

Payment Services Bill

Bill No. /2018.

Read the first time on .

**THIS VERSION OF THE BILL IS IN DRAFT FORM AND IS
SUBJECT TO CLEARANCE BY THE ATTORNEY GENERAL'S CHAMBERS**

PAYMENT SERVICES ACT

(No. X of 2018)

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

Section

1. Short title and commencement
2. Interpretation
3. Purpose of Act
4. Application of Act
5. Appointment of Assistants

PART 2 LICENSING OF PAYMENT SERVICE PROVIDERS

Division 1 – Licensing of payment service providers

6. Licensing of payment service providers
7. Application for licence
8. Variation of licence
9. Holding out as licensee, etc.
10. Prohibition against solicitation
11. Annual fees of licensees
12. Lapsing, surrender, revocation and suspension of licence
13. Right of appeal
14. Exempt persons

Division 2 – Conduct of business

Subdivision (1) - General

15. Place of business or registered office of licensee
16. Obligation of licensee to notify Authority of certain events
17. Obligation of licensee to provide information to Authority
18. Obligation of licensee to submit periodic reports
19. Prohibition against use of unregulated agents
20. Prohibition against withdrawals of currency from payment accounts which store e-money
21. Disapplication of section 14 of the Currency Act

Subdivision (2) – Major payment institutions

22. Security
23. Safeguarding of moneys received from customers
24. Restrictions on personal accounts which store e-money
25. Powers of Authority to impose interoperability of payment accounts
26. Powers of Authority to impose interoperability of payment systems

Division 3 – Control of Substantial Shareholders and Controllers of Licensees

27. Application and interpretation of this Division
28. Control of shareholding in licensees
29. Objection to existing control of licensee
30. Power to make directions in this Division
31. Power of Authority to obtain information relating to this Division
32. Power to exempt
33. Offences, penalties and defences
34. Appeals

Division 4 – Control of Officers of Licensees

35. Approval of chief executive officers, partners and directors of licensees
36. Removal of chief executive officers, partners or directors of licensees
37. Appeals

Division 5 – Audit of Licensees

38. Auditing
39. Powers of auditor appointed by Authority
40. Restriction on auditor's and employee's right to communicate certain matters
41. Offence to destroy, conceal, alter, etc. records

PART 3
PAYMENT SYSTEMS

Division 1 – Information gathering powers over Payment Systems

42. Provision of information to the Authority

Division 2 – Designation of Payment Systems

43. Power of Authority to designate payment systems
44. Prohibition on holding out as designated payment system
45. Power of Authority to impose conditions or restrictions
46. Withdrawal of designation of payment system
47. Exemptions applicable to an operator, participant and settlement institution of a payment system designated to ensure efficiency or competitiveness

Division 3 – Obligations of Operators and Settlement Institutions of Designated Payment Systems

48. Obligation of operator and settlement institution to have a place of business or registered office
49. Obligation of operator and settlement institution to notify Authority of certain events
50. Obligation of operator to submit periodic reports
51. Obligation of operator to notify Authority of businesses and acquisition of corporations

Division 4 – Access Regime

52. Power of Authority to impose access regime
53. Variation of access regime
54. Cessation and revocation of access regime
55. Right to apply to High Court in respect of access regime

Division 5 – Voluntary Transfer of Business

56. Interpretation of this Division
57. Voluntary transfer of business
58. Approval of transfer

Division 6 – Control of Substantial Shareholders and Controllers of Operators of Designated Payment Systems

59. Application and interpretation of this Division
60. Control of shareholding in operator
61. Objection to existing control of operator
62. Power to make directions in this Division
63. Power of Authority to obtain information relating to this Division
64. Power to exempt
65. Offences, penalties and defences
66. Appeals

Division 7 – Control of Officers of Operators and Settlement Institutions of Designated Payment Systems

67. Approval of chief executive officers and directors of operators
68. Removal of executive officers or directors of operators and settlement institutions
69. Appeals

Division 8 – Audit of Operators and Settlement Institutions of Designated Payment Systems

70. Auditing
71. Powers of auditor appointed by Authority
72. Restriction on auditor's and employee's right to communicate certain matters
73. Offence to destroy, conceal, alter, etc. records

PART 4
INSPECTION AND INVESTIGATIONS

74. Inspection by Authority
75. Investigation by Authority
76. Confidentiality of inspection and investigation reports
77. Self-incrimination
78. Savings for advocates and solicitors

PART 5
EMERGENCY POWERS

79. Interpretation of this Part
80. Action by Authority if the payment entity is unable to meet obligations, etc
81. Emergency powers of the Authority applicable to designated payment systems
82. Assumption of control
83. Other provisions concerning control
84. Responsibilities of directors, officers, etc., of the payment entity
85. Remuneration and expenses of Authority and others in certain cases

PART 6
ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

86. Interpretation of this Part
87. Conditions for provision of assistance
88. Other factors to consider for provision of assistance
89. Assistance that may be rendered
90. Offences under this Part
91. Immunities

PART 7
OFFENCES

92. Offences by corporations
93. Offences by unincorporated associations or partnerships

94. Offences by officers
95. Falsification of records by officers, etc.
96. Duty to use reasonable care not to provide false information to Authority
97. General penalty
98. Composition of offences

PART 8
MISCELLANEOUS

99. Jurisdiction of the District Court
100. Opportunity to be heard
101. Power of the court to make certain orders
102. General exemption
103. Codes, guidelines, etc. by Authority
104. Power of Authority to issue notice in writing
105. Power of Authority to prescribe regulations
106. Publication of certain information
107. Service of documents
108. Electronic service
109. Amendment of Schedules

First Schedule	- Regulated Activities
Second Schedule	- Excluded Services
Third Schedule	- Specified Provisions

A BILL

i n t i t u l e d

An Act to provide for the licensing and regulation of payment services, oversight of payment systems, and for matters connected with any of these.

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

PART 1

PRELIMINARY

Short title and commencement

1. This Act is the Payment Services Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

“access”, in relation to a payment system, means the entitlement or eligibility of a person to become a participant in the payment system, on a commercial basis on terms that are fair and reasonable;

“access regime”, in relation to a payment system, means an access regime imposed by the Authority under section 52 and that is in force;

“advocate and solicitor” means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 2(1) of the Legal Profession Act (Cap. 161);

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

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

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

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

“book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

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

- (a) is in the direct employment of, or acting for or by arrangement with, the corporation; and
- (b) is principally responsible for the management and conduct of the business of the corporation;

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

“currency” means currency notes and coins which are legal tender in Singapore or a country or territory other than Singapore;

“credit card” or “charge card” has the same meaning as in section 56 of the Banking Act (Cap. 19);

“deposit” has the same meaning as in section 4B of the Banking Act (Cap. 19);

“deposit-taking business” has the same meaning as in section 4B of the Banking Act (Cap. 19);

“designated payment system” means a payment system that is designated by the Authority under section 43 to be a designated payment system for the purposes of this Act;

“director” has the same meaning as in section 4(1) of the Companies Act;

“e-money” means any electronically stored monetary value that is denominated in any currency that—

- (a) has been paid in advance for the purpose of making payment transactions through the use of a payment account;
- (b) is accepted by a person other than the person that issues the e-money; and
- (c) represents a claim on the person that issues the e-money;

but does not include any deposit accepted in Singapore, from any person in Singapore, by a person in the course of carrying on (whether in Singapore or elsewhere) a deposit-taking business;

“employee” includes an individual seconded or temporarily transferred from another employer;

“entity” means any body corporate or unincorporated, whether incorporated, formed or established in or outside Singapore;

“executive director” means a director who is concurrently an executive officer;

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

- (a) is in the direct employment of, or acting for or by arrangement with, the corporation; and
- (b) is concerned with or takes part in the management of the corporation on a day-to-day basis;

“exempt person” means a person who is exempt under section 14;

“financing business” has the same meaning as in section 2 of the Finance Companies Act (Cap. 108);

“Guidelines on Fit and Proper Criteria” means the document by that title issued by the Authority and published on its website, as revised from time to time;

“Guidelines for Operation of “Merchant” Banks” means the document by that title issued by the Authority and published on its website, as revised from time to time;

“licence” means a licence granted under section 7;

“licensee” means a payment service provider that is for the time being licensed;

“limited liability partnership” has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“major payment institution” means a person licenced under as section 7 as a major payment institution;

“merchant” means a person who, in the course of the person’s business—

- (a) provides goods or services;
- (b) promotes the use or purchase of goods or services; or
- (c) receives or is entitled to receive money or other consideration as a result of the provision of goods or services,

and includes any employee or agent of the person, but does not include a natural person who is not registered under section 5 of the Business Names Registration Act 2014 (Act 29 of 2014);

“money” includes currency and e-money but does not include virtual currency;

“operator”, in relation to a payment system, means a person who operates the payment system;

“participant”, in relation to a payment system, means any person who is recognised in the rules of the payment system, otherwise recognised as being eligible to settle payments through the payment system with other participants, or processes payments through the payment system;

“partner” in relation to a limited liability partnership, has the same meaning as in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“payee” means a person who is the intended recipient of money which has been the subject of a payment transaction;

“payer” means a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account;

“payment account” means—

- (a) any account held in the name of, or any account with a unique identifier of, one or more payment service users; or
- (b) any personalised device or personalised facility,

which is used by a payment service user for the initiation, execution, or both of payment transactions and includes a bank account, debit card, credit card and charge card;

“payment order” means any instruction by—

- (a) a payer; or
- (b) a payee,

to their respective payment service providers requesting the execution of a payment transaction;

“payment service” means any service specified in the First Schedule but excludes services specified in the Second Schedule;

“payment service provider” means any person who provides a payment service;

“payment service user” means any person when making use of a payment service in the capacity of either payer or payee, or both;

“payment system” means a funds transfer system or other system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system;

“payment transaction” means an act, initiated by the payer or payee, of placing, transferring or withdrawing money, irrespective of any underlying obligations between the payer or payee and includes—

- (a) the placing, transferring or withdrawing of money for the purposes of making payment for goods or services; and
- (b) the placing, transferring or withdrawing of money for any other purpose.

“permanent place of business” means each fixed place or fixed location in Singapore used by a licensee or an operator or settlement institution of a designated payment system for carrying on business, whether within a single building or at a single business address;

“personalised device or personalised facility” means any device or facility (whether in physical or electronic form) with a name or unique identifier;

“place of business” means a permanent place of business, a mobile kiosk or any other place used by the licensee or an operator or settlement institution of a designated payment system for the conduct of business;

“public authority” means —

- (a) the Government, including any ministry, department and agency of the Government, or an organ of State; or
- (b) any statutory body;

“registered office” means an office established by a person under section 142(1) or 370(1) of the Companies Act (Cap. 50);

“standard payment institution” means a person licenced under as section 7 as a standard payment institution;

“statutory body” means a board, commission, committee or similar body, whether corporate or unincorporate, established under a written law;

“settlement institution” means a person who provides facilities for —

- (a) the participants of a payment system to hold funds; and
- (b) the settling of transactions between the participants;

“share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50) and includes an interest in a share;

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

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

“unique identifier” means a combination of letters, numbers or symbols specified by the payment service provider to the payment service user and is to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of—

- (a) the other payment service user who is a party to the payment transaction;
- (b) the other payment service user’s payment account;

“virtual currency” means any digital representation of value that—

- (a) is expressed as a unit;
- (b) is not denominated in any currency;
- (c) is a medium of exchange accepted by the public or a section of the public, as payment for goods or services or the discharge of a debt;
- (d) can be transferred, stored or traded electronically; and
- (e) satisfies such other characteristics as the Authority may prescribe,

but does not include such other digital representation of value that the Authority may prescribe.

(2) In any case where the functions of the operator or settlement institution of a payment system are assumed by or shared among more than one operator or settlement institution, a reference in this Act to the operator or settlement institution shall be read as a reference to each of such operators or settlement institutions.

Purpose of Act

3. The purpose of this Act is to—

- (a) regulate—
 - (i) licensees;
 - (ii) exempt persons in relation to their provision of payment services;
 - (iii) operators, settlement institutions and participants of designated payment systems;
- (b) provide for the Authority’s oversight of payment systems and payment services under this Act; and
- (b) regulate and provide for matters relating to or connected with the above.

Application of Act

4.—(1) Subject to subsection (2), this Act does not apply to any public authority.

(2) The Minister may by order declare that a public authority is one to which this Act applies.

Appointment of Assistants

5.—(1) Subject to subsection (2), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Act, either generally or in any particular case, except the power —

- (a) of appointment conferred by this subsection; and
- (b) to make subsidiary legislation.

(2) The Authority may, by notification in the *Gazette*, appoint one or more of its officers to exercise the power under a provision of this Act specified in the Third Schedule to grant an exemption to a particular person, or to revoke any such exemption.

(3) Any officer appointed by the Authority under subsection (1) or (2) is deemed to be a public servant for the purposes of the Penal Code (Cap. 224).

PART 2

LICENSING OF PAYMENT SERVICE PROVIDERS

Division 1 – Licensing of payment service providers

Licensing of payment service providers

6.—(1) A person must not carry on business in providing any type of payment service in Singapore unless the person is licensed by the Authority under this Act or exempted under section 14 in respect of that type of payment service.

(2) For the purpose of subsection (1), a person is deemed to be carrying on business in providing a payment service if the provision of the payment service is incidental to any other business which he carries on, whether it is related or not, to the other business which he carries on.

(3) Any person that contravenes this section shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

Application for licence

7.—(1) A person who desires to carry on business in providing one or more types of payment service must be licensed in respect of that type of payment services and must apply in writing to the Authority for a licence under this section, in such form and manner as the Authority may require.

(2) Subject to subsections (3), (4), (5) and (6), the person in subsection (1) may apply for a—

- (a) money-changing licence;
- (b) standard payment institution licence; or
- (c) major payment institution licence.

(3) A person must hold a money-changing licence if he carries on business in providing money-changing services only.

(4) A person must hold a standard payment institution licence or a major payment institution licence if he carries on business in providing —

- (a) any one or more of the following payment services —
 - (i) account issuance services;
 - (ii) domestic money transfer services;
 - (iii) cross border money transfer services;
 - (iv) merchant acquisition services;
 - (v) e-money issuance;
 - (vi) virtual currency services; or
- (b) money-changing services and any one or more of the following payment services —
 - (i) account issuance services;
 - (ii) domestic money transfer services;
 - (iii) cross border money transfer services;
 - (iv) merchant acquisition services;
 - (v) e-money issuance;
 - (vi) virtual currency services.

(5) A person must hold a major payment institution licence if —

- (a) the person carries on business in one or more of the following payment services —
 - (i) providing account issuance services;
 - (ii) providing domestic money transfer services;
 - (iii) providing cross border money transfer services;
 - (iv) providing merchant acquisition services; or
 - (v) providing virtual currency services,

and the average monthly transactions (including all payment transactions) accepted, processed or executed by that person in a calendar year, in respect of the

payment services in paragraphs (i) to (v) but excluding providing account issuance services where the payment accounts do not store e-money, exceeds \$3 million;

- (b) subject to (c), the person carries on business in one of the following payment services —
 - (i) providing account issuance services; or
 - (ii) e-money issuance,

and the average daily e-money stored in the payment account or issued to persons, who have an agreement with the first named person to be treated as resident in Singapore for the purpose of the e-money stored in the payment account or e-money issued, as the case may be, in a calendar year exceeds \$5 million;

- (c) the person carries on business in both of the following payment services-
 - (i) providing account issuance services;
 - (ii) e-money issuance;

and the average daily e-money issued to persons, who have an agreement with the first named person to be treated as resident in Singapore for the purpose of e-money issuance, in a calendar year exceeds \$5 million.

(6) Upon receiving an application under subsection (1), the Authority must consider the application and may —

- (a) grant a licence to the applicant in respect of one or more types of payment service with or without conditions; or
- (b) refuse to grant a licence.

(7) Where an applicant has applied for a licence in accordance with subsection (2)(a), the Authority must not grant a licence to the applicant unless —

- (a) the applicant has a permanent place of business or registered office in Singapore;
- (b) the Authority is satisfied as to —
 - (i) whether the applicant is a fit and proper person in accordance the Guidelines on Fit and Proper Criteria;
 - (ii) the financial condition of the applicant; and
 - (iii) whether the public interest will be served by the granting of the licence; and
- (c) the application is accompanied by —
 - (i) such information as the Authority may require; and
 - (ii) a non-refundable application fee of a prescribed amount that is paid in the manner the Authority specifies.

(8) Where an applicant has applied for a licence in accordance with subsection (2)(b) and (c), the Authority must not grant a licence to the applicant unless —

- (a) the applicant is a company incorporated under the Companies Act (Cap. 50) or a company incorporated outside Singapore;
- (b) the applicant has a permanent place of business or registered office in Singapore;

- (c) the applicant has an executive director who is a Singapore citizen or a Singapore permanent resident;
- (d) the applicant satisfies the minimum capital requirements as may be prescribed;
- (e) the Authority is satisfied as to –
 - (i) whether the applicant is a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria;
 - (ii) the financial condition of the applicant; and
 - (iii) whether the public interest will be served by the granting of the licence;
- (f) the applicant satisfies financial and operational requirements specified by the Authority; and
- (g) the application is accompanied by —
 - (i) such information as the Authority may require; and
 - (ii) a non-refundable application fee of a prescribed amount that is paid in the manner the Authority specifies.

(9) The Authority may at any time add to, vary or revoke any of the existing conditions of the licence of a payment service provider.

(10) The Authority must not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

(11) A standard payment institution and a major payment institution must, at all times during the currency of its licence, satisfy the minimum capital requirements as may be prescribed and such other financial and operational requirements as the Authority may specify by notice in writing under section 104.

(12) Any standard payment institution or major payment institution which fails to comply with any requirement under subsection (11) shall immediately notify the Authority.

(13) Where a standard payment institution or major payment institution fails to comply with any requirement under subsection (11), the Authority may, by notice in writing to the standard payment institution or major payment institution, as the case may be —

- (a) restrict or suspend the operations of the standard payment institution or major payment institution, as the case may be;
- (b) give such direction to the standard payment institution or major payment institution, as the case may be, as the Authority considers appropriate, and the standard payment institution or major payment institution must comply with such directions.

(14) Any licensee that without reasonable cause fails to comply with subsection (11) or any condition imposed by the Authority under subsection (6) or (9) 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.

Variation of licence

8.—(1) A licensee may apply to the Authority, in such form and manner as may be prescribed, to vary its licence —

- (a) by adding or removing one or more types of payment service authorised to be provided by its licence;
- (b) from a money-changing licence to a standard payment institution licence;
- (c) from a money-changing licence to a major payment institution licence;
- (d) from a standard payment institution licence to a money-changing licence;
- (e) from a standard payment institution licence to a major payment institution licence;
- (f) from a major payment institution licence to a money-changing licence or
- (g) from a major payment institution licence to a standard payment institution licence.

(2) The Authority may require an applicant to furnish it with such information or documents as it considers necessary in relation to the application.

(3) An application under subsection (1) must be accompanied by a non-refundable application fee of such amount as may be prescribed, which shall be paid in the manner specified by the Authority.

(4) The Authority may approve an application under subsection (1) subject to such conditions or restrictions as the Authority thinks fit, or may refuse the application.

(5) The Authority must not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

Holding out as licensee, etc.

9.—(1) No person shall —

- (a) hold himself out as carrying on business in providing any type of payment service unless he is a licensee or a person exempt under section 102 in respect of that type of payment service or an exempt person; or
- (b) hold himself out as a licensee unless he is licensed under section 7.

(2) Any person that contravenes this section shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or

- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

Prohibition against solicitation

10.—(1) A person whether in Singapore or elsewhere who is not a licensee must not, whether by himself or through any person in Singapore, offer or invite, or issue any advertisement containing any offer or invitation to the public or any section of the public in Singapore to provide any type of payment service, whether in Singapore or elsewhere.

(2) For the purposes of subsection (1), in determining whether an offer, invitation or advertisement is made or issued to the public or any section of the public in Singapore, regard shall be had to such considerations as the Authority may prescribe.

