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Banking (Amendment) Bill

Bill No. 35/2019.

Read the first time on 4 November 2019.

A BILL

intituled

An Act to amend the Banking Act (Chapter 19 of the 2008 Revised Edition) and to make consequential 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 Banking (Amendment) Act 2020 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2.—(1) Section 2(1) of the Banking Act is amended —

(a) by deleting the word “or” at the end of paragraph (a) of the definition of “capital funds”;

10 (b) by inserting, immediately after the words “outside Singapore” in paragraph (b) of the definition of “capital funds”, the words “or a merchant bank incorporated outside Singapore”;

15 (c) by inserting the word “or” at the end of paragraph (b) of the definition of “capital funds”, and by inserting immediately thereafter the following paragraph:

“*(c)* in the case of a merchant bank incorporated in Singapore, the aggregate of its paid-up capital (excluding any amount represented by treasury shares) and its published reserves (excluding any reserves that the Authority may specify by notice in writing), deduction having been made for any loss appearing in the accounts of the merchant bank;”;

25 (d) by inserting, immediately after the words “a bank” in paragraphs (a) and (b) of the definition of “credit facilities”, the words “or merchant bank”;

30 (e) by inserting, immediately after the words “customer of the bank” in paragraph (a) of the definition of “credit facilities”, the words “or merchant bank (as the case may be)”;

(f) by inserting, immediately after the definition of “foreign-owned bank incorporated in Singapore”, the following definition:

““foreign-owned merchant bank incorporated in Singapore” means a merchant bank incorporated in Singapore, the parent bank of which is incorporated, formed or established outside Singapore;”;

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- (g) by deleting the definition of “licence” and substituting the following definition:

““licence” means —

(a) a bank licence granted or held under section 7 or 79; or

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(b) a merchant bank licence granted under section 55S or treated as having been granted under section 64 of the Banking (Amendment) Act 2020;”;

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- (h) by deleting the definition of “merchant bank” and substituting the following definitions:

““merchant bank” means any company —

(a) that holds a valid merchant bank licence granted under section 55S; or

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(b) that is treated as having been granted a merchant bank licence in accordance with section 64 of the Banking (Amendment) Act 2020;

““merchant bank in Singapore” means —

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(a) a merchant bank incorporated in Singapore; or

(b) in the case of a merchant bank incorporated outside Singapore, the branches and offices of the merchant bank located in Singapore;

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“merchant bank incorporated outside Singapore”
means a merchant bank incorporated, formed
or established outside Singapore;”;

5 (i) by inserting, immediately after the words “a bank” in the
definition of “parent bank”, the words “or merchant bank”;

(j) by inserting, immediately after the words “the bank”
wherever they appear in the definition of “parent bank”,
the words “or merchant bank (as the case may be)”;

10 (k) by deleting the word “or” at the end of paragraph (a) of the
definition of “parent supervisory authority”;

(l) by inserting, immediately after paragraph (b) of the
definition of “parent supervisory authority”, the
following paragraphs:

15 “(c) in relation to a merchant bank incorporated
outside Singapore, a supervisory authority
that is responsible, under the laws of the
country or territory where the merchant
bank or its parent bank is incorporated,
formed or established, for supervising the
20 merchant bank or its parent bank, as the
case may be; or

(d) in relation to a foreign-owned merchant
bank incorporated in Singapore, a
supervisory authority that has
25 consolidated supervision authority over
the merchant bank;”;

(m) by deleting the definitions of “place of business” and
“published reserves” and substituting the following
definitions:

30 ““place of business”, in relation to a bank or
merchant bank, includes —

(a) a head or main office;

(b) a branch;

(c) an agency;

- (d) a mobile branch;
- (e) any office established and maintained for the bank or merchant bank (as the case may be) for a limited period only; and
- (f) any other place used by the bank or merchant bank (as the case may be) for the conduct of any of its business;

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“published reserves”, in relation to a bank or merchant bank, means reserves in the accounts of the bank or merchant bank (as the case may be) that are duly audited or certified as correct by the auditor of the bank or merchant bank, as the case may be;”.

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(2) Section 2(2) of the Banking Act is amended by inserting, immediately after the words “a bank”, the words “or merchant bank”.

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Amendment of section 4

3. Section 4(1) of the Banking Act is amended by deleting the word “No” and substituting the words “Subject to section 55S, no”.

Amendment of section 4B

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4. Section 4B(7) of the Banking Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) the capital of or the interest on money received by way of deposit is used to finance any activity of the business to any material extent.”.

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Amendment of section 7

5. Section 7 of the Banking Act is amended —

- (a) by deleting the words “A company” in subsection (1) and substituting the words “Subject to section 55S, a company”; and

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- (b) by deleting subsection (6).

Amendment of section 9

6. Section 9(1) of the Banking Act is amended —

(a) by deleting the words “a bank shall not” and substituting the words “a company must not”;

5 (b) by deleting the words “in the case of a bank incorporated in Singapore” in paragraph (a) and substituting the words “where the company intends to carry on banking business in Singapore as a bank incorporated in Singapore”; and

10 (c) by deleting the words “in the case of a bank incorporated outside Singapore” in paragraph (b) and substituting the words “where the company intends to carry on banking business in Singapore through a branch or office located in Singapore,”.

Amendment of section 9A

15 7. Section 9A of the Banking Act is amended by deleting subsection (4).

Amendment of section 10A

8. Section 10A of the Banking Act is amended —

20 (a) by deleting subsection (2) and substituting the following subsection:

“(2) Without limiting subsection (1), a notice under that subsection may —

(a) specify the manner of and process for calculating the leverage ratio;

25 (b) require the bank incorporated in Singapore or a bank within the class of banks incorporated in Singapore to report to the Authority —

(i) its leverage ratio; or

30 (ii) the manner in which and the process by which it calculates its leverage ratio; and

- (c) specify the manner in which and the times at which the bank incorporated in Singapore or a bank within the class of banks incorporated in Singapore must report to the Authority the matters mentioned in paragraph (b)(i) and (ii).”; 5
- (b) by inserting, immediately after the words “subsection (1) to” in subsection (3), the words “a bank incorporated in Singapore or”;
- (c) by inserting, immediately after the words “may by” in subsection (3), the words “that notice or”; and 10
- (d) by inserting, immediately after the word “the” in subsection (3)(a), the words “bank or”.

Amendment of section 10B

9. Section 10B(2) of the Banking Act is amended by deleting the words “section 38” in paragraph (e) and substituting the words “section 10C or 38”. 15

New section 10C

10. The Banking Act is amended by inserting, immediately after section 10B, the following section: 20

“Stable funding requirement

10C.—(1) The Authority may, by written notice, require any bank in Singapore or any class of banks in Singapore —

(a) to maintain any of the following:

(i) a minimum stable funding ratio; 25

(ii) a minimum amount of stable funds; and

(b) to carry out other acts relating to a requirement mentioned in paragraph (a).

(2) Without limiting subsection (1)(b), a notice under that subsection may — 30

- (a) specify the manner of and process for calculating the stable funding ratio or the amount of stable funds;
- (b) require the bank in Singapore or a bank within the class of banks in Singapore to report to the Authority —
- (i) its stable funding ratio;
- (ii) its amount of stable funds; or
- (iii) the manner in which and the process by which it calculates its stable funding ratio or its amount of stable funds; and
- (c) specify the manner in which and the times at which the bank in Singapore or a bank within the class of banks in Singapore must report to the Authority the matters mentioned in paragraph (b)(i), (ii) and (iii).

(3) Where the Authority issues a notice under subsection (1) to a class of banks in Singapore, the Authority may by another notice, vary the requirements for different banks within that class, having regard to the risks arising from the activities of the bank, the systemic impact of the bank on the financial sector and any other factors that the Authority considers relevant.

(4) Without limiting subsection (5)(a) or (b), the Authority may restrict or suspend the operations of a bank which fails to comply with a notice under subsection (1) or (3).

(5) Any bank which fails to comply with —

- (a) a notice under subsection (1);
- (b) a notice under subsection (3); or
- (c) any restriction or suspension imposed under subsection (4),

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) In this section —

“stable funding ratio” means the ratio of the amount of funds expected to be available to the bank to fund its assets and exposures (whether or not those assets and exposures are on its balance-sheet) during a given period to the amount of funds expected to be required by the bank to fund its assets and exposures (whether or not those assets and exposures are on its balance-sheet) during that period;

“stable funds” means the amount of funds expected to be available to the bank to fund its assets and exposures (whether or not those assets and exposures are on its balance-sheet) during a given period.”.

Amendment of section 20

11. Section 20(1) of the Banking Act is amended —

(a) by deleting the words “revoke a licence issued under this Act” and substituting the words “revoke a bank licence”;

(b) by deleting the words “the provisions” in paragraph (a)(vi) and substituting the words “or has contravened any provision”;

(c) by deleting the word “or” at the end of paragraph (a)(vii);

(d) by deleting the words “has contravened” in paragraph (a)(viii) and substituting the words “is contravening or has contravened”;

(e) by inserting, immediately after sub-paragraph (viii) of paragraph (a), the following sub-paragraph:

“(ix) is contravening or has contravened any provision of the Monetary Authority of Singapore Act (Cap. 186) or any direction issued by the Authority under that Act;”;
and

(f) by deleting the full-stop at the end of paragraph (b) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

5 “(c) where the bank holding the licence is a foreign-owned bank incorporated in Singapore, if the parent supervisory authority of the bank has withdrawn the licence or authority to operate of the parent bank of the bank; or

10 (d) if the Authority is satisfied that it is in the public interest to do so.”.

Amendment of section 25

12. Section 25 of the Banking Act is amended —

15 (a) by inserting, immediately after subsection (1), the following subsection:

“(1A) The Authority may, by regulations made under section 78(1), require a bank or class of banks to make available, within a reasonable time, to any person upon the person’s request —

20 (a) copies of the statements mentioned in subsection (1)(a); and

(b) a document containing —

25 (i) the full and correct names of all persons who are directors for the time being of the bank;

(ii) the names of all subsidiary companies for the time being of the bank; and

30 (iii) any additional information that the bank is required to publish under subsection (4).”;

(b) by deleting the words “newspaper or newspapers” in subsection (2) and substituting the word “manner”;

- (c) by deleting the words “relating to the accounts of that bank for any financial year” in subsection (4); and
- (d) by deleting the word “balance-sheet” in the section heading and substituting the word “accounts”.

Repeal and re-enactment of section 27

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13. Section 27 of the Banking Act is repealed and the following section substituted therefor:

“Information on exposures, etc., to related parties

27.—(1) The Authority may, by written notice, require any bank in Singapore or a bank within any class of banks in Singapore —

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- (a) to prepare a statement in respect of each period of a duration specified by the Authority, in the form specified by the Authority, showing as at the end of that period —

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- (i) all the credit facilities, or all the credit facilities of a specified type, from the bank or any branch or entity in its bank group to any person, branch, entity or head office set out in subsection (2);

- (ii) all the exposures, or all the exposures of a specified type, of the bank or any branch or entity in its bank group to any person, branch, entity or head office set out in subsection (2); and

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- (iii) all the transactions, or all the transactions of a specified type, of the bank or any branch or entity in its bank group with any person, branch, entity or head office set out in subsection (2); and

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- (b) to carry out other acts relating to a requirement mentioned in paragraph (a).

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(2) The persons, branches, entities or head offices mentioned in subsection (1) are the following:

- (a) any person in a director group of the bank;
- (b) in the case of a bank incorporated in Singapore, any person in a substantial shareholder group of the bank;
- (c) any entity in a major stake entity group of the bank;
- 5 (d) any branch, entity or head office in a related corporation group of the bank;
- (e) any person in a senior management group of the bank;
- (f) any person in a key credit approver group of the bank;
- 10 (g) any person in which any of the directors of the bank has a direct or indirect interest, as declared under section 28 (other than credit facilities, exposures or transactions particulars of which have already been supplied under this section);
- 15 (h) any person whose duties or interests are in conflict with the interests of the bank, as determined by the bank in accordance with a manner and process specified by the Authority by written notice to the bank;
- 20 (i) any person specified by the Authority by written notice to the bank whose duties or interests are, in the opinion of the Authority, in conflict with the interests of the bank;
- (j) any other person or class of persons that is prescribed.

25 (3) Without limiting subsection (1)(b), a notice under that subsection may —

- (a) specify the manner in which and process by which any exposure is to be measured or aggregated;
- (b) require that a statement prepared for the purpose of subsection (1)(a) describes the manner in which and the process by which the bank calculated the exposures shown in that statement; and
- 30 (c) require that a statement prepared for the purpose of subsection (1)(a) be accompanied by any document

(including a legal opinion or a contract) relating to any credit facility, exposure or transaction shown in the statement.

(4) A statement under subsection (1)(a) —

(a) must be prepared within the period specified by the Authority by written notice, after the period in respect of which it is to be prepared; 5

(b) must —

(i) in the case of a bank incorporated in Singapore, be brought up and read at the next meeting of its board of directors after it is prepared; and 10

(ii) in the case of a bank incorporated outside Singapore, be submitted to the head office of the bank; and

(c) must be submitted to the Authority within 7 days after the date on which it is read at the meeting of the board of directors or submitted to the head office of the bank, as the case may be. 15

(5) Any bank which fails to comply with subsection (4)(a), (b) or (c) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction. 20

(6) In this section, “bank group”, “director”, “director group”, “exposure”, “key credit approver group”, “major stake entity group”, “related corporation group”, “senior management group”, “substantial shareholder group” and “transaction” have the meanings given to them in the Fifth Schedule.”. 25

Amendment of section 29

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14. Section 29 of the Banking Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) The Authority may by written notice to any bank in Singapore, or any class of banks in Singapore, impose requirements that are necessary or expedient for the purposes of —

5 (a) identifying any person or class of persons, where exposure of the bank, or a bank within the class of banks, to the person or class of persons may result in concentration risk to the bank; or

10 (b) limiting the exposure of the bank, or a bank within the class of banks, to any person or class of persons, where the exposure may result in concentration risk to the bank.”;

15 (b) by deleting paragraph (c) of subsection (2) and substituting the following paragraph:

 “(c) specify the manner in which and the process by which —

 (i) any exposure is to be measured or aggregated; and

20 (ii) a person or class of persons mentioned in subsection (1)(a) or (b) is to be identified.”;

(c) by deleting the word “and” at the end of subsection (2)(d);

25 (d) by deleting the full-stop at the end of paragraph (e) of subsection (2) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

 “(f) require the bank in Singapore or a bank within the class of banks in Singapore to report its exposures to the Authority; and

30 (g) specify the manner in which and the times at which the bank in Singapore or a bank within the class of banks in Singapore must report its exposures to the Authority.”;

(e) by deleting subsection (7) and substituting the following subsection:

“(7) In this section, “exposure” has the meaning given to it in the Fifth Schedule.”; and

(f) by inserting, immediately after the word “facilities” in the section heading, the words “resulting in concentration risk”.

New section 29A

15. The Banking Act is amended by inserting, immediately after section 29, the following section:

“Credit facilities, exposures and transactions that may result in conflict of interest

29A.—(1) The Authority may by written notice to any bank in Singapore, or any class of banks in Singapore, impose requirements that are reasonably necessary for the purposes of monitoring and controlling the risk of conflict between the interests of the bank in Singapore or a bank within the class of banks in Singapore, and the interests of any person, branch, entity or head office mentioned in section 27(2)(a), (b), (c), (d), (e), (f), (h), (i) or (j), by —

(a) identifying any credit facility from the bank or any branch or entity in its bank group to, any exposure of the bank or any branch or entity in its bank group to, or any transaction of the bank or any branch or entity in its bank group with, any person, branch, entity or head office mentioned in section 27(2)(a), (b), (c), (d), (e), (f), (h), (i) or (j); or

(b) monitoring, limiting or restricting the credit facilities, exposures and transactions mentioned in paragraph (a).

(2) For the purposes of subsection (1), the reference to the risk of conflict between —

(a) the interests of the bank in Singapore or a bank within the class of banks in Singapore; and

(b) the interests of any branch or head office mentioned in section 27(2)(d),

is a reference to the risk of conflict between —

5 (c) interests relating to the business of the bank in Singapore; and

(d) interests relating to the business carried out through the branch or head office.

(3) Without limiting subsection (1), a notice under that subsection may —

10 (a) specify the manner in which and the process by which the bank may grant any credit facility to, create any exposure to, or enter into any transaction with, a person, branch, entity or head office mentioned in section 27(2)(a), (b), (c), (d), (e), (f), (h), (i) or (j);

15 (b) specify the terms and conditions under which the bank may grant any credit facility to, create any exposure to, or enter into any transaction with, a person, branch, entity or head office mentioned in section 27(2)(a), (b), (c), (d), (e), (f), (h), (i) or (j), including the terms and conditions on which such credit facility, exposure or transaction may be terminated or avoided;

20 (c) specify the manner in which and the process by which a credit facility, exposure or transaction mentioned in subsection (1)(a) is to be identified;

25 (d) specify the manner in which and the process by which credit facilities, exposures or transactions mentioned in subsection (1)(a) are to be monitored;

30 (e) specify the policies and procedures that a bank must implement in relation to credit facilities, exposures or transactions mentioned in subsection (1)(a); and

(f) specify the manner in which and the process by which the bank is to determine whether a person, branch, entity or head office is a person, branch, entity or head

office mentioned in section 27(2)(a), (b), (c), (d), (e), (f), (h), (i) or (j).

