —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the finance company to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may

specify, any property, book, accounts, record or other documents, whether in electronic, print or other form, of the finance company which is comprised in, forms part of or relates to the relevant business of the finance company, and which is in the person's possession or control; and

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

(2) Any person who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

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

**39.** The Authority may at any time fix the remuneration and expenses to be paid by a finance company —

- (a) to a statutory manager or statutory adviser appointed in relation to the finance company, whether or not the appointment has been revoked; and
  - (b) where the Authority has assumed control of the relevant business of the finance company, to the Authority and any person authorised or appointed by the Authority under section 42 in relation to the Authority’s assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.”;
- (i) by inserting, immediately after section 39, the following Part:

“PART VIA

VOLUNTARY TRANSFER OF BUSINESS

**Interpretation of this Part**

**39A.** In this Part, unless the context otherwise requires —

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

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

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

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

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

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

“transferee” means a finance company, or a company which has applied or will be applying for a licence to carry on financing business in Singapore, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Part;

“transferor” means a finance company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Part.

### **Voluntary transfer of business**

**39B.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not financing business) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the financing business of the transferor; and
- (c) the Court has approved the transfer.

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

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor’s business (or any part thereof) under this Part.



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

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

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

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

**Approval of transfer**

**39C.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Part.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 39B(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on

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their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

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

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

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

(4) The Court shall not approve the transfer if the Authority has not consented under section 39B(1)(a) to the transfer.

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

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

(b) refuse to approve the transfer.

(6) If the transferee is not granted a licence by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being granted a licence by the Authority.

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

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

(b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to

be allotted or appropriated by the transferee to or for any person;

- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

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

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

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

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

- (j) by repealing section 45;
- (k) by repealing section 47 and substituting the following section:

**“Disqualification or removal of director or executive officer**

**47.—**(1) Notwithstanding the provisions of any other written law, a finance company shall not, without the prior written consent of the Authority, permit a person to act as its director or executive officer, if the person —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 5(k) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
  - (i) involving fraud or dishonesty;
  - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
  - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures

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

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

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

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

(2) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director or an executive officer of a finance company —

(a) has wilfully contravened or wilfully caused the finance company to contravene any provision of this Act;

(b) has, without reasonable excuse, failed to secure the compliance of the finance company with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; or

(c) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the public interest or for the protection of the depositors or creditors of the finance company, by notice in writing to the finance company, direct the finance company to remove the director or executive officer, as the case may

be, from his office or employment within such period as may be specified by the Authority in the notice, and the finance company shall comply with the notice.

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

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

- (a) give the finance company and the person notice in writing of its intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the finance company and the person to show cause, within such time as may be specified in the notice, why the person should not be removed.

(5) If the finance company and the person referred to in subsection (4) —

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

the Authority may direct the finance company to remove the person under subsection (2).

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



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(7) Any finance company which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

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

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

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

(l) by deleting subsection (2) of section 48;

(m) by inserting, immediately after section 48, the following sections:

**“Composition of offences**

**48A.**—(1) The Authority may, in its discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

(2) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision which has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.

(3) On payment of the sum of money referred to in subsection (1) or (2), no further proceedings shall be taken against that person in respect of the offence.

(4) The Authority may make regulations to prescribe the offences which may be compounded.

(5) All sums collected by the Authority under subsection (1) or (2) shall be paid into the Consolidated Fund.

**Recovery of fees, expenses, etc.**

**48B.** There shall be recoverable as a civil debt due to the Authority from the finance company concerned —

(a) the amount of any fees payable under section 6(7); and

(b) any remuneration and expenses payable by the finance company to —

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- (i) a statutory adviser appointed under section 35(2);
  - (ii) a statutory manager appointed under section 35(2);
  - (iii) the Authority or any person authorised or appointed by the Authority under section 42 in relation to the Authority's assumption of control of any business of the finance company under section 35; and
  - (iv) any person appointed to perform any independent assessment under Part VIA.”; and
- (n) by inserting, immediately after the words “the Companies Act (Cap. 50)” in section 54(1), the words “and Part IVB of the Monetary Authority of Singapore Act (Cap. 186)”.

### **Amendment of Government Securities Act**

6. Section 29D of the Government Securities Act (Cap. 121A) is amended —

- (a) by inserting, immediately after subsection (3), the following subsection:
  - “(3A) A financial penalty collected by the Authority under subsection (3) shall be paid into the Consolidated Fund.”; and
- (b) by deleting subsection (9) and substituting the following subsection:
  - “(9) The Authority may recover on behalf of the Government any financial penalty ordered under subsection (3) as though the financial penalty were a civil debt due to the Authority.”.

**Amendment of Money-changing and Remittance Businesses Act**

7. The Money-changing and Remittance Businesses Act (Cap. 187) is amended —

- (a) by inserting, immediately after section 12, the following section:

**“Removal of partner, director or executive officer**

**12A.**—(1) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of a licensee which is incorporated in Singapore, or a partner or an executive officer of a licensee —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 7(a) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
- (i) involving fraud or dishonesty;
  - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
  - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a

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compromise or scheme of arrangement that is still in operation;

- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures Act (Cap. 289) made against him that remains in force;
- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (i) which is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory;
- (g) has wilfully contravened or wilfully caused the licensee to contravene any provision of this Act;
- (h) has, without reasonable excuse, failed to secure the compliance of the licensee with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; or
- (i) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the public interest or for the protection of the customers of the licensee, by notice in writing to the licensee, direct the

licensee to remove the partner, director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the licensee shall comply with the notice.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a partner, a director or an executive officer of a licensee has failed to discharge the duties of his office for the purposes of subsection (1)(i), have regard to such criteria as may be prescribed.

(3) Before directing a licensee to remove a person from his office or employment under subsection (1), the Authority shall —

- (a) give the licensee and the person notice in writing of its intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the licensee and the person to show cause, within such time as may be specified in the notice, why the person should not be removed.

(4) If the licensee and the person referred to in subsection (3) —

- (a) fail to show cause within the time specified under subsection (3)(b) or within such extended period of time as the Authority may allow; or
- (b) fail to show sufficient cause,

the Authority may direct the licensee to remove the person under subsection (1).

(5) Any licensee which, or any partner, director or executive officer of a licensee who, is aggrieved by a direction of the Authority under subsection (1) may,

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within 30 days after receiving the direction, appeal in writing to the Minister, whose decision shall be final.

(6) Any licensee which fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

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

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

(a) is in the direct employment of, or acting for or by arrangement with, the licensee; and

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

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

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory

function of the Authority under this Act, the Monetary Authority of Singapore Act or any of the written laws set out in the Schedule to that Act.”;

- (b) by inserting, immediately after subsection (1) of section 29, the following subsection:

“(1A) The Authority may, in its discretion, compound any offence under this Act or any regulations made thereunder (including an offence under a provision which has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.”;

- (c) by deleting the words “such sum of money” in section 29(2) and substituting the words “the sum of money referred to in subsection (1) or (1A)”;

- (d) by deleting subsection (3) of section 29 and substituting the following subsection:

“(3) All sums collected by the Authority under subsection (1) or (1A) shall be paid into the Consolidated Fund.”.

### **Amendment of Payment Systems (Oversight) Act**

**8.** The Payment Systems (Oversight) Act (Cap. 222A) is amended —

- (a) by inserting, immediately after the definition of “director” in section 2(1), the following definition:

“ “executive officer”, in relation to an operator or a settlement institution of a payment system,



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means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the operator or settlement institution, as the case may be; and
  - (b) is concerned with or takes part in the management of the operator or settlement institution, as the case may be, on a day-to-day basis;”;
- (b) by deleting subsections (1) to (6) of section 22 and substituting the following subsections:

“(1) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of a Singapore operator or Singapore settlement institution of a designated payment system, or an executive officer of an operator or a settlement institution of a designated payment system —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 8(b) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
  - (i) involving fraud or dishonesty;
  - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
  - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;

- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures Act (Cap. 289) made against him that remains in force;
- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (i) which is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory;
- (g) has wilfully contravened or wilfully caused the operator or settlement institution to contravene any provision of this Act;
- (h) has, without reasonable excuse, failed to secure the compliance of the operator or settlement institution with this Act, the Monetary Authority of Singapore Act

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(Cap. 186) or any of the written laws set out in the Schedule to that Act; or

- (i) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public, by notice in writing to the operator or settlement institution, direct the operator or settlement institution to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the operator or settlement institution shall comply with the notice.

(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of an operator or a settlement institution of a designated payment system has failed to discharge the duties of his office for the purposes of subsection (1)(i), have regard to such criteria as may be prescribed.

(3) Subject to subsection (4), the Authority shall not direct an operator or a settlement institution of a designated payment system to remove a person from his office or employment under subsection (1) without giving the operator or settlement institution an opportunity to be heard.

