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Monetary Authority of Singapore (Amendment) Bill

Bill No. 25/2017.

Read the first time on 8 May 2017.

A BILL

intituled

An Act to amend the Monetary Authority of Singapore Act (Chapter 186 of the 1999 Revised Edition) and to make consequential and related amendments to certain other Acts.

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 is the Monetary Authority of Singapore (Amendment) Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 3

2. Section 3 of the Monetary Authority of Singapore Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after subsection (3), the following subsections:

10 “(3A) The managing director may, subject to such terms and conditions as the managing director thinks fit, appoint an officer of the Authority who holds the appointment of deputy managing director or its equivalent, to exercise the power and perform the
15 duty of the managing director under subsection (3), and that officer must exercise that power and perform that duty under the direction and control of the managing director.

(3B) To avoid doubt, the managing director —

20 (a) remains responsible for the exercise of the power, and the performance of the duty, by the deputy managing director (or equivalent) delegated under subsection (3A); and

25 (b) may continue to exercise the power and perform the duty, despite the delegation under subsection (3A).”; and

(b) by inserting, immediately after the word “signing” in subsection (4), the words “by the managing director or officer appointed by the managing director under
30 subsection (3A)”.

Amendment of section 4

3. Section 4 of the principal Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) The Authority, when giving effect to its objects under subsection (1), is to act on the basis that the object in paragraph (b) prevails over the object in paragraph (d) of that subsection.”.

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Amendment of section 5

4. Section 5 of the principal Act is amended by deleting subsections (2) and (3) and substituting the following subsections:

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“(2) The paid-up capital may be revised from time to time by such amount as the Government and the board may agree.

(3) For the purpose of subsection (2), the board must consider the Authority’s capital and reserves necessary for the Authority to carry out its principal objects and functions.

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(4) Any reduction of or increase in the paid-up capital may be effected by way of transfers to or from the General Reserve Fund, or by such other means as the Government and the board may from time to time agree.”.

Amendment of section 6

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5. Section 6 of the principal Act is amended by deleting subsection (4) and substituting the following subsection:

“(4) Where the General Reserve Fund is in deficit at the end of a financial year —

(a) if the Authority’s net profit for that financial year is larger than the deficit, an amount of not less than the net profit necessary to offset the deficit, as determined by the Authority, must be credited to the General Reserve Fund; and

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(b) if the Authority’s net profit for that financial year is smaller than or equal to the deficit, the whole of the net profit must be credited to the General Reserve Fund.”.

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New section 6A

6. The principal Act is amended by inserting, immediately after section 6, the following section:

“Transfer of Currency Fund to Authority’s accounts

5 **6A.**—(1) For the purposes of section 21 of the Currency Act
 (Cap. 69), the Authority must, starting from the date of
 commencement of section 6 of the Monetary Authority of
 Singapore (Amendment) Act 2017, commence transferring all of
 10 the assets (including external assets) and liabilities of the
 Currency Fund established under section 21(1) of the
 Currency Act as in force immediately before that date, to such
 of the accounts holding the Authority’s assets and liabilities as
 the Authority may determine.

15 (2) Upon the completion of the transfer mentioned in
 subsection (1), the Authority must publish a notification in the
Gazette of the completion and the date of the completion.”.

New section 22A

7. The principal Act is amended by inserting, immediately after section 22, the following section:

“Indemnity for Authority’s officers against cost of action to which section 22 applies

20 **22A.**—(1) The Authority must indemnify a person mentioned
 in subsection (2) against all costs and expenses reasonably
 incurred by the person in connection with any action, suit or
 25 other legal proceedings to which the person is a party by reason
 of anything done (including any statement made) or omitted to be
 done in good faith in the course of or in connection with any of
 the matters mentioned in section 22(i), (ii) or (iii).

30 (2) Subsection (1) applies to a person who was a person
 mentioned in section 22(b), (d) or (e) at the time of the alleged act
 or omission giving rise to the action, suit or proceeding.”.

Amendment of section 23

8. Section 23 of the principal Act is amended by inserting, immediately after subsection (7), the following subsection:

“(7A) For the purposes of Part IVB, the Authority may (in addition to its other powers) —

- (a) grant a loan to a trustee of a resolution fund within the meaning of Division 5B of that Part; and
- (b) do all such things as are necessary or expedient to be done for the orderly resolution of a financial institution.”.

Renumbering of provisions of Act

9. The principal Act is amended by renumbering each section of the principal Act in the first column of the following table with the section number set out opposite in the second column of the table:

<i>Section number</i>	<i>New section number</i>
30AA	31
30AAA	32
30AAB	33
30AAC	34
30AAD	35
30AAE	36
30AAF	37
30AAG	38
30AAH	39
30AAI	40
30AAJ	41
30AAK	49
30AAL	50

	<i>Section number</i>	<i>New section number</i>
	30AAM	51
	30AAN	52
	30AAO	53
5	30AAP	54
	30AAQ	55
	30AAR	56
	30AAS	57
	30AAT	58
10	30AAU	59
	30AAV	65
	30AAW	66
	30AAX	67
	30AAZ	68
15	30AAZA	69
	30AAZB	70
	30AAZC	86
	30AAZD	87
	30AAZE	88
20	30AAZF	89
	30AAZG	90
	30AAZH	91
	30AAZI	92
	30AAZJ	121
25	30AAZJ	122

<i>Section number</i>	<i>New section number</i>
30AAZK	123
30AAZL	124
30AAZM	125
30AAZN	126
30A	127
30B	128
30C	129
30D	130
30E	133
30F	134
30G	135
30H	136
30I	137
30J	138
30K	139
30L	140
30M	141
30N	142
30O	143
30P	144
30Q	145
30R	146
30S	147
30T	148

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	<i>Section number</i>	<i>New section number</i>
	30U	149
	30V	150
	30W	151
5	30X	152
	30Y	153
	30Z	154
	30ZA	155
	30ZB	156
10	30ZC	157
	30ZD	158
	30ZE	159
	30ZF	160
	30ZG	161
15	30ZH	162
	30ZI	163
	31	164
	32	165
	32A	166
20	33	167
	34	168
	35	169
	36	170
	37	171
25	38	172

<i>Section number</i>	<i>New section number</i>
39	173
39A	174
41	175
41A	176
41B	177
41C	178
42	179
43	180

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New Division heading of Part IVA

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10. Part IVA of the principal Act is amended by inserting, immediately above section 31, the following Division heading:

“Division 1 — General provisions”.

Amendment of section 31

11. Section 31(2) of the principal Act is amended by inserting, immediately after the definition of “executive officer”, the following definition:

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“ “pertinent financial institution” has the same meaning as in section 49;”.

New Division 2 of Part IVA

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12. The principal Act is amended by inserting, immediately after section 41, the following Division:

“Division 2 — Recovery and resolution planning

Notice concerning recovery and resolution plans

42.—(1) The Authority may issue a notice to pertinent financial institutions requiring each pertinent financial institution to which a direction is issued under section 43(1) —

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- 5 (a) to prepare, in the form and manner and containing the information specified in the notice, a plan to restore the financial strength and viability of the financial institution in the event it suffers financial pressure or stress (called in this section and section 43 a recovery plan);
- (b) to review and keep up-to-date its recovery plan, at a frequency specified in the direction;
- 10 (c) to adopt various procedures in preparing its recovery plan, including the oversight of the process and endorsement of the plan;
- (d) to notify the Authority of the occurrence of any event that may necessitate the implementation of its recovery plan;
- 15 (e) to maintain information to enable it to prepare, review and keep up-to-date its recovery plan, and to comply with any direction of the Authority under section 44;
- (f) to have in place a management information system that is necessary for the maintenance and production of the information mentioned in paragraph (e);
- 20 (g) to ensure that its outsourcing arrangements for its critical functions and critical shared services will continue in the event it comes under resolution; and
- (h) to take such other action as in the Authority's opinion will facilitate compliance with any notice or direction issued by the Authority under this Division, or the effective implementation of the recovery plan of the pertinent financial institution or a plan of the Authority under section 44.

30 (2) A notice under this section may make different provisions for different classes of pertinent financial institutions.

Direction for recovery plan and its implementation

43.—(1) The Authority may issue a direction to a pertinent financial institution —

- (a) requiring it to comply with the requirements of a notice issued under section 42; and 5
- (b) specifying the dates for the submission of the recovery plan and the submission of any other document, and the frequency for the action mentioned in section 42(1)(b).

(2) The Authority may issue a further direction to a pertinent financial institution to which a direction was issued under subsection (1) — 10

- (a) to make such amendment to the institution's recovery plan as the Authority may reasonably require, including an amendment to address any deficiency in the plan; or 15
- (b) to remove any impediment to the implementation of the recovery plan.

(3) Without affecting the generality of subsection (2)(b), the direction in that subsection may require the pertinent financial institution to make changes to its practices, organisation and structure (including its operational, legal and financial structures). 20

(4) The Authority may issue a further direction to a pertinent financial institution to which a direction was issued under subsection (1) — 25

- (a) to implement a specified part of the institution's recovery plan; and
- (b) to implement such other arrangements or measures as may be necessary to restore the institution's financial strength and viability. 30

Resolution planning

5 **44.** The Authority may prepare plans for the orderly resolution of a pertinent financial institution, and may for that purpose issue a direction to the pertinent financial institution requiring it to furnish, within the time and in the form and manner set out in the direction, any information or document that the Authority may reasonably require for that purpose.

Power to direct removal of impediments

10 **45.—(1)** This section applies if the Authority is of the opinion that an impediment exists to the orderly resolution of a pertinent financial institution in accordance with a plan of the Authority under section 44.

15 (2) The Authority may issue a direction to the pertinent financial institution, requiring the financial institution to take, within the time specified in the direction, measures specified in the direction for the purpose of addressing or removing the impediment.

20 (3) Without affecting the generality of subsection (2), the direction may require the financial institution to make changes to its practices, organisation and structure (including its operational, legal and financial structures).

Appeal against direction to remove impediment

25 **46.—(1)** A pertinent financial institution that is aggrieved by a direction to it under section 43(2)(b) or 45(2) may, within 30 days after receiving the direction, appeal to the Minister whose decision is final.

30 (2) An appeal may only be made if the direction requires the pertinent financial institution to make a change that will significantly affect its practices, organisation or operations.

(3) For the purposes of subsection (2), a change will significantly affect the practices, organisation or operations of a pertinent financial institution if it —

(a) changes any part of its legal or financial structure; or

(b) satisfies such other criterion as may be prescribed by regulations under subsection (7).

(4) If an appeal is lodged, the pertinent financial institution need not comply with the direction until the appeal is determined. 5

(5) The Minister may determine an appeal by confirming, varying or reversing the direction.

(6) If the Minister is satisfied that an appeal is made without reasonable ground, the Minister may, without calling for a reply from the Authority, but after giving the pertinent financial institution an opportunity to be heard, determine the appeal by confirming the direction. 10

(7) The Minister may make regulations to prescribe the criterion for the purposes of subsection (3)(b).

Provisions concerning directions and notices under this Division 15

47.—(1) A direction or notice under this Division must be in writing.

(2) It is not necessary to publish a direction or notice under this Division in the *Gazette*. 20

Offences under this Division

48.—(1) A pertinent financial institution that does not comply with a direction or notice of the Authority under this Division 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 of a day during which the offence continues after conviction. 25

(2) A pertinent financial institution that, in purported compliance with a direction or notice under this Division, knowingly or recklessly furnishes to the Authority 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 \$250,000.” 30

Amendment of section 49

13. Section 49 of the principal Act is amended by inserting, immediately after the definition of “pertinent financial institution”, the following definitions:

5 “ “PPF Agency” means the company designated as the deposit insurance and policy owners’ protection fund agency under section 56 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);

10 “PPF Funds” means the Policy Owners’ Protection Life Fund and the Policy Owners’ Protection General Fund established under section 34 of the Deposit Insurance and Policy Owners’ Protection Schemes Act;”.

Amendment of section 50

14. Section 50 of the principal Act is amended —

15 (a) by deleting the words “and 4” and substituting the words “, 4 and 4A”; and

 (b) by deleting the words “and 4” in the section heading and substituting the words “, 4 and 4A”.

Amendment of section 53

20 15. Section 53 of the principal Act is amended by inserting, immediately after subsection (5), the following subsections:

25 “(6) A specified financial institution that contravenes an order under subsection (1) 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 of a day during which the offence continues after conviction.

 (7) It is not necessary to publish any order under subsection (1) in the *Gazette*.”.

Amendment of section 54

16. Section 54 of the principal Act is amended —

(a) by inserting, immediately after subsection (6), the following subsection:

“(6A) The specified financial institution or the liquidator, as the case may be, mentioned in subsection (4)(b) must comply with the conditions in subsection (6).”; and

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(b) by inserting, immediately after subsection (8), the following subsection:

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“(8A) Any liquidator who —

(a) without reasonable excuse, fails to comply with subsection (6A) or (8); or

(b) in purported compliance with subsection (8), 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 \$125,000 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 \$12,500 for every day or part of a day during which the offence continues after conviction.”.

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Amendment of section 56

17. Section 56 of the principal Act is amended —

(a) by inserting, immediately after the definition of “determination”, the following definition:

““guaranteed policy moneys” has the same meaning as in section 1A of the Insurance Act (Cap. 142);”; and

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(b) by deleting the definition of “transferee” and substituting the following definition:

““transferee” means any person 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;”.

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Amendment of section 57

18. Section 57 of the principal Act is amended —

(a) by inserting, immediately after the words “subsections (2)” in subsection (1), “, (2A)”;

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(b) by deleting the word “or” at the end of sub-paragraph (ii) of subsection (1)(c), and by inserting immediately thereafter the following sub-paragraph:

“(iia) in any case where the transferor is an insurer licensed under the Insurance Act (Cap. 142) —

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(A) the interests of the policy owners of the transferor given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;

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(B) if the transferee is an insurer licensed under the Insurance Act, the interests of the policy owners of the transferee given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;

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(C) the stability of the financial system in Singapore;

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- (D) whether the PPF Agency has to make a payout from any of the PPF Funds to the transferee and the amount of such payout, if any; and 5
- (E) any other matter that the Authority considers relevant; or”;
- (c) by deleting the word “and” at the end of subsection (1)(c);
- (d) by deleting the full-stop at the end of paragraph (d) of subsection (1) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph: 10
- “(e) where the transferee is to carry on the whole or part of the significant business of the transferor, the transferee is, or will be applying to be, approved, authorised, designated, recognised, registered, licensed or otherwise regulated, under this Act or any of the written laws set out in the Schedule, to carry on the significant business of the transferor.”; 15 20
- (e) by inserting, immediately after the word “depositors” in subsection (2), the words “; policy owners”;
- (f) by inserting, immediately after subsection (2), the following subsection: 25
- “(2A) Where the transferor is an insurer licensed under the Insurance Act, any determination made by the Authority for the purpose of subsection (1) may include a determination as to whether guaranteed policy moneys in relation to any policy should be adjusted upon the proposed transfer so as to achieve an orderly resolution of the transferor.”; 30
- (g) by deleting the word “and” at the end of subsection (3)(a)(i);

(h) by inserting, immediately after sub-paragraph (ii) of subsection (3)(a), the following sub-paragraph:

“(iii) where the transferor is an insurer licensed under the Insurance Act, whether guaranteed policy moneys in relation to any policy should be adjusted upon the proposed transfer so as to achieve an orderly resolution of the transferor; and”;

(i) by deleting the words “who is not” in subsection (6) and substituting the words “for the purpose mentioned in subsection (1)(e), where the transferee is not”;

(j) by deleting paragraph (b) of subsection (12) and substituting the following paragraph:

“(b) approve the determination subject to any modification the Minister considers appropriate, if either the board of directors of the transferee (if it is a corporation) or the committee of management of the transferee (if it is a co-operative society) has agreed to the modification; or”;

(k) by inserting, immediately after the word “determine” in subsection (13), the words “to give effect to the determination”; and

(l) by inserting, immediately after subsection (13), the following subsections:

“(13A) The transferor or transferee, as the case may be, must comply with every condition mentioned in subsection (13) that applies to it and of which it has been given written notice by the Authority.

(13B) A person that contravenes subsection (13A) 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 of a day during which the offence continues after conviction.”.

Amendment of section 58

19. Section 58 of the principal Act is amended —

(a) by inserting, immediately after paragraph (f) of subsection (3), the following paragraph: 5

“(fa) where the transferor is an insurer licensed under the Insurance Act (Cap. 142), whether guaranteed policy moneys in relation to any policy should be adjusted upon the proposed transfer so as to achieve an orderly resolution of the transferor;”;

(b) by inserting, immediately after the words “Where the transferee” in subsection (7), the words “is to carry on the whole or part of the significant business of the transferor, and”;

(c) by deleting paragraph (b) of subsection (8) and substituting the following paragraph:

“(b) no deed, bond, agreement or other arrangement subsisting immediately before that date — 20

(i) which relates to the business (or any part of the business); and

(ii) to which the transferor is a party,

is considered terminated by reason only of the transfer, but each of these continues in full force and effect, and is enforceable by or against the transferee (as the case may be), as from that date, as if the transferee had been named in it or had been a party to it instead of the transferor; and”;

(d) by inserting, immediately after subsection (8), the following subsections:

“(8A) Subsection (8)(b) does not apply to a contract of employment.

(8B) To avoid doubt, this section does not affect the operation of section 18A of the Employment Act (Cap. 91).”; and

(e) by inserting, immediately after subsection (9), the following subsection:

“(9A) Where the transferor is an insurer licensed under the Insurance Act and guaranteed policy moneys under a policy have been adjusted under the certificate —

(a) the policy owner or claimant continue to have recourse against the transferor for the difference between the original guaranteed policy moneys and the adjusted guaranteed policy moneys; and

(b) any agreement or other arrangement mentioned in subsection (8)(b) has effect as if the guaranteed policy moneys have been so adjusted.”.

Amendment of section 59

20. Section 59(2) of the principal Act is amended by inserting, immediately after the word “void” in paragraph (d), the words “, except for (where the transferor is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who are related corporations of the transferor”.

New Division 2A of Part IVB

21. The principal Act is amended by inserting, immediately after section 59, the following Division:

*“Division 2A — Reverse transfer of business and
onward transfer of business*

Interpretation of this Division

60. In this Division —

“2nd transferee” means the person to which the whole or part of a transferor’s business that was transferred to a transferee by a certificate of transfer, is or is to be transferred from the transferee in accordance with an onward transfer certificate under section 64; 5

“business” includes affairs, property, right, obligation and liability; 10

“certificate of transfer” means a certificate of transfer issued under section 58;

“onward transfer” means the transfer by the transferee to the 2nd transferee, in accordance with an onward transfer certificate under section 64, of the whole or part of the business transferred to the transferee by a certificate of transfer; 15

“reverse transfer” means the transfer by the transferee to the transferor in accordance with a reverse transfer certificate under section 62, of the whole or part of the transferor’s business that was transferred to the transferee by a certificate of transfer; 20

“transferee” means the person to which the whole or part of a transferor’s business has been transferred by a certificate of transfer; 25

“transferor” means a pertinent financial institution the whole or part of the business of which has been transferred by a certificate of transfer.

Reverse transfer of business

61.—(1) Subject to this section, the Authority may, at any time after the transfer of any business under a certificate of transfer, make a determination that the whole or any part of the business 30

transferred to the transferee by the certificate be transferred back to the transferor.

(2) The Authority may make such determination if —

5 (a) the board of directors of the transferee (if it is a corporation), or the committee of management of the transferee (if it is a co-operative society), consents to the reverse transfer; and

 (b) the conditions prescribed by regulations made under section 126 are met.

10 (3) The Authority must submit every determination under subsection (1) to the Minister for approval.

(4) The Minister may —

 (a) approve a determination under subsection (1) without modification;

15 (b) approve a determination under subsection (1) subject to any modification the Minister considers appropriate, if the board of directors of the transferee (if it is a corporation), or the committee of management of the transferee (if it is a co-operative society), agrees to the modification; or

20 (c) refuse to approve the determination.

 (5) An approval under subsection (4) is subject to such conditions as the Minister may determine to be necessary to give effect to the determination, and the Minister may add to, vary or revoke any such condition.

 (6) The transferor or transferee, as the case may be, must comply with every condition mentioned in subsection (5) that applies to it and of which it has been given written notice by the Authority.

30 (7) A person that contravenes subsection (6) 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 of a day during which the offence continues after conviction.