(4) If it appears to the Authority that any credit facility from a bank in Singapore to, any exposure of a bank in Singapore to, or any transaction of a bank in Singapore with, any person, branch, entity or head office mentioned in subsection (5) is detrimental to the interests of the depositors of the bank, the Authority may by written notice to the bank —

(a) direct the bank to —

(i) secure repayment of the credit facility;

(ii) reduce or eliminate the exposure; or

(iii) terminate the transaction;

(b) prohibit the bank from granting any credit facility to, creating any exposure to, or entering into any transaction with, the person, branch, entity or head office; or

(c) impose restrictions on the grant of any credit facility to, the creation of any exposure to, or the entry into any transaction with, the person, branch, entity or head office.

(5) The persons, branches, entities and head offices mentioned in subsection (4) are the following:

(a) any person, branch, entity or head office mentioned in section 27(2)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j);

(b) any firm or limited liability partnership of which the bank is a partner, a manager, an agent, a guarantor or a surety;

(c) any company of which any of the directors of the bank is a director or an agent;

(d) any company of which the bank or any of its officers (other than directors), employees or other persons who receive remuneration from the bank (other than for professional services rendered to the bank) is a

director, an executive officer, an agent, a guarantor or a surety;

5 (e) any officer of the bank (other than a director of the bank), where the aggregate value of the credit facilities from the bank to that officer, exposures of the bank to that officer and transactions of the bank with that officer exceed one year's emoluments of that officer;

10 (f) any employee of the bank (other than a director of the bank), where the aggregate value of the credit facilities from the bank to that employee, exposures of the bank to that employee and transactions of the bank with that employee exceed one year's emoluments of that employee;

15 (g) any person who receives remuneration from the bank (other than a director, officer or employee of the bank or a person who receives remuneration for professional services rendered to the bank), where the aggregate value of the credit facilities from the bank to that person, exposures of the bank to that person and transactions of the bank with that person exceed one year's emoluments of that person.

20 (6) Any bank which fails to comply with any requirement imposed under subsection (1) or (4) 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.

30 (7) In this section, "bank group", "director", "exposure", and "transaction" have the meanings given to them in the Fifth Schedule."

Amendment of section 31

16. Section 31 of the Banking Act is amended —

- (a) by inserting, immediately after the words “No bank” in subsection (1), the word “incorporated”; and
- (b) by inserting, immediately after subsection (1), the following subsection: 5

“(1A) A bank incorporated outside Singapore must not, through a branch or office located within Singapore, acquire or hold any equity investment in a single company, the value of which exceeds in the aggregate — 10

- (a) any limit prescribed by the Authority; or
- (b) any limit specified by the Authority in a particular case by written notice to that branch or office.”. 15

Amendment of section 33

17. Section 33 of the Banking Act is amended —

- (a) by inserting, immediately after the words “No bank” in subsection (1), the word “incorporated”;
- (b) by inserting, immediately after subsection (1), the following subsection: 20

“(1A) A bank incorporated outside Singapore must not, through a branch or office located within Singapore, acquire or hold any interest in or rights over immovable property, wherever situated, the value of which exceeds in the aggregate — 25

- (a) any limit prescribed by the Authority; or
- (b) any limit specified by the Authority in a particular case by written notice to that branch or office.”; and 30

- (c) by inserting, immediately after the words “subsection (1)” in subsections (2) and (4), the words “or (1A)”.

Amendment of section 40A

18. Section 40A of the Banking Act is amended by deleting the words “this Part” and substituting the words “sections 44A, 47 and 55”.

5 **Repeal of section 46A**

19. Section 46A of the Banking Act is repealed.

Amendment of section 47

20. Section 47 of the Banking Act is amended by deleting subsection (10).

10 **New section 47A**

21. The Banking Act is amended by inserting, immediately after section 47, the following section:

“Relevant services obtained or received by bank in Singapore

15 **47A.**—(1) This section applies where a bank in Singapore obtains or receives any relevant service on or after the date of commencement of section 21 of the Banking (Amendment) Act 2020 from —

20 (a) a branch or office of the bank (including its head office) that is located outside Singapore (called in this section its branch or office); or

(b) any person.

(2) Before obtaining any relevant service from its branch or office, a bank in Singapore must —

25 (a) take the steps specified by the Authority by written notice to the bank to evaluate the ability of the branch or office to perform any of the following:

(i) to provide the relevant service;

(ii) to ensure continuity of the relevant service;

- (iii) to safeguard the confidentiality and integrity of, and ensure the availability of, information of the bank related to the provision of the relevant service that is in the custody of the branch or office; 5
 - (iv) to comply with written laws related to the provision of the relevant service;
 - (v) to manage the legal, reputational, technological and operational risks to the branch or office related to the provision of the relevant service; and 10
- (b) implement policies and procedures by which the branch or office is to provide the relevant service, that satisfy requirements specified by the Authority by written notice to the bank. 15
- (3) Requirements in subsection (2)(b) may include (but are not limited to) the following:
- (a) a requirement that the policies and procedures be recorded in writing;
 - (b) a requirement that the policies and procedures provide that the branch or office must protect all customer information of the bank in Singapore against unauthorised disclosure, retention or use; 20
 - (c) a requirement that the policies and procedures provide that the bank in Singapore or the Authority, or an auditor appointed by the bank in Singapore or the Authority, be allowed to audit the books of the branch or office for any of the purposes mentioned in subsection (10) at the times specified in the notice; 25
 - (d) a requirement that the policies and procedures provide that the branch or office must, on a request by the bank in Singapore, provide to the bank or the Authority any record, document, information or report relating to the provision of the relevant service; 30

(e) a requirement that the policies and procedures provide that the bank in Singapore must, should circumstances specified in the notice arise, stop receiving the relevant service from the branch or office;

(f) a requirement that the policies and procedures provide that the branch or office must not arrange for the relevant service to be provided by another branch or office or sub-contract the provision of the relevant service to any person, or may only so arrange or sub-contract under conditions specified in the notice.

(4) Before obtaining any relevant service from any person, a bank in Singapore must —

(a) take the steps specified by the Authority by written notice to the bank to evaluate the ability of the person to perform any of the following:

(i) to provide the relevant service;

(ii) to ensure continuity of the relevant service;

(iii) to safeguard the confidentiality, integrity and availability of information related to the provision of the relevant service that is in the custody of the person;

(iv) to comply with written laws related to the provision of the relevant service;

(v) to manage the legal, reputational, technological and operational risks to the person related to the provision of the relevant service; and

(b) enter into a contract with the person that satisfies requirements specified by the Authority by written notice to the bank.

(5) Requirements in subsection (4)(b) may include (but are not limited to) the following:

(a) a requirement that the contract be in writing;

- (b) a requirement that the contract provides that the person must protect all customer information of the bank in Singapore against unauthorised disclosure, retention or use;
- (c) a requirement that the contract provides that the bank in Singapore or the Authority, or an auditor appointed by the bank in Singapore or the Authority, be allowed to audit the books of the person for any of the purposes mentioned in subsection (10) at the times specified in the notice;
- (d) a requirement that the contract provides that the person must, on a request by the bank in Singapore, provide to the bank or the Authority any record, document, information or report relating to the provision of the relevant service;
- (e) a requirement that the contract provides that the bank in Singapore may terminate the contract should circumstances specified in the notice arise;
- (f) a requirement that the contract provides that the person must not arrange for the relevant service to be provided by a branch or office or sub-contract the provision of the relevant service to another person, or may only so arrange or sub-contract under conditions specified in the notice.
- (6) The Authority may, by written notice to a bank in Singapore that receives a relevant service from its branch or office, require the bank —
- (a) to take steps specified by the Authority to evaluate the ability of the branch or office to perform the acts mentioned in subsection (2)(a);
- (b) if the bank is required to implement policies and procedures that satisfy subsection (3)(c), to take reasonable steps to ensure that the books of the branch or office are audited for any of the purposes mentioned in subsection (10);

- 5 (c) if the bank is required to implement policies and procedures that satisfy subsection (3)(d), to request the branch or office to provide to the bank or the Authority any record, document, information or report relating to the provision of the relevant service;
- (d) if the bank is required to implement policies and procedures that satisfy subsection (3)(e) and any of the circumstances specified in the notice mentioned in subsection (3)(e) have arisen —
- 10 (i) to notify the Authority of the circumstances that have arisen; or
- (ii) to stop receiving the relevant service from the branch or office;
- 15 (e) to establish measures to minimise any disruption to the operations of the bank in Singapore in the event the branch or office cannot adequately provide the relevant service to the bank in Singapore;
- 20 (f) to implement the measures mentioned in paragraph (e) in the event the branch or office cannot adequately provide the relevant service to the bank in Singapore;
- 25 (g) to develop and implement policies and procedures to manage, monitor and control any risk to the bank that may arise from receiving the relevant service from the branch or office;
- (h) to take reasonable steps to supervise and monitor the provision of the relevant service by the branch or office;
- 30 (i) to record, in a list or register of relevant services received by the bank, the fact that the relevant service is received by the bank from the branch or office;
- (j) to implement measures that protect customer information of the bank disclosed to the branch or

office against unauthorised disclosure, retention or use; or

- (k) to implement measures to ensure that the bank in Singapore, and the Authority (in accordance with this Act), have access to customer information and any record, document, information or report relating to the provision of the relevant service by the branch or office. 5

(7) The Authority may, by written notice to a bank in Singapore that receives a relevant service from another person, require the bank — 10

- (a) to take steps specified by the Authority to evaluate the ability of the person to perform the acts mentioned in subsection (4)(a);
- (b) if the contract provides for the matter mentioned in subsection (5)(c), to take reasonable steps to ensure that the books of the person are audited for any of the purposes mentioned in subsection (10); 15
- (c) if the contract provides for the matter mentioned in subsection (5)(d), to exercise its right to obtain any record, document, information or report relating to the provision of the relevant service from the person; 20
- (d) if the contract provides for the matter mentioned in subsection (5)(e) and any of the circumstances specified in the notice mentioned in subsection (5)(e) have arisen — 25
 - (i) to notify the Authority of the circumstances that have arisen; or
 - (ii) to exercise its right to terminate the contract;
- (e) to establish measures to minimise any disruption to the operations of the bank in Singapore in the event the person cannot adequately provide the relevant service to the bank in Singapore; 30

(f) to implement the measures mentioned in paragraph (e) in the event the person cannot adequately provide the relevant service to the bank in Singapore;

5 (g) to develop and implement policies and procedures to manage, monitor and control any risk to the bank that may arise from receiving the relevant service from the person;

10 (h) to take reasonable steps to supervise and monitor the provision of the relevant service by the person;

(i) to record, in a list or register of relevant services received by the bank, the fact that the relevant service is received by the bank from the person;

15 (j) to implement measures that protect customer information of the bank disclosed to the person against unauthorised disclosure, retention or use; or

20 (k) to implement measures to ensure that the bank in Singapore, and the Authority (in accordance with this Act), have access to customer information and any record, document, information or report relating to the provision of the relevant service by the person.

(8) Notices for the purposes of subsections (2), (4), (6) and (7) —

25 (a) may impose requirements on a bank in Singapore or a class of banks in Singapore;

(b) may impose different requirements on different banks in Singapore or different classes of banks in Singapore; and

30 (c) may impose different requirements in relation to different types of relevant services.

(9) In specifying any requirement in a notice under subsection (2), (4), (6) or (7) to a bank in Singapore or class of banks in Singapore, the Authority must have regard to —

- (a) the risk arising from the activities of the bank or class of banks; and
 - (b) the systemic impact of the bank or class of banks on the financial sector.
- (10) The purposes of an audit mentioned in subsections (3)(c), (5)(c), (6)(b) and (7)(b) are the following: 5
- (a) determining whether the branch or office, or person, is properly providing the relevant service;
 - (b) assessing —
 - (i) the ability of the branch or office, or person — 10
 - (A) to ensure continuity of the relevant service;
 - (B) to safeguard the confidentiality, integrity and availability of information related to the provision of the relevant service in the custody of the branch or office, or person; 15
 - (C) to manage its legal, reputational, technological and operational risks arising from the provision of the relevant service; and 20
 - (ii) the level of compliance of the branch or office, or person, with written laws related to the provision of the relevant service.
- (11) Any bank in Singapore which contravenes subsection (2) 25
 or (4) or any requirement imposed by a notice under
 subsection (6) or (7) 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 30
 continues after conviction.

(12) In this section, “relevant service”, in relation to a bank in Singapore, means any service obtained or received by the bank, other than a service provided in the course of employment by an employee of the bank or a service provided by a director or an officer of the bank in the course of the director’s or officer’s appointment, and does not include any service specified by the Authority by written notice.”.

Amendment of section 48AA

22. Section 48AA of the Banking Act is amended —

(a) by deleting the words “materially affected adversely” in subsections (1) and (2) and substituting in each case the words “materially and adversely affected”; and

(b) by deleting the words “materially affect adversely” in subsections (1) and (2) and substituting in each case the words “materially and adversely affect”.

Amendment of section 55

23. Section 55 of the Banking Act is amended by deleting subsection (3) and substituting the following subsection:

“(3) Any bank in Singapore which fails to comply with any direction given to the bank or any requirement imposed on the bank by any notice issued under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.”.

New Part VIIB

24. The Banking Act is amended by inserting, immediately after section 55P, the following Part:

“PART VIIB

MERCHANT BANKS

*Division 1 — Interpretation and application
of provisions in Parts III to VIIA*

Interpretation of this Part

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55Q. In this Part, unless the context otherwise requires —

“associate”, in relation to a merchant bank, has the meaning given by section 48AA(5), with each reference to the first entity replaced with a reference to the merchant bank;

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“deposit” has the meaning given by section 4B(4) read with subsections (4A), (5), (6) and (10) of that section;

“deposit-taking business” has the meaning given by section 4B(7) read with subsections (8), (9) and (10) of that section;

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“merchant bank group”, in relation to a merchant bank, means a group of entities comprising the merchant bank and —

(a) any of its associates; and

(b) any other entity treated as part of the merchant bank’s group of companies according to the accounting standards applicable to the merchant bank;

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“permitted business”, in relation to a merchant bank, means one or both of the following businesses:

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(a) banking business;

(b) deposit-taking business.

Application of provisions in Parts III to VIIA

55R.—(1) Where any provision in Parts III to VIIA (called in this section an incorporated provision) is incorporated by reference in this Part, whether with or without modifications,

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then, in addition to any specific modifications set out in this Part —

- (a) the incorporated provision applies with the necessary modifications;
- 5 (b) a reference in the incorporated provision to another incorporated provision is to that other provision as applied in this Part;
- (c) a reference in the incorporated provision to a bank is to a merchant bank;
- 10 (d) a reference in the incorporated provision to a class of banks is to a class of merchant banks;
- (e) a reference in the incorporated provision to a bank in Singapore is to a merchant bank in Singapore;
- 15 (f) a reference in the incorporated provision to a class of banks in Singapore is to a class of merchant banks in Singapore;
- (g) a reference in the incorporated provision to a bank incorporated in Singapore is to a merchant bank incorporated in Singapore;
- 20 (h) a reference in the incorporated provision to a class of banks incorporated in Singapore is to a class of merchant banks incorporated in Singapore;
- 25 (i) a reference in the incorporated provision to a bank incorporated outside Singapore is to a merchant bank incorporated outside Singapore;
- (j) a reference in the incorporated provision to a foreign-owned bank incorporated in Singapore is to a foreign-owned merchant bank incorporated in Singapore;
- 30 (k) a reference in the incorporated provision to a bank group is to a merchant bank group;
- (l) a reference in the incorporated provision to a bank licence is to a merchant bank licence;

- (m) a reference in the incorporated provision to banking business is to a permitted business; and
- (n) the incorporated provision applies subject to any other modifications prescribed by regulations made under subsection (2).

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(2) The Minister may, for a period of 3 years starting on the date of commencement of section 24 of the Banking (Amendment) Act 2020, make regulations to prescribe further modifications to an incorporated provision in its application by this Part.

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Division 2 — Licensing of merchant banks, etc.

Application for merchant bank licence

55S.—(1) A company that wishes to carry on a permitted business in Singapore may, instead of applying for a bank licence under section 7(1), apply in writing to the Authority for a merchant bank licence under this section.

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(2) An applicant under subsection (1) must provide to the Authority —

- (a) a copy of the memorandum and articles of association or other instrument under which the applicant is incorporated, duly verified by a statutory declaration made by a senior officer of the applicant;
- (b) a copy of the latest balance-sheet of the applicant; and
- (c) any other information required by the Authority.

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(3) On receipt of an application under subsection (1), the Authority must consider the application and may, subject to section 55T —

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- (a) grant a merchant bank licence to the applicant, with or without conditions; or
- (b) refuse to grant the licence.

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(4) The Authority may, at any time, impose conditions or additional conditions on, or vary or revoke any condition of, a merchant bank licence under subsection (3)(a).

5 (5) The Authority must, before taking any action under subsection (4) in relation to a merchant bank —

(a) give written notice of its intention to take that action to the merchant bank; and

10 (b) give the merchant bank an opportunity to provide reasons why the conditions of its licence should not be so imposed, varied or revoked.

(6) A merchant bank commits an offence if it fails to comply with any condition of its licence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for every day or part of a day during which the offence continues after conviction.

15 (7) An application under subsection (1) must be accompanied by a non-refundable application fee —

(a) that is of an amount prescribed by the Authority by notification in the *Gazette*; and

20 (b) that must be paid in the manner specified by the Authority.

