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DEPOSIT INSURANCE IN SINGAPORE: WHY HAVE IT, WHO GETS IT, HOW DOES IT WORK?

SANDRA ANNETTE **BOOYSEN***

Singapore's deposit insurance scheme was revised in 2011. This paper reviews the debate on the merits of a deposit insurance scheme, considers key features of the scheme operating in Singapore and evaluates how well it promotes the rationale of deposit insurance.

I. INTRODUCTION

The House of Lords ruled more than 150 years ago, that when a customer deposited monies into an account with a bank, the transaction is a loan by the customer to the bank.[1] This means that bank customers rank as ordinary creditors in the estate of an insolvent bank and as such, they are unlikely to recover much, if anything at all. This may have a devastating impact on depositors and even lead to social unrest. For this reason, depositors have been identified by governments, parliaments and regulators, as deserving of protection in the event of a bank's collapse.

Deposit insurance ("DI") is an overt example of such protection and is today viewed as an important component of a larger framework that is intended to promote the safety and stability of the banking system.[2] Other components include the lender

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* Assistant Professor, Faculty of Law, National University of Singapore. The author thanks Hans Tjio and Helena Whalen-Bridge for their helpful comments on an earlier draft, as well as Afzal Ali and Seow Xian Wen Andrew for their research assistance and constructive comments.

[1] *Foley v. Hill* (1848), 2 H.L. Cas. 28, 9 E.R. 1002.

[2] See *e.g.*, Financial Stability Board, *Thematic Review on Deposit Insurance Systems*, Peer Review Report (8 February 2012), online: Financial Stability Board <http://www.financialstabilityboard.org/publications/r_120208.pdf> at 8 [FSB Review]; Basel Committee on Banking Supervision & International Association of Deposit Insurers, *Core Principles for Effective Deposit Insurance Systems* (June 2009), online: Bank for International Settlements <https://www.bis.org/publ/bcbs156.pdf> at p. 1 para. 4, p. 7 para. 6 [Basel Core Principles]; Andrew Campbell, "Insolvent Banks and the Financial Sector Safety Net—Lessons from the Northern Rock Crisis" (2008) 20 Sing. Ac. L. J. 316 at paras. 10-19 [Campbell, "Lessons from Northern Rock"]; Asli Demirgüç -Kunt, Edward J. Kane & Luc Laeven, "Deposit Insurance Design and Implementation: Policy Lessons from Research and Practice", in Asli. Demirgüç-Kunt, Edward J. Kane & Luc Laeven, eds., *Deposit Insurance Around the World: Issues of Design and Implementation* (Cambridge, Massachusetts: MIT Press, 2008) 3 [Demirgüç-Kunt,

of last resort function fulfilled by a country's central bank, an effective bank resolution framework[3] and a comprehensive set of regulatory rules and supervisory principles.[4] The regulatory framework aims to minimise, but not eliminate, bank failures by striking a balance between necessary prudence and permissible risk-taking so as to promote a vibrant yet stable banking system. If despite these measures, a bank fails, the DI scheme and other measures are intended to soften the blow that is inevitable from the collapse.

This paper examines the protection offered to bank customers in Singapore in respect of their deposits. This protection is primarily, but not exclusively, found in the *Deposit Insurance and Policy Owners' Protection Schemes Act*.[5] The object of this paper is twofold: first, to consider the rationale of DI and assess the consumer protection rationale that has been identified in Singapore.[6] I suggest that consumer protection is a sound basis on which to place Singapore's DI scheme. The second objective of this paper is to evaluate the DI provisions in Singapore against international norms. To do so, I compare key aspects of Singapore's scheme with other DI schemes as well as with recent international recommendations, including the "Thematic Review of Deposit Insurance Systems" conducted by the Financial Stability Board[7] and the "Core Principles for Effective Deposit Insurance Systems"[8] issued collaboratively by the influential Basel Committee on Banking Supervision and the International Association of Deposit Insurers.[9] I argue that, on the whole, Singapore's DI measures compare favourably with international norms and although for example, the level of cover in Singapore is relatively modest, it nevertheless fulfils its objective of protecting vulnerable depositors. In some respects, I argue that more should be done to firm-up depositors' rights in the event of a bank's collapse.