(8) A determination under subsection (1) or an approval under subsection (4) of the determination does not prevent the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the transferor.

Reverse transfer certificate

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62.—(1) If the Minister approves a determination under section 61, the Minister must, as soon as practicable, issue a certificate (called in this section the reverse transfer certificate), which is to come into effect on the date specified in the certificate.

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(2) The reverse transfer certificate must specify such information as may be prescribed by regulations made under section 126.

(3) The reverse transfer certificate may make provision for one or more of the following matters:

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- (a) the reverse transfer approved by the Minister;
- (b) the effective date of the reverse transfer, if different from the date on which the reverse transfer certificate comes into effect;
- (c) the consideration, if any, to be returned by the transferee to the transferor and the period within which the consideration is to be returned;
- (d) the rescission of provisions made for any of the matters mentioned in section 58(3)(c) and (d) in the certificate of transfer concerned;
- (e) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the reverse transfer is fully effective, including any condition mentioned in section 61(5).

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(4) The Minister may, at any time before the reverse transfer certificate comes into effect, add to, vary or revoke any matter specified in the reverse transfer certificate.

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(5) On or before the date on which the reverse transfer certificate comes into effect, the Authority must cause the reverse transfer certificate, and any addition, variation or revocation mentioned in subsection (4) to be —

- 5 (a) served on the transferor and the transferee; and
 (b) published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

10 (6) Subject to subsection (7), unless otherwise specified in the reverse transfer certificate, the effective date of the reverse transfer is the date on which the reverse transfer certificate comes into effect.

(7) Despite any written law or rule of law (including section 58 as it applies to the certificate of transfer in question), on the effective date of the reverse transfer —

- 15 (a) subject to subsection (10) —
 (i) the business that is the subject of the reverse transfer is transferred back to and vests in the transferor without other or further assurance, act or deed; and
20 (ii) the reverse transfer certificate has effect according to its tenor and is binding on any person affected by it;
 (b) no deed, bond, agreement or other arrangement mentioned in section 58(8)(b) which relates to the business that is the subject of the reverse transfer is considered terminated by reason only of the reverse transfer, but each of these continues in full force and effect and is once again enforceable by or against the transferor (as the case may be);
25 (c) no deed, bond, agreement or other arrangement —
 (i) that is entered into by the transferee after the transfer of business under the certificate of transfer under section 58, but before the effective date of the reverse transfer; and
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- (ii) which relates to the business that is the subject of the reverse transfer,

is considered terminated by reason only of the reverse transfer, but each of these continues in full force and effect, and is enforceable by or against the transferor (as the case may be), as if the transferor had been named in it or had been a party to it instead of the transferee; and

- (d) any proceedings or cause of action, by or against the transferee, pending or existing immediately before the effective date of the reverse transfer (including those mentioned in section 58(8)(c)), and relating to the business that is the subject of the reverse transfer may be continued and enforced by or against the transferor as from that date.

(8) Subsection (7)(b) and (c) does not apply to a contract of employment.

(9) To avoid doubt, this section does not affect the operation of section 18A of the Employment Act (Cap. 91).

(10) Section 58(9) to (17) applies in relation to a reverse transfer as it applies to a transfer of business under that section as if —

- (a) a reference to the business to be transferred is a reference to the business that is the subject of the reverse transfer;
- (b) a reference to the transferor is a reference to the transferee;
- (c) a reference to the transferee is a reference to the transferor; and
- (d) a reference to the certificate of transfer is a reference to the reverse transfer certificate.

Onward transfer of business

5 **63.**—(1) Subject to this section, the Authority may, at any time after the transfer of any business under a certificate of transfer, make a determination that the whole or any part of the business transferred to the transferee by the certificate be transferred to another transferee.

(2) The Authority may make such determination if —

10 (a) the board of directors of the 2nd transferee (if it is a corporation), or the committee of management of the 2nd transferee (if it is a co-operative society), consents to the transfer; and

(b) the transferee is an entity established or incorporated to do one or both of the following:

15 (i) temporarily hold and manage the assets and liabilities of the transferor;

(ii) do any other act for the orderly resolution of the transferor.

(3) The Authority must submit every determination under subsection (1) to the Minister for approval.

20 (4) The Minister may —

(a) approve a determination under subsection (1) without modification;

25 (b) approve a determination under subsection (1) subject to any modification the Minister considers appropriate, if the board of directors of the 2nd transferee (if it is a corporation), or the committee of management of the 2nd transferee (if it is a co-operative society), agrees to the modification; or

30 (c) refuse to approve the determination.

(5) An approval under subsection (4) is subject to such conditions as the Minister may determine to be necessary to

give effect to the determination, and the Minister may add to, vary or revoke any such condition.

(6) The transferee or 2nd transferee, as the case may be, must comply with every condition mentioned in subsection (5) that applies to it and of which it has been given written notice by the Authority. 5

(7) A person that contravenes subsection (6) 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 of a day during which the offence continues after conviction. 10

(8) A determination under subsection (1) or an approval under subsection (4) of the determination does not prevent the exercise of any power by the Authority or the Minister under this Act or the relevant Act applicable to the transferor. 15

Onward transfer certificate

64.—(1) If the Minister approves a determination under section 63, the Minister must, as soon as practicable, issue a certificate (called in this section the onward transfer certificate), which is to come into effect on the date specified in the certificate. 20

(2) The onward transfer certificate must specify such information as may be prescribed by regulations made under section 126.

(3) The onward transfer certificate may make provision for all or any of the following matters: 25

- (a) the onward transfer approved by the Minister;
- (b) the effective date of the onward transfer, if different from the date on which the onward transfer certificate comes into effect; 30
- (c) the consideration, if any, to be paid by the 2nd transferee to the transferee and the period within which the consideration is to be paid;

(d) such incidental, consequential and supplementary matters as are, in the Minister's opinion, necessary to secure that the onward transfer is fully effective, including any condition mentioned in section 63(5).

5 (4) The Minister may, at any time before the onward transfer certificate comes into effect, add to, vary or revoke any matter specified in the onward transfer certificate.

10 (5) On or before the date on which the onward transfer certificate comes into effect, the Authority must cause the onward transfer certificate and any addition, variation or revocation mentioned in subsection (4) —

(a) to be served on the transferee and the 2nd transferee; and

15 (b) to be published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

(6) Subject to subsection (7), unless otherwise specified in the onward transfer certificate, the effective date of the onward transfer is the date on which the onward transfer certificate comes into effect.

20 (7) Despite any written law or rule of law (including section 58 as it applies to the certificate of transfer in question), on the effective date of the onward transfer —

(a) subject to subsection (10) —

25 (i) the business that is the subject of the onward transfer is transferred to and vests in the 2nd transferee without other or further assurance, act or deed; and

30 (ii) the onward transfer certificate has effect according to its tenor and is binding on any person affected by it;

(b) no deed, bond, agreement or other arrangement (including any deed, bond, agreement or other arrangement mentioned in section 58(8)(b)) which relates to the business that is the subject of the onward

transfer, is considered terminated by reason only of the onward transfer, but each of these continues in full force and effect and is enforceable by or against the 2nd transferee (as the case may be) as if the 2nd transferee had been named in it or had been a party to it instead of the transferee; and

5

- (c) any proceedings or cause of action, by or against the transferee, pending or existing immediately before the effective date of the onward transfer (including those mentioned in section 58(8)(c)) and relating to the business that is the subject of the onward transfer may be continued and enforced by or against the 2nd transferee as from that date.

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(8) Subsection (7)(b) does not apply to a contract of employment.

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(9) To avoid doubt, this section does not affect the operation of section 18A of the Employment Act (Cap. 91).

(10) Section 58(9) to (17) applies in relation to an onward transfer as it applies to a transfer of business under this section as if —

20

- (a) a reference to the business to be transferred is a reference to the business that is the subject of the onward transfer;
- (b) a reference to the transferor is a reference to the transferee;
- (c) a reference to the transferee is a reference to the 2nd transferee; and
- (d) a reference to the certificate of transfer is a reference to the onward transfer certificate.”.

25

Amendment of section 65

22. Section 65 of the principal Act is amended —

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

“(2) This Division does not apply where the pertinent financial institution is a co-operative society.”; and

(b) by deleting the section heading and substituting the following section heading:

“General provisions”.

Amendment of section 66

23. Section 66 of the principal Act is amended —

(a) by deleting the word “or” at the end of sub-paragraph (ii) of subsection (1)(c), and by inserting immediately thereafter the following sub-paragraph:

“(iia) in any case where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142) —

(A) the interests of the policy owners of the insurer given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;

(B) if the transferee is an insurer licensed under the Insurance Act, the interests of the policy owners of the transferee given priority and the order of priority of each class of policy owners

under section 49FR of the Insurance Act;

(C) the stability of the financial system in Singapore;

(D) whether the PPF Agency has to make a payout from any of the PPF Funds to the transferee and the amount of such payout, if any; and 5

(E) any other matter that the Authority considers relevant; or”; 10

(b) by inserting, immediately after the words “the transferor” in subsection (12), the words “and of which it has been given written notice by the Authority”; 15

(c) by inserting, immediately after the words “the transferee” in subsection (13), the words “and of which it has been given written notice by the Authority”; and

(d) by inserting, immediately after subsection (13), the following subsection: 20

“(13A) A person that contravenes subsection (12) or (13) 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 of a day during which the offence continues after conviction.”. 25

Amendment of section 67

24. Section 67(13) of the principal Act is amended by inserting, immediately after the word “void” in paragraph (I), the words “, except for (where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who are related corporations of the pertinent financial institution”. 30

Amendment of section 69

25. Section 69 of the principal Act is amended —

(a) by deleting the word “or” at the end of sub-paragraph (ii) of subsection (2)(c), and by inserting immediately thereafter the following sub-paragraph:

“(iia) in any case where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142) —

(A) the interests of the policy owners of the insurer given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;

(B) if the subscriber is an insurer licensed under the Insurance Act, the interests of the policy owners of the subscriber given priority and the order of priority of each class of policy owners under section 49FR of the Insurance Act;

(C) the stability of the financial system in Singapore; and

(D) any other matter that the Authority considers relevant; or”;

(b) by deleting paragraph (a) of subsection (3) and substituting the following paragraph:

“(a) to perform an independent assessment of —

(i) in the case of a determination to be made under subsection (1), the value

of the assets of the pertinent financial institution and the extent to which the whole or any part of any share capital not paid up, or of any paid-up share capital, should be cancelled; and

5

(ii) in the case of a determination to be made under subsection (2), the value of the assets of the pertinent financial institution in which the shares are proposed to be issued and the consideration, if any, that should be paid by the subscriber; and”;

10

(c) by deleting the word “issued” in subsections (4) and (5)(a) and substituting in each case the words “cancelled or issued, as the case may be”;

15

(d) by deleting the word “issued” in subsection (7)(a) and substituting the words “cancelled or issued, as the case may be,”;

(e) by inserting, immediately after the word “it” in subsection (13), the words “and of which it has been given written notice by the Authority”;

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(f) by inserting, immediately after the words “the subscriber” in subsection (14), the words “and of which the subscriber has been given written notice by the Authority”; and

(g) by inserting, immediately after subsection (14), the following subsection:

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“(14A) A person that contravenes subsection (13) or (14) 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 of a day during which the offence continues after conviction.”.

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Amendment of section 70

26. Section 70 of the principal Act is amended —

(a) by deleting the word “transferee” in subsection (7) and substituting the word “subscriber”; and

5 (b) by inserting, immediately after the word “void” in subsection (13)(f), the words “, except for (where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who
10 are related corporations of the pertinent financial institution”.

New Divisions 4A and 4B of Part IVB

27. The principal Act is amended by inserting, immediately after section 70, the following Divisions:

15 *“Division 4A — Bail-in powers*

Interpretation of this Division

71.—(1) In this Division, unless the context otherwise requires —

20 “appointed date”, in relation to a bail-in certificate, means the date appointed for it to take effect, as specified in the notification under section 75(2);

“bail-in certificate” means a bail-in certificate issued under section 75(1);

25 “determination” means a determination made by the Authority under section 73(1);

30 “Division 4A FI” or “Division 4A financial institution”, means a pertinent financial institution that belongs to a class of pertinent financial institutions prescribed by regulations made under section 126 as Division 4A financial institutions;

“eligible instrument” means an instrument or a liability within a class of instruments or liabilities that are

prescribed by regulations made under section 126 as eligible instruments;

“pre-resolution creditor” means any person who was a creditor of a Division 4A FI immediately before the date of publication in the *Gazette* of the bail-in certificate; 5

“pre-resolution shareholder” means any person who, immediately before the date of publication in the *Gazette* of the bail-in certificate, held shares or other instrument conferring or representing a legal or beneficial ownership interest in a Division 4A FI; 10

“resulting FI” or “resulting financial institution”, in relation to a Division 4A FI, means an entity established or incorporated to do one or both of the following:

(a) temporarily hold and manage the assets and liabilities of the Division 4A FI; 15

(b) do any act for the orderly resolution of the Division 4A FI,

and which issued or must issue a share or other similar instrument representing a legal or beneficial ownership interest, pursuant to a provision of a bail-in certificate issued for that Division 4A FI; 20

“significant shareholder”, in relation to a Division 4A FI or resulting FI, means any person falling within a description of shareholders of the Division 4A FI or resulting FI prescribed by regulations made under section 126 as its significant shareholders; 25

“significant shareholder provision” means a provision of any written law that is prescribed by regulations made under section 126 as a significant shareholder provision.

(2) For the purposes of this Division, a reference to cancelling an eligible instrument includes cancelling it in whole or in part. 30

(3) For the purposes of this Division, a reference to modifying, converting, or changing the form of an eligible instrument is a reference to —

- (a) converting the whole or a part of the eligible instrument from one form or class to another;
- (b) replacing the whole or a part of the eligible instrument with another instrument or liability of a different form or class;
- (c) creating a new instrument (of any form or class) or liability in connection with the modification of the eligible instrument; or
- (d) converting the whole or a part of the eligible instrument into shares or other similar instrument issued by a resulting FI.

Exercise of powers under this Division

72.—(1) In exercising any power under this Division, the Authority must have regard to the desirability of giving each pre-resolution creditor or pre-resolution shareholder of a Division 4A FI the priority and treatment the pre-resolution creditor or pre-resolution shareholder would have enjoyed had the Division 4A FI been wound up.

(2) In determining whether to exercise its powers in accordance with the priority and treatment a pre-resolution creditor or pre-resolution shareholder of a Division 4A FI would have enjoyed had the Division 4A FI been wound up, the Authority may consider the following:

- (a) any widespread adverse impact that the Division 4A FI's failure would have on the financial system in Singapore or the economy of Singapore, or both;
- (b) the need to maximise value for the benefit of all creditors of the Division 4A FI as a whole;
- (c) the public interest;
- (d) any other matter that the Authority considers relevant.

(3) Any exercise of a power under this Division does not prevent the exercise of any other power of the Authority or the

Minister under this Act or the relevant Act applicable to the Division 4A FI or resulting FI.

Determination by Authority

73.—(1) Subject to subsection (2), the Authority may make one or more of the following determinations concerning one or more eligible instruments issued by a Division 4A FI, or to which it is a party or is subject: 5

(a) that the eligible instrument or instruments should be cancelled;

(b) that the eligible instrument or instruments should be modified, converted or changed in form; 10

(c) that the eligible instrument or instruments should have effect as if a right of modification, conversion or change of its or their form had been exercised.

(2) The Authority may make the determination in subsection (1) if — 15

(a) any ground exists for the Authority to exercise any power under the relevant provisions applicable to the Division 4A FI, whether or not the Authority has exercised the power; and 20

(b) the Authority is of the opinion that —

(i) the eligible instrument or instruments ought to be bailed in to facilitate the orderly resolution of the Division 4A FI; or

(ii) the Division 4A FI's available assets do not or are unlikely to support payment of its liabilities, as they become due and payable. 25

(3) The Authority may, before making a determination, appoint one or more persons —

(a) to perform an independent assessment of the extent to which the acts mentioned in subsection (1)(a), (b) and (c) should be carried out for all or any eligible instruments; and 30

(b) to furnish to the Authority a report on the assessment.

(4) The remuneration and expenses of any person appointed under subsection (3) are to be paid by the Division 4A FI.

5 (5) The Authority must serve a copy of any report furnished under subsection (3) on the Division 4A FI.

(6) Upon making a determination, the Authority must submit the determination to the Minister for approval.

Approval by Minister of determination

10 **74.**—(1) Before approving a determination of the Authority, the Minister must, unless the Minister decides that it is not practicable or desirable to do so —

(a) publish in the *Gazette* and in such newspaper or newspapers as the Minister determines, a notice specifying —

15 (i) the Minister's intention to approve the determination;

(ii) the date by which the holder of an eligible instrument that is the subject of the determination may make written representations to the Minister; and
20

(iii) such other particulars as the Minister considers appropriate; and

(b) give to the Division 4A FI written notice specifying —

25 (i) the Minister's intention to approve the determination;

(ii) the date by which the Division 4A FI may make written representations to the Minister; and

(iii) such other particulars as the Minister considers appropriate.

30 (2) In determining the period within which written representations have to be made under subsection (1), the Minister must take into account the need for the measures

proposed by the determination to be effected expeditiously in the interest of the stability of the financial system in Singapore.

(3) The Minister must consider all written representations for the purpose of deciding whether to approve the determination.

(4) The Minister may —

- (a) approve the determination without modification;
- (b) approve the determination subject to any modification the Minister considers appropriate; or
- (c) refuse to approve the determination.

(5) Any approval under subsection (4) may be subject to such conditions as the Minister may determine to be necessary to give effect to the determination, and the Minister may add to, vary or revoke any such condition.

(6) The Division 4A FI must comply with every condition mentioned in subsection (5) that applies to it and of which it has been given written notice by the Authority.

(7) A person that contravenes subsection (6) 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 of a day during which the offence continues after conviction.

Bail-in certificate

75.—(1) If the Minister approves a determination, the Minister must, as soon as practicable, issue a bail-in certificate.

(2) The bail-in certificate comes into effect on such date as the Minister appoints by notification in the *Gazette*.

(3) The bail-in certificate may make provision for one or more of the following:

- (a) the cancellation of one or more eligible instruments;
- (b) the modification, conversion, or change in form of one or more eligible instruments;

(c) that one or more eligible instruments is or are to have effect as if a right of modification, conversion or change of its or their form had been exercised under it or them;

5 (d) where provision under paragraph (c) is made, the details of the modification, conversion or change of the form of the eligible instrument or instruments;

10 (e) incidental, consequential and supplementary matters, including a requirement that the Division 4A FI or any other person must comply with a general or specific direction set out in the certificate.

(4) The bail-in certificate must include such information as may be prescribed by regulations made under section 126.

(5) The bail-in certificate may —

15 (a) make provision generally or only for specified purposes, cases or circumstances; and

(b) make different provision for different purposes, cases or circumstances.

20 (6) The Minister may, at any time before the appointed date, add to, vary or revoke any matter specified in the bail-in certificate.

(7) On or before the appointed date, the Authority must cause the bail-in certificate and every addition, variation or revocation mentioned in subsection (6) to be —

25 (a) served on the Division 4A FI; and

(b) published in the *Gazette* and in such newspaper or newspapers as the Minister may determine.

Effects of bail-in certificate

30 **76.**—(1) A provision in a bail-in certificate has effect despite any restriction arising by reason of contract, any written law or rule of law in force before the appointed date of the bail-in certificate, or the constitution of the Division 4A FI.

(2) Where a bail-in certificate provides for the cancellation of an eligible instrument —

(a) the cancellation takes effect without other or further act by the Division 4A FI; and

(b) the certificate has effect according to its tenor and is binding on any person affected by it. 5

(3) Where a bail-in certificate provides for the modification, conversion, or change in form of an eligible instrument —

(a) the modification, conversion, or change in form takes effect without other or further act by the Division 4A FI or resulting FI; and 10

(b) the certificate has effect according to its tenor and is binding on any person affected by it.

(4) Where a bail-in certificate provides that an eligible instrument is to have effect as if a specified right had been exercised under it — 15

(a) the eligible instrument has effect as if the specified right had been exercised under it without other or further act by the Division 4A FI or resulting FI; and

(b) the certificate has effect according to its tenor and is binding on any person affected by it. 20

(5) A reference in subsections (1) to (4) to anything taking or having effect is a reference to that thing taking or having effect from (and including) the appointed date.