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

- (a) in the case of an individual, to a fine not exceeding \$125,000 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 thereof 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 thereof during which the offence continues after conviction.

(4) Any person in Singapore must not, on behalf of a person outside Singapore who is not a licensee, offer or invite, or issue any advertisement containing any offer or invitation to, the public or any section of the public in Singapore to provide any type of payment service, whether in Singapore or elsewhere.

(5) Any person who contravenes sub-section (4) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof 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 thereof during which the offence continues after conviction.

(6) A person whose business it is to publish or to arrange for the publication of advertisements shall not be guilty of an offence under subsection (3) or (5) if he proves that —

- (a) he received the advertisement for publication in the ordinary course of his business;

- (b) the matters contained in the advertisement were not, wholly or in part, devised or selected by him or by any person under his direction or control; and
- (c) he did not know and had no reason for believing that the publication of the advertisement would constitute an offence.

Annual fees of licensees

11.—(1) A licensee must pay to the Authority such prescribed annual fee in the manner that the Authority specifies.

(2) The Authority may prescribe different annual fees for different classes or categories of licensees depending on the type and number of payment services they are licensed to carry on, their volume of transactions and all other factors which the Authority may consider relevant.

(3) The Authority may, where it considers appropriate in a particular case, waive, refund or remit the whole or any part of any annual fee paid or payable to it.

Lapsing, surrender, revocation and suspension of licence

12.—(1) A licence lapses —

- (a) if the licensee is wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) if the licensee is an individual, on the date the licensee dies, becomes mentally incapacitated or has been adjudicated a bankrupt; or
- (c) upon the occurrence of such event as may be prescribed.

(2) The Authority may revoke a licence of a licensee if —

- (a) it appears to the Authority that the licensee or any of the following persons of the licensee are not fit and proper persons in accordance with the Guidelines on Fit and Proper Criteria:
 - (i) its officers, partners (where the licensee is a partnership including a limited liability partnership) and employees;
 - (ii) its substantial shareholders, 12% controllers, 20% controllers and indirect controllers, as defined in section 27(2);
- (b) it appears to the Authority that —
 - (i) the financial standing of the licensee; or
 - (ii) the manner in which the licensee's business is being conducted,

is not satisfactory;

- (c) the licensee is contravening or has contravened any provision of this Act, or any condition or restriction imposed or any notice issued by the Authority under this Act;
- (d) the licensee is contravening or has contravened any notice issued by the Authority under the Monetary Authority of Singapore Act (Cap. 186);

- (e) it appears to the Authority that the licensee is failing or has failed to satisfy any of its obligations under or arising from —
 - (i) this Act; or
 - (ii) any notice issued by the Authority under this Act;
 - (f) the licensee has provided to the Authority any information or document required under this Act that is false or misleading;
 - (g) it appears to the Authority that the licensee, or any of its officers, partners (where the licensee is a partnership including a limited liability partnership or employees, has not performed its or his or her duties under this Act honestly or fairly;
 - (h) it appears to the Authority that it would be contrary to the public interest for the licensee to continue its operations;
 - (i) the licensee fails to pay the annual fee mentioned in section 11(1);
 - (j) the licensee fails or ceases to carry on business in any type of any payment service for which it is licensed; or
 - (k) the licensee fails or ceases to have an executive director who is a Singapore citizen or a Singapore permanent resident.
- (3) The Authority may, if it considers it desirable to do so —
- (a) suspend the licence of a licensee for a specified period instead of revoking the licence under subsection (2); and
 - (b) at any time —
 - (i) extend the suspension for a specified period; or
 - (ii) revoke the suspension.
- (4) Subject to subsection (5), the Authority must not revoke a licence under subsection (2) or suspend a licence under subsection (3) without giving the licensee an opportunity to be heard.
- (5) The Authority may, without giving the licensee an opportunity to be heard, revoke or suspend a licence of a licensee in any of the following circumstances:
- (a) the licensee is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
 - (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the licensee;
 - (c) where—
 - (i) the licensee;
 - (ii) any of the licensee’s partners, where the licensee is a partnership (including a limited liability partnership);
 - (iii) the individual, where the licensee is an individual; or
 - (iv) any of the licensee’s directors or substantial shareholders as defined in section 27(2), where the licensee is a corporation,
- has been convicted —

- (A) whether in Singapore or elsewhere; and
- (B) whether before, on or after the date of commencement of this Act,

of an offence involving fraud or dishonesty, or the conviction involved a finding that the licensee, partner, individual, director, or substantial shareholder as the case may be, had acted fraudulently or dishonestly.

(6) A licensee whose licence has lapsed, or is revoked or suspended, must cease to carry on business in any type of payment service from the date it lapses, or the date the revocation or suspension takes effect.

(7) Despite the lapse or revocation of the licence, and unless the Authority otherwise directs, sections 17, 38, 74, 75 and 76 continue to apply in relation to the former licensee in respect of matters that occurred before the lapse or revocation as if it had not occurred.

(8) Any person that contravenes subsection (6) 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.

(9) A licensee may surrender his licence with a written notice of surrender, in such form as may be specified by the Authority.

(10) Any lapsing, surrender, revocation or suspension of a licence shall not operate so as to

- (a) avoid or affect any agreement, transaction or arrangement relating to the licensee's business in respect of the provision of any payment service, entered into by such licensee, whether the agreement, transaction or arrangement was entered into before or after the lapsing, surrender, revocation, or suspension of the licence, as the case may be;
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

Right of appeal

13.—(1) Any person who is aggrieved —

- (a) by the refusal of the Authority to grant a licence to it; or
- (b) by the revocation or suspension of its licence by the Authority,

may, within 30 days after having been informed of the refusal, revocation or suspension, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

Exempt persons

14.—(1) Subject to subsection (7), the following persons shall be exempted from the requirement to hold a licence to carry on business in respect of any payment service:

- (a) a bank licensed under the Banking Act (Cap. 19);
- (b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);
- (c) a finance company licensed under the Finance Companies Act (Cap. 108);
- (d) a person licensed to carry on the business of issuing credit cards or charge cards in Singapore under section 57B of the Banking Act (Cap. 19); and
- (e) such other persons or classes of persons as may be prescribed.

(2) Subject to the provisions of this Act, section 16, 17, 18, 19, 20, 23, and 24 and Division 5 of this Part shall apply, with the necessary modifications, to an exempt person (other than a person referred to in subsection (1)(e)) in respect of its business of providing the relevant payment service as if it is a licensee.

(3) The Authority may, on the application of an exempt person, exempt the exempt person from complying with any of the provisions referred to in subsection (2).

(4) The Authority may prescribe or specify by notice in writing the provisions of this Act that apply to the persons referred to in subsection (1)(e).

(5) An exemption granted under subsection (3) need not be published in the *Gazette*.

(6) The Authority may prescribe or specify in notice in writing such conditions or restrictions as may be imposed on an exempt person in carrying on business in any type of payment service as the Authority thinks fit.

(7) The Authority may withdraw an exemption granted to any person under this section if

- (a) he contravenes any other provision of this Act; or
- (b) the Authority considers it necessary in the public interest.

(8) Where the Authority withdraws an exemption granted to any person under this section, the Authority need not give the person an opportunity to be heard.

(9) An exempt person which is aggrieved by the decision of the Authority to withdraw an exemption granted to it under this section may, within 30 days of the decision, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

(10) A withdrawal under subsection (7) of an exemption granted to any person shall not operate so as to —

- (a) avoid or affect any agreement, transaction or arrangement, relating to any payment service provided by the person, whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the exemption; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

(11) Any exempt person which contravenes any condition or restriction imposed under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

(12) The Authority may at any time add to, vary or revoke any of the conditions imposed under this section.

(13) In this section, “relevant payment service” —

- (a) in relation to an exempt person under subsection (1)(a) means the following:
 - (i) providing account issuance services which is not solely incidental to the conduct of deposit-taking business or banking business under the Banking Act (Cap. 19);
 - (ii) providing domestic money transfer services which is not solely incidental to the conduct of deposit-taking business or banking business under the Banking Act (Cap. 19);
 - (iii) e-money issuance;
 - (iv) providing virtual currency services;
- (b) in relation to an exempt person under subsection (1)(b) means the following:
 - (i) providing account issuance services which is not solely incidental to the conduct of the business of receiving money on current or deposit account, and the making of advances to customers, as permitted under the Guidelines for Operation of “Merchant” Banks;
 - (ii) providing domestic money transfer services which is not solely incidental to the conduct of the business of receiving money on current or deposit account, and the making of advances to customers, as permitted under the Guidelines for Operation of “Merchant” Banks;
 - (iii) e-money issuance;
 - (iv) providing virtual currency services;
- (c) in relation to an exempt person under subsection (1)(c) means the following:
 - (i) providing account issuance services which is not solely incidental to the conduct of financing business under the Finance Companies Act (Cap. 108);
 - (ii) providing domestic money transfer services which is not solely incidental to the conduct of financing business under the Finance Companies Act (Cap. 108);
 - (iii) e-money issuance;
 - (iv) providing virtual currency services;
- (d) in relation to an exempt person under subsection (1)(d) means the following:

- (i) providing account issuance services which is not solely incidental to the business of issuing credit cards or charge cards under the Banking Act (Cap. 19);
- (ii) providing domestic money transfer services which is not solely incidental to the business of issuing credit cards or charge cards under the Banking Act (Cap. 19);
- (iii) providing cross border money transfer services;
- (iv) providing merchant acquisition services;
- (v) e-money issuance;
- (vi) providing virtual currency services;
- (vii) providing money-changing services.

Division 2 – Conduct of business

Subdivision (1) – General

Place of business or registered office of licensee

15.—(1) A licensee must not carry on business in any type of payment service unless —

- (a) the licensee has a permanent place of business in Singapore; or
- (b) the licensee has a registered office in Singapore.

(2) A licensee must appoint at least one person to be present at the permanent place of business or registered office of the licensee, as the case may be, on the days and at the hours during which the permanent place of business or registered office, as the case may be, is to be accessible to the public to address any queries or complaints from any payment service user who is a customer of the licensee.

(3) A licensee must keep, or cause to be kept, at the permanent place of business or registered office, as the case may be, books of all his or its transactions in relation to any payment service which the person provides.

(4) A licensee must inform the Authority of any change in address of its place of business or registered office in Singapore, as the case may be, within 7 days of such change.

(5) A licensee must not carry on business in providing money-changing services or cross border money transfer services at any additional place of business other than the licensee's place of business referred to in subsection (1) except with the approval of the Authority.

(6) A licensee which intends to commence business in providing money-changing services or cross border money transfer services at any additional place of business must, prior to commencing such business at the additional place of business, apply in writing to the Authority for approval, and the Authority may approve the additional place of business subject to such conditions as it thinks fit.

(7) The Authority may revoke its approval granted under subsection (6) if the licensee breaches any of the conditions imposed on the licensee under that subsection.

(8) The Authority may at any time add to, vary or revoke any condition imposed under this section.

(9) Any licensee who contravenes subsection (2) or (5) 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 of \$10,000 for every day or part thereof during which the offence continues after conviction.

(10) Where a licensee fails to notify the Authority within the time period specified in subsection (4) of any change in the address of the licensee's place of business or registered office in Singapore, as the case may be, the Authority may impose a late notification fee not exceeding \$50 for every day or part thereof that a notification is late, subject to a maximum of \$1,500.

Obligation of licensee to notify Authority of certain events

16.—(1) A licensee must notify the Authority as soon as practicable after the occurrence of any of the following events:

- (a) any civil or criminal proceeding instituted against the licensee, whether in Singapore or elsewhere;
- (b) an event (including an irregularity in any operations of the licensee) that materially impedes or impairs the operations of the licensee;
- (c) the licensee is becoming, or is likely to become, insolvent or unable to meet any of its financial, statutory, contractual or other obligations;
- (d) any disciplinary action taken against the licensee by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (e) any significant change to the regulatory requirements imposed on the licensee by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (f) any other event that the Authority may prescribe or specify by notice in writing from time to time.

(2) Subject to subsection (1), a licensee must notify the Authority within 14 days after the occurrence of any of the following events:

- (a) any change of any of its executive officers other than a director or the chief executive officer of the licensee;
- (b) any other event that the Authority may prescribe or specify by notice in writing from time to time.

(3) Any person that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

Obligation of licensee to provide information to Authority

17.—(1) Subject to subsection (4), the Authority may, by notice in writing, require any licensee or any person acting on behalf of a licensee to provide to the Authority all such information relating to its business of providing payment services within such period as the Authority may specify in the notice.

(2) Without affecting the generality of subsection (1), the Authority may in the notice issued under that subsection require any person mentioned in subsection (1) to provide —

- (a) information relating to —
 - (i) the operations of the licensee; and
 - (ii) the pricing of, or other form of consideration for, the payment services offered by the licensee; and
- (b) such other information as the Authority may require for the purposes of this Act.

(3) Subject to subsection (4) —

- (a) a requirement imposed by the Authority under this section has effect despite any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any rule of law or contract; and
- (b) a person that complies with a requirement imposed by the Authority under this section is not to be treated as being in breach of any restriction on the disclosure of the information imposed by any rule of law or contract.

(4) Nothing in this section requires a person to disclose any information subject to legal privilege.

(5) Any person that fails to comply with a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 1 year or to both and, in the case of a continuing offence, to a further fine not exceeding \$1,250 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 \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

Obligation of licensee to submit periodic reports

18.—(1) A licensee must submit to the Authority such reports or returns relating to its business in such form, manner and frequency as the Authority may specify by notice in writing.

(2) Any person that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence,

to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

Prohibition against use of unregulated agents

19.—(1) A licensee must not provide any type of payment service in Singapore through an agent unless the agent is a licensee in respect of that type of payment service.

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

Prohibition against withdrawals of currency from payment accounts which store e-money

20.—(1) Subject to subsection (2), a licensee carrying on business in providing account issuance services must not allow the withdrawal of any currency from the payment account which it issues and which stores e-money.

(2) A licensee carrying on business in providing money-changing services or cross border money transfer services may allow the withdrawal of currency from the payment account which it issues and which stores e-money if —

- (a) the payment account is used solely for money-changing services or cross border money transfer services, as the case may be; and
- (b) each withdrawal of currency from the payment account is solely for the purpose of the execution of a transaction in respect of money-changing services or cross border money transfer services, as the case may be, by the licensee.

(3) Any licensee that contravenes subsection (1) or (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.

Disapplication of section 14 of the Currency Act

21. Section 14 of the Currency Act (Cap. 69) shall not apply to the issue of e-money.

Subdivision (2) – Major payment institutions

Security

22.—(1) Every major payment institution must maintain with the Authority security of the value of \$100,000, or such other amount as may be prescribed, for the due performance of its obligations to a payment service user who is a customer of the major payment institution.

(2) The security referred to in subsection (1) must be —

- (a) in the form of a cash deposit;
- (b) in the form of a bank guarantee specified by the Authority; or
- (c) in such other form as the Authority may, in any particular case, allow.

(3) Where a major payment institution has surrendered its licence, or its licence has lapsed or has been revoked, it shall be lawful for the Authority to enforce the security referred to in subsection (1) to the extent required to pay any sums outstanding and claimed by payment service users who are the customers of the major payment institution.

(4) To avoid doubt, where the security referred to in subsection (1) is provided in the form of a bank guarantee, it shall be lawful for the Authority to call on the bank guarantee for the purposes of subsection (3) notwithstanding that a closure certificate required under subsection (7) has not been submitted to the Authority.

(5) Where a major payment institution has surrendered its license or its licence has lapsed or has been revoked, the Authority must, upon being satisfied that there is no outstanding claim by any payment service user who is the customer of the major payment institution and upon receiving the closure certificate required under subsection (7), release the security or the remainder thereof, as the case may be, to the major payment institution.

(6) Any security furnished by a major payment institution under this section shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, and if the major payment institution is declared insolvent or is wound up by an order of the court, the security shall be deemed not to form part of the property of the major payment institution.

(7) A major payment institution must within 45 days, or such longer period as the Authority may allow, of the date on which its licence has been surrendered, lapsed or revoked, submit to the Authority a closure certificate issued by its auditors confirming that –

- (a) all moneys received from the payment service users who are the customers of the major payment institution have been received by the intended recipients of such moneys; and
- (b) adequate provision has been made to meet any unforeseen liabilities in respect of the major payment institution's business.

Safeguarding of moneys received from customers

23.—(1) A major payment institution who carries on business in any of the following:

- (a) providing domestic money transfer services;
- (b) providing cross border money transfer services;
- (c) providing merchant acquisition services;
- (d) e-money issuance; or
- (e) any other payment service as may be prescribed;

must ensure that any relevant moneys are —

- (i) covered by an undertaking from any full bank and that the bank is to be fully liable to the customer for such moneys;
- (ii) covered by a guarantee by any full bank;
- (iii) deposited in a trust account with any full bank no later than the next business day following the day on which the major payment institution receives such moneys;
- (iv) deposited in a trust account with an authorised custodian prescribed or specified by the Authority no later than the next business day following the day on which the major payment institution receives such moneys; or
- (v) invested in any secure, liquid, and low risk assets as the Authority may prescribe, no later than the next business day following the day on which the major payment institution receives such moneys and the assets deposited in a trust account with an authorised custodian prescribed or specified by the Authority.

(2) Where the major payment institution safeguards the relevant moneys in accordance with subsection (1)(iii), (1)(iv) or (1)(v), the major payment institution must record and maintain a separate book entry for each customer in relation to that customer's moneys or assets.

(3) Where the major payment institution safeguards the relevant moneys in accordance with subsection (1)(ii), the major payment institution must ensure that the proceeds of any such guarantee are payable upon insolvency of the major payment institution into a separate account held by the major payment institution which must —

- (a) be designated in such a way to show that it is an account which is held for the purpose of safeguarding the relevant moneys in accordance with this section; and
- (b) be used only for holding such proceeds on trust for the customers who had provided the relevant moneys to the major payment institution.

(4) All moneys and assets deposited in the accounts referred to in subsection (1)(iii), (1)(iv), (1)(v) and (3) —

- (a) shall not be available for payment of the debts of the major payment institution; and
- (b) shall not be liable to be paid or taken in execution under an order or a process of any court.

(5) A major payment institution may safeguard any relevant moneys using one or more of the options in subsection (1)(i) to (1)(v).

(6) A major payment institution must notify the Authority in such form or manner as may be specified —

- (a) the option referred to in subsection (1) which the major payment institution has chosen to safeguard the relevant moneys;

- (b) where the relevant moneys are safeguarded in accordance with subsection (1)(i), (1)(ii) or (1)(iii), the name of the full bank providing the undertaking, guarantee or holding the trust account as the case may be; and
- (c) any change to the option referred to in paragraph (a).

(7) The Authority may prescribe that this section applies to any licensee or class of licensees other than a major payment institution.

(8) Any major payment institution that contravenes subsection (1) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(9) In this section —

“full bank” means any bank holding a licence granted by the Authority under the Banking Act (Cap. 19) which permits the bank to carry on the full range of banking business;

“relevant moneys” —

- (a) in relation to subsections (1)(a), (b) or (c) mean moneys received by a major payment institution from its customers for the provision of one or more of the payment services in subsections (1)(a), (b) or (c) and which the major payment institution still holds at the end of each business day;
- (b) in relation to subsection 1(d) means the moneys received by a major payment institution from persons, who have an agreement with the major payment institution to be treated as resident in Singapore, in exchange for e-money issued by the major payment institution and which the major payment institution still holds at the end of each business day.

Restrictions on personal accounts which store e-money

24.—(1) A major payment institution carrying on business in providing account issuance services must not —

- (a) issue a personal account to an individual which stores e-money in excess of \$5,000 per account; and
- (b) allow the payment service user of a personal account to transfer e-money out from his personal account (other than a transfer to a personal deposit account) where the transfer would cause the aggregate amount of transfers for the one year period up to and including the day of the proposed transfer to exceed \$30,000.

(2) The Authority may by order published in the *Gazette* vary the amount of e-money specified in subsection (1)(a) or (1)(b).