Kane & Laeven, "DI Design" for the chapter and *Deposit Insurance Around the World: Issues of Design and Implementation*]; Andrew B. Campbell & Peter Cartwright, "Protecting Depositors", in *Banks in Crisis: the Legal Response* (Aldershot, U.K.: Ashgate Publishing Limited, 2002) 177 at 189 [Campbell & Cartwright, "Protecting Depositors"]. Nevertheless, Demirgüç-Kunt, Kane & Laeven warn that it may not be appropriate for all countries: see *e.g.*, at 24, 30.

3 Luc Laeven, "Pricing of Deposit Insurance", in *Deposit Insurance Around the World: Issues of Design and Implementation* 81 at 98, 136 [Laeven, "Pricing of Deposit Insurance"]; see also, the speech by Andrew Bailey (Executive Director of Banking Services and Chief Cashier, Bank of England), "Financial Stability—Objective and Resolution" (Speech given at the Pro Manchester Business and Professional Services Conference, Manchester, 17 March 2011), online: Bank of England <http://www.bankofengland.co.uk/publications/Documents/speeches/2011/speech481.pdf> at 5.

4 In Singapore, the primary bank regulatory instrument is the *Banking Act* (Cap. 19, 2008 Rev. Ed. Sing.).

5 Cap. 77B, 2012 Rev. Ed. Sing. [*DIPOPS Act*].

6 See the statement by Mr. Lim Hng Kiang, Minister for Trade & Industry and Deputy Chairman of Monetary Authority of Singapore, during the second reading of the *Deposit Insurance and Policy Owners' Protection Schemes Bill* Sing., *Parliamentary Debates*, vol. 87, col. 4761 (11 April 2011) [*Deposit Insurance and Policy Owners' Protection Schemes Bill* Second Reading]. Mr. Lim stated that the DI Scheme aims "to provide a basic level of protection to small depositors".

7 FSB Review, *supra* note 2.

8 Basel Core Principles, *supra* note 2.

9 The Basel Core Principles are intended as general guidelines for adoption and adaptation by jurisdictions to suit their unique situations. They have been endorsed by the Financial Stability Board, the World Bank and the International Monetary Fund: see "Foreword" in FSB Review, *supra* note 2.

II. Depositor Protection in Context

A. *Overview of the Singapore DI Scheme*

The U.S. is credited with having one of the oldest national DI schemes, established around 1933.[10] The U.K.'s scheme dates back to the early 1980's.[11] Singapore's scheme was established a relatively short time ago, in 2006.[12] The key feature of the 2006 scheme is that cover up to $20,000 was provided for Singapore dollar deposits held by individuals and charities with full banks and finance companies.[13] In October 2008, when the world was reeling from the spectacular failures of banks in leading financial centres and confidence was at a low ebb, Singapore's financial regulator and central bank, the Monetary Authority of Singapore ("MAS"), announced a widespread government guarantee of deposits.[14] The move was an extraordinary measure that aimed to maintain customer confidence in the Singapore banking system and was prompted, at least in part, by similar action in the region, including Hong Kong, Australia and Malaysia.[15] This government guarantee of deposits expired at the end of 2010. In 2011, the 2006 DI scheme was replaced by the *DIPOPS Act*.[16]

As its name suggests, the *DIPOPS Act* consolidates the protection previously afforded in separate statutes to bank depositors in the event of bank failure and to insured persons in the event of the failure of an insurance company. The *DIPOPS Act* takes advantage of the mutual needs of the two protection schemes, such as an administrative agency,[17] penalties for non-compliance[18] and financial and auditing requirements.[19] In other respects, it maintains two separate schemes of protection. Thus, separate funds are established to pay compensation in the event of bank or

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10 Demirgüç-Kunt, Kane & Laeven, "DI Design", *supra* note 2 at 18; see also, the website of the Federal Deposit Insurance Corporation (online: Federal Deposit Insurance Corporation <www.fdic.gov> [FDIC Website]). Some states of the United States had schemes that were older: see Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 187.

