
First published in the *Government Gazette*, Electronic Edition, on 29 October 2021 at 5 pm.

No. S 802

MONETARY AUTHORITY OF SINGAPORE ACT (CHAPTER 186)

MONETARY AUTHORITY OF SINGAPORE (RESOLUTION OF FINANCIAL INSTITUTIONS) (AMENDMENT NO. 2) REGULATIONS 2021

In exercise of the powers conferred by section 126 of the Monetary Authority of Singapore Act, the Senior Minister and Coordinating Minister for Social Policies, Mr Tharman Shanmugaratnam, who is charged with the responsibility for the Monetary Authority of Singapore Act (Cap. 186), makes the following Regulations:

Citation and commencement

1. These Regulations are the Monetary Authority of Singapore (Resolution of Financial Institutions) (Amendment No. 2) Regulations 2021 and come into operation on 1 November 2021.

New regulations 16A to 16E

2. The Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018 (G.N. No. S 714/2018) (called in these Regulations the principal Regulations) are amended by inserting, immediately before regulation 17 in Part 3, the following regulations:

“Definitions of this Part

16A. In this Part, “2nd transferee”, “certificate of transfer”, “onward transfer”, “reverse transfer”, “transferee” and “transferor” have the meanings given by section 60 of the Act.

Setting-off and netting rights in relation to reverse transfer and onward transfer

16B.—(1) A reverse transfer under section 61 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer must not

provide for the transfer of some, and not all, of the protected rights and liabilities between the transferor and the transferee.

(2) An onward transfer under section 63 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer must not provide for the transfer of some, and not all, of the protected rights and liabilities between the transferee and the 2nd transferee.

(3) In this regulation —

(a) rights and liabilities between the transferor and the transferee mentioned in paragraph (1) are protected if —

(i) they are rights and liabilities that arise from one or more financial contracts between them; and

(ii) they are rights and liabilities which either the transferor or the transferee is entitled to set-off or net under a set-off arrangement, netting arrangement or title transfer arrangement; and

(b) rights and liabilities between the transferee and the 2nd transferee mentioned in paragraph (2) are protected if —

(i) they are rights and liabilities that arise from one or more financial contracts between them; and

(ii) they are rights and liabilities which either the transferee or the 2nd transferee is entitled to set-off or net under a set-off arrangement, netting arrangement or title transfer arrangement.

(4) For the purposes of paragraph (3)(a), it is immaterial whether —

(a) the set-off arrangement or netting arrangement also permits the transferor or the transferee to set-off or net rights and liabilities with another person; or

(b) the right to set-off or net is exercisable only on the occurrence of a particular event.

(5) For the purposes of paragraph (3)(b), it is immaterial whether —

(a) the set-off arrangement or netting arrangement also permits the transferee or the 2nd transferee to set-off or net rights and liabilities with another person; or

(b) the right to set-off or net is exercisable only on the occurrence of a particular event.

Rights and liabilities connected with clearing and settlement arrangement of market infrastructure in relation to reverse transfer and onward transfer

16C.—(1) A reverse transfer under section 61 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer must not provide for the transfer of some, and not all, of the rights and liabilities of the transferee that arise from a clearing and settlement arrangement of a market infrastructure, if the failure to transfer any such right or liability will result in a disruption of the arrangement.

(2) An onward transfer under section 63 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer must not provide for the transfer of some, and not all, of the rights and liabilities of the transferee that arise from a clearing and settlement arrangement of a market infrastructure, if the failure to transfer any such right or liability will result in a disruption of the arrangement.

(3) Without limiting the circumstances that constitute a disruption of the clearing and settlement arrangement of a market infrastructure, any of the following is considered a disruption of the arrangement under paragraph (1) or (2):

-
-
- (a) a disruption of the discharge of payment and delivery obligations in respect of transactions cleared and settled through the market infrastructure;
 - (b) a disruption of the operation of the business rules of the market infrastructure relating to settlement finality;
 - (c) a disruption of the operation of the business rules of the market infrastructure regarding processes to be observed on the default of a participant.

(4) In this regulation, “clearing and settlement arrangement”, in relation to a market infrastructure, means any of the following that is governed by the business rules of the market infrastructure:

- (a) a market contract;
- (b) the business rules of the market infrastructure relating to the settlement of a market contract;
- (c) any proceedings or other actions taken under the business rules;
- (d) a market charge;
- (e) the provision of market collateral;
- (f) the default rules of the market infrastructure;
- (g) any default proceedings.

(5) In paragraph (4), “default proceedings”, “default rules”, “market charge”, “market collateral” and “market contract” have the meanings given by section 48(1) of the Securities and Futures Act (Cap. 289), with the reference in each definition to an approved clearing house or a recognised clearing house substituted with a reference to a market infrastructure.

Rights and liabilities connected with designated system in relation to reverse transfer or onward transfer

16D.—(1) This regulation applies where —

- (a) a right or liability arising from a transfer order effected through a designated system has yet to be settled by a transferee; and
- (b) a failure to transfer the right or liability when transferring a part of the business of a transferor that was transferred to a transferee under a certificate of transfer (whether the transfer is a reverse transfer under section 61 of the Act or an onward transfer under section 63 of the Act) is likely to result in a disruption of the operation of the designated system.

