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MONETARY AUTHORITY OF SINGAPORE ACT (CHAPTER 186)

MONETARY AUTHORITY OF SINGAPORE (RESOLUTION OF FINANCIAL INSTITUTIONS) REGULATIONS 2018

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In exercise of the powers conferred by section 126 of the Monetary Authority of Singapore Act, the Deputy Prime Minister and Coordinating Minister for Economic and Social Policies, Prime Minister's Office, Mr Tharman Shanmugaratnam, who is charged with the responsibility for the portfolio of the Prime Minister as regards the Monetary Authority of Singapore, makes the following Regulations:

PART 1
PRELIMINARY

Citation and commencement

1. These Regulations are the Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018 and come into operation on 29 October 2018.

General definitions

2. In these Regulations, unless the context otherwise requires —
- “12% controller” —
- (a) in relation to a bank incorporated in Singapore or a financial holding company, has the meaning given by section 15B(3) of the Banking Act (Cap. 19);
 - (b) in relation to an operator of a designated payment system under the Payment Systems (Oversight) Act (Cap. 222A), has the meaning given by section 23(3) of that Act;

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- (c) in relation to an approved exchange under the Securities and Futures Act (Cap. 289), has the meaning given by section 27(3) of that Act;
 - (d) in relation to a licensed trade repository under the Securities and Futures Act, has the meaning given by section 46U(3) of that Act;
 - (e) in relation to an approved clearing house under the Securities and Futures Act, has the meaning given by section 70(3) of that Act; or
 - (f) in relation to an approved holding company under the Securities and Futures Act, has the meaning given by section 81ZE(3) of that Act;

“20% controller” —

- (a) in relation to a bank incorporated in Singapore or a financial holding company, has the meaning given by section 15B(3) of the Banking Act;
- (b) in relation to an operator of a designated payment system under the Payment Systems (Oversight) Act, has the meaning given by section 23(3) of that Act;
- (c) in relation to an approved exchange under the Securities and Futures Act, has the meaning given by section 27(3) of that Act;
- (d) in relation to a licensed trade repository under the Securities and Futures Act, has the meaning given by section 46U(3) of that Act;
- (e) in relation to an approved clearing house under the Securities and Futures Act, has the meaning given by section 70(3) of that Act;
- (f) in relation to an approved holding company under the Securities and Futures Act, has the meaning given by section 81ZE(3) of that Act; or
- (g) in relation to a licensed trust company under the Trust Companies Act (Cap. 336), has the meaning given by section 16(3) of that Act;

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- “50% controller”, in relation to a licensed trust company under the Trust Companies Act, has the meaning given by section 16(3) of that Act;
- “Accounting Standards” has the meaning given by section 4 of the Companies Act (Cap. 50);
- “business rules”, in relation to a market infrastructure, means the rules, regulations, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of —
- (a) the market infrastructure; and
 - (b) other persons in relation to it,
- whether or not those rules, regulations, by-laws or similar body of statements are made by the market infrastructure or are contained in its constituent documents;
- “designated system” has the meaning given by section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231);
- “designated system rules” means rules, regulations, by-laws or such similar body of written statements (by whatever name called) of a designated system, whether or not contained in the constituent documents of the designated system, that govern the activities and conduct of —
- (a) the designated system; and
 - (b) any other persons in relation to the designated system;
- “Division 5C FI under resolution” means a financial institution mentioned in regulation 28 that is the subject of a resolution action;
- “financial holding company” means a company belonging to a class of financial institutions approved by the Authority as financial holding companies under section 28 of the Act;

“indirect controller” —

- (a) in relation to a bank incorporated in Singapore or a financial holding company, has the meaning given by section 15B(5) of the Banking Act; or
- (b) in relation to a licensed trust company under the Trust Companies Act, has the meaning given by section 16(3) of that Act;

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

“merchant bank” means a financial institution belonging to a class of financial institutions approved by the Authority as merchant banks under section 28 of the Act;

“parent” has the meaning given by the Accounting Standards;

“pre-resolution creditor” has the meaning given by section 112 of the Act;

“pre-resolution shareholder” has the meaning given by section 112 of the Act;

“prescribed written law” has the meaning given by section 86 of the Act;

“public sector body” means a Ministry, a department of the Government or a body established or constituted by or under a public Act to perform or discharge a public function;

“relevant financial institution” has the meaning given by section 31 of the Act;

“resolution action” has the meaning given by section 112 of the Act;

“resolution date” has the meaning given by section 112 of the Act;

“significant business” has the meaning given by section 49 of the Act;

“specified financial institution” has the meaning given by section 49 of the Act;

“subsidiary” has the meaning given by the Accounting Standards;

“substantial shareholder” —

(a) in relation to a bank incorporated in Singapore or a financial holding company, means a person who has substantial shareholding in the bank within the meaning of section 81 of the Companies Act;

(b) in relation to an operator of a designated payment system under the Payment Systems (Oversight) Act, means a person who has substantial shareholding in the operator within the meaning of section 81 of the Companies Act;