11 Established by the *Banking Act 1979* (U.K.), 1979, c. 37: see Harry McVea, "The Financial Services Compensation Scheme and Deposit Insurance Reform" [2008] L.M.C.L.Q. 389 at 396, n. 39 [McVea, "FSCS and DI Reform"]; Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 179.

12 See the *Deposit Insurance Act* (Cap. 77A, 2006 Rev. Ed. Sing.) [*DI Act*].

13 A separate cover limit of $20,000 was available for CPF related deposits.

14 See Sing., Monetary Authority of Singapore, *Annual Report 2008/2009*, online: Monetary Authority of Singapore <http://www.mas.gov.sg/annual_reports/annual20082009/index.html> at 27.

15 See Monetary Authority of Singapore, "Ministerial Statement by Mr. Lim Hng Kiang Minister for Trade & Industry and Deputy Chairman, Monetary Authority of Singapore on Government Guarantee on Deposits" (21 October 2008), online: Monetary Authority of Singapore <http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/2008/Ministerial-Statement-by-Mr-Lim-Hng-Kiang-Minister-for-Trade-and-Industry-and-Deputy-Chairman-Monetary-Authority-of-Singapore-on-Government-Guarantee-on-Deposits.aspx>; government guarantees of one kind or another were issued in numerous other countries including the United States, the United Kingdom and France, see *e.g.*, FSB Review, supra note 2 at 11, 12.

16 *Supra* note 5.

17 *Ibid*., Part X.

18 *Ibid*., Part XI.

19 *Ibid*., Part XII.

insurer failure,[20] contributions to the funds are dealt with separately[21] and the circumstances in which compensation is payable are independently defined.[22] This paper will not discuss the protection afforded to insurance policy holders. The thrust of the *DIPOPS Act* from a bank customer's point of view is to broaden the scope of the 2006 scheme in two significant ways: the cover ceiling has more than doubled to $50,000 and cover is now available to all depositors other than banks,[23] where previously business deposits were excluded from the safety net.

B. *Implicit and Explicit Protection*

Before examining the salient features of the *DIPOPS Act*, it is helpful to put DI in context. Depositors can be protected in various ways. At a general level, the entire regulatory and supervisory system is a form of depositor protection as it seeks to minimize bank failures. More specific depositor protection may be implicit or explicit. The choice between an implicit and an explicit scheme boils down to a choice "between discretion and rules".[24] An implicit scheme arises from calculated conjecture that the government will intervene and rescue a failing bank.[25] An implicit system is undefined and therefore allows flexibility, both in terms of whether to protect depositors at all, and if yes, to what extent.[26] This so-called 'constructive ambiguity' surrounding implicit schemes would be supported by DI cynics as it avoids complacency since government back-up is not guaranteed.[27] DI supporters, on the other hand, would criticise it for producing uncertainty and inconsistency.[28] According to the FSB Review, an explicit scheme has become "the preferred choice" amongst FSB members.[29] It is said to offer numerous advantages,[30] including: transparency, advance clarification of depositors' rights to compensation; promotion of public

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20 *Ibid.*, Part III (for bank deposits) & Part VII (for insurance policies).

21 *Ibid.*, Part IV (banks) & Part VIII (insurance).

22 *Ibid.*, Part V (banks) & Part IX (insurance).

23 Banks commonly hold deposits with each other; such deposits are not covered by the scheme.

24 David Hoelscher, Michael Taylor & Ulrich Klueh, *The Design and Implementation of Deposit Insurance Systems* (Washington DC: International Monetary Fund, 2006) at 4 [Hoelscher, Taylor & Klueh, *Design and Implementation of DI*].

25 Demirgüç-Kunt, Kane & Laeven, "DI Design", *supra* note 2 at 3; Ronald MacDonald, *Deposit Insurance Handbooks in Central Banking No. 9* (London: Bank of England, Centre for Central Banking Studies, 1996) at 7 [MacDonald, *Deposit Insurance*].