(2) A reverse transfer under section 61 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer —

- (a) must not take effect until after the right or liability is settled; or
- (b) must include the transfer of —
 - (i) the right or liability; and
 - (ii) any security posted by the transferee in accordance with the designated system rules.

(3) An onward transfer under section 63 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer —

- (a) must not take effect until after the right or liability is settled; or
- (b) must include the transfer of —
 - (i) the right or liability; and
 - (ii) any security posted by the transferee in accordance with the designated system rules.

(4) Without limiting the circumstances that constitute a disruption of the operation of a designated system, either of the following is considered a disruption of the operation of the designated system in paragraph (1):

- (a) a disruption of the netting or settlement (in accordance with the designated system rules) of a transfer order that is effected through the designated system;
- (b) a disruption of any process to be observed under the designated system rules, upon a default of a participant of the designated system.

Secured liabilities in relation to reverse transfer and onward transfer

16E.—(1) This regulation applies where, under a contract to which a transferee is a party, one party owes to the other a liability that is secured against any property or rights.

(2) A reverse transfer under section 61 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer must not provide for —

- (a) the transfer of the liability without the benefit of the security;
- (b) the transfer of the benefit of the security without the liability; or
- (c) the transfer of the property or rights without the liability and benefit of the security.

(3) An onward transfer under section 63 of the Act of a part (but not the whole) of the business of a transferor that was transferred to a transferee under a certificate of transfer must not provide for —

- (a) the transfer of the liability without the benefit of the security;

-
-
- (b) the transfer of the benefit of the security without the liability; or
 - (c) the transfer of the property or rights without the liability and benefit of the security.
- (4) For the purposes of paragraph (1), it is immaterial —
- (a) whether or not the liability is secured against all, or substantially all, of the properties and rights of the transferee;
 - (b) whether or not the liability is secured against specified properties or rights; and
 - (c) whether or not the property or rights against which the liability is secured is or are owned by the person who owes the liability.”.

Amendment of regulation 17

3. Regulation 17 of the principal Regulations is amended by deleting paragraph (2).

Amendment of regulation 18

4. Regulation 18 of the principal Regulations is amended by deleting paragraph (2).

Amendment of regulation 19

5. Regulation 19 of the principal Regulations is amended by deleting paragraph (2).

Amendment of regulation 27

6. Regulation 27 of the principal Regulations is amended by inserting, immediately after paragraph (a), the following paragraph:

“(aa) the Authority;”.

New regulation 27A

7. The principal Regulations are amended by inserting, immediately after regulation 27 in Part 6, the following regulation:

“Contractual recognition of sections 83 and 84 of Act

27A.—(1) A qualifying pertinent financial institution, or any subsidiary of the qualifying pertinent financial institution, must include a provision in each specified contract to which the qualifying pertinent financial institution or subsidiary is a party, the effect of which is that the parties to the contract agree to be bound by section 83 of the Act and by any suspension of a termination right in the contract made by the Authority under section 84 of the Act, where —

- (a) the qualifying pertinent financial institution or subsidiary enters into the specified contract on or after 1 November 2024; or
 - (b) the qualifying pertinent financial institution or subsidiary executes any transaction under the specified contract on or after 1 November 2024.
- (2) This regulation does not apply to —
- (a) a specified contract between a qualifying pertinent financial institution and a person mentioned in regulation 27;
 - (b) a specified contract between a subsidiary of a qualifying pertinent financial institution and a person mentioned in regulation 27; and
 - (c) a specified contract, where the obligations of a subsidiary of a qualifying pertinent financial institution under the specified contract are not guaranteed or otherwise supported by the qualifying pertinent financial institution.

(3) A qualifying pertinent financial institution, or a subsidiary of the qualifying pertinent financial institution, that fails to comply with paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

(4) In any proceedings for an offence under paragraph (3), it is a defence for the qualifying pertinent financial institution or subsidiary of the qualifying pertinent financial institution (as the case may be) to prove, on a balance of probabilities, that the qualifying pertinent financial institution or subsidiary had taken all reasonable efforts to comply with paragraph (1).

(5) In this regulation —

“qualifying pertinent financial institution” means a bank that is incorporated in Singapore and to which a direction is issued under section 43(1) of the Act;

“specified contract” means a contract —

- (a) that is a financial contract;
- (b) that is governed by any law other than the law of Singapore; and
- (c) that contains a termination right, the exercise of which may be suspended, or the applicability of which may be disregarded, under the Act if the contract had been governed by the laws of Singapore;

“termination right” has the meaning given by section 82 of the Act.”.

Made on 25 October 2021.

LEO YIP
*Permanent Secretary,
Prime Minister's Office,
Singapore.*

[BD 01/2021; AG/LEGIS/SL/186/2020/1 Vol. 1]

(To be presented to Parliament under section 126(5) of the Monetary Authority of Singapore Act).