(8) Any person that provides any document or information in connection with an application under subsection (1), knowing or reckless as to whether the document or information is false or misleading in any material particular, commits 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; or

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

Minimum capital requirements of merchant banks

55T.—(1) A company must not be granted a merchant bank licence unless —

- (a) where the company intends to carry on a permitted business in Singapore as a merchant bank incorporated in Singapore, its paid-up capital and capital funds —
- (i) are in ordinary shares; 5
 - (ii) are denominated in Singapore dollars, or another currency approved by the Authority in a particular case by written notice to the company; and
 - (iii) are each at least \$15 million or another amount determined by the Authority in a particular case by written notice to the company; or 10
- (b) where the company intends to carry on a permitted business in Singapore through a branch or office located in Singapore, its head office capital funds are at least the equivalent of \$200 million or another amount determined by the Authority in a particular case by written notice to the company. 15
- (2) Subject to subsection (3), the paid-up capital and capital funds of a merchant bank incorporated in Singapore — 20
- (a) must at all times be denominated in Singapore dollars or another currency approved by the Authority in a particular case by written notice to the merchant bank; and
 - (b) must at all times be in ordinary shares. 25
- (3) Any amount of paid-up capital or capital funds of a merchant bank incorporated in Singapore that is above the amount mentioned in subsection (1)(a) may be denominated in any currency, and may be in any type of shares.
- (4) A merchant bank incorporated in Singapore must not, without the approval of the Authority — 30
- (a) reduce its paid-up capital; or

(b) purchase or otherwise acquire shares issued by the merchant bank if those shares are to be held as treasury shares.

(5) The Authority may —

5 (a) give its approval under subsection (2)(a) or (4), with or without conditions; and

(b) at any time impose conditions or additional conditions on, or vary or revoke any condition of, its approval.

10 (6) A merchant bank must at all times maintain —

(a) if it is incorporated in Singapore — paid-up capital and capital funds of at least the amount mentioned in subsection (1)(a); or

15 (b) if it is incorporated outside Singapore — head office capital funds of at least the equivalent of the amount mentioned in subsection (1)(b).

(7) A merchant bank that fails to comply with any requirement under subsection (2) or (6) must immediately give written notice to the Authority.

20 (8) Without affecting subsection (9), where a merchant bank fails to comply with any provision of this section, the Authority may by written notice to the merchant bank —

(a) restrict or suspend the operations of the merchant bank; or

25 (b) give any direction to the merchant bank that the Authority considers appropriate.

(9) A merchant bank commits an offence if it fails to comply with —

(a) subsection (2), (4), (6) or (7);

30 (b) any condition imposed under subsection (5); or

(c) any restriction or suspension imposed by the Authority, or any direction of the Authority, under subsection (8).

(10) A merchant bank that commits an offence under subsection (9) 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.

(11) In this section —

“head office capital funds”, in relation to a company or merchant bank incorporated outside Singapore, means the aggregate of —

(a) its paid-up capital or the equivalent of such paid-up capital recognised by the Authority as applicable to the company or merchant bank under the laws of the country or territory in which the company or merchant bank is incorporated, formed or established; and

(b) published reserves (excluding any reserves specified by the Authority by written notice to the company or merchant bank), deduction having been made for any loss appearing in the accounts of the company or merchant bank;

“paid-up capital” does not include any amount that is represented by treasury shares.

Restrictions on merchant banks in Singapore accepting or soliciting deposit or raising money in Singapore dollars

55U.—(1) Despite section 4 and anything in this Part, a merchant bank in Singapore —

(a) must not accept any deposit in Singapore dollars or otherwise borrow any money in Singapore dollars, except —

(i) from any person or a person within a class of persons prescribed by the Authority and in

accordance with any condition prescribed by the Authority; or

5 (ii) from any other person approved by the Authority for the merchant bank in a particular case and in accordance with any condition imposed by the Authority on the merchant bank by written notice;

10 (b) must not offer, invite or issue any advertisement containing any offer or invitation to any person or class of persons (other than a person or class of persons mentioned in paragraph (a)) —

(i) to make any deposit in Singapore dollars with the merchant bank; or

15 (ii) to enter or offer to enter into any agreement to make any deposit in Singapore dollars with the merchant bank; and

(c) must not raise money in Singapore dollars by —

(i) issuing promissory notes, commercial papers or certificate of deposits;

20 (ii) accepting or endorsing bills of exchange; or

(iii) any other method prescribed by the Authority.

(2) The Authority may, at any time, impose conditions or additional conditions on, or vary or revoke any condition of, an approval under subsection (1)(a)(ii).

25 (3) Any person that contravenes this section or fails to comply with any condition prescribed or imposed under this section commits 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.

30 (4) The fact that a deposit has been taken in contravention of this section does not affect any civil liability in respect of the deposit or the money deposited.

(5) For the purposes of this section, “advertisement” has the meaning given by section 4B(1), (2) and (3).

Businesses that merchant banks in Singapore may carry on

55V.—(1) A merchant bank in Singapore may only carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, whether in Singapore or elsewhere, one or more of the following businesses: 5

- (a) a permitted business;
- (b) any business the conduct of which is regulated or authorised by the Authority or, if carried on in Singapore, would be regulated or authorised by the Authority under any written law; 10
- (c) any business that is incidental to the business which the merchant bank may carry on under paragraph (a) or (b); 15
- (d) any business or class of business prescribed by the Authority;
- (e) any other business that the Authority may approve in a particular case by written notice to the merchant bank for the purposes of this section. 20

(2) The carrying on of any business or class of business prescribed under subsection (1)(d) by any merchant bank in Singapore must be in accordance with any condition prescribed under section 78 for that purpose and any additional condition imposed by the Authority on the merchant bank by written notice in a particular case. 25

(3) The carrying on of any business approved for a merchant bank under subsection (1)(e) must be in accordance with any condition imposed by the Authority by the written notice. 30

(4) The Authority may, at any time, add to, vary or revoke any condition imposed by written notice under subsection (2) or (3).

(5) Nothing in this section is to be construed as exempting a merchant bank from any requirement that, apart from this section, the merchant bank is required to comply with under any written law for the conduct of any business.

5 (6) Any merchant bank that contravenes this section commits 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 **Duty to inform Authority of change in shareholding**

55W.—(1) A merchant bank in Singapore must give written notice to the Authority within 7 days of the merchant bank becoming aware of —

15 (a) any transfer, sale or purchase, or any proposed transfer, sale or purchase, of any shares in the merchant bank to or by any person; or

(b) any other agreement or arrangement that results in a person becoming or ceasing to be a substantial shareholder or an indirect controller of the merchant bank.

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(2) A merchant bank commits an offence if it fails to comply with subsection (1) 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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(3) In this section, “indirect controller”, in relation to a merchant bank —

30 (a) means any person whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in a merchant bank —

(i) in accordance with whose directions, instructions or wishes the directors of the merchant bank are accustomed or under an

obligation (whether formal or informal) to act;
or

(ii) that is in a position to determine the policy of the merchant bank; but

(b) does not include any person —

(i) who is a director or other officer of the merchant bank and whose appointment has been approved by the Authority; or

(ii) in accordance with whose directions, instructions or wishes the directors of the merchant bank are accustomed to act only because the directors act on advice given by the person in the person's professional capacity.

Shareholder must be fit and proper person

55X.—(1) This section applies to, and in relation to, all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) A person must not, on or after the date of commencement of section 24 of the Banking (Amendment) Act 2020, purchase or otherwise acquire any share in a merchant bank in Singapore without the prior approval of the Authority.

(3) The Authority may approve an application made by any person under subsection (2) if the Authority is satisfied that —

(a) the person is a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria; and

(b) having regard to the likely influence of the person, the merchant bank will or will continue to conduct its business prudently and comply with the provisions of this Act and any other written law applicable to it in the conduct of its business.

(4) An approval under this section may be granted to a person subject to any condition imposed by the Authority, including but not limited to any condition —

- (a) restricting the person's further acquisition of shares or voting power in the merchant bank; or
- (b) restricting the person's exercise of voting power in the merchant bank.

(5) The Authority may, at any time, impose additional conditions on, or vary or revoke any condition of, an approval granted under this section.

(6) Any condition of approval imposed under this section has effect despite any provision of the Companies Act or anything contained in the memorandum or articles of association of the merchant bank.

(7) A person commits an offence if the person fails to comply with —

- (a) subsection (2); or
- (b) any condition of approval imposed under this section.

(8) A person who commits an offence under subsection (7) 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.

Duty to inform Authority if shareholder, etc., is not fit and proper person

55Y.—(1) A merchant bank in Singapore must immediately inform the Authority after the merchant bank becomes aware that —

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(a) a person approved under section 55X(3), a substantial shareholder or an indirect controller (called in this section a specified person) is, in accordance with the Guidelines on Fit and Proper Criteria, not or no longer a fit and proper person; or

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(b) the merchant bank is not likely to be able to conduct its business prudently or to comply with the provisions of this Act or any other written law applicable to it in the conduct of its business, having regard to the likely influence over the merchant bank of the specified person.

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(2) If the Authority is satisfied that a specified person is, in accordance with the Guidelines on Fit and Proper Criteria, not or no longer a fit and proper person, the Authority may, by written notice —

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(a) direct the transfer or disposal of all or any of the shares in the merchant bank held by the specified person or any of the specified person's associates (called in this section specified shares) within the time or in accordance with the conditions imposed by the Authority;

25

(b) restrict the transfer or disposal of the specified shares; or

(c) make any other direction that the Authority considers appropriate.

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(3) If a direction has been made under subsection (2)(a) or (b), then, until a transfer or disposal is effected in accordance with the direction or until the restriction on the transfer or disposal is revoked (as the case may be) —

(a) no voting rights may be exercised in respect of the specified shares unless the Authority expressly permits those rights to be exercised;

5 (b) no shares of the merchant bank may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares unless the Authority expressly permits the issue or offer; and

10 (c) except in a liquidation of the merchant bank, no payment may be made by the merchant bank of any amount (whether by way of dividends or otherwise) in respect of the specified shares unless the Authority expressly authorises the payment.

15 (4) Subsection (3) applies despite any provision of the Companies Act or anything contained in the memorandum or articles of association of the merchant bank.

(5) A person who fails to comply with this section commits an offence and shall be liable on conviction —

20 (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

25 (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.

(6) In this section —

30 “associate”, in relation to a specified person, has the meaning given by section 15B(4)(c);

“indirect controller” has the meaning given by section 55W(3).

Power of Authority to obtain information

55Z.—(1) The Authority may, by written notice, direct any merchant bank in Singapore —

- (a) to obtain from any of its shareholders any information relating to that shareholder which the Authority may require to ascertain or investigate into the control of shareholding or voting power in the merchant bank; and 5
- (b) to provide the information to the Authority within the time specified in the written notice. 10

(2) The information mentioned in subsection (1) includes information —

- (a) as to whether the shareholder holds any share in the merchant bank as beneficial owner or as trustee; and
- (b) if the shareholder holds the share as trustee, to indicate as far as the shareholder is able to, the person for whom the shareholder holds the share (either by name or by other particulars sufficient to identify the person) and the nature of the person's interest. 15
20

(3) The Authority may, by written notice, require any shareholder of a merchant bank in Singapore, or any person who appears from information provided to the Authority under subsection (1) or this subsection to have an interest in any share in the merchant bank (called in this subsection and subsection (4) an interested person), to provide to the Authority the information specified in subsection (4) within any time that may be specified in the written notice. 25

(4) The information mentioned in subsection (3) is information that the Authority may require to ascertain or investigate into the control of shareholding or voting power in the merchant bank, including — 30

- (a) whether the interested person holds that interest as beneficial owner or as trustee; and

(b) if the interested person holds the interest as trustee, to indicate as far as the interested person is able to, the person for whom the interested person holds the interest (either by name or by other particulars sufficient to identify the person) and the nature of that person's interest.

(5) A person commits an offence if the person —

(a) fails to comply with a notice under this section; or

(b) in purported compliance with the notice, knowingly or recklessly provides any information or document that is false or misleading in a material particular.

(6) Any person that commits an offence under this section 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.

(7) If a person claims, before providing any information to a merchant bank in Singapore under subsection (1) or to the Authority under subsection (3), that the information may tend to incriminate the person, the information is not admissible in evidence against the person in criminal proceedings, except for proceedings for an offence under this section.

Revocation of merchant bank licence

55ZA.—(1) The Authority may by order revoke a merchant bank licence granted under section 55S or treated as granted under section 64 of the Banking (Amendment) Act 2020 —

- (a) if the Authority is satisfied that the merchant bank holding that licence —
- (i) has ceased to transact all permitted business in Singapore;
 - (ii) has provided any information or document to the Authority that is false or misleading in any material particular in connection with its application —
 - (A) for a merchant bank licence under section 55S; or
 - (B) to be an approved financial institution under section 28(1) of the Monetary Authority of Singapore Act;
 - (iii) if it is a merchant bank incorporated outside Singapore, has had its licence or authority to operate withdrawn by the supervisory authority that is responsible, under the laws of the country or territory where the merchant bank is incorporated, formed or established, for supervising the merchant bank;
 - (iv) proposes to make, or has made, any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;
 - (v) is carrying on its business in a manner likely to be detrimental to the interests of its depositors, customers or creditors, or has insufficient assets to cover its liabilities to its depositors, customers, creditors or the public;
 - (vi) is contravening or has contravened any provision of this Act;
 - (vii) has been convicted of an offence under this Act, or any of its directors or officers holding a

managerial or executive position has been convicted of an offence under this Act; or

(viii) is contravening or has contravened any direction issued by the Authority under the Monetary Authority of Singapore Act or any provision of that Act;

(b) if the Authority considers that it is in the public interest to do so —

(i) upon the Authority exercising any power under section 49(2) as applied by section 55ZJ(1) in relation to the merchant bank;

(ii) upon the Minister exercising any power under Division 2, 3, 4 or 4A of Part IVB of the Monetary Authority of Singapore Act in relation to the merchant bank; or

(iii) on any other ground; or

(c) where the merchant bank holding the licence is a foreign-owned merchant bank incorporated in Singapore — if the parent supervisory authority of the merchant bank has withdrawn the licence or authority to operate of the parent bank of the merchant bank.

(2) Before revoking the licence of a merchant bank under subsection (1), the Authority must —

(a) give written notice to the merchant bank of its intention to do so; and

(b) require the merchant bank to show cause, within the time specified in the notice, as to why the licence should not be revoked.

(3) If the merchant bank —

(a) fails to show cause within the time specified in the notice or within an extended period of time allowed by the Authority in any particular case; or

(b) fails to show sufficient cause,

the Authority may give written notice to the merchant bank of the revocation and the date on which the revocation is to take effect (called in this section the revocation date), and the date must be at least 21 days after the date of the notice. 5

(4) An order for revocation made by the Authority takes effect on the revocation date specified in the notice issued under subsection (3), or any later date specified by the Authority by written notice to the merchant bank.

(5) Any merchant bank whose licence has been revoked under this section may, within 21 days starting on the date of the notice mentioned in subsection (3), appeal in writing to the Minister whose decision is final. 10

(6) If within the period specified in subsection (5), the merchant bank appeals in writing to the Minister, the order by the Authority to revoke the licence does not take effect unless the order is confirmed by the Minister or the appeal is dismissed by the Minister. 15

(7) An appeal by a merchant bank under this section does not affect the exercise of any power — 20

(a) by the Authority under section 49, 50, 51, 52 or 53 (as applied by section 55ZJ(1)) in relation to the merchant bank; or

(b) by the Minister under Division 2, 3, 4 or 4A of Part IVB of the Monetary Authority of Singapore Act, in relation to the merchant bank. 25

Application of provisions in Part III

55ZB.—(1) Subject to section 55R and the modifications specified in subsection (2), sections 8, 10, 10A, 10B, 10C, 11A, 12, 13, 19 and 21 apply to or in relation to a merchant bank as those provisions apply to or in relation to a bank. 30

(2) The modifications mentioned in subsection (1) are —

(a) subsection (2) of section 8 is omitted;

- (b) the reference in section 10(1) to section 9 or 9A is to section 55T;
- (c) the reference in section 10(1) to capital funds required to be maintained by a bank in Singapore is to capital funds required to be maintained by a merchant bank in Singapore;
- (d) the reference in section 10B(2)(f)(ii) to a major stake as defined in section 32(7) is to a major stake as defined in section 55ZF(2)(a);
- (e) the reference in section 11A to the Authority's refusal to grant a bank licence under section 7(3) is to the Authority's refusal to grant a merchant bank licence under section 55S(3)(b);
- (f) the reference in section 12(1) to any business referred to in subsection (2) of section 12 is to any business whatsoever;
- (g) subsection (2) of section 12 is omitted; and
- (h) the reference in section 21(1) to section 20 is to section 55ZA.

Division 3 — Balance-sheets and information

Maintenance of adequate provisions for bad and doubtful debts

55ZC. Every merchant bank in Singapore must make provision for bad and doubtful debts and, before any profit or loss is declared, ensure that such provision is adequate.

Application of provisions in Part IV

55ZD.—(1) Subject to section 55R, section 26 applies to or in relation to a merchant bank as it applies to or in relation to a bank, except that the reference in subsection (2)(b) of that section to every half-year or such other intervals as may be determined by the Authority is to an interval determined by the Authority.