26 See *e.g.*, MacDonald, *Deposit Insurance*, *ibid.* at 11.

27 See Jonathan R. Macey & Geoffrey P. Miller, "Towards a Regulatory Analysis of Deposit Insurance", in Guido Ferrarini, *Prudential Regulation of Banks and Securities Firms: European and International Aspects* (London: Kluwer Law International, 1995) 209 at 227 [Macey & Miller, "Regulatory Analysis of DI"]; the authors observe that "constructive ambiguity has had a mixed history".

28 See Hoelscher, Taylor & Klueh, *Design and Implementation of DI*, *supra* note 24 at 4; Dalvinder Singh & John Raymond LaBrosse, "Northern Rock, Depositors and Deposit Insurance Coverage: Some Critical Reflections" [2010] J. Bus. L. 55 at 71, 72 [Singh & LaBrosse, "Critical Reflections"].

29 FSB Review, *supra* note 2 at 2; Singh & LaBrosse, Critical Reflections, *ibid.* at 72. See also, Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 83, 132, 136: he notes that deposit insurance is not suitable in environments where moral hazard cannot be controlled.

30 See *e.g.*, Basel Core Principles, *supra* note 2 at 1, para. 3; John Raymond Labrosse and David G Mayes "Promoting Financial Stability through Effective Depositor Protection: The Case for Explicit Limited Deposit Insurance", in Andrew Campbell, John Raymond Labrosse, David G Mayes, Dalvinder Singh, *Deposit Insurance* (Hampshire, New York, Palgrave Macmillan, 2007) Chapter 1; MacDonald, *Deposit Insurance*, *supra* note 25 at 10; Singh & LaBrosse, "Critical Reflections", *ibid.* at 71, 82.

confidence and stability; reduction of the scope for discretion upon a bank's failure; assistance in the orderly handling of a bank's insolvency and containing the cost of a winding up (for example, by reducing the number of claimants in the insolvent estate).

In Singapore, at the time of first establishing the DI scheme, it is evident that the government was keen to dispel any perception of an implicit government guarantee and an explicit scheme was viewed as a way to achieve that.[31] Arguably, however, an explicit scheme complements but does not displace an implicit scheme.[32] In other words, the pressure on a government to intervene when bank insolvency occurs is considerable even if an explicit DI scheme is in place.[33] Expectations of government intervention are likely to be fuelled for instance where a government has previously demonstrated its willingness to intervene, such as the relatively recent government guarantee of deposits seen in Singapore in 2008.

C. *Rationale of a DI Scheme*

Two policy objectives of a DI scheme are usually identified: to protect bank customers, particularly consumers, and to protect the banking and financial system by promoting stability.[34] In Singapore, it is the customer protection role that was emphasised in the *DIPOPS Act*'s passage through Parliament.[35] In contrast, DI in the U.S. "is perceived to be a tool which can be used in the prevention of systemic risk" and "the protection of individual depositors is generally perceived to be a by-product".[36]

1. *Customer Protection*

The consumer protection role of DI is fairly self-evident in that the scheme reimburses depositors on a bank's failure. Critics may argue, however, that the protection

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31 See the second reading of the *Deposit Insurance Bill*, Sing., *Parliamentary Debates*, vol. 80, col. 1371 (19 September 2005) (Mr. Tharman Shanmugaratnam) at para. 13 [*Deposit Insurance Bill* Second Reading].

32 Asli Demirgüç-Kunt, Edward J. Kane & Luc Laeven, "Adoption and Design of Deposit Insurance" in *Deposit Insurance Around the World: Issues of Design and Implementation*, *supra* note 2, 19 at 29 [Demirgüç-Kunt, Kane & Laeven, "Adoption and Design of DI"].

33 *Ibid*.

34 See *e.g.*, Basel Core Principles, *supra* note 2, Principle 1; Campbell, "Lessons from Northern Rock", *supra* note 2 at para. 19; MacDonald, *Deposit Insurance*, *supra* note 25 at 8,9; U.K., Financial Services Authority, *Policy Statement PS12/10—Deposit Protection: Raising Consumer Awareness* (May 2012), online: Financial Services Authority <http://www.fsa.gov.uk/static/pubs/policy/ps12-10.pdf> at para. 1.5 [FSA Policy Statement]. There are also less orthodox views of its rationale, one argument is that the main beneficiaries of deposit insurance are banks themselves and governments/politicians, see *e.g.*, Macey & Miller, "Regulatory Analysis of DI", supra note 27 at 225.