(6) A person that fails to comply with any direction given to the person in the bail-in certificate shall be guilty of an offence and shall be liable on conviction — 25

(a) in the case of an individual, to a fine not exceeding \$125,000 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 \$12,500 for every day or part of a day during which the offence continues after conviction; or 30

(b) in any other case, 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 of a day during which the offence continues after conviction.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

(a) the person was not aware of the contravention of the direction; and

(b) the person complied with the direction within a reasonable time after becoming aware of the contravention.

(8) Except as provided in subsection (7), it is not a defence for the person mentioned in that subsection that the person did not intend to or did not knowingly contravene the direction.

Moratorium

77.—(1) Despite section 53(2) but subject to section 125, during the period beginning on the date of publication of the notice in section 74(1)(a) in the *Gazette* or, where the notice is not published in the *Gazette*, the date of publication of the bail-in certificate in the *Gazette* under section 75(7), and ending on the appointed date of the certificate —

(a) no resolution may be passed, and no order may be made, for the winding up of the Division 4A FI;

(b) no judicial management order under Part VIIIA of the Companies Act (Cap. 50) may be made in relation to the Division 4A FI;

(c) no civil proceedings may be commenced or continued against the Division 4A FI in respect of any business of the Division 4A FI;

(d) no execution, distress or other legal process may be commenced, levied or continued against any property of the Division 4A FI;

(e) no steps may be taken to enforce any security over any property of the Division 4A FI; and

(f) any sale, transfer, assignment or other disposition of any property of the Division 4A FI is void, except for (where the pertinent financial institution is an insurer licensed under the Insurance Act (Cap. 142)) any payment of claims to policy owners or claimants, other than policy owners who are related corporations of the Division 4A FI.

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(2) No shareholder of a Division 4A FI or resulting FI may exercise any voting power in the Division 4A FI or resulting FI during the period beginning on —

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(a) the date the notice in section 74(1)(a) is published in the *Gazette*; or

(b) where that notice is not published in the *Gazette*, the date the bail-in certificate is published in the *Gazette* under section 75(7),

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and ending on the date on which the Minister publishes a notice in the *Gazette* that this subsection ceases to apply.

(3) Subsection (2) has effect despite anything in the Companies Act or the constitution of the Division 4A FI or resulting FI.

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Significant shareholder by reason of bail-in certificate

78.—(1) Where any person becomes a significant shareholder of a Division 4A FI or resulting FI as a result of a provision of a bail-in certificate, that person —

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(a) is treated as having obtained the approval of the Minister or the Authority, as the case may be, under the significant shareholder provisions applicable to the Division 4A FI or the resulting FI, in respect of the person becoming a significant shareholder; and

30

(b) is not required to make a take-over offer or to acquire the shares of the other shareholders of the Division 4A FI or resulting FI (as the case may be), despite

anything in the Companies Act (Cap. 50) or the Take-over Code.

5 (2) The person mentioned in subsection (1) must comply with such conditions as the Minister may reasonably impose on the person, including but not limited to the following:

(a) a condition restricting the person's disposal or further acquisition of shares or voting power in the Division 4A FI or resulting FI, as the case may be;

10 (b) a condition restricting the person's exercise of voting power in the Division 4A FI or resulting FI, as the case may be.

(3) The Minister may, at any time, add to, vary or revoke any condition imposed under subsection (2).

15 (4) Any condition imposed under subsection (2) has effect despite anything in the Companies Act or the constitution of the Division 4A FI or resulting FI.

(5) Despite subsection (1)(a), the Minister may serve a written notice on the person mentioned in subsection (1) if —

(a) the Authority is not satisfied that —

20 (i) the person is, in accordance with the Guidelines on Fit and Proper Criteria, a fit and proper person to be a significant shareholder; and

25 (ii) having regard to the likely influence of the person on it, the Division 4A FI or resulting FI will or will continue to conduct its business prudently and comply with the provisions of this Act and the relevant Act applicable to it; or

(b) the Minister is not satisfied that —

30 (i) in a case where the Division 4A FI or resulting FI is a bank incorporated in Singapore, it is in the national interest for the person to remain a significant shareholder of the Division 4A FI or resulting FI, as the case may be; or

- (ii) in any other case, it is in the public interest for the person to remain a significant shareholder of the Division 4A FI or resulting FI, as the case may be.

(6) The written notice in subsection (5) is one that requires the person to take such steps within a reasonable time as are necessary to cease to be a significant shareholder of the Division 4A FI or resulting FI, as the case may be. 5

(7) Before serving the notice in subsection (5), the Minister must (unless the Minister decides that it is not practicable or desirable to do so) cause to be given to the person a written notice of the Minister's intention to serve the notice in that subsection, and specifying a date by which the person may make written representations. 10

(8) Upon receipt of any written representation, the Minister must consider it for the purpose of determining whether to serve the notice in subsection (5). 15

(9) Where the Minister has served a notice in subsection (5) on a person, then, until the person has disposed of or transferred the shares specified in the notice and in accordance with the notice — 20

(a) no voting rights are exercisable in respect of the specified shares except with the permission of the Minister, whether or not a notice under section 77(2) is published that the provision has ceased to apply; 25

(b) no shares of the Division 4A FI or resulting FI (as the case may be) may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares except with the permission of the Minister; and 30

(c) except in a liquidation of the Division 4A FI or resulting FI (as the case may be), the Division 4A FI or resulting FI may not make any payment (whether by way of dividends or otherwise) in respect of the

specified shares except with the permission of the Minister.

(10) Subsection (9) has effect despite anything in the Companies Act or the constitution of the Division 4A FI or resulting FI.

(11) In this section, “Guidelines on Fit and Proper Criteria” means the document by that title issued by the Authority and published on its website, as revised from time to time.

Directions for disposal

79.—(1) If the Minister is satisfied that any person has failed to comply with a condition imposed on the person in section 78(2), or if the Minister has served a notice on the person in section 78(5), the Minister may, by notice in writing —

- (a) direct the transfer or disposal of all or any of the shares in the Division 4A FI or resulting FI held by the person within such time and in such manner as the Minister considers appropriate;
- (b) restrict the transfer or disposal of those shares; or
- (c) make such other direction as the Minister considers appropriate.

(2) Any person to whom a notice is given under subsection (1) must comply with each direction specified in the notice.

Offence

80. A person that fails to comply with a condition imposed on the person in section 78(2), or a notice served on the person in section 78(5) or 79(1), shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or

- (b) in any other case, 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 of a day during which the offence continues after conviction.

5

Restriction on eligible instruments

81.—(1) To ensure the effective operation of the provisions of this Division on an eligible instrument, the Authority may make regulations under section 126 to impose a requirement on a Division 4A FI to ensure that the contract governing the eligible instrument contains a provision to the effect that the parties to the contract agree for the eligible instrument to be the subject of a bail-in certificate.

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(2) The regulations may —

- (a) specify the eligible instruments or class of eligible instruments, and Division 4A FI or class of Division 4A FIs, to which the requirement applies;
- (b) require a Division 4A FI bound by the requirement to provide a legal opinion as to the enforceability of the provision required to be included in the contract in a specified jurisdiction; and
- (c) provide for incidental, consequential or transitional matters.

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Division 4B — Termination rights

Interpretation of this Division

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82. In this Division, unless the context otherwise requires —

“approved clearing house” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“basic substantive obligation”, in relation to a contract, means an obligation provided by the contract for payment, delivery or the provision of collateral;

30

“business day” has the same meaning as in section 2(1) of the Banking Act (Cap. 19);

5 “designated payment system” means a payment system within the meaning of the Payment Systems (Oversight) Act (Cap. 222A) that is designated under section 7 of that Act;

“foreign resolution” means any action by a foreign resolution authority of a foreign country or territory to do either or both of the following:

10 (a) to maintain financial stability;

(b) to deal with any serious problem in a financial institution of that country or territory which affects the ability of the financial institution to continue its business or operations as a financial institution, and which, if not dealt with, may cause the financial institution to be no longer able to continue its business or operations as a financial institution;

15 “foreign resolution authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory which, whether alone or together with one or more other authorities of the foreign country or territory, is responsible for a foreign resolution, or for preparing plans for a foreign resolution;

20 “group of companies”, in relation to a pertinent financial institution, means —

(a) the pertinent financial institution;

(b) the entities that are subsidiaries of the pertinent financial institution; and

30 (c) the entity that is the holding company of the pertinent financial institution, and the entities that are subsidiaries of that holding company;

“operator” and “settlement institution” have the meanings given to those terms in section 2(1) of the Payment Systems (Oversight) Act;

“reinsurance contract” means any contract or arrangement involving the reinsurance of liabilities under insurance policies;

5

“resolution measure” means —

(a) the making of a determination under Division 2, 3, 4, 4A or 5A, the issue of any certificate under Division 2, 3, 4 or 4A, the making of an order under Division 5A, or the exercise of any power under any such certificate or order; or

10

(b) the exercise of any power under any relevant provision applicable to the pertinent financial institution concerned;

15

“termination right” means —

(a) a right to terminate a contract;

(b) a right to accelerate, close out, set off or net an obligation under a contract that would result in a suspension or modification or the extinguishment of the obligation;

20

(c) a right to suspend, modify or extinguish an obligation of a party to a contract; or

(d) in the case of a reinsurance contract, a right of the reinsurer to terminate or not to reinstate coverage under the contract.

25

Effect of resolution measure on contracts where substantive obligations continue to be performed

83.—(1) This section applies to a contract that satisfies both of the following:

30

(a) one of the parties to the contract is —

(i) a pertinent financial institution that is the subject of a resolution measure; or

(ii) an entity that is part of the same group of companies as that of a pertinent financial institution where —

(A) the pertinent financial institution is the subject of a resolution measure; and

(B) the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution;

(b) the substantive obligations of the contract (including all applicable basic substantive obligations) continue to be performed by the parties to the contract.

(2) Despite any provision of any rule of law, written law or contract —

(a) the resolution measure, and the occurrence of any event directly linked to it, are to be disregarded in determining the applicability of a provision in the contract enabling a party to exercise a termination right; and

(b) any purported exercise of that termination right in reliance on that provision in the contract on the basis of either of those grounds in paragraph (a) has no effect.

(3) For the purposes of subsection (1)(b), a basic substantive obligation of a pertinent financial institution (being an approved clearing house or an operator or a settlement institution of a designated payment system) under a contract is not considered to be no longer performed, by reason only that the institution allocates any loss to its participants, or uses collateral provided by or on behalf of its participants —

(a) under its margin rules or default arrangements; or

(b) pursuant to a resolution measure.

Right to temporarily suspend termination right for contracts because of resolution measure

84.—(1) This section applies to a contract one of the parties to which is —

5

(a) a pertinent financial institution that is the subject or proposed subject of a resolution measure;

(b) a pertinent financial institution in respect of which a foreign resolution authority of a foreign country or territory has carried out, or has informed the Authority that it has grounds to carry out, a foreign resolution; or

10

(c) an entity that is part of the same group of companies as that of a pertinent financial institution where —

(i) the pertinent financial institution is the subject or proposed subject of a resolution measure;

15

(ii) the contract has a termination right that is exercisable if the pertinent financial institution becomes insolvent or is in a certain financial condition; and

(iii) the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution.

20

(2) The Authority may, by notice in writing to the parties to the contract, suspend the exercise of any termination right in the contract for a specified period.

25

(3) The notice under subsection (2) does not apply to —

(a) a termination right under the contract which becomes exercisable for a breach of a basic substantive obligation only;

(b) a termination right under a contract between the pertinent financial institution and a person prescribed for the purposes of this paragraph by regulations made under section 126; or

30

(c) a termination right under a contract, or a contract within a class of contracts, prescribed for the purposes of this paragraph by regulations made under section 126.

5 (4) When exercising a power under subsection (2), the Authority must have regard to its impact on the safe and orderly functioning of the financial market and financial market infrastructures operating in Singapore.

(5) The notice under subsection (2) —

10 (a) may relate to all or any class or description of parties to a contract;

(b) may make different provisions for different classes or descriptions of parties to a contract; and

(c) may be of general or specific application.

15 (6) A copy of the notice under subsection (2) must be published —

(a) by the Authority in the *Gazette* and on its website; and

(b) by the pertinent financial institution on its website.

20 (7) In this section, a pertinent financial institution is a proposed subject of a resolution measure if the Authority is satisfied that there is a basis for that action under section 50 in relation to that pertinent financial institution.

When suspension takes effect

25 **85.**—(1) A suspension by a notice under section 84 takes effect from (and including) the time of publication of the notice under that section in the *Gazette* or a time on another date specified in the notice, and —

30 (a) if the contract is not a reinsurance contract, expires no later than the same time on the second business day after —

(i) the date of publication of the notice; or

(ii) the other date specified in the notice,

as the case may be; or

(b) if the contract is a reinsurance contract, expires no later than the time and date prescribed for the purposes of this paragraph by regulations made under section 126.

5

(2) During the period of suspension of a termination right under a contract and despite any provision of any rule of law, written law or contract, any purported exercise of that right has no effect.

10

(3) A person whose termination right under a contract is suspended under section 84 may (in accordance with the terms of the contract) exercise that right before the expiry of the suspension if the Authority gives the person written notice that the person may exercise that right because —

15

(a) the contract does not or will not form part of the business of the pertinent financial institution to be transferred under section 58; or

(b) the Authority has decided not to make a determination under Division 4A in relation to the pertinent financial institution.

20

(4) On the expiry of the period of suspension under section 84 of a termination right under a contract, the person who holds that right may (if it had not already been exercised under subsection (3)) exercise that right in accordance with the terms of the contract, but not on any of the following grounds:

25

(a) a resolution measure taken in relation to the pertinent financial institution;

(b) the occurrence of an event directly linked to such resolution measure;

30

(c) if the contract forms part of any business of the pertinent financial institution that has been transferred to another person pursuant to a certificate of transfer under section 58 or an onward transfer certificate

under section 64, any act of the pertinent financial institution before the transfer;

(d) the suspension itself.”.

New Divisions 5A, 5B and 5C of Part IVB

5 **28.** The principal Act is amended by inserting, immediately after section 92, the following Divisions:

“*Division 5A — Recognition of foreign resolutions*

General provisions

10 **93.—**(1) In this Division, unless the context otherwise requires —

“determination” means a determination made under section 94;

15 “foreign financial institution” means a financial institution incorporated, formed or established in a foreign country or territory that has —

(a) a branch located in Singapore; or

(b) a subsidiary incorporated in Singapore,

20 that is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule;

“foreign resolution” means any action by a foreign resolution authority of a foreign country or territory to do either or both of the following:

25 (a) to maintain financial stability;

30 (b) to deal with any serious problem in a foreign financial institution of that country or territory which affects the ability of the financial institution to continue its business or operations as a financial institution, and which, if not dealt with, may cause the financial

institution to be no longer able to continue its business or operations as a financial institution;

“foreign resolution authority”, in relation to a foreign country or territory, means an authority of that country or territory which, whether alone or together with one or more other authorities of that country or territory, is responsible for a foreign resolution, or for preparing plans for a foreign resolution;

“Singapore creditor”, in relation to a foreign financial institution, means —

(a) a creditor of the foreign financial institution, in respect of a liability incurred by the operations of its branch located in Singapore; or

(b) a creditor of a subsidiary incorporated in Singapore of the foreign financial institution;

“Singapore shareholder”, in relation to a foreign financial institution, means the holder of shares or similar instruments of a subsidiary incorporated in Singapore of the foreign financial institution.

(2) The exercise of any power under this Division does not prevent the exercise of any other power of the Minister or the Authority under this Act or the relevant Act applicable to the foreign financial institution or to the subsidiary incorporated in Singapore of a foreign financial institution, as the case may be.

Determination over foreign resolution

94.—(1) This section applies where a foreign resolution authority of a foreign country or territory makes a request to the Authority to recognise a foreign resolution in relation to a foreign financial institution by the foreign resolution authority.

(2) The Authority must make a determination that —

(a) the foreign resolution should be recognised in whole or in part; or

(b) the foreign resolution should not be recognised.

(3) The Authority may make a determination that the foreign resolution should be recognised in whole or in part if it is satisfied that all of the following conditions are fulfilled:

- 5 (a) recognition of the foreign resolution or part would not have a widespread adverse effect on the financial system in Singapore or the economy of Singapore, whether or not that effect occurs directly or indirectly as a result of the effects of recognising the resolution or part;
- 10 (b) recognition of the foreign resolution or part would not result in inequitable treatment of any Singapore creditor relative to any other creditor of the foreign financial institution with similar rights, or of any Singapore shareholder relative to any shareholder of
- 15 the foreign financial institution;
- (c) recognition of the foreign resolution or part would not be contrary to the national interest or public interest;
- (d) recognition of the foreign resolution or part would not have material fiscal implications for Singapore;
- 20 (e) any other condition that is prescribed by regulations made under section 126 for the purposes of this paragraph.

(4) Upon making a determination, the Authority must submit the determination to the Minister for approval.

- 25 (5) The Minister may —
- (a) approve the determination without modification;
- (b) approve the determination subject to any modification the Minister considers appropriate; or
- (c) refuse to approve the determination.

- 30 (6) The Minister must not approve the determination under subsection (5)(a) or (b) unless satisfied that all of the conditions mentioned in subsection (3) are fulfilled.

(7) An approval under subsection (5) is subject to such conditions as the Minister may determine, and the Minister may add to, vary or revoke any condition.

(8) Any person to which a condition mentioned in subsection (7) applies, and who has been given written notice of that condition by the Authority, must comply with the condition.

(9) A person that contravenes subsection (8) 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 of a day during which the offence continues after conviction.

Order to give effect to foreign resolution

95.—(1) If the Minister approves a determination that a foreign resolution should be recognised in whole or in part, the Minister must, as soon as practicable, by order in the *Gazette*, declare that the foreign resolution is to be recognised.

(2) The order may make provision for any of the following matters, to take effect from a date specified in the order:

- (a) matters that may be set out in a certificate of transfer pursuant to section 58(3);
- (b) matters that may be set out in a certificate of transfer of shares pursuant to section 67(3);
- (c) matters that may be set out in a certificate of restructuring of share capital pursuant to section 70(3);
- (d) matters that may be set out in a bail-in certificate pursuant to section 75(3).

(3) The matters mentioned in paragraphs (a) to (d) of subsection (2) may be modified for the purposes of giving effect to the foreign resolution.

(4) To avoid doubt, provision may be made in the order for matters mentioned in subsection (2)(d) affecting instruments or

liabilities entered into or accruing before the effective date of the order.

(5) With effect from the effective date of the order, sections 58(8) to (17) and 59, section 67(6) to (13), section 70(6) to (14), or sections 76 to 80 (as the case may be), together with the regulations that are made under section 126 for the purpose of implementing those provisions, apply in relation to an order that provides for the matters mentioned in paragraph (a), (b), (c) or (d) of subsection (2), as they apply in relation to the certificate mentioned in that paragraph.

(6) The provisions of this Act mentioned in subsection (5) apply subject to such modifications as the order may prescribe.

Directions

96. The Authority may, from time to time, issue such directions to any person who is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule, as the Authority considers necessary for the purposes of giving full effect to the order mentioned in section 95.

Offence

97.—(1) A person that refuses or fails to comply with a provision of the order under section 95 that applies to the person, or a direction issued to the person under section 96, shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 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 \$12,500 for every day or part of a day during which the offence continues after conviction; or

(b) in any other case, 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 of a

day during which the offence continues after conviction.

(2) Where a person is charged with an offence under subsection (1), it is a defence for the person to prove that —

(a) the person was not aware of the contravention of the provision of the order or the direction; and 5

(b) the person has complied with the provision of the order or the direction within a reasonable time after becoming aware of the contravention.