(2) Subject to section 55R and the modifications specified in subsection (3), sections 27 and 28 read with the Fifth Schedule (as applied by section 55ZL) apply to or in relation to a merchant bank in Singapore as those provisions apply to or in relation to a bank in Singapore.

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(3) The modifications mentioned in subsection (2) are —

(a) the following provision applies in place of section 27(4):

“A statement under subsection (1)(a) must be submitted to the Authority within a period specified by the Authority by written notice.”; and

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(b) the following provision applies in place of section 27(5):

“A merchant bank that fails to comply with the provision mentioned in section 55ZD(3)(a) commits an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.”.

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*Division 4 — Additional restrictions on
business of merchant banks*

Exposures and credit facilities resulting in concentration risk

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55ZE.—(1) The Authority may by written notice to a merchant bank in Singapore or a class of merchant banks in Singapore impose requirements that are necessary or expedient for the purposes of —

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(a) identifying any person or class of persons, where exposure of the merchant bank, or a merchant bank within the class of merchant banks, to the person or

class of persons may result in concentration risk to the merchant bank; or

(b) limiting the exposure of the merchant bank or a merchant bank within the class of merchant banks to any person or class of persons, where the exposure may result in concentration risk to the merchant bank.

(2) Without limiting subsection (1), the Authority may in a notice under that subsection —

(a) specify the limit on any exposure;

(b) exclude any exposure from any limit;

(c) specify the manner in which and process by which —

(i) any exposure is to be measured or aggregated; and

(ii) a person or class of persons mentioned in subsection (1)(a) or (b) is to be identified;

(d) exclude any merchant bank or class of merchant banks from any requirement imposed under subsection (1);

(e) vary any limit in a particular case;

(f) require the merchant bank in Singapore or a merchant bank within the class of merchant banks in Singapore to report its exposures to the Authority; and

(g) specify the manner in which and the times at which the merchant bank in Singapore or a merchant bank within the class of merchant banks must report its exposures to the Authority.

(3) A merchant bank in Singapore must not grant any credit facility against the security of its own shares.

(4) Any merchant bank that fails to comply with —

(a) any requirement imposed under subsection (1); or

(b) subsection (3),

commits an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction. 5

(5) In this section, “exposure” has the meaning given by the Fifth Schedule as applied by section 55ZL.

Application of provisions in Part V

55ZF.—(1) Subject to section 55R, section 29A read with the Fifth Schedule (as applied by section 55ZL) applies to or in relation to a merchant bank in Singapore or a class of merchant banks in Singapore as it applies to or in relation to a bank in Singapore or a class of banks in Singapore. 10

(2) Subject to section 55R, section 32 applies to or in relation to a merchant bank in Singapore as it applies to or in relation to a bank in Singapore, subject to the following modifications: 15

(a) the following definition applies in place of the definition of “major stake” in section 32(7):

“ “major stake”, in relation to an entity,
means — 20

(a) any beneficial interest exceeding 20% of the total number of issued shares or another measure corresponding to shares in a company that is prescribed; 25

(b) control of more than 20% of the voting power or another measure corresponding to voting power in a company that is prescribed; or

(c) any interest in the entity, by reason of which — 30

- 5 (i) the management of the entity is accustomed or under an obligation, (whether formal or informal) to act in accordance with the merchant bank's directions, instructions or wishes; or
- 10 (ii) the merchant bank is in a position to determine the policy of the entity;";

(b) the following definition applies in place of the definition of "prohibited business" in section 32(7):

15 " "prohibited business" means any business other than the businesses mentioned in section 55V."

20 (3) The Authority may make regulations under section 78 to provide for the matters mentioned in section 35 in relation to a merchant bank in Singapore, and for this purpose, the reference in that section to a bank in Singapore is to a merchant bank in Singapore.

Division 5 — Minimum asset requirements

Application of provisions in Part VI

25 **55ZG.**—(1) Subject to section 55R, section 38 read with the Fifth Schedule (as applied by section 55ZL) applies to or in relation to a merchant bank in Singapore or a class of merchant banks in Singapore as it applies to or in relation to a bank in Singapore or a class of banks in Singapore.

30 (2) Subject to section 55R, section 40 applies to or in relation to a merchant bank in Singapore or a class of merchant banks in Singapore as it applies to or in relation to a bank in Singapore or a class of banks in Singapore.

Division 6 — Powers of control over merchant banks, etc.

Regulation of interest rates of merchant banks

55ZH.—(1) The Authority may from time to time determine and announce the rates of interest payable to or by merchant banks in Singapore, the rates of discount chargeable by merchant banks in Singapore, or the rates of commission and other charges payable to merchant banks in Singapore.

(2) Any determination and announcement made under subsection (1) does not apply to any transaction between merchant banks in Singapore.

Privacy of customer information

55ZI.—(1) Subject to section 55R and the modifications to the Third Schedule mentioned in subsection (2), section 47 and the Third Schedule apply to or in relation to a merchant bank in Singapore as they apply to or in relation to a bank in Singapore.

(2) The modifications to the Third Schedule mentioned in subsection (1) are —

(a) the following item applies in place of item 9 of Part I of the Third Schedule:

“ 9. Disclosure is in compliance with the provisions of this Act, or any notice or directive issued by the Authority to merchant banks.	The Authority or any person authorised or appointed by the Authority.	”;
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(b) the following item applies in place of item 4 of Part II of the Third Schedule:

<p>“ 4. Disclosure is solely in connection with —</p> <p>(a) the merger or proposed merger of the merchant bank with another company; or</p> <p>(b) any acquisition or issue, or proposed acquisition or issue, of any part of the share capital of the merchant bank,</p> <p>whether or not the merger or acquisition is subsequently entered into or completed.</p>	<p>Any person participating or otherwise involved in the merger, acquisition or issue, or proposed merger, acquisition or issue, including any of the person’s lawyers or other professional advisers (whether or not the merger or acquisition is subsequently entered into or completed).</p>	<p>”;</p>
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(c) items 6 and 10 of Part II of the Third Schedule are omitted; and

(d) the definitions of “deposit insurance and policy owners’ protection fund agency” and “insured depositor” in Part III of the Third Schedule are omitted.

Application of other provisions in Part VII

55ZJ.—(1) Subject to section 55R and the modifications mentioned in subsection (2), the provisions in Part VII (except sections 41, 45(7) and 47) apply to or in relation to a merchant bank in Singapore as they apply to or in relation to a bank in Singapore.

(2) The modifications mentioned in subsection (1) are —

(a) a reference in section 45 to a parent bank is to a financial institution incorporated, formed or established outside Singapore of which a foreign-owned merchant bank incorporated in Singapore or merchant bank incorporated outside Singapore (as the case may be) is a subsidiary; and

(b) the reference in section 47A(1) to the date of commencement of section 21 of the Banking

(Amendment) Act 2020 is to the date of commencement of section 24 of that Act.

Division 7 — Transfer of business of merchant banks

Application of provisions in Part VIIA

55ZK.—(1) Subject to section 55R and the modifications mentioned in subsection (2), the provisions in Part VIIA (except section 55P) apply in relation to the transfer of the business of a merchant bank in Singapore as those provisions apply in relation to the transfer of the business of a bank in Singapore. 5

(2) The modifications mentioned in subsection (1) are — 10

(a) a reference to a transferee in sections 55A, 55B and 55C is to —

(i) a bank in Singapore, or a company that has applied for or will be applying for a bank licence under section 7(1)(a) to carry on banking business in Singapore; or 15

(ii) a merchant bank in Singapore or a company that has applied for or will be applying for a merchant bank licence under section 55S to carry on a permitted business in Singapore, 20

to which the whole or part of a transferor’s business is, or is to be, or is proposed to be, transferred under the provisions of Part VIIA as applied by subsection (1);

(b) the following provision applies in place of section 55B(1): 25

“A transferor may voluntarily transfer the whole or any part of its business (including any business that is not a permitted business) to a transferee, if — 30

(a) where the transferor is a merchant bank incorporated in Singapore —

the Authority has consented to the transfer;

5 (b) where the transferor is a merchant bank incorporated outside Singapore — the business to be transferred is reflected in the books of the transferor in Singapore in relation to its operations in Singapore;

10 (c) the transfer involves the whole or part of the business that is permitted under the licence of the transferor; and

15 (d) the Court has approved the transfer.”;

(c) the following provision applies in place of section 55C(6):

20 “If the transferee is not licensed as a bank or merchant bank, the Court may approve the transfer on terms that it takes effect only if the transferee becomes so licensed.”; and

25 (d) the reference in section 55C(14)(b) to the transferee becoming licensed to carry on banking business in Singapore is to the transferee becoming licensed as a bank or a merchant bank.

30 (3) The Minister may make regulations that are necessary or expedient for carrying out the purposes and provisions in Part VIIA as applied by subsection (1) and for prescribing anything that may be required to be prescribed for the purposes of those provisions.

Division 8 — Application of Fifth Schedule

Application of Fifth Schedule

55ZL. Subject to section 55R, the Fifth Schedule applies to or in relation to a merchant bank or a merchant bank in Singapore as it applies to or in relation to a bank or a bank in Singapore, except that the reference to a major stake is to a major stake as defined in section 55ZF(2)(a).”.

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New sections 57FA to 57FE

25. The Banking Act is amended by inserting, immediately after section 57F, the following sections:

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“Appointment of chief executive officer and other persons

57FA.—(1) A licensee incorporated in Singapore must obtain the prior approval of the Authority for the appointment of any of the following:

- (a) any director;
- (b) the chairman of the board of directors;
- (c) the chief executive officer and the deputy chief executive officer;
- (d) a person holding a prescribed appointment in the licensee.

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(2) A licensee incorporated outside Singapore must obtain the prior approval of the Authority for the appointment of the following persons for each of its branches in Singapore:

- (a) the chief executive officer and the deputy chief executive officer;
- (b) a person holding a prescribed appointment in the branch.

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5 (3) Without limiting any other matter that the Authority may consider relevant, the Authority, in determining whether to grant its approval under subsection (1) or (2), must have regard to whether the person is a fit and proper person to hold the office or appointment in accordance with the Guidelines on Fit and Proper Criteria.

(4) The Authority may —

(a) grant its approval under subsection (1) or (2), with or without conditions; and

10 (b) at any time vary or revoke any existing condition or impose conditions or additional conditions.

(5) Without limiting section 78, the Authority may by regulations made under section 78 prescribe —

15 (a) the duties of a person appointed under subsection (1) or (2); and

(b) the maximum term for which a person appointed under subsection (1) or (2) may hold that office or appointment.

20 (6) A licensee incorporated in Singapore must immediately inform the Authority after the licensee becomes aware that a person who holds an office or appointment mentioned in subsection (1) is, in accordance with the Guidelines on Fit and Proper Criteria, no longer a fit and proper person to hold that office or appointment.

25 (7) A licensee incorporated outside Singapore must immediately inform the Authority after the licensee becomes aware that a person who holds an office or appointment mentioned in subsection (2) is, in accordance with the Guidelines on Fit and Proper Criteria, no longer a fit and proper person to hold that office or appointment.

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(8) Any licensee which contravenes subsection (1) or (2), or fails to comply with any condition imposed by the Authority under subsection (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction. 5

(9) Any licensee which contravenes subsection (6) or (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000. 10

Disqualification or removal of director or executive officer

57FB.—(1) Despite the provisions of any other written law —

(a) a licensee incorporated outside Singapore must not, without the prior written consent of the Authority, permit a person to act as an executive officer of its branch in Singapore; and 15

(b) a licensee incorporated in Singapore must not, without the prior written consent of the Authority, permit a person to act as its executive officer or director, 20

if the person —

(c) has been convicted, whether in Singapore or elsewhere, of an offence whether committed before, on or after the date of commencement of section 25 of the Banking (Amendment) Act 2020, being an offence — 25

(i) involving fraud or dishonesty;

(ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or

(iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268); 30

(d) is an undischarged bankrupt, whether in Singapore or elsewhere;

- (e) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures Act (Cap. 289) made against him that remains in force; or
- (h) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
- (i) which is being or has been wound up by a court; or
 - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory.

(2) Despite the provisions of any other written law, where the Authority is satisfied that —

- (a) a director of a licensee incorporated in Singapore; or
- (b) an executive officer of a licensee,

is not a fit and proper person to be a director or an executive officer (as the case may be), the Authority may, by written notice to the licensee, direct the licensee to remove the director or executive officer from his office or employment within the period specified by the Authority in the notice, and the licensee must comply with the notice.

(3) In assessing whether to direct a licensee to remove a director or an executive officer from his office or employment under subsection (2), the Authority may consider any matter which it considers relevant, including (but not limited to) whether —

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

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

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(c) he has failed to discharge any of the duties of his office or employment; or

(d) his removal is necessary in the public interest or for the protection of customers of the licensee.

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

(a) give the licensee and the person written notice of its intention to do so; and

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(b) in the notice mentioned in paragraph (a), call upon the licensee and the person to show cause, within the time specified in the notice, why the person should not be removed.

(5) If the licensee and the person mentioned in subsection (4) —

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(a) fail to show cause within the time specified under subsection (4)(b) or within an extended period of time allowed by the Authority; or

(b) fail to show sufficient cause,

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

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

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

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

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

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

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

Application and interpretation of sections 57FD and 57FE

57FC.—(1) This section and sections 57FD and 57FE apply to, and in relation to, all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate and unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) In sections 57FD and 57FE —

“arrangement” includes any formal or informal scheme, arrangement or understanding, and any trust whether express or implied;

“licensee” means a person who is granted a licence under section 57B and is incorporated in Singapore. 5

Control of shareholdings and voting power in licensee

57FD.—(1) A person must not, on or after the date of commencement of section 25 of the Banking (Amendment) Act 2020, become a 20% controller of a licensee without first obtaining the approval of the Authority. 10

(2) Subject to section 57FE(5), a person who, immediately before the date of commencement of section 25 of the Banking (Amendment) Act 2020, is a 20% controller of a licensee must not continue to be such a controller unless he has, within 6 months after the date of commencement of section 25 of the Banking (Amendment) Act 2020 or a longer period allowed by the Authority, applied to the Authority for approval to continue to be such a controller. 15

(3) In this section, “20% controller” means a person who, alone or together with his associates — 20

(a) holds not less than 20% of the total number of issued shares in the licensee; or

(b) is in a position to control voting power of not less than 20% in the licensee. 25

(4) For the purposes of subsection (3) —

(a) a person holds a share if —

(i) he is deemed to have an interest in that share under section 7 of the Companies Act (Cap. 50); or 30

(ii) he otherwise has a legal or an equitable interest in that share except for such interest as is to be

disregarded under section 7 of the Companies Act;

5 (b) a reference to the control of a percentage of the voting power in a licensee is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the licensee; and

(c) a person, *A*, is an associate of another person, *B*, if —

10 (i) *A* is the spouse or a parent, remoter lineal ancestor or step-parent or a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister, of *B*;

15 (ii) *A* is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of *B*;

20 (iii) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B*;

(iv) *A* is a subsidiary of *B*;

25 (v) *A* is a body corporate in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control not less than 20% of the voting power in *A*; or

30 (vi) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their voting power in relation to, the licensee.

Approval of applications

57FE.—(1) The Authority may approve an application made by any person under section 57FD if —

(a) the Authority is satisfied that —

(i) the person is a fit and proper person; and 5

(ii) having regard to the likely influence of the person, the licensee will or will continue to conduct its business prudently and comply with the provisions of this Act; and

(b) the Authority is satisfied that it is in the public interest to do so. 10

(2) Any approval under this section may be granted to any person subject to any conditions imposed by the Authority, including but not limited to any condition —

(a) restricting the person’s disposal or further acquisition of shares or voting power in the licensee; or 15

(b) restricting the person’s exercise of voting power in the licensee.

(3) The Authority may at any time add to, vary or revoke any condition imposed under subsection (2). 20

(4) Any condition imposed under subsection (2) has effect despite any of the provisions of the Companies Act or anything contained in the memorandum or articles of association of the licensee.

(5) Where the Authority disapproves an application made by any person under section 57FD(2), the person must, within the time specified by the Authority, take such steps as are necessary to cease to be a 20% controller.”. 25

Amendment of section 58

26. Section 58 of the Banking Act is amended —

(a) by inserting, immediately before the word “losses” in subsection (8)(b), the words “in the case of a bank incorporated in Singapore —”;

(b) by deleting the word “or” at the end of subsection (8)(c);

(c) by deleting the comma at the end of paragraph (d) of subsection (8) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(e) any development has occurred or is likely to occur which has materially and adversely affected, or is likely to materially and adversely affect, the financial soundness of the bank,”; and

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

“(14) This section applies to or in relation to a merchant bank, a merchant bank incorporated in Singapore and a merchant bank incorporated outside Singapore as the section applies to or in relation to a bank, a bank incorporated in Singapore and a bank incorporated outside Singapore.”.

Amendment of section 59

27. Section 59 of the Banking Act is amended by deleting the word “banks” wherever it appears and substituting in each case the words “banks, merchant banks”.

Amendment of section 60

28. Section 60 of the Banking Act is amended —

- (a) by inserting, immediately after the words “banks in Singapore” in subsection (1), the words “or merchant banks in Singapore”; and
- (b) by inserting, immediately after the words “Any bank” in subsection (5), the words “or merchant bank”.