35 See *Deposit Insurance Bill* Second Reading, *supra* note 31; also see *Deposit Insurance and Policy Owners' Protection Schemes Bill* Second Reading, *supra* note 6. The preamble to the *DIPOPS Act* says that its purpose is to provide "limited compensation to insured depositors". The Singapore Deposit Insurance Corporation website also suggests that the avoidance of panic is a reason for the scheme, see Singapore Deposit Insurance Corporation, "Deposit Insurance Scheme—Frequently Asked Questions", online: Singapore Deposit Insurance Corporation <https://www.sdic.org.sg/di_faq.php>, Question No. 22 [SDIC, "Frequently Asked Questions"]. See also, FSB Review, *supra* note 2 at 16.

36 Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 177, 178; see Campbell, "Lessons from Northern Rock", *supra* note 2 at para. 19; MacDonald, *Deposit Insurance*, *supra* note 25 at 9.

is inadequate and ineffectual.[37] The inadequacy argument may be directed at the level of cover offered by the DI scheme, an aspect of the *DIPOPS Act* that will be addressed later in this paper. The inadequacy argument may also be directed at the fact that a DI scheme cannot avoid the inevitable disruption that customers face if their bank collapses, including difficulty in accessing funds and making payments. An inadequacy argument can also be made where customers have outstanding loans from the insolvent bank. The loan size is likely to exceed the customer's deposit many times over and the majority of bank loans are repayable on demand. Thus, borrowers from an insolvent bank are likely to receive a demand for repayment of their loan from the bank's liquidator. The need to repay a large sum at short notice may place customers in a peril that is not alleviated by the DI scheme.

In Singapore, this repayment peril is to some extent, addressed by the *DIPOPS Act* which provides that insured deposits are compensated gross, without deduction of any liabilities (such as loans) owed by the depositor to the bank.[38] Gross payment promotes customer liquidity and facilitates speedier payment of compensation, thereby furthering the customer protection objective of DI.[39] In one sense, net payment is arguably more beneficial to customers than gross payment as net payment effectively gives an immediate repayment of the deposit (or part of it).[40] This ignores, however, the liquidity-benefit of receiving gross payment. Gross payment does not, however, remove the peril of having to repay a loan in full at short notice. A DI scheme should not, however, be criticised for failing to address the loan repayment problem nor the disruptive effect of a bank failure. DI aims to protect the working capital of depositors in the event of bank insolvency; it is not a panacea for all the complications that may arise from a bank's failure. Some of these are better addressed by a sound bank resolution framework which aims to minimise the destructive impact of a bank's failure, such as a transfer of some of the failed institution's business to a bridge bank which will continue to operate viable loans and offer payment services.[41] In short, consumer protection is optimised by a multi-pronged approach of which DI is a component.

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37 There are others who take a more extreme view and argue, for example, that depositors in need of such protection should purchase it privately, see Macey & Miller, "Regulatory Analysis of DI", *supra* note 27 at 221. There may, however, be problems in obtaining such insurance privately, see MacDonald, *Deposit Insurance*, *supra* note 25 at 11-12.

38 *DIPOPS Act*, *supra* note 5, s. 22(6).

39 See U.K., H.C., "The Run on the Rock", HC 56-I in *Sessional Papers*, vol. 1 (2007–08) at para. 251 [House of Commons Report, "Run on the Rock"]; McVea, "FSCS and DI Reform", *supra* note 11 at 400, 404; Monetary Authority of Singapore, "Response to Feedback Received—Review of Deposit Insurance Scheme" (3 September 2010), online: Monetary Authority of Singapore <http://www.mas.gov.sg/~/media/resource/publications/consult_papers/2010/Response_Feedback_DI_Scheme_Review.ashx> [MAS Response (Sep 2010)] at paras. 8.1.2-8.1.4. See also, Gillian Garcia, *Deposit Insurance Actual and Good Practices* (Washington DC: International Monetary Fund, 2000) at 16 [Garcia, *Actual and Good Practices*].