(4) The Authority may direct an operator or a settlement institution of a designated payment system to remove a person from his office or employment under subsection (1) on any of the following grounds without giving the operator or settlement institution an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;

(b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 8(b) of the Financial Institutions (Miscellaneous Amendments) Act 2013 —

- (i) involving fraud or dishonesty, or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
- (ii) punishable with imprisonment for a term of 3 months or more.

(5) Where the Authority directs an operator or a settlement institution of a designated payment system to remove a person from his office or employment under subsection (1), the Authority need not give that person an opportunity to be heard.

(6) An operator or a settlement institution of a designated payment system which is aggrieved by a direction of the Authority under subsection (1) may, within 30 days after the operator or settlement institution is notified of the direction, appeal in writing to the Minister, whose decision shall be final.”;

(c) by deleting subsections (9) and (10) of section 22 and substituting the following subsections:

“(9) An operator or a settlement institution of a designated payment system which fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(10) No criminal or civil liability shall be incurred by an operator or a settlement institution of a designated

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payment system, or any person acting on behalf of the operator or settlement institution, in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the operator or settlement institution under this section.

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

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

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

“Singapore operator” means an operator which is incorporated in Singapore;

“Singapore settlement institution” means a settlement institution which is incorporated in Singapore.”;

- (d) by deleting the words “chief executive officer and directors” in the section heading of section 22 and substituting the words “director or executive officer”;
- (e) by inserting, immediately after section 28, the following sections:

**“Responsibilities of officers, member, etc., of operator or settlement institution**

**28A.**—(1) During the period when the Authority, or a person directed by the Authority under section 28(1)(c) (referred to in this section as the directed person), is in control of the operations of an operator or a settlement institution of a designated payment system —

- (a) the High Court may, on an application by the Authority or directed person, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the operator or settlement institution to pay, deliver, convey, surrender or transfer to the Authority or directed person, within such period as the High Court may specify, any property, book, accounts, record or other documents, whether in electronic, print or other form, of the operator or settlement institution which is comprised in, forms part of or relates to the operations of the operator or settlement institution, and which is in the person’s possession or control; and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the operator or settlement institution shall give to the Authority or directed person such information as the Authority or directed person may require for the discharge of the Authority’s or directed person’s duties or functions, or the exercise of the Authority’s or directed person’s powers, in relation to the operator or settlement institution, within such

time and in such manner as may be specified by the Authority or directed person.

(2) Any person who —

(a) without reasonable excuse, fails to comply with subsection (1)(b); or

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

#### **Interpretation of sections 28B, 28C and 28D**

**28B.** In this section and sections 28C and 28D, unless the context otherwise requires —

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means a person who is carrying on, or who intends to carry on, in Singapore the usual business of an operator or a settlement institution of a designated payment system, to

which the whole or any part of a transferor's business is, is to be or is proposed to be transferred under section 28C(1);

“transferor” means an operator or a settlement institution of a designated payment system the whole or any part of the business of which is, is to be, or is proposed to be transferred under section 28C(1).

### **Voluntary transfer of business**

**28C.—(1)** A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an operator or a settlement institution of a designated payment system) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an operator or a settlement institution of a designated payment system; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of an operator or a settlement institution of a designated payment system to transfer the whole or any part of its business under any law.

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of,



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and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under subsection (1).

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

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

(7) The Authority may require a person to furnish, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this section and section 28D.

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal

proceedings other than proceedings under subsection (8).

### **Approval of transfer**

**28D.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under section 28C(1).

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 28C(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of

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15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and

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

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

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

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

(4) The Court shall not approve the transfer if the Authority has not consented under section 28C(1)(a) to the transfer.

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

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

(b) refuse to approve the transfer.

(6) If the transferee is not identified under section 7(2) as the operator or settlement institution of the designated payment system, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being so identified.

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

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
  - (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
  - (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) the provisions to be made for persons who are affected by the transfer;
  - (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.
- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.
- (9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be

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transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from any charge which by virtue of the transfer is to cease to have effect.

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

- (f) by inserting, immediately after the words “one half of” in section 50(1), the words “the amount of”;
- (g) by inserting, immediately after subsection (1) of section 50, the following subsection:
- “(1A) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision which has been repealed) which —
- (a) was compoundable under this section at the time the offence was committed; but
- (b) has ceased to be so compoundable,
- by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.”;
- (h) by deleting the words “such sum of money” in section 50(2) and substituting the words “the sum of money referred to in subsection (1) or (1A)”;
- (i) by deleting subsection (4) of section 50 and substituting the following subsection:
- “(4) All sums collected by the Authority under subsection (1) or (1A) shall be paid into the Consolidated Fund.”;
- (j) by repealing section 55 and substituting the following section:
- “Directions and notices need not be published in Gazette**
- 55.** It shall not be necessary to publish any written direction or notice in writing given by the Authority under this Act in the *Gazette*.”; and
- (k) by deleting subsection (7) of section 57 and substituting the following subsection:

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“(7) It shall not be necessary to publish any code, guideline, policy statement or practice note issued under this section in the *Gazette*.”.

**Amendment of Securities and Futures Act**

9.—(1) The Securities and Futures Act (Cap. 289) is amended —

(a) by inserting, immediately after the definition of “entity” in section 2(1), the following definition:

““executive officer”, in relation to an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, the holder of a capital markets services licence, or any other corporation, means any person, by whatever name called, who is —

(a) in the direct employment of, or acting for or by arrangement with, the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence, or other corporation, as the case may be; and

(b) concerned with or takes part in the management of the approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house, approved holding company, holder of a capital markets services licence, or other

corporation, as the case may be, on a day-to-day basis;”;

(b) by inserting, immediately after paragraph (d) of section 13(1), the following paragraph:

“(da) upon the Authority exercising any power under section 44B(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;”;

(c) by repealing section 31;

(d) by inserting, immediately after section 44, the following sections:

**“Interpretation of sections 44A to 44F**

**44A.** In this section and sections 44B to 44F, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved exchange or a recognised market operator, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved exchange or recognised market operator (as the case may be), or acting in an equivalent capacity in relation to the approved exchange or recognised market operator (as the case may be);

“relevant business” means any business of an approved exchange or a recognised market operator —

(a) which the Authority has assumed control of under section 44B; or



(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 44B;

“statutory adviser” means a statutory adviser appointed under section 44B;

“statutory manager” means a statutory manager appointed under section 44B.

**Action by Authority if approved exchange or recognised market operator unable to meet obligations, etc.**

**44B.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) an approved exchange or a recognised market operator informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) an approved exchange or a recognised market operator becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that an approved exchange or a recognised market operator —
  - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 5;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its

obligations, or is about to suspend payments;

(iii) has contravened any of the provisions of this Act; or

(iv) has failed to comply with any condition or restriction imposed on it under section 8(4) or (5); or

(d) the Authority considers it in the public interest to do so.

(2) Subject to subsections (1) and (3), the Authority may —

(a) require the approved exchange or recognised market operator (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved exchange or recognised market operator (as the case may be) on the proper management of such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine; or

(c) assume control of and manage such of the business of the approved exchange or recognised market operator (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

(3) In the case of an approved exchange, or a recognised market operator, which is incorporated outside Singapore, any appointment of a statutory

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adviser or statutory manager or any assumption of control by the Authority of any business of the approved exchange or recognised market operator (as the case may be) under subsection (2) shall only be in relation to —

- (a) the business or affairs of the approved exchange or recognised market operator (as the case may be) carried on in, or managed in or from, Singapore; or
- (b) the property of the approved exchange or recognised market operator (as the case may be) located in Singapore, or reflected in the books of the approved exchange or recognised market operator (as the case may be) in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved exchange or a recognised market operator, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 13(1)(*da*), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by

the Authority in the exercise of such power, on such terms and conditions as it may specify;

- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

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

(7) Any approved exchange or recognised market operator that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

#### **Effect of assumption of control under section 44B**

**44C.**—(1) Upon assuming control of the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of an

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approved exchange or a recognised market operator, the Authority or statutory manager —

(a) shall manage the relevant business of the approved exchange or recognised market operator (as the case may be) in the name of and on behalf of the approved exchange or recognised market operator (as the case may be); and

(b) shall be deemed to be an agent of the approved exchange or recognised market operator (as the case may be).

(3) In managing the relevant business of an approved exchange or a recognised market operator, the Authority or statutory manager —

(a) shall take into consideration the interests of the public or the section of the public referred to in section 44B(1)(c)(i), and the need to protect investors; and

(b) shall have all the duties, powers and functions of the members of the board of directors of the approved exchange or recognised market operator (as the case may be) (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the approved exchange or recognised market operator (as the case may be), including powers of delegation, in relation to the relevant business of the approved exchange or recognised market operator (as the case may be); but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the approved exchange or recognised market operator (as the case may be) under the Companies Act or the constitution of the approved exchange or

recognised market operator (as the case may be).