(3) Except as provided in subsection (2), it is not a defence for a person charged with an offence under subsection (1) that the person did not intend to or did not knowingly contravene the provision of the order or the direction. 10

Division 5B — Resolution funding

Interpretation of this Division 15

98. In this Division, unless the context otherwise requires —

“Agency” means the company designated by the Minister under section 56 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B) as the deposit insurance and policy owners’ protection fund agency; 20

“DI Fund” means the Deposit Insurance Fund reconstituted under section 9 of the Deposit Insurance and Policy Owners’ Protection Schemes Act;

“financial institution” means any person that is approved, authorised, designated, recognised, registered, licensed or otherwise regulated by the Authority under this Act or any of the written laws set out in the Schedule; 25

“financial institution under resolution” means the pertinent financial institution that is the subject of a resolution measure and, in relation to a resolution fund, means the pertinent financial institution that is the subject of the resolution measure for which the fund is established; 30

“market infrastructure” means a pertinent financial institution that performs the functions of a market, a central clearing counterparty, a trade repository, a central securities depository, or a securities settlement system;

5 “participant” —

(a) in relation to a market infrastructure, means a participant of the market infrastructure, and includes a client of such participant; and

10 (b) in relation to a payment system operator, means a participant of the payment system (within the meaning of the Payment Systems (Oversight) Act (Cap. 222A)) operated by the payment system operator;

15 “payment system operator” means a person who operates a payment system within the meaning of the Payment Systems (Oversight) Act;

“provisional entity”, in relation to a resolution fund, means an entity established or incorporated to do one or more of the following:

20 (a) temporarily hold and manage the assets and liabilities of the financial institution under resolution;

25 (b) to be the transferee of any part of the business of the financial institution under resolution under Division 2;

(c) do any other act for the orderly resolution of the financial institution under resolution;

“resolution fund” means a fund established under section 99;

30 “resolution measure” means —

(a) the making of a determination under Division 2, 2A, 3, 4, 4A or 5A, the issue of any certificate under Division 2, 2A, 3, 4 or 4A, the making of

an order under Division 5A, or the exercise of any power under any such certificate or order; or

- (b) the exercise of any power under any relevant provision applicable to the financial institution concerned;

5

“resolution measure”, in relation to a resolution fund, means the resolution measure or measures for which the fund was established;

“similar financial institution” means a financial institution that is prescribed by regulations made under section 126 for the purposes of section 102(1)(b)(i), as belonging to the same category as the financial institution under resolution;

10

“trustee”, in relation to a resolution fund, means the entity appointed under section 99(2) as the trustee of the fund.

15

Establishment of resolution fund

99.—(1) For the purposes of supporting a resolution measure undertaken for a financial institution and other matters relating to the measure, the Minister may, on the recommendation of the Authority, establish a resolution fund.

20

(2) The Minister must appoint a body corporate or unincorporate established or incorporated in Singapore, or established under any Act, to be the trustee of the resolution fund.

(3) The Authority must publish a notification in the *Gazette* and in such newspaper or newspapers as the Minister determines, of the establishment of a resolution fund and the trustee of the fund.

25

(4) The trustee of a resolution fund may obtain a loan from the Authority for the purpose of constituting the fund.

30

(5) In addition to the loan in subsection (4), the following are to be paid into a resolution fund:

- (a) all payments, levies and late payment fees collected or recovered under sections 103, 105, 106 and 107;
- (b) any interest from a loan made out of moneys withdrawn from the fund;
- 5 (c) any other income from the use of moneys withdrawn from the fund;
- (d) any proceeds from the exercise of the resolution measure;
- 10 (e) any moneys paid out of the DI Fund under section 29A of the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B) and given to the trustee of the fund;
- (f) any additional loan obtained from the Authority.

15 (6) The moneys mentioned in subsection (5)(e) must be put in a separate account of the resolution fund from the other moneys, and moneys from that separate account may not be used to make any payment of compensation and associated costs under Division 5C.

20 (7) The trustee of a resolution fund must keep proper accounts and records of transactions in respect of the fund.

(8) The accounts and records of the resolution fund are to be audited by an auditor appointed by the trustee in consultation with the Minister.

25 (9) The first audit of the resolution fund must take place as soon as practicable after the end of the first year in which the first withdrawal from the fund is made, and the fund must be audited every year thereafter until it is dissolved.

Trustee of resolution fund

30 **100.**—(1) The duty of the trustee of a resolution fund is to administer and manage the fund, and in particular —

- (a) to make withdrawals from the fund in accordance with sections 101 and 109(1) and to apply the moneys

withdrawn for the purposes mentioned in those provisions;

- (b) to collect and recover payments, levies and late payment fees under sections 103, 105, 106 and 107 and pay these into the fund; 5
- (c) to collect proceeds in relation to the resolution measure and pay these into the fund;
- (d) at the direction of the Minister (being one made on the Authority's recommendation), to give a guarantee to any person for, or enter into any agreement with any person to share, any liability of the financial institution under resolution, a provisional entity, or a person to whom any asset or business of the financial institution under resolution is transferred; 10
- (e) to deal with the balance in the resolution fund after the fund is no longer needed for the purposes in section 101(1) or 109(1), in accordance with the regulations made for the purposes of section 109(2); and 15
- (f) do any other thing that is incidental or conducive to the discharge of its duties under paragraphs (a) to (e). 20

(2) The trustee of a resolution fund may be paid such fees for carrying out its duties and exercising its powers under this Division as the Minister may determine, and such fees are to be paid out of the fund. 25

(3) The expenses incurred by the trustee of a resolution fund in carrying out its duties and exercising its powers under this Division are, with the Minister's approval, to be paid out of the fund.

(4) The trustee of a resolution fund may, with the Minister's approval and subject to such conditions as the Minister may impose, appoint any person to discharge any part of its duties or exercise any part of its powers. 30

(5) No action, suit or other legal proceedings lie against —

- (a) any current or former trustee of a resolution fund;
- (b) any current or former director, officer, employee or agent of the trustee; or
- (c) any person acting under the direction of the trustee,

as a result of anything done (including any statement made) or omitted to be done in good faith in carrying out any of the trustee's duties or exercising any of the trustee's powers under this Division.

Withdrawal from resolution fund

101.—(1) The trustee of a resolution fund must, at the Minister's direction, make one or more withdrawals from the fund and apply the moneys withdrawn for one or more of the following purposes:

- (a) to pay the operating costs of a provisional entity;
- (b) to discharge a guarantee for, or an obligation under an agreement to share, a liability of the financial institution under resolution, a provisional entity or a person to whom any asset or business of the financial institution has been transferred;
- (c) to pay the costs of transferring the whole or any part of the business of the financial institution under resolution pursuant to the resolution measure;
- (d) to make or provide a loan, advance, overdraft or other credit facility to the financial institution under resolution or a provisional entity;
- (e) to pay any other costs reasonably incurred in the resolution measure, such as interest costs, legal cost, cost of any advisory services, and the cost of an independent valuation of the financial institution under resolution;
- (f) to make any payment of compensation and associated costs under Division 5C;

- (g) to pay the remuneration and expenses of a valuer mentioned in section 115(9);
- (h) to provide capital to the financial institution under resolution or the provisional entity;
- (i) such other purposes in support of the resolution measure as may be prescribed by regulations made under section 126. 5

(2) The Minister may only give a direction to the trustee under subsection (1) on a recommendation of the Authority.

(3) In determining whether to make a recommendation to the Minister to direct a trustee of a resolution fund to make a withdrawal under subsection (1), the Authority must have regard to all of the following: 10

- (a) whether losses are imposed on shareholders and unsecured creditors of the financial institution under resolution under Division 4 or 4A; 15
- (b) whether funding from the private sector can be obtained for the resolution measure;
- (c) such other factors as may be prescribed by regulations made under section 126. 20

(4) The Authority may only make a recommendation to the Minister under subsection (1)(h) to make a withdrawal to provide capital to the financial institution under resolution —

- (a) if the Authority is of the view that the provision of the capital is necessary for the orderly resolution of the financial institution under resolution; and 25
- (b) after the Authority has taken into account whether appropriate losses have been imposed on shareholders and unsecured creditors of the financial institution under resolution under Division 4 or 4A. 30

(5) Where a direction has been made to the trustee under subsection (1), the Authority must, as soon as practicable, publish a notice of that fact in the *Gazette* and in such newspaper or newspapers as the Minister determines.

Recovery of sums withdrawn

5 **102.**—(1) Where one or more withdrawals have been made from a resolution fund under section 101, the Minister may direct the trustee of the resolution fund to recover the sum or sums withdrawn in one or both of the following ways:

 (a) by making a claim for all or part of that sum or those sums from the financial institution under resolution;

10 (b) by imposing a levy, in accordance with section 104 and the regulations made under section 126 for that section, on the following persons (called in this Part levy payers):

15 (i) financial institutions that have been prescribed by regulations made under section 126 as belonging to the same category as the financial institution under resolution;

20 (ii) if the financial institution under resolution is a market infrastructure, those participants of the market infrastructure and of other market infrastructures, that have been prescribed by regulations made under section 126 as levy payers;

25 (iii) if the financial institution under resolution is a payment system operator, those participants of the payment system operator that have been prescribed by regulations made under section 126 as levy payers.

30 (2) In addition to the purpose in subsection (1), the Minister may direct the trustee of a resolution fund to impose a levy, in accordance with section 104 and the regulations made under section 126 for section 104, on levy payers for the purpose of meeting any shortfall in the amount of the levy collected to make good the amount withdrawn from the account, or for any other prescribed purpose.

35 (3) The Minister may only give a direction under subsection (1) or (2) on a recommendation of the Authority.

(4) The Authority must, as soon as practicable after the Minister has given a direction under subsection (1) or (2), publish a notice in the *Gazette* and in such newspaper or newspapers as the Minister determines, of the direction.

Claim from financial institution under resolution

5

103.—(1) Where a direction has been given under section 102(1)(a), the trustee of the resolution fund must make a claim mentioned in that provision on the financial institution under resolution to pay the sum mentioned in the direction, at such time and in such manner as the trustee determines, and the sum claimed is recoverable as a debt due from the financial institution under resolution to the trustee.

10

(2) Any sum recovered from the financial institution under resolution must be paid into the resolution fund.

Computation and notice of levy

15

104.—(1) After the Minister has given a direction under section 102(1)(b) or (2), the Authority must, in accordance with the regulations made under section 126 for the purpose of this section —

(a) compute the amount of levy payable by every levy payer; and

20

(b) give a written notice to the trustee of the amount of levy payable by every levy payer.

(2) After receipt of the notice mentioned in subsection (1)(b), the trustee must give the notices mentioned in subsection (3), (4), (5) or (6) (whichever is applicable) to the levy payers and in the manner set out in that subsection.

25

(3) Where the levy is to be imposed on a similar financial institution, the trustee must give each similar financial institution a notice in writing stating —

30

(a) the amount of the levy;

(b) the date by which the levy is to be paid;

- (c) the manner of payment of the levy; and
- (d) such other matters as may be prescribed by regulations made under section 126.

(4) Where the levy is to be imposed on participants of a market infrastructure on a transaction basis, the trustee must give —

- (a) a notice to the market infrastructure stating —
 - (i) the description of the participants on which the levy is imposed;
 - (ii) the amount of the levy it is to collect from each participant, or the rate of computation of that amount;
 - (iii) the period and manner of collection;
 - (iv) the date by which the market infrastructure is to pay the total amount of the levy imposed on the participants to the trustee;
 - (v) the information and documents it is to provide to the trustee when making the payment under sub-paragraph (iv); and
 - (vi) such other matters as may be prescribed by regulations made under section 126; and
- (b) a general notice to those participants, to be published on such medium as may be determined by the trustee, stating —
 - (i) the matters in paragraph (a)(i), (ii) and (iii); and
 - (ii) such other matters as may be prescribed by regulations made under section 126.

(5) Where the levy is to be imposed on participants of a market infrastructure on a lump sum basis, the trustee must give to each participant of the market infrastructure a notice in writing stating —

- (a) the amount of the levy;
- (b) the date by which the levy is to be paid;

- (c) the manner of payment of the levy; and
- (d) such other matters as may be prescribed by regulations made under section 126.

(6) Where the levy is to be imposed on participants of a payment system operator, the trustee must give to each participant a notice in writing stating — 5

- (a) the amount of the levy;
- (b) the date by which the levy is to be paid;
- (c) the manner of payment of the levy; and
- (d) such other matters as may be prescribed by regulations made under section 126. 10

(7) The notice under subsection (3), (5) or (6) may require the levy payer to pay an amount of levy regularly over a period of time.

(8) The trustee may, at any time, vary a notice mentioned in subsection (3), (4), (5) or (6), and give the notice of the variation to every person to whom the initial notice was given, and each reference in section 105 or 106 to a notice given to a person under this section includes a reference to the notice of the variation given to the person under this subsection. 15 20

Payment of levy by similar financial institutions, participants of market infrastructure on lump sum basis, or participants of payment system operator

105.—(1) This section applies where a notice under section 104(3), (5) or (6) is given to a levy payer that is a similar financial institution or a participant of a market infrastructure or payment system operator. 25

(2) The levy payer must pay to the trustee of the resolution fund on or before the date of payment specified in the notice, the amount of the levy specified in the notice. 30

(3) If the levy payer fails to comply with subsection (2) —

(a) the trustee may, by notice in writing to the levy payer, impose on it such late payment fee as may be prescribed by regulations made under section 126; and

(b) the levy payer must pay to the trustee the late payment fee together with the amount of the unpaid levy on or before the date specified in the notice under paragraph (a), and in the manner specified in the notice.

(4) The late payment fee under subsection (3) must not exceed the amount of the unpaid levy.

Payment of levy by participants of market infrastructure on transaction basis

106.—(1) This section applies where a notice under section 104(4) is given to a market infrastructure.

(2) The market infrastructure must —

(a) during the period of collection specified in the notice, collect from each participant on whom the levy is imposed under the notice and in the manner specified in the notice, an amount equal to the levy so imposed;

(b) pay to the trustee of the resolution fund the total amount of the levy it is to collect from its participants by the date of payment specified in the notice; and

(c) together with the payment, give a notice to the trustee setting out how the amount of levy is arrived at and providing such other details as the trustee may reasonably require.

(3) A market infrastructure does not incur any civil liability for doing anything with reasonable care and in good faith in compliance with subsection (2).

(4) If a market infrastructure fails to comply with subsection (2)(b) —

(a) the trustee may, by notice in writing to the market infrastructure, impose on it such late payment fee as may be prescribed by regulations made under section 126; and

(b) the market infrastructure must pay to the trustee the late payment fee, together with the amount of the unpaid levy, on or before the date specified in the notice under paragraph (a), and in the manner specified in the notice.

(5) A market infrastructure that —

(a) fails to comply with subsection (2)(c); or

(b) in purported compliance with that provision, provides to the trustee of the resolution fund any information that the market infrastructure knows or has reason to believe is false or misleading,

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 of a day during which the offence continues after conviction.

(6) The late payment fee under subsection (4) must not exceed the amount of the unpaid levy.

Recovery, refund and remission of levies and late payment fees, etc.

107.—(1) The levy imposed on a person under section 104(3), (5) or (6), and any late payment fee imposed on the person under section 105(3), are both recoverable as a debt due from that person to the trustee of the resolution fund concerned.

(2) The amount of levy that a market infrastructure is required to collect from its participants under section 106(2), and any late payment fee imposed on the market infrastructure under section 106(4), are both recoverable as a debt due from the market infrastructure to the trustee of the resolution fund concerned.

(3) Where the trustee of a resolution fund has commenced any legal proceedings in a court in Singapore to recover any levy or late payment fee from a person, the trustee is entitled to claim costs on a full indemnity basis from that person.

5 (4) All levies and late payment fees collected or recovered are to be paid into the resolution fund concerned.

(5) Where a levy payer has paid an amount of levy that is in excess of the amount imposed on the levy payer under a notice under section 105, the trustee of the resolution fund concerned
10 must make a withdrawal from the fund to refund the excess amount to the levy payer.

(6) In any particular case other than the one to which subsection (5) applies, the trustee of a resolution fund may, with the approval of the Minister —

15 (a) make a withdrawal from the fund to refund in whole or in part any levy paid by a levy payer; or

(b) remit in whole or in part any levy payable by a levy payer.

Disclosure of information on levy

20 **108.**—(1) This section applies to a notice given under section 104(3), (5) or (6) to a levy payer that is a similar financial institution or a participant of a market infrastructure or payment system operator.

(2) Subject to subsections (3) and (4), the levy payer, and any
25 of its officers, must not disclose to any person —

(a) the amount of the levy specified in the notice; and

(b) any information which, if disclosed, would enable the amount of the levy to be identified or deduced.

(3) Despite subsection (2), the levy payer and any of its officers
30 may disclose any information mentioned in subsection (4) to —

(a) any officer of the levy payer;

- (b) where the levy payer is one that is established or incorporated in a foreign country or territory, its head office, parent corporation, parent supervisory authority, resolution authority, deposit insurance authority or policy owners' protection scheme authority, as the case may be; 5
- (c) where the levy payer is a financial institution that is a subsidiary of a foreign corporation, that corporation or the corporation's parent supervisory authority, resolution authority, deposit insurance authority or policy owners' protection scheme authority, as the case may be; or 10
- (d) such other person or class of persons as the Authority may approve in writing.

(4) The information that may be disclosed under subsection (3) is such information that is necessary for the performance of the duties of the person or authority mentioned in subsection (3)(a), (b), (c) or (d), as the case may be. 15

(5) A person to whom information is disclosed under subsection (3) must not disclose the information to any other person except as approved by the Authority. 20

(6) Any person who contravenes subsection (2) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both. 25

(7) This section does not apply to any information that is public information.

(8) In this section —

“deposit insurance authority”, in relation to a levy payer or foreign corporation, means an authority of the foreign country or territory in which the levy payer or foreign corporation is incorporated or established that, whether alone or together with one or more other authorities, is responsible for administering a deposit insurance 30

scheme for deposits of the levy payer or foreign corporation;

“foreign corporation” means a corporation incorporated in a foreign country or territory;

5 “officer”, in relation to a levy payer, includes —

(a) a director, secretary or an employee of the levy payer;

10 (b) a receiver or manager of any part of the undertaking of the levy payer appointed under a power contained in any instrument; and

(c) the liquidator of the levy payer appointed in a voluntary winding up;

15 “parent corporation”, in relation to a levy payer, means a corporation that is able to exercise a significant influence over the direction and management of the levy payer or that has a controlling interest in the levy payer;

20 “parent supervisory authority”, in relation to a levy payer or a foreign corporation, means the supervisory authority that is responsible, under the laws of the country or territory in which the levy payer or foreign corporation is incorporated or established, for supervising the levy payer or foreign corporation (as the case may be);

25 “policy owners’ protection scheme authority”, in relation to a levy payer or a foreign corporation, means an authority of the foreign country or territory in which the levy payer or foreign corporation is incorporated or established that, whether alone or together with one or more authorities, is responsible for administering a protection scheme for the policy owners of insurance policies of the levy payer or
30 foreign corporation (as the case may be);

“resolution authority”, in relation to a levy payer or a foreign corporation, means an authority of the foreign country or territory in which the levy payer or foreign corporation is incorporated or established that, whether

alone or together with one or more other authorities, is responsible for the resolution, or for preparing plans for dealing with the resolution of, the levy payer or foreign corporation (as the case may be).

Use of resolution fund to pay loan, etc., and balance in resolution fund

5

109.—(1) The Minister may, from time to time, direct the trustee of a resolution fund to make a withdrawal from the resolution fund for any of the following purposes:

(a) to repay the Authority all or any part of the loan made under section 23(7A), together with any interest on such loan;

10

(b) to reimburse the Agency for any payment the trustee received under section 29A of the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B).

15

(2) The Minister may by regulations made under section 126 provide for —

(a) how the balance in a resolution fund is to be dealt with after the fund is no longer needed for any of the purposes mentioned in section 101(1) or subsection (1); and

20

(b) the dissolution of the resolution fund after the balance of the fund has been dealt with in accordance with the regulations, and the publication of a notice of such dissolution.

25

Priority of debt of financial institution to trustee

110. Despite the provisions of any written law or rule of law relating to the winding up of companies, in the event of a winding up of a financial institution (other than one that is a bank, a finance company or a licensed insurer) —

30

(a) any sum claimed by the trustee of a resolution fund from the financial institution under section 103; and

- (b) any levy and late payment imposed on the financial institution under section 104, 105 or 106 and due from the institution, and any levy which the financial institution is liable to collect under section 106(2) and due from the institution,

have priority over all unsecured liabilities of the financial institution other than preferential debts specified in section 328(1) of the Companies Act (Cap. 50).

Regulations for this Division

111.—(1) Regulations may be made under section 126 for the purposes of this Division.