40 See Garcia, *Actual and Good Practices*, *ibid*. at 16.

41 See *e.g.*, the speech given at the Pro Manchester Business and Professional Services Conference by Andrew Bailey (Executive Director of Banking Services and Chief Cashier, Bank of England), "Financial Stability—objective and resolution", *supra* note 3 at 5; Basel Core Principles, *supra* note 2, Principle 16. In Singapore, see *Banking Act*, *supra* note 4, Part VIIA "Transfer of Business and Shares and Restructuring of Share Capital".

2. *Promotion of Stability*

The second main rationale of DI is that it promotes the stability of the financial system. The claim is controversial.[42] The promotion of stability is, at least in theory, achieved by boosting the public confidence on which the financial system depends. The need for stability is traditionally explained with reference to the banking business model, being one of borrowing to lend or invest.[43] Banks use deposits to make loans and other investments and do not have the liquidity to repay all depositors at once. They rely on the probability that a widespread withdrawal of deposited funds will not materialise. If depositors become skittish about the safety of their bank and decide *en masse* to withdraw their deposits, the bank's failure becomes inevitable because of its reliance on the public's money to fund its activities. In today's age of social media, the speed with which rumours (founded or unfounded) can spread, can only exacerbate the problem. Because of their inter-connectedness, one bank's failure invariably threatens others—and eventually, the entire financial system.[44] Hence, the maintenance of public confidence is vital to a stable banking and financial system.

In theory, DI promotes confidence, and therefore stability, in two ways. First, during periods of financial calm, it encourages customers to place their surplus funds in the banking system, which boosts the well-being of the bank and promotes the efficient allocation of financial resources.[45] Second, in times of crisis, DI deters bank runs by giving customers the confidence that they will not lose their deposits if they leave them with the bank. Today, bank runs are likely to play out silently through electronic channels,[46] as well as on the streets.

There is some recent evidence that DI can deter a bank run. For instance, the British government's comprehensive guarantee of Northern Rock's deposits is credited with dissipating the queues of depositors outside its branches in 2007.[47] There are also suggestions in the United States' Financial Crisis Inquiry Report that the DI scheme operating in the U.S. averted panic amongst insured depositors during the financial crisis.[48] Nevertheless, it is apparent that even fully insured depositors, acting rationally, have an incentive to participate in a bank run because of the

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42 See *e.g.*, the discussion in House of Commons Report, "Run on the Rock", *supra* note 39 at paras. 219-220; Hoelscher, Taylor & Klueh, "Design and Implementation of DI", *supra* note 24 at 3, 4; McVea, "FSCS and DI Reform", *supra* note 11 at 395; Kam Hon Chu, "Deposit Insurance and Banking Stability" (2011) 31(1) Cato Journal 99 [Kam, "DI and Stability"].

43 See *e.g.*, Campbell, "Lessons from Northern Rock", *supra* note 2 at paras. 6-8. Not all authors subscribe to this explanation, for an alternative view, see *e.g.*, Macey & Miller, "Regulatory Analysis of DI", *supra* note 27.

44 The recent financial crisis illustrates the point: see *e.g.*, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 57, 58.

45 Demirgüç-Kunt, Kane & Laeven, "DI Design", *supra* note 2 at 16.

46 Described as a "silent run", see U.S., Financial Crisis Inquiry Committee, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (Superintendent of Documents, US Government Printing Office, 2011) online: Financial Crisis Inquiry Committee <http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf> at 367 [U.S. Final Report]; see also, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 58.

47 Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 65, 68; Campbell, "Lessons from Northern Rock", *supra* note 2 at para. 62.

