LEGISLATION COMMENTS

FURTHER CHANGES TO THE LAW OF BANKING IN SINGAPORE THE BANKING (AMENDMENT) ACT 1984

Introduction

THE Banking (Amendment) Act 1984,[1] which came into force on 14th February 1984, makes substantial if not sweeping changes which is bound to have a strong impact on the banking community in Singapore. The amendments contained therein are the most comprehensive since the present Banking Act was passed in 1970[2] and covers a wide range of subjects including those relating to the operations of banks, their loan portfolios, their takeovers and controls and the responsibilities of their directors and auditors. Additionally, it also contains further amendments on banking secrecy thereby attempting to clarify certain matters which were somehow left untouched by the Banking (Amendment) Act, 1983 which made extensive changes to the law relating to banking secrecy.

An attempt will be made below to analyse and comment on the various subjects covered by the amendments to the Banking Act (hereinafter referred to as "the Act").

Interpretation of Certain Terms

Section 2 of the Act has been amended by giving statutory definition to certain terms used in the Act. Thus the following words have now been given a special meaning, "agreement", "credit facilities", "officer", "person" and "share". The term "place of business" has now been redefined.

The word "agreement" is defined as an agreement whether formal or informal and whether express or implied. This definition has now become necessary because of the new sections 14A and 27A which attempt to prohibit certain agreements made to takeover or to gain control of banks. The word "agreement" is apparently used in its ordinary literal sense as opposed to its technical meaning in the law of contract. An "agreement" sufficient to constitute a conspiracy in criminal law may well be good enough to constitute an agreement as now defined in the Act.

The phrase "credit facilities" has now been defined to mean advances, loans and other facilities granted by a bank, or other liabilities incurred by a bank on behalf of a customer. Hitherto, the phrase was used in a narrower sense in the relevant sections of the Act and was used in contradistinction to "advances", "loans" and "financial guarantees". See, for example, the original section 25 of the Act.

1 No. 2 of 1984.
2 Cap. 182.

The word "officer" in relation to a corporation now not only includes a director, a secretary and employee but also includes a receiver or manager, as well as liquidators in a voluntary winding up. The net has apparently been cast wider to get hold of a wider group of persons in a bank take-over or an arrangement to obtain effective control of a bank which the new sections 14A and 14B attempt to control or prohibit. It is important to note that the term "officer" is not really defined; hence the word "includes". Thus, certain categories of persons not specifically mentioned in the amendment may be held to be "officers" of a "corporation". It is also interesting to note that the said word is used in relation to a "corporation" which is not defined in the Act. It will probably have the same meaning as used in the Companies Act.[3]

The word "persons" is now described to include a corporation. As has been noted, the latter term is not defined in the Banking Act. The necessity of this enactment is in doubt because in any event what is now enacted is already understood by the definition of "person" in the Interpretation Act[4] and which would apply in the absence of a special provision in the Act.

The word "share" in relation to a bank has been defined as a share in the share capital of a bank and includes an interest in such a share. The main purpose of this definition is obviously to extend the provisions of the Act to persons who may be smart enough not to have the shares in a bank in their own name. A person would be considered to have an interest in a share, if he does so within the meaning of section 6A of the Companies Act. However, it should be pointed out that in the definition of "share" under the Companies Act, "share" includes stock. Perhaps the authorities felt that this extension was not necessary for the purposes of the Banking Act.

The meaning of the phrase "place of business" has now been amended to also expressly include a head or main office, a branch, an agency and a representative office. It would also include any other place used by the bank for dispensing or accepting money on account or for the conduct of other banking business. Regarding the so-called definition it should also be pointed out that it is not really a definition because of the word "include". It is more of a description. Moreover, as already pointed out, the word "include" obviously leaves open other places which may not have been expressly referred to. Furthermore, the phrase "head or main office" could be ambiguous. Suppose an English bank has a branch in Singapore. For the purposes of the Banking Act that branch would be a "Bank" coming under the control of the Monetary Authority of Singapore (MAS). Does the head office or main office mean the head office or main office of that branch (in Singapore)? Its real "head office" would probably be somewhere in England.