(c) in relation to an approved exchange, a licensed trade repository, an approved clearing house or an approved holding company under the Securities and Futures Act, has the meaning given by section 2(6) of that Act; or

(d) in relation to an insurer incorporated under the Companies Act and licensed under the Insurance Act (Cap. 142), means a person who has substantial shareholding in the insurer within the meaning of section 81 of the Companies Act;

“title transfer arrangement” means an arrangement under which a person transfers assets to another person on terms providing for the other person to transfer those assets back to the first person if the specified obligations are discharged;

“transfer order” has the meaning given by section 2(1) of the Payment and Settlement Systems (Finality and Netting) Act;

“valuation report” has the meaning given by section 112 of the Act;

“valuer” has the meaning given by section 112 of the Act.

Definition of “affected person”

3. For the purposes of the definition of “affected person” in section 49 of the Act, each person within a group of persons in the second column of the First Schedule is an affected person of the specified financial institution in the first column of that Schedule opposite that group.

Definition of “excluded financial institution”

4.—(1) Each of the following persons is prescribed as an excluded financial institution for the purposes of Part IVB of the Act except sections 51 and 52 of the Act:

- (a) a person who —
 - (i) is a licensed financial adviser under the Financial Advisers Act (Cap. 110); or
 - (ii) is an exempt financial adviser under the Financial Advisers Act, but is not a pertinent financial institution;
- (b) a person who is exempt from the requirement to hold a capital markets services licence under the Securities and Futures Act to carry on business in any regulated activity specified in the Second Schedule to that Act, but is not a pertinent financial institution;
- (c) a holder of a capital markets services licence under the Securities and Futures Act who carries on business in the regulated activity of providing credit rating services;
- (d) an authorised reinsurer as defined in section 1A of the Insurance Act;
- (e) a member of Lloyd’s that is permitted to carry on general class of insurance business in accordance with regulation 3 of the Insurance (Lloyd’s Scheme) Regulations (Cap. 142, Rg 8), or any insurance business specified in the First Schedule to the Insurance (Lloyd’s Asia Scheme) Regulations (Cap. 142, Rg 9) in accordance with regulation 3 of those Regulations;

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- (f) an insurance agent or insurance broker registered or otherwise regulated under the Insurance Act;
 - (g) a money-changer licensed to conduct money-changing business, or a remitter licensed to conduct remittance business, under the Money-changing and Remittance Businesses Act (Cap. 187);
 - (h) a holder of a stored value facility under the Payment Systems (Oversight) Act.
- (2) Each of the following persons is prescribed as an excluded financial institution for the purposes of sections 51 and 52 of the Act:
- (a) a person who —
 - (i) is a licensed financial adviser under the Financial Advisers Act; or
 - (ii) is an exempt financial adviser under the Financial Advisers Act, but who is not a pertinent financial institution;
 - (b) a person who is exempt from the requirement to hold a capital markets services licence under the Securities and Futures Act to carry on business in any regulated activity specified in the Second Schedule to that Act, but who is not a pertinent financial institution;
 - (c) a holder of a capital markets services licence under the Securities and Futures Act who carries on business in the regulated activity of providing credit rating services;
 - (d) an authorised reinsurer as defined in section 1A of the Insurance Act;
 - (e) a member of Lloyd’s that is permitted to carry on general class of insurance business in accordance with regulation 3 of the Insurance (Lloyd’s Scheme) Regulations, or any insurance business specified in the First Schedule to the Insurance (Lloyd’s Asia Scheme) Regulations in accordance with regulation 3 of those Regulations;
 - (f) an insurance agent or insurance broker that is registered or otherwise regulated under the Insurance Act;

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- (g) a money-changer licensed to conduct money-changing business, or a remitter licensed to conduct remittance business, under the Money-changing and Remittance Businesses Act;
 - (h) a holder of a stored value facility under the Payment Systems (Oversight) Act;
 - (i) a trustee-manager of a business trust that is registered under the Business Trusts Act (Cap. 31A).

(3) In this regulation, “member of Lloyd’s” has the meaning given by regulation 2 of the Insurance (Lloyd’s Scheme) Regulations.

Definition of “pertinent financial institution”

5. For the purposes of the definition of “pertinent financial institution” in section 49 of the Act, each of the following persons is a pertinent financial institution for the purposes of Part IVB of the Act:

- (a) a bank;
- (b) a finance company licensed under the Finance Companies Act (Cap. 108);
- (c) a merchant bank;
- (d) a financial holding company;
- (e) an operator or a settlement institution of a designated payment system under the Payment Systems (Oversight) Act;
- (f) an approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a depository, or a holder of a capital markets services licence under the Securities and Futures Act (not being a holder of a capital markets services licence under the Securities and Futures Act who carries on business in the regulated activity of providing credit rating services);

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- (g) a trustee for a collective investment scheme authorised under section 286 of the Securities and Futures Act, that is approved under that Act;
 - (h) a licensed trust company under the Trust Companies Act;
 - (i) an insurer licensed under the Insurance Act.