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of an approved exchange or a recognised market operator by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be), which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the approved exchange or recognised market operator (as the case may be), for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be).

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved exchange or a

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recognised market operator is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

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

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

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved exchange or a recognised market operator in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved exchange or recognised market operator (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved exchange or recognised market operator (as the case may be) —

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

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

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

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

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

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved exchange or recognised market operator (as the case may be),

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

(b) no person shall exercise any voting or other right attached to any share in the approved exchange or recognised market operator (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to an approved exchange or a recognised market operator, means the memorandum of association and articles of association of the approved exchange or recognised market operator (as the case may be).

### **Duration of control**

**44D.**—(1) The Authority shall cease to be in control of the relevant business of an approved exchange or a



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recognised market operator when the Authority is satisfied that —

- (a) the reasons for the Authority's assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 44B(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of an approved exchange or a recognised market operator on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 44B(1)(c)(i) or for the protection of investors; or
- (b) on any other ground,

and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the approved exchange or recognised market operator (as the case may be).

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

- (a) the Authority's assumption of control of the relevant business of an approved exchange or a recognised market operator;
- (b) the cessation of the Authority's control of the relevant business of an approved exchange or a recognised market operator;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved exchange or a recognised market operator; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved exchange or a recognised market operator.

**Responsibilities of officers, member, etc., of approved exchange or recognised market operator**

**44E.—**(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved exchange or a recognised market operator —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved exchange or recognised market operator (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the approved exchange or recognised market operator (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved exchange or

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recognised market operator (as the case may be), and which is in the person's possession or control; and

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

(2) Any person who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**44F.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved exchange or a recognised market operator —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved exchange or recognised market operator (as the case may be), whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved exchange or recognised market operator (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The approved exchange or recognised market operator (as the case may be) shall reimburse the Authority any remuneration and expenses payable by the approved exchange or recognised market operator (as the case may be) to a statutory manager or statutory adviser.”;

- (e) by inserting, immediately after section 46, the following Division:

*“Division 5 — Voluntary Transfer of Business of Approved Exchange or Recognised Market Operator*

**Interpretation of this Division**

**46AA.** In this Division, unless the context otherwise requires —

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved exchange or a recognised market operator, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved exchange or a recognised market operator, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means an approved exchange or a recognised market operator the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

### **Voluntary transfer of business**

**46AAA.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved exchange or a recognised market operator) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved exchange or a recognised market operator; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of an approved exchange or a recognised market operator to transfer the whole or any part of its business under any law.

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

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

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

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

(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

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shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

### **Approval of transfer**

**46AAB.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 46AAA(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in

paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

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

- (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

(4) The Court shall not approve the transfer if the Authority has not consented under section 46AAA(1)(a) to the transfer.

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



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

(b) refuse to approve the transfer.

(6) If the transferee is not approved as an approved exchange or recognised as a recognised market operator by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being approved as an approved exchange or recognised as a recognised market operator by the Authority.

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

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

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

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

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

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

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

- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

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

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

- (f) by inserting, immediately after paragraph (d) of section 81Z(1), the following paragraph:

“(da) upon the Authority exercising any power under section 81ZGC(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval;”;

- (g) by inserting, immediately after section 81ZG, the following sections:

**“Information of insolvency, etc.**

**81ZGA.—**(1) Any approved holding company which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

(2) Any approved holding company which contravenes subsection (1) shall be guilty of an

offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

### **Interpretation of sections 81ZGB to 81ZGG**

**81ZGB.** In this section and sections 81ZGC to 81ZGG, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved holding company, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved holding company, or acting in an equivalent capacity in relation to the approved holding company;

“relevant business” means any business of an approved holding company —

(a) which the Authority has assumed control of under section 81ZGC; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 81ZGC;

“statutory adviser” means a statutory adviser appointed under section 81ZGC;

“statutory manager” means a statutory manager appointed under section 81ZGC.

### **Action by Authority if approved holding company unable to meet obligations, etc.**

**81ZGC.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

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- (a) an approved holding company informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
  - (b) an approved holding company becomes unable to meet its obligations, or is insolvent, or suspends payments;
  - (c) the Authority is of the opinion that an approved holding company —
    - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 81T;
    - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition or restriction imposed on it under section 81W(1) or (2); or
  - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved holding company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

- (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved holding company on the proper management of such of the business of the approved holding company as the Authority may determine; or
- (c) assume control of and manage such of the business of the approved holding company as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

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

- (a) the business or affairs of the approved holding company carried on in, or managed in or from, Singapore; or
- (b) the property of the approved holding company located in Singapore, or reflected in the books of the approved holding company in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved holding company, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

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

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

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 81Z(1)(*da*), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

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

(7) Any approved holding company that fails to comply with a requirement imposed by the Authority under subsection (2)(*a*) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

**Effect of assumption of control under section 81ZGC**

**81ZGD.**—(1) Upon assuming control of the relevant business of an approved holding company, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, the Authority or statutory manager —

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

(3) In managing the relevant business of an approved holding company, the Authority or statutory manager —

- (a) shall take into consideration the interests of the public or the section of the public referred to in section 81ZGC(1)(c)(i), and the need to protect investors; and
- (b) shall have all the duties, powers and functions of the members of the board of directors of the approved holding company (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the approved holding company, including powers of delegation, in relation to the relevant business of the approved holding company; but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the approved holding company



under the Companies Act or the constitution of the approved holding company.

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of an approved holding company by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved holding company, which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the approved holding company, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved holding company, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the approved holding company.

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved holding company is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in

control of the relevant business of the approved holding company —

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

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

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved holding company in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved holding company during the period when the Authority or statutory manager is in control of the relevant business of the approved holding company —

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

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

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

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

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

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

the direction or decision referred to in sub-paragraph (i) shall, to the extent of the

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

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

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to an approved holding company, means the memorandum of association and articles of association of the approved holding company.

### **Duration of control**

**81ZGE.**—(1) The Authority shall cease to be in control of the relevant business of an approved holding company when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 81ZGC(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of an approved

holding company on the date of his appointment as a statutory manager.

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

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 81ZGC(1)(c)(i) or for the protection of investors; or
- (b) on any other ground,

and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the approved holding company.

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

- (a) the Authority's assumption of control of the relevant business of an approved holding company;
- (b) the cessation of the Authority's control of the relevant business of an approved holding company;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved holding company; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved holding company.

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**Responsibilities of officers, member, etc., of approved holding company**

**81ZGF.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved holding company —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the approved holding company which is comprised in, forms part of or relates to the relevant business of the approved holding company, and which is in the person's possession or control; and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved holding company shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved holding company, within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

(a) without reasonable excuse, fails to comply with subsection (1)(b); or

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**81ZGG.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved holding company —

(a) to a statutory manager or statutory adviser appointed in relation to the approved holding company, whether or not the appointment has been revoked; and

(b) where the Authority has assumed control of the relevant business of the approved holding company, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The approved holding company shall reimburse the Authority any remuneration and expenses payable by the approved holding company to a statutory manager or statutory adviser.”;

(h) by inserting, immediately after section 81ZL, the following Division:

*“Division 3 — Voluntary Transfer of Business of  
Approved Holding Company*

**Interpretation of this Division**

**81ZM.** In this Division, unless the context otherwise requires —

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved holding company, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved holding company, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means an approved holding company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

**Voluntary transfer of business**

**81ZN.—**(1) A transferor may transfer the whole or any part of its business (including any business that is

not the usual business of an approved holding company) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved holding company; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of an approved holding company to transfer the whole or any part of its business under any law.

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

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

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

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



(8) Any person who —

- (a) without reasonable excuse, fails to comply with any requirement under subsection (7); or
- (b) in purported compliance with any requirement under subsection (7), knowingly or recklessly furnishes any information or document that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

### **Approval of transfer**

**81ZO.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 81ZN(1)(a);

- (c) the transferor and the transferee shall, if they intend to serve on their respective shareholders a summary of the transfer, obtain the Authority's approval of the summary;
  - (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
  - (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
  - (f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective shareholders affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).
- (3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —
- (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
  - (b) may make any application to the Court in relation to the transfer.

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(4) The Court shall not approve the transfer if the Authority has not consented under section 81ZN(1)(a) to the transfer.

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

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

(b) refuse to approve the transfer.

(6) If the transferee is not approved as an approved holding company by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being approved as an approved holding company by the Authority.