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Amendment of section 62

29. Section 62 of the Banking Act is amended —

- (a) by deleting paragraph (c) of subsection (1) and substituting the following paragraph:

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“(c) thirdly, deposit liabilities incurred by the bank with non-bank customers other than those specified in paragraph (b), which are incurred —

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- (i) in Singapore dollars; or
- (ii) on terms under which the deposit liabilities may be discharged by the bank in Singapore dollars;”;

- (b) by deleting the words “when operating an Asian Currency Unit approved under section 77” in subsection (1)(d);

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- (c) by deleting the words “paragraph (b)” in subsection (1)(d) and substituting the words “paragraphs (b) and (c)”;

- (d) by deleting the words “section 61 and this section, “deposit liabilities of a bank” ” in subsection (3) and substituting the words “this section, “deposit liabilities”, in relation to a bank,”; and

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- (e) by deleting the words “ “deposit liabilities of a bank” ” in subsection (4A) and substituting the words “ “deposit liabilities” ”.

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Repeal and re-enactment of section 62A and new section 62B

30. Section 62A of the Banking Act is repealed and the following sections substituted therefor:

“Priorities for set-off in winding up of bank

5 **62A.**—(1) Despite any written law or rule of law relating to the winding up of companies, in the event of the winding up of a bank in Singapore, a liquidator must first set-off a depositor’s liabilities to the bank against any deposit of the depositor placed with the bank that is accepted —

10 (a) in Singapore dollars; or

 (b) on terms under which the deposit may be repaid by the bank in Singapore dollars.

(2) In this section, “deposit” means —

(a) a sum of money paid on terms —

15 (i) under which it will be repaid, with or without interest or a premium, or with any consideration in money or money’s worth, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

20 (ii) which are not referable to the provision of property or services or to the giving of security; and

 (b) any other prescribed product.

Priority of specified liabilities for merchant banks

25 **62B.**—(1) Where a merchant bank becomes unable to meet its obligations, becomes insolvent or suspends payment, the assets of that merchant bank in Singapore are available to meet all liabilities in Singapore of the merchant bank specified in subsection (3).

30 (2) The liabilities in Singapore of the merchant bank specified in subsection (3) have priority over all unsecured liabilities of

the merchant bank other than preferential debts specified in section 328(1) of the Companies Act.

(3) Despite the provisions of any written law or rule of law relating to the winding up of companies, in the event of the winding up of a merchant bank, the following liabilities in Singapore of the merchant bank rank in the following order of priority:

(a) firstly, any deposit liabilities incurred by the merchant bank with non-bank customers;

(b) secondly, 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 merchant bank under section 103, 104, 105 or 106 of that Act.

(4) The liabilities in each paragraph specified in subsection (3) —

(a) rank in the order specified in that subsection, but as between all liabilities that fall within the same paragraph of that subsection, such liabilities rank equally between themselves; and

(b) must be paid in full unless the assets of the merchant bank in Singapore are insufficient to meet them in which case the liabilities abate in equal proportions between themselves.

(5) For the purposes of this section, “deposit liabilities” has the meaning given in section 62(3) and (4) with each reference to a bank substituted with a merchant bank.

(6) To avoid doubt, any liability of a merchant bank excluded from the definition of “deposit liabilities” in section 62(3) and (4) as applied by subsection (5) ranks *pari passu* with all other unsecured liabilities of the merchant bank.”.

Amendment of section 63

31. Section 63 of the Banking Act is amended —

(a) by inserting, immediately after subsection (2), the following subsection:

5 “(3) This section applies to or in relation to a merchant bank as it applies to or in relation to a bank.”; and

(b) by inserting, immediately after the words “held by bank” in the section heading, the words “or merchant bank”.

10 **Amendment of section 64**

32. Section 64 of the Banking Act is amended by inserting, immediately after subsection (2), the following subsection:

15 “(3) This section applies to or in relation to a merchant bank incorporated in Singapore as it applies to or in relation to a bank incorporated in Singapore.”.

Amendment of section 65

33. Section 65 of the Banking Act is amended —

(a) by inserting, immediately after “10A,” in subsection (1), “10C,”;

20 (b) by inserting, immediately after “29,” in subsection (1), “29A,”;

(c) by inserting, immediately after “10A,” in subsection (2), “10C,”; and

25 (d) by inserting, immediately after “29,” in subsection (2), “29A,”.

New section 65A

34. The Banking Act is amended by inserting, immediately after section 65, the following section:

“Power of Authority to secure compliance by merchant bank

65A.—(1) A merchant bank in Singapore must, if notified in writing at any time by the Authority to do so, produce any evidence or information that the Authority may require, to satisfy the Authority that the merchant bank is not in contravention of any of the provisions of, or any regulation, notice or direction made or issued under —

(a) sections 10, 10A and 10C as applied by section 55ZB(1);

(b) section 55ZC;

(c) section 27 as applied by section 55ZD(2), read with the Fifth Schedule as applied by section 55ZL;

(d) section 55ZE;

(e) section 29A as applied by section 55ZF(1), read with the Fifth Schedule as applied by section 55ZL;

(f) section 32 as applied by section 55ZF(2);

(g) section 35 read with section 55ZF(3);

(h) section 38 as applied by section 55ZG(1), read with the Fifth Schedule as applied by section 55ZL;

(i) section 40 as applied by section 55ZG(2);

(j) section 42 as applied by section 55ZJ(1); or

(k) this section.

(2) Without affecting any of the provisions mentioned in subsection (1)(a) to (j), the Authority may, for the purpose of securing compliance with any of those provisions, or any regulation, notice or direction made under any of those provisions, on a consolidated basis, from time to time by written notice, require any merchant bank to aggregate, within the time and in the manner specified in the notice —

(a) the merchant bank’s assets, liabilities, profits or losses, and any other information whether or not on its balance-sheet; and

(b) the assets, liabilities, profits or losses, and any other information whether or not on the balance-sheets of —

(i) any of the merchant bank’s related corporations; and

(ii) any entity in which the merchant bank holds, directly or indirectly, a major stake within the meaning of section 55ZF(2)(a).

(3) A notice under subsection (2) may vary a requirement of a notice issued under any of the provisions mentioned in subsection (1)(a) to (j).

(4) Any merchant bank that fails to comply with a requirement of the Authority 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.

(5) Any merchant bank that fails to comply with a requirement of the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to the same punishment as that provided for a contravention of the section of this Act, or of a notice or direction under the section of this Act, for the compliance with which the notice was given.”.

Amendment of section 66

35. Section 66 of the Banking Act is amended —

(a) by inserting, immediately after the words “a bank in Singapore” in subsection (1), the words “or merchant bank in Singapore”;

(b) by inserting, immediately after the words “the bank” in subsection (1), the words “or merchant bank (as the case may be)”;

(c) by inserting, immediately after the words “banks in Singapore” in subsections (1) and (3)(a), the words “or merchant banks in Singapore (as the case may be)”;

(d) by deleting subsection (5) and substituting the following subsection: 5

“(5) Despite subsection (1), no director or executive officer shall be guilty of an offence under that subsection where the non-compliance by the bank or merchant bank with any provision of this Act or any other written law applicable to banks or merchant banks (as the case may be) results only in the imposition of a financial penalty on the bank or merchant bank, as the case may be.”; and 10

(e) by deleting the words “director and executive officers of bank” in the section heading and substituting the words “directors or executive officers”. 15

Amendment of section 67

36. The Banking Act is amended by renumbering section 67 as subsection (1) of that section, and by inserting immediately thereafter the following subsection: 20

“(2) Subsection (1) applies to any director, executive officer, trustee, auditor, employee or agent of a merchant bank in Singapore as the subsection applies to any director, executive officer, trustee, auditor, employee or agent of a bank in Singapore.”. 25

Amendment of section 70

37. Section 70 of the Banking Act is amended —

(a) by inserting, immediately after the words “a list of banks” in subsection (1), the words “and a list of merchant banks”;

(b) by inserting, immediately after the words “any bank” in subsection (2), the words “or merchant bank”; and 30

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

“Publication of information on banks and merchant banks”.

5 **Amendment of section 71**

38. Section 71 of the Banking Act is amended by inserting, immediately after the words “Any bank”, the words “or merchant bank”.

Amendment of section 74

10 **39.** Section 74 of the Banking Act is amended by deleting subsection (1A) and substituting the following subsections:

“(1A) The Authority may recover as a civil debt due to the Authority from a merchant bank —

- 15 (a) the amount of any fees payable by the merchant bank under sections 8 and 13 as applied by section 55ZB(1); and
- (b) any remuneration and expenses payable by the merchant bank to —
- 20 (i) an auditor appointed under sections 44A(3) and 46B(3) as applied by section 55ZJ(1);
- (ii) a statutory adviser appointed under section 49(2)(b) as applied by section 55ZJ(1);
- (iii) a statutory manager appointed under section 49(2)(c) as applied by section 55ZJ(1);
- 25 (iv) the Authority or any person employed or authorised by the Authority under section 3 in relation to the Authority assuming control of any business of the merchant bank under section 49 as applied by section 55ZJ(1); and

- (v) any person appointed to perform any independent assessment under section 55B(4) as applied by section 55ZK(1).

(1B) The Authority may recover on behalf of the Government —

5

- (a) any financial penalty imposed under section 38(7) or 39(7) on a bank; or

- (b) any financial penalty imposed under section 38(7) as applied by section 55ZG(1) on a merchant bank,

as though the financial penalty were a civil debt due to the Authority.”.

10

Amendment of section 74A

40. Section 74A of the Banking Act is amended by deleting the words “under section 38(7) or 39(7)” and substituting the words “on a bank under section 38(7) or 39(7) or on a merchant bank under section 38(7) as applied by section 55ZG(1),”.

15

Amendment of section 75

41. Section 75(1) of the Banking Act is amended by inserting, immediately after the words “any bank”, the words “or merchant bank”.

20

Repeal of section 77

42. Section 77 of the Banking Act is repealed.

Amendment of section 78

43. Section 78 of the Banking Act is amended —

- (a) by deleting subsection (3) and substituting the following subsection:

25

“(3) Without affecting subsection (1), regulations may be made for or with respect to —

5 (a) the corporate governance, and the appointment and removal of principal officers, of banks in Singapore or merchant banks in Singapore, their related corporations or other entities in which the banks or merchant banks acquire or hold (directly or indirectly) a major stake as defined in section 32(7) or section 55ZF(2)(a), as the case may be;

10 (b) the prohibition or restriction on mutual holding of shares or other interests between the banks and their related corporations or other entities mentioned in paragraph (a), or between the merchant banks and their related corporations or other entities mentioned in paragraph (a); and

15 (c) the risk management —

(i) of banks, whether or not relating to banking business; and

20 (ii) of merchant banks, whether or not relating to a permitted business.”;

(b) by deleting the words “or banks” wherever they appear in subsection (4) and substituting in each case the words “, banks or merchant banks”; and

25 (c) by deleting the words “or bank” in subsection (4) and substituting the words “, bank or merchant bank”.

Amendment of Third Schedule

44. The Third Schedule to the Banking Act is amended —

30 (a) by deleting item 1 of Part II and substituting the following item:

<p>“1. Disclosure is solely —</p> <p>(a) in connection with the performance of duties as an officer or a professional adviser of the bank; or</p> <p>(b) to enable an auditor appointed or engaged by a bank in Singapore, the head office of the bank in Singapore or, (in the case of a foreign-owned bank incorporated in Singapore) its parent bank, to make certain disclosures.</p>	<p>(a) For the purpose of item 1(a) in the first column —</p> <p>(i) an officer of the bank in Singapore;</p> <p>(ii) an officer designated in writing by the head office of the bank in Singapore or, in the case of a foreign-owned bank incorporated in Singapore, its parent bank;</p> <p>(iii) a lawyer, consultant or other professional adviser appointed or engaged by the bank in Singapore under a contract for service; or</p> <p>(iv) an auditor appointed or engaged by the bank in Singapore, the head office of the bank in Singapore or, in the case of a foreign-owned bank incorporated in Singapore, its parent bank, under a contract for service.</p> <p>(b) For the purpose of item 1(b) in the first column —</p> <p>(i) the head office of the bank in Singapore, where the head office receives information from an auditor under paragraph (a)(iv);</p> <p>(ii) in the case of a foreign-owned bank incorporated in Singapore, its parent bank, where the parent bank receives information from an auditor under paragraph (a)(iv); or</p> <p>(iii) any employee of the Accounting and Corporate Regulatory Authority who is appointed under section 35 of the Accountants Act to carry out a practice review of an auditor, where the employee receives information from the auditor under paragraph (a)(iv).</p>	<p>(a) Disclosure must not be made to any auditor referred to in paragraph (a)(iv) of the second column, other than an auditor appointed or engaged by the bank in Singapore, unless the auditor has given to the bank a written undertaking that the auditor will not disclose any customer information obtained by the auditor in the course of the performance of audit to any person other than —</p> <p>(i) the head office of the bank in Singapore;</p> <p>(ii) in the case of a foreign-owned bank incorporated in Singapore, its parent bank;</p> <p>(iii) an employee of the Accounting and Corporate Regulatory Authority appointed as a reviewer under section 35 of the Accountants Act (Cap. 2) to carry out a practice review of the auditor.</p> <p>(b) The disclosure by any auditor to any person mentioned in paragraph (b)(iii) of the second column is subject to any conditions specified in a notice issued by the Authority to the auditor.”;</p>
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- (b) by deleting the words “If any out-sourced function is to be performed outside Singapore, the” in the third column of item 3 of Part II and substituting the word “The”;
- (c) by inserting, immediately after the word “perform” in paragraph (c) of the second column of item 10 of Part II, the words “any act in connection with”; and
- (d) by inserting, immediately after the definition of “lawyer” in Part III, the following definitions:

““practice review” and “reviewer” have the same meanings as in section 32 of the Accountants Act;”.

Amendment of Fifth Schedule

45. The Fifth Schedule to the Banking Act is amended —

- (a) by inserting, immediately after “29,” in the Schedule heading, “29A”;
- (b) by inserting, immediately after the definition of “associate” in paragraph 1, the following definition:

““bank group”, in relation to a bank in Singapore, means a group comprising —

(a) in the case of a bank incorporated in Singapore —

- (i) every subsidiary of the bank;
- (ii) every branch of the bank located outside Singapore; and

(iii) every other entity that is treated as part of the bank’s group of entities for accounting purposes according to Accounting Standards; or

(b) in the case of branches and offices located within Singapore of a bank incorporated outside Singapore —

- (i) every subsidiary of the bank that is reflected as an investment in the balance-sheet of a branch of the bank located within Singapore; and

(ii) every other entity that —

(A) is treated as part of the bank’s group of entities for accounting purposes according to Accounting Standards; and

5

(B) is reflected as an investment in the balance-sheet of a branch of the bank located within Singapore;”;

(c) by deleting the definition of “financial group” in paragraph 1 and substituting the following definitions:

10

““key credit approver”, in relation to a bank in Singapore, means —

(a) in the case of a bank incorporated in Singapore, any person who, whether alone or jointly with any other person or persons, has the highest level of authority to approve credit facilities that will be reflected in the balance-sheet or profit and loss accounts of the bank incorporated in Singapore or any branch or entity in its bank group; and

15

20

(b) in the case of branches and offices located within Singapore of a bank incorporated outside Singapore, any person who —

(i) whether alone or jointly with any other person or persons, has the highest level of authority to approve credit facilities that will be reflected in the balance-sheet or profit and loss accounts of any branch of the bank located within Singapore or any branch or entity in the bank group of the branches and offices located within Singapore of the bank incorporated outside Singapore; and

25

30

(ii) takes part in the operations of the branches located within Singapore of the bank on a day to day basis;

35

“key credit approver group”, in relation to a bank in Singapore, means a group comprising —

(a) any key credit approver of the bank;

- (b) any family member of a key credit approver of the bank;
- 5 (c) any firm or limited liability partnership in or for which a key credit approver of the bank, or a family member of a key credit approver of the bank, is a partner, a manager, an agent, a guarantor or a surety;
- 10 (d) any individual for whom a key credit approver of the bank, or a family member of a key credit approver of the bank, is a guarantor or a surety;
- (e) any company for which a key credit approver of the bank, or a family member of a key credit approver of the bank, is a guarantor or a surety;
- 15 (f) any company of which a key credit approver of the bank, or a family member of a key credit approver of the bank, is an executive officer;
- (g) any company in which a key credit approver of the bank, or a family member of a key credit approver of the bank, owns more than half of the total number of issued shares, whether legally or beneficially;
- 20 (h) any company in which a key credit approver of the bank, or a family member of a key credit approver of the bank, controls more than half of the voting power; or
- 25 (i) any company the composition of the board of directors of which is controlled by a key credit approver of the bank, or a family member of a key credit approver of the bank;

30 “major stake” has the same meaning as in section 32(7);

“major stake entity group”, in relation to a bank in Singapore, means a group comprising —

- 35 (a) in the case of a bank incorporated in Singapore, any entity in which the bank holds, directly or indirectly, a major stake; and
- (b) in the case of branches and offices located within Singapore of a bank incorporated outside Singapore, any entity in which the bank incorporated outside Singapore holds, directly

or indirectly, a major stake that is reflected as an investment in the balance-sheet in Singapore of the bank;”;

(d) by inserting, immediately after the definition of “parent bank” in paragraph 1, the following definitions: 5

““related corporation group”, in relation to a bank in Singapore, means a group comprising —

- (a) any related corporation of the bank;
- (b) any branch of the bank located outside Singapore; and 10
- (c) in the case of a bank incorporated outside Singapore, the head office of the bank incorporated outside Singapore;

“senior management group”, in relation to a bank in Singapore, means a group comprising — 15

- (a) any executive officer of the bank;
- (b) any family member of an executive officer of the bank;
- (c) any firm or limited liability partnership in or for which an executive officer of the bank, or a family member of an executive officer of the bank, is a partner, a manager, an agent, a guarantor or a surety; 20
- (d) any individual for whom an executive officer of the bank, or a family member of an executive officer of the bank, is a guarantor or a surety; 25
- (e) any company for which an executive officer of the bank, or a family member of an executive officer of the bank, is a guarantor or a surety;
- (f) any company of which an executive officer of the bank, or a family member of an executive officer of the bank, is an executive officer; 30
- (g) any company in which an executive officer of the bank, or a family member of an executive officer of the bank, owns more than half of the total number of issued shares, whether legally or beneficially; 35

(h) any company in which an executive officer of the bank, or a family member of an executive officer of the bank, controls more than half of the voting power; or

5

(i) any company the composition of the board of directors of which is controlled by an executive officer of the bank, or a family member of an executive officer of the bank;” and

(e) by deleting paragraph 5 and substituting the following paragraphs:

10

“5. For the purposes of the definition of “key credit approver group”, a key credit approver of a bank is deemed to control the composition of the board of directors of a company if he has any power, exercisable by him without the consent or concurrence of any other person, to appoint or remove all or a majority of the directors of the company.