[3] Cap. 185. Note that "company" is defined in the Banking Act and its meaning is different from that used in the Companies Act. "Company" as defined in the Banking Act, would be almost as wide as a "corporation" under the Companies Act.

[4] Cap. 22.

Examination of Persons Suspected of Transacting Banking Business

The original section 6 has now been amended to extend the power of the MAS to have "full and free" access to the premises in question at all tunes. What is "full and free" will probably be a question of fact to be determined in specific cases. The phrase "at all times" may also give rise to questions of interpretation. It obviously is meant to mean more than the usual office hours and may well extend to holidays also.

Giving False or Misleading Particulars in Applying for a Banking Licence

The new sub-section (1A) of section 7 now makes it a punishable offence to knowingly or recklessly furnish any document or information which is false or misleading in a material particular in connection with an application for a banking licence under section 7(1). As one of the main intentions of the MAS is to keep out "undesirable elements" in the banking field, this amendment creating an offence is quite understandable. The punishment for the new offence is imprisonment for a term not exceeding 3 years *or* to a fine not exceeding $50,000-00 or both. While the punishment may appear stiff, it should be pointed out that by the standards of the Penal Code, the offence is a modest one.[5] It is barely a "seizable offence" under Schedule A of the Criminal Procedure Code and in practice a fine would probably be given in most cases.[6]

Control of Takeover of Banks

The government's policy to keep out "undesirable elements" is also primarily responsible for the new section 14A. Under sub-section (2) no person is to enter into an agreement to acquire shares of a bank that is incorporated in Singapore by virtue of which he would obtain effective control of that bank without prior notification to and subsequent approval from the MAS. It has already been noted that the agreement may be formal or informal, express or implied and may not even be used in the contractual sense in that it is enforceable in law. Furthermore, the section relates only to the takeovers of banks incorporated in Singapore as obviously the MAS cannot stop the takeover of a foreign bank which would include its Singapore branch. The section also applies to natural persons as well as all bodies corporate or incorporate.

The phrase "effective control" is elaborated in section 14A(3)(a). A person would be regarded as having effective control if he (alone or acting with associate/s) would be in a position to control not less

5 The punishment is the same as the punishment for "cheating" under section 418 of the Penal Code, but lower than that for cheating under section 420 of the same.

6 Cap. 113. A seizable offence as defined in section 2 of the Code would be one for which a police officer would be able to arrest without a warrant. As far as the sentencing is concerned it may well be that where the facts involve a serious or deliberate breach or where a deterrent sentence is called for (to make an example, for example) a jail sentence might be given. See the case of *DPP* v. *Tarling* [1981] 1 M.L.J. 173 where Tarling was sentenced to 6 months jail for offences under section 171(1) and (4) of the Companies Act which carried a maximum jail sentence of 2 years only or a fine not exceeding $5,000-00.

than 20% of the voting power in the bank; or would hold interests in not less than 20% of the issued shares of the bank. The phrase "voting power" means the total number of votes that might be cast in the general meeting of the bank. A person would have an "interest in a share" if he has any legal or equitable interest in that share. In any event, that phrase would also have the same meaning attributed to it under section 6A(6) to (10) of the Companies Act.

The phrase "associates of a person" is further elaborated in section 14A(3)(f) of the Act. It would include a spouse, parent, remote lineal ancestor, son, daughter or remoter issue, brother or sister and a partner. It would also include any corporation where the person concerned is an officer. Conversely, where the person concerned is a corporation, it could include any officer of the corporation. It would also include employers, employees, other officers and directors of a corporation (where the person is a corporation).

The punishment for contravening section 14A(2) is specified in section 14A(4). It also carries a maximum term of imprisonment of 3 years *or* a fine not exceeding $50,000-00 or both.[7] Those not familiar with take-overs may wonder why the MAS has plucked the figure of 20% (voting power or issued shares).