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

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

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

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

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

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

(f) such incidental, consequential and supplementary matters as are, in the opinion

of the Court, necessary to secure that the transfer is fully effective.

- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

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

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

(i) by inserting, immediately after paragraph (e) of section 95(2), the following paragraph:

“(ea) upon the Authority exercising any power under section 97E(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the holder, the Authority considers that it is in the public interest to revoke the licence;”;

(j) by deleting subsection (1) of section 97 and substituting the following subsections:

“(1) Notwithstanding the provisions of any other written law —

- (a) a holder of a capital markets services licence shall not, without the prior written consent of

the Authority, permit a person to act as its executive officer; and

- (b) a holder of a capital markets services licence which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(j) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —
- (A) involving fraud or dishonesty;
  - (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
  - (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142)

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or section 101A made against him that remains in force; or

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

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

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

(1A) Notwithstanding the provisions of any other written law, where the Authority is satisfied that a director of a holder of a capital markets services licence which is incorporated in Singapore, or an executive officer of a holder of a capital markets services licence —

(a) has wilfully contravened or wilfully caused the holder to contravene any provision of this Act;

(b) has, without reasonable excuse, failed to secure the compliance of the holder with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; or

(c) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing to the holder, direct the holder to remove the director or

executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the holder shall comply with the notice.”;

- (k) by deleting subsections (2) and (3) of section 97 and substituting the following subsections:

“(2) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, when determining whether a director or an executive officer of a holder of a capital markets services licence has failed to discharge the duties of his office for the purposes of subsection (1A)(c), have regard to such criteria as may be prescribed or as may be specified in written directions.

(3) The Authority shall not direct a holder of a capital markets services licence to remove a person from his office under subsection (1A) without giving the holder an opportunity to be heard.”;

- (l) by deleting subsection (4) of section 97;

- (m) by deleting subsection (5) of section 97 and substituting the following subsection:

“(5) Where the Authority directs a holder of a capital markets services licence to remove a person from his office or employment under subsection (1A), the Authority need not give that person an opportunity to be heard.”;

- (n) by inserting, immediately after the words “in respect of anything done” in section 97(6), the words “(including any statement made)”;

- (o) by inserting, immediately after subsection (6) of section 97, the following subsection:

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



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

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

(p) by inserting, immediately after section 97B, the following sections:

**“Information of insolvency, etc.**

**97C.**—(1) Any holder of a capital markets services licence which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

(2) Any holder of a capital markets services licence which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

**Interpretation of sections 97D to 97I**

**97D.** In this section and sections 97E to 97I, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to a holder of a capital markets services licence, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the holder, or acting in an equivalent capacity in relation to the holder;

“relevant business” means any business of a holder of a capital markets services licence —

(a) which the Authority has assumed control of under section 97E; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 97E;

“statutory adviser” means a statutory adviser appointed under section 97E;

“statutory manager” means a statutory manager appointed under section 97E.

**Action by Authority if holder of capital markets services licence unable to meet obligations, etc.**

**97E.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(a) a holder of a capital markets services licence informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) a holder of a capital markets services licence becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that a holder of a capital markets services licence —

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- (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition or restriction in its licence (being a condition or restriction imposed under section 88(1) or (2)); or
- (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the holder of a capital markets services licence immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the holder of a capital markets services licence on the proper management of such of the business of the holder as the Authority may determine; or
  - (c) assume control of and manage such of the business of the holder of a capital markets services licence as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

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

- (a) the business or affairs of the holder carried on in, or managed in or from, Singapore; or
- (b) the property of the holder located in Singapore, or reflected in the books of the holder in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of a holder of a capital markets services licence, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 95(2)(ea), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);

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

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

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

(7) Any holder of a capital markets services licence that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

#### **Effect of assumption of control under section 97E**

**97F.**—(1) Upon assuming control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

- (a) shall manage the relevant business of the holder in the name of and on behalf of the holder; and

(b) shall be deemed to be an agent of the holder.

(3) In managing the relevant business of a holder of a capital markets services licence, the Authority or statutory manager —

(a) shall take into consideration the interests of the public or the section of the public referred to in section 97E(1)(c)(i), and the need to protect investors; and

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

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of a holder of a capital markets services licence by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the holder, which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the holder, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the holder.

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a holder of a capital markets services licence is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a holder of a capital markets services licence in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the holder during the period when the Authority or statutory manager is in control of the relevant business of the holder —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(9) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

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

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

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

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

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

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to a holder of a capital markets services licence, means the memorandum of association and articles of association of the holder.



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**Duration of control**

**97G.**—(1) The Authority shall cease to be in control of the relevant business of a holder of a capital markets services licence when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of a holder of a capital markets services licence on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 97E(1)(c)(i) or for the protection of investors; or
- (b) on any other ground,

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

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

- (a) the Authority's assumption of control of the relevant business of a holder of a capital markets services licence;
- (b) the cessation of the Authority's control of the relevant business of a holder of a capital markets services licence;
- (c) the appointment of a statutory manager in relation to the relevant business of a holder of a capital markets services licence; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a holder of a capital markets services licence.

**Responsibilities of officers, member, etc., of holder of capital markets services licence**

**97H.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of a holder of a capital markets services licence —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the holder to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the holder which is comprised in, forms part of or relates to the relevant business of the holder, and which is in the person's possession or control; and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker,

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auditor or office holder of, or trustee for, the holder shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the holder, within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**97I.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by a holder of a capital markets services licence —

- (a) to a statutory manager or statutory adviser appointed in relation to the holder, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the holder, to the Authority and any person appointed by the

Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The holder of a capital markets services licence shall reimburse the Authority any remuneration and expenses payable by the holder to a statutory manager or statutory adviser.”;

(q) by inserting, immediately after section 99A, the following Division:

*“Division 1A — Voluntary Transfer of Business of Holder of Capital Markets Services Licence*

**Interpretation of this Division**

**99AA.** In this Division, unless the context otherwise requires —

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means a holder of a capital markets services licence, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of a holder of a capital markets services licence, to which the whole or any

part of a transferor's business is, is to be or is proposed to be transferred under this Division;

“transferor” means a holder of a capital markets services licence the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

### **Voluntary transfer of business**

**99AB.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a holder of a capital markets services licence) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of a holder of a capital markets services licence; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of a holder of a capital markets services licence to transfer the whole or any part of its business under any law.

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

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

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

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

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

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**Approval of transfer**

**99AC.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 99AB(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on

their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

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

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

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

(4) The Court shall not approve the transfer if the Authority has not consented under section 99AB(1)(a) to the transfer.

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

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

(b) refuse to approve the transfer.

(6) If the transferee is not granted a capital markets services licence by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being granted a capital markets services licence by the Authority.

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

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



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- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
  - (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) the provisions to be made for persons who are affected by the transfer;
  - (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.
- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.
- (9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from

any charge which by virtue of the transfer is to cease to have effect.

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

- (r) by inserting, immediately after subsection (4) of section 289, the following subsection:

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“(4A) Where, upon the Authority exercising any power under section 292D(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to an approved trustee, the Authority considers that it is in the public interest to do so, the Authority may —

- (a) revoke the approval granted to the approved trustee under this section; and
  - (b) direct the manager for the collective investment scheme or schemes, which the approved trustee was acting for, to appoint a new trustee for the scheme or schemes.”;
- (s) by inserting, immediately after section 292, the following sections:

**“Disqualification or removal of director or executive officer**

**292A.**—(1) Notwithstanding the provisions of any other written law —

- (a) an approved trustee shall not, without the prior written consent of the Authority, permit a person to act as its executive officer; and
- (b) an approved trustee which is incorporated in Singapore shall not, without the prior written consent of the Authority, permit a person to act as its director,

if the person —

- (i) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of section 9(1)(s) of the Financial Institutions (Miscellaneous Amendments) Act 2013, being an offence —

- (A) involving fraud or dishonesty;

- (B) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
- (C) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (ii) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (iii) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (iv) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (v) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A made against him that remains in force; or
- (vi) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (A) which is being or has been wound up by a court; or
  - (B) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

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

- (a) has wilfully contravened or wilfully caused the approved trustee to contravene any provision of this Act;
- (b) has, without reasonable excuse, failed to secure the compliance of the approved trustee with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act; or
- (c) has failed to discharge any of the duties of his office,

the Authority may, if it thinks it necessary in the interests of the public or a section of the public or for the protection of investors, by notice in writing to the approved trustee, direct the approved trustee to remove the director or executive officer, as the case may be, from his office or employment within such period as may be specified by the Authority in the notice, and the approved trustee shall comply with the notice.

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

(4) Before directing an approved trustee to remove a person from his office or employment under subsection (2), the Authority shall —

- (a) give the approved trustee and the person notice in writing of its intention to do so; and

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

(5) If the approved trustee and the person referred to in subsection (4) —

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

(b) fail to show sufficient cause,

the Authority may direct the approved trustee to remove the person under subsection (2).