(3) Any major payment institution that contravenes 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.

(4) In this section —

“personal account” means a payment account which is used as a means of executing payment transactions other than in the course of business;

“personal deposit account” means a deposit account held with a bank in Singapore which is used as a means of executing payment transactions other than in the course of business, and

- (a) is a deposit account in the name of the payment service user; or
- (b) is a deposit account designated by the payment service user of the payment account.

Powers of Authority to impose interoperability of payment accounts

25.—(1) The Authority may, by notice in writing, direct a major payment institution, an exempt person or a person exempt under section 102 to —

- (a) be a participant of a payment system on such terms and conditions as the Authority may consider appropriate; or
- (b) enter into an arrangement with the operator of the payment system to achieve interoperability of the payment account with the payment system.

(2) In considering whether to mandate interoperability of any payment account under subsection (1), the Authority must have regard to the following:

- (a) whether the interoperability of the payment account with the payment system would be in the interests of the public;
- (b) the interests of the current participants and operator of the payment system;
- (c) the interests of persons who, in the future, may be required to be a participant in the payment system; and
- (d) such other matters as the Authority may consider to be relevant.

Powers of Authority to impose interoperability of payment systems

26.—(1) The Authority may, by notice in writing, impose common standards on a major payment institution, an exempt person, or a person exempt under section 102 operating a payment system on such terms and conditions as the Authority may consider appropriate.

(2) In considering whether to mandate interoperability of any payment systems under subsection (1), the Authority must have regard to the following:

- (a) whether the interoperability of the payment systems would be in the interests of the public;
- (b) the interests of the major payment institution, the exempt person or person exempt under section 102 on whom the common standards are imposed;

- (c) the interests of persons who, in the future, may need to comply with the common standard; and
- (d) such other matters as the Authority may consider to be relevant.

(3) In this section, “common standard” means any technical standard or set of technical standards with characteristics or specifications that the Authority may specify by notice in writing in respect of which a payment order is accepted or a payment transaction is processed on the payment system.

Division 3 – Control of Substantial Shareholders and Controllers of Licensees

Application and interpretation of this Division

27.—(1) This Division applies to —

- (a) all individuals whether resident in Singapore or not and whether citizens of Singapore or not; and
- (b) all entities.

(2) In this Division, unless the context otherwise requires —

“12% controller”, in relation to a licensee incorporated in Singapore, means a person, not being a 20% controller, that alone or together with the person’s associates —

- (a) has an interest in 12% or more of the shares in the licensee incorporated in Singapore; or
- (b) is in a position to control 12% or more of the votes in the licensee incorporated in Singapore;

“20% controller”, in relation to a licensee incorporated in Singapore, means a person that, alone or together with the person’s associates —

- (a) has an interest in 20% or more of the shares in the licensee incorporated in Singapore; or
- (b) is in a position to control 20% or more of the votes in the licensee incorporated in Singapore;

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

“indirect controller”, in relation to a licensee incorporated in Singapore, 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 licensee incorporated in Singapore —

- (a) in accordance with whose directions, instructions or wishes the directors of the licensee incorporated in Singapore are accustomed or under an obligation, whether formal or informal, to act; or
- (b) that is in a position to determine the policy of the licensee incorporated in Singapore,

but excludes any person —

- (i) who is a director or other officer of a licensee incorporated in Singapore whose appointment has been approved by the Authority; or
- (ii) in accordance with whose directions, instructions or wishes the directors of the licensee incorporated in Singapore are accustomed to act by reason only that they act on advice given by the person in the person's professional capacity;

“substantial shareholder” has the same meaning as in section 81 of the Companies Act (Cap. 50);

“voting share” has the same meaning as in section 4(1) of the Companies Act.

(3) In this Division —

- (a) a person has an interest in a share if —
 - (i) the person has or is treated to have an interest in that share under section 7(1A), (1B), (2), (6), (7) to (10) of the Companies Act; or
 - (ii) the person otherwise has a legal or equitable interest in that share, except an interest disregarded under section 7(9) of the Companies Act;
- (b) a reference to the control of a percentage of the votes in a licensee incorporated in Singapore 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 incorporated in Singapore; and
- (c) a person (A) is an associate of another person (B) if —
 - (i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of B;
 - (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;
 - (iii) A is a person that 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;
 - (v) A is a body corporate in which B, whether alone or together with other associates of B as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control 20% or more of the votes in A; or
 - (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 votes in relation to, the licensee incorporated in Singapore.

Control of shareholding in licensees

28.—(1) A person must not become —

- (a) a substantial shareholder;
- (b) a 12% controller;
- (c) a 20% controller; or
- (d) an indirect controller,

of a licensee incorporated in Singapore without first applying for and obtaining the approval of the Authority.

(2) A person must not enter into any agreement or arrangement, whether oral or in writing and whether express or implied, to act together with any other person with respect to the acquisition, holding or disposal of, or the exercise of rights in relation to, their interests in voting shares of an aggregate of 5% or more of the total votes attached to all voting shares in a licensee incorporated in Singapore, without first applying for and obtaining the approval of the Authority.

(3) Subject to subsection (7), a person that, at any time before the date of commencement of this Act, has entered into any agreement or arrangement mentioned in subsection (2) must not continue to be such a party to such an agreement or arrangement unless the person has, within 6 months after the date or such longer period as the Authority may allow, applied to the Authority for approval to continue to be a party to such an agreement or arrangement.

(4) The Authority may approve an application made by any person under subsection (1), (2) or (3) if the Authority is satisfied that —

- (a) having regard to the likely influence of the person, the licensee incorporated in Singapore will or will continue to conduct its business prudently and comply with the provisions of this Act and any of the requirements imposed under other legislation administered by the Authority;
- (b) the person is, in accordance with the Guidelines on Fit and Proper Criteria, a fit and proper person to be a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the licensee incorporated in Singapore; and

it is in the public interest to do so.

(5) Any approval under subsection (4) may be granted to any person subject to such conditions as the Authority may impose, including but not limited to any condition —

- (a) restricting the person's disposal or further acquisition of shares or voting power in the licensee incorporated in Singapore; or
- (b) restricting the person's exercise of voting power in the licensee incorporated in Singapore,

and the Authority may at any time add to, vary or revoke any condition imposed under this subsection.

(6) Any condition imposed under subsection (5) has effect despite any provision of the Companies Act (Cap. 50) or anything contained in the constitution of the licensee incorporated in Singapore.

(7) Where the Authority refuses an application made by any person under subsection (1), (2) or (3), the person must, within such time as the Authority may specify, take such steps (as soon as practicable after the refusal) that are necessary —

- (a) in the case of subsection (1), to cease to be —
 - (i) a substantial shareholder;
 - (ii) a 12% controller;
 - (iii) a 20% controller; or
 - (iv) an indirect controller,

of the licensee incorporated in Singapore, as the case may be; or

- (b) in the case of subsection (2) or (3), to cease to be a party to the agreement or arrangement.

Objection to existing control of licensee

29.—(1) The Authority may serve a written notice of objection on any person mentioned in section 28(1), (2) or (3) if the Authority is satisfied that —

- (a) any condition of approval imposed on the person under section 28(5) has not been complied with;
- (b) it is no longer in the public interest to allow the person to continue to be —
 - (i) a party to the agreement or arrangement described in section 28(2) or (3);
 - (ii) a substantial shareholder of the licensee incorporated in Singapore;
 - (iii) a 12% controller of the licensee incorporated in Singapore;
 - (iv) a 20% controller of the licensee incorporated in Singapore; or
 - (v) an indirect controller of the licensee incorporated in Singapore,

as the case may be;

- (c) the person has provided any false or misleading information or document in connection with an application under section 28(1), (2) or (3);
- (d) the person is no longer a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria;
- (e) having regard to the likely influence of the person, the licensee is no longer likely to conduct its business prudently or to comply with the provisions of this Act; or
- (f) it would not have been satisfied as to any of the matters specified in section 28(4) had it been aware, at that time, of circumstances relevant to the person's application under section 28(1), (2) or (3).

(2) Before serving a written notice of objection under subsection (1), the Authority must, unless the Authority decides that it is not practicable or desirable to do so, give the person —

- (a) a notice in writing of the Authority's intention to serve the written notice of objection; and
- (b) specify a date by which the person may make written representations with regard to the proposed written notice of objection.

(3) The Authority must consider any written representations it receives before the date mentioned in subsection (2)(b) for the purpose of determining whether to issue a written notice of objection.

(4) The Authority must, in any written notice of objection, specify a reasonable period within which the person that has been served the written notice of objection must —

- (a) take such steps as are necessary to ensure that the person ceases to be a party to the agreement or arrangement described in section 28(2) or (3), as the case may be;
- (b) cease to be —
 - (i) a substantial shareholder;
 - (ii) a 12% controller;
 - (iii) a 20% controller; or
 - (iv) an indirect controller,

of the licensee incorporated in Singapore, as the case may be; or

- (c) comply with such direction as the Authority may make under section 30,

and the person must comply with that notice.

Power to make directions in this Division

30.—(1) If the Authority is satisfied that a person has contravened section 28(1), (2), (3) or (7) or has failed to comply with any condition imposed under section 28(5), or if the Authority has served a written notice of objection under section 29, the Authority may, by notice in writing —

- (a) direct the transfer or disposal of all or any of the shares in the licensee incorporated in Singapore held by the person or any of the person's associates (called in this section the specified shares) within such time or subject to such conditions as the Authority considers appropriate;
- (b) restrict the transfer or disposal of the specified shares; or
- (c) make such other direction as the Authority considers appropriate.

(2) In the case of any direction made under subsection (1)(a) or restriction made under subsection (1)(b), until a transfer or disposal is effected in accordance with the direction or until the restriction on the transfer or disposal is removed, as the case may be —

- (a) no voting rights may be exercised in respect of the specified shares unless the Authority expressly permits such rights to be exercised;
- (b) no shares of the licensee incorporated in Singapore may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares unless the Authority expressly permits such issue or offer; and
- (c) except in a liquidation of the licensee incorporated in Singapore, no payment may be made by the licensee incorporated in Singapore of any amount (whether by way of dividends or otherwise) in respect of the specified shares unless the Authority expressly authorises such payment.

(3) Subsection (2) has effect despite any provision of the Companies Act (Cap. 50) or anything contained in the constitution of the licensee incorporated in Singapore.

(4) Any offer or issue of shares in contravention of subsection (2)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (1)(a) or (1)(b) must immediately return those shares to the licensee incorporated in Singapore, upon which the licensee incorporated in Singapore must return to the person any payment received from him in respect of those shares.

(5) Any payment made by the licensee incorporated in Singapore in contravention of subsection (2)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (1)(a) or (1)(b) must immediately return the payment he has received to the licensee incorporated in Singapore.

Power of Authority to obtain information relating to this Division

31.—(1) The Authority may, by notice in writing, direct a licensee incorporated in Singapore to obtain from any of its shareholders, and to provide to the Authority, any information relating to the shareholder that the Authority may require for the purpose of —

- (a) ascertaining or investigating into the control of shareholding or voting power in the licensee incorporated in Singapore; or
- (b) exercising any power or function under section 28, 29, 30, 32 or 33.

(2) Without affecting the generality of subsection (1), the notice in subsection (1) may require the licensee incorporated in Singapore to obtain and provide the following information:

- (a) whether the shareholder has an interest in any share in licensee incorporated in Singapore as beneficial owner or as trustee;
- (b) if the shareholder holds the interest in the share as trustee, to indicate as far as that shareholder is able to —
 - (i) the person for whom that shareholder holds the interest (either by name or by other particulars sufficient to enable that person to be identified); and
 - (ii) the nature of that person's interest.

(3) The Authority may, by notice in writing, require any shareholder (X) of a licensee incorporated in Singapore, or any person (Y) that appears from information provided to the Authority under subsection (1) or this subsection to have an interest in any share in the licensee incorporated in Singapore, to provide to the Authority any information relating to X or Y, as the case may be, that the Authority may require for the purpose of —

- (a) ascertaining or investigating into the control of shareholding or voting power in the licensee incorporated in Singapore; or
- (b) exercising any power or function under section 28, 29, 30, 32 or 33.

(4) Without affecting the generality of subsection (3), the notice in subsection (3) may require X or Y to provide the following information:

- (a) whether X or Y holds that interest as beneficial owner or as trustee;
- (b) if X or Y holds the interest as trustee, to indicate as far as X or Y can —

- (i) the person (Z) for whom X or Y holds the interest (either by name or by other particulars sufficient to enable that person to be identified); and
- (ii) the nature of Z's interest;
- (c) whether any share or any voting right attached to the share is the subject of an agreement or arrangement described in section 27(3)(c)(vi) or 28(2) or (3), and if so, to give particulars of the agreement or arrangement and the parties to it.

Power to exempt

32.—(1) The Authority may, by order published in the *Gazette*, exempt —

- (a) any person or class of persons; or
- (b) any class or description of shares or interests in shares,

from section 28, subject to such conditions as may be specified in the order.

(2) Without affecting the generality of subsection (1), the conditions may include —

- (a) restricting the person's or class of persons' disposal or further acquisition of shares or voting power in the licensee incorporated in Singapore; or
- (b) restricting the person's or class of persons' exercise of voting power in the licensee incorporated in Singapore,

and the Authority may at any time add to, vary or revoke any condition imposed under this section.

Offences, penalties and defences

33.—(1) Any person that contravenes section 28(1)(a) or (b), (2), (3), (7)(a)(i) or (ii), or (b) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 and, in the case of a continuing offence (if applicable), 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 (if applicable), to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(2) Any person that —

- (a) contravenes section 28(1)(c) or (d), (7)(a)(iii) or (iv) or 30(2);
- (b) fails to comply with —
 - (i) any notice given under section 29(4), 30(1) or 31; or
 - (ii) any condition imposed under section 28(5); or
- (c) in purported compliance with a notice under section 31, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence.

(3) Any person convicted of an offence under subsection (2) 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 (if applicable), 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 (if applicable), to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.
- (4) Where a person is charged with an offence in respect of a contravention of section 28(1), (2), (3) or (7), it is a defence for the person to prove that —
- (a) the person was not aware that the person had contravened section 28(1), (2), (3) or (7), as the case may be; and
 - (b) within 14 days after becoming aware of the contravention, the person —
 - (i) notified the Authority of the contravention; and
 - (ii) within such time as may be determined by the Authority, took such action in relation to the person's shareholding or control of the voting power in the licensee incorporated in Singapore as the Authority may direct.
- (5) Where a person is charged with an offence in respect of a contravention of section 28(1), it is also a defence for the person to prove that, even though the person was aware of the contravention —
- (a) the contravention occurred as a result of an increase in the shareholding as described in section 27(3)(a) of, or in the voting power controlled by, any of the person's associates described in section 27(3)(c)(i) of;
 - (b) the person had no agreement or arrangement, whether oral or in writing and whether express or implied, with that associate with respect to the acquisition, holding or disposal of shares or other interests in, or under which they act together in exercising their voting power in relation to, the licensee incorporated in Singapore; and
 - (c) within 14 days after the date of the contravention, the person —
 - (i) notified the Authority of the contravention; and
 - (ii) within such time as may be determined by the Authority, took such action in relation to the person's shareholding or control of the voting power in the licensee incorporated in Singapore as the Authority may direct.
- (6) Except as provided in subsections (4) and (5), it is not a defence for a person charged with an offence in respect of a contravention of section 28(1), (2), (3) or (7) to prove that the person did not intend to or did not knowingly contravene that provision.

Appeals

34. Any person that is aggrieved by a decision of the Authority under section 28, 29 or 30 may, within 30 days after receiving the decision of the Authority, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

Approval of chief executive officers, partners and directors of licensees

35.—(1) Subject to subsection (3), a licensee must not appoint an individual as its chief executive officer, director or partner (where the licensee is a partnership, including a limited liability partnership), as the case may be, in Singapore unless it has applied for and obtained the approval of the Authority.

(2) An application for approval under subsection (1) shall be made in such form and manner as the Authority may prescribe.

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may —

- (a) in determining whether to grant its approval under paragraph (b), have regard to such criteria as may be specified by notice in writing to the licensee; and
- (b) approve or refuse the application.

(4) Where a licensee has obtained the approval of the Authority to appoint an individual as its chief executive officer or director under subsection (3)(b), the person may, without the approval of the Authority, be re-appointed as chief executive officer or director (as the case may be) of the a licensee immediately upon the expiry of the individual's term of appointment.

(5) Subject to subsection (6), the Authority must not refuse an application for approval of an individual under subsection (1) without giving the licensee an opportunity to be heard.

(6) The Authority may refuse an application for approval of an individual under subsection (1) without giving the licensee an opportunity to be heard in any of the following circumstances:

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

- (e) if the individual 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 or her that is still in force;
- (f) if the individual has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (i) that 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.

(7) Where the Authority refuses an application for approval under subsection (3)(b), the Authority need not give the individual who was proposed to be appointed an opportunity to be heard.

(8) Any licensee that, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(9) In this section and section 36, unless the context otherwise requires —

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

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act.

Removal of chief executive officers, partners or directors of licensees

36.—(1) Despite the provisions of any other written law, where the Authority is satisfied that a chief executive officer, director, or partner of a licensee incorporated, formed or registered in Singapore, is not a fit and proper person to act as such chief executive officer, director or partner, the Authority may, by notice in writing, direct the licensee to remove —

- (a) the chief executive officer from employment with the licensee;
- (b) the director as director of the licensee; or
- (c) the partner as partner of the licensee,

within such period as the Authority may specify in the notice.

(2) Without affecting any other matter that the Authority may deem relevant, in assessing whether to direct the licensee incorporated, formed or registered in Singapore to remove its chief executive officer or director, or partner under subsection (1), the Authority may consider whether the chief executive officer, director or partner —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of this Act, being an offence —
 - (i) involving fraud or dishonesty;
 - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures Act (Cap. 289) made against him that remains in force;
- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (i) which is being or has been wound up by a court; or
 - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory;
- (g) has wilfully contravened or wilfully caused the licensee to contravene any provision of this Act;
- (h) has, without reasonable excuse, failed to secure the compliance of the licensee with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;
- (i) has failed to discharge any of the duties of his or her office or employment; or
- (j) needs to be removed in the public interest.

(3) Subject to subsection (4), before directing a licensee incorporated in Singapore to remove its chief executive officer, director, or partner under subsection (1), the Authority must give —

- (a) the licensee; and
- (b) the individual concerned,

an opportunity to be heard.

(4) The Authority may direct a licensee incorporated in Singapore to remove a person from his office or employment under subsection (1) on any of the following grounds without giving the licensee an opportunity to be heard:

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement this Act —
 - (i) involving fraud or dishonesty, or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and

(ii) punishable with imprisonment for a term of 3 months or more.

(5) Without affecting the Authority's power to impose conditions under section 7(6), the Authority may at any time, by notice in writing to a licensee incorporated in Singapore impose a condition requiring the licensee to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer, director, or partner and vary any such condition.

- (6) Any licensee incorporated in Singapore that, without reasonable excuse —
- (a) fails to comply with a direction under subsection (1); or
 - (b) contravenes any condition imposed under subsection (5),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

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

Appeals

37.—(1) A licensee incorporated in Singapore that is aggrieved by the decision of the Authority under section 35(3)(b) may, within 30 days after receiving the decision of the Authority, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

(2) A licensee incorporated in Singapore, or any chief executive officer, director or partner of the licensee incorporated, formed or registered in Singapore, that is aggrieved by a direction of the Authority under section 36(1) may, within 30 days after receiving the direction, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

Division 5 – Audit of Licensees

Auditing

- 38.**—(1) Despite the provisions of the Companies Act (Cap. 50), a licensee —
- (a) must, on an annual basis and at its own expense, appoint an auditor; and
 - (b) if for any reason its auditor ceases to be its auditor, appoint another auditor as soon as practicable after such cessation.

- (2) The Authority may appoint an auditor —
- (a) if the licensee fails to appoint an auditor; or
 - (b) if the Authority considers it desirable that another auditor should act with the auditor appointed under subsection (1),

and may at any time fix the remuneration to be paid by the licensee to the auditor the Authority appoints.