15

5A. For the purposes of the definition of “senior management group”, an executive officer of a bank is deemed to control the composition of the board of directors of a company if he has any power, exercisable by him without the consent or concurrence of any other person, to appoint or remove all or a majority of the directors of the company.”.

20

Miscellaneous amendments

25

46.—(1) The Banking Act is amended by deleting the word “licence” wherever it appears in the following provisions and substituting in each case the words “bank licence”:

Section 2(1) (definition of “bank”)

Section 4(1)

Section 7(1), (3), (4), (5)(b), (7) and (8) and section heading

30

Section 9(1)

Section 9A(1)

Section 11A

Section 21 (section heading)

Section 49(1)(c)(iv)

Section 55A (definition of “transferee”).

(2) Section 20 of the Banking Act is amended —

- (a) by deleting the words “that licence” in subsection (1)(a) and substituting the words “that bank licence”; and
- (b) by deleting the word “licence” wherever it appears in subsections (1)(a)(ii) and (iii) and (b), (2), (3) and (4) and in the section heading and substituting in each case the words “bank licence”. 5

Consequential amendments to Commodity Trading Act

47. The Commodity Trading Act (Cap. 48A, 2009 Ed.) is amended — 10

- (a) by deleting sub-paragraph (i) of paragraph (c) of the definition of “commodity trading adviser” in section 2 and substituting the following sub-paragraph:

“(i) a bank or merchant bank licensed under the Banking Act (Cap. 19);”;
and 15

- (b) by deleting sub-paragraph (c) of paragraph 1 of the Schedule and substituting the following sub-paragraph:

“(c) in respect of sections 12(1) and 13(1)(a) to (e), a bank or merchant bank licensed under the Banking Act (Cap. 19);” 20

Consequential amendments to Companies Act

48. The Companies Act (Cap. 50, 2006 Ed.) is amended —

- (a) by deleting the definition of “banking corporation” in section 4(1) and substituting the following definition: 25

““banking corporation” means a bank or merchant bank licensed under the Banking Act (Cap. 19);”;
and

- (b) by inserting, immediately after the words “section 50 or 54 of the Banking Act (Cap. 19),” in section 145(6)(b), the 30

words “section 50 or 54 of the Banking Act as applied by section 55ZJ of that Act.”.

Consequential amendment to Deposit Insurance and Policy Owners’ Protection Schemes Act

5 **49.** Section 2(1) of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B, 2012 Ed.) is amended by inserting, immediately after the words “require the person to be licensed under” in paragraph (b) of the definition of “excluded person”, the words “section 7 of”.

10 **Consequential amendment to Finance Companies Act**

50. Section 53(1) of the Finance Companies Act (Cap. 108, 2011 Ed.) is amended by inserting, immediately after the words “any bank” in paragraph (a), the words “or merchant bank”.

Consequential amendment to Financial Advisers Act

15 **51.** Section 23(1) of the Financial Advisers Act (Cap. 110, 2007 Ed.) is amended by deleting the words “approved as a financial institution and approved to carry on a business of providing any financial advisory service under the Monetary Authority of Singapore Act (Cap. 186)” in paragraph (b) and
20 substituting the words “licensed under the Banking Act”.

Consequential amendment to Hostage-Taking Act

52. Section 2 of the Hostage-Taking Act (Cap. 126C, 2011 Ed.) is amended by deleting the definition of “bank” and substituting the following definition:

25 ““bank” means a bank or merchant bank licensed under the Banking Act (Cap. 19), and includes a finance company licensed under the Finance Companies Act (Cap. 108);”.

Consequential amendment to Housing and Development Act

30 **53.** Section 51(11) of the Housing and Development Act (Cap. 129, 2004 Ed.) is amended by deleting the words “approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186)” in paragraph (d) of the definition of “approved

financial institution” and substituting the words “licensed under the Banking Act”.

Consequential amendments to Income Tax Act

54. The Income Tax Act (Cap. 134, 2014 Ed.) is amended —

- (a) by deleting the words “approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186)” in section 10(20A)(c)(iv) and substituting the words “licensed under the Banking Act”; 5
- (b) by deleting the definition of “approved bank” in section 13(16) and substituting the following definition: 10
- ““approved bank” means a bank or merchant bank licensed under the Banking Act;”;
- (c) by deleting the definition of “bank” in section 14I(7) and substituting the following definition:
- ““bank” means a bank or merchant bank licensed under the Banking Act;”;
- 15
- (d) by deleting the definition of “MAS notice” in section 14I(7) and substituting the following definition:
- ““MAS notice” means a notice or direction of the Monetary Authority of Singapore given under — 20
- (a) section 55 of the Banking Act;
- (b) section 55 of the Banking Act as applied by section 55ZJ of that Act; or 25
- (c) section 30 of the Finance Companies Act;”;
- (e) by deleting sub-paragraph (i) of section 43A(2)(b) and substituting the following sub-paragraph:
- “(i) a bank or merchant bank licensed under the Banking Act; and”; 30

(f) by deleting paragraph (a) of section 45I(2) and substituting the following paragraph:

“(a) a bank or merchant bank licensed under the Banking Act;”;

5 (g) by deleting the words “including any regulations made for the purposes of subsection (10) of that section” in section 65D(1)(b)(i) and substituting the words “including that section as applied by section 55ZI(1) of that Act”; and

10 (h) by deleting the words “including any regulations made for the purposes of subsection (10) of that section” in section 105E(2)(a) and substituting the words “including that section as applied by section 55ZI(1) of that Act”.

15 **Consequential amendment to Insolvency, Restructuring and Dissolution Act 2018**

55. Section 250(7) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) is amended by deleting paragraph (b) of the definition of “relevant company” and substituting the following paragraphs:

20 “(b) a merchant bank licensed under the Banking Act;

(ba) a financial institution approved under section 28 of the Monetary Authority of Singapore Act;”.

Consequential amendment to Insurance Act

25 **56.** Section 35ZN(1) of the Insurance Act (Cap. 142, 2002 Ed.) is amended by deleting the words “approved as a financial institution and approved to carry on business as an insurance broker under the Monetary Authority of Singapore Act (Cap. 186)” in paragraph (b) and substituting the words “licensed under the Banking Act”.

30 **Consequential amendments to Monetary Authority of Singapore Act**

57. The Monetary Authority of Singapore Act (Cap. 186, 1999 Ed.) is amended —

(a) by inserting, immediately after paragraph (a) of the definition of “financial institution” in section 27A(6), the following paragraph:

“(aa) any merchant bank licensed under the Banking Act;”;

5

(b) by deleting paragraph (b) of section 161(5) and substituting the following paragraph:

“(b) section 47(1) of the Banking Act as applied by section 55ZI(1) of that Act — an officer of a merchant bank in Singapore (as defined in section 2(1) of that Act);”.

10

Consequential amendment to Moneylenders Act

58. Section 2 of the Moneylenders Act (Cap. 188, 2010 Ed.) is amended by deleting the words “that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act” in paragraph (b) of the definition of “bank” and substituting the words “licensed under the Banking Act”.

15

Consequential amendment to Ngee Ann Kongsu (Incorporation) Ordinance

59. Section 20A(8) of the Ngee Ann Kongsu (Incorporation) Ordinance (Cap. 370, 1985 Ed.) is amended by deleting paragraph (c) of the definition of “relevant deposit” and substituting the following paragraph:

20

“(c) any merchant bank licensed under the Banking Act;”.

Consequential amendment to Payment Services Act 2019

25

60. The Payment Services Act 2019 (Act 2 of 2019) is amended by deleting the words “approved as a financial institution under the Monetary Authority of Singapore Act” in sections 13(1)(b) and 23(10)(b) and substituting in each case the words “licensed under the Banking Act”.

30

Consequential amendment to Remote Gambling Act 2014

61. Section 3(1) of the Remote Gambling Act 2014 (Act 34 of 2014) is amended by inserting, immediately after paragraph (a) of the definition of “financial institution”, the following paragraph:

5 “(aa) any merchant bank licensed under the Banking Act;”.

Consequential amendments to Securities and Futures Act

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

10 (a) by deleting the words “licensed under that Act or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186)” in the following provisions and substituting in each case the words “or merchant bank licensed under that Act”:

15 Section 2(1) (paragraph (iv) of the definition of “derivatives contract”)

 Section 29(8)(d)

 Section 41(8)(d);

20 (b) by deleting the words “approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186)” in the following provisions and substituting in each case the words “licensed under the Banking Act”:

 Section 4A(1)(c)(x)

 Section 123ZT(9)(b)

25 Section 123ZU(7)(b)

 Section 123ZV(7)(b)

 Section 123ZW(4)(b);

30 (c) by inserting, immediately after subsection (4) of section 81C, the following subsection:

 “(4A) Where a participant that is also a merchant bank licensed under the Banking Act becomes insolvent, the liabilities of the merchant bank

accorded priority under section 62B of that Act and the Payment and Settlement Systems (Finality and Netting) Act have priorities over any unsecured liabilities of the merchant bank arising from and after the settlement of market contracts.”;

5

(d) by deleting the words “approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186)” in the definition of “depository agent” in section 81SF and substituting the words “licensed under the Banking Act”;

10

(e) by deleting the words “approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) in respect of any regulated activity which it is approved to carry out under that Act” in section 99(1)(b) and substituting the words “licensed under the Banking Act in respect of any regulated activity”;

15

(f) by deleting the words “authorised as a financial institution under the Monetary Authority of Singapore Act (Cap. 186)” in section 123ZH(1)(b) and substituting the words “licensed under the Banking Act”;

20

(g) by deleting the words “authorised as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186)” in section 123ZZ(2)(b) and substituting the words “licensed under the Banking Act”; and

(h) by deleting the words “approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186)” in the following provisions and substituting in each case the words “licensed under the Banking Act”:

25

Section 124 (paragraph (c) of the definition of “specified person”)

30

Section 129B (paragraph (b) of the definition of “specified person”)

Section 129I (paragraph (b) of the definition of “specified person”)

Part II of the Second Schedule (paragraph (b) of the definition of “financial institution”).

Consequential amendment to Trust Companies Act

5 **63.** Section 15(1) of the Trust Companies Act (Cap. 336, 2006 Ed.) is amended by deleting the words “approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186)” in paragraph (b) and substituting the words “licensed under the Banking Act”.

Saving and transitional provisions for merchant banks that were approved financial institutions

10 **64.—**(1) Despite section 55S of the Banking Act, any company (called in this section and sections 65, 66, 67 and 68 a deemed licensee) —

15 (a) that, immediately before the date of commencement of section 24 (called in this section and sections 65, 66, 67 and 68 the appointed date) was an approved financial institution under section 28 of the Monetary Authority of Singapore Act; and

20 (b) that is specified as a merchant bank on the list of approved financial institutions published by the Authority on its Internet website at <http://www.mas.gov.sg> on the appointed date,

25 is treated as having been granted a merchant bank licence (called in this section a deemed licence) under section 55S(3)(a) of the Banking Act.

(2) The deemed licence is subject to the conditions to which the approval of the approved financial institution mentioned in subsection (1) was subject immediately before the appointed date.

Saving and transitional provisions for new section 55T of Banking Act

30 **65.** An approval granted before the appointed date by the Authority under the direction commonly known as MAS Directive 1 issued by the Monetary Authority of Singapore under section 28(3) of the

Monetary Authority of Singapore Act to a deemed licensee to maintain its minimum paid-up capital and minimum capital funds in a currency other than Singapore dollars, and that was in force immediately before that date —

- (a) is treated as an approval granted under section 55T(2) of the Banking Act; and 5
- (b) is subject to the conditions to which it was subject immediately before that date.

Saving and transitional provisions for new section 55V of Banking Act 10

66.—(1) An approval granted before the appointed date by the Authority (called in this section an old approval) under section 30(1)(e) of the Banking Act as in force immediately before that date to a deemed licensee in relation to its operation of an Asian Currency Unit, and that was in force immediately before that date, is treated as an approval granted to the deemed licensee (called in this section a deemed approval) under section 55V(1)(e) of the Banking Act. 15

(2) A deemed approval is subject to the conditions to which the old approval was subject immediately before the appointed date. 20

(3) If, on the day immediately before the appointed date, a deemed licensee carried on (whether in Singapore or elsewhere and whether or not as its principal business) any business that is not a business mentioned in section 55V(1)(a), (b), (c) and (d) of the Banking Act, then section 55V of the Banking Act does not apply to the continued carrying on of that business by the deemed licensee on or after the appointed date for the period mentioned in subsection (4). 25

(4) In subsection (3), the period is —

- (a) 3 months after the appointed date; or
- (b) if, before the expiry of the period in paragraph (a), the deemed licensee applies for approval under section 55V(1)(e) of the Banking Act for the carrying on of that business — 30
 - (i) until the date the approval is given; or

- (ii) if the application is refused, 12 months, or any longer period allowed by the Authority, after the date on which the application is refused.

Saving and transitional provisions for section 32 of Banking Act as applied by new section 55ZF(2) of that Act

67.—(1) An approval granted before the appointed date by the Authority under section 32 of the Banking Act as in force immediately before that date or MAS Directive 10 (called in this section an old approval) to a deemed licensee and that was in force immediately before that date, is treated as an approval granted under section 32 of the Banking Act as applied by section 55ZF(2) of that Act (called in this section a deemed approval).

(2) A deemed approval is subject to the conditions to which the old approval was subject immediately before the appointed date.

(3) If, on the day immediately before the appointed date —

(a) a deemed licensee held, directly or indirectly, a major stake in an entity other than a company; and

(b) the entity only carried on (whether in Singapore or elsewhere) one or more of the businesses mentioned in section 55V(1)(a), (b), (c) and (d) of the Banking Act,

then, so long as the entity only carries on one or more of those businesses on or after the appointed date, no approval needs to be obtained under section 32 of the Banking Act (as applied by section 55ZF(2) of that Act) for —

(c) the continued holding of such major stake in the entity; or

(d) the acquisition or holding, directly or indirectly, of any other major stake in the entity,

by the deemed licensee on or after that date.

(4) If, on the day immediately before the appointed date —

(a) a deemed licensee held, directly or indirectly, a major stake in an entity other than a company; and

- (b) the entity carried on (whether in Singapore or elsewhere, and whether or not as its principal business), any business other than a business mentioned in section 55V(1)(a), (b), (c) and (d) of the Banking Act,

then, no approval needs to be obtained under section 32 of the Banking Act (as applied by section 55ZF(2) of that Act) for the continued holding of such major stake by the deemed licensee on or after the appointed date for the period mentioned in subsection (5). 5

(5) In subsection (4), the period is —

- (a) 3 months after the appointed date; or 10
- (b) if, before the expiry of the period in paragraph (a), the deemed licensee applies for approval under section 32 of the Banking Act (as applied by section 55ZF(2) of that Act) for the holding of that major stake —
 - (i) until the date the approval is given; or 15
 - (ii) if the application is refused, 12 months, or any longer period allowed by the Authority, after the date the application is refused.

(6) In this section, “MAS Directive 10” means the direction commonly known as MAS Directive 10 issued by the Monetary Authority of Singapore under section 28(3) of the Monetary Authority of Singapore Act. 20

Saving and transitional provisions for section 53A of Banking Act as applied by new section 55ZJ of that Act

68.—(1) Any person who, immediately before the appointed date, was appointed a director or the chairman of the board of directors of a deemed licensee, is treated as having been appointed with the approval of the Authority under section 53A of Banking Act (as applied by section 55ZJ of that Act) for a period of 12 months after the appointed date or another period approved by the Authority. 25 30

(2) A deemed licensee must obtain the prior approval of the Authority for the continued appointment or re-appointment of a person mentioned in subsection (1) as a director or the chairman of the board of directors after the period mentioned in that subsection.