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

(7) Any approved trustee which contravenes subsection (1) or fails to comply with a notice issued under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(8) No criminal or civil liability shall be incurred by an approved trustee, or any person acting on behalf of the approved trustee, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the approved trustee under this section.

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

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

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

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

**292B.**—(1) Any approved trustee which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

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

#### **Interpretation of sections 292C to 292H**

**292C.** In this section and sections 292D to 292H, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved trustee, means any person acting as the liquidator, the provisional liquidator, the receiver or the

receiver and manager of the approved trustee, or acting in an equivalent capacity in relation to the approved trustee;

“relevant business” means any business of an approved trustee —

(a) which the Authority has assumed control of under section 292D; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 292D;

“statutory adviser” means a statutory adviser appointed under section 292D;

“statutory manager” means a statutory manager appointed under section 292D.

**Action by Authority if approved trustee unable to meet obligations, etc.**

**292D.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(a) an approved trustee informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

(b) an approved trustee becomes unable to meet its obligations, or is insolvent, or suspends payments;

(c) the Authority is of the opinion that an approved trustee —

(i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors;



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- (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or
  - (iv) has failed to comply with any condition or restriction imposed on it under section 289(1) or (1A); or
- (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved trustee immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved trustee on the proper management of such of the business of the approved trustee as the Authority may determine; or
  - (c) assume control of and manage such of the business of the approved trustee as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.
- (3) Where the Authority appoints 2 or more persons as the statutory manager of an approved trustee, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(4) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 289(4A), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

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

(6) Any approved trustee that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a

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further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

**Effect of assumption of control under section 292D**

**292E.**—(1) Upon assuming control of the relevant business of an approved trustee, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, the Authority or statutory manager —

(a) shall manage the relevant business of the approved trustee in the name of and on behalf of the approved trustee; and

(b) shall be deemed to be an agent of the approved trustee.

(3) In managing the relevant business of an approved trustee, the Authority or statutory manager —

(a) shall take into consideration the interests of the public or the section of the public referred to in section 292D(1)(c)(i), and the need to protect investors; and

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

approved trustee under the Companies Act or the constitution of the approved trustee.

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of an approved trustee by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved trustee, which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the approved trustee, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved trustee, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the approved trustee.

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved trustee is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

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

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

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved trustee in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved trustee during the period when the Authority or statutory manager is in control of the relevant business of the approved trustee —

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

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

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

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

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

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

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

(b) no person shall exercise any voting or other right attached to any share in the approved

trustee in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to an approved trustee, means the memorandum of association and articles of association of the approved trustee.

### **Duration of control**

**292F.**—(1) The Authority shall cease to be in control of the relevant business of an approved trustee when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(c)(i) or for the protection of investors.

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

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

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 292D(1)(c)(i) or for the protection of investors; or
- (b) on any other ground,

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

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

- (a) the Authority's assumption of control of the relevant business of an approved trustee;
- (b) the cessation of the Authority's control of the relevant business of an approved trustee;
- (c) the appointment of a statutory manager in relation to the relevant business of an approved trustee; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved trustee.

**Responsibilities of officers, member, etc., of approved trustee**

**292G.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved trustee —

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

executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved trustee to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the approved trustee which is comprised in, forms part of or relates to the relevant business of the approved trustee, and which is in the person's possession or control; and

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

(2) Any person who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further



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fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**292H.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved trustee —

- (a) to a statutory manager or statutory adviser appointed in relation to the approved trustee, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the approved trustee, to the Authority and any person appointed by the Authority under section 320 in relation to the Authority’s assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The approved trustee shall reimburse the Authority any remuneration and expenses payable by the approved trustee to a statutory manager or statutory adviser.”; and

- (t) by inserting, immediately after section 295C, the following Subdivision:

*“Subdivision (2A) — Voluntary transfer of business of approved trustee*

**Interpretation of this Subdivision**

**295D.** In this Subdivision, unless the context otherwise requires —

“approved trustee” means a trustee for collective investment schemes which are authorised under section 286 and constituted as unit trusts;

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means an approved trustee, or a public company which has applied or will be applying for the Authority’s approval under section 289(1) to act as an approved trustee, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Subdivision;

“transferor” means an approved trustee the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Subdivision.

### **Voluntary transfer of business**

**295E.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved trustee) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved trustee; and
- (c) the Court has approved the transfer.

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(2) Subsection (1) is without prejudice to the right of an approved trustee to transfer the whole or any part of its business under any law.

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

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

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

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Subdivision.

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

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

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

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

### **Approval of transfer**

**295F.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Subdivision.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 295E(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on the participants of their respective collective investment schemes a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one

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month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on the participants of their respective collective investment schemes affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

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

- (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
- (b) may make any application to the Court in relation to the transfer.

(4) The Court shall not approve the transfer if the Authority has not consented under section 295E(1)(a) to the transfer.

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

- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
- (b) refuse to approve the transfer.

(6) If the transferee does not have the Authority's approval under section 289(1) to act as an approved trustee, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee obtaining the Authority's approval under section 289(1) to act as an approved trustee.

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

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) the provisions to be made for persons who are affected by the transfer;
- (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.

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

- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to any property which is held by the transferor as trustee; and
- (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

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

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

(2) The Securities and Futures Act in force immediately before the date of commencement of this subsection is amended —

- (a) by inserting, immediately after paragraph (d) of section 46H(1), the following paragraph:

“(da) upon the Authority exercising any power under section 46ZIB(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the corporation, the Authority considers that it is in the public interest to revoke the trade repository licence or foreign trade repository licence, as the case may be;”;

- (b) by repealing section 46W;
- (c) by inserting, immediately before section 46ZJ in Division 4 of Part IIA, the following sections:



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**“Interpretation of sections 46ZIA to 46ZIF**

**46ZIA.** In this section and sections 46ZIB to 46ZIF, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to a licensed trade repository or licensed foreign trade repository, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the licensed trade repository or licensed foreign trade repository (as the case may be), or acting in an equivalent capacity in relation to the licensed trade repository or licensed foreign trade repository (as the case may be);

“relevant business” means any business of a licensed trade repository or licensed foreign trade repository —

(a) which the Authority has assumed control of under section 46ZIB; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 46ZIB;

“statutory adviser” means a statutory adviser appointed under section 46ZIB;

“statutory manager” means a statutory manager appointed under section 46ZIB.

**Action by Authority if licensed trade repository unable to meet obligations, etc.**

**46ZIB.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

(a) a licensed trade repository or licensed foreign trade repository informs the Authority that it is

or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

- (b) a licensed trade repository or licensed foreign trade repository becomes unable to meet its obligations, or is insolvent, or suspends payments;
  - (c) the Authority is of the opinion that a licensed trade repository or licensed foreign trade repository —
    - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 46A;
    - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition or restriction imposed on it under section 46E(3) or (4); or
  - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the licensed trade repository or licensed foreign trade repository (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in

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relation to its business as the Authority may consider necessary;

(b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the licensed trade repository or licensed foreign trade repository (as the case may be) on the proper management of such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine; or

(c) assume control of and manage such of the business of the licensed trade repository or licensed foreign trade repository (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

(3) In the case of a licensed foreign trade repository, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the licensed foreign trade repository under subsection (2) shall only be in relation to —

(a) the business or affairs of the licensed foreign trade repository carried on in, or managed in or from, Singapore; or

(b) the property of the licensed foreign trade repository located in Singapore, or reflected in the books of the licensed foreign trade repository in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of a licensed trade repository or licensed foreign trade repository, the Authority shall specify, in the terms and conditions of the appointment,

which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 46H(1)(*da*), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

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

(7) Any licensed trade repository or licensed foreign trade repository that fails to comply with a requirement

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imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

**Effect of assumption of control under section 46ZIB**

**46ZIC.**—(1) Upon assuming control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

(a) shall manage the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) in the name of and on behalf of the licensed trade repository or licensed foreign trade repository (as the case may be); and

(b) shall be deemed to be an agent of the licensed trade repository or licensed foreign trade repository (as the case may be).

(3) In managing the relevant business of a licensed trade repository or licensed foreign trade repository, the Authority or statutory manager —

(a) shall take into consideration the interests of the public or the section of the public referred to in section 46ZIB(1)(c)(i), and the need to protect investors; and

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

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be), which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the licensed trade repository or licensed foreign trade repository (as the case may be), for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository, except with the approval of the Authority,

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no person shall be appointed as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be).