- (3) The duties of an auditor appointed under subsection (1) or (2) are —
- (a) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the licensee;
 - (b) to carry out an audit of the transactions in relation to the payment services provided by the licensee, in particular, in respect of their observance of the provisions of this Act and any of the requirements imposed under other legislation administered by the Authority;
 - (c) to submit a report of the audit to the Authority in such form and within such time as may be prescribed or such time as the Authority may allow; and
 - (d) to —
 - (i) in the case of a licensee incorporated in Singapore, make a report on the financial statements or consolidated financial statements of the licensee in accordance with section 207 of the Companies Act; or
 - (ii) in the case of a licensee incorporated outside Singapore, make a report on its latest annual balance sheet and profit and loss account together with any notes thereon showing the assets and liabilities and profit or loss arising out of the operations of the licensee in Singapore which complies with section 207 of the Companies Act.
- (4) The Authority may, by notice in writing to an auditor, impose all or any of the following duties on the auditor in addition to those provided under subsection (3), and the auditor must carry out the duties so imposed:
- (a) a duty to submit such additional information in relation to the audit as the Authority considers necessary;
 - (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the licensee, as the case may be;
 - (c) a duty to carry out any other examination, or establish any procedure, in relation to the audit in any particular case;
 - (d) a duty to submit a report on any of the matters mentioned in paragraphs (b) and (c).
- (5) The licensee must remunerate the auditor in respect of —
- (a) such remuneration the Authority has fixed under subsection (2); and
 - (b) the discharge of all or any of the additional duties of the auditor imposed under subsection (4).
- (6) Despite any other provision of this Act or the provisions of the Companies Act, the Authority may at any time direct the licensee to —
- (a) remove the auditor of the licensee; and
 - (b) appoint another auditor,

if the Authority is not satisfied with the performance of any duty by the auditor.

(7) The auditor's report made under subsection (3)(d) must be attached to the balance-sheet and the profit and loss account, financial statements or consolidated financial statements of the

licensee, and a copy of the report, together with any report submitted under subsection (4), must be submitted in writing to the Authority.

- (8) If an auditor, in the course of performing the auditor's duties, is satisfied that —
- (a) there has been a serious breach or non-observance of the provisions of this Act or any of the requirements imposed under other legislation administered by the Authority;
 - (b) a criminal offence involving fraud or dishonesty has been committed;
 - (c) losses have been incurred that reduce the capital of the licensee by 50% or more;
 - (d) any irregularity that has or may have a material effect upon the accounts of the licensee, including irregularities that had caused a major disruption on the provision of any type of payment services to the customers of the licensee; or
 - (e) the auditor is unable to confirm that the claims of creditors of the licensee are still covered by the assets of the licensee,

the auditor must immediately report the matter to the Authority.

- (9) Where an auditor or employee of the auditor discloses in good faith to the Authority —
- (a) the auditor's or employee's knowledge or suspicion of any of the matters mentioned in subsection (8); or
 - (b) any information or other matter on which that knowledge or suspicion is based,

the disclosure is not a breach of any restriction upon the disclosure imposed by any law, contract or rules of professional conduct, and the auditor or employee is not liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.

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

(11) Any auditor that contravenes subsection (4) or (8) 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.

(12) In this section, "consolidated financial statements" and "financial statements" have the same meanings as in section 209A of the Companies Act.

Powers of auditor appointed by Authority

39.—(1) An auditor appointed by the Authority under section 38(2) may, for the purpose of carrying out an examination or audit —

- (a) examine, on oath or affirmation, any officer or employee of the licensee or any other auditor of the licensee;

- (b) require any officer or employee of the licensee, or any other auditor of the licensee, to produce any books held by or on behalf of the licensee relating to its business;
- (c) make copies of or take extracts from, or retain possession of, any books mentioned in paragraph (b) for such period as may be necessary to enable them to be inspected;
- (d) employ such persons as the auditor considers necessary to assist the auditor in carrying out the examination or audit; and
- (e) authorise in writing any person employed by the auditor to do, in relation to the examination or audit, any act or thing that the auditor could do as an auditor under this subsection, other than the examination of a person on oath or affirmation.

- (2) Any individual who, without reasonable excuse —
- (a) refuses or fails to answer any question put to him or her; or
 - (b) fails to comply with any request made to him or her,

by an auditor appointed under section 38(2) or a person authorised under subsection (1)(e) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 12 months or to both.

Restriction on auditor's and employee's right to communicate certain matters

40.—(1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal —

- (a) an auditor appointed under section 38(1) or (2); or
- (b) any employee of such auditor,

must not disclose any information that comes to the auditor's or employee's knowledge in the course of performing the auditor's or employee's duties, to any person other than the Authority, or in the case of an employee of such auditor, the auditor.

(2) Any person that contravenes this section shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of the auditor, to a fine not exceeding \$25,000; or
- (b) in the case of the employee, to a fine not exceeding \$12,500.

Offence to destroy, conceal, alter, etc. records

41.—(1) Any individual who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under section 38 or 39 —

- (a) destroys, conceals or alters any book relating to the business of a licensee; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of the licensee,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the individual charged with the offence —

- (a) destroyed, concealed or altered any book mentioned in subsection (1)(a); or
- (b) sent, or conspired to send, out of Singapore, any book or asset mentioned in subsection (1)(b),

the onus of proving that, in so doing, the individual did not act with intent to prevent, delay or obstruct the carrying out of an examination or audit under section 38 or 39 lies on him or her.

PART 3

PAYMENT SYSTEMS

Division 1 – Information gathering powers over Payment Systems

Provision of information to the Authority

42.—(1) The Authority may, by notice in the form and manner prescribed, require —

- (a) any participant;
- (b) any operator or any person acting on behalf of an operator; or
- (c) any settlement institution,

of a payment system to provide to the Authority, within a reasonable period specified in the notice, all such information relating to the payment system as may be required by the Authority.

(2) Without affecting the generality of subsection (1), the Authority may in a notice issued under that subsection require any person referred to in paragraph (a), (b) or (c) of subsection (1) to provide, whether in the form of a return to be provided on a periodic basis or otherwise

—

- (a) information relating to —
 - (i) the operation of the payment system; and
 - (ii) the pricing of, or other form of consideration for, the services offered by the payment system;
- (b) information relating to the participation or other involvement of that person in the payment system; and
- (c) such other information as the Authority may require for the purposes of this Act.

(3) Subject to subsection (5), any person to whom a notice is issued under subsection (1) must comply with the notice.

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

(5) A person to whom a notice is issued under subsection (1) is not obliged to disclose any information where he is prohibited by any written law from disclosing such information.

Division 2 – Designation of Payment Systems

Power of Authority to designate payment systems

43.—(1) The Authority may, by order published in the *Gazette*, designate a payment system as a designated payment system for the purposes of this Act, if the Authority is satisfied that —

- (a) a disruption in the operations of the payment system could trigger, cause or transmit further disruption to participants or systemic disruption to the financial system of Singapore;
- (b) a disruption in the operations of the payment system could affect public confidence in payment systems or the financial system of Singapore;
- (c) where the payment system is widely used in Singapore or its operations may have an impact on the operation of one or more payment systems in Singapore, it is necessary to ensure efficiency or competitiveness in any of the services provided by the operator of the payment system; or
- (d) it is otherwise in the interests of the public to do so.

(2) Any order made under subsection (1) shall continue to have effect until it is withdrawn by the Authority and the order must —

- (a) in the case of a payment system designated under subsection (1)(a), (b) and (d), identify the operator and the settlement institution of the designated payment system, and
- (b) in the case of a payment system designated under subsection (1)(c), state that it is designated under subsection (1)(c) and identify the operator of the designated payment system.

(3) An operator or a settlement institution who is aggrieved by a decision of the Authority to designate the payment system as a designated payment system may, within 30 days after the order is published in the *Gazette*, appeal in writing to the Minister whose decision shall be final.

(4) Notwithstanding the lodging of an appeal under subsection (3), the designation by the Authority under this section continues to have effect pending the decision of the Minister.

(5) The Minister may, when deciding an appeal under subsection (3), direct that the Authority must not designate the payment system as a designated payment system, and such direction takes effect from the date of the decision of the Minister.

Prohibition on holding out as designated payment system

44.—(1) A person must not hold himself out as the operator or settlement institution of a designated payment system unless the payment system has been designated by the Authority under section 43.

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

Power of Authority to impose conditions or restrictions

45.—(1) The Authority may, by notice in writing, impose on a participant, an operator or a settlement institution of a designated payment system such conditions or restrictions as the Authority may think fit.

(2) The Authority may, at any time, by notice in writing to a participant, an operator or a settlement institution of the designated payment system, vary any condition or restriction as the Authority may think fit.

(3) Without affecting the generality of subsection (1) or (2), the conditions or restrictions that the Authority may impose include conditions or restrictions relating to any of the following—

- (a) the activities that the operator or settlement institution of the designated payment system may undertake;
- (b) standards to be maintained by the operator or settlement institution of the designated payment system, as the case may be, and
- (c) the requirement for the operator or settlement institution of the designated payment system to operate as a corporation.

(4) Any participant, operator or settlement institution of a designated payment system which fails to comply with any condition or restriction imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Withdrawal of designation of payment system

46.—(1) The Authority may, by order published in the *Gazette*, withdraw the designation of any designated payment system at any time if the Authority is of the opinion that the considerations in section 43(1) are no longer valid or satisfied.

(2) The Authority must not withdraw the designation of any designated payment system without giving the operator and the settlement institution an opportunity to be heard.

Exemptions applicable to an operator, participant and settlement institution of a payment system designated to ensure efficiency or competitiveness

47.—(1) Section 51, Divisions 4 to 8 of this Part and Part 5 shall not apply to an operator of a designated payment system that is designated under section 43(1)(c).

(2) Division 4 of this Part shall not apply to a participant of a designated payment system that is designated under section 43(1)(c).

(3) Section 45, 104, 105, Divisions 3 to 8 of this Part and Parts 4 to 5 shall not apply to a settlement institution of a designated payment system designated under section 43(1)(c).

Division 3 – Obligations of Operators and Settlement Institutions of Designated Payment Systems

Obligation of operator and settlement institution to have a place of business or registered office

48.—(1) An operator and settlement institution of a designated payment system must, within 14 days after the date the order in section 43(1) is published in the *Gazette* or such longer period as the Authority may specify by notice in writing, establish a permanent place of business or a registered office in Singapore.

(2) An operator or settlement institution must appoint a person to be present at the permanent place of business or registered office, as the case may be, of the operator or settlement institution, as the case may be, on the days and at the hours during which the permanent place of business or registered office is to be accessible to the public to address any queries or complaints from any customer of the operator or settlement institution.

(3) An operator and settlement institution must keep, or cause to be kept, at the permanent place of business or registered office, as the case may be, books of all its transactions in relation to the designated payment system.

(4) The operator or settlement institution of the designated payment system must notify the Authority of any change in address of its place of business or registered office within 14 days of such change or such longer period as the Authority may specify by notice in writing.

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

Obligation of operator and settlement institution to notify Authority of certain events

49.—(1) An operator and a settlement institution of a designated payment system must notify the Authority as soon as practicable after the occurrence of any of the following events:

- (a) an intention to make a material change to the nature of the operating rules, settlement procedures or activities of the designated payment system;
- (b) an event or irregularity that impedes or prevents access to, or impairs the usual operations of the designated payment system or its settlement operations, as the case may be;
- (c) any material function of the operator or the settlement institution that is outsourced;
- (d) any civil or criminal proceeding instituted against the operator or the settlement institution, whether in Singapore or elsewhere;
- (e) the operator or settlement institution is becoming, or is likely to become, insolvent or unable to meet any of its financial, statutory, contractual or other obligations;
- (f) any disciplinary action taken against the operator or settlement institution, as the case may be, by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (g) any significant change to the regulatory requirements imposed on the operator or settlement institution, as the case may be, by any regulatory authority, whether in Singapore or elsewhere, other than the Authority;
- (h) any other event that the Authority may prescribe or specify by notice in writing from time to time.

(2) Without affecting subsection (1), an operator and a settlement institution of a designated payment system must notify the Authority within 14 days after the occurrence of any of the following events:

- (a) any change of any of its executive officers other than a director or the chief executive officer of the operator or settlement institution of a designated payment system;
- (b) any other event that the Authority may prescribe or specify by notice in writing from time to time.

(3) Any person that contravenes subsection (1) or (2) shall be an offence and shall be liable on conviction to a fine not exceeding \$250,000.

Obligation of operator to submit periodic reports

50.—(1) An operator of a designated payment system must submit to the Authority such reports or returns in such form, manner and frequency as the Authority may specify by notice in writing.

(2) Any person that contravenes 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.

Obligation of operator to notify Authority of businesses and acquisition of corporations

51.—(1) An operator of a designated payment system must notify the Authority as soon as practicable after the occurrence of any of the following events:

- (a) the carrying on of any business by the operator of the designated payment system other than —
 - (i) the business of operating a payment system;
 - (ii) a business incidental to operating a payment system; or
 - (iii) such business or class of businesses as the Authority may prescribe;
- (b) the acquisition by the operator of the designated payment system of a substantial shareholding in a corporation which does not carry on —
 - (i) the business of operating a payment system;
 - (ii) a business incidental to operating a payment system; or
 - (iii) such business or class of businesses as the Authority may prescribe.

(2) An operator of a designated payment system must, within 2 months after the designation of the payment system, notify the Authority of its substantial shareholding in a corporation which does not carry on —

- (a) the business of operating a payment system;
- (b) a business incidental to operating a payment system; or
- (c) such business or class of businesses as the Authority may prescribe.

(3) Without affecting the generality of section 104(1), the Authority may, at any time after receiving the notification referred to in subsection (1) or (2), issue directions to the operator of the designated payment system —

- (a) where the notification relates to a matter referred to in subsection (1)(a) —
 - (i) to cease carrying on the first-mentioned business referred to in subsection (1)(a); or
 - (ii) to carry on the first-mentioned business referred to in subsection (1)(a) on such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 104(1); or
- (b) where the notification relates to a matter referred to in subsection (1)(b) or (2) —
 - (i) to dispose of the shareholding referred to in subsection (1)(b) or (2); or
 - (ii) to exercise its rights relating to such shareholding on such conditions or restrictions as the Authority may impose, if the Authority is of the opinion that this is necessary for any of the purposes referred to in section 104(1),

and the operator of the designated payment system must comply with such directions.

(4) Any person who contravenes subsection (1) or (2) or any direction issued by the Authority under subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

Division 4 – Access Regime

Power of Authority to impose access regime

52.—(1) The Authority may, by order published in the *Gazette*, impose an access regime in respect of a payment system on the person who determines access to the payment system, regardless of whether he is a participant, an operator or a settlement institution of the payment system, on such terms and conditions as the Authority may consider appropriate.

(2) In considering whether to impose an access regime under subsection (1), the Authority must have regard to —

- (a) whether the imposition of the access regime in respect of the payment system would be in the interests of the public;
- (b) the interests of the current participants, operator and settlement institution of the payment system;
- (c) the interests of persons who, in the future, may require or desire access to the payment system; and
- (d) such other matters as the Authority may consider to be relevant.

(3) The Authority, in imposing an access regime under subsection (1), must ensure that the access regime is fair and not discriminatory.

Variation of access regime

53.—(1) The Authority may, by order published in the *Gazette*, vary an access regime which has been imposed in respect of a payment system under section 52, on such terms and conditions as the Authority may consider appropriate.

(2) In considering whether to vary an access regime under subsection (1), the Authority must have regard to the following:

- (a) whether variation of the access regime in respect of the payment system would be in the interests of the public;
- (b) the interests of the current participants, operator and settlement institution of the payment system;
- (c) the interests of persons who, in the future, may require or desire access to the payment system; and
- (d) such other matters as the Authority may consider to be relevant.

Cessation and revocation of access regime

54.—(1) An access regime in respect of a payment system must cease to be in force if —

- (a) the order imposing or varying the access regime under section 52(1) or 53(1), as the case may be, provides for an expiry date and that date is reached;
- (b) the Authority revokes the access regime under subsection (2); or
- (c) the payment system concerned ceases to exist or operate.

(2) The Authority may, by order published in the *Gazette*, revoke an access regime if the Authority considers it appropriate to do so.

(3) In considering whether to revoke an access regime under subsection (2), the Authority must have regard to the following:

- (a) whether the revocation of the access regime would be in the interests of the public;
- (b) the interests of the current participants, operator and settlement institution of the payment system;
- (c) the interests of persons who, in the future, may require or desire access to the payment system; and
- (d) such other matters as the Authority may consider to be relevant.

Right to apply to High Court in respect of access regime

55.—(1) If a person has been denied access to a payment system by the person who determines access to the payment system, regardless of whether he is a participant, an operator or a settlement institution of the payment system, in contravention of a term or condition of the access regime that has been imposed under section 52(1) or 53(1), he may apply to the High Court for an order under subsection (2).

(2) An applicant for an order under subsection (1) must give to the Authority notice in writing of the application together with a copy of the application, and the Authority may apply to the High Court to be joined as a party to the proceedings.

(3) If the High Court is satisfied that the person who determines access to a payment system, regardless of whether he is a participant, an operator or a settlement institution of the payment system, has contravened a term or condition of the access regime, the High Court may make —

- (a) an order directing the participant, operator or settlement institution, as the case may be, to comply with that term or condition of the access regime;
- (b) an order directing the participant, operator or settlement institution, as the case may be, to compensate any person who has suffered loss or damage as a result of the contravention; or
- (c) such other order as the High Court thinks fit.

(4) The High Court may, upon an application by any person having a sufficient interest, or on its own motion, discharge or vary any order made under this section but no discharge or variation of any order must be made by the High Court unless a reasonable opportunity has been given for the Authority to make representations to the High Court.

Division 5 – Voluntary Transfer of Business

Interpretation of this Division

56. In this division, unless the context otherwise requires —

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

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

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

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

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

“transferee” means a person who is carrying on, or who intends to carry on, in Singapore the usual business of an operator or a settlement institution of a designated payment system, to which the whole or any part of a transferor’s business is, is to be or is proposed to be transferred under section 57(1);

“transferor” means an operator or a settlement institution of a designated payment system the whole or any part of the business of which is, is to be, or is proposed to be transferred under section 57(1).

Voluntary transfer of business

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

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

(2) Subsection (1) does not affect the right of an operator or a settlement institution of a designated payment system to transfer the whole or any part of its business under any law and subsection (1) does not apply to such transfer.

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

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

(b) the transferee will conduct the business of the transferor prudently and comply with the provisions of this Act.

(4) The Authority may at any time appoint one or more persons to perform an independent assessment of, and furnish a report on, the proposed transfer of a transferor's business (or any part thereof) under subsection (1).

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

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

(7) The Authority may require a person to furnish, within the period and in the manner specified by the Authority, any information or document that the Authority may reasonably require for the discharge of its duties or functions, or the exercise of its powers, under this section and section 58.

(8) Any person who —

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

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$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 thereof during which the offence continues after conviction.

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

Approval of transfer

58.—(1) A transferor must apply to the Court for its approval of the transfer of the whole or any part of the business of the transferor to the transferee under section 57(1).