Definition of “relevant provisions”

6. For the purposes of the definition of “relevant provisions” in section 49 of the Act, a provision of written law in the second column of the Second Schedule is a relevant provision for —

- (a) the specified financial institution; or
- (b) any person carrying on or has carried on the significant business of the specified financial institution,

in the first column of that Schedule opposite that provision.

Definitions of “significant shareholder”

7. For the purposes of the definitions of “significant shareholder” in sections 65, 68 and 71 of the Act, each person in the second column of the Third Schedule is a significant shareholder of the pertinent financial institution in the first column of that Schedule opposite that person.

Definitions of “significant shareholder provisions”

8. For the purposes of the definitions of “significant shareholder provisions” in sections 65, 68 and 71 of the Act, each provision of written law in the second column of the Fourth Schedule is a significant shareholder provision for the pertinent financial institution in the first column of that Schedule opposite that provision.

Meaning of “financial contract”

- 9.—(1) In these Regulations, “financial contract” means —
- (a) a securities contract;
 - (b) a derivatives contract;

(c) a securities lending or repurchase agreement; or

(d) a spot contract.

(2) In this regulation —

“business trust” has the meaning given by section 2 of the Business Trusts Act;

“collective investment scheme” has the meaning given by section 2(1) of the Securities and Futures Act;

“commodity” means —

(a) any produce, item, goods or article; or

(b) any index, right or interest in any produce, item, goods or article;

“derivatives contract” means any contract or arrangement under which —

(a) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and

(b) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:

(i) the value or amount of one or more underlying things;

(ii) fluctuations in the values or amounts of one or more underlying things,

but does not include —

(c) securities;

(d) a deposit as defined in section 4B of the Banking Act, where the deposit is accepted by a bank licensed under that Act or a merchant bank approved as a

financial institution under the Monetary Authority of Singapore Act;

- (e) a deposit as defined in section 2 of the Finance Companies Act, where the deposit is accepted by a finance company as defined in that section of that Act; or
- (f) any contract of insurance in relation to any class of insurance business specified in section 2(1) of the Insurance Act;

“financial instrument” has the meaning given by section 2(1) of the Securities and Futures Act;

“securities” means —

- (a) shares, units in a business trust, units in a collective investment scheme or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership; or
- (b) debentures,

but does not include —

- (c) any bill of exchange; or
- (d) any certificate of deposit issued by a bank or finance company whether situated in Singapore or elsewhere;

“securities contract” means a contract for or with a view to acquiring, disposing of, subscribing for, or underwriting securities;

“securities lending or repurchase agreement” means an agreement under which —

- (a) a person (called in this definition the transferor) transfers the legal interest in any certificates of deposit, banker’s acceptances or securities (called in this definition the transferred securities) to another person (called in this definition the transferee);

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- (b) the transferor re-acquires the transferred securities or acquires equivalent certificates of deposit, banker's acceptances or securities from the transferee —
 - (i) at a later time not later than one year after the date of the transfer mentioned in paragraph (a);
or
 - (ii) on demand;
 - (c) the transferor retains the risk of loss or opportunity for gain in respect of the transferred securities;
 - (d) the transferor does not dispose of (by transfer, declaration of trust or otherwise) the right to receive any part of the total consideration payable or to be given by the transferee under the agreement; and
 - (e) if any distribution is made in respect of the transferred securities during the period between the date of the transfer mentioned in paragraph (a) and the date of the re-acquisition mentioned in paragraph (b), the transferor receives from the transferee the distribution or compensatory payment equal to the value of the distribution;

“spot contract” means a contract or an arrangement for the sale or purchase of any currency or commodity at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the currency or commodity immediately or within a period that must not be longer than the period determined by the market convention for delivery of the currency or commodity;

“underlying thing” means —

- (a) a unit in a collective investment scheme;
- (b) a commodity;
- (c) a financial instrument;
- (d) the price of transporting goods as freight or of hiring vessels for the purpose of transporting goods;

- (e) the credit of any person;
- (f) a numerical indicator, model or statistic relating to weather;
- (g) a numerical indicator, model or statistic relating to the emission of pollutants;
- (h) real property; or
- (i) a numerical indicator, model or statistic that is a measure of economic performance or economic conditions;

“unit” has the meaning given by section 2(1) of the Securities and Futures Act.

PART 2

COMPULSORY TRANSFER OF BUSINESS

Definition of this Part

10. In this Part, “transferor” has the meaning given by section 56 of the Act.

Setting-off and netting rights

11.—(1) A transfer of a part (but not the whole) of the business of a transferor under section 57 of the Act must not provide for the transfer of some, and not all, of the protected rights and liabilities between a particular person (*P*) and the transferor.

(2) In this regulation, rights and liabilities between *P* and the transferor are protected if —

- (a) they are rights and liabilities that arise from one or more financial contracts between them; and
- (b) they are rights and liabilities which either *P* or the transferor is entitled to set-off or net under a set-off arrangement, netting arrangement or title transfer arrangement.