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be) —

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

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

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of a licensed trade repository or licensed foreign trade repository in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the licensed trade repository or licensed foreign trade repository (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business

of the licensed trade repository or licensed foreign trade repository (as the case may be) —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(9) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trade repository or licensed foreign trade repository —

- (a) if there is any conflict or inconsistency between —
  - (i) a direction or decision given by the Authority or statutory manager (including a direction or decision to a person or body of persons referred to in sub-paragraph (ii)); and
  - (ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the licensed trade repository or licensed foreign trade repository (as the case may be),

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

- (b) no person shall exercise any voting or other right attached to any share in the licensed trade repository or licensed foreign trade repository (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager,



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and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to a licensed trade repository or licensed foreign trade repository, means the memorandum of association and articles of association of the licensed trade repository or licensed foreign trade repository (as the case may be).

### **Duration of control**

**46ZID.**—(1) The Authority shall cease to be in control of the relevant business of a licensed trade repository or licensed foreign trade repository when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of a licensed trade repository or licensed foreign trade repository on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository may be revoked by the Authority at any time —

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 46ZIB(1)(c)(i) or for the protection of investors; or
- (b) on any other ground,

and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be).

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

- (a) the Authority's assumption of control of the relevant business of a licensed trade repository or licensed foreign trade repository;
- (b) the cessation of the Authority's control of the relevant business of a licensed trade repository or licensed foreign trade repository;
- (c) the appointment of a statutory manager in relation to the relevant business of a licensed trade repository or licensed foreign trade repository; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a licensed trade repository or licensed foreign trade repository.

**Responsibilities of officers, member, etc., of licensed trade repository**

**46ZIE.**—(1) During the period when the Authority or statutory manager is in control of the relevant business

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of a licensed trade repository or licensed foreign trade repository —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the licensed trade repository or licensed foreign trade repository (as the case may be) which is comprised in, forms part of or relates to the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), and which is in the person's possession or control; and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trade repository or licensed foreign trade repository (as the case may be) shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), within such time and in such manner as may be

specified by the Authority or statutory manager.

(2) Any person who —

(a) without reasonable excuse, fails to comply with subsection (1)(b); or

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**46ZIF.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by a licensed trade repository or licensed foreign trade repository —

(a) to a statutory manager or statutory adviser appointed in relation to the licensed trade repository or licensed foreign trade repository (as the case may be), whether or not the appointment has been revoked; and

(b) where the Authority has assumed control of the relevant business of the licensed trade repository or licensed foreign trade repository (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The licensed trade repository or licensed foreign trade repository (as the case may be) shall reimburse the Authority any remuneration and expenses payable by the licensed trade repository or licensed foreign trade repository (as the case may be) to a statutory manager or statutory adviser.”;

(d) by inserting, immediately after section 46ZL, the following Division:

*“Division 5 — Voluntary Transfer of Business of Licensed Trade Repository or Licensed Foreign Trade Repository*

**Interpretation of this Division**

**46ZM.** In this Division, unless the context otherwise requires —

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means a licensed trade repository or licensed foreign trade repository, or a corporation which has applied or will be applying for a trade repository licence or foreign trade repository licence, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means a licensed trade repository or licensed foreign trade repository the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

### **Voluntary transfer of business**

**46ZN.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of a licensed trade repository or licensed foreign trade repository) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of a licensed trade repository or licensed foreign trade repository; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of a licensed trade repository or licensed foreign trade repository to transfer the whole or any part of its business under any law.

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor’s business (or any part thereof) under this Division.

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

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

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

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

**Approval of transfer**

**46ZO.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 46ZN(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on



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their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

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

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

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

(4) The Court shall not approve the transfer if the Authority has not consented under section 46ZN(1)(a) to the transfer.

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

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

(b) refuse to approve the transfer.

(6) If the transferee is not granted a trade repository licence or foreign trade repository licence by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being granted a trade repository licence or foreign trade repository licence by the Authority.

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

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

- (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
  - (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) the provisions to be made for persons who are affected by the transfer;
  - (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.
- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.
- (9) Subject to subsection (10), where an order made under subsection (7) provides for the transfer to the transferee of the whole or any part of the transferor's business, then by virtue of the order the business (or part thereof) of the transferor specified in the order shall be transferred to and vest in the transferee, free in the case of any particular property (if the order so directs) from

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any charge which by virtue of the transfer is to cease to have effect.

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

- (e) by inserting, immediately after paragraph (d) of section 56(1), the following paragraph:

“(da) upon the Authority exercising any power under section 81SAA(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the corporation, the Authority considers that it is in the public interest to revoke the approval or recognition, as the case may be;”;

(f) by repealing section 81SA and substituting the following sections:

**“Interpretation of sections 81SA to 81SAE**

**81SA.** In this section and sections 81SAA to 81SAE, unless the context otherwise requires —

“business” includes affairs and property;

“office holder”, in relation to an approved clearing house or a recognised clearing house, means any person acting as the liquidator, the provisional liquidator, the receiver or the receiver and manager of the approved clearing house or recognised clearing house (as the case may be), or acting in an equivalent capacity in relation to the approved clearing house or recognised clearing house (as the case may be);

“relevant business” means any business of an approved clearing house or a recognised clearing house —

(a) which the Authority has assumed control of under section 81SAA; or

(b) in relation to which a statutory adviser or a statutory manager has been appointed under section 81SAA;

“statutory adviser” means a statutory adviser appointed under section 81SAA;

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“statutory manager” means a statutory manager appointed under section 81SAA.

**Action by Authority if approved clearing house or recognised clearing house unable to meet obligations, etc.**

**81SAA.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) an approved clearing house or a recognised clearing house informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) an approved clearing house or a recognised clearing house becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) the Authority is of the opinion that an approved clearing house or a recognised clearing house —
  - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or the protection of investors, or to the objectives specified in section 47;
  - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
  - (iii) has contravened any of the provisions of this Act; or

- (iv) has failed to comply with any condition or restriction imposed on it under section 51(4) or (5); or
  - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
- (a) require the approved clearing house or recognised clearing house (as the case may be) immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the approved clearing house or recognised clearing house (as the case may be) on the proper management of such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine; or
  - (c) assume control of and manage such of the business of the approved clearing house or recognised clearing house (as the case may be) as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.
- (3) In the case of a recognised clearing house which is incorporated outside Singapore, any appointment of a statutory adviser or statutory manager or any assumption of control by the Authority of any business of the recognised clearing house under subsection (2) shall only be in relation to —

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- (a) the business or affairs of the recognised clearing house carried on in, or managed in or from, Singapore; or
  - (b) the property of the recognised clearing house located in Singapore, or reflected in the books of the recognised clearing house in Singapore, as the case may be, in relation to its operations in Singapore.

(4) Where the Authority appoints 2 or more persons as the statutory manager of an approved clearing house or a recognised clearing house, the Authority shall specify, in the terms and conditions of the appointment, which of the duties, functions and powers of the statutory manager —

- (a) may be discharged or exercised by such persons jointly and severally;
- (b) shall be discharged or exercised by such persons jointly; and
- (c) shall be discharged or exercised by a specified person or such persons.

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 56(1)(*da*), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

(6) No liability shall be incurred by a statutory manager or a statutory adviser for anything done

(including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

(7) Any approved clearing house or recognised clearing house that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

### **Effect of assumption of control under section 81SAA**

**81SAB.**—(1) Upon assuming control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

- (a) shall manage the relevant business of the approved clearing house or recognised clearing house (as the case may be) in the name of and on behalf of the approved clearing house or recognised clearing house (as the case may be); and



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(b) shall be deemed to be an agent of the approved clearing house or recognised clearing house (as the case may be).

(3) In managing the relevant business of an approved clearing house or a recognised clearing house, the Authority or statutory manager —

(a) shall take into consideration the interests of the public or the section of the public referred to in section 81SAA(1)(c)(i), and the need to protect investors; and

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

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of an approved clearing house or a recognised clearing house by the Authority or statutory manager, any appointment of a person as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be), which was in force

immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the approved clearing house or recognised clearing house (as the case may be), for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house, except with the approval of the Authority, no person shall be appointed as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be).

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive officer or a director of an approved clearing house or a recognised clearing house is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

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

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

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive officer or a director of an approved clearing house or a recognised clearing house in contravention of subsection (5) acts or purports to act as the chief executive officer or a director of the approved clearing house or recognised clearing house (as the case may be) during the period when the Authority or statutory manager is in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be) —

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

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

(9) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

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

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

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office holder, or the board of directors, of the approved clearing house or recognised clearing house (as the case may be),

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

- (b) no person shall exercise any voting or other right attached to any share in the approved clearing house or recognised clearing house (as the case may be) in any manner that may defeat or interfere with any duty, function or power of the Authority or statutory manager, and any such act or purported act shall be invalid and of no effect.

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to an approved clearing house or a recognised clearing house, means the memorandum of association and articles of association of the approved clearing house or recognised clearing house (as the case may be).