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

(a) the transferor must lodge with the Authority a report setting out such details of the transfer and furnish such supporting documents as the Authority may specify;

(b) the transferor must obtain the consent of the Authority under section 57(1)(a);

- (c) the transferor and the transferee must, if they intend to serve on their respective customers a summary of the transfer, obtain the Authority's approval of the summary;
 - (d) the transferor must, at least 15 days before the application is made but not earlier than one month after the report referred to in paragraph (a) is lodged with the Authority, publish in the *Gazette* and in such newspaper or newspapers as the Authority may determine a notice of the transferor's intention to make the application and containing such other particulars as may be prescribed;
 - (e) the transferor and the transferee must keep at their respective offices in Singapore, for inspection by any person who may be affected by the transfer, a copy of the report referred to in paragraph (a) for a period of 15 days after the publication of the notice referred to in paragraph (d) in the *Gazette*; and
 - (f) unless the Court directs otherwise, the transferor and the transferee must serve on their respective customers affected by the transfer, at least 15 days before the application is made, a copy of the report referred to in paragraph (a) or a summary of the transfer approved by the Authority under paragraph (c).
- (3) The Authority and any person who, in the opinion of the Court, is likely to be affected by the transfer —
- (a) has the right to appear before and be heard by the Court in any proceedings relating to the transfer; and
 - (b) may make any application to the Court in relation to the transfer.
- (4) The Court must not approve the transfer if the Authority has not consented under section 57(1)(a) to the transfer.
- (5) The Court may, after taking into consideration the views, if any, of the Authority on the transfer —
- (a) approve the transfer without modification or subject to any modification agreed to by the transferor and the transferee; or
 - (b) refuse to approve the transfer.
- (6) If the transferee is not identified under section 43(2) as the operator or settlement institution of the designated payment system, the Court may approve the transfer on terms that the transfer shall take effect only in the event of the transferee being so identified.
- (7) The Court may by the order approving the transfer or by any subsequent order provide for all or any of the following matters:
- (a) the transfer to the transferee of the whole or any part of the business of the transferor;
 - (b) the allotment or appropriation by the transferee of any share, debenture, policy or other interest in the transferee which under the transfer is to be allotted or appropriated by the transferee to or for any person;

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

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

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

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

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

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

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

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

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

Division 6 – Control of Substantial Shareholders and Controllers of Operators of Designated Payment Systems

Application and interpretation of this Division

59.—(1) This Division applies to —

- (a) all individuals whether resident in Singapore or not and whether citizens of Singapore or not; and
- (b) all entities.

(2) In this Division, unless the context otherwise requires —

“12% controller”, in relation to an operator of a designated payment system, means a person, not being a 20% controller, that alone or together with the person’s associates —

- (a) has an interest in 12% or more of the shares in the operator of the designated payment system; or
- (b) is in a position to control 12% or more of the votes in the operator of the designated payment system;

“20% controller”, in relation to an operator of a designated payment system, means a person that, alone or together with the person’s associates —

- (a) has an interest in 20% or more of the shares in the operator of the designated payment system; or
- (b) is in a position to control 20% or more of the votes in the operator of the designated payment system;

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

“indirect controller”, in relation to an operator of a designated payment system, means any person, whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in an operator of a designated payment system —

- (a) in accordance with whose directions, instructions or wishes the directors of the operator of a designated payment system, as the case may be, are accustomed or under an obligation, whether formal or informal, to act; or
- (b) that is in a position to determine the policy of the operator of a designated payment system,

but excludes any person —

- (i) who is a director or other officer of an operator of a designated payment system whose appointment has been approved by the Authority; or
- (ii) in accordance with whose directions, instructions or wishes the directors of the operator of a designated payment system are accustomed to act by reason only that they act on advice given by the person in the person's professional capacity;

“substantial shareholder” has the same meaning as in section 81 of the Companies Act (Cap. 50);

“voting share” has the same meaning as in section 4(1) of the Companies Act.

(3) In this Division —

- (a) a person has an interest in a share if —
 - (i) the person has or is treated to have an interest in that share under section 7(1A), (1B), (2), (6), (7) to (10) of the Companies Act; or
 - (ii) the person otherwise has a legal or equitable interest in that share, except an interest disregarded under section 7(9) of the Companies Act;
- (b) a reference to the control of a percentage of the votes in an operator of a designated payment system 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 operator of a designated payment system; and
- (c) a person (A) is an associate of another person (B) if —
 - (i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter or a brother or sister of B;
 - (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;
 - (iii) A is a person that 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;
 - (v) A is a body corporate in which B, whether alone or together with other associates of B as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control 20% or more of the votes in A; or
 - (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 votes in relation to, the operator of a designated payment system.

Control of shareholding in operator

60.—(1) A person must not become —

- (a) a substantial shareholder;

- (b) a 12% controller;
- (c) a 20% controller; or
- (d) an indirect controller,

of an operator of a designated payment system without first applying for and obtaining the approval of the Authority.

(2) A person must not enter into any agreement or arrangement, whether oral or in writing and whether express or implied, to act together with any other person with respect to the acquisition, holding or disposal of, or the exercise of rights in relation to, their interests in voting shares of an aggregate of 5% or more of the total votes attached to all voting shares in an operator of a designated payment system, without first applying for and obtaining the approval of the Authority.

(3) The Authority may approve an application made by any person under subsection (1) or (2) if the Authority is satisfied that —

- (a) having regard to the likely influence of the person, the operator of a designated payment system will or will continue to conduct its business prudently and comply with the provisions of this Act;
- (b) the person is, in accordance with the Guidelines on Fit and Proper Criteria, a fit and proper person to be a substantial shareholder, a 12% controller, a 20% controller or an indirect controller of the operator of a designated payment system; and
- (c) it is in the public interest to do so.

(4) Any approval under subsection (3) may be granted to any person subject to such conditions as the Authority may impose, including but not limited to any condition —

- (a) restricting the person's disposal or further acquisition of shares or voting power in the operator; or
- (b) restricting the person's exercise of voting power in the operator,

and the Authority may at any time add to, vary or revoke any condition imposed under this subsection.

(5) Any condition imposed under subsection (4) has effect despite any provision of the Companies Act (Cap. 50) or anything contained in the constitution of the operator of a designated payment system.

(6) Where the Authority refuses an application made by any person under subsection (1) or (2), the person must, within such time as the Authority may specify, take such steps (as soon as practicable after the refusal) that are necessary —

- (a) in the case of subsection (1), to cease to be —
 - (i) a substantial shareholder;

- (ii) a 12% controller;
- (iii) a 20% controller; or
- (iv) an indirect controller,

of the operator of a designated payment system, as the case may be; or

- (b) in the case of subsection (2), to cease to be a party to the agreement or arrangement.

Objection to existing control of operator

61.—(1) The Authority may serve a written notice of objection on any person mentioned in section 60(1) or (2) if the Authority is satisfied that —

- (a) any condition of approval imposed on the person under section 60(4) has not been complied with;
- (b) it is no longer in the public interest to allow the person to continue to be —
 - (i) a party to the agreement or arrangement described in section 60(2);
 - (ii) a substantial shareholder of the operator of a designated payment system;
 - (iii) a 12% controller of the operator of a designated payment system;
 - (iv) a 20% controller of the operator of a designated payment system; or
 - (v) an indirect controller of the operator of a designated payment system, as the case may be;
- (c) the person has provided any false or misleading information or document in connection with an application under section 60(1) or (2);
- (d) the person is no longer a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria;
- (e) having regard to the likely influence of the person, the operator of a designated payment system is no longer likely to conduct its business prudently or to comply with the provisions of this Act; or
- (f) it would not have been satisfied as to any of the matters specified in section 60(3) had it been aware, at that time, of circumstances relevant to the person's application under section 60(1) or (2).

(2) Before serving a written notice of objection under subsection (1), the Authority must, unless the Authority decides that it is not practicable or desirable to do so, give the person —

- (a) a notice in writing of the Authority's intention to serve the written notice of objection; and
- (b) specify a date by which the person may make written representations with regard to the proposed written notice of objection.

(3) The Authority must consider any written representations it receives before the date mentioned in subsection (2)(b) for the purpose of determining whether to issue a written notice of objection.

(4) The Authority must, in any written notice of objection, specify a reasonable period within which the person that has been served the written notice of objection must —

- (a) take such steps as are necessary to ensure that the person ceases to be a party to the agreement or arrangement described in section 60(2), as the case may be;
- (b) cease to be —
 - (i) a substantial shareholder;
 - (ii) a 12% controller;
 - (iii) a 20% controller; or
 - (iv) an indirect controller,

of the operator of a designated payment system, as the case may be; or

- (c) comply with such direction as the Authority may make under section 62,

and the person must comply with that notice.

Power to make directions in this Division

62.—(1) If the Authority is satisfied that a person has contravened section 60(1), (2), (3) or (7) or has failed to comply with any condition imposed under section 60(4), or if the Authority has served a written notice of objection under section 61, the Authority may, by notice in writing —

- (a) direct the transfer or disposal of all or any of the shares in the operator of a designated payment system held by the person or any of the person's associates (called in this section the specified shares) within such time or subject to such conditions as the Authority considers appropriate;
- (b) restrict the transfer or disposal of the specified shares; or
- (c) make such other direction as the Authority considers appropriate.

(2) In the case of any direction made under subsection (1)(a) or restriction made under subsection (1)(b), until a transfer or disposal is effected in accordance with the direction or until the restriction on the transfer or disposal is removed, as the case may be —

- (a) no voting rights may be exercised in respect of the specified shares unless the Authority expressly permits such rights to be exercised;
- (b) no shares of the operator of a designated payment system may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares unless the Authority expressly permits such issue or offer; and
- (c) except in a liquidation of the operator of a designated payment system, no payment may be made by the operator of a designated payment system any amount (whether by way of dividends or otherwise) in respect of the specified shares unless the Authority expressly authorises such payment.

(3) Subsection (2) has effect despite any provision of the Companies Act (Cap. 50) or anything contained in the constitution of the operator of a designated payment system.

(4) Any offer or issue of shares in contravention of subsection (2)(b) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (1)(a) or (1)(b) must immediately return those shares to the operator of the designated payment system, upon which the operator of the designated payment system must return to the person any payment received from him in respect of those shares.

(5) Any payment made by an operator of a designated payment system in contravention of subsection (2)(c) shall be deemed to be null and void, and a person to whom a direction has been issued under subsection (1)(a) or (1)(b) must immediately return the payment he has received to the operator of the designated payment system.

Power of Authority to obtain information relating to this Division

63.—(1) The Authority may, by notice in writing, direct an operator of a designated payment system to obtain from any of its shareholders, and to provide to the Authority, any information relating to the shareholder that the Authority may require for the purpose of —

- (a) ascertaining or investigating into the control of shareholding or voting power in the operator of a designated payment system; or
- (b) exercising any power or function under section 60, 61, 62, 64 or 65.

(2) Without affecting the generality of subsection (1), the notice in subsection (1) may require the operator of a designated payment system to obtain and provide the following information:

- (a) whether the shareholder has an interest in any share in the operator of a designated payment system as beneficial owner or as trustee;
- (b) if the shareholder holds the interest in the share as trustee, to indicate as far as that shareholder is able to —
 - (i) the person for whom that shareholder holds the interest (either by name or by other particulars sufficient to enable that person to be identified); and
 - (ii) the nature of that person's interest.

(3) The Authority may, by notice in writing, require any shareholder (X) of an operator of a designated payment system, or any person (Y) that appears from information provided to the Authority under subsection (1) or this subsection to have an interest in any share in the operator of a designated payment system, to provide to the Authority any information relating to X or Y, as the case may be, that the Authority may require for the purpose of —

- (a) ascertaining or investigating into the control of shareholding or voting power in the operator of a designated payment system; or
- (b) exercising any power or function under section 60, 61, 62, 64 or 65.

(4) Without affecting the generality of subsection (3), the notice in subsection (3) may require X or Y to provide the following information:

- (a) whether X or Y holds that interest as beneficial owner or as trustee;
- (b) if X or Y holds the interest as trustee, to indicate as far as X or Y can —
 - (i) the person (Z) for whom X or Y holds the interest (either by name or by other particulars sufficient to enable that person to be identified); and
 - (ii) the nature of Z's interest;
- (c) whether any share or any voting right attached to the share is the subject of an agreement or arrangement described in section 59(3)(c)(vi) or 60(2), and if so, to give particulars of the agreement or arrangement and the parties to it.

Power to exempt

64.—(1) The Authority may, by order published in the *Gazette*, exempt —

- (a) any person or class of persons; or
- (b) any class or description of shares or interests in shares,

from section 60, subject to such conditions as may be specified in the order.

(2) Without affecting the generality of subsection (1), the conditions may include —

- (a) restricting the person's or class of persons' disposal or further acquisition of shares or voting power in the operator of a designated payment system; or
- (b) restricting the person's or class of persons' exercise of voting power in the operator of a designated payment system,

and the Authority may at any time add to, vary or revoke any condition imposed under this section.

Offences, penalties and defences

65.—(1) Any person that contravenes section 60(1)(a) or (b), (2), (6)(a)(i) or (ii), or (b) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 and, in the case of a continuing offence (if applicable), 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 (if applicable), to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(2) Any person that —

- (a) contravenes section 60(1)(c) or (d), (6)(a)(iii) or (iv) or 62(2);
- (b) fails to comply with —
 - (i) any notice given under section 61(4), 62(1) or 63; or
 - (ii) any condition imposed under section 60(4); or
- (c) in purported compliance with a notice under section 63, knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence.

(3) Any person convicted of an offence under subsection (2) 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 (if applicable), 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 (if applicable), to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(4) Where a person is charged with an offence in respect of a contravention of section 60(1), (2) or (6), it is a defence for the person to prove that —

- (a) the person was not aware that the person had contravened section 60(1), (2) or (6), as the case may be; and
- (b) within 14 days after becoming aware of the contravention, the person —
 - (i) notified the Authority of the contravention; and
 - (ii) within such time as may be determined by the Authority, took such action in relation to the person's shareholding or control of the voting power in the Singapore operator as the Authority may direct.

(5) Where a person is charged with an offence in respect of a contravention of section 60(1), it is also a defence for the person to prove that, even though the person was aware of the contravention —

- (a) the contravention occurred as a result of an increase in the shareholding as described in section 59(3)(a) of, or in the voting power controlled by, any of the person's associates described in section 59(3)(c)(i) of;
- (b) the person had no agreement or arrangement, whether oral or in writing and whether express or implied, with that associate with respect to the acquisition, holding or disposal of shares or other interests in, or under which they act together in exercising their voting power in relation to, the Singapore operator; and
- (c) within 14 days after the date of the contravention, the person —
 - (i) notified the Authority of the contravention; and
 - (ii) within such time as may be determined by the Authority, took such action in relation to the person's shareholding or control of the voting power in the Singapore operator as the Authority may direct.

(6) Except as provided in subsections (4) and (5), it is not a defence for a person charged with an offence in respect of a contravention of section 60(1), (2) or (6) to prove that the person did not intend to or did not knowingly contravene that provision.

Appeals

66. Any person that is aggrieved by a decision of the Authority under section 60, 61 or 62 may, within 30 days after receiving the decision of the Authority, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

Division 7 – Control of Officers of Operators and Settlement Institutions of Designated Payment Systems

Approval of chief executive officers and directors of operators

67.—(1) Subject to subsection (3), an operator of a designated payment system must not appoint an individual as its chief executive officer or director, as the case may be, in Singapore unless it has applied for and obtained the approval of the Authority.

(2) An application for approval under subsection (1) must be made in such form and manner as the Authority may prescribe.

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may —

- (a) in determining whether to grant its approval under paragraph (b), have regard to such criteria as may be specified by notice in writing to the operator; and
- (b) approve or refuse the application.

(4) Where an operator has obtained the approval of the Authority to appoint an individual as its chief executive officer or director under subsection (2)(b), the person may, without the approval of the Authority, be re-appointed as chief executive officer or director (as the case may be) of the operator immediately upon the expiry of the individual's term of appointment.

(5) Subject to subsection (6), the Authority must not refuse an application for approval of an individual under subsection (1) without giving the operator an opportunity to be heard.

(6) The Authority may refuse an application for approval of an individual under subsection (1) without giving the operator an opportunity to be heard in any of the following circumstances:

- (a) if the individual has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of this Act, being an offence —
 - (i) involving fraud or dishonesty;
 - (ii) the conviction for which involved a finding that he or she had acted fraudulently or dishonestly; or

- (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) if the individual is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) if the individual has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) if the individual has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) if the individual 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 or her that is still in force;
- (f) if the individual has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (i) that 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.

(7) Where the Authority refuses an application for approval under subsection (3)(b), the Authority need not give the individual who was proposed to be appointed an opportunity to be heard.

(8) The operator of a designated payment system shall, as soon as practicable, give written notice to the Authority of the resignation or removal of its chief executive officer or director.

(9) Any operator that, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

(10) In this section and section 68, unless the context otherwise requires —

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

“regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act.

Removal of executive officers or directors of operators and settlement institutions

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

- (a) an executive officer of an operator or a settlement institution of a designated payment system; or
- (b) a director of a Singapore operator or a Singapore settlement institution,

is not a fit and proper person to act as such executive officer or director, the Authority may, by notice in writing, direct the operator or settlement institution to remove —

- (i) the executive officer from employment with the operator or settlement institution, as the case may be; or
- (ii) the director as director of the Singapore operator or Singapore settlement institution, as the case may be,

within such period as the Authority may specify in the notice.

(2) Without affecting any other matter that the Authority may deem relevant, in assessing whether to direct the operator or settlement institution to remove its executive officer or director under subsection (1), the Authority may consider whether the executive officer or director —

- (a) has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement of this Act, being an offence —
 - (i) involving fraud or dishonesty;
 - (ii) the conviction for which involved a finding that he had acted fraudulently or dishonestly; or
 - (iii) that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against him in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has had a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142) or section 101A of the Securities and Futures Act (Cap. 289) made against him that remains in force;
- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
 - (i) which is being or has been wound up by a court; or
 - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the regulatory authority in that foreign country or territory;

- (g) has wilfully contravened or wilfully caused the operator or settlement institution to contravene any provision of this Act;
- (h) has, without reasonable excuse, failed to secure the compliance of the operator or settlement institution with this Act, the Monetary Authority of Singapore Act (Cap. 186) or any of the written laws set out in the Schedule to that Act;
- (i) has failed to discharge any of the duties of his or her office or employment; or
- (j) needs to be removed in the public interest.

(3) Subject to subsection (4), before directing an operator or a settlement institution to remove its chief executive officer or director under subsection (1), the Authority must give –

- (a) the operator or settlement institution, as the case may be; and
- (b) the individual concerned,

an opportunity to be heard.

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

- (a) the person is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the person has been convicted, whether in Singapore or elsewhere, of an offence committed before, on or after the date of commencement this Act —
 - (i) involving fraud or dishonesty, or the conviction for which involved a finding that he had acted fraudulently or dishonestly; and
 - (ii) punishable with imprisonment for a term of 3 months or more.

(5) Without affecting the Authority's power to impose conditions under section 45, the Authority may at any time, by notice in writing to an operator or a settlement institution impose a condition requiring the operator or settlement institution to notify the Authority of a change to any specified attribute (such as residence and nature of appointment) of its chief executive officer or director, and vary any such condition.

(6) Any operator or settlement institution that, without reasonable excuse —

- (a) fails to comply with a direction under subsection (1); or
- (b) contravenes any condition imposed under subsection (5),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

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

Appeals

69.—(1) An operator of a designated payment system that is aggrieved by the decision of the Authority under section 67(3)(b) may, within 30 days after receiving the decision of the Authority, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

(2) An operator or a settlement institution, as the case may be, or any executive officer or director of the operator or settlement institution, that is aggrieved by a direction of the Authority under section 68(1) may, within 30 days after receiving the direction, appeal in writing to the Minister whose decision shall be final and shall be given effect to by the Authority.

Division 8 – Audit of Operators and Settlement Institutions of Designated Payment Systems

Auditing

70.—(1) Despite the provisions of the Companies Act (Cap. 50), an operator or a settlement institution of a designated payment system —

- (a) must, on an annual basis, appoint an auditor; and
- (b) if for any reason its auditor ceases to be its auditor, appoint another auditor as soon as practicable after such cessation.

(2) The Authority may appoint an auditor —

- (a) if the operator or settlement institution of a designated payment system fails to appoint an auditor; or
- (b) if the Authority considers it desirable that another auditor should act with the auditor appointed under subsection (1),

and may at any time fix the remuneration to be paid by the operator or settlement institution of a designated payment system to the auditor the Authority appoints.