(2) Without affecting the generality of subsection (1), regulations may be made in relation to the imposition and recovery of a levy and late payment fee under sections 104, 105, 106 and 107, and in particular in relation to one or more of the following:

- (a) the levy payers on and from whom the trustee of the resolution fund may impose and recover the levy;
- (b) the classification of the levy payers mentioned in paragraph (a) for the purpose of imposing different amounts of the levy;
- (c) the manner in which the amount of the levy for each class of levy payers is to be determined;
- (d) the amount of the late payment fee;
- (e) the manner and date of payment of the levy and late payment fee;
- (f) a duty of a financial institution under resolution, a levy payer, a market infrastructure or a payment system operator to provide such information as the Authority or trustee may reasonably require for the purposes of computing the levy or late payment fee or preparing a notice under section 104;

- (g) such other matters as the Authority considers necessary for the computation, imposition and recovery of the levy or late payment fees.

Division 5C — Compensation

Interpretation of this Division

5

112. In this Division, unless the context otherwise requires —

“2nd transferee” has the same meaning as in section 60;

“Division 5C FI” or “Division 5C financial institution” means a pertinent financial institution within a class of pertinent financial institutions prescribed by regulations made under section 126 for the purposes of this Division;

10

“Division 5C FI under resolution” means a Division 5C FI that is the subject of a resolution action;

“pre-resolution creditor”, in relation to a Division 5C FI under resolution, means any person who was a creditor of the Division 5C FI immediately before the resolution date;

15

“pre-resolution shareholder”, in relation to a Division 5C FI under resolution, means any person who held shares or instruments conferring or representing a legal or beneficial ownership interest in the Division 5C FI, immediately before the resolution date;

20

“prescribed written law” has the same meaning as in section 86;

“resolution action” means —

25

(a) the issue of a certificate of transfer under section 58 or any action to be taken under that certificate;

(b) the issue of a certificate of transfer under section 67 or any action to be taken under that certificate;

30

- (c) the issue of a certificate of restructuring of share capital under section 70 or any action to be taken under that certificate;
- (d) the issue of a bail-in certificate under section 75 or any action to be taken under that certificate;
- (e) the making of an order under section 95 that provides for any of the matters mentioned in section 95(2);

“resolution date”, in relation to a Division 5C FI under resolution, means —

- (a) if the Division 5C FI is the subject of the issue of a certificate of transfer under section 58, a certificate of transfer under section 67, a certificate of restructuring of share capital under section 70, or a bail-in certificate under section 75, the date the certificate is published in the *Gazette*;
- (b) if the Division 5C FI is the subject of 2 or more actions mentioned in paragraphs (a) to (d) of the definition of “resolution action”, the earlier or earliest of the dates of publication of the relevant certificates in the *Gazette*;
- (c) if the Division 5C FI is the subject of an action mentioned in paragraph (e) of the definition of “resolution action”, the date of publication of the order in the *Gazette*; or
- (d) if the Division 5C FI is the subject of one or more actions mentioned in paragraphs (a) to (d) of the definition of “resolution action”, as well as the action mentioned in paragraph (e) of that definition, the earlier of the following dates:
 - (i) the date of publication in the *Gazette* of the relevant certificate or, if there is more than one relevant certificate, the earlier or

earliest of the dates of publication in the *Gazette* of the relevant certificates;

(ii) the date of publication in the *Gazette* of the order;

“transferee” has the same meaning as in section 56; 5

“valuation report” means a report issued by a valuer under section 116(3);

“valuer” means a person appointed under section 115 as a valuer.

Meaning of “worse off as a result of the resolution” 10

113.—(1) In this Division, a pre-resolution creditor or pre-resolution shareholder of a Division 5C FI under resolution is worse off as a result of the resolution if, by reason of one or more of the actions mentioned in subsection (2) taken in relation to the Division 5C FI, the pre-resolution creditor or pre-resolution shareholder has received, is receiving or is likely to receive less favourable treatment than what the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date. 15 20

(2) In subsection (1), the actions are —

(a) any resolution action;

(b) the issue of a reverse transfer certificate under section 62 or any action taken under that certificate; and 25

(c) the issue of an onward transfer certificate under section 64 or any action taken under that certificate.

(3) In any of the following cases, it is a rebuttable presumption that a pre-resolution creditor or pre-resolution shareholder of a Division 5C FI under resolution is not worse off as a result of the resolution: 30

- 5 (a) the liability or instrument concerned is transferred to a transferee under section 58 and the transferee is subject to the same terms for that liability or instrument as those to which the Division 5C FI under resolution was subject;
- 10 (b) the liability or instrument concerned is transferred under section 58 and is then transferred back to the Division 5C FI under section 62, and the Division 5C FI is subject to the same terms for that liability or instrument as it was subject to immediately before the transfer under section 58;
- 15 (c) the liability or instrument concerned is transferred under section 58 and is then transferred to a 2nd transferee under section 64, and the 2nd transferee is subject to the same terms for that liability or instrument as those to which the Division 5C FI under resolution was subject;
- 20 (d) the only resolution action to which the Division 5C FI is subject is the issue of a bail-in certificate within the meaning of Division 4A or any action under the certificate, and the instrument or liability concerned is not one to be bailed in under that certificate;
- 25 (e) the only resolution action to which the Division 5C FI is subject is the making of an order under Division 5A, and the pre-resolution creditor or pre-resolution shareholder is eligible for compensation under the law of a foreign country or territory by reason of the resolution to which the order gives effect.

Eligibility for compensation

30 **114.**—(1) A pre-resolution creditor or pre-resolution shareholder of a Division 5C FI under resolution that is worse off as a result of the resolution, is eligible for compensation of the amount mentioned in subsection (2).

(2) The amount of compensation that the pre-resolution creditor or pre-resolution shareholder is eligible for is the difference between —

- (a) what the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI under resolution immediately before the resolution date; and 5
- (b) what the pre-resolution creditor or pre-resolution shareholder has received, is receiving, or is likely to receive — 10
 - (i) as a result of one or more of the actions mentioned in section 113(2); and
 - (ii) as compensation under the law of a foreign country or territory governing the foreign resolution (if applicable). 15

(3) Subject to section 120, the Authority must recommend to the Minister to make a direction to the trustee of the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI, to make a withdrawal from the fund to pay to the pre-resolution creditor or pre-resolution shareholder, the amount set out in the valuation report as the amount mentioned in subsection (2). 20

(4) Payment of the compensation to the pre-resolution creditor or pre-resolution shareholder is to be made in the form and manner, and within the time, prescribed by regulations made under section 126. 25

Appointment of valuer

115.—(1) The Minister must, as soon as practicable, after the resolution date of a Division 5C FI under resolution, appoint a valuer for the Division 5C FI. 30

(2) The role of a valuer appointed under this section is to make a valuation in relation to the Division 5C FI in accordance with section 116, and decide whether any pre-resolution creditor or

pre-resolution shareholder of the Division 5C FI is eligible for compensation and the amount of the compensation.

5 (3) The Minister may only appoint a person as a valuer if the Minister is satisfied that the person satisfies the criteria prescribed by regulations made for the purposes of this subsection under section 126.

(4) The appointment of a valuer is to be made on such conditions as the Minister may determine, and the Minister may at any time add to, vary or revoke any such condition.

10 (5) The Minister may on any prescribed ground revoke the appointment of a valuer, and may, subject to subsections (3) and (4), appoint a new valuer.

15 (6) Where the appointment of a valuer is revoked and a new valuer appointed under subsection (5), the Authority may direct the previous valuer to provide such information and documents to the new valuer as the Authority considers necessary for the new valuer to conduct the valuation.

20 (7) A valuer that does not comply with a direction issued under subsection (6) 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 of a day during which the offence continues after conviction.

25 (8) The Authority may at any time fix the remuneration and expenses to be paid to a valuer.

(9) The remuneration and expenses of a valuer may be paid out of the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI.

Valuation

30 **116.**—(1) A valuer for a Division 5C FI under resolution must conduct the valuation of the Division 5C FI in accordance with the valuation principles that are prescribed by regulations made under section 126, and any other valuation principles specified by the Authority by written notice to the valuer.

(2) The valuer must determine the amount of compensation to be paid to each pre-resolution creditor or pre-resolution shareholder of the Division 5C FI, or each one that is within a class of pre-resolution creditors or pre-resolution shareholders of the Division 5C FI, by reference to the difference between — 5

(a) the valuer's assessment of what the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date; and 10

(b) the valuer's assessment of what the pre-resolution creditor or pre-resolution shareholder has received, is receiving, or is likely to receive —

(i) as a result of one or more of the actions mentioned in section 113(2); and 15

(ii) as compensation under the law of a foreign country or territory governing the foreign resolution (if applicable).

(3) After conducting the valuation, the valuer for a Division 5C FI under resolution must issue a report setting out the valuer's decision on — 20

(a) whether each pre-resolution creditor or pre-resolution shareholder of the Division 5C FI is eligible for compensation; and

(b) the amount of compensation to be paid to each pre-resolution creditor or pre-resolution shareholder. 25

(4) The valuation report must specify the information that is prescribed by regulations made under section 126 and any other valuation principles specified by the Authority by written notice to the valuer. 30

(5) The valuer must provide the valuation report to the Minister and the Authority by such date as may be determined by the Minister.

(6) On receiving a copy of the valuation report, where the Authority is of the view that —

(a) the valuation report was not prepared in accordance with this section; or

(b) the valuer should have had regard to any additional circumstances not taken into account in the valuation report,

the Authority may, by notice in writing, request the valuer to reconsider the valuation report or any aspect of the report by such date as the Authority may specify in the notice.

(7) The Authority may cause the valuation report or any part of it to be published in the manner determined by the Authority.

Access to information by valuer

117.—(1) A Division 5C FI under resolution for which a valuer is appointed must —

(a) give the valuer access to such of its records and documents as the valuer may reasonably require to conduct the valuation;

(b) procure a person who is in possession of such records and documents to give the valuer access to them;

(c) provide such information and facilities as the valuer may reasonably require to conduct the valuation; and

(d) procure a person who is in possession of such information or facilities to provide the information or facilities to the valuer.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the Division 5C FI under resolution or any of its officers, or on any person mentioned in subsection (1)(b) or (d), by any prescribed written law or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(3) A Division 5C FI under resolution that refuses or neglects, without reasonable excuse, to comply with subsection (1) 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 of a day during which the offence continues after conviction. 5

(4) No civil or criminal liability is incurred by a Division 5C FI under resolution or any of its officers, or by any person mentioned in subsection (1)(b) or (d) or any of the person's officers, in respect of any obligation or restriction mentioned in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with or giving effect to subsection (1). 10

(5) A Division 5C FI under resolution or any of its officers, or any person mentioned in subsection (1)(b) or (d), that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with or giving effect to subsection (1) is not to be treated as being in breach of any obligation or restriction mentioned in subsection (2). 15 20

Confidentiality and use of information

118.—(1) A valuer must not use or disclose any information obtained under this Division other than for the performance of its functions under this Division.

(2) Any person who comes to know of any information in the course of assisting another person to perform a function under this Division must not use or disclose the information for any purpose other than for such assistance. 25

(3) Except as provided under sections 116(5) and 119, a valuer must not disclose any part of the valuation report issued by the valuer to any person. 30

(4) The duties of a valuer under subsections (1) and (3) continue after the revocation or cessation of the valuer's appointment.

(5) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom any information is disclosed, who knows or has reasonable grounds for believing at the time of the disclosure, that the information was disclosed to the person in contravention of subsection (1), (2) or (3), shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

(a) the disclosure was made contrary to the person's desire;

(b) where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the information, surrendered, or taken all reasonable steps to surrender, the information and all copies of the information to the Authority; and

(c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the information, taken all reasonable steps to ensure the deletion of all electronic copies of the information and the surrender of the information and all copies of the information in other forms to the Authority.

Disclosure of valuation report

119.—(1) A valuer of a Division 5C FI under resolution may, with the Authority's approval, disclose the whole or any part of

the valuation report of the Division 5C FI to the Division 5C FI, any pre-resolution creditor or pre-resolution shareholder of the Division 5C FI, or the public.

(2) In granting approval for a disclosure, the Authority may impose such conditions or restrictions as it thinks fit on the valuer as to the form or content of the valuation report or part of it to be disclosed. 5

(3) The Authority may also impose such conditions or restrictions as it thinks fit on the Division 5C FI under resolution or any pre-resolution creditor or pre-resolution shareholder of the Division 5C FI that the valuer discloses the valuation report to. 10

(4) Any person who contravenes any of the provisions of this section, or any condition or restriction imposed under subsection (2) or (3), shall be guilty of an offence and shall be liable on conviction — 15

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in any other case, to a fine not exceeding \$250,000. 20

Appeals

120.—(1) The Authority may appeal to the Court against a valuation report if it is dissatisfied with —

(a) the valuer's decision on any person's eligibility for compensation; or 25

(b) the amount of compensation to be paid to any person pursuant to the valuation report.

(2) A person may appeal to the Court against a valuation report if the person is dissatisfied with —

(a) the valuer's decision on the person's eligibility for compensation; or 30

(b) the amount of compensation to be paid to the person pursuant to the valuation report.

(3) The Court may make an order that confirms or varies the valuation report in respect of the eligibility of a person for compensation or the amount of compensation to be paid to the person.

5 (4) No person may lodge an appeal after the resolution fund established under Division 5B in relation to the resolution of the Division 5C FI has been dissolved in accordance with regulations made for the purposes of section 109(2).

10 (5) Rules of Court may provide for the manner in which appeals under this section may be made and the procedure for the appeal.”.

Amendment of section 122

29. Section 122 of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

15 “(a) any sale, transfer, assignment or other disposition of any property or business of a pertinent financial institution pursuant to section 58 or 64 must not be reversed, repaid or set aside, except where a certificate has been issued under section 62 to reverse such sale,
20 transfer, assignment or other disposition; and”.

Amendment of section 123

30. Section 123 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

25 “(1) The Minister or the Authority may require a person to furnish, within the period and in the manner specified by the Minister or the Authority, any information or document that the Minister or the Authority may reasonably require —

30 (a) for the discharge or exercise of the Minister’s or the Authority’s duties, functions or powers under this Part; or

(b) for transmission to a valuer appointed under section 115 in connection with the valuer’s role under Division 5C.”.

Amendment of section 125

31. Section 125 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) The Minister may, by order in the *Gazette*, direct that section 59(1) or (2), 67(13), 70(13) or 77, or any part of that provision, ceases to apply to a pertinent financial institution, any business (or any part of the business) of a pertinent financial institution, any share in a pertinent financial institution or any eligible instrument issued by a Division 4A FI or to which it is a party or is subject, and the order has effect according to its terms on the date specified by the Minister in the order.”.

Amendment of section 126

32. Section 126(2) of the principal Act is amended —

(a) by deleting paragraph (b) and substituting the following paragraph:

“(b) provide for either or both of the following:

- (i) that any arrangement, transaction or action is exempt from any provision of this Part;
- (ii) that the Minister or the Authority must not exercise any power under this Part in relation to any arrangement, transaction or action, or any matter for which any arrangement has been entered into, either in all circumstances or if specified conditions are not satisfied;”;

(b) by inserting, immediately after sub-paragraph (i) of paragraph (c), the following sub-paragraph:

“(ia) any transaction or action as a transaction or action in paragraph (b)(i) or (ii);”;

(c) by inserting, immediately after the word “arrangement” wherever it appears in paragraph (c)(ii), the words “, transaction or action”;

5 (d) by inserting, immediately after the word “arrangement” wherever it appears in paragraph (c)(iii), the words “, transaction, action or matter”;

(e) by deleting the word “and” at the end of paragraph (e); and

10 (f) by deleting the full-stop at the end of paragraph (f) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

15 “(g) provide that a pertinent financial institution, any of its subsidiaries or any subsidiary within a class of its subsidiaries, must include a provision in a specified contract to which the pertinent financial institution or subsidiary is a party, the effect of which is that the parties to the contract agree to be bound by section 83 and by any suspension of a termination right in the contract by the Authority under section 84.”.

20

Repeal and re-enactment of section 130 and new sections 131 and 132

33.—(1) Section 130 of the principal Act is repealed and the following sections substituted therefor:

25 **“Financial year of Fund**

130. The financial year of the Fund begins on 1 April of each year and ends on 31 March of the succeeding year.

Audit

30 **131.** The accounts of the Fund are to be audited by the Auditor-General or such other auditor as may be appointed annually by the Minister in consultation with the Auditor-General.

Preparation and publication of financial statements and annual report of Fund

132.—(1) The Authority must, within 6 months from the close of the financial year of the Fund, send to the Minister —

- (a) a copy of the audited financial statements of the Fund, together with a copy of the auditor’s report; and 5
- (b) a report on the activities concerning the Fund during that financial year.

(2) The Authority must publish the audited financial statements and the auditor’s report mentioned in subsection (1)(a) in the *Gazette*. 10

(3) The Authority must publish the report mentioned in subsection (1)(b) in such manner as the Authority may determine.

(4) The Minister must, within 6 months from the close of the financial year of the Fund, cause a copy of the audited financial statements and a copy of the auditor’s report mentioned in subsection (1)(a), and a copy of the report mentioned in subsection (1)(b), to be presented to Parliament.” 15

(2) Subsection (1) applies with effect from the financial year of the Fund on 1 April 2017, and every subsequent financial year of the Fund. 20

Miscellaneous amendments consequential on renumbering

34.—(1) The section numbers in the first column of the Schedule are the section numbers of the principal Act before section 9 comes into force. 25

(2) Each provision of the principal Act specified in the first column of the Schedule is amended by deleting the cross-reference in the provision to a provision of the principal Act specified in the second column of the Schedule opposite that provision, and substituting the cross-reference with a reference to the renumbered provision of the principal Act directly opposite it in the third column of that Schedule. 30

Other miscellaneous amendments

35. The principal Act is amended —

(a) by inserting, immediately after the words “section 101A” in section 40(1)(v), the words “or 123ZZC”;

5 (b) by inserting, immediately after the definition of “domestic authority” in section 86, the following definition:

“ “foreign resolution authority” means an authority of a foreign country or territory which, whether alone or together with one or more other authorities of the foreign country or territory, is responsible for the resolution, or for preparing plans for dealing with the resolution, of a financial institution;”;

10 (c) by deleting the semi-colon at the end of the definition of “resolution” in section 86 and substituting a full-stop;

15 (d) by deleting the definition of “resolution authority” in section 86;

20 (e) by deleting the words “a resolution authority of a foreign country or territory” in sections 87(1), 88 and 89(1) and substituting in each case the words “a foreign resolution authority”; and

(f) by deleting the words “the resolution authority” wherever they appear in the following provisions and substituting in each case the words “the foreign resolution authority”:

25 Sections 87(1)(a) to (e), 88(a), (b) and (c) and 89(1)(a) to (d).

Consequential amendments to Banking Act

30 36.—(1) Section 20 of the Banking Act (Cap. 19, 2008 Ed.) is amended by deleting the words “or 4” in subsections (1)(b) and (7) and substituting in each case the words “, 4 or 4A”.

(2) Section 43 of the Banking Act is amended by inserting, immediately after subsection (2), the following subsection:

“(3) To avoid doubt, this section, and sections 44A and 46 in relation to an inspection under this section, do not apply to any inspection by the Authority for a purpose mentioned in section 27C of the Monetary Authority of Singapore Act (Cap. 186).”.

5

(3) Section 45 of the Banking Act is amended by inserting, immediately after subsection (6), the following subsection:

“(6A) To avoid doubt, this section, and section 46 in relation to an inspection under this section, do not apply to any inspection by a parent supervisory authority of the books of any branch or office of a bank in Singapore, if —

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(a) the parent supervisory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act, and exercises consolidated supervision authority as defined in that section over that bank; and

15

(b) the inspection is solely for the purpose of such consolidated supervision.”.

(4) Section 62(1) of the Banking Act is amended by deleting the full-stop at the end of paragraph (d) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

20

“(e) fifthly, any sum claimed by the trustee of a resolution fund (within the meaning of section 98 of the Monetary Authority of Singapore Act) from the bank under section 103, 104, 105 or 106 of that Act.”.

25

(5) Part II of the Third Schedule to the Banking Act is amended —

(a) by deleting the words “section 30AAR” in paragraph (a) of the second column of item 4B and substituting the words “section 56”;

(b) by deleting the words “section 30AAS” in paragraph (d) of the second column of item 4B and substituting the words “section 57”;

30

- (c) by deleting the words “section 30AAV” in paragraph (a) of the second column of item 4C and substituting the words “section 65”;
- 5 (d) by deleting the words “section 30AAW” in paragraph (c) of the second column of item 4C and substituting the words “section 66”;
- (e) by deleting the words “section 30AAY” in paragraph (b) of the second column of item 4D and substituting the words “section 68”; and
- 10 (f) by deleting the words “section 30AAZ” in paragraph (d) of the second column of item 4D and substituting the words “section 69”.