### **Duration of control**

**81SAC.**—(1) The Authority shall cease to be in control of the relevant business of an approved clearing house or a recognised clearing house when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in

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section 81SAA(1)(c)(i) or for the protection of investors.

(2) A statutory manager shall be deemed to have assumed control of the relevant business of an approved clearing house or a recognised clearing house on the date of his appointment as a statutory manager.

(3) The appointment of a statutory manager in relation to the relevant business of an approved clearing house or a recognised clearing house may be revoked by the Authority at any time —

(a) if the Authority is satisfied that —

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

(ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 81SAA(1)(c)(i) or for the protection of investors; or

(b) on any other ground,

and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the approved clearing house or recognised clearing house (as the case may be).

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

(a) the Authority's assumption of control of the relevant business of an approved clearing house or a recognised clearing house;

(b) the cessation of the Authority's control of the relevant business of an approved clearing house or a recognised clearing house;

(c) the appointment of a statutory manager in relation to the relevant business of an approved

clearing house or a recognised clearing house;  
and

- (d) the revocation of a statutory manager's appointment in relation to the relevant business of an approved clearing house or a recognised clearing house.

**Responsibilities of officers, member, etc., of approved clearing house or recognised clearing house**

**81SAD.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of an approved clearing house or a recognised clearing house —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the approved clearing house or recognised clearing house (as the case may be) to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the approved clearing house or recognised clearing house (as the case may be) which is comprised in, forms part of or relates to the relevant business of the approved clearing house or recognised clearing house (as the case may be), and which is in the person's possession or control;  
and
- (b) any person who has ceased to be or who is still any chief executive officer, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the

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approved clearing house or recognised clearing house (as the case may be) shall give to the Authority or statutory manager such information as the Authority or statutory manager may require for the discharge of the Authority's or statutory manager's duties or functions, or the exercise of the Authority's or statutory manager's powers, in relation to the approved clearing house or recognised clearing house (as the case may be), within such time and in such manner as may be specified by the Authority or statutory manager.

(2) Any person who —

(a) without reasonable excuse, fails to comply with subsection (1)(b); or

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**81SAE.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by an approved clearing house or a recognised clearing house —

(a) to a statutory manager or statutory adviser appointed in relation to the approved clearing house or recognised clearing house (as the case

may be), whether or not the appointment has been revoked; and

- (b) where the Authority has assumed control of the relevant business of the approved clearing house or recognised clearing house (as the case may be), to the Authority and any person appointed by the Authority under section 320 in relation to the Authority’s assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.

(2) The approved clearing house or recognised clearing house (as the case may be) shall reimburse the Authority any remuneration and expenses payable by the approved clearing house or recognised clearing house (as the case may be) to a statutory manager or statutory adviser.”; and

- (g) by inserting, immediately after section 81SB, the following Division:

*“Division 6 — Voluntary Transfer of Business of  
Approved Clearing House or Recognised Clearing  
House*

**Interpretation of this Division**

**81SC.** In this Division, unless the context otherwise requires —

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

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

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

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

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



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

“transferee” means an approved clearing house or a recognised clearing house, or a corporation which has applied or will be applying for approval or recognition to carry on in Singapore the usual business of an approved clearing house or a recognised clearing house, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Division;

“transferor” means an approved clearing house or a recognised clearing house the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Division.

### **Voluntary transfer of business**

**81SD.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not the usual business of an approved clearing house or a recognised clearing house) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the business of the transferor that is the usual business of an approved clearing house or a recognised clearing house; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of an approved clearing house or a recognised clearing house to transfer the whole or any part of its business under any law.

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

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

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

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under this Division.

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

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

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

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

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(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

### **Approval of transfer**

**81SE.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Division.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 81SD(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective participants a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;

- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
  - (f) unless the Court directs otherwise, the transferor and the transferee shall serve on their respective participants affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).
- (3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —
  - (a) shall have the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
  - (b) may make any application to the Court in relation to the transfer.
- (4) The Court shall not approve the transfer if the Authority has not consented under section 81SD(1)(a) to the transfer.
- (5) The Court may, after taking into consideration the views, if any, of the Authority on the transfer —
  - (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
  - (b) refuse to approve the transfer.
- (6) If the transferee is not approved as an approved clearing house or recognised as a recognised clearing house by the Authority, the Court may approve the

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transfer on terms that the transfer shall take effect only in the event of the transferee being approved as an approved clearing house or recognised as a recognised clearing house by the Authority.

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

- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
  - (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;
  - (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) the provisions to be made for persons who are affected by the transfer;
  - (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.
- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any

instrument under which any such right or liability may arise.

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

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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(13) A transferor or transferee which contravenes subsection (12), and every officer of the transferor or transferee (as the case may be) who fails to take all reasonable steps to secure compliance by the transferor

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

(3) The Securities and Futures Act in force immediately before the date of commencement of this subsection is amended —

- (a) by deleting the word “registered” in paragraph (e) of the definition of “specified person” in section 124 and substituting the word “licensed”; and
- (b) by deleting the word “registered” in paragraph (d) of the definition of “specified person” in section 129B and substituting the word “licensed”.

#### **Amendment of Trust Companies Act**

**10.** The Trust Companies Act (Cap. 336) is amended —

- (a) by deleting the words “section 130A” in the definition of “advocate and solicitor” in section 2 and substituting the words “section 2(1)”;
- (b) by inserting, immediately after the definition of “book” in section 2, the following definition:
  - “ “chief executive”, in relation to a licensed trust company, means any person, by whatever name described, who —
    - (a) is in the direct employment of, or acting for or by arrangement with, the licensed trust company; and
    - (b) is principally responsible for the management and conduct of the business of the licensed trust company;”;
- (c) by inserting, immediately after the definition of “director” in section 2, the following definition:

““executive officer”, in relation to a licensed trust company, means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the licensed trust company; and

(b) is concerned with or takes part in the management of the licensed trust company on a day-to-day basis;”;

(d) by inserting, immediately after paragraph (d) of section 10(2), the following paragraph:

“(da) upon the Authority exercising any power under section 21C(2) or the Minister exercising any power under Division 2, 3 or 4 of Part IVB of the Monetary Authority of Singapore Act (Cap. 186) in relation to the licensed trust company, the Authority considers that it is in the public interest to revoke or suspend the trust business licence;”;

(e) by inserting, immediately after section 21, the following Parts:

### “PART IIIA

#### CONTROL OVER LICENSED TRUST COMPANY

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

**21A.** In this Part, unless the context otherwise requires —

“business” includes affairs and property;

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



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“relevant business” means any business of a licensed trust company —

- (a) which the Authority has assumed control of under section 21C; or
- (b) in relation to which a statutory adviser or a statutory manager has been appointed under section 21C;

“statutory adviser” means a statutory adviser appointed under section 21C;

“statutory manager” means a statutory manager appointed under section 21C.

**Information of insolvency, etc.**

**21B.**—(1) Any licensed trust company which is or is likely to become insolvent, which is or is likely to become unable to meet its obligations, or which has suspended or is about to suspend payments, shall immediately inform the Authority of that fact.

(2) Any licensed trust company which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

**Action by Authority if licensed trust company unable to meet obligations, etc.**

**21C.**—(1) The Authority may exercise any one or more of the powers specified in subsection (2) as appears to it to be necessary, where —

- (a) a licensed trust company informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;

- (b) a licensed trust company becomes unable to meet its obligations, or is insolvent, or suspends payments;
  - (c) the Authority is of the opinion that a licensed trust company —
    - (i) is carrying on its business in a manner likely to be detrimental to the interests of the public or a section of the public or of the protected parties of the licensed trust company;
    - (ii) is or is likely to become insolvent, or is or is likely to become unable to meet its obligations, or is about to suspend payments;
    - (iii) has contravened any of the provisions of this Act; or
    - (iv) has failed to comply with any condition or restriction attached to its trust business licence; or
  - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsections (1) and (3), the Authority may —
  - (a) require the licensed trust company immediately to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;
  - (b) appoint one or more persons as statutory adviser, on such terms and conditions as the Authority may specify, to advise the licensed trust company on the proper management of such of the business of the licensed trust company as the Authority may determine; or

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(c) assume control of and manage such of the business of the licensed trust company as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms and conditions as the Authority may specify.

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

(a) the business or affairs of the licensed trust company carried on in, or managed in or from, Singapore; or

(b) the property of the licensed trust company located in Singapore, or reflected in the books of the licensed trust company in Singapore, as the case may be, in relation to its operations in Singapore.

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

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

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

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

(5) Where the Authority has exercised any power under subsection (2), it may, at any time and without prejudice to its power under section 10(2)(*da*), do one or more of the following:

- (a) vary or revoke any requirement of, any appointment made by or any action taken by the Authority in the exercise of such power, on such terms and conditions as it may specify;
- (b) further exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term or condition specified by the Authority under this section.