(3) The duties of an auditor appointed under subsection (1) or (2) are —

- (a) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the operator or settlement institution of a designated payment system; and
- (b) to —
 - (i) in the case of a Singapore operator or Singapore settlement institution, make a report on the financial statements or consolidated financial statements of the operator or settlement institution of a designated payment system in accordance with section 207 of the Companies Act; or
 - (ii) in the case of an operator or settlement institution incorporated outside Singapore, make a report on its latest annual balance sheet and profit and loss account together with any notes thereon showing the assets and liabilities and profit or loss arising out of the operator's or settlement institution's

operations in Singapore, as the case may be, which complies with section 207 of the Companies Act.

(4) The Authority may, by notice in writing to an auditor, impose all or any of the following duties on the auditor in addition to those provided under subsection (3), and the auditor must carry out the duties so imposed:

- (a) a duty to submit such additional information in relation to the audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the operator or settlement institution of a designated payment system, as the case may be;
- (c) a duty to carry out any other examination, or establish any procedure, in relation to the audit in any particular case;
- (d) a duty to submit a report on any of the matters mentioned in paragraphs (b) and (c).

(5) The operator or settlement institution of a designated payment system must remunerate the auditor in respect of —

- (a) such remuneration the Authority has fixed under subsection (2); and
- (b) the discharge of all or any of the additional duties of the auditor imposed under subsection (4).

(6) Despite any other provision of this Act or the provisions of the Companies Act, the Authority may at any time direct the operator or settlement institution of a designated payment system to —

- (a) remove the auditor of the operator or settlement institution of a designated payment system; and
- (b) appoint another auditor,

if the Authority is not satisfied with the performance of any duty by the auditor.

(7) The auditor's report made under subsection (3)(b) must be attached to the balance-sheet and the profit and loss account, the financial statements or the consolidated financial statements, as the case may be, and a copy of the report, together with any report submitted under subsection (4), must be submitted in writing to the Authority.

(8) If an auditor, in the course of performing the auditor's duties, is satisfied that —

- (a) there has been a serious breach or non-observance of the provisions of this Act;
- (b) a criminal offence involving fraud or dishonesty has been committed;
- (c) losses have been incurred that reduce the capital of the operator or settlement institution of a designated payment system by 50% or more;
- (d) any irregularity that has or may have a material effect upon the accounts of the operator or settlement institution, as the case may be, including any irregularity that

affects or jeopardises, or may affect or jeopardise, the interests of the participants of the designated payment system; or

- (e) the auditor is unable to confirm that the claims of creditors of the operator or settlement institution of a designated payment system are still covered by the assets of the operator or settlement institution of a designated payment system,

the auditor must immediately report the matter to the Authority.

- (9) Where an auditor or employee of the auditor discloses in good faith to the Authority —
 - (a) the auditor's or employee's knowledge or suspicion of any of the matters mentioned in subsection (8); or
 - (b) any information or other matter on which that knowledge or suspicion is based,

the disclosure is not a breach of any restriction upon the disclosure imposed by any law, contract or rules of professional conduct, and the auditor or employee is not liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.

(10) Any operator or settlement institution of a designated payment system that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(11) Any auditor that contravenes subsection (4) or (8) 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.

(12) In this section, “consolidated financial statements” and “financial statements” have the same meanings as in section 209A of the Companies Act.

Powers of auditor appointed by Authority

71.—(1) An auditor appointed by the Authority under section 70(2) may, for the purpose of carrying out an examination or audit —

- (a) examine, on oath or affirmation, any officer or employee of the operator or settlement institution of a designated payment system, or any other auditor of the operator or settlement institution of a designated payment system;
- (b) require any officer or employee of the operator or settlement institution of a designated payment system, or any other auditor of the operator or settlement institution of a designated payment system, to produce any books held by or on behalf of the operator or settlement institution of a designated payment system relating to its business;
- (c) make copies of or take extracts from, or retain possession of, any books mentioned in paragraph (b) for such period as may be necessary to enable them to be inspected;

- (d) employ such persons as the auditor considers necessary to assist the auditor in carrying out the examination or audit; and
- (e) authorise in writing any person employed by the auditor to do, in relation to the examination or audit, any act or thing that the auditor could do as an auditor under this subsection, other than the examination of a person on oath or affirmation.

- (2) Any individual who, without reasonable excuse —
 - (a) refuses or fails to answer any question put to him or her; or
 - (b) fails to comply with any request made to him or her,

by an auditor appointed under section 70(2) or a person authorised under subsection (1)(e) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 12 months or to both.

Restriction on auditor's and employee's right to communicate certain matters

72.—(1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal —

- (a) an auditor appointed under section 70(1) or (2); or
- (b) any employee of such auditor,

must not disclose any information that comes to the auditor's or employee's knowledge in the course of performing the auditor's or employee's duties, to any person other than the Authority, or in the case of an employee of such auditor, the auditor.

- (2) Any person that contravenes this section shall be guilty of an offence and shall be liable on conviction —
 - (a) in the case of the auditor, to a fine not exceeding \$25,000; or
 - (b) in the case of the employee, to a fine not exceeding \$12,500.

Offence to destroy, conceal, alter, etc. records

73.—(1) Any individual who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under section 70 or 71 —

- (a) destroys, conceals or alters any book relating to the business of an operator or a settlement institution of a designated payment system; or
- (b) sends, or conspires with any other person to send, out of Singapore, any book or asset of any description belonging to, in the possession of or under the control of the operator or settlement institution of a designated payment system,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

- (2) If, in any proceedings for an offence under subsection (1), it is proved that the individual charged with the offence —

- (a) destroyed, concealed or altered any book mentioned in subsection (1)(a); or
- (b) sent, or conspired to send, out of Singapore, any book or asset mentioned in subsection (1)(b),

the onus of proving that, in so doing, the individual did not act with intent to prevent, delay or obstruct the carrying out of an examination or audit under section 70 or 71 lies on him or her.

PART 4

INSPECTION AND INVESTIGATIONS

Inspection by Authority

74.—(1) The Authority may from time to time inspect, under conditions of secrecy, the books of any —

- (a) licensee;
- (b) exempt person or a person exempt under section 102;
- (c) operator of a designated payment system;
- (d) settlement institution of a designated payment system; or
- (e) participant of a designated payment system.

(2) For the purposes of an inspection under this section —

- (a) a person mentioned in subsection (1) in possession of its books must produce such books to the Authority and give such information or facilities as the Authority may require to conduct the inspection;
- (b) a person referred to in subsection (1) must procure any person that is in possession of its books to produce the books to the Authority and give such information or facilities as the Authority may require to conduct the inspection; and
- (c) the Authority may —
 - (i) make copies of, or take possession of, any such books;
 - (ii) use, or permit the use of, any such books for the purposes of any proceedings under this Act; and
 - (iii) subject to subsection (4), retain possession of any such books for so long as is necessary —
 - (A) for the purposes of exercising a power conferred by this section;
 - (B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
 - (C) for such proceedings to be commenced and carried on.

(3) A person is not entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) While the books are in the possession of the Authority, the Authority —

(a) must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the possession of the Authority; and

(b) may permit another person to inspect any of the books.

(5) The Authority may require a person that produced any book to the Authority to explain, to the best of the person's knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) Any person that fails, without reasonable excuse, to comply with subsection (2)(a) or (b) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction; or

(b) in any other case, 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.

Investigation by Authority

75.—(1) The Authority may conduct such investigation as it considers necessary or expedient for any of the following purposes:

(a) to determine whether —

(i) a licensee, exempt person, or a person exempt under section 102 is carrying on its business in a manner likely to be detrimental to the interests of its customers;

(ii) a licensee, exempt person, or a person exempt under section 102 is conducting its payment service business in a proper manner;

(iii) an operator of a designated payment system or a licensee who is the operator of a payment system, as the case may be, is operating the payment system in a manner likely to be detrimental to the interests of its customers;

(iv) an operator of a designated payment system or a licensee who is the operator of a payment system, as the case may be, is operating the payment system in a proper manner;

(v) a settlement institution of a designated payment system or a licensee who is a settlement institution of a payment system, as the case may be, is carrying

on its business as a settlement institution in a manner likely to be detrimental to the interest of the participants of the payment system;

- (vi) a settlement institution of a designated payment system or licensee who is a settlement institution of a payment system, as the case may be, is conducting its business as a settlement institution in a proper manner;
 - (vii) a participant of a designated payment system or a licensee who is a participant of a payment system is carrying on its business as a participant in a manner likely to be detrimental to the interests of the other participants of the payment system.
- (b) to investigate an alleged or suspected offence or contravention of any provision of this Act;
 - (c) to ensure compliance with this Act or any notice in writing issued by the Authority under this Act.
- (2) For the purposes of subsection (1), the Authority may —
- (a) by notice in writing, require any person to provide information or to produce books relating to any matter under investigation, and such person must immediately comply with that requirement;
 - (b) make copies of, or take possession of, any such books;
 - (c) use, or permit the use of, any such books for the purposes of any proceedings under this Act; and
 - (d) subject to subsection (4), retain possession of any such books for so long as is necessary —
 - (i) for the purposes of exercising a power conferred by this section;
 - (ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
 - (iii) for such proceedings to be commenced and carried on.
- (3) A person is not entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.
- (4) While the books are in the possession of the Authority, the Authority —
- (a) must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the possession of the Authority; and
 - (b) may permit another person to inspect any of the books.
- (5) The Authority may require a person that produced any book to the Authority to explain, to the best of the person's knowledge and belief, any matter about the compilation of the book or to which the book relates.
- (6) The Authority may exercise any of its powers for the purposes of conducting an investigation under this section despite the provisions of any prescribed written law (or any requirement imposed under the prescribed written law) or any rule of law.

(7) A requirement imposed by the Authority in the exercise of its powers under this section has effect despite any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law (or any requirement imposed under the prescribed written law), rule of law, contract or rule of professional conduct.

(8) Any person that complies with a requirement imposed by the Authority in the exercise of its powers under this section is not to be treated as being in breach of any restriction on the disclosure of the information imposed by any prescribed written law (or any requirement imposed under the prescribed written law), rule of law, contract or rule of professional conduct.

(9) No civil or criminal action lies against any person for —

- (a) providing information or producing books to the Authority if the person provided the information or produced the books in good faith in compliance with a requirement imposed by the Authority under this section; or
- (b) doing or omitting to do any act, if the person did or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Authority under this section.

(10) Any person that fails, without reasonable excuse, to comply with subsection (2)(a) or a requirement of the Authority under subsection (5) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction; or
- (b) in any other case, 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.

(11) In this section, “prescribed written law” means this Act, or any of the following written laws and any subsidiary legislation made under this Act or those written laws:

- (a) Banking Act (Cap. 19);
- (b) Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);
- (c) Finance Companies Act (Cap. 108);
- (d) Financial Advisers Act (Cap. 110);
- (e) Financial Holding Companies Act
- (f) Insurance Act (Cap. 142);
- (g) Monetary Authority of Singapore Act (Cap. 186);
- (h) Securities and Futures Act (Cap. 289);
- (i) Trust Companies Act (Cap. 336);
- (j) Credit Bureau Act 2016 (No. 27 of 2016);

- (k) such other written law as the Authority may prescribe.

Confidentiality of inspection and investigation reports

76.—(1) Subject to subsection (2), where the Authority has —

- (a) produced a written report —
 - (i) upon an inspection under section 74 in respect of a licensee, an exempt person, a person exempt under section 102, an operator, a settlement institution or a participant of a designated payment system; or
 - (ii) in respect of any investigation under section 75; and
- (b) provided the report to the licensee, the exempt person, the person exempt under section 102, the operator, the settlement institution, or a participant of a designated payment system or the person under investigation (called in this section the payment entity or person, as the case may be),

the payment entity or person, or any of the payment entity's or person's officers or auditors, must not disclose the report to any other person.

(2) The report mentioned in subsection (1) may be disclosed —

- (a) by the payment entity or person to the payment entity's or person's officer or auditor solely in connection with the performance of the duties of the officer or auditor in the payment entity or person;
- (b) by any officer or auditor of the payment entity or person to any other officer or auditor of the payment entity or person, solely in connection with the performance of their duties in the relevant person; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as the Authority thinks fit on the payment entity or person, any of the payment entity's or person's officers or auditors, or the person to whom disclosure is approved, and the payment entity or person, officer, auditor or the person to whom disclosure is approved must comply with the condition or restriction.

(4) The obligations of an officer or auditor mentioned in subsections (1) and (3) continue after the termination or cessation of the person's employment with or appointment by the relevant person.

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

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (b) in any other case, to a fine not exceeding \$100,000.

(6) Any person to whom the report is disclosed and that knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence unless the person proves that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written form, the person has, as soon as practicable after receiving the report, surrendered or taken all reasonable steps to surrender the report and all copies of the report to the Authority; and
- (c) where the disclosure was made in an electronic form, the person has, as soon as practicable after receiving the report, taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies of the report in other forms have been surrendered to the Authority.

(7) Any person convicted of an offence under subsection (6) shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (b) in any other case, to a fine not exceeding \$100,000.

Self-incrimination

77.—(1) A person is not excused from disclosing information to the Authority pursuant to a requirement made of the person under this Part on the grounds that the disclosure of the information might tend to incriminate the person.

(2) Where a person claims, before making a statement disclosing information that the person is required to disclose by such requirement, that the statement might tend to incriminate the person, that statement is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 96(1) or (2).

Savings for advocates and solicitors

78.—(1) Nothing in this Part —

- (a) compels an advocate and solicitor to disclose or produce privileged communication, or a document or other material containing privileged communication, made by or to him or her in that capacity; or
- (b) authorises the taking of any such document or other material that is in his or her possession.

(2) An advocate and solicitor who refuses to disclose the information or produce the document or other material mentioned in subsection (1) must nevertheless give the name and address (if he or she knows them) of the person to whom, or by or on behalf of whom, that privileged communication was made.

(3) Any advocate and solicitor who contravenes subsection (2) shall be guilty of an offence.

PART 5
EMERGENCY POWERS

Interpretation of this Part

79. In this Part, unless the context otherwise requires —

“business” includes affairs and property;

“emergency”, in relation to a designated payment system, means—

- (a) any situation which prevents a designated payment system from carrying on its functions;
- (b) any situation in which, in the opinion of the Authority, a designated payment system is carrying on its operations in a manner likely to be detrimental to the interests of its participants; or
- (c) any undesirable situation or practice which, in the opinion of the Authority, constitutes an emergency.

“office-holder”, in relation to a payment entity, means any person acting as the liquidator, provisional liquidator, receiver, receiver and manager, judicial manager or an equivalent person of the relevant payment entity;

“relevant business”, in relation to a payment entity, means any of its business —

- (a) in relation to which a statutory adviser has been appointed under section 80(2)(b);
- (b) in relation to which a statutory manager has been appointed under section 80(2)(c); or
- (c) that the Authority has assumed control of under section 80(2)(c);

“payment entity” means any of the following:

- (a) a licensee;
- (b) a person licensed to carry on the business of issuing credit cards or charge cards in Singapore under section 57B of the Banking Act (Cap. 19);
- (c) an operator of a designated payment system;
- (d) a settlement institution of a designated payment system.

“statutory adviser” means a statutory adviser appointed under section 80(2)(b);

“statutory manager” means a statutory manager appointed under section 80(2)(c).

Action by Authority if the payment entity is unable to meet obligations, etc

- 80.**—(1) The Authority may exercise one or more of the powers specified in subsection (2) as appears to it to be necessary, where —
- (a) a payment entity informs the Authority that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
 - (b) a payment entity is insolvent, becomes unable to meet its obligations, or suspends payments;
 - (c) the Authority is of the opinion that the payment entity —
 - (i) is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
 - (ii) has contravened any of the provisions of this Act; or
 - (d) the Authority considers it in the public interest to do so.
- (2) Subject to subsection (1), the Authority may —
- (a) require the payment entity to immediately take any action or to do or not to do any act in relation to its business as the Authority may consider necessary;
 - (b) appoint one or more persons as statutory adviser, on such terms as the Authority may specify, to advise the payment entity on the proper management of its business as the Authority may determine; or
 - (c) assume control of and manage the business of the payment entity as the Authority may determine, or appoint one or more persons as statutory manager to do so on such terms as the Authority may specify.
- (3) Where the Authority appoints 2 or more persons as statutory manager of a payment entity, the Authority must specify, in the terms of the appointment, which of the duties, functions and powers of the statutory manager —
- (a) may be discharged or exercised by such persons jointly and severally;
 - (b) must be discharged or exercised by such persons jointly; and
 - (c) must be discharged or exercised by a specified person of such persons.
- (4) Where the Authority has exercised any power under subsection (2), it may, at any time and without affecting its powers under section 12(2) or (3), do one or more of the following:
- (a) vary or revoke any requirement of, any appointment made by, or any action taken by the Authority under subsection (2) in the exercise of such power, on such terms as it may specify;
 - (b) exercise any of the powers under subsection (2);
 - (c) add to, vary or revoke any term the Authority has specified under this section.
- (5) A statutory manager or a statutory adviser incurs no liability for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with —

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

Emergency powers of the Authority applicable to designated payment systems

81.—(1) Without affecting section 80, where the Authority has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public to so act, the Authority may exercise one or more of the following powers:

- (a) by notices in writing, direct an operator or a settlement institution of a designated payment system to take such action as the Authority considers necessary to maintain or restore the safe and efficient operation of the designated payment system;
- (b) present a petition to the High Court for the winding up or bankruptcy, as the case may be, of an operator or a settlement institution of a designated payment system;
- (c) require an operator of a designated payment system to cease operation of the designated payment system.

(2) Without prejudice to the generality of subsection (1)(a), the actions which the Authority may direct an operator or a settlement institution of a designated payment system to take include modifying or suspending any of the rules of the designated payment system.

(3) The Authority may modify or cancel any action taken by it under subsection (1), and in so modifying or cancelling any such action, the Authority may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

(4) Any operator or settlement institution of a designated payment system, which fails to comply with any direction issued under subsection (1)(a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Assumption of control

82.—(1) Upon assuming control of any business of a payment entity under section 80(2)(c), the Authority or statutory manager, as the case may be, must take custody or control of the relevant business.

(2) During the period when the Authority or statutory manager is in control of a payment entity's relevant business, the Authority or statutory manager —

- (a) must manage the relevant business in the name of and on behalf of the payment entity; and
- (b) is treated as an agent of the payment entity.

(3) In managing the payment entity's relevant business, the Authority or statutory manager has all the duties, powers and functions of the members of the board of directors of the payment entity (collectively and individually) under —

- (a) this Act;
- (b) the Companies Act (Cap. 50); and
- (c) the payment entity's constitution,

including powers of delegation, in relation to the relevant business.

(4) Despite subsection (5), the Authority or statutory manager is not required to call any meeting of the payment entity under the Companies Act or the payment entity's constitution.

(5) Despite any written law or rule of law —

- (a) upon the Authority or statutory manager assuming control of any business of a payment entity under section 80(2)(c), any appointment of an individual as chief executive officer or director of the payment entity that was in force immediately before the assumption of control is treated as revoked, unless the Authority gives its approval, by notice in writing to the individual and the payment entity, for the individual to remain in the appointment; and
- (b) during the period when the Authority or statutory manager is in control of the payment entity's relevant business, an individual must not be appointed as chief executive officer or director of the payment entity, except with the approval of the Authority.

(6) Where the Authority has given its approval under subsection (5) for an individual to remain in the appointment of, or to be appointed as, chief executive officer or director of a payment entity, the Authority may at any time, by notice in writing to the individual, revoke its approval and such appointment is treated as revoked on the date specified in the notice.

(7) Despite any written law or rule of law, if any individual whose appointment as chief executive officer or director of a payment entity is revoked under subsection (5) or (6), acts or purports to act after the revocation as chief executive officer or director of the payment entity during the period when the Authority or statutory manager is in control of the payment entity's relevant business under section 80(2)(c) —

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

(8) Despite any written law or rule of law, if any individual who is appointed as chief executive officer or director of a payment entity in contravention of subsection (5) acts or purports to act as chief executive officer or director of the payment entity during the period

when the Authority or statutory manager is in control of the payment entity's relevant business under section 80(2)(c)—

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

(9) During the period when the Authority or statutory manager is in control of a payment entity's relevant business —

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

the direction or decision mentioned in sub-paragraph (i) prevails over the direction or decision mentioned in sub-paragraph (ii) to the extent of the conflict or inconsistency; and

- (b) a person must not exercise any voting or other right attached to any share in the payment entity in any manner that may defeat or interfere with any duty, power or function of the Authority or statutory manager, and any such act or purported act is invalid and of no effect.