The answer of course is that this percentage may be sufficient for the majority of cases of "effective control".[8]

Arrangements Affecting Control of a Bank

The new section 14B complements the new section 14A in an attempt to keep out undesirable elements from the banking field. Like section 14A, it also deals with the control of banks incorporated in Singapore only. Sub-section (1) prohibits "arrangements" which if carried out would allow a person[9] to obtain control of bank, without prior notification and subsequent approval of the MAS. The sub-section refers to "arrangements" as opposed to "agreements" which is the term used in section 14A. The term "arrangements" is later explained in sub-section (2)(b). It also uses the term "control" as opposed to "effective control". The question therefore is whether "control" is weaker or stronger than "effective control". Part of the answer to the above question lies in section 14B(2) which states that a person will be regarded as having attained control if he (with or without assoctate/s) would be in a position to determine the policy of the bank. It is of course common knowledge that the persons determining the policy of a bank (as in any other company) would be the Board of Directors. Thus anyone who can influence Board decisions would have control of the bank. This may not be accomplished by merely controlling 20% of the voting power or the issued shares. Thus the word "control" may mean something more than "effective control"; or mean the same thing.

Section 14B(2)(b) in effect states that the term "arrangements" as used in the section would in general cover any formal or informal

7 Note that it is the same as under the new sub-section 7(1A) of the Act, and the same comments apply.

8 Note that this formula of 20% has already been used in section 14 which deals with takeovers and mergers by another bank, its subsidiaries or related companies.

9 "Person" here is used in the wider sense as described above.

scheme, arrangement or understanding whether expressly or impliedly made or reached. In particular, it would include the creation of a trust (express or implied) or the entering into a transaction or agreement. Two points emerge for comment. First, the use of the word "arrangements" as defined is wider than the plain dictionary meaning of the word "arrangements". Second, as the meaning of "arrangements" includes an "agreement", it would appear that the former term would be wider than the latter term; at least for the purposes of the Act.

The term "Associates of a person" as used in sections HA and 14B are the same. Likewise, the punishments mentioned in the two sections are also the same.

Control of Substantial Shareholdings in Banks

The new section 14C in turn complements sections 14A and 14B. Sub-section (1) prohibits any person from entering into an "agreement" to acquire a "substantial shareholding" in a bank without prior notification and subsequent approval by the MAS. Like the preceding two sections it is also confined in its application to banks incorporated in Singapore.

Under sub-section (2) clause (a) the acquisition of a substantial shareholding would include the acquisition of an interest in the shares. Furthermore the phrase "substantial shareholding" has the same meaning as in section 69C of the Companies Act. It therefore means that the aggregate of the nominal amounts of the shares held is not less than 5% of the aggregate of the nominal amount of the voting shares in the bank.

With regard to the punishment for a breach of section 14C(1) it is interesting to note that the punishment is considerably lower; the maximum imprisonment is one year and the maximum fine is $10,000-00.[10] The apparent rationale is that while the law frowns upon the acquisition of a substantial shareholding, as it does not involve control or effective control of the bank, it is a lesser sin.

Power to Obtain Information as to Beneficial Interests in Shares

In a yet further attempt to keep away undesirable elements from penetrating the field of banking, the new section 14D gives the MAS power to ask a bank to ask from any shareholder holding voting shares whether he is a beneficial owner or a trustee. In the former case, the shares presumably will not be in the name of the beneficial owner. If a person is a trustee, he is to indicate who the beneficial owner is.[11]

The phrase "voting shares" is to have the same meaning as in the Companies Act. Under section 4 of the Companies Act, a voting share would generally be an issued share where there are no special restrictions as to the right to vote.

[10] The punishment is about the lowest one can get by Penal Code standards. It is for example the same as that stipulated for "simple hurt" under section 323 e.g. where one person slaps another person.

[11] In its ordinary meaning "beneficial owner" would be a beneficiary having an equitable interest under a trust.

Credit Facilities and Limits

Section 25 of the Act has been repealed and substituted by a new section 25. This section has attracted considerable comment and concern in the banking world as it affects the actual operations of banks in that it deals with the granting of credit facilities and their limits.