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- (3) For the purposes of paragraph (2), it is immaterial whether —
- (a) the set-off arrangement or netting arrangement also permits *P* or the transferor 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

12.—(1) A transfer of a part (but not the whole) of the business of a transferor under section 57 of the Act must not provide for the transfer of some, and not all, of the rights and liabilities of the transferor 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) 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):

- (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.

(3) 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;

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- (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.

(4) In paragraph (3), the terms “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, 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

13.—(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 the transferor; and
- (b) a failure to transfer the right or liability when transferring a part of the transferor’s business is likely to result in a disruption of the operation of the designated system.

(2) A transfer of a part (but not the whole) of the business of the transferor under section 57 of the Act —

- (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 transferor in accordance with the designated system rules.

(3) 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 designated system in paragraph (1):

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- (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

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

(2) A transfer of a part (but not the whole) of the business of the transferor under section 57 of the Act 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) 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 transferor;
 - (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.

Protected covered bonds

15.—(1) This regulation applies to a covered bond programme that has all of the following characteristics:

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- (a) bonds, notes or other debentures (called in this regulation covered bonds) are issued in one or more tranches by a transferor that is a bank incorporated in Singapore, directly or through a covered bond special purpose vehicle;
 - (b) liabilities owed under the covered bonds issued in each tranche to the holders of the covered bonds, and liabilities arising from the enforcement of the rights of the holders of those covered bonds, are —
 - (i) secured by a common pool of qualifying assets; and
 - (ii) recoverable from the bank regardless of whether the common pool of qualifying assets are sufficient to meet the liabilities.

(2) A transfer of a part (but not the whole) of the business of a transferor under section 57 of the Act must not result in the transfer of some, and not all, of the rights and liabilities of all the covered bonds that are issued under the covered bond programme.

(3) However, paragraph (2) is not contravened if the certificate of transfer —

- (a) provides for the transfer of all the rights and liabilities of all the covered bonds that are issued under the covered bond programme; but
- (b) fails to transfer all such rights and liabilities for reasons beyond the control of the transferor or the transferee.

(4) In this regulation —

“covered bond programme” means a programme for the issue of covered bonds that are the subject of a single offer document (including any supplementary offer document and other supporting document);

“covered bond special purpose vehicle” means a company that is incorporated in Singapore for the primary purpose of one or both of the following:

- (a) issuing the covered bonds;

(b) holding a common pool of qualifying assets in relation to the covered bonds;

“qualifying assets”, in relation to covered bonds, means assets that are —

(a) either —

(i) owned legally or beneficially by a bank incorporated in Singapore or a covered bond special purpose vehicle; or

(ii) owned both legally and beneficially by a bank incorporated in Singapore or a covered bond special purpose vehicle; and

(b) used for the purposes of securing the payment of one or more of the following:

(i) any liabilities to the holders of the covered bonds;

(ii) any liabilities arising from the enforcement of the rights of the holders of the covered bonds;

(iii) any liabilities owed to a person appointed by the bank or the covered bond special purpose vehicle for the purposes of the operation and administration of the covered bond programme;

“tranche” means a particular issue of covered bonds under a covered bond programme;

“transferee” has the meaning given by section 56 of the Act.

Information under section 58(2) of Act

16.—(1) For the purposes of section 58(2) of the Act, the certificate of transfer must specify the following information:

(a) the names of the transferor and the transferee;

(b) whether the whole or only a part of the business of the transferor is to be transferred;

- (c) if only a part of the business of the transferor is to be transferred, a description of that part of the business;
- (d) the details of the determination made by the Authority under section 57 of the Act.

(2) In this regulation, “transferee” has the meaning given by section 56 of the Act.

PART 3

REVERSE TRANSFER OF BUSINESS AND ONWARD TRANSFER OF BUSINESS

Information under section 62(2) of Act

17.—(1) For the purposes of section 62(2) of the Act, the reverse transfer certificate must specify the following information:

- (a) the names of the transferor and the transferee;
- (b) whether the whole or only a part of the business under the certificate of transfer is to be transferred back to the transferor;
- (c) if only a part of the business under the certificate of transfer is to be transferred back to the transferor, a description of that part of the business;
- (d) the details of the determination made by the Authority under section 61 of the Act.

(2) In this regulation, “certificate of transfer”, “transferee” and “transferor” have the meanings given by section 60 of the Act.

Restrictions on reverse transfer

18.—(1) A reverse transfer under section 61 of the Act of a part (but not the whole) of the business of a transferor under a certificate of transfer, must not —

- (a) provide for the transfer of any right or liability (including a right or liability to transfer property) that was not earlier transferred under the certificate of transfer; or

- (b) provide for the transfer of any right or liability of the transferor that arises after the issuance of the certificate of transfer.

(2) In this regulation, “certificate of transfer” and “transferor” have the meanings given by section 60 of the Act.