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

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

(7) Any licensed trust company that fails to comply with a requirement imposed by the Authority under subsection (2)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

### **Effect of assumption of control under section 21C**

**21D.**—(1) Upon assuming control of the relevant business of a licensed trust company, the Authority or statutory manager, as the case may be, shall take custody or control of the relevant business.

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

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licensed trust company, the Authority or statutory manager —

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

(3) In managing the relevant business of a licensed trust company, the Authority or statutory manager —

- (a) shall take into consideration the interests of the public or the section of the public referred to in section 21C(1)(c)(i), or of the protected parties of the licensed trust company; and
- (b) shall have all the duties, powers and functions of the members of the board of directors of the licensed trust company (collectively and individually) under this Act, the Companies Act (Cap. 50) and the constitution of the licensed trust company, including powers of delegation, in relation to the relevant business of the licensed trust company; but nothing in this paragraph shall require the Authority or statutory manager to call any meeting of the licensed trust company under the Companies Act or the constitution of the licensed trust company.

(4) Notwithstanding any written law or rule of law, upon the assumption of control of the relevant business of a licensed trust company by the Authority or statutory manager, any appointment of a person as the chief executive or a director of the licensed trust company, which was in force immediately before the assumption of control, shall be deemed to be revoked, unless the Authority gives its approval, by notice in writing to the person and the licensed trust company, for the person to remain in the appointment.

(5) Notwithstanding any written law or rule of law, during the period when the Authority or statutory manager is in control of the relevant business of a licensed trust company, except with the approval of the Authority, no person shall be appointed as the chief executive or a director of the licensed trust company.

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

(7) Notwithstanding any written law or rule of law, if any person, whose appointment as the chief executive or a director of a licensed trust company is revoked under subsection (4) or (6), acts or purports to act after the revocation as the chief executive or a director of the licensed trust company during the period when the Authority or statutory manager is in control of the relevant business of the licensed trust company —

- (a) the act or purported act of the person shall be invalid and of no effect; and
- (b) the person shall be guilty of an offence.

(8) Notwithstanding any written law or rule of law, if any person who is appointed as the chief executive or a director of a licensed trust company in contravention of subsection (5) acts or purports to act as the chief executive or a director of the licensed trust company during the period when the Authority or statutory manager is in control of the relevant business of the licensed trust company —

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

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

(9) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trust company —

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

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

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

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

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

(10) Any person who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(11) In this section, “constitution”, in relation to a licensed trust company, means the memorandum of association and articles of association of the licensed trust company.

### **Duration of control**

**21E.**—(1) The Authority shall cease to be in control of the relevant business of a licensed trust company when the Authority is satisfied that —

- (a) the reasons for the Authority’s assumption of control of the relevant business have ceased to exist; or
- (b) it is no longer necessary in the interests of the public or the section of the public referred to in section 21C(1)(c)(i) or for the protection of the protected parties of the licensed trust company.

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

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

- (a) if the Authority is satisfied that —
  - (i) the reasons for the appointment have ceased to exist; or
  - (ii) it is no longer necessary in the interests of the public or the section of the public referred to in section 21C(1)(c)(i) or for the protection of the protected parties of the licensed trust company; or
- (b) on any other ground,



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and upon such revocation, the statutory manager shall cease to be in control of the relevant business of the licensed trust company.

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

- (a) the Authority's assumption of control of the relevant business of a licensed trust company;
- (b) the cessation of the Authority's control of the relevant business of a licensed trust company;
- (c) the appointment of a statutory manager in relation to the relevant business of a licensed trust company; and
- (d) the revocation of a statutory manager's appointment in relation to the relevant business of a licensed trust company.

**Responsibilities of officers, member, etc., of licensed trust company**

**21F.**—(1) During the period when the Authority or statutory manager is in control of the relevant business of a licensed trust company —

- (a) the High Court may, on an application by the Authority or statutory manager, direct any person who has ceased to be or who is still any chief executive, director, member, executive officer, employee, agent, banker, auditor or office holder of, or trustee for, the licensed trust company to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the licensed trust company which is comprised in, forms part of or relates to the relevant business of the licensed trust

company, and which is in the person's possession or control; and

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

(2) Any person who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

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

**21G.**—(1) The Authority may at any time fix the remuneration and expenses to be paid by a licensed trust company —

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- (a) to a statutory manager or statutory adviser appointed in relation to the licensed trust company, whether or not the appointment has been revoked; and
- (b) where the Authority has assumed control of the relevant business of the licensed trust company, to the Authority and any person appointed by the Authority under section 73 in relation to the Authority's assumption of control of the relevant business, whether or not the Authority has ceased to be in control of the relevant business.
- (2) The licensed trust company shall reimburse the Authority any remuneration and expenses payable by the licensed trust company to a statutory manager or statutory adviser.

## PART IIIB

### VOLUNTARY TRANSFER OF BUSINESS

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

**21H.** In this Part, unless the context otherwise requires —

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

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

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

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

“Registrar of Companies” means the Registrar of Companies appointed under the Companies Act and includes any Deputy or Assistant Registrar of Companies appointed under that Act;

“transferee” means a licensed trust company, or a corporation which has applied or will be applying for a trust business licence, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under this Part;

“transferor” means a licensed trust company the whole or any part of the business of which is, is to be, or is proposed to be transferred under this Part.

### **Voluntary transfer of business**

**21I.**—(1) A transferor may transfer the whole or any part of its business (including any business that is not trust business) to a transferee, if —

- (a) the Authority has consented to the transfer;
- (b) the transfer involves the whole or any part of the trust business of the transferor; and
- (c) the Court has approved the transfer.

(2) Subsection (1) is without prejudice to the right of a licensed trust company to transfer the whole or any part of its business under any law.

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

- (a) the transferee is a fit and proper person; and
- (b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor’s business (or any part thereof) under this Part.

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

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

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

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(9) Where a person claims, before furnishing the Authority with any information or document that he is required to furnish under subsection (7), that the information or document might tend to incriminate him, the information or document shall not be admissible in evidence against him in criminal proceedings other than proceedings under subsection (8).

**Approval of transfer**

**21J.**—(1) A transferor shall apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under this Part.

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

- (a) the transferor shall lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;
- (b) the transferor shall obtain the consent of the Authority under section 21I(1)(a);
- (c) the transferor and the transferee shall, if they intend to serve on their respective protected parties a summary of the transfer, obtain the Authority's approval of the summary;
- (d) the transferor shall, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
- (e) the transferor and the transferee shall keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
- (f) unless the Court directs otherwise, the transferor and the transferee shall serve on

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their respective protected parties affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).

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

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

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

(4) The Court shall not approve the transfer if the Authority has not consented under section 21I(1)(a) to the transfer.

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

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

(b) refuse to approve the transfer.

(6) If the transferee is not granted a trust business licence by the Authority, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being granted a trust business licence by the Authority.

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

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

(b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest

in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

- (c) the continuation by (or against) the transferee of any legal proceedings pending by (or against) the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) the provisions to be made for persons who are affected by the transfer;
  - (f) such incidental, consequential and supplementary matters as are, in the opinion of the Court, necessary to secure that the transfer is fully effective.
- (8) Any order under subsection (7) may —
- (a) provide for the transfer of any business, whether or not the transferor otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to any property which is held by the transferor as trustee; and
  - (c) make provision as to any future or contingent right or liability of the transferor, including provision as to the construction of any instrument under which any such right or liability may arise.

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



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

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

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

- (a) a copy of the order with the Registrar of Companies and with the Authority; and
- (b) where the order relates to land in Singapore, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

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

- (f) by inserting, immediately after the words “one half of” in section 69(1), the words “the amount of”;
- (g) by inserting, immediately after subsection (1) of section 69, the following subsection:

“(1A) The Authority may, in its discretion, compound any offence under this Act (including an offence under a provision which has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence at the time it was committed.”;

(h) by deleting the words “such sum of money” in section 69(2) and substituting the words “the sum of money referred to in subsection (1) or (1A)”;

(i) by deleting subsection (4) of section 69 and substituting the following subsection:

“(4) All sums collected by the Authority under subsection (1) or (1A) shall be paid into the Consolidated Fund.”;

(j) by deleting subsection (8) of section 74 and substituting the following subsection:

“(8) It shall not be necessary to publish any code, guideline, policy statement, practice note or no-action letter issued under this section in the *Gazette*.”; and

(k) by deleting subsection (4) of section 76 and substituting the following subsection:

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

### **Savings and transitional provision**

**11.** For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such provisions of a savings or transitional nature consequent on the

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enactment of that provision as he may consider necessary or expedient.

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