Clause (a) of sub-section (1) basically states that facilities granted to any one should not exceed 30% of the capital funds of that bank. It was formerly 60%. With MAS consent, the credit facilities so granted may go up to 100% of the capital funds. The obvious purpose of this provision is to deter banks from lending a disproportionately large proportion of its funds to one particular borrower or to a relatively small group of borrowers. Thus, the credit facilities would be spread over a larger group of borrowers who are engaged in different kinds of business.

Capital funds would mean the capital funds to be maintained in Singapore in proportion to their assets at such rates or ratios prescribed by the MAS from time to time.[12] Since the time the Banking Act was passed in 1970, the capital funds of most banks have increased considerably if not enormously, and hence the further justification for lowering it to 30% instead of 60%.

There are other noteworthy changes in clause (a). Firstly, the phrase "any customer" has been substituted by the phrase "anyone person, firm, corporation or company or any group of companies or persons which such person, firm corporation or company is able to control or influence". It would therefore appear that the credit facilities given by banks is no longer confined to "customers" in the accepted sense.[13]

Secondly, the word "person" as used therein, in contradistinction to the words "firm", "corporation" or "company" seems to indicate that it is confined to "natural persons". This is somewhat confusing as the meaning of "persons" has already been extended in the Amendment Act itself to include "corporations", and would therefore cover "firms" as well.[14] Additionally, the use of the word "corporation" in contradistinction to the word "company" in this section also seems to be unnecessary, and indeed confusing.[15] The word "corporation" as defined in the Companies Act would include "companies" in any case.[16] The confusion is compounded because a "Company" is itself defined in the Banking Act and may well include "corporations" in that sense as well.[17]

12 See the definition in section 10 of the Act.

13 The word "customer" in the law of banking is generally accepted to cover a person who has some sort of account with the bank, although in certain special circumstances it may cover a non-account holder. See *Woods* v. *Martins Bank* [1959] 1 Q.B. 55 at p. 63.

14 Under the U.K. Partnership Act 1890 (applicable to Singapore), section 4 thereof states that the "persons" who have entered into a partnership are called collectively a "firm". In any event, a "firm" is not a separate legal entity.

15 See the way in which the new section 14A(3)(f) has been drafted. Only the word "corporation" is used there, and it obviously includes "companies".

16 See section 4 of the Companies Act, Cap. 185.

17 See section 2 of the Act.

Thirdly, the clause uses the comprehensive term "credit facilities" which covers the phrase hitherto used, namely "advances, loans or credit facilities".

Section 25(l)(b) now prohibits a bank from granting substantial loans which exceeds 50% of its total credit facilities or such other percentage as the MAS may from time to time determine. Section 25(5) explains that "substantial loans" means any credit facilities granted by a bank to a single borrower which in the aggregate exceeds 15% of the Bank's capital funds.

There has also been an interesting addition in the wording of section 25(l)(d) (former section 25(l)(c)) which is meant to prohibit the granting of unsecured credit facilities exceeding $5,000 to directors of the bank or those connected with them. The change is the insertion of the phrase "directly or indirectly" and by which phrase devious efforts by directors to use the bank's assets would become more difficult to materialise.

A grammatical correction has been attempted in section 25(1)(e) [former section 25(l)(d)] by substituting the words "the bank" instead of "a bank" in one place. Unfortunately, the same correction was not made in another place in the same clause.

The substance of the new section 25(4) is also slightly different from that of the old section 25(4). Under the new section 25(4), the directors are jointly and severally liable *whether the bank has contravened or not contravened* the provisions of section 25(l)(d)(i), (ii) and (iii).

Lastly, section 25(6) creates an offence for breach of the provisions of the section, but mentions no punishment. Accordingly, section 64 of the Act would apply and a conviction would not involve any imprisonment but only a fine not exceeding $50,000-00.

Control Over Banks in the Acquisition of Shares in Companies

The new section 27A attempts to control banks in the acquisition of shares in companies. Although every bank in Singapore is supposed to be a company under the definition of "bank" in section 2, the word "company" in this section probably refers to companies other than banks incorporated in Singapore. If so, it would include the acquisition of shares in "banks" within the meaning of the Banking Act, which are not incorporated in Singapore.[18] If so, it would also include the acquisition of shares of all merchant banks in Singapore which are companies, as merchant banks are not banks within the meaning of the Banking Act.