Information under section 64(2) of Act

19.—(1) For the purposes of section 64(2) of the Act, the onward transfer certificate must specify the following information:

- (a) the names of the transferee and the 2nd transferee;
- (b) whether the whole or only a part of the business transferred to the transferee by the certificate of transfer is to be transferred to the 2nd transferee;
- (c) if only a part of the business of the transferee is to be transferred, a description of that part of the business;
- (d) the details of the determination made by the Authority under section 63 of the Act.

(2) In this regulation, “2nd transferee”, “certificate of transfer” and “transferee” have the meanings given by section 60 of the Act.

PART 4

INFORMATION IN CERTIFICATES

Information under section 67(2) of Act

20.—(1) For the purposes of section 67(2) of the Act, the certificate of transfer must specify the following information:

- (a) the names of the transferor and the transferee;
- (b) the class or classes of the shares to be transferred, and the number of shares in each class to be transferred;
- (c) the details of the determination made by the Authority under section 66 of the Act.

(2) In this regulation, “transferor” and “transferee” have the meanings given by section 65 of the Act.

Information under section 70(2) of Act

21.—(1) For the purposes of section 70(2) of the Act, the certificate of restructuring of share capital must specify the following information:

- (a) either or both of the following, as may be applicable:
 - (i) the amount by which the share capital of the pertinent financial institution is to be reduced, and the number of shares of the pertinent financial institution that are to be cancelled;
 - (ii) the names of the subscribers (if any) to whom shares are to be issued by the pertinent financial institution, and the number of shares to be issued to each subscriber;
- (b) the details of the determination made by the Authority under section 69 of the Act.

(2) In this regulation, “subscriber” has the meaning given by section 68 of the Act.

PART 5**BAIL-IN POWERS****Definition of “Division 4A financial institution”**

22. Each of the following persons is a Division 4A financial institution:

- (a) a bank that is incorporated in Singapore;
- (b) a holding company incorporated in Singapore that has at least one subsidiary which is a bank incorporated in Singapore.

Definition of “eligible instrument”

23.—(1) Subject to paragraph (2), each of the following is an eligible instrument for the purposes of section 71 of the Act in relation to a Division 4A financial institution:

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- (a) any equity instrument or other instrument that confers or represents a legal or beneficial ownership in the Division 4A financial institution, except an ordinary share;
 - (b) any unsecured liability or other unsecured debt instrument that is subordinated to unsecured creditors' claims of the Division 4A financial institution that are not so subordinated;
 - (c) any instrument that provides for a right for the instrument to be written down, cancelled, modified, changed in form or converted into shares or another instrument of ownership, when a specified event occurs.
- (2) However, an “eligible instrument” does not include —
- (a) any instrument that is issued before 29 November 2018; or
 - (b) a derivatives contract as defined in regulation 9(2).

Particulars under section 75(4) of Act

24. For the purposes of section 75(4) of the Act, the bail-in certificate must specify the following information:

- (a) the name of the Division 4A financial institution;
- (b) where the certificate provides for the cancellation of one or more eligible instruments issued by the Division 4A financial institution, or to which it is a party or is subject, details of the eligible instrument or instruments to be cancelled, including the types or classes of eligible instrument or instruments;
- (c) where the certificate provides for the modification, conversion, or change in form of one or more eligible instruments issued by the Division 4A financial institution, or to which it is a party or is subject, details of the eligible instrument or instruments to be modified, converted, or changed in form, including the types or classes of eligible instrument or instruments;

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- (d) where the certificate provides that one or more eligible instruments issued by the Division 4A financial institution, or to which it is a party or is subject, is or are to have effect as if a right of modification, conversion or change of form had been exercised under the eligible instrument or instruments —
- (i) details of the right of modification, conversion or change of form and its effect on the eligible instrument or instruments; and
 - (ii) details of the eligible instrument or instruments that is or are to have that effect, including the types or classes of eligible instrument or instruments.

Restrictions on eligible instruments

25.—(1) For the purposes of section 81 of the Act, a Division 4A financial institution must ensure that the contract —

- (a) that governs an eligible instrument issued by it; and
- (b) that is governed by any law other than the law of Singapore,

must contain a provision to the effect that the parties to the contract agree that the eligible instrument may be the subject of a bail-in certificate.

(2) In particular, the contract must contain provisions to the effect that —

- (a) the eligible instrument may be subject to cancellation, modification, conversion, change in form, or have the effect as if a right of modification, conversion, or change of its form had been exercised by the Authority in the exercise of the Authority's powers under Division 4A of Part IVB of the Act; and
- (b) the parties agree to be bound by a bail-in certificate.

(3) Paragraphs (1) and (2) do not apply to an eligible instrument that the Authority specifies in a written notice to the Division 4A financial institution.

(4) To avoid doubt, where a contract mentioned in paragraph (1) contains any provision to the effect that upon the occurrence of a specified event, the eligible instrument may be cancelled, modified, converted, changed in form, or may have the effect as if a right of modification, conversion, or change of its form had been exercised, that provision is unaffected by Division 4A of Part IVB of the Act or the exercise by the Authority of any power under it.