48 U.S. Final Report, *supra* note 46, *e.g.*, at 355, 367, 368.

implications that a bank's insolvency has for their liquidity. *A fortiori*, uninsured depositors (being those excluded partially or fully from the DI safety net), have an incentive to withdraw funds from a failing institution. For example, the run on Wachovia in the U.S. in 2008 is attributed to large depositors who made transfers to bring themselves within the DI limit.[49] A run by uninsured depositors, particularly where the DI cover is relatively low, is likely to be crippling for a bank. To avert a bank run, therefore, it is apparent that the scope of the DI safety net needs to be extensive (both in terms of who is protected and the amount covered), so as to significantly reduce the number of customers with a strong incentive to join a bank run.[50] This may explain why DI in the U.S. can be aligned with the stability rationale as DI cover in the U.S. is extensive. Nevertheless, according to *Bloomberg,* bank runs were witnessed in the U.S. during the recent crisis.[51] Hence, claims that DI averts bank runs can be contested. Indeed, some critics take issue with the objective of averting bank runs; they argue that individual (as opposed to systemic) bank runs can promote stability by eliminating weak banks and keeping stakeholders vigilant.[52]

The claim that DI boosts stability in periods of calm is also contentious. Antagonists argue that the confidence engendered by DI actually destabilises the system by exacerbating the risk of complacency on the part of depositors and banks themselves. This is known in regulatory parlance as moral hazard. For example, a bank may take risks in reliance on an assumption that it will be rescued by the government if it gets into financial trouble.[53] This willingness on the part of a bank to take risks may be compounded by the knowledge that its depositors are protected under a DI scheme. Moral hazard on the part of a bank is combated to some extent by the risk of job losses and legal redress if directors and senior staff are in breach of their common law or statutory duties.[54]

The manifestation of moral hazard that most closely implicates DI is that depositors will cease to exercise market discipline in selecting and maintaining an account with a bank. The idea of market discipline is that of a discerning depositor undertaking a risk-return analysis in deciding where to place his funds. In theory, market

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49 U.S. Final Report, *ibid.* at 367; see also, Rick Rothacker & Kerry Hall, "Wachovia Faced a 'Silent' Bank Run" *The Charlotte Observer* (2 October 2008), online: The Charlotte Observer <http://www.charlotteobserver.com/2008/10/02/v-print/226799/wachovia-faced-a-silent-bank-run.html>.

50 See Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 193.

51 See David Mildenberg, "Wachovia's Steel Ran out of Time Amid Mortgage Losses" *Bloomberg* (30 September 2008) online: Bloomberg <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aJicDM1cwuZY>.

52 Kam, "DI and Stability", *supra* note 42 at 102. See also, Randall S. Kroszner & William R. Melick, "Lessons from the US Experience with Deposit Insurance" in *Deposit Insurance Around the World: Issues of Design and Implementation*, *supra* note 2, 181 at 182.

53 The extensive rescue initiatives in the United States, Europe and elsewhere following the collapse of Lehman Brothers in 2008 reveal the reluctance of governments to allow significant banks to fail. Nevertheless, the British government's decisions not to rescue Barings Bank in 1995 shows that government rescues are not inevitable: see *e.g.*, McVea, "FSCS and DI Reform", *supra* note 11 at 410.

54 See Peter Cartwright & Andrew Campbell, "Co-insurance and Moral Hazard: Some Reflections on Deposit Protection in the UK and USA (2003) 5(1) Journal of International Banking Regulation 17 [Campbell & Cartwright, "Co-insurance and Moral Hazard"]; Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 191, 192; MacDonald, *Deposit Insurance*, *supra* note 25 at 10. As MacDonald points out at 10, senior officers, related companies, substantial shareholders and their families can also be excluded from the DI protective net.

discipline will mean that banks engaging in high risk activity will not attract customers or will be forced to pay higher interest for their deposits.[55] Thus, market discipline forces banks to tone down their risk or be run out of business. The criticism of DI is that it removes the incentive for protected customers to exercise this market discipline because they feel immune to the risk of loss.[56] Basically, a public that is over-confident may exacerbate the risk of bank collapse.