Section 27A(1) provides that no bank shall enter into an agreement to accept more than 20% of the share capital of any company without prior notification and subsequent approval of the MAS. It is however clarified in sub-section (3) that this would not include share capital which is acquired by way of enforcement of security and approval is

[18] This is because sections 14A, 14B and 14C already deal with the take-overs, effective control, and the control of substantial shareholdings of banks incorporated in Singapore.

given by the MAS. If approval is not given, the bank is to dispose of the shareholdings at the earliest opportunity.

The new sub-section (5) creates an offence for contravening sub-section (1) and lays down the punishment. The maximum punishment is a fine not exceeding $50,000-00. This last provision is unnecessary in view of section 64 which already provides the same penalty in cases where the penalty is not expressly provided.

Amendment of Section 32

The Amendments confer upon the MAS additional powers to secure compliance with sections 10, 19, 25, 27, 28, 29 and 38. The MAS is now empowered to require any bank which is incorporated in Singapore to aggregate its assets, liabilities or profits, as the case may be, with those of any of its related companies.

Amendments in Banking Secrecy (Section 42)

A slight change is made in section 42(2). The effect of this change is that the MAS will not only keep secret the information it incidentally obtains about the accounts of customers as a result of "inspections" or "investigations" under section 39 and under section 40, but it will also keep secret such information obtained as a result of supervising the financial conditions of any bank. The effect is to permit the MAS to acquire incidental information of a customer's account in the discharge of its duty to supervise the financial condition of a bank.

In section 42(4)(a) the permission given by the customer or his personal representative to divulge information is now expressly required to be "written". Thus banks must now see that permission in *writing* is now received. The word "writing" will obviously have the same meaning as in the Interpretation Act, and may mean more than "writing" in its literal sense.

Section 42(4)(c)(i) has also now been slightly amended to allow a bank to divulge information about a customer's account not only in civil proceedings between the bank and the customer but between the bank and the guarantor of the customer as well. However, even without this change, it is respectfully submitted that such divulgence would be justified as under the general law a disclosure in the interests of the bank would be justified.[19]

Two more exceptions to banking secrecy are now expressly stated in the form of section 42(d) and (e). Thus, banking secrecy is lifted where the bank is served with a garnishee order attaching monies in the account of the customer. It is also lifted where the information is given by a foreign bank operating in Singapore to its Head Office, provided it relates solely to credit facilities.

The new statutory exception with regard to garnishee orders now makes clear by statute what is already accepted in banking law. It is generally accepted that a bank may disclose a customer's affairs if he has to do so as a result of a garnishee order.[20]

19 See the well known case of *Tournier* v. *National Provincial & Union Bank* (1924) 1 K.B. 461.

20 See Holden, *The Law and Practice of Banking* Vol. 1 para. 2-111.

On the other hand, the new exception with regard to disclosure by the branch in Singapore to the Head Office abroad in connection with credit facilities is most welcome. Foreign banks in Singapore have always been apprehensive of their liability in this regard.[21] The exception however has the danger of being too narrowly interpreted because of the word "solely". However in view of the wider meaning given to the term "credit facilities", the communication between the banks in Singapore to the Head Office should be less hazardous.

It is also interesting to note that section 42(4)(e) which is now renumbered (g) has been qualified in the amending Act. As it stood since 1970 banking secrecy is lifted with regard to the answering of credit enquiries. This exception was noteworthy because it goes further than what the common law allows.[22] The qualification now imposed is that such answers must be limited to information of a general nature and must in no way be related to the details of a customer's account.

Finally, with regard to banking secrecy, the phrase "professional relationship" used in section 42(3) is now defined.[23] It now also includes a relationship between a bank and a computer bureau (as approved by the MAS) and such other relatonship with a bank as the MAS may from time to time decide.