Consequential amendment to Companies Act

15 **37.** Section 145(6) of the Companies Act (Cap. 50, 2006 Ed.) is amended by deleting the words “section 30AAI” in paragraph (b) and substituting the words “section 40”.

Related amendments to Currency Act

38. The Currency Act (Cap. 69, 2002 Ed.) is amended —

- 20 (a) by deleting the definitions of “foreign” and “foreign exchange” in section 2;
- (b) by repealing section 16; and
- (c) by repealing sections 21 and 22 and substituting the following sections:

“Dissolution of Currency Fund

25 **21.** The Currency Fund established under section 21 in force immediately before the date of commencement of section 6 of the Monetary Authority of Singapore (Amendment) Act 2017, is dissolved on the date of the completion of the transfer of all of its assets and liabilities to the accounts holding the Authority’s assets and liabilities, as set out

30

in the notification mentioned in section 6A(2) of the Monetary Authority of Singapore Act (Cap. 186).

Authority’s assets must not be less than currency in circulation

22.—(1) The gross assets of the Authority must at all times be not less than 100% of the face value of the Authority’s currency in circulation.

(2) If, at any time, the face value of the Authority’s currency in circulation exceeds the gross assets of the Authority, the amount of the deficiency is to be charged on and paid out of the Consolidated Fund.”.

Related amendments to Deposit Insurance and Policy Owners’ Protection Schemes Act

39. The Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B, 2012 Ed.) is amended —

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

““resolution fund” means a fund established under section 99 of the Monetary Authority of Singapore Act (Cap. 186);

“resolution measure” has the meaning given to that term in section 98 of the Monetary Authority of Singapore Act;”;

(b) by inserting, immediately after the definition of “Supplementary Retirement Scheme” in section 2(1), the following definition:

““trustee”, in relation to a resolution fund, means the entity appointed under section 99(2) of the Monetary Authority of Singapore Act as the trustee of the resolution fund;”;

(c) by inserting, immediately after subsection (3) of section 9, the following subsection:

“(3A) The DI Fund may also be used to support a resolution measure in relation to a DI Scheme member.”;

(d) by inserting, immediately after subsection (1) of section 10, the following subsection:

“(1A) The Agency may also withdraw moneys in the DI Fund in accordance with Part VA to pay to the trustee of a resolution fund that is established under Division 5B of Part IVB of the Monetary Authority of Singapore Act to support a resolution measure undertaken in relation to a DI Scheme member.”;

(e) by inserting, immediately after section 29, the following Part:

“PART VA

WITHDRAWAL IN SUPPORT OF RESOLUTION MEASURE FOR DI SCHEME MEMBER

Determination of Authority

29A.—(1) For the purposes of supporting a resolution measure undertaken for a DI Scheme member and other matters relating to the measure, the Authority may, with the Minister’s approval, make a determination that an amount is to be paid out of the DI Fund and given to the trustee of the resolution fund for which the resolution measure was established.

(2) The amount to be paid out of the DI Fund must not exceed the amount of compensation that would have been paid out of the DI Fund to the insured depositors of the DI Scheme member under Part V if a determination for such compensation had been made under section 21, after taking into account any amounts that the Agency would have been repaid from or out of the assets of the DI Scheme member under section 27.

(3) Where the Authority determines that an amount is to be paid out of the DI Fund for the purpose mentioned in subsection (1), the Authority must immediately give a notice in writing to the Agency of its determination. 5

(4) The notice mentioned in subsection (3) must be in such form and contain such information as may be agreed between the Authority and the Agency.

(5) The Agency must, as soon as practicable upon receiving the notice mentioned in subsection (3), publish a notice in the *Gazette* to the effect that a payment is to be made from the DI Fund for the purpose mentioned in subsection (1). 10

Regulations for this Part

29B. The Authority may, in consultation with the Agency and with the approval of the Minister, make regulations for the purpose of section 29A, including for the following matters: 15

(a) the procedure for making payments out of or to the DI Fund; 20

(b) the manner of determining, for the purposes of section 29A(2), the amounts that the Agency would have been repaid from or out of the assets of the DI Scheme member under section 27.”; 25

(f) by deleting the words “Part IIIAA of the Insurance Act (Cap. 142)” in section 46(1)(c) and substituting the words “Part IVB of the Monetary Authority of Singapore Act in relation to a PPF Scheme member”; and

(g) by inserting, immediately after paragraph (d) of section 57(2), the following paragraph: 30

“(da) make payments to a trustee of a resolution fund established for a resolution measure undertaken for a DI Scheme member;”.

Related amendments to Finance Companies Act

40. The Finance Companies Act (Cap. 108, 2011 Ed.) is amended —

- 5 (a) by deleting the words “or 4” in section 15(1)(c)(ii) and substituting the words “, 4 or 4A”; and
- (b) by deleting the full-stop at the end of paragraph (b) of section 44A(1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

10 “(c) thirdly, any sum claimed by the trustee of a resolution fund (within the meaning of section 98 of the Monetary Authority of Singapore Act (Cap. 186)) from the finance company under section 103, 104, 105 or 106 of that Act.”.

Consequential amendments to Financial Advisers Act

41. The Financial Advisers Act (Cap. 110, 2007 Ed.) is amended —

- (a) by deleting the words “section 30X” in section 70B(a) and substituting the words “section 152”; and
- (b) by inserting, immediately after section 77, the following section:

“Application of this Part

77A. This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act (Cap. 186).”.

Consequential amendments to Financial Holding Companies Act 2013

42. The Financial Holding Companies Act 2013 (Act 13 of 2013) is amended —

- 30 (a) by inserting, immediately after subsection (5) of section 43, the following subsection:

“(5A) To avoid doubt, this section, and section 44 in relation to an inspection under this section, do not

apply to any inspection by a foreign supervisory authority of the books of any branch or office of a designated financial holding company, if —

(a) the foreign supervisory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act (Cap. 186), and exercises consolidated supervision authority as defined in that section over the company; and

(b) the inspection is solely for the purpose of such consolidated supervision.”; and

(b) by inserting, immediately after section 53, the following section:

“Application of this Part

53A. This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act.”.

Consequential and related amendments to Insurance Act

43. The Insurance Act (Cap. 142, 2002 Ed.) is amended —

(a) by inserting, immediately after subsection (5) of section 40B, the following subsection:

“(5A) To avoid doubt, this section, and section 40C in relation to an inspection under this section, do not apply to any inspection by a parent supervisory authority of the books of a licensed insurer, if —

(a) the parent supervisory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act (Cap. 186), and exercises consolidated supervision authority as defined in that section over the licensed insurer; and

(b) the inspection is solely for the purpose of such consolidated supervision.”;

(b) by inserting, immediately after section 49A, the following section:

5 **“Application of this Part**

49AA. This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act.”;

(c) by repealing Divisions 2, 3 and 4 of Part IIIAA;

10 (d) by deleting subsections (1) to (7) of section 49FO and substituting the following subsection:

 “(1) This section is to be read together with section 54 of the Monetary Authority of Singapore Act.”;

15 (e) by deleting subsections (12), (13) and (14) of section 49FO;

(f) by deleting the full-stop at the end of paragraph (d) of section 49FR(3) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

20 “(e) fifthly, any sum claimed by the trustee of a resolution fund (within the meaning of section 98 of the Monetary Authority of Singapore Act) from the licensed insurer under section 103, 104, 105 or 106 of that Act.”;

25 (g) by repealing sections 49FS and 49FU;

(h) by deleting paragraphs (a) to (d) of section 49FW(2); and

(i) by deleting subsection (4) of section 49FW.

Consequential amendment to Monetary Authority of Singapore (Amendment) Act 2015

30 **44.** Section 6 of, and the Schedule to, the Monetary Authority of Singapore (Amendment) Act 2015 (Act 14 of 2015) are repealed.

Consequential amendment to Payment Systems (Oversight) Act

45. The Payment Systems (Oversight) Act (Cap. 222A, 2007 Ed.) is amended by inserting, immediately after section 41, the following section:

“Application of this Part

5

41A. This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act (Cap. 186).”

Consequential amendments to Securities and Futures Act

46. The Securities and Futures Act (Cap. 289, 2006 Ed.) is amended —

10

(a) by deleting the words “or 4” in the following provisions and substituting in each case the words “, 4 or 4A”:

Sections 13(1)(*da*), 46H(1)(*da*), 56(1)(*da*), 81Z(1)(*da*), 95(2)(*ea*) and 289(4A);

15

(b) by deleting the words “or 4” in section 14(1)(*e*) and substituting the words “, 4 or 4A”;

(c) by inserting, immediately after subsection (4) of section 150B, the following subsection:

“(4A) To avoid doubt, this section, and section 150C in relation to an inspection under this section, do not apply to any inspection by a foreign regulatory authority of the books of any person, if —

20

(a) the foreign regulatory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act (Cap. 186), and exercises consolidated supervision authority as defined in that section over that person; and

25

(b) the inspection is solely for the purpose of such consolidated supervision.”; and

30

(d) by inserting, immediately after section 169, the following section:

“Application of this Part

169A. This Part does not apply to any request for assistance mentioned in section 154(1) of the Monetary Authority of Singapore Act.”.

5 **Consequential amendment to Securities and Futures (Amendment) Act 2017**

47. Section 206 of the Securities and Futures (Amendment) Act 2017 (Act 4 of 2017) is amended by deleting paragraph (c).

Consequential amendments to Trust Companies Act

- 10 **48.** The Trust Companies Act (Cap. 336, 2006 Ed.) is amended —
- (a) by deleting the words “or 4” in section 10(2)(da) and substituting the words “, 4 or 4A”; and
 - (b) by inserting, immediately after subsection (5) of section 47, the following subsection:

15 “(5A) To avoid doubt, this section, and section 48 in relation to an inspection under this section, do not apply to any inspection by a parent supervisory authority of the books, accounts and transactions of any branch or office of a licensed trust company, if —

20 (a) the parent supervisory authority is an AML/CFT authority as defined in section 152 of the Monetary Authority of Singapore Act (Cap. 186), and exercises consolidated supervision authority as defined in that section over that licensed trust company; and

25 (b) the inspection is solely for the purpose of such consolidated supervision.”.

THE SCHEDULE

Section 34

MISCELLANEOUS AMENDMENTS CONSEQUENTIAL
ON RENUMBERING

<i>First column</i>	<i>Second column</i>	<i>Third column</i>	
<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>	
Section 2 (definition of “primary dealer”)	Section 30Q	Section 145	5
Section 27C(6)	Section 30X(1)	Section 152(1)	
Section 27C(7)	Section 30ZA Section 30ZC Section 30ZF	Section 155 Section 157 Section 160	10
Section 27C(8)	Section 30X(1)	Section 152(1)	
Section 27D(2)	Section 30X(1)	Section 152(1)	
Section 27F(1)	Section 30X(1)	Section 152(1)	15
Section 27F(2)	Section 30X(1) Section 30ZF	Section 152(1) Section 160	
Section 30AA(2) (paragraph (b) of the definition of “relevant financial institution”)	Section 30AAJ	Section 41	20
Section 30AA(3)	Section 30AAB Section 30AAF	Section 33 Section 37	
Section 30AA(3) (paragraphs (a) and (b) of the definition of “relevant business”)	Section 30AAB	Section 33	25
Section 30AA(3) (definition of “statutory adviser”)	Section 30AAB	Section 33	
Section 30AA(3) (definition of “statutory manager”)	Section 30AAB	Section 33	30
Section 30AA(4)	Section 30AAG Section 30AAH	Section 38 Section 39	

THE SCHEDULE — *continued*

	<i>First column</i>	<i>Second column</i>	<i>Third column</i>
	<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>
5	Section 30AA(4) (definition of “transferee”)	Section 30AAG(1)	Section 38(1)
	Section 30AA(4) (definition of “transferor”)	Section 30AAG(1)	Section 38(1)
	Section 30AAB(1)(c)(i)	Section 30AAJ	Section 41
	Section 30AAC(3)(a)	Section 30AAJ	Section 41
10	Section 30AAC (section heading)	Section 30AAB	Section 33
	Section 30AAD(1)(b)	Section 30AAJ Section 30AAB(1)(c)(i)	Section 41 Section 33(1)(c)(i)
15	Section 30AAD(3)(a)(ii)	Section 30AAJ Section 30AAB(1)(c)(i)	Section 41 Section 33(1)(c)(i)
	Section 30AAG(7)	Section 30AAH	Section 39
	Section 30AAH(1)	Section 30AAG(1)	Section 38(1)
	Section 30AAH(2)(b)	Section 30AAG(1)(a)	Section 38(1)(a)
	Section 30AAH(2)(d)	Section 30AAJ	Section 41
20	Section 30AAH(4)	Section 30AAG(1)(a)	Section 38(1)(a)
	Section 30AAI(2)	Section 30AAJ	Section 41
	Section 30AAI(3)	Section 30AAJ	Section 41
	Section 30AAJ(3)	Section 30AAB(1)(c)(i) Section 30AAC(3)(a)	Section 33(1)(c)(i) Section 34(3)(a)
25	Section 30AAK (definition of “affected person”)	Section 30AAZN	Section 126
	Section 30AAK (definition of “director”)	Section 30AAZI	Section 121
30	Section 30AAK (definition of “excluded financial institution”)	Section 30AAZN	Section 126
	Section 30AAK (definition of “executive officer”)	Section 30AAZI	Section 121

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>	
<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>	
Section 30AAK (definition of “pertinent financial institution”)	Section 30AAZN	Section 126	5
Section 30AAK (definition of “relevant provisions”)	Section 30AAZN	Section 126	
Section 30AAR (definition of “certificate”)	Section 30AAT(1)	Section 58(1)	10
Section 30AAR (definition of “determination”)	Section 30AAS(1)	Section 57(1)	
Section 30AAT(2)	Section 30AAZN	Section 126	
Section 30AAU(1)	Section 30AAO(2) Section 30AAZM	Section 53(2) Section 125	15
Section 30AAU(1)(a)(i)	Section 30AAS(8)	Section 57(8)	
Section 30AAU(1)(a)(ii)	Section 30AAT(5)	Section 58(5)	
Section 30AAU(2)	Section 30AAO(2) Section 30AAZM Section 30AAS(8) Section 30AAT(5)	Section 53(2) Section 125 Section 57(8) Section 58(5)	20
Section 30AAV (definition of “certificate”)	Section 30AAX(1)	Section 67(1)	
Section 30AAV (definition of “determination”)	Section 30AAW(2)	Section 66(2)	25
Section 30AAV (definition of “significant shareholder”)	Section 30AAZN	Section 126	
Section 30AAV (definition of “significant shareholder provisions”)	Section 30AAZN	Section 126	30
Section 30AAX(2)	Section 30AAZN	Section 126	

THE SCHEDULE — *continued*

	<i>First column</i>	<i>Second column</i>	<i>Third column</i>
	<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>
5	Section 30AAX(13)	Section 30AAO(2) Section 30AAZM Section 30AAW(6)	Section 53(2) Section 125 Section 66(6)
	Section 30AAY (definition of “certificate”)	Section 30AAZA(1)	Section 70(1)
10	Section 30AAY (definition of “determination”)	Section 30AAZ(1) Section 30AAZ(2)	Section 69(1) Section 69(2)
	Section 30AAY (definition of “significant shareholder”)	Section 30AAZN	Section 126
15	Section 30AAY (definition of “significant shareholder provisions”)	Section 30AAZN	Section 126
	Section 30AAZA(2)	Section 30AAZN	Section 126
20	Section 30AAZA(13)	Section 30AAO(2) Section 30AAZM Section 30AAZ(7)	Section 53(2) Section 125 Section 69(7)
	Section 30AAZB (paragraph (k) of the definition of “prescribed written law”)	Section 30AAZN	Section 126
	Section 30AAZC(1)	Section 30AAZE	Section 89
25	Section 30AAZD	Section 30AAZE	Section 89
	Section 30AAZE(5)	Section 30AAZG	Section 91
	Section 30AAZG(a)	Section 30AAZE(1)(b) Section 30AAZE(1)(c)	Section 89(1)(b) Section 89(1)(c)
	Section 30AAZG(b)	Section 30AAZE(1)(b)	Section 89(1)(b)
30	Section 30AAZG(c)	Section 30AAZE(1)(c)	Section 89(1)(c)
	Section 30AAZH(1)	Section 30AAZG	Section 91
	Section 30AAZH(1)(a)	Section 30AAZE(1)(b)	Section 89(1)(b)
	Section 30AAZH(1)(b)	Section 30AAZE(1)(c)	Section 89(1)(c)

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>	
<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>	
Section 30AAZH(1)(c)	Section 30AAZE(1)(b) Section 30AAZE(1)(c)	Section 89(1)(b) Section 89(1)(c)	5
Section 30AAZH(2)	Section 30AAZE(1)(b) Section 30AAZE(1)(c)	Section 89(1)(b) Section 89(1)(c)	
Section 30AAZL(1)	Section 30AAZI	Section 121	
Section 30AAZL(2)	Section 30AAZI	Section 121	
Section 30AAZN(2)(a)	Section 30AAR	Section 56	10
Section 30AAZN(3)	Section 30AAK	Section 49	
Section 30AAZN(4)	Section 30AAK	Section 49	
Section 30A(3)	Section 30B	Section 128	
Section 30B(3)(c)	Section 30C(3)	Section 129(3)	
Section 30H(1)	Section 30G	Section 135	15
Section 30H(2)(a)	Section 30G	Section 135	
Section 30H(2)(b)	Section 30G	Section 135	
Section 30H(4)	Section 30G	Section 135	
Section 30H(5)	Section 30G	Section 135	
Section 30K(1)	Section 30P	Section 144	20
Section 30L(1)	Section 30M	Section 141	
Section 30L(1)(a)	Section 30P	Section 144	
Section 30L(1)(b)(ii)	Section 30P	Section 144	
Section 30Q(1)(a)	Section 30N	Section 142	
Section 30Q(1)(b)	Section 30M	Section 141	25
Section 30Q(4)(b)	Section 30W	Section 151	
Section 30Q(6)(b)	Section 30R	Section 146	
Section 30S(2)(a)	Section 30Q(1)	Section 145(1)	
Section 30T(1)(b)	Section 30S	Section 147	

THE SCHEDULE — *continued*

	<i>First column</i>	<i>Second column</i>	<i>Third column</i>
	<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>
	Section 30T(1)(h)	Section 30W	Section 151
5	Section 30T(1)(i)	Section 30Q(1)	Section 145(1)
	Section 30T(3)	Section 30S	Section 147
	Section 30U(1)(a)	Section 30R	Section 146
	Section 30U(1)(b)	Section 30S	Section 147
10	Section 30U(1)(c)	Section 30T(1)	Section 148(1)
		Section 30T(2)	Section 148(2)
		Section 30T(3)	Section 148(3)
	Section 30U(2)(a)	Section 30T	Section 148
	Section 30V(1)	Section 30Q(1)	Section 145(1)
	Section 30V(1)(a)	Section 30R	Section 146
15	Section 30V(1)(b)	Section 30S	Section 147
	Section 30V(2)(a)	Section 30Q(1)	Section 145(1)
	Section 30X(1) (paragraph (m) of the definition of “prescribed written law”)	Section 42	Section 179
20	Section 30Z(1)	Section 30ZA	Section 155
	Section 30Z(3)	Section 30ZA	Section 155
	Section 30ZB	Section 30ZC	Section 157
	Section 30ZD(1)(a)	Section 30ZA(2)(a)	Section 155(2)(a)
		Section 30ZC(2)	Section 157(2)
25	Section 30ZD(1)(b)	Section 30ZA(5)	Section 155(5)
		Section 30ZC(5)	Section 157(5)
	Section 30ZD(1)(c)	Section 30ZA(2)(a)	Section 155(2)(a)
		Section 30ZC(2)	Section 157(2)
		Section 30ZA(5)	Section 155(5)
30		Section 30ZC(5)	Section 157(5)