Saving and transitional provision

5 **69.** For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe any additional provisions of a saving or transitional nature consequent on the enactment of that provision that the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Banking Act (Cap. 19) (the Act) for the following purposes:

- (a) to remove the divide between the Domestic Banking Unit and the Asian Currency Unit for banks and merchant banks and to make consequential changes to prudential requirements;
- (b) to consolidate the prudential regulation of merchant banks under the Act and subject merchant banks to a licensing regime under the Act;
- (c) to strengthen supervisory oversight over relevant services such as the outsourcing arrangements of banks and merchant banks;
- (d) to expand the grounds for revoking the licences of banks and merchant banks;
- (e) to empower the Monetary Authority of Singapore (the Authority) to impose stable funding requirements on banks and merchant banks;
- (f) to impose on banks and merchant banks requirements with respect to their related party transactions;
- (g) to impose on credit card and charge card licensees requirements for the approval of appointment of their controllers, the chairman and board of directors, and senior management;
- (h) to make refinements to provisions governing the disclosure of customer information.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 of the Act (Interpretation) to introduce several new definitions to support the amendments in the subsequent clauses. It also amends the existing definitions of certain terms arising from the application of various provisions of the Act to merchant banks. For instance, the clause introduces definitions for the terms “foreign-owned merchant bank incorporated in Singapore”, “merchant bank in Singapore” and “merchant bank incorporated

outside Singapore”, and amends the definition of “licence” to mean a bank licence or a merchant bank licence.

Clause 3 amends section 4 of the Act (Licensing of banks) to provide that the prohibition against the transacting of banking business in Singapore by any person other than a company holding a valid bank licence is subject to the new section 55S. A company holding a merchant bank licence granted under the new section 55S may carry on banking business, subject to certain limitations.

Clause 4 amends section 4B of the Act (Application of section 4A) so that a business is a deposit-taking business if the capital of or the interest on money received by way of deposit is used to finance any activity of the business to any material extent.

Clause 5 amends section 7 of the Act (Application for licence or variation of condition as to banking business), which imposes the requirement for a company that wishes to carry on banking business in Singapore to apply for a bank licence. The amendment makes this requirement subject to the new section 55S, because a company that wishes to carry on banking business may apply for a merchant bank licence under that section instead. Clause 5 also deletes section 7(6) of the Act because it is unnecessary.

Clause 6(a) amends subsection (1) of section 9 of the Act (Minimum capital requirements) such that the subject of the provision is a company instead of a bank, because the provision applies to a company that has not yet been granted a licence, rather than a bank within the meaning of the Act. Similarly, clause 6(b) and (c) amends section 9(1)(a) and (b) of the Act to refer to a company that intends to carry on banking business in Singapore as a bank incorporated in Singapore, and a company that intends to carry on banking business in Singapore through a branch or office located in Singapore, respectively.

Clause 7 deletes subsection (4) of section 9A of the Act (Capital requirements for qualifying subsidiaries), a provision that is redundant because it relates to an exemption from a provision that no longer exists.

Clause 8 amends section 10A of the Act (Leverage ratio requirement). Subsection (2) is amended to set out a wider range of matters that may be prescribed by a notice under subsection (1), without limiting subsection (1). Among other things, a bank in Singapore may be required to report to the Authority its leverage ratio and the manner in which and the process by which it calculates its leverage ratio. Subsection (3) is amended such that it applies to a single bank incorporated in Singapore (in addition to a class of banks incorporated in Singapore), and also such that the requirements in that subsection can be imposed in the same notice issued under subsection (1) (in addition to being imposed in another notice).

Clause 9 amends section 10B(2) of the Act (Public disclosure requirement) to provide that a bank can be required by a notice under section 10B(1) of the Act to

disclose the manner it complies with any requirement imposed on it under the new section 10C.

Clause 10 inserts a new section 10C to the Act (Stable funding requirement). The new section 10C provides that the Authority may, by written notice, impose stable funding requirements on a bank in Singapore or a class of banks in Singapore.

Under subsection (1), the Authority may, by written notice, require any bank or class of banks in Singapore to maintain a minimum stable funding ratio or a minimum amount of stable funds. Stable funds are the amount of funds expected to be available to the bank to fund its assets and exposures (whether or not such assets and exposures are on its balance-sheet) during a given period, and the stable funding ratio of a bank is the ratio of the amount of funds expected to be available to the bank to fund its assets and exposures (whether or not such assets and exposures are on its balance-sheet) during a given period to the amount of funds expected to be required by the bank to fund its assets and exposures (whether or not such assets and exposures are on its balance-sheet) during that period.

Subsection (2) sets out certain requirements that may be prescribed in a notice under subsection (1), without limiting subsection (1).

Subsection (3) provides for the circumstances where the Authority may issue another notice to vary the requirements imposed under subsection (1) for different banks.

Subsection (4) provides that the Authority may restrict or suspend the operations of a bank that fails to comply with a notice under subsection (1) or (3).

Subsection (5) provides for the offences under the new section 10C.

Clause 11 amends section 20 of the Act (Revocation of licence). Subsection (1) is amended such that the Authority's power of revocation under that section is in relation to a bank licence. The Authority's power to revoke a merchant bank licence is provided under the new section 55ZA. Further, the circumstances under which the Authority may by order revoke a licence issued under the Act are widened. The Authority may now do so if (in addition to the existing grounds) it is satisfied that the bank holding the licence is contravening or has contravened any provision of the Monetary Authority of Singapore Act (Cap. 186) or any direction issued under that Act, if it is satisfied that it is in the public interest to do so, or (where the bank holding the licence is a foreign-owned bank incorporated in Singapore) if the parent supervisory authority of the bank has withdrawn the licence or authority to operate of the parent bank of the bank.

Clause 11(b) and (d) makes drafting improvements and clause 11(c) makes a technical amendment.

Clause 12 amends section 25 of the Act (Publication and exhibition of audited balance-sheet). The new subsection (1A) empowers the Authority, by regulations

made under section 78(1) of the Act, to require a bank or class of banks to make available to any person, upon the person's request, a copy of its latest audited annual balance-sheet and profit and loss account, together with any notes on that balance-sheet and account, and a copy of the report of the auditors, and a document containing the names of directors of the bank and subsidiary companies of the bank, and additional information that the bank is required to publish under section 25(4) of the Act.

Subsection (2) is amended such that the Authority may prescribe any manner for the publication required under that subsection, including publication otherwise than in a newspaper.

Subsection (4) is amended such that the Authority may require a bank to publish any additional information under that subsection, including additional information that does not relate to the accounts of the bank for the financial year.

Clause 13 repeals and re-enacts section 27 of the Act (Information on exposures, etc., and actions if exposures, etc., detrimental to depositors' interests). The new section 27 provides that the Authority may, by written notice, require a bank in Singapore or a bank within a class of banks in Singapore to prepare a statement showing in respect of certain periods, in a form specified by the Authority, certain or all credit facilities, exposures and transactions of the bank and certain branches or entities with certain persons, branches, entities or head offices. These persons, branches, entities or head offices are set out in subsection (2). Generally, these persons, branches, entities and head offices are related in some way to the bank in Singapore, and credit facilities, exposures and transactions with such persons, branches, entities and head offices may present some risk of conflict of interest with the bank.

It is possible for a bank in Singapore to extend a credit facility to, have an exposure to, or enter into a transaction with, a branch, entity or head office that is not a legal person separate from the bank. For example, in the case of a bank incorporated outside Singapore, a branch of the bank located within Singapore may lend money to a branch of the bank located outside Singapore.

Clause 14 amends section 29 of the Act (Exposures and credit facilities). The new subsection (1) provides that the Authority may, by written notice, impose requirements on a bank in Singapore or class of banks in Singapore to identify persons or classes of persons to whom exposure of the bank may result in concentration risk to the bank, and to limit exposure that may result in concentration risk to the bank.

Subsection (2) is amended to allow the Authority to specify the manner in which and the process by which exposure is to be measured or aggregated for the purpose of subsection (1), and by which persons or classes of persons are to be identified for the purposes of subsection (1). The Authority may also now require a bank in Singapore to report its exposures to the Authority and specify the manner

in which and the times at which the bank in Singapore or bank within the class of banks in Singapore must report its exposures to the Authority.

Clause 15 inserts a new section 29A to the Act, broadly for the purposes of monitoring and controlling the risk of conflict between the interests of a bank in Singapore and the interests of certain persons, branches or head offices that are in some way related to the bank.

Under the new section 29A, the Authority may, by written notice, impose requirements that are reasonably necessary for the purposes of identifying credit facilities, exposures and transactions to or with certain persons, branches, entities or head offices that may give rise to any conflict of interest, and for monitoring, limiting and restricting such credit facilities, exposures and transactions. Among other things, the notice may prohibit the bank from granting any credit facility, creating any exposure or entering into any transaction to or with such a person, branch, entity or head office.

It is possible for a bank in Singapore to extend a credit facility to, have an exposure to, or enter into a transaction with, a branch, entity or head office that is not a legal person separate from the bank.

Clause 16 amends section 31 of the Act (Limit on equity investments). Subsection (1) is amended to apply only to banks incorporated in Singapore. The new subsection (1A) applies to banks incorporated outside Singapore and prohibits banks incorporated outside Singapore from acquiring or holding any equity investment in a single company the value of which exceeds in the aggregate any limit prescribed by the Authority or specified by the Authority by written notice.

Clause 17 amends section 33 of the Act (Immovable property). Subsection (1) is amended to apply only to banks incorporated in Singapore. The new subsection (1A) applies to banks incorporated outside Singapore and prohibits banks incorporated outside Singapore from acquiring or holding any interest in or rights over immovable property the value of which exceeds in the aggregate any limit prescribed by the Authority or specified by the Authority by written notice.

Clause 18 makes a technical amendment to section 40A of the Act (Interpretation of Part VII). The terms defined in that section are used only in sections 44A, 47 and 55 of the Act.

Clause 19 repeals section 46A of the Act (Application of section 45 to merchant banks), which applies sections 45 and 46 to a merchant bank incorporated outside Singapore or a foreign-owned merchant bank incorporated in Singapore. Section 46A is no longer necessary because the new section 55ZJ applies the provisions in Part VII of the Act (including sections 45 and 46) to a merchant bank in Singapore.

Clause 20 deletes subsection (10) of section 47 of the Act (Privacy of customer information), which applies section 47 and the Third Schedule to a merchant bank. Subsection (10) is no longer necessary because of the new section 55ZI.

Clause 21 inserts a new section 47A to the Act (Relevant services obtained or received by bank in Singapore). The new section 47A of the Act applies where a bank in Singapore obtains or receives any relevant service on or after the date of commencement of section 21 of the Banking (Amendment) Act 2020 from any branch or office of the bank located outside Singapore (including the head office of the bank) or any person. A relevant service is defined as any service obtained or received by a bank, other than a service provided in the course of employment by an employee of the bank or a service provided by a director or an officer of the bank in the course of his or her appointment. The Authority may specify by written notice any service that does not fall within the meaning of “relevant service”. Different provisions are made in relation to relevant services obtained or received from branches or offices of the bank and in relation to relevant services obtained or received from persons.

Subsections (2) and (4) set out the requirements a bank in Singapore must comply with before obtaining any relevant service from its branch or office, or from a person, respectively. In addition to certain due diligence requirements, a bank in Singapore must implement policies and procedures (in the case of a relevant service obtained from its branch or office) or enter into a contract (in the case of a relevant service obtained from a person) that meets requirements specified by the Authority by written notice. The requirements that may be specified are set out non-exhaustively in subsections (3) and (5).

Subsections (6) and (7) provide that the Authority may, by written notice, require a bank in Singapore that receives a relevant service from its branch or office, and from a person, respectively, to perform certain acts, in relation to the relevant services and the branch or office, or the person.

Subsections (6) and (7) apply to a bank in Singapore that receives a relevant service after the date of commencement of section 21 of the Banking (Amendment) Act 2020, whether or not the relevant service was obtained or procured before, on or after that date.

Written notices may impose requirements on a bank in Singapore or a class of banks in Singapore, may impose different requirements on different banks in Singapore or different classes of banks in Singapore, and may impose different requirements in relation to different types of relevant services.

In issuing any such written notice, the Authority must have regard to the risk arising from the activities of the bank or class of banks on which the notice is imposed, and the systemic impact of the bank or class of banks on the financial sector.

It is an offence for a bank in Singapore to contravene subsection (2) or (4) or any requirement imposed by a notice under subsection (6) or (7).

Clause 22 makes drafting improvements to section 48AA of the Act (Information of material adverse development, etc.).

Clause 23 deletes and substitutes subsection (3) of section 55 of the Act (Notices to banks). The new subsection (3) expressly provides that it is an offence for a bank in Singapore to fail to comply with any direction given to the bank or any requirement imposed on the bank by a notice issued under the Act. It is currently an offence to contravene any provision of the Act for which no penalty is provided (including the existing section 55(3) of the Act), under the existing section 71 of the Act.

Clause 24 inserts a new Part VIIB, comprising 22 new sections (sections 55Q to 55ZL), which sets out provisions that apply to merchant banks.

The new section 55Q introduces new definitions for the terms used in the new Part VIIB. In particular, it defines “permitted business” to mean one or both of the following businesses:

- (a) banking business;
- (b) deposit-taking business.

The new section 55R sets out the modifications to any provision in Parts III to VIIA that is applied by the new Part VIIB to merchant banks. It also empowers the Minister to make further modifications to an incorporated provision within a period of 3 years starting on the date of commencement of section 24 of the Banking (Amendment) Act 2020.

The new section 55S makes provision for a company that wishes to carry on a permitted business in Singapore to apply to the Authority for a merchant bank licence instead of a bank licence under section 7. The application must be accompanied by the information and documents mentioned in subsection (2) and a non-refundable application fee of an amount prescribed by the Authority. The Authority may grant a merchant bank licence (with or without conditions) or refuse to grant the licence. In addition, the Authority may, after giving a merchant bank an opportunity to provide a response, impose conditions or additional conditions on, or vary or revoke any condition of, a grant of a merchant bank licence.

The new section 55S also provides that it is an offence for a merchant bank to fail to comply with any condition of its licence or a person to knowingly or recklessly provide any false or misleading information or document to the Authority in connection with an application for a merchant bank licence.

The new section 55T provides that a merchant bank licence must not be granted to a company unless —

- (a) where the company intends to carry on a permitted business in Singapore as a merchant bank incorporated in Singapore — its paid-up capital and capital funds —
 - (i) are in ordinary shares;
 - (ii) are denominated in Singapore dollars or any currency approved by the Authority; and
 - (iii) are each at least \$15 million or another amount determined by the Authority in a particular case; or
- (b) where the company intends to carry on a permitted business in Singapore through a branch or office located in Singapore — its head office capital funds (as defined in subsection (11)) are at least the equivalent of \$200 million or another amount determined by the Authority in a particular case.

The paid-up capital and capital funds of a merchant bank incorporated in Singapore must at all times be denominated in Singapore dollars or any currency approved by the Authority in a particular case, and must at all times be in ordinary shares. Except with the Authority's approval, a merchant bank incorporated in Singapore must not reduce its paid-up capital, or purchase or otherwise acquire shares issued by the merchant bank if those shares are to be held as treasury shares.

The Authority may, by written notice, restrict or suspend the operations of a merchant bank, or give any appropriate direction to the merchant bank, if the merchant bank fails to comply with any provision of the new section 55T. A merchant bank that fails to comply with any provision of the section or any restriction, suspension or direction of the Authority commits an offence.

The new section 55U provides that a merchant bank in Singapore must not accept any deposit or otherwise borrow any money in Singapore dollars, except from a person or a person within a class of persons prescribed by the Authority, or a person approved by the Authority in a particular case. The new section 55U also prohibits a merchant bank in Singapore from offering, inviting or issuing any advertisement containing any offer or invitation to any person (with some exceptions) to make a deposit in Singapore dollars or to enter or offer to enter into an agreement to make such deposit with the merchant bank. Lastly, the new section 55U prohibits a merchant bank in Singapore from raising money in Singapore dollars by certain means specified in the section.

The new section 55V sets out the businesses that a merchant bank in Singapore may carry on, or enter into a partnership, joint venture or other arrangement with any person to carry on, whether in Singapore or elsewhere. A merchant bank in Singapore that contravenes the section or fails to comply with any condition prescribed or imposed under the section commits an offence.

The new section 55W imposes a requirement on a merchant bank in Singapore to give written notice to the Authority within 7 days of the merchant bank becoming aware of —

- (a) any transfer, sale or purchase or any proposed transfer, sale or purchase, of any shares in the merchant bank to or by any person; or
- (b) any other agreement or arrangement that results in a person becoming or ceasing to be a substantial shareholder or an indirect controller (as defined in subsection (3)) of the merchant bank.

A merchant bank that fails to comply with the requirement to give the written notice to the Authority under the new section 55W commits an offence.

The new section 55X prohibits any purchase or acquisition of any share in a merchant bank in Singapore on or after the date of commencement of section 24 of the Banking (Amendment) Act 2020, without the prior approval of the Authority. The Authority may approve (with or without conditions) any intended purchase or acquisition if —

- (a) the intended purchaser or acquirer is a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria; and
- (b) the merchant bank will continue to be able to conduct its business prudently and comply with the provisions of the Act and any other written law applicable to it in the conduct of its business, having regard to the likely influence over the merchant bank by the intended purchaser or acquirer.

Any person that fails to seek prior approval for any purchase or acquisition or comply with any condition imposed on an approval under the new section 55X commits an offence.