Auditing of Banks

The Amending Act then goes on to impose higher standards with regard to the auditing of banks. Section 53(1) of the Act already stipulates that auditors of banks are to be approved by the MAS. The new section 53(1A) now stipulates that an auditor shall not be approved by the MAS unless he is able to comply with the conditions imposed by the MAS. There is no real necessity for this enactment as it must be assumed that the MAS would not approve an auditor unless he also satisfies the conditions laid down by the MAS. The new sub-section is probably meant to fetter the discretion of the "approvers" in the MAS and in this context appears to be a self-disciplinary provision.

The new sub-section (3A) of section 53 now allows the MAS to impose certain duties on auditors in addition to that already imposed by sub-section (3). The additional duties are:—

a) to submit such additional information as the MAS feels necessary;
b) to enlarge or extend the scope of his audit;
c) to carry out any other examination or any other procedure;
d) to submit a report on any matters referred to in (b) and (c) above.

It is also made clear that in respect of these additional duties imposed by the MAS, the bank concerned is to pay for it.

21 Their fears are not unfounded. See the recent cases of *US and Trigglett (Revenue Officer, IRS)* v. *First National City Bank* and *US* v. *Bank of Nova Scotia,* International Banking Law, Dec. 1983 pp. 76-78.

22 See Myint Soe, *The Law of Banking and Negotiable Instruments in Singapore & Malaysia* (2nd Edition) 1983 pp. 179-180.

23 Actually it is not a definition because of the use of the word "includes", which leaves open other relationships.

The amended subsection (4) is more or less consequential to the new sub-section (3A). It now requires that the report under sub-section (3A) should also be transmitted in writing to the MAS.

The new sub-section (5) enlarges the reporting duties of an auditor to the MAS and is obviously of great interest to all auditors who audit the account of banks. Auditors of banks must now "immediately" report to the MAS the following:—

a) any serious breach or non-observance of the provisions of the Banking Act or the commission of a criminal offence involving fraud or dishonesty;

b) losses reducing the capital funds of the bank by 50%;

c) serious irregularities (including those jeopardising the security of creditors);

d) if he is unable to confirm that the claims of creditors are still covered by the assets.

Those auditing banks would thus be placed in the unhappy position of not only divining what is "serious" but also having to distinguish between a "serious breach", a "serious non-observance" and a "serious irregularity".[24] One would have thought even without being endowed with much common-sense that a "non-observance" could also be a "breach". Perhaps the legislature intended to distinguish between acts of omission as opposed to acts of commission.

Business on Bank Holidays

Section 55(2) of the Act had prohibited banks from doing business *with the public* during bank holidays. This obviously left it open for them to do business on bank holidays which is not with the public. For instance, the doors of the bank could still be closed but the bank could still do international business with banks or persons abroad especially on holidays which are not holidays in many other countries (e.g. Vesak day). This loophole is now plugged by the deletion of the words "with the public". However, it is also stipulated in the amended section 55(2) that business can be done on holidays provided MAS's approval has been received.

Priority of Deposit Liabilities

The original section 56 of the Act had attempted to protect depositors in the unlikely event that a Singapore bank might become insolvent or suspend payment.[25] It stated that such deposit liabilities were to have priority over all other liabilities of the bank. The section has now been amended to give priority only over all *unsecured liabilities* (other than preferential debts specified in section 292(1) of the Companies Act).

[24] What is "serious" to one auditor may not be "serious" in the eyes of another. The standard must be an objective one. In other words the test is, would it appear to be "serious" to a reasonably prudent auditor who is auditing the accounts of a bank.

[25] Even if a bank does not become insolvent it could still have to suspend payment for other reasons. For example, in the recent Overseas Union Finance case, where the Finance Company had to suspend payment for a while when a petition for compulsory winding up was presented by the Minister.