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>	
<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>	
Section 30ZE(1)(a)	Section 30ZA(2)(a) Section 30ZC(2) Section 30ZA(5) Section 30ZC(5)	Section 155(2)(a) Section 157(2) Section 155(5) Section 157(5)	5
Section 30ZE(1)(b)	Section 30ZA(2)(a) Section 30ZC(2) Section 30ZA(5) Section 30ZC(5)	Section 155(2)(a) Section 157(2) Section 155(5) Section 157(5)	10
Section 30ZE(2)	Section 30ZA(2)(a) Section 30ZC(2) Section 30ZA(5) Section 30ZC(5)	Section 155(2)(a) Section 157(2) Section 155(5) Section 157(5)	15
Section 30ZG(4)	Section 30ZH Section 30ZI	Section 162 Section 163	
Section 30ZH(1)	Section 30ZG	Section 161	
Section 30ZI(1)	Section 30ZG	Section 161	
Section 41B(b)(i)	Section 30AAB(2)	Section 33(2)	20
Section 41B(b)(ii)	Section 30AAB(2)	Section 33(2)	
Section 41B(b)(iii)	Section 30AAB	Section 33	
Section 41C(1)	Section 30AAJ Section 30AAM Section 30P Section 30W	Section 41 Section 51 Section 144 Section 151	25
Section 41C(2)(a)	Section 30AAJ Section 30AAM Section 30P Section 30W	Section 41 Section 51 Section 144 Section 151	30

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Provision in principal Act</i>	<i>Existing cross-reference</i>	<i>New provision number</i>
The Schedule	Section 30AA(4)	Section 31(4)
	Section 30AAH(6)	Section 39(6)
	Section 30AAI(2)	Section 40(2)
	Section 30AAI(9)	Section 40(9)
	Section 30AAK	Section 49
	Section 30AAM(2)	Section 51(2)
	Section 30AAN(1)	Section 52(1)
	Section 30AAN(2)	Section 52(2)
	Section 30AAP(1)	Section 54(1)
	Section 30AAP(2)	Section 54(2)
	Section 30AAQ(1)	Section 55(1)
	Section 30AAR	Section 56
	Section 30AAS(6)	Section 57(6)
	Section 30AAT(7)	Section 58(7)
Section 30AAZI(5)	Section 121(5)	

EXPLANATORY STATEMENT

This Bill seeks to amend the Monetary Authority of Singapore Act (Cap. 186) for the following main purposes:

- (a) to enhance the framework for the resolution of distressed financial institutions under the Act;
- (b) to state that the developmental objective of the Monetary Authority of Singapore (the Authority) is subordinate to its supervision and financial stability objective;
- (c) to change the way in which the Authority's paid-up capital may be revised;

- (d) to modify the rules for determining the amount of the Authority's profits to be paid into the General Reserve Fund, which in turn affects how much of such profits may be paid to the Government;
- (e) to provide for the merger of the assets and liabilities of the Currency Fund with the rest of the assets and liabilities of the Authority;
- (f) to set out specific financial and annual report provisions for the Financial Sector Development Fund;
- (g) to apply the resolution provisions in the Act to licensed insurers, and delete the corresponding provisions in the Insurance Act (Cap. 142), in order to consolidate resolution provisions for all financial institutions in a single Act;
- (h) to renumber the existing sections of the Act for ease of reading and use of the Act.

The Bill also makes consequential and related amendments to certain other Acts.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 3 (Establishment of Authority) to enable the managing director of the Authority to appoint a deputy managing director to exercise the managing director's power of signing instruments that require the Authority's common seal, and witnessing the affixing of the seal.

Clause 3 amends section 4 (Principal objects and functions of Authority) to provide that when carrying out its functions and duties or when exercising its powers, the Authority has to act on the basis that its objective of growing Singapore into an internationally competitive financial centre (its developmental objective) is subordinate to its objective of fostering a sound and reputable financial centre and promoting financial stability (its supervision and financial stability objective).

Clause 4 amends section 5 (Paid-up capital) to enable the Authority's paid-up capital to be revised by an amount agreed to by the Government and the board of the Authority. To this end, the board has to consider the level of capital and reserves necessary for the Authority's objects and functions. Currently, section 5 only allows for an increase in the Authority's paid-up capital with the approval of the Government.

Clause 5 amends section 6 (General Reserve Fund) to revise the rules that determine the amount of the Authority's net profit that must be credited to the General Reserve Fund. Currently, the net profit or a part of it must be credited to the Fund if the Fund is less than half of the Authority's paid-up capital, or is not less than half but less than twice the Authority's paid-up capital. With the amendment, the net profit or a part of it is required to be credited to the Fund only if the Fund is in deficit.

Clause 6 inserts a new section 6A to provide that the Authority must, starting from the commencement date of that clause, commence transferring all the assets and liabilities of the Currency Fund to such of the accounts holding the Authority's assets and liabilities as the Authority may determine. The Currency Fund will be dissolved upon the completion of the transfer.

Clause 7 inserts a new section 22A to require the Authority to indemnify any of its directors, officers, employees, secondees, persons on attachment to it, and persons carrying out or exercising any of its functions, duties and powers, against costs incurred in legal proceedings, if the proceedings arose from anything done by that person in good faith in exercising a power or carrying out a duty or function of the Authority or in complying with a written law.

Clause 8 amends section 23 (Powers, duties and functions of Authority) to provide that, in furtherance of its functions under Part IVB (Resolution of financial institutions), the Authority may grant a loan to the trustee of a resolution fund established to support a resolution measure for a financial institution. The Authority may also do anything that is necessary or expedient for the orderly resolution of a financial institution.

Clause 9 renumbers the sections of the Act starting from section 30AA. The sections are renumbered in order to make the Act easier to read and use.

Clause 10 inserts a new Division heading in Part IVA.

Clause 11 amends section 31(2) to define the term "pertinent financial institution" for the purposes of the new Division 2. This is a term that is already used in Part IVB (Resolution of financial institutions) and bears the same meaning as in that Part.

Clause 12 inserts a new Division 2 in Part IVA.

The new Division 2 (comprising new sections 42 to 48) sets out requirements for recovery and resolution planning for financial institutions, and provides for the removal of impediments to their orderly resolution.

The new section 42 empowers the Authority to issue a notice to pertinent financial institutions requiring any financial institution to which a direction under section 43 is issued, to prepare a recovery plan (i.e. a plan to restore its financial strength or viability should it become distressed), to review and keep up-to-date its recovery plan, to adopt certain procedures in preparing its recovery plan, to maintain information for the purpose of preparing, reviewing and keeping up-to-date its recovery plan, and to take action for the effective implementation of a plan under section 44, among other duties.

The new section 43 empowers the Authority to issue a direction to a pertinent financial institution to comply with the requirements of a section 42 notice. The direction is to specify the dates for the submission and frequency of review of the financial institution recovery plan. The Authority may also direct a pertinent

financial institution to amend its recovery plan, to remove any impediment to its implementation, to implement a part of the plan, or to implement any other arrangement or measure for the restoration of its financial strength or viability.

The new section 44 provides that the Authority may prepare resolution plans for a pertinent financial institution, and may to this end require it to furnish information and documents to the Authority.

The new section 45 empowers the Authority to direct a pertinent financial institution to remove any impediment to its orderly resolution.

The new section 46 provides for an appeal process against a direction given to a pertinent financial institution under section 43 or 45 for the removal of impediments.

The new section 47 specifies that a direction or notice under the new Division 2 must be in writing but need not be published in the *Gazette*.

The new section 48 makes it an offence for a pertinent financial institution to fail to comply with a notice or direction of the Authority under the new Division 2, or to knowingly or recklessly provide any false or misleading information or document in purported compliance with such direction or notice.

Clause 13 amends section 49 (formerly section 30AAK) (Interpretation of Part IVB) to define “PPF Agency” and “PPF Funds”, which are terms used in the amended Divisions 2 and 3 of Part IVB.

Clause 14 amends section 50 (formerly section 30AAL) (Exercise of powers under Divisions 2, 3 and 4 of Part IVB) to provide that the matters that the Authority must have regard to when exercising its powers under Divisions 2, 3 and 4 of Part IVB, as set out in that section, are also relevant when the Authority exercises its powers under the new Division 4A (Bail-in powers).

Clause 15 amends section 53 (formerly section 30AAO) (Moratorium) to criminalise the breach of an order of the Authority prohibiting a specified financial institution from carrying on its significant business, any act or function connected with the business or any aspect of the business. It also amends section 53 to provide that such order need not be published in the *Gazette*.

Clause 16 amends section 54 (formerly section 30AAP) (General provisions as to winding up) to require certain persons to comply with conditions of an approval given by the Authority to a liquidator of a foreign company carrying on the local significant business of a specified financial institution, to act as a liquidator in Singapore. The failure of the liquidator to comply with any such condition is an offence. It is also an offence for a liquidator of a company carrying on the local significant business of a specified financial institution, to fail to give to the Authority information the Authority requires concerning the affairs of the company or the company’s winding up, or to knowingly or recklessly provide false or misleading information to the Authority.

Clause 17 amends section 56 (formerly section 30AAR) (Interpretation of Division 2) to define “guaranteed policy moneys”, and to redefine “transferee” by removing the requirement that it has to apply to be a regulated person to carry on the transferor’s significant business, as a transfer need not involve the transferee carrying on such business.

Clause 18 amends section 57 (formerly section 30AAS) (Compulsory transfer of business) —

- (a) to state when the Authority may make a determination for the transfer of business of a licensed insurer, and to make other related amendments concerning such transfer;
- (b) to provide that the Authority may only make a determination for the transfer of the transferor’s significant business which is to be carried on by the transferee, if the transferee is regulated by the Authority for this purpose or will be applying to be so regulated;
- (c) to provide that the Minister may approve the Authority’s determination of a transfer of business only if the transferee’s board of directors (if it is a corporation) or committee of management (if it is a co-operative society) has agreed to the modification; and
- (d) to require the transferor or transferee to comply with every condition of the Minister’s approval that applies to it and of which it has been notified.

Clause 19 amends section 58 (formerly section 30AAT) (Certificate of transfer) to provide for the following:

- (a) a certificate of transfer involving a licensed insurer may state whether guaranteed policy moneys in relation to any policy should be adjusted;
- (b) where the policy moneys have been so adjusted, agreements subsisting before the transfer date have effect as if the adjustment has been made, and the policy owner or claimant has recourse against the transferor for the difference between the original and adjusted amounts.

The section is further amended to provide that the rule that a transfer takes effect only if the transferee becomes regulated to carry on the transferor’s significant business, only applies if the transferee is to carry on such business.

Additionally, the section is amended to provide that the novation under subsection (8)(b) of agreements pertaining to the transferred business to the transferee does not apply to a contract of employment. The operation of section 18A of the Employment Act (Cap. 91), which preserves contracts of employment and period of employments as at the time of transfer, is not affected by the section.

Lastly, the section is amended to provide that an agreement subsisting before the transfer date that relates to the business that is transferred, is not terminated by reason only of the transfer.

Clause 20 amends section 59 (formerly section 30AAU) (Moratorium, avoidance of disposition of property, etc.) to make an exception to the rule that any sale or other disposition of the business to be transferred, before the transfer takes effect is void. The exception relates to the payment of an insurance claim in a case where the transferor is a licensed insurer.

Clause 21 inserts a new Division 2A in Part IVB.

The new Division 2A (comprising new sections 60 to 64) enables subsequent adjustments to be made to a compulsory transfer of business made under Division 2, through a transfer back to the transferor or an onward transfer to a third entity.

The new section 60 defines terms used in the new Division 2A.

The new section 61 enables the Authority to make a determination that the whole or any part of a business that has been compulsorily transferred to another is to be transferred back to the transferor. For example, such reverse transfer may be necessary if, upon obtaining further information, the Authority determines that assets are over-valued or liabilities are under-valued at the point of the transfer. The determination is to be submitted to the Minister for approval. The Minister's approval may be made subject to conditions. The transferor or transferee must comply with every condition that applies to it and of which it has been notified.

The new section 62 provides that if the Minister approves the Authority's determination for a reverse transfer, the Minister must issue a reverse transfer certificate. The section specifies the provisions which the certificate may make, the date the reverse transfer is to come into effect, the Minister's right to add to, vary or revoke any matter in the certificate before it comes into effect, and for the certificate to be served on the affected entities and published. It also provides for various matters necessary to effect the reverse transfer, such as the novation of agreements and the change of parties to legal proceedings that relate to the business transferred back.

The new section 63 enables the Authority to make a determination that the whole or any part of a business that has been compulsorily transferred to a transferee is to be transferred to another transferee. Such onward transfer may be made to an entity established or incorporated to temporarily hold and manage the assets and liabilities of the transferor or to do any other act for the orderly resolution of the transferor, or both. The determination is to be submitted to the Minister for approval. The Minister's approval may be made subject to conditions. The transferee or 2nd transferee must comply with every condition that applies to it and of which it has been notified.

The new section 64 provides that if the Minister approves the Authority's determination for an onward transfer, the Minister must issue an onward transfer certificate. The section specifies the provisions which the certificate may make, the date the onward transfer is to come into effect, the Minister's right to add to, vary or revoke any matter in the certificate before it comes into effect, and for the certificate to be served on the affected entities and published. It also provides for various matters necessary to effect the onward transfer, such as the novation of agreements and the change of parties to legal proceedings that relate to the business that is transferred.

Clause 22 amends section 65 (formerly section 30AAV) (Interpretation of Division 3) to provide that the Division (which enables the compulsory transfer of shares of pertinent financial institutions) does not apply to a financial institution that is a co-operative society. This is because any such transfer may in effect force a member of a co-operative society to withdraw from the society. This in turn may engage the member's right under Article 14 of the Constitution (freedom of association).

Clause 23 amends section 66 (formerly section 30AAW) (Compulsory transfer of shares) —

- (a) to include matters which the Authority must have regard to when determining whether shares held in a pertinent financial institution that is a licensed insurer should be compulsorily transferred; and
- (b) to clarify that the transferor or transferee must comply with a condition of the Minister's approval of the Authority's determination on a transfer only if the condition applies to the transferor or transferee and it has been notified of the condition, as well as to criminalise such non-compliance.

Clause 24 amends section 67 (formerly section 30AAX) (Certificate of transfer) to make an exception to the rule that any sale or other disposition of the property of a pertinent financial institution whose shares are to be transferred, before the transfer takes effect is void. The exception relates to the payment of an insurance claim in a case where the pertinent financial institution is a licensed insurer.

Clause 25 amends section 69 (formerly section 30AAZ) (Compulsory restructuring of share capital) to include matters that the Authority must have regard to when determining whether shares are to be issued to a subscriber by a pertinent financial institution that is a licensed insurer. It also amends the section to enable the Authority to call for an independent assessment for a proposed determination to reduce the share capital of a pertinent financial institution (and not just for a proposed determination for the issue of shares by a pertinent financial institution).

The clause further amends section 69 to require the Minister's notice of intention to approve a determination, to include the date by which shareholders of a pertinent

financial institution in which shares are proposed to be cancelled, may make written representations to the Minister. Currently, the notice need only state such particulars if the determination is for the issue of shares by a pertinent financial institution.

Finally, the clause amends section 69 to clarify that the pertinent financial institution or subscriber of shares in the institution must comply with a condition of the Minister's approval of the Authority's determination on a restructuring of share capital only if the condition applies to and is notified to the institution or subscriber, as well as to criminalise such non-compliance.

Clause 26 amends section 70 (formerly section 30AAZA) (Certificate of restructuring of share capital) to make an exception to the rule that any sale or other disposition of property of a pertinent financial institution whose share capital is to be compulsorily restructured, before the date the certificate comes into effect, is void. The exception relates to the payment of an insurance claim in a case where the pertinent financial institution is a licensed insurer. It also makes an editorial amendment to the section.

Clause 27 inserts 2 new Divisions in Part IVB.

The new Division 4A (comprising new sections 71 to 81) provides for powers to bail-in instruments of ownership and liabilities of a distressed financial institution.

The powers of bail-in include powers to cancel an instrument or liability, to convert it from one form or class to another (e.g. from debt to equity), to create a new instrument or liability in connection with modifying an existing instrument or liability, and to treat an instrument or liability as having effect as if a right of modification or conversion of its form had been exercised. Both the types of instruments and liabilities that may be bailed in, and the financial institutions whose ownership instruments and liabilities may be the subject of a bail-in, will be prescribed in regulations.

The new section 71 defines terms used in the new Division 4A.

The new section 72 provides that in exercising a power under the new Division 4A, the Authority must have regard to the desirability of giving pre-resolution creditors and shareholders the priority and treatment they would have enjoyed in a winding up of the financial institution concerned. The exercise of any power under the new Division 4A does not affect the exercise of any other resolution power, i.e. the Authority and the Minister may exercise a power of bail-in in conjunction with other powers under Part IVB or another Act administered by the Authority.

The new section 73 enables the Authority to make a determination that instruments and liabilities relating to a financial institution should be bailed in. The section provides for the grounds for making the determination. It also provides that

the Authority may call for an independent assessment before making a determination. The determination is to be submitted to the Minister for approval.

The new section 74 requires the Minister, before approving a determination, to publish a notice of the Minister's intention to approve the determination and the date by which the holder of an affected instrument or liability may make representations to the Minister, unless the Minister decides that it is not practicable or desirable to publish the notice. The Minister must also give the affected financial institution a notice of such intention and a date by which it may make representations to the Minister, unless the Minister decides that it is not practicable or desirable to do so. The Minister is to consider all representations when deciding whether to approve the determination. The Minister's approval may be given subject to conditions. The affected financial institution must comply with every condition that applies to it and of which it is notified.

The new section 75 provides that if the Minister approves the Authority's determination, the Minister must issue a bail-in certificate. The section also provides for the date the certificate is to come into effect, the provisions which the certificate may contain, the Minister's power to add to, vary or revoke matters in the certificate, service of the certificate on the affected financial institution, and the publication of the certificate.

The new section 76 provides for the effects of a bail-in certificate. A bail-in certificate takes effect according to its tenor, does not require any further act by the affected financial institution, or the financial institution required by the certificate to issue any ownership instrument (called the resulting financial institution), for it to take effect, and is binding on affected persons. Where the certificate contains a direction to a person to do a specified act, non-compliance with that direction is an offence.

The new section 77 provides for a stay on certain actions in the period starting on the date of the publication of the notice of the Minister's intention to approve a bail-in or (where the notice is not published) of the bail-in certificate, and ending on the date the certificate takes effect. These actions include the passing of resolutions, the making of a winding up order against the affected financial institution, and the commencement and continuation of proceedings against it. Further, starting from the date of the publication of the notice of the Minister's intention to approve a bail-in or (where the notice is not published) of the bail-in certificate, no shareholder may exercise any voting power in the financial institution. Voting power may only be exercised from the date the Minister publishes a notice of the cessation of the stay on such exercise.

The new section 78 contains provisions that apply to a person who becomes a significant shareholder of the affected financial institution as a result of the bail-in certificate, or who becomes a significant shareholder of the resulting financial institution. The person is treated as having obtained the requisite approval under any law that requires a significant shareholder to seek approval from the Minister

or the Authority to become a significant shareholder. The person is also not required to make a take-over offer to other shareholders. However, the person must comply with any condition imposed by the Minister, including any restriction on the disposal or further acquisition of shares or voting power and on the exercise of voting power.

Lastly, the person must take steps to cease to be a significant shareholder if required by a notice of the Minister to do so. The Minister may require the person to take such steps if, among other grounds, the Authority is not satisfied that the person is a fit and proper person to be a significant shareholder of the financial institution concerned. Until the person has disposed of or transferred the shares specified in the notice, no voting rights may be exercised, and no rights, bonuses or dividends may be issued, offered or paid in respect of the shares, except with the permission of the Minister.

The new section 79 enables the Minister to direct a person who has failed to comply with a condition imposed by the Minister under section 78, or a notice under section 78 to take steps to cease to be a significant shareholder. The direction may be one requiring the transfer or disposal of shares in the affected or resulting financial institution, or restricting such transfer or disposal.

The new section 80 criminalises the non-compliance by a significant shareholder with a condition imposed by the Minister under section 78, with a notice under section 78 to take steps to cease to be a significant shareholder, or with a notice under section 79.

The new section 81 enables the Minister to make regulations to require a contract governing an instrument or liability to contain a term that the parties agree that the instrument or liability may be bailed in under the new Division 4A.