(5) For a contract mentioned in paragraph (1), the Division 4A financial institution must, before the issuance of the eligible instrument, provide to the Authority a legal opinion by a person qualified to practise law in the jurisdiction of the governing law of the contract, as to the enforceability in that jurisdiction of the provision required under paragraph (1) to be contained in the contract.

(6) However, the Authority may, on an application made by a Division 4A financial institution before the issuance of an eligible instrument, and subject to such conditions and restrictions as the Authority may impose, extend the time for the provision of the legal opinion mentioned in paragraph (5) by up to 10 business days after the date of issuance of the eligible instrument, and paragraph (5) applies accordingly.

(7) A single legal opinion may be provided for one or more contracts or classes of contracts.

(8) A Division 4A financial institution that fails to comply with paragraph (1) or (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

Disclosure requirement

26.—(1) A Division 4A financial institution must disclose, on the front cover of a prospectus, information memoranda, offering circular or other offering document related to an eligible instrument issued by it, that the instrument may be subject to cancellation, modification, conversion, or change in form under a bail-in certificate.

(2) A Division 4A 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.

PART 6

TERMINATION RIGHTS

Persons excluded from section 84 of Act

27. For the purposes of section 84(3)(b) of the Act, a notice issued under section 84(2) of the Act does not apply to a termination right under a contract between a pertinent financial institution and any of the following persons:

- (a) a central bank of a country or territory outside Singapore;
- (b) an operator or a settlement institution of a designated system under the Payment and Settlement Systems (Finality and Netting) Act;
- (c) an approved clearing house, a recognised clearing house or a depository under the Securities and Futures Act.

PART 7

COMPENSATION

Definition of “Division 5C FI”

28. For the purposes of the definition of “Division 5C FI” in section 112 of the Act, every pertinent financial institution mentioned in regulation 5 is a Division 5C FI.

Form, manner and timing for payment of compensation

29.—(1) For the purposes of section 114(4) of the Act, where the Minister has made a direction to the trustee of a resolution fund established under Division 5B of Part IVB of the Act in relation to the resolution of a Division 5C FI to make a withdrawal from the resolution fund under section 114(3) of the Act, the trustee must pay the amount of compensation that the pre-resolution creditor or pre-resolution shareholder is entitled to in full —

- (a) in Singapore dollars into an account in the name of the pre-resolution creditor or pre-resolution shareholder (as the case may be) established or maintained with a bank in Singapore; or

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- (b) in such other manner as the Authority may determine.
- (2) Before the payment of compensation, the trustee may require any pre-resolution creditor or pre-resolution shareholder that is entitled to the compensation to submit within the time specified by the trustee, either or both of the following:
- (a) particulars of an account in the name of the pre-resolution creditor or pre-resolution shareholder (as the case may be) established or maintained with a bank in Singapore;
 - (b) any other details that the trustee may require to facilitate the payment of compensation to the pre-resolution creditor or pre-resolution shareholder, as the case may be.
- (3) Upon receipt of the details required by the trustee mentioned in paragraph (2), the trustee must make the payment of compensation under paragraph (1) within the time specified by the Authority by written notice to the trustee.

Criteria for appointment and removal of valuer

30.—(1) For the purposes of section 115(3) of the Act, the Minister may only appoint a person as a valuer for a Division 5C FI under resolution if the Minister is satisfied that all of the following conditions are fulfilled:

- (a) the person is not employed by the Authority or by the Division 5C FI;
- (b) the person is not a public sector body or a parent or a subsidiary of the Division 5C FI;
- (c) the person does not have any material interest in common, or in conflict, with either of the following persons that could influence, or be reasonably perceived to influence, the person's judgment in the performance of the role of a valuer in relation to the Division 5C FI:
 - (i) any public sector body;
 - (ii) the Division 5C FI, or a parent or a subsidiary of the Division 5C FI;

(d) the person has sufficient experience, expertise, knowledge of winding up proceedings under Singapore law, and technical and human resources, to carry out the valuation in relation to the Division 5C FI.

(2) In deciding whether to appoint a person as a valuer, the Minister must also take into account any other factors that may influence the person's judgment in performing his or her role as a valuer.

(3) For the purposes of section 115(5) of the Act, the Minister may revoke the appointment of a valuer if the Minister is satisfied that the person appointed as a valuer —

- (a) no longer meets the criteria set out in paragraph (1);
- (b) has been convicted, whether in Singapore or elsewhere, of any offence involving any dishonesty (including fraud, corruption, bribery and deception);
- (c) has been disciplined for contravening any rule of professional conduct for an act involving any dishonesty; or
- (d) has become incapable of performing the role of a valuer appointed under section 115(2) of the Act.

Valuation principles

31.—(1) For the purposes of section 116(1) of the Act, a valuer for a Division 5C FI under resolution must conduct the valuation of the Division 5C FI in accordance with the principles specified in paragraph (2).