(10) Any individual who is guilty of an offence under subsection (7) or (8) shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction.

Other provisions concerning control

83.—(1) The Authority must cease to be in control of a payment entity's relevant business when the Authority is satisfied that the reasons for its assumption of control of the relevant business have ceased to exist.

(c) A statutory manager is treated to have assumed control of a payment entity's relevant business on the date of the statutory manager's appointment as a statutory manager.

(2) Without affecting the generality of section 80(4)(a), the Authority may at any time revoke the appointment of a statutory manager in relation to a payment entity's relevant business —

- (a) if the Authority is satisfied that the reasons for the appointment have ceased to exist; or
- (b) on any other ground.

(3) The statutory manager must cease to be in control of the relevant business upon revocation of its appointment under subsection (3) or section 80(4)(a).

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

- (a) its assuming control of a payment entity's relevant business;
- (b) the cessation of its control of a payment entity's relevant business;
- (c) the appointment of a statutory manager in relation to a payment entity's relevant business; and
- (d) the revocation of a statutory manager's appointment in relation to a payment entity's relevant business.

Responsibilities of directors, officers, etc., of the payment entity

84.—(1) During the period when the Authority or statutory manager is in control of a payment entity's relevant business —

- (a) the High Court may, on an application of the Authority or statutory manager, direct any former or current relevant person of the payment entity to pay, deliver, convey, surrender or transfer to the Authority or statutory manager, within such period as the High Court may specify, any property or book of the payment entity that —
 - (i) forms part of or relates to the business of the payment entity; and
 - (ii) is in the person's possession or control; and
- (b) any former or current relevant person of the payment entity must provide the Authority or statutory manager such information as the Authority or statutory manager may require to —
 - (i) discharge its duties or functions; or
 - (ii) exercise its powers,

in relation to the payment entity, within such time and in such manner as the Authority or statutory manager may specify.

(2) Any person who —

- (a) without reasonable excuse, fails to comply with subsection (1)(b); or
- (b) in purported compliance with subsection (1)(b), knowingly or recklessly provides any information or document that is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence (if applicable), to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

(3) In this section, “relevant person”, in relation to a payment entity, means a chief executive officer, director, executive officer, employee, agent, banker, auditor or office-holder of, or trustee for, the payment entity.

Remuneration and expenses of Authority and others in certain cases

- 85.** The Authority may at any time fix the remuneration and expenses to be paid by a payment entity —
- (a) to a statutory adviser or statutory manager appointed in relation to the payment entity, whether or not the appointment has been revoked; and
 - (b) where the Authority has assumed control of any business of a payment entity under section 80(2)(c), to the Authority and any person appointed by the Authority under section 5 in relation to its assumption of control of such business, whether or not the Authority has ceased to be in control of such business.

PART 6

ASSISTANCE TO FOREIGN REGULATORY AUTHORITIES

Interpretation of this Part

86. In this Part, unless the context otherwise requires —

“enforce” means enforce through criminal or administrative proceedings;

“enforcement” means the taking of any action to enforce a law or regulatory requirement against a specified person, being a law or regulatory requirement that relates to the payment systems or payment services of the foreign country of the regulatory authority concerned;

“foreign country” means a country or territory other than Singapore;

“investigation” means an investigation to determine if a specified person has contravened or is contravening a law or regulatory requirement, being a law or regulatory requirement that relates to the payment systems or payment services of the foreign country of the regulatory authority concerned;

“prescribed written law” means this Act, or any of the following written laws and subsidiary legislation made thereunder:

- (a) Banking Act (Cap. 19);
- (b) Finance Companies Act (Cap. 108);
- (c) Financial Advisers Act (Cap. 110);
- (d) Financial Holding Companies Act (Cap.);

- (e) Insurance Act (Cap. 142);
- (f) Monetary Authority of Singapore Act (Cap. 186);
- (g) Securities and Futures Act (Cap. 289);
- (h) such other Act as the Authority may prescribe.

“material” includes any information, book, document or other record in any form whatsoever, and any container or article relating thereto;

“regulatory authority”, in relation to a foreign country, means an authority of the foreign country exercising any function that corresponds to a regulatory function of the Authority under this Act;

“supervision”, in relation to a regulatory authority, means the taking of any action for or in connection with the supervision of the licensee, an operator, a settlement institution or a participant of a designated payment system, or any other person, regulated by the regulatory authority.

Conditions for provision of assistance

87.—(1) The Authority may provide the assistance referred to in section 89 to a regulatory authority of a foreign country if the Authority is satisfied that all of the following conditions are fulfilled:

- (a) the assistance is intended to enable the regulatory authority, or any other authority of the foreign country, to carry out the supervision, investigation or enforcement;
- (b) the regulatory authority has given a written undertaking that any material or copy thereof obtained pursuant to its request shall not be used for any purpose other than a purpose that is specified in the request and approved by the Authority;
- (c) the regulatory authority has given a written undertaking not to disclose to a third party (other than a designated third party of the foreign country in accordance with paragraph (d)) any material received pursuant to the request unless the regulatory authority is compelled to do so by the law or a court of the foreign country;
- (d) the regulatory authority has given a written undertaking to obtain the prior consent of the Authority before disclosing any material received pursuant to the request to a designated third party, and to make such disclosure only in accordance with such conditions as may be imposed by the Authority;
- (e) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
- (f) the matter to which the request relates is of sufficient gravity; and
- (g) the rendering of assistance will not be contrary to the public interest.

(2) For the purposes of subsection (1)(c) and (d), “designated third party”, in relation to a foreign country, means —

- (a) any person or body responsible for supervising the regulatory authority in question;

- (b) any authority of the foreign country responsible for carrying out the supervision, investigation or enforcement in question; or
- (c) any authority of the foreign country exercising a function that corresponds to a regulatory function of the Authority under this Act.

Other factors to consider for provision of assistance

88. In deciding whether to grant a request for assistance referred to in section 89 from a regulatory authority of a foreign country, the Authority may also have regard to the following:

- (a) whether the act or omission that is alleged to constitute the contravention of the law or regulatory requirement to which the request relates would, if it had occurred in Singapore, have constituted an offence under this Act;
- (b) whether the regulatory authority has given or is willing to give an undertaking to the Authority to comply with a future request by the Authority to the regulatory authority for similar assistance; and
- (c) whether the regulatory authority has given or is willing to give an undertaking to the Authority to contribute towards the costs of providing the assistance that the regulatory authority has requested.

Assistance that may be rendered

89.—(1) Notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, the Authority or any person authorised by the Authority may, in relation to a request by a regulatory authority of a foreign country for assistance —

- (a) transmit to the regulatory authority any material in the possession of the Authority that is requested by the regulatory authority or a copy thereof;
- (b) order any person to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority;
- (c) order any person to transmit directly to the regulatory authority any material that is requested by the regulatory authority or a copy thereof;
- (d) order any person to make an oral statement to the Authority on any information requested by the regulatory authority, record such statement, and transmit the recorded statement to the regulatory authority; or
- (e) request any Ministry, Government department or statutory authority to furnish to the Authority any material that is requested by the regulatory authority or a copy thereof, and transmit the material or copy to the regulatory authority.

(2) The assistance referred to in subsection (1)(c) may only be rendered if the material sought is to enable the regulatory authority to carry out investigation or enforcement.

(3) An order under subsection (1)(b), (c) or (d) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by

any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

- (4) Nothing in this section shall compel an advocate and solicitor —
- (a) to furnish or transmit any material or copy thereof that contains; or
 - (b) to disclose,

a privileged communication made by or to him in that capacity.

(5) An advocate and solicitor who refuses to furnish or transmit any material or copy thereof that contains, or to disclose, any privileged communication shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) A person is not excused from making an oral statement pursuant to an order made under subsection (1)(d) on the ground that the statement might tend to incriminate him.

Offences under this Part

90.—(1) Any person who —

- (a) without reasonable excuse refuses or fails to comply with an order under section 89(1)(b), (c) or (d);
- (b) in purported compliance with an order made under section 89(1)(b) or (c), furnishes to the Authority or transmits to a regulatory authority any material or copy thereof known to the person to be false or misleading in a material particular; or
- (c) in purported compliance with an order made under section 89(1)(d), makes a statement to the Authority that is false or misleading in a material particular,

shall be guilty of an offence.

(2) Any person who is guilty of an offence under subsection (1)(a) shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(3) Any person who is guilty of an offence under subsection (1)(b) or (c) shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or

- (b) in any other case, to a fine not exceeding \$100,000.

Immunities

91.—(1) No civil or criminal proceedings, other than proceedings for an offence under section 90, shall lie against any person for —

- (a) furnishing to the Authority or transmitting any material or copy thereof to the Authority or a regulatory authority of a foreign country if he had furnished or transmitted that material or copy in good faith in compliance with an order made under section 89(1)(b) or (c);
- (b) making a statement to the Authority in good faith and in compliance with an order made under section 89(1)(d); or
- (c) doing or omitting to do any act, if he had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order referred to in subsection (1)(a) or (b) shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by any prescribed written law or any requirement imposed thereunder, any rule of law, any contract or any rule of professional conduct.

PART 7

OFFENCES

Offences by corporations

92.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

- (a) an officer, employee or agent of the corporation engaged in that conduct within the scope of his or her actual or apparent authority; and
- (b) the officer, employee or agent had that state of mind,

is evidence that the corporation had that state of mind.

(2) Where a corporation commits an offence under this Act, a person —

- (a) who is —
 - (i) an officer of the corporation, or a member of a corporation whose affairs are managed by its members; or
 - (ii) an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the offence; and
- (b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the offence;
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the corporation; or
- (iii) knew or ought reasonably to have known that the offence by the corporation (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall (if this is not already an offence under section 94(1)) be guilty of the same offence as is the corporation, and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the corporation if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the corporation would bear.

(4) To avoid doubt, this section does not affect the application of —

- (a) Chapters V and VA of the Penal Code (Cap. 224); or
- (b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (1) also does not affect the liability of the corporation for an offence under this Act, and applies whether or not the corporation is convicted of the offence.

(6) In this section —

“corporation” includes a limited liability partnership within the meaning of section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer”, in relation to a corporation, means any director, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —

- (a) any person purporting to act in any such capacity; and
- (b) for a corporation whose affairs are managed by its members, any of those members as if the member was a director of the corporation;

“state of mind” of a person includes —

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

Offences by unincorporated associations or partnerships

93.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

- (a) an employee or agent of the unincorporated association or partnership engaged in that conduct within the scope of his or her actual or apparent authority; and
- (b) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

(2) Where an unincorporated association or a partnership commits an offence under this Act, a person —

- (a) who is —
 - (i) an officer of the unincorporated association or a member of its governing body;
 - (ii) a partner in the partnership; or
 - (iii) an individual who is involved in the management of the unincorporated association or partnership and is in a position to influence the conduct of the unincorporated association or partnership (as the case may be) in relation to the commission of the offence; and
- (b) who —
 - (i) consented or connived, or conspired with others, to effect the commission of the offence;
 - (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the unincorporated association or partnership; or
 - (iii) knew or ought reasonably to have known that the offence by the unincorporated association or partnership (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the unincorporated association or partnership (as the case may be), and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the unincorporated association or partnership if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the unincorporated association or partnership would bear.

(4) To avoid doubt, this section does not affect the application of —

- (a) Chapters V and VA of the Penal Code (Cap. 224); or
- (b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (1) also does not affect the liability of an unincorporated association or a partnership for an offence under this Act, and applies whether or not the unincorporated association or partnership is convicted of the offence.

(6) In this section —

“officer”, in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, and includes —

- (a) any person holding a position analogous to that of president, secretary or member of a committee of the unincorporated association; and
- (b) any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“state of mind” of a person includes —

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

Offences by officers

94.—(1) Any officer of —

- (a) a licensee; or
- (b) a participant, an operator or a settlement institution of a payment system;

whose duty is or includes ensuring that the licensee, participant, operator or settlement institution, as the case may be, complies with a provision of this Act, who fails to take all reasonable steps to secure such compliance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) Any officer of —

- (a) a licensee; or
- (b) a participant, an operator or a settlement institution of a payment system;

whose duty is or includes submitting information to the Authority or any other person under this Act, who fails to take all reasonable steps to ensure the accuracy and correctness of any information so submitted, shall (if such failure is not already an offence under section 96(1) or (2)) be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In any proceedings against an officer under subsection (1) or (2), it is a defence for the officer to prove that he or she had reasonable grounds for believing that —

- (a) another individual was charged with the duty of —
 - (i) securing compliance with the requirements of this Act; or
 - (ii) ensuring that the information submitted was accurate,

as the case may be; and

(b) that individual was competent, and in a position, to discharge that duty.

(4) An officer is not to be sentenced to imprisonment for any offence under subsection (1) or (2) unless, in the opinion of the court, he or she committed the offence wilfully.

Falsification of records by officers, etc.

95.—(1) Any officer, auditor, employee or agent of —

- (a) licensee; or
- (b) a participant, an operator or a settlement institution of a payment system;

who—

- (i) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that licensee, participant, operator or settlement institution, as the case may be;
- (ii) wilfully omits to make an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that licensee, participant, operator or settlement institution, as the case may be, or wilfully causes any such entry to be omitted; or
- (iii) wilfully alters, extracts, conceals or destroys an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of that licensee, participant, operator or settlement institution, as the case may be, or wilfully causes any such entry to be altered, extracted, concealed or destroyed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) In subsection (1), “officer” includes a person purporting to act in the capacity of an officer.

Duty to use reasonable care not to provide false information to Authority

96.—(1) Any individual who provides the Authority with any information under or for the purposes of any provision of this Act must use reasonable care to ensure that the information is not false or misleading in any material particular.

(2) Any individual who —

- (a) signs any document lodged with the Authority; or
- (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to him or her by the Authority,

must use reasonable care to ensure that the document is not false or misleading in any material particular.

(3) Any individual who contravenes subsection (1) or (2) shall (if the provision of such information, or the signing or lodging of such document, that is false or misleading in a material particular is not already an offence under any other provision of this Act) be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

General penalty

97. Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000; or
- (b) in any other case, to a fine not exceeding \$100,000.

Composition of offences

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

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

- (a) was compoundable under this section when the offence was committed; but
- (b) has ceased to be so compoundable,

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

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

(4) All sums collected by the Authority under subsection (1) or (2) are to be paid into the Consolidated Fund.

PART 8

MISCELLANEOUS

Jurisdiction of the District Court

99. Despite any provision to the contrary in the Criminal Procedure Code (Cap. 68), a District Court has —

- (a) jurisdiction to try any offence under this Act; and
- (b) power to impose the full penalty or punishment in respect of any offence under this Act.

Opportunity to be heard

100. Where this Act provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person is to be given such opportunity to be heard.

Power of the court to make certain orders

- 101.**—(1) Where, on an application of the Authority, it appears to the court that a person —
- (a) has committed an offence under this Act; or
 - (b) is about to do an act that, if done, would be an offence under this Act,

the court may (without prejudice to any other order it may make) make one or more of the orders under subsection (2).

- (2) The orders mentioned in subsection (1) are —
- (a) in the case of a persistent or continuing contravention of a provision of this Act, an order restraining a person from —
 - (i) carrying on business in providing one or more types of payment services;
 - (ii) carrying on the business of operating a payment system;
 - (iii) carrying on the business as a settlement institution of a payment system;
 - (iv) holding itself out as a licensee;
 - (v) holding itself out as an operator or settlement institution of a designated payment system;
 - (b) for the purpose of securing compliance with any order made under this section, an order directing a person to do or refrain from doing any specified act; or
 - (c) any ancillary order the court considers to be desirable as a result of making any other order under this section.

(3) The court may, before making an order under subsection (2), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

- (4) Any person that, without reasonable excuse, contravenes an order made under subsection (2) shall be guilty of an offence and shall be liable on conviction —
- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or
 - (b) in any other case, to a fine not exceeding \$100,000.

(5) Subject to subsection (6), subsection (4) does not affect the powers of the court in relation to the punishment of contempt of court.

(6) Where a person is convicted of an offence under subsection (4) in respect of any contravention of an order made under subsection (2), such contravention is not punishable as a contempt of court.

(7) A person cannot be convicted of an offence under subsection (4) in respect of any contravention of an order made under subsection (2) that has been punished as a contempt of court.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

General exemption

102.—(1) The Authority may, by regulations, exempt any person or any class of persons from all or any of the provisions of this Act, subject to such conditions as may be prescribed.

- (2) The Authority may, on the application of any person, exempt the person from —
- (a) all or any of the provisions of this Act; or
 - (b) the requirements specified in any notice in writing,

if the Authority considers it appropriate to do so in the circumstances of the case.

- (3) An exemption under subsection (2) —
- (a) may be granted by notice in writing subject to such conditions as the Authority may specify in the notice;
 - (b) need not be published in the *Gazette*; and
 - (c) may be varied or withdrawn at any time by the Authority.

(4) The Authority may at any time add to, vary or revoke any term or condition imposed under this section.

- (5) Any person that contravenes any condition —
- (a) prescribed under subsection (1);
 - (b) specified by the Authority under subsection (3)(a); or
 - (c) added or varied under subsection (4),

shall be guilty of an offence.

Codes, guidelines, etc. by Authority

103.—(1) The Authority may issue, and in its discretion publish by notification in the *Gazette* or in any other manner it considers appropriate, such codes, guidelines, policy

statements, practice notes and no-action letters as it considers appropriate for providing guidance —

- (a) in furtherance of its regulatory objectives;
- (b) in relation to any matter relating to any of its functions under this Act; or
- (c) in relation to the operation of any of the provisions of this Act.

(2) The Authority may, at any time, amend or revoke the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section.

(3) Where amendments are made under subsection (2) —

- (a) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and
- (b) any reference in this Act or any other written law to the code, guideline, policy statement, practice note or no-action letter, however expressed, is (unless the context otherwise requires) a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(4) Any failure by a person to comply with any provision of a code, guideline, policy statement or practice note issued under this section to the person does not of itself render that person liable to criminal proceedings, but any such failure may, in any proceedings, whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or negate any liability that is in question in the proceedings.

(5) The issue by the Authority of a no-action letter does not of itself prevent the institution of any proceedings against any person for the contravention of any provision of this Act.

(6) Any code, guideline, policy statement or practice note issued under this section may be of general or specific application, and may specify that different provisions of such code, guideline, policy statement or practice note apply to different circumstances or provide for different cases or classes of cases.

(7) To avoid doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section is not to be treated as subsidiary legislation.

(8) In this section, “no-action letter” means a letter written by the Authority to a person to the effect that, if the facts are as represented by the person, the Authority will not institute proceedings against the person in respect of a particular state of affairs or particular conduct.

Power of Authority to issue notice in writing

104.—(1) The Authority may, if it thinks it necessary or expedient for the effective administration of the Act, for the protection of consumers or in the interest of the public or a

section of the public, or for ensuring the integrity and proper management of a designated payment system or ensuring the integrity of the e-money stored in a payment account, issue a notice in writing, either of a general or a specific nature, to —

- (a) any licensee;
- (b) any class of licensee;
- (c) any operator of a designated payment system;
- (d) any class of operators of a designated payment system;
- (e) any settlement institution of a designated payment system;
- (f) any class of settlement institutions of a designated payment system;
- (g) any participant of a designated payment system;
- (h) any class of participants of a designated payment system;
- (i) any exempt person;
- (j) any class of exempt persons;
- (k) any person exempt under section 102; or
- (l) any class of persons exempt under section 102,

to comply with such requirements as the Authority may specify in the notice.