The new section 55Y imposes a requirement on a merchant bank in Singapore to inform the Authority if it becomes aware that a person approved under the new section 55X, a substantial shareholder or an indirect controller (called a specified person) is not or no longer a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria, or the merchant bank is not or not likely to be able to conduct its business prudently and comply with the provisions of the Act or any other written law applicable to it in the conduct of its business, having regard to the likely influence over the merchant bank of the specified person. The Authority may, if it is satisfied that a specified person is, in accordance with the Guidelines on Fit and Proper Criteria, not or no longer a fit and proper person, by written notice —

- (a) direct the transfer or disposal of any share held by the specified person or an associate (as defined in subsection (6)) of the specified person;

- (b) restrict the transfer or disposal of any share mentioned in paragraph (a); or
- (c) make such other direction as the Authority considers appropriate.

A merchant bank that fails to inform the Authority as required or a person that fails to comply with the written notice given by the Authority commits an offence.

The new section 55Z empowers the Authority to give a written notice to a merchant bank in Singapore to obtain any information relating to its shareholders that the Authority requires to ascertain or investigate into the control of the shareholding or voting power in the merchant bank. The Authority is also empowered to direct any shareholder or person having an interest in any share in a merchant bank in Singapore to provide information required by the Authority to ascertain or investigate into the control of the shareholding or voting power in the merchant bank. A person who fails to comply with a notice given by the Authority, or knowingly or recklessly provides any false or misleading information or document to the Authority under the new section 55Z, commits an offence.

The new section 55ZA enables the Authority to revoke a merchant bank licence on certain grounds. Before revoking the licence, the Authority must give the merchant bank written notice of its intention to do so and require the merchant bank to show cause why its licence should not be revoked. A merchant bank whose licence has been revoked by the Authority may appeal in writing to the Minister, whose decision is final.

The new section 55ZB provides that sections 8, 10, 10A, 10B, 10C, 11A, 12, 13, 19 and 21 (which are in Part III of the Act) apply to and in relation to a merchant bank as those provisions apply to or in relation to a bank, subject to the modifications specified in subsection (2). For instance, section 8(2) which provides for different licence fees to be prescribed in respect of different classes or categories of banks is omitted as only one fee will be prescribed for a merchant bank licence.

The new section 55ZC provides that every merchant bank in Singapore must make provision for bad and doubtful debts, and ensure that such provision is adequate before declaring any profit or loss.

The new section 55ZD applies sections 26, 27 (read with the Fifth Schedule as applied by the new section 55ZL) and 28 (read with the Fifth Schedule as applied by the new section 55ZL) to or in relation to a merchant bank or a merchant bank in Singapore, as those provisions apply to or in relation to a bank or a bank in Singapore, subject to certain modifications.

The new section 55ZE empowers the Authority to give a written notice to any merchant bank in Singapore or merchant bank within a class of merchant banks in Singapore to impose any requirement that is necessary or expedient —

- (a) to identify any person or class of persons, exposure to which may result in concentration risk to the merchant bank; or
- (b) to limit the exposure of the merchant bank to any person or class of persons that may result in concentration risk to the merchant bank.

The new section 55ZE also prohibits a merchant bank in Singapore from granting any credit facility against the security of its own shares.

A merchant bank that fails to comply with the new section 55ZE or any requirement imposed under that section commits an offence.

The new section 55ZF applies the new section 29A (read with the Fifth Schedule as applied by the new section 55ZL) to a merchant bank in Singapore or a class of merchant banks in Singapore.

The new section 55ZF also applies with modifications section 32 to a merchant bank in Singapore. The definitions of “major stake” and “prohibited business” are replaced with the definitions given in that section. Section 32 imposes restrictions against a bank in Singapore in acquiring or holding a major stake in any entity without the Authority’s prior approval.

The new section 55ZF also empowers the Authority to make regulations under section 78 for the purposes of limiting the exposure of a merchant bank in Singapore to risks associated with prescribed immovable property.

The new section 55ZG —

- (a) applies section 38 (read with the Fifth Schedule as applied by the new section 55ZL) to a merchant bank in Singapore. Section 38 empowers the Authority to impose requirements on the minimum amount of liquid assets to be held by a bank in Singapore and the utilisation of such liquid assets; and
- (b) applies section 40 to a merchant bank in Singapore. Section 40 empowers the Authority to impose requirements in relation to the minimum amount of assets in Singapore that a bank in Singapore must hold, for the purposes of meeting its liabilities.

The new section 55ZH empowers the Authority to determine and announce the rates of interest payable to or by merchant banks in Singapore, the rates of discount chargeable by merchant banks, or the rates of commission and other charges payable to merchant banks in Singapore. However, any such determination and announcement does not apply to transactions between merchant banks in Singapore.

The new section 55ZI applies section 47 and the Third Schedule (as modified by subsection (2)) to a merchant bank in Singapore. Section 47, read with the Third Schedule, prohibits the disclosure of customer information by a bank in Singapore or any of its officers, subject to certain exceptions.

The new section 55ZJ applies certain provisions in Part VII (Powers of Control over Banks, etc.) to a merchant bank in Singapore, subject to the modifications specified in subsection (2).

The new section 55ZK applies the provisions in Part VIIA (Transfer of Business) in relation to the transfer of the business of a merchant bank in Singapore, subject to the modifications specified in subsection (2).

The new section 55ZK also empowers the Minister to make regulations to carry out the purposes and provisions in Part VIIA (as applied by subsection (1)) and to prescribe matters for the purposes of those provisions.

The new section 55ZL applies with modifications the Fifth Schedule (Definitions in sections 27, 28, 29, 38 and 39A) to a merchant bank.

Clause 25 inserts new sections 57FA, 57FB, 57FC, 57FD and 57FE to the Act.

The new section 57FA requires a person licensed to carry on the business of issuing credit cards or charge cards in Singapore to seek the Authority's approval before the licensee appoints certain key appointment holders. The Authority may grant its approval with conditions and may at any time add to, vary or revoke any condition.

In considering whether to grant an approval, the Authority may consider if the person is fit and proper to hold the appointment, having regard to its Guidelines on Fit and Proper Criteria. A licensee must also immediately inform the Authority if a key appointment holder whose appointment must be approved by the Authority, is no longer a fit and proper person (in accordance with those Guidelines) to hold the appointment.

Finally, the new section 57FA enables the Authority to prescribe the duties of key appointment holders of licensees whose appointments must be approved by the Authority, and to specify the maximum term of each appointment.

The new section 57FB prohibits a licensee in Singapore from permitting a person to act as its director or executive officer, without the prior written consent of the Authority, in certain circumstances. The new section 57FB also provides for the removal of a director or an executive officer of a licensee in Singapore from his or her office or employment in certain circumstances.

The new sections 57FC, 57FD and 57FE introduce a new 20% limit on shareholding or control of voting power in a licensee. The Authority's approval is required before a person becomes a 20% controller of a licensee. The criteria which an applicant must satisfy to obtain the Authority's approval are prescribed by the new section 57FE(1).

Clause 26 amends section 58 of the Act (Auditing) for the following purposes:

- (a) to require the auditor of a bank to report to the Authority the losses mentioned in section 58(8)(b) of the Act only if it is a bank incorporated in Singapore;
- (b) to set out a new matter that an auditor of a bank must report to the Authority; and
- (c) to apply section 58 to a merchant bank, a merchant bank incorporated in Singapore and a merchant bank incorporated outside Singapore.

Clause 27 amends section 59 of the Act (Clearing House settlements and control over Clearing House) which requires the Authority to establish a Clearing House in order to facilitate the clearing of cheques and credit instruments for banks and other financial institutions approved by the Authority. The clause applies the section to a merchant bank.

Clause 28 amends section 60 of the Act (Declaration of holidays) which empowers the Authority to declare any day as a bank holiday and prohibit banks in Singapore from conducting any activities during the bank holiday. The clause applies the section to a merchant bank in Singapore.

Clause 29 amends section 62 of the Act (Priority of specified liabilities inter se) to provide that the third-ranking liability in the event of a winding up of a bank are deposit liabilities in Singapore incurred by the bank with non-bank customers, if they are not liabilities ranking second under section 62(1)(b) of the Act, and they are incurred in Singapore dollars or on terms under which they may be discharged in Singapore dollars. All other deposit liabilities in Singapore incurred by the bank with non-bank customers (in other words, those not ranking second or third) will rank fourth, whether or not they are incurred when operating an approved Asian Currency Unit. Drafting improvements are also made to subsection (3).

Clause 30 repeals and re-enacts section 62A of the Act (Priorities for set-off in winding up of bank). Under the re-enacted section 62A, a liquidator must first set-off a depositor's liabilities to the bank against any deposit of the depositor placed with the bank that is accepted in Singapore dollars or on terms under which it may be repaid in Singapore dollars. The current prohibition of set-off against any deposit placed with the Asian Currency Unit of the bank is removed.

Clause 30 also inserts a new section 62B to the Act to provide for the priority of liabilities where a merchant bank becomes unable to meet its obligations, becomes insolvent or suspends payment. The new section 62B also provides that where a merchant bank is being wound up, deposit liabilities incurred in Singapore by the merchant bank with non-bank customers have priority over any sum claimed by the trustee of a resolution fund from the merchant bank under section 103, 104, 105 or 106 of the Monetary Authority of Singapore Act. Both of these liabilities have priority over unsecured liabilities of the merchant bank.

Clause 31 amends section 63 of the Act (Redemption of securities held by bank under liquidation) so that it applies to a merchant bank. Section 63 requires the liquidator of a bank to publish in the *Gazette* a notice to require every debtor of the bank to redeem any property deposited with the bank as security for any loan obtained from the bank.

Clause 32 amends section 64 of the Act (Execution of instruments under seal) so that it applies to a merchant bank incorporated in Singapore. Section 64 provides that the seal of any bank incorporated in Singapore must not be affixed to any instrument except in the presence of a director of the bank and one other person who is either a director or duly authorised officer of the bank.

Clause 33 amends section 65 of the Act (Power of Authority to secure compliance with Act) to enable the Authority to exercise its powers in relation to the new sections 10C and 29A.

Clause 34 inserts a new section 65A to the Act which imposes an obligation on a merchant bank in Singapore to produce evidence or information required by the Authority to satisfy itself that the merchant bank is not in contravention of certain provisions of the Act (or any regulation, notice or direction made under those provisions) that apply to the merchant bank. A merchant bank that fails to comply with any requirement of the Authority under the new section 65A commits an offence.

Clause 35 amends section 66 of the Act (Offences by director and executive officers of bank and false or misleading information) which makes it an offence for any director or executive officer of a bank in Singapore for failing to take all reasonable steps to secure compliance by the bank with any provision of the Act or any written law applicable to banks in Singapore. Clause 35 amends the section so that it also applies to any director or executive officer of a merchant bank in Singapore.

Clause 36 amends section 67 of the Act (Offences by directors, employees and agents) which makes it an offence for any director, executive officer or other employee or agent of a bank in Singapore to make a false entry, omit to make an entry or alter, conceal or destroy an entry in any book of record or certain other documents of the bank. The clause amends the section so that it also applies to any director, executive officer or other employee or agent of a merchant bank in Singapore.

Clause 37 amends section 70 of the Act (Publication of information on banks) which requires the Authority to publish and maintain on its website a list of banks licensed under the Act and to publish a notice in the *Gazette* of any issuance, revocation or surrender of a bank licence. Clause 37 amends the section to require the Authority to do the same in respect of merchant banks.

Clause 38 amends section 71 of the Act (General penalty) so that it applies to a merchant bank. Section 71 provides the default penalty for any contravention of any provision of the Act by a bank for which no penalty is expressly provided.

Clause 39 amends section 74 of the Act (Recovery of fees, expenses, etc.) which provides for the recovery by the Authority of a fee, remuneration and expenses payable by a bank, or a financial penalty imposed on a bank, under certain provisions of the Act. The amendment extends the provision to similar fees, remuneration, expenses and financial penalties payable by or imposed on a merchant bank.

Clause 40 amends section 74A of the Act (Power to refund, reduce, etc., financial penalty) which empowers the Authority to review, reduce or refund any financial penalty imposed on a bank. The amendment applies that provision to a financial penalty imposed on a merchant bank.

Clause 41 amends section 75 of the Act (Operation of this Act not to affect Companies Act) which provides *inter alia* that the Banking Act does not affect the operation of the Companies Act (Cap. 50), or the liability of a bank to be incorporated under that Act. Section 75 is amended to extend the latter to a merchant bank.

Clause 42 repeals section 77 of the Act (Authority to approve operation of an Asian Currency Unit) as it is no longer needed.

Clause 43 amends section 78 of the Act (Regulations) which provides the regulation-making power of the Authority in relation to banks in respect of the specified matters. The amendment enables the Authority to make regulations concerning merchant banks in respect of the same matters.

Clause 44 amends the Third Schedule to the Act (Disclosure of Information). Item 1 of Part II of the Third Schedule is deleted and substituted with a new item 1. The new item 1 enables an auditor to whom customer information is disclosed by a bank to make certain further disclosures. Among other things, such an auditor may disclose customer information to an employee of the Accounting and Corporate Regulatory Authority who is appointed under section 35 of the Accountants Act (Cap. 2) to carry out a practice review of the auditor. Such disclosure is subject to conditions specified in a notice issued by the Authority.

Item 3 of Part II of the Third Schedule is amended such that all disclosures under that item are subject to conditions specified in a notice issued by the Authority, irrespective of whether the out-sourced function mentioned in that item is to be performed outside Singapore.

Item 10 of Part II of the Third Schedule is amended to refer to any person authorised or appointed by the deposit insurance and policy owners' protection fund agency or the Public Trustee to perform any act in connection with its functions under the Deposit Insurance and Policy Owners' Protection Schemes

Act (Cap. 77B), and not merely any person so authorised or appointed to perform functions of the deposit insurance and policy owners' protection fund agency or the Public Trustee.

Clause 45 amends the Fifth Schedule to the Act (Definitions in sections 27, 28, 29, 38 and 39A) to define terms that are used in the new sections 27 and 29A of the Act.

Clause 46 makes various amendments to the Act arising from the amendment of the definition of "licence" in section 2(1) to mean either a bank licence or a merchant bank licence.

Clauses 47 to 63 make amendments to the Commodity Trading Act (Cap. 48A), the Companies Act, the Deposit Insurance and Policy Owners' Protection Schemes Act, the Finance Companies Act (Cap. 108), the Financial Advisers Act (Cap. 110), the Hostage-Taking Act (Cap. 126C), the Housing and Development Act (Cap. 129), the Income Tax Act (Cap. 134), the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018), the Insurance Act (Cap. 142), the Monetary Authority of Singapore Act, the Moneylenders Act (Cap. 188), the Ngee Ann Kongsi (Incorporation) Ordinance (Cap. 370), the Payment Services Act 2019 (Act 2 of 2019), the Remote Gambling Act 2014 (Act 34 of 2014), the Securities and Futures Act (Cap. 289) and the Trust Companies Act (Cap. 336), as a result of —

- (a) the extension of the Act to cover merchant banks; and
- (b) the new section 55ZI.

Clause 64 provides that a merchant bank that was an approved financial institution under section 28 of the Monetary Authority of Singapore Act (called a deemed licensee) immediately before the date of commencement of section 24 of the Banking (Amendment) Act 2020 (called the appointed date) is treated as having been granted a merchant bank licence under the new section 55S(3)(a) (called a deemed licence). The deemed licence is subject to the conditions to which the approval of the deemed licensee was subject immediately before the appointed date.

Clause 65 provides that an unexpired approval of the Authority granted to a deemed licensee under the directive of the Authority known as "MAS Directive 1" to maintain its minimum paid-up capital and minimum capital funds in a currency other than Singapore dollars, is treated as an approval granted under the new section 55T(2). The deemed approval is subject to the conditions to which the approval under the MAS Directive 1 was subject immediately before the appointed date.

Clause 66 provides that an unexpired approval of the Authority granted to a deemed licensee under section 30(1)(e) of the Act before the appointed date for the operation of an Asian Currency Unit is treated as an approval granted under the

new section 55V(1)(e). Clause 66 also provides that where a deemed licensee carried on any existing business other than a business mentioned in the new section 55V(1)(a) to (d), the new section 55V only applies to the carrying on of such business after the expiry of a grace period.

Clause 67 provides that an unexpired approval of the Authority granted to a deemed licensee before the appointed date under section 32 of the Act or the directive of the Authority known as “MAS Directive 10” for the holding or acquisition of a major stake in a company is treated as an approval granted under section 32 as applied by the new section 55ZF(2).

Clause 67 also provides that where a deemed licensee holds an existing major stake in an entity other than a company, and that entity only carried on any of the businesses mentioned in the new section 55V(1)(a) to (d) of the Act, then the deemed licensee is not required to obtain an approval under section 32 of the Act (as applied by the new section 55ZF(2)) for the continued holding of such major stake, if that entity continues to carry on only one or more of the businesses mentioned in the new section 55V(1)(a) to (d). In relation to the holding by a deemed licensee of a major stake in an entity that carries on any business other than the new section 55V(1)(a) to (d), section 32 (as applied by the new section 55ZF(2)) only applies to such holding after the expiry of a grace period.

Clause 68 provides that an existing director or the chairman of the board of directors of a deemed licensee is treated as having been appointed with the approval of the Authority under section 53A (as applied by the new section 55ZJ) for a period of 12 months after the appointed date. Any continued appointment or re-appointment of the director or the chairman beyond the 12-month period requires the prior approval of the Authority.

Clause 69 empowers the Minister to make regulations prescribing any other provisions of a saving or transitional nature consequent on the enactment of any provision in the Bill, that the Minister considers necessary or expedient. The Minister has power to make such regulations only within 2 years after the date of commencement of the provision.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