The new Division 4B (comprising new sections 82 to 85) provides for the suspension of certain contractual rights in the event of a resolution of a financial institution. These rights include the right to terminate the contract, the right to accelerate, close out, set off or net an obligation under the contract that would result in a suspension or modification or the extinguishment of the obligation, the right to suspend, modify or extinguish an obligation under the contract, and (in the case of a reinsurance contract) the reinsurer's right to terminate or not reinstate coverage.

The new section 82 defines terms used in the new Division 4B.

The new section 83 provides that a resolution measure is to be disregarded in determining the applicability of a provision in a contract enabling a party to exercise a termination right if any resolution measure or an event linked to it occurs. The section applies to a contract —

- (a) one of the parties to which is a pertinent financial institution that is the subject of a resolution, or an entity within the same group of companies

as that financial institution and whose obligations under the contract are guaranteed by that financial institution; and

(b) whose substantive obligations continue to be performed.

The new section 84 gives the Authority a power to temporarily stay the exercise of a termination right under a contract if one of the parties to the contract is —

- (a) a pertinent financial institution that is the subject or proposed subject of a resolution;
- (b) a pertinent financial institution that is the subject of a foreign resolution, or for which there are grounds for carrying out such resolution; or
- (c) an entity within the same group of companies as a pertinent financial institution that is the subject or proposed subject of a resolution, and whose obligations under the contract are guaranteed by that financial institution, where the contract has a termination right that may be exercised if the pertinent financial institution becomes insolvent or is in a certain financial condition.

Any suspension by the Authority does not extend to a termination right —

- (a) that is exercisable for a breach of a basic substantive obligation;
- (b) under a contract with a person specified in regulations; or
- (c) under a contract prescribed in regulations.

The new section 85 provides that a suspension of a termination right under the new section 84 takes effect from the time the notice of it is published in the *Gazette* or a time on another date specified in the notice, and expires at the same time on the second business day after the date it commences. For a reinsurance contract, the date of expiry will be set out in regulations. During the period of suspension, any purported exercise of the right has no effect. During the suspension period, a person may nevertheless exercise a termination right if the Authority gives notice to the person that the contract does not or will not form part of any business that will be compulsorily transferred under section 58, or the Authority has decided not to make a determination under Division 4A (Bail-in powers) in relation to the pertinent financial institution in question. However, the person may still not exercise a termination right after the expiry of the suspension period on the basis of a resolution measure or an event directly linked to it, (if the contract forms part of business compulsorily transferred to another pursuant to a certificate of transfer or an onward transfer certificate) any act of the institution before the transfer, or the suspension itself.

Clause 28 inserts 3 new Divisions (Divisions 5A, 5B and 5C) in Part IVB.

The new Division 5A (comprising sections 93 to 97) provides for the recognition and support of resolution actions taken by a foreign resolution authority on a

financial institution operating in Singapore whether through a branch or a subsidiary (called a foreign financial institution).

The new section 93 defines terms used in the new Division 5A.

The new section 94 provides that where a foreign resolution authority makes a request to the Authority for recognition of a foreign resolution action taken on a foreign financial institution, the Authority may make a determination whether to recognise it in whole or part or to refuse to recognise it. The Authority must submit its determination to the Minister who may approve the determination with or without modification, or refuse to approve it.

The new section 95 provides that where the Minister approves a determination for recognition of a foreign resolution action, the Minister must make an order declaring that the action is recognised. The order may make provision for the same matters as those for which provision may be made in a certificate of transfer of business, certificate of transfer of shares, certificate of restructuring of share capital, or a bail-in certificate in Part IVB. Those matters may be modified in order to give effect to the foreign resolution action. The provisions of the Act that apply to those certificates also apply to corresponding provisions made in the order.

The new section 96 allows the Authority to issue directions to persons regulated by it in order to give effect to an order made under the new section 95.

The new section 97 criminalises a non-compliance with an order under the new section 95 or a direction under the new section 96.

The new Division 5B (comprising new sections 98 to 111) provides for the establishment of resolution funds to finance resolution measures under Part IVB and to pay compensation under the new Division 5C for losses connected with those measures.

The new section 98 defines terms used in the new Division 5B.

The new section 99 enables the Minister (on the Authority's recommendation) to establish a resolution fund for a resolution measure taken under Part IVB. The Minister must appoint an entity to be the trustee of the fund. The trustee of a resolution fund may obtain a loan from the Authority to constitute the fund. All income and proceeds from the resolution measure and from moneys withdrawn from the resolution fund, all levies collected from levy payers and moneys recovered from the financial institution under resolution, any moneys paid out of the Deposit Insurance Fund to the trustee, as well as any additional loan from the Authority, must be paid into the resolution fund.

The new section 100 sets out the duties of the trustee of a resolution fund. Essentially, the trustee acts on the direction of the Minister. The trustee's duties include making withdrawals from the fund in accordance with the new Division 5B, collecting and recovering payments from the financial institution under resolution and levies from the industry, and distributing the balance in the

fund after completion of the resolution. The trustee as well as its directors, officers, employees and agents and persons acting on its direction are immune from suit for anything done in good faith pursuant to the new Division 5B.

The new section 101 provides for withdrawals which may be made from the resolution fund. A withdrawal may be made for various purposes to support the resolution measure as well as to pay compensation under the new Division 5C. A withdrawal may only be made by the trustee if directed by the Minister. The Minister may only direct the trustee to make a withdrawal from the fund to provide capital to the financial institution under resolution if firstly, the Authority is of the view that such provision of capital is necessary for the orderly resolution of the financial institution; and secondly after taking into account whether appropriate losses have been imposed on shareholders and unsecured creditors of the financial institution.

The new section 102 provides that the Minister may (on a recommendation of the Authority) direct the trustee of a resolution fund to recover moneys withdrawn from the fund either from the financial institution under resolution, or from the industry in the form of levies, or both. The persons on whom a levy may be imposed will be prescribed in regulations. The following levy payers may be prescribed:

- (a) a financial institution that belongs to the same category as the financial institution under resolution, as defined in the regulations (called a similar financial institution);
- (b) if the financial institution under resolution is a market infrastructure, its participants as well as participants of other market infrastructures;
- (c) if the financial institution under resolution is a payment system operator, its participants.

The new section 103 provides for the manner of recovery of moneys withdrawn from a resolution fund from the financial institution under resolution. It provides that any sum claimed by the trustee of the fund from the financial institution is a debt due from the financial institution to the trustee.

The new section 104 provides that after the Minister has directed that moneys withdrawn from a resolution fund be recovered by way of imposition of levies, the Authority must proceed to compute the amount of levy due from each levy payer, in accordance with regulations. The new section also sets out the notices that must be given to levy payers. Where the levy payers are participants of market infrastructures, the levy may be collected directly from the participants, or indirectly through the market infrastructures e.g. by deducting from transaction fees due from participants to the market infrastructures.

The new section 105 provides for the manner of payment of the levy by similar financial institutions, participants of a market infrastructure (in the case where the

levy is to be collected directly from them) and participants of a payment system operator. It provides that if the levy is not paid by the due date, the trustee may impose a late payment fee. The late payment fee must not exceed the amount of the unpaid levy.

The new section 106 provides for the manner of payment of the levy by participants of a market infrastructure, in the case where the market infrastructure is required to collect the levy from the participants. It sets out the duties of the market infrastructure to collect the levy from the participants and pay the total amount of the levies due from the participants to the trustee. The market infrastructure is immune from any suit for carrying out those duties in good faith and with reasonable care. If the market infrastructure fails to pay to the trustee the total amount of the levies due from its participants by the date of payment specified in the notice, the trustee may impose a late payment fee on the market infrastructure. The late payment fee must not exceed the amount of the unpaid levy.

The new section 107 provides that levies and late payment fees that are imposed under the new Division 5B are recoverable as a debt due to the trustee. It also provides that where the trustee has commenced proceedings for recovering any of these, it is entitled to claim costs on a full indemnity basis. Lastly, the new section provides for the refund and remission of levies.

The new section 108 provides for the confidentiality of notices for payment of a levy given to a levy payer that is a similar financial institution, a participant of a market infrastructure (in the case where the levy is to be collected directly from participants) or a participant of a payment system operator.

The new section 109 provides that the Minister may, from time to time, direct the trustee of a resolution fund to make a withdrawal from the fund —

- (a) to repay the loan from the Authority; and
- (b) to reimburse the deposit insurance and policy owners' protection fund agency for moneys withdrawn from the Deposit Insurance Fund.

Any amount that is left in a resolution fund after completion of the resolution is to be dealt with in accordance with regulations, and the fund is to be dissolved thereafter in accordance with the regulations.

The new section 110 provides that any sum claimed by the trustee of a resolution fund (including any levy or late payment fee) from a financial institution has priority over unsecured liabilities of the financial institution in the event of its winding up.

The new section 111 provides for matters which may be prescribed in regulations for the purposes of the new Division 5B.

The new Division 5C (comprising new sections 112 to 120) sets out a compensation scheme for pre-resolution shareholders and creditors of a financial

institution under resolution who are worse off as a result of a resolution. The compensation scheme only applies to such shareholders and creditors of a pertinent financial institution of a type prescribed in regulations for this purpose.

The new section 112 defines terms used in the new Division 5C. In particular, the section defines the term “resolution date” for a financial institution. The resolution date is used to determine who is a pre-resolution shareholder or a pre-resolution creditor of the financial institution. It is also used to determine whether such a shareholder or creditor is worse off as a result of the resolution of the financial institution.

It should be noted that the resolution date of a financial institution is the date of publication of the applicable certificate or order for any of 5 types of resolution actions taken against the financial institution, namely the compulsory transfer of business, the compulsory transfer of shares, the compulsory restructuring of share capital, a bail-in of instruments or liabilities, and a recognition of a foreign resolution action that corresponds to any of those 4 actions. However, when determining if a pre-resolution shareholder or creditor is worse off as a result of a resolution, other resolution actions taken against the financial institution, such as a reverse transfer or onward transfer of business are to be taken into account.

The new section 113 defines the term “worse off as a result of the resolution”. A pre-resolution shareholder or creditor of a financial institution is worse off as a result of a resolution if, by reason of one or more of the 5 types of resolution actions in the new section 112, a reverse transfer of business or an onward transfer of business, the shareholder or creditor has received, is receiving or is likely to receive less favourable treatment than what the shareholder or creditor would have received if winding up proceedings were commenced against the financial institution immediately before the resolution date. The new section also provides for 5 cases where a pre-resolution creditor or pre-resolution shareholder is presumed not to be worse off as a result of a resolution.

The new section 114 provides that a pre-resolution creditor or pre-resolution shareholder of a financial institution who is worse off as a result of the resolution of the financial institution is eligible for compensation under the new Division 5C. The amount of compensation is the difference between what the person would have received had winding up proceedings been commenced against the financial institution before the resolution date, and what the person has received, is receiving or is likely to receive as a result of the resolution, after deducting any compensation received pursuant to a resolution action or any reverse transfer or onward transfer of business, or under the law of the foreign country governing any foreign resolution (if applicable). The amount of compensation is to be paid out of the relevant resolution fund established under the new Division 5B by the trustee of the fund on the direction of the Minister.

The new section 115 provides for the appointment of a valuer for a financial institution after its resolution date. The valuer’s role is to make a valuation of the

financial institution, and to determine whether each pre-resolution creditor or shareholder is eligible for compensation along with the amount of compensation to be paid to an eligible pre-resolution creditor or shareholder.

The new section 116 provides for the manner for carrying out a valuation and computing compensation amounts. The section requires the valuer to issue a report after completing the valuation, and provide it to the Minister and the Authority. The Authority may in certain circumstances request the valuer to reconsider the valuation report. The Authority may cause the valuation report to be published.

The new section 117 gives the valuer a right to access information that the valuer reasonably requires for conducting the valuation. The duty of a person to provide such information to the valuer overrides any duty of confidentiality that the person is subject to. The person incurs no liability in doing any act for the purpose of complying with the new section, if the act is done with reasonable care and in good faith.

The new section 118 imposes a duty of confidentiality on the valuer and any person assisting the valuer, in relation to the valuation report and any information obtained when carrying out functions under the new Division 5C.

The new section 119 provides that the valuation report may, with the Authority's approval, be disclosed to the financial institution under resolution, a pre-resolution creditor or shareholder, or the public.

The new section 120 gives the Authority a right to appeal to the High Court against a valuation report if it is dissatisfied with the valuer's decision on any person's eligibility for compensation, or any amount of compensation to be paid to any person. It also gives a person dissatisfied with the valuer's decision on the person's eligibility for compensation, or the amount of the compensation, a right to appeal to the High Court.

Clause 29 amends section 30AAZJ (renumbered as section 122) (Modification of law of insolvency) which sets out the rule that any disposition of any property or business of a pertinent financial institution pursuant to a compulsory transfer of business must not be reversed, repaid or set aside despite anything in the Act, the Bankruptcy Act (Cap. 20) or the Companies Act (Cap. 50). The amendment extends the rule to an onward transfer of business under the new section 64, and disappplies it to any property or business transferred back to the financial institution under the new section 62.

Clause 30 amends section 30AAZK (renumbered as section 123) (Power to obtain information under Part IVB) to enable the Minister or the Authority to require a person to furnish information for transmission to a valuer under the new Division 5C for the purposes of the valuer's functions under that new Division.

Clause 31 amends section 30AAZM (renumbered as section 125) (Cessation of moratorium, etc., under Part IVB) to enable the Minister to order the cessation of

the application of section 77 (under which the Minister may impose a moratorium on various actions pending the coming into effect of a bail-in certificate) in relation to a pertinent financial institution or any of its instruments susceptible to a bail-in.

Clause 32 amends section 30AAZN (renumbered as section 126) (Regulations for Part IVB) to enable regulations to be made —

- (a) to exempt prescribed transactions and actions (and not just arrangements) from any provision of Part IVB;
- (b) to prevent the Minister or the Authority to exercise any power under Part IVB in relation to prescribed transactions and actions, and any matter for which a prescribed arrangement has been entered into (and not just in relation to prescribed arrangements);
- (c) to provide that the Minister or the Authority must not exercise such power either in all circumstances or only if specified conditions are not satisfied; and
- (d) requiring a pertinent financial institution or its subsidiary to include a provision in a specified contract to which it is a party, to the effect that parties to the contract agree to be bound by any suspension of a termination right in the contract under the new section 84.

Clause 33 repeals and re-enacts section 30D (now section 130), and inserts new sections 131 and 132. The purposes of these sections are to provide the Financial Sector Development Fund (called the Fund) with its own financial, audit and annual report provisions.

The new section 130 sets out the financial year of the Fund.

The new section 131 provides for the audit of the accounts of the Fund.

The new section 132 requires the Authority to send the audited financial statements, the auditor’s report, and the annual report of the Fund to the Minister and present them to Parliament, and to publish them.

Clause 34, read with the Schedule to the Bill, makes amendments to a number of provisions of the Act arising from the renumbering of the sections of the Act by clause 9.

Clause 35 makes various amendments of a miscellaneous nature. This includes an amendment made to section 30AAI (renumbered as section 40) by the Securities and Futures (Amendment) Act 2017 (Act 4 of 2017). The provision making that amendment in the Securities and Futures (Amendment) Act 2017 is in turn deleted by clause 47. This amendment is necessitated by the renumbering of section 30AAI under clause 9. The other amendments made in that clause are to replace the term “resolution authority” with “foreign resolution authority” in Division 5, for consistency with the new Division 5A of Part IVB.

Clause 36 amends the Banking Act (Cap. 19) for the following purposes:

- (a) to enable a bank licence to be revoked if a power is exercised under the new Division 4A of the Monetary Authority of Singapore Act (called in clauses 36 to 48 the MAS Act);
- (b) to give priority to sums claimed by the trustee of a resolution fund under the new Division 5B of Part IVB of the MAS Act in the event of the winding up of a bank;
- (c) to include amendments made to the Banking Act by provisions of the Monetary Authority of Singapore (Amendment) Act 2015 (Act 14 of 2015) which are deleted by clause 44, with the reference to section 30X of the MAS Act amended to reflect its new section number under clause 9; and
- (d) to renumber cross-references to various sections of the MAS Act that are renumbered under clause 9.

Clause 37 amends the Companies Act to change the reference to a section of the MAS Act, being one that is renumbered under clause 9.

Clause 38 amends the Currency Act (Cap. 69) —

- (a) to provide that the Currency Fund established under the Currency Act is dissolved upon the completion of the transfer of all of its assets and liabilities to accounts holding the Authority's assets and liabilities under the new section 6A of the MAS Act;
- (b) to provide that the gross assets of the Authority cannot be less than the face value of the Authority's currency in circulation, and for any deficiency to be charged on the Consolidated Fund; and
- (c) to make other amendments that are consequential on the dissolution of the Currency Fund.

Clause 39 amends the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B) —

- (a) to provide that the Deposit Insurance Fund or DI Fund may be used to support a resolution measure under the MAS Act that is taken on a DI Scheme member;
- (b) to provide that the Authority may (with the Minister's approval) make a determination for an amount to be withdrawn from the DI Fund to support such resolution measure;
- (c) to set a limit on the amount that may be so withdrawn. The amount cannot exceed the compensation that would have been paid out of the DI Fund to the insured depositors of the DI Scheme member in question

under the Deposit Insurance and Policy Owners' Protection Schemes Act;

- (d) to enable the deposit insurance and policy owners' protection fund agency to make a withdrawal from the DI Fund on receipt of a notice of such determination, and pay it to the trustee of the resolution fund in question; and
- (e) to enable regulations to be made for the above purposes.

Clause 40 amends the Finance Companies Act (Cap. 108) —

- (a) to enable a finance company licence to be revoked if a power is exercised under the new Division 4A of the MAS Act; and
- (b) to give priority to sums claimed by the trustee of a resolution fund under the new Division 5B of Part IVB of the MAS Act in the event of the winding up of a finance company.

Clause 41 amends the Financial Advisers Act (Cap. 110) to include an amendment made to that Act by provisions of the Monetary Authority of Singapore (Amendment) Act 2015 which are deleted by clause 44, with the reference to section 30Z of the MAS Act amended to reflect its new section number under clause 9.

Clause 42 amends the Financial Holding Companies Act 2013 (Act 13 of 2013) to include amendments made to that Act by provisions of the Monetary Authority of Singapore (Amendment) Act 2015 deleted by clause 44, with references to sections 30X and 30Z of the MAS Act amended to reflect their new section numbers under clause 9.

Clause 43 amends the Insurance Act —

- (a) to give priority to sums claimed by the trustee of a resolution fund under the new Division 5B of Part IVB of the MAS Act in the event of the winding up of a licensed insurer; and
- (b) to include amendments made to the Insurance Act by provisions of the Monetary Authority of Singapore (Amendment) Act 2015 which are deleted by clause 44, with references to sections 30X and 30Z of the MAS Act amended to reflect their new section numbers under clause 9.

In addition, the clause deletes a number of provisions of the Insurance Act which provide for the resolution of licensed insurers. The resolution regime under the MAS Act will apply to licensed insurers through an enlargement of the term “pertinent financial institution” and other modifications to the MAS Act.

Clause 44 repeals section 6 and the Schedule to the Monetary Authority of Singapore (Amendment) Act 2015. The amendments in that section are now made

in clauses 36, 41, 42, 43, 45, 46 and 48. The reason for this is the renumbering of sections 30X and 30Z by clause 9.

Clauses 45 and 46 amend the Payment Systems (Oversight) Act (Cap. 222A) and the Securities and Futures Act (Cap. 289), respectively, to include amendments made to those Acts by provisions of the Monetary Authority of Singapore (Amendment) Act 2015 which are deleted by clause 44, with references to sections 30X and 30Z of the MAS Act amended to reflect their new section numbers under clause 9.

Clause 46 also amends the Securities and Futures Act to enable various licences, approvals and recognitions to be revoked if a power is exercised under the new Division 4A of the MAS Act.

Clause 47 deletes the amendment made to section 30AAI (now renumbered as section 40) of the MAS Act by the Securities and Futures (Amendment) Act 2017 (Act 4 of 2017). This amendment to section 40 is made under clause 35.

Clauses 48 amends the Trust Companies Act (Cap. 336) —

- (a) to enable a trust business licence to be revoked or suspended if a power is exercised under the new Division 4A of the MAS Act; and
- (b) include an amendment made to that Act by provisions of the Monetary Authority of Singapore (Amendment) Act 2015 which are deleted by clause 44, with the reference to section 30X of the MAS Act amended to reflect its new section number under clause 9.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