- (2) Without affecting the generality of subsection (1), a notice may be issued —
 - (a) with respect to —
 - (i) the activities that may be carried out by the licensee, the operator, settlement institution or participant, as the case may be, in relation to its business;
 - (ii) the standards, framework, policies and procedures for the prudent management of risks (including information technology risks);
 - (iii) the financial soundness, financial management and stability of the licensee, operator, settlement institution or participant, as the case may be;
 - (iv) the standards to be maintained by the licensee, operator, settlement institution or participant, as the case may be, in the conduct of its business;
 - (v) the arrangement and conditions that are to apply if the licensee, operator, settlement institution or participant, as the case may be, appoints any person as an independent contractor to carry out any of the functions and duties of the licensee, operator, settlement institution or participant, as the case may be;
 - (vi) the type, form, manner and frequency of returns and other information to be submitted to the Authority;
 - (vii) the preparation and publication of reports on the performance of the licensee, operator, settlement institution or participant;
 - (viii) the remuneration of an auditor appointed under this Act and the costs of an audit carried out under this Act;
 - (ix) the appropriate action to be taken by a participant or class of participants, or the operator or settlement institution in relation to its business;
 - (x) the appointment of a person approved by the Authority to advise the participant or class of participants, or the operator or the settlement institution, on the proper conduct of its business;

- (xi) the collection by or on behalf of the Authority of information from the licensee, operator, settlement institution or participant of a payment system, as the case may be, in relation to the conduct of its business at such intervals or on such occasions as may be set out in the notice; and
 - (xii) the manner in which licensees and operators, settlement institutions and participants conduct their dealings with their customers, conflicts of interest involving the licensees and operators, settlement institutions and participants with their customers and the duties of the licensees to their customers in the operation of payment accounts;
 - (xiii) the requirement for a licensee carrying on business in providing money-changing services or cross border money transfer services to display or exhibit such cautionary statements as the Authority thinks fit in a conspicuous place at every place where he or it carries on business in providing money-changing services or cross border money transfer services, as the case may be; and
 - (xiv) the requirement for a licensee to provide cautionary statements in writing to the licensee's customers.
- (b) where any person is contravening, is likely to contravene or has contravened, any provision of this Act, to require the person —
- (i) to comply with that provision or to cease contravening that provision;
 - (ii) to take any action necessary to enable the person to conduct the person's business in accordance with sound principles; and
 - (iii) where the person is a company, to remove any of its directors; and
- (c) for any other purpose specified in this Act.

(3) It is not necessary to publish any notice in writing issued under subsection (1) in the *Gazette*.

(4) The Authority may at any time vary, rescind or revoke any notice issued under subsection (1).

(5) Any person that fails to comply with any requirement specified in a notice issued under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

Power of Authority to prescribe regulations

105.—(1) The Authority may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without affecting the generality of subsection (1), the Authority may make regulations for or with respect to —
- (a) the fees to be paid in respect of any matter or thing required for the purposes of this Act;
 - (b) the corporate governance of a licensee, an operator or settlement institution of a designated payment system;
 - (c) prescribing the offences that may be compounded;
 - (d) prescribing the procedure—
 - (i) for the use of the electronic service mentioned in section 108; and
 - (ii) in circumstances where there is a breakdown or interruption of the electronic service;
 - (e) the imposition, variation or revocation of an access regime, and such transitional or savings provisions as the Authority may consider necessary or expedient;
 - (f) the acquisition or holding of shares or any other interest in an operator of a designated payment system;
 - (g) the acquisition or holding of shares or any other interest by an operator of a designated payment system in any other person;
 - (h) different requirements for the audit of accounts in relation to different designated payment systems;
 - (i) the responsibilities of an operator or a settlement institution of a designated payment system relating to the audit of its accounts; and
 - (j) the procedures applicable in the event of a default in payment obligations, including the suspension and re-admission of participants of a designated payment system.
- (3) Except as otherwise expressly provided in this Act, regulations made under this Act —
- (a) may be of general or specific application;
 - (b) may contain provisions of a savings or transitional nature;
 - (c) may provide that a contravention of any specified provision of the regulations shall be an offence; and
 - (d) may provide —
 - (i) in the case of an individual, for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 2 years or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of \$5,000 for every day or part of a day during which the offence continues after conviction; and
 - (ii) in any other case, for penalties not exceeding a fine of \$100,000 and, in the case of a continuing offence, a further penalty not exceeding a fine of \$10,000 for every day or part of a day during which the offence continues after conviction.

Publication of certain information

106.—(1) The Authority may, from time to time, prepare and publish —

- (a) consolidated statements aggregating any information provided under this Act; or
- (b) for statistical purposes, statements that relate to or are derived from any information provided under this Act in respect of a payment system or any payment service provided by any licensee, being the only payment system or payment service in its class.

(2) The Authority may, from time to time and in such form or manner as it considers appropriate, publish such information as the Authority may consider necessary or expedient to publish in the public interest, including information relating to all or any of the following:

- (a) the lapsing, surrender, revocation or suspension of the licence of any person under section 12;
- (b) the acceptance by any person of an offer to compound an offence under section 98;
- (c) the revocation or withdrawal of any exemption granted under this Act;
- (d) the conviction of any person for any offence under this Act;
- (e) any other action taken by the Authority against any person under this Act.

Service of documents

107.—(1) A document that is permitted or required by this Act to be served on a person may be served as described in this section.

(2) A document permitted or required by this Act to be served on an individual may be served —

- (a) by giving it to the individual personally;
- (b) by sending it by prepaid registered post to the address specified by the individual for the service of documents or, if no address is so specified, the individual's residential address or business address;
- (c) by leaving it at the individual's residential address with an adult apparently resident there, or at the individual's business address with an adult apparently employed there;
- (d) by affixing a copy of the document in a conspicuous place at the individual's residential address or business address;
- (e) by sending it by fax to the fax number last known to the person giving or serving the document as the fax number for the service of documents on the individual; or
- (f) by sending it by email to the individual's last email address.

(3) A document permitted or required by this Act to be served on a partnership (other than a limited liability partnership) may be served —

- (a) by giving it to any partner or other like officer of the partnership;
 - (b) by leaving it at, or by sending it by prepaid registered post to, the partnership's business address;
 - (c) by sending it by fax to the fax number used at the partnership's business address;
- or

(d) by sending it by email to the partnership's last email address to the person giving or serving the document by the partnership.

(4) A document permitted or required by this Act to be served on a body corporate (including a limited liability partnership) or an unincorporated association may be served —

- (a) by giving it to the secretary or other similar officer of the body corporate or the unincorporated association, or the limited liability partnership's manager;
- (b) by leaving it at, or by sending it by prepaid registered post to, the body corporate's or unincorporated association's registered office or principal office;
- (c) by sending it by fax to the fax number used at the body corporate's or unincorporated association's registered office or principal office; or
- (d) by sending it by email to the body corporate's or unincorporated association's last email address.

(5) Service of a document under subsection (2), (3) or (4) takes effect —

- (a) if the document is sent by fax and a notification of successful transmission is received, on the day of transmission;
- (b) if the document is sent by prepaid registered post, 2 days after the day the document was posted (even if it is returned undelivered); and
- (c) if the document is sent by email, at the time the email becomes capable of being retrieved by the person.

(6) This section does not apply to documents to be served in proceedings in court.

(7) In this section —

“business address” means —

- (a) in the case of an individual, the individual's usual or last known place of employment or place for carrying on business, in Singapore; or
- (b) in the case of a partnership (other than a limited liability partnership), the partnership's principal or last known place for carrying on business in Singapore;

“document” includes a notice permitted or required by this Act to be served;

“last email address” means—

- (a) the last email address given by the addressee concerned to the person giving or serving the document as the email address for the service of documents under this Act; or
- (b) the last email address of the addressee concerned known to the person giving or serving the document;

“residential address” means an individual's usual or last known place of residence in Singapore.

Electronic service

- 108.**—(1) The Authority may provide an electronic service for the service of any document that is required or authorised by this Act to be served on any person.
- (2) For the purposes of the electronic service, the Authority may assign to any person —
- (a) an authentication code; and
 - (b) an account with the electronic service.
- (3) Despite section 107, where a person has given consent for any document to be served on the person through the electronic service —
- (a) the Authority may serve the document on that person by transmitting an electronic record of the document to that person’s account with the electronic service; and
 - (b) the document is treated as having been served at the time when an electronic record of the document enters the person’s account with the electronic service.

- (4) In this section —

“account with the electronic service”, in relation to any person, means a computer account within the electronic service that is assigned by the Authority to the person for the storage and retrieval of electronic records relating to the person;

“authentication code”, in relation to any person, means an identification or identifying code, a password or any other authentication method or procedure that is assigned to the person for the purposes of identifying and authenticating the access to and use of the electronic service by the person;

“document” includes a notice and order;

“electronic record” has the same meaning as in section 2(1) of the Electronic Transactions Act (Cap. 88).

Amendment of Schedules

- 109.**—(1) The Minister may from time to time, by order published in the *Gazette*, amend, add to or vary the First, Second or Third Schedule.
- (2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.
- (3) Any order made under subsection (1) is to be presented to Parliament as soon as possible after publication in the *Gazette*.

FIRST SCHEDULE

Section 2 and 109 and Second Schedule

REGULATED ACTIVITIES

PART I

TYPE OF PAYMENT SERVICES

The following are payment services for the purposes of this Act:

1. providing account issuance services;
2. providing domestic money transfer services;
3. providing cross border money transfer services;
4. providing merchant acquisition services;
5. e-money issuance;
6. providing virtual currency services;
7. providing money-changing services.

PART II

INTERPRETATION

1. In this Schedule —

“direct debit” means the act of debiting the payer’s payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee’s payment service provider or to the payer’s own payment service provider;

“dealing in virtual currency” means—

- (a) buying virtual currency; or
- (b) selling virtual currency,

in exchange for another virtual currency or for any currency, but does not include—

- (i) facilitating the exchange of virtual currency;
- (ii) accepting virtual currency as a means of payment for the provision of goods or services; or
- (iii) using virtual currency as a means of payment for the provision of goods or services.

“e-money issuance” means issuing e-money in Singapore or to persons in Singapore;

“facilitating the exchange of virtual currency” means the establishment or operation of a virtual currency exchange where the person who establishes or operates the virtual currency exchange comes into possession (whether in advance or otherwise) of money or virtual currency in respect of any offer or invitation to exchange, buy or sell virtual currency;

“financial institution” means—

- (a) any person that is licensed, approved, registered or regulated by the Authority under any written law and includes any person that is exempted under the relevant law from being licensed, approved, registered or regulated; or
- (b) any person that is licensed, approved, registered or otherwise regulated under any law administered by a corresponding authority in a foreign country to carry on any financial activities in that country, or that is exempted from such licensing, approval, registration or regulation for the carrying on of any financial activities in that country.

“providing account issuance services” means—

- (a) issuing a payment account to any person in Singapore; or
- (b) providing in Singapore services in relation to any of the operations required for operating a payment account, including—
 - (i) services enabling money to be placed on a payment account; or
 - (ii) services enabling money to be withdrawn from a payment account.

other than providing domestic money transfer services.

“providing domestic money transfer services” means accepting money for the purpose of executing or arranging for the execution of one or more of the following payment transactions in Singapore, where the payment service user is not a financial institution—

- (a) payment transactions executed from, by way of or through a payment account;
- (b) direct debits including one-off direct debits through a payment account;
- (c) credit transfers, including standing orders through a payment account; or
- (d) accepting any money from any person (A) for transfer to another person’s (B) payment account, where both A and B are not the same person.

“providing cross border money transfer services” means, whether as principal or agent—

- (a) accepting moneys in Singapore for the purpose of transmitting, or arranging for the transmission, of moneys to any person in another country or territory outside Singapore; or

- (b) receiving for, or arranging for the receipt by, any person in Singapore, moneys from a country or territory outside Singapore,

but does not include such other services that the Authority may prescribe.

“providing merchant acquisition services” means contracting with a merchant to accept and process payment transactions, which result in a transfer of money to the merchant, whether or not the payment service provider comes into possession of money in respect of the payment transactions, where the merchant carries on business in Singapore, is incorporated, formed or registered in Singapore, or the contract is entered into in Singapore.

“providing money-changing services” means buying or selling foreign currency notes;

“providing virtual currency services” means—

- (a) dealing in virtual currency;
- (b) facilitating the exchange of virtual currency; or
- (c) such other service relating to virtual currency as the Authority may prescribe,

in Singapore or providing such services to persons in Singapore but does not include such other service relating to virtual currency as the Authority may prescribe.

“virtual currency exchange” means a place at which, or a facility (whether electronic or otherwise)—

- (a) by means of which offers or invitations to exchange, buy or sell virtual currency in exchange for another virtual currency or for any currency are regularly made on a centralised basis,
- (b) where the offers or invitations that are made are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or buy virtual currencies; and
- (c) where the persons making the offers or invitations to exchange buy or sell virtual currency are different from the persons accepting the offers or making the offers, to exchange, sell or buy virtual currencies,

but does not include a place or facility used by only one person—

- (i) to regularly make offers or invitations to sell, purchase or exchange virtual currencies; or
- (ii) to regularly accept offers to sell, purchase or exchange virtual currencies;

2. For the purposes of this Schedule, a person is deemed to be—
 - (a) carrying on cross border money transfer if he offers to transmit money on behalf of any person to another person resident in another country and this includes offers to transmit money on behalf of any person in a country or territory outside of Singapore to a person resident in Singapore; and
 - (b) providing money-changing services if he offers to buy or sell any foreign currency notes.

SECOND SCHEDULE

Section 2 and 109

EXCLUDED SERVICES

PART I

EXCLUDED PAYMENT SERVICES

The following are excluded payment services for the purposes of this Act:

1. Payment transactions between the payer and payee executed through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee, but does not include payment transactions executed on an online marketplace.
2. The professional physical transport of currency, including their collection, processing and delivery.
3. Payment transactions consisting of non-professional currency collection and delivery as part of a not-for-profit or charitable activity.
4. Payment transactions based on any of the following documents drawn on a person with a view to placing money at the disposal of the payee—
 - (a) cheques, cashiers' orders, drawing vouchers, dividend warrants, demand drafts, remittance receipts, travellers cheques or gift cheques; or
 - (b) paper postal orders.
5. Payment transactions carried out within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.

6. Any service provided by any technical service provider, which supports the provision of payment services, where the provider does not at any time enter into possession of the money to be transferred, including—
 - (a) the processing and storage of data;
 - (b) trust and privacy protection services;
 - (c) data and entity authentication;
 - (d) information technology;
 - (e) communication network provision; and
 - (f) the provision and maintenance of terminals and devices used for payment services.
7. Payment transactions carried out between payment services providers, or their agents or branches, for their own account.
8. Payment transactions between or among related corporations as defined in section 4 of the Companies Act (Cap. 50), where there is no intermediary intervention by any payment service provider unless the payment service provider is one of the related corporations.
9. Any payment service provided by any person licensed approved, registered or regulated, including a person exempted from licensing, approval, registration or regulation, under any of the following Acts:
 - (a) Securities and Futures Act (Cap. 289);
 - (b) Financial Advisers Act (Cap. 110);
 - (c) Trust Companies Act (Cap. 336);
 - (d) Insurance Act (Cap. 142),where such payment service is solely incidental to or solely necessary for the person's carrying on of the business in any regulated activity under the respective Act or Acts.
10. Dealing in central bank virtual currency carried out by a central bank or financial institution.
11. Facilitating the exchange of central bank virtual currency carried out by a central bank or financial institution.
12. Any payment service provided by any person in respect of limited purpose e-money only.
13. Dealing in limited purpose virtual currency.
14. Facilitating the exchange of limited purpose virtual currency.

PART II INTERPRETATION

In this Schedule—

“central bank virtual currency” means virtual currency that is issued by a central bank or by any entity that a central bank delegates the power, function or duty to issue such virtual currency to;

“commercial agent” means any person who carries on a business acting as an authorised agent on behalf of another person for the purposes of negotiating or concluding the sale or purchase of goods or services on behalf of that other person;

“financial institution” has the same meaning as in the First Schedule;

“financial product” means any product or service that is provided by a financial institution;

“franchise” means a written agreement or arrangement between 2 or more persons by which —

- (a) a party (referred to in this definition as the franchisor) to the agreement or arrangement authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;
- (b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;
- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee’s business;
- (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor; and
- (e) the franchisor agrees to communicate to the franchisee, or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential;

“in-game assets” means any digital representation of value that—

- (a) is purchased or otherwise acquired by a person (referred to in this definition as the game player);
- (b) is not denominated in any currency;
- (c) is issued by an issuer as part of an online game; and
- (d) is used by the game player for payment of or exchange for virtual objects or services in the online game.

“online marketplace” means an electronic facility by means of which, offers or invitations to exchange, sell or purchase goods or services are regularly made on a centralised basis, being offers or invitations that are intended or may reasonably be expected to result, whether directly or indirectly, in the acceptance or making, respectively, of offers to exchange, sell or purchase goods or services through the facility;

“limited purpose e-money” means any one or more of the following:

- (a) electronically stored monetary value in any payment account that is, or is intended to be, used only in Singapore—
 - (i) for payment or part payment of the purchase of goods from the issuer or use of services of the issuer, or both; or
 - (ii) for payment of or part payment of the purchase of goods from a limited network of goods or service providers who have a commercial arrangement with the issuer or use of services of a limited network of goods or service providers who have a commercial arrangement with the issuer, or both;
- (b) electronically stored monetary value in any payment account, that is or is intended to be, used only in Singapore and—
 - (i) all the monetary value stored in the payment account is issued by a public authority; or
 - (ii) that a public authority has undertaken to be fully liable for or provided a guarantee in respect of, all the monetary value stored in the payment account, in the event of default by the issuer.
- (c) electronically stored monetary value in any payment account, that—
 - (i) is denominated in any currency;
 - (ii) is issued by an issuer as part of a scheme, the dominant purpose of which is to promote the purchase of goods from, or the use of services of, the issuer, or by such merchants as may be specified by the issuer;
 - (iii) is issued to a user as a result of the user purchasing goods from, or using the services of, the issuer, or such merchants as may be specified by the issuer;
 - (iv) is used for payment or part payment of the purchase of goods or use of services, or both;
 - (v) is not part of a financial product;

- (vi) cannot be withdrawn by the user from the payment account in exchange for currency; and
- (vii) cannot be refunded entirely to the user where the electronically stored monetary value is more than S\$100, unless the issuer identifies and verifies the identity of the user requesting the refund.

“limited purpose virtual currency” means the following digital representations of value:

- (a) non-monetary customer loyalty points or non-monetary customer reward points;
- (b) in-game assets; or
- (c) any digital representation of value similar to sub-paragraphs (a) or (b) above,

where each of sub-paragraphs (a) to (c) above—

- (i) must not be returnable, transferrable or capable of being sold to any person in exchange for money;
- (ii) is a medium of exchange that is, or is intended to be, as the case may be—
 - (A) used only for payment of or part payment of, or exchange for, goods or services, or both, provided by the issuer of the digital representation of value, or provided by such merchants as may be specified by the issuer; or
 - (B) used only for the payment of or exchange for virtual objects or virtual services, or any similar thing within, or as part of, or in relation to an online game.

“limited network of goods or service providers” means the following networks:

- (a) all parties to a franchise which an issuer is a party to; or
- (b) the issuer and all its related corporations as defined in section 4 of the Companies Act (Cap. 50).

“non-monetary customer loyalty points” or “non-monetary customer reward points” means any digital representation of value, by whatever name called, that—

- (a) is not denominated in any currency;
- (b) is issued by an issuer as part of a scheme, the dominant purpose of which is to promote the purchase of goods from, or the use of services of, the issuer, or by such merchants as may be specified by the issuer;
- (c) is issued to a person as a result of the person purchasing goods from, or using the services of, the issuer, or such merchants as may be specified by the issuer;
- (d) is used for payment or part payment of, or exchange for, goods or services, or both goods and services; and
- (e) is not part of a financial product.

THIRD SCHEDULE

Section 5(2) and 109

SPECIFIED PROVISIONS

1. Section 14(3)
2. Section 102