(2) For the purposes of section 116(2)(a) of the Act, the principles are —

- (a) in determining, for the purpose of section 113(1) of the Act, the treatment that the pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date, those proceedings are taken to have been commenced under Part X of the Companies Act or by a liquidator appointed under section 377 of that Act; and

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- (b) the valuer must not take into account any financial support or assistance provided to the Division 5C FI by a public sector body, other than any financial support that is provided in the ordinary course of business.

Information to be specified in valuation report

32. For the purposes of section 116(4) of the Act, a valuation report must specify the following information:

- (a) the valuer's assessment of what each pre-resolution creditor or pre-resolution shareholder would have received had winding up proceedings been commenced against the Division 5C FI immediately before the resolution date;
- (b) the valuer's assessment of what each pre-resolution creditor or pre-resolution shareholder has received, is receiving, or is likely to receive —
- (i) as a result of one or more of the actions mentioned in section 113(2) of the Act; or
 - (ii) as compensation under the law of a foreign country or territory governing the foreign resolution (if applicable);
- (c) an explanation of the key methodologies and assumptions adopted by the valuer in making the assessments in paragraphs (a) and (b), the reasons for their adoption, and the sensitivity of the respective assessments to these methodologies and assumptions;
- (d) any source of uncertainty in the valuation that is inherent in the valuer's assessment.

PART 8

EXEMPTION

Exemption from moratorium provisions of Act

33. Sections 59(2), 67(13) and 70(13) of the Act do not apply to a market infrastructure or the operator of a designated system, when enforcing any security held by it in accordance with the margin rules or default arrangements of the market infrastructure or designated system.

PART 9

MISCELLANEOUS

Revocation

34. The Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018 (G.N. No. S 143/2018) are revoked.

FIRST SCHEDULE

Regulation 3

AFFECTED PERSONS

<i>First column</i>	<i>Second column</i>
<i>Specified financial institution</i>	<i>Affected persons</i>
1. A bank	The depositors of the bank
2. A finance company licensed under the Finance Companies Act (Cap. 108)	The depositors and the creditors of the finance company
3. A merchant bank	The depositors of the merchant bank

FIRST SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
<i>Specified financial institution</i>	<i>Affected persons</i>
4. A financial holding company	The depositors of a bank that is a subsidiary of the financial holding company, and the policy owners of the insurance policies issued by an insurer licensed under the Insurance Act that is a subsidiary of the financial holding company
5. An operator or a settlement institution of a designated payment system under the Payment Systems (Oversight) Act	The participants of the designated payment system
6. An approved exchange, a recognised market operator, a licensed trade repository, a licensed foreign trade repository, an approved clearing house, a recognised clearing house, an approved holding company, a depository, or a holder of a capital markets services licence (not being a holder of a capital markets services licence who carries on business in the regulated activity of providing credit rating services) under the Securities and Futures Act	Members of the public or of a section of the public, the participants of the specified financial institution or the investors using the facility or service provided by the specified financial institution
7. A trustee for a collective investment scheme authorised under section 286 of the Securities and Futures Act, that is approved under that Act	Members of the public or of a section of the public, or the participants of the collective investment scheme
8. A licensed trust company under the Trust Companies Act	Members of the public or of a section of the public, or protected parties under the Trust Companies Act

FIRST SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
<i>Specified financial institution</i>	<i>Affected persons</i>
9. A licensed financial adviser under the Financial Advisers Act, or an exempt financial adviser under that Act that is not a pertinent financial institution	The clients of the licensed financial adviser or exempt financial adviser, as the case may be
10. A person who is exempt from the requirement to hold a capital markets services licence under the Securities and Futures Act to carry on business in any regulated activity specified in the Second Schedule to that Act, but is not a pertinent financial institution	Members of the public or of a section of the public, or clients of the exempt person
11. An insurer licensed or otherwise regulated under the Insurance Act	The policy owners of insurance policies issued by the insurer
12. An insurance intermediary registered or otherwise regulated under the Insurance Act	The policy owners for which the insurance intermediary acts as an agent
13. A money-changer licensed to conduct money-changing business, or a remitter licensed to conduct remittance business, under the Money-changing and Remittance Businesses Act	The customers of the money-changer or remitter, as the case may be
14. A holder of a stored value facility under the Payment Systems (Oversight) Act	The users of the stored value facility

SECOND SCHEDULE

Regulation 6

RELEVANT PROVISIONS

<i>First column</i>	<i>Second column</i>
<i>Specified financial institution</i>	<i>Relevant provision</i>
1. A bank	Section 49(2) of the Banking Act (Cap. 19)
2. A finance company licensed under the Finance Companies Act	Section 35(2) of the Finance Companies Act
3. A merchant bank	Section 33(2) of the Act
4. A financial holding company	Section 33(2) of the Act
5. An operator or a settlement institution of a designated payment system under the Payment Systems (Oversight) Act	Section 28(1) of the Payment Systems (Oversight) Act
6. An approved exchange or a recognised market operator under the Securities and Futures Act	Section 46AAB(2) of the Securities and Futures Act
7. A licensed trade repository or a licensed foreign trade repository under the Securities and Futures Act	Section 46ZIB(2) of the Securities and Futures Act
8. An approved clearing house or a recognised clearing house under the Securities and Futures Act	Section 81SAA(2) of the Securities and Futures Act
9. An approved holding company under the Securities and Futures Act	Section 81ZGC(2) of the Securities and Futures Act