This watering down of the rights of depositors in section 56 has been compensated by the introduction of new sections 56A and 56B which deals with the priority of deposit liabilities in the event of winding up of a bank. Thus it is to be noted that these new sections will come into play only in the event of a winding up as opposed to a situation where it becomes unable to meet its obligations, or becomes insolvent or suspends payment but there is no winding up. The phrase "in the event of a winding up" will also require interpretation. Does it merely mean that winding up proceedings have commenced in law or that winding up is actually taking place. For voluntary winding up, winding up normally commences when the special resolution is passed and thenceforth it proceeds. But for compulsory winding up, it commences when the petition is presented but this does not necessarily means that the company is insolvent in anyway. It may be presented for example on just and equitable grounds by a disgruntled shareholder holding a negligible amount of shares and may not eventually succeed. The bank in question also may be quite solvent. Probably it means a situation where a winding up order has already been passed and the liquidators have taken charge.[26]

The new section 56A also lays down the rules as to priority for different types of deposit liability. Highest in rank are deposit liabilities to non-bank customers which were incurred to fulfil the reserve and liquidity requirements laid down under the Act. Second in rank would be deposit liabilities incurred with other banks for the same reason. Third and last comes deposit liabilities to non-bank customers not incurred for the said purposes. In other words this class will mainly include the ordinary customers of the bank who have made deposits with it. The depositors in the same class will of course rank *pan passu* under section 56A(2). The term "deposit liabilities" is also defined in section 56A(3).

Redemption of Securities

Section 56B specifically deals with the redemption of securities held by a bank under liquidation. The debtors in question would be informed by the liquidator by a notice in the *Gazette* and also by registered post, and the notice which is given would not be less than three months.

Operation of Asian Currency Units

The new section 69A in subsection (1) clearly states that no "person" shall "establish and operate" an Asian Currency Unit (ACU) without first obtaining the approval of the MAS. It is further stated in sub-section (2) that the operation of such Units would be subject to the terms and conditions determined by the MAS. Additionally, sub-section (3) states that all such Units shall be subject to the provisions of the Banking Act except those specified in sub-section (4).

The term "Asian Currency Unit" (ACU) has been used for many years and has been generally understood to mean the separate accounting units of banks and other financial institutions making transactions in the Asian Dollar Market. It is now defined in sub-section (5) as follows:—

[26] What about situations where a winding up order has not been passed but a provisional liquidator has been appointed?

> (5) In this section, "Asian Currency Unit" means an operational unit that has been approved by the Authority to operate in the Asian Dollar Market subject to such conditions as the Authority may determine.

As Asian Currency Units are supposed to operate with MAS approval and the MAS obviously has a list of them, the main purpose of the section is therefore to give legal force to existing practice. Thus, those banks and financial institutions unofficially operating in the Asian Dollar Market and so discovered will now be punished. As the punishment is not specifically mentioned it will come under section 64 of the Act which deals with general penalties. The penalty prescribed therein is a fine not exceeding fifty thousand dollars; no imprisonment is involved.

Sub-section (4) deals specifically with "corporations", thereby implying that some ACUs may not be corporations. It then distinguishes between corporations incorporated in Singapore and those incorporated outside Singapore. To all ACU's which are corporations, sections 34 and 35 which relate to minimum liquid assets and minimum cash balances would not apply. To those ACU's of banks and institutions incorporated outside Singapore, section 25(l)(a), (b), (d)(ii), section 27 and section 28 would in addition not apply.

Miscellaneous Amendments — Penalties

Lastly, the Amendment Act of 1984 beefs up the penalties under the various sections. The main increase is in the monetary penalties (fines). Since 1970 the inflation rates have increased and apart from the desire to stiffen penalties, they have to be realistic and more accurately reflect present day values.

Conclusion

From a perusal of the amendments to the Banking Act which has been dealt with above, it will be readily seen that the changes are substantial and significant. What overall effects it will have on the banking sector remains to be seen. Some of the changes will probably affect the Singapore banks more. On the other hand, some will affect the foreign banks more. For example, the closer link of lending power with the capital funds may favour local banks over the less well capitalised branches of foreign banks doing business in Singapore. On the other hand, the various restrictions regarding the takeover and effective control of banks as well as the restrictions on investments in the shares of companies may effect the "empires" of the big local banks. Again, as far as certain other amendments are concerned, both local and foreign banks alike would be equally affected. In the long run, happiness and harmony in doing banking business in Singapore, may well depend on how the changes are implemented. A pragmatic and benign approach by the authorities should have rewarding results.

MYINT SOE