SECOND SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
<i>Specified financial institution</i>	<i>Relevant provision</i>
10. A holder of a capital markets services licence (not being a holder of a capital markets services licence who carries on business in the regulated activity of providing credit rating services) under the Securities and Futures Act	Section 97E(2) of the Securities and Futures Act
11. A trustee, for a collective investment scheme authorised under section 286 of the Securities and Futures Act, that is approved under that Act	Section 292D(2) of the Securities and Futures Act
12. A licensed trust company under the Trust Companies Act	Section 21C(2) of the Trust Companies Act
13. An insurer licensed or otherwise regulated under the Insurance Act	Section 41(2) of the Insurance Act
14. An insurer intermediary registered or otherwise regulated under the Insurance Act	Section 41(2) of the Insurance Act

THIRD SCHEDULE

Regulation 7

SIGNIFICANT SHAREHOLDERS

<i>First column</i>	<i>Second column</i>
<i>Pertinent financial institution</i>	<i>Significant shareholders</i>
1. A bank incorporated in Singapore	Any substantial shareholder, 12% controller, 20% controller or indirect controller of the bank
2. A finance company licensed under the Finance Companies Act	Any person who has effective control (as used in section 10 of the Finance Companies Act) or control (as used in section 11 of the Finance Companies Act) of, or a substantial shareholding (as used in section 12 of the Finance Companies Act) in, the finance company
3. A merchant bank	Any person who, under any directions given by the Authority to the merchant bank under section 28(3) of the Act, is required to obtain the approval of the Authority before purchasing or holding any shares of the merchant bank
4. A financial holding company	Any substantial shareholder, 12% controller, 20% controller or indirect controller of the financial holding company
5. An operator of a designated payment system under the Payment Systems (Oversight) Act	Any substantial shareholder, 12% controller or 20% controller of the operator of the designated payment system
6. An approved exchange under the Securities and Futures Act	Any substantial shareholder, 12% controller or 20% controller of the approved exchange
7. A licensed trade repository under the Securities and Futures Act	Any substantial shareholder, 12% controller or 20% controller of the licensed trade repository

THIRD SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>
<i>Pertinent financial institution</i>	<i>Significant shareholders</i>
8. An approved clearing house under the Securities and Futures Act	Any substantial shareholder, 12% controller or 20% controller of the approved clearing house
9. An approved holding company under the Securities and Futures Act	Any substantial shareholder, 12% controller or 20% controller of the approved holding company
10. A holder of a capital markets services licence (not being a holder of a capital markets services licence who carries on business in the regulated activity of providing credit rating services) under the Securities and Futures Act	Any person who has obtained effective control (as defined in section 97A(6) of the Securities and Futures Act) of the holder of the capital markets services licence
11. A licensed trust company under the Trust Companies Act	Any 20% controller, 50% controller or indirect controller of the licensed trust company
12. An insurer incorporated in Singapore and licensed under the Insurance Act	Any substantial shareholder, or any person who has effective control (as defined in section 28(7) of the Insurance Act) of the insurer

FOURTH SCHEDULE

Regulation 8

SIGNIFICANT SHAREHOLDER PROVISIONS

<i>First column</i>	<i>Second column</i>
<i>Pertinent financial institution</i>	<i>Significant shareholder provisions</i>
1. A bank incorporated in Singapore	Sections 15A(1) and 15B(1) of the Banking Act (Cap. 19)
2. A finance company licensed under the Finance Companies Act	Sections 10(2), 11(1) and 12(1) of the Finance Companies Act
3. A financial holding company	Sections 15A(1) and 15B(1) of the Banking Act
4. An operator of a designated payment system under the Payment Systems (Oversight) Act	Section 23(1) and (2) of the Payment Systems (Oversight) Act
5. An approved exchange under the Securities and Futures Act	Section 27(1) and (2) of the Securities and Futures Act
6. A licensed trade repository under the Securities and Futures Act	Section 46U(1) and (2) of the Securities and Futures Act
7. An approved clearing house under the Securities and Futures Act	Section 70(1) and (2) of the Securities and Futures Act
8. An approved holding company under the Securities and Futures Act	Section 81ZE(1) and (2) of the Securities and Futures Act
9. A holder of a capital markets services licence under the Securities and Futures Act (not being a holder of a capital markets services licence who carries on business in the regulated activity of providing credit rating services)	Section 97A(2) of the Securities and Futures Act
10. A licensed trust company under the Trust Companies Act (Cap. 336)	Section 16(1) of the Trust Companies Act
11. An insurer incorporated in Singapore and licensed under the Insurance Act (Cap. 142)	Sections 28(1) and 29(1) of the Insurance Act

Made on 26 October 2018.

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

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