There are persuasive arguments, however, countering the idea that rank-and-file depositors can exert market discipline. First, it assumes that depositors know of and understand the DI scheme. Second, many critics argue that it is unrealistic to expect consumer and ordinary business depositors to exercise market discipline, as they lack the incentive and tools to do so, including access to adequate and timely information and an ability to draw informed conclusions from such information.[57] Risk assessment is as much an art as a science and has confounded even regulators who have extensive access to information, manpower to digest it and know-how to assess it. The orthodox view today is that, provided the market discipline displaced by DI is replaced in other ways, moral hazard is not a reason to avoid an explicit DI scheme.[58]

A suitably designed DI system can also contain moral hazard:[59] appropriate limits (both in ambit and quantum of cover) on the protection offered by the DI scheme[60] and risk-based DI premiums are examples. This can be complemented by a strong regulatory framework, prudent risk management and a sound corporate governance culture.[61] The Singapore DI scheme exhibits numerous such features: aside from the DI quantum limit, there are other limits such as the exclusion of banks from claiming under the DI scheme and the exclusion of investments from the definition of an 'insured deposit', which will be discussed further below. This is boosted by the

55 See *e.g.*, Demirgüç-Kunt, Kane & Laeven, "DI Design", *supra* note 2 at 15; Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 64; MacDonald, *Deposit Insurance*, *supra* note 25 at 9; Helen A. Garten, "Banking On the Market: Relying on Depositors to Control Bank Risks" (1986-1987) 4 Yale J. on Reg. 129 at 133 [Garten, "Banking on the Market"].

56 Macey & Miller, "Regulatory Analysis of DI", *supra* note 27 at 221-222.

57 See Basel Core Principles, *supra* note 2, Explanations and supporting guidance to Principle 1 at 9; also Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 72; McVea, "FSCS and DI Reform", *supra* note 11 at 397; House of Commons Report, "Run on the Rock", *supra* note 39 at paras. 223, 225; Hoelscher, Taylor & Klueh, "Design and Implementation of DI", *supra* note 24 at 26; Campbell & Cartwright, "Co-insurance and Moral Hazard", *supra* note 54 at 15; Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 190; Garten, "Banking on the Market", *supra* note 55 at 134. Garten says there is evidence that depositors are sensitive to risk, but we need to distinguish between involuntary depositors who are ill-suited to exert market discipline and investor-depositors who are better positioned to do so.

58 See Demirgüç-Kunt, Kane & Laeven, "DI Design", *supra* note 2 at 15, 16; Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 83.

59 Demirgüç-Kunt, Kane & Laeven, "DI Design", *ibid.* at 16; Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 134. See also, Basel Core Principles, *supra* note 2, Principle 2; FSB Review, *supra* note 2 at 3, 7.

60 Basel Core Principles, *ibid.*, Principle 2; Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 109.

61 Basel Core Principles, *ibid.* at 8, para. 16; FSB Review, *supra* note 2 at 3. See also, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 73; Laeven, "Pricing of Deposit Insurance", *ibid*. at 83; see also, 132, 136.

regulatory framework under the *Banking Act* which emphasises risk management,[62] as do the corporate governance regulations for banks.[63]

At one time it was thought that customer-moral hazard could be combated through the introduction of a co-insurance structure.[64] Under such a scheme, depositors are covered for a percentage of their eligible deposits, leaving them to bear the loss of the remainder. In this way, it was thought, customers retain an incentive to choose their bank carefully and monitor its financial health. The co-insurance structure has, however, been blamed for undermining the confidence-boosting function of DI in Britain, which in 2007 witnessed its first bank run in more than 120 years.[65] The House of Commons report on the failure of Northern Rock put it bluntly: "Rather than contributing to financial stability, co-insurance directly undermines it, by offering an incentive to join a bank run. We consider the co-insurance model to be discredited with regard to depositor protection".[66] Other criticisms levelled at co-insurance include the unavoidable greater complexity which it brings, making it difficult for customers to understand the scheme,[67] as well as the large number of small claims it will produce in the insolvent bank's estate, thereby clogging up the liquidation process.[68] According to the FSB Review, there has been a trend towards eliminating co-insurance since the global financial crisis[69] and it is unsurprising that it does not feature in the Singapore scheme.

In Singapore, the control of moral hazard and limiting the cost of DI were important considerations in establishing the DI scheme.[70] It is appropriate therefore, for the rationale of DI in Singapore, to be that of consumer protection rather than the

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[62] See *e.g.*, Monetary Authority of Singapore, "Guidelines on Risk Management Practices—Credit Risk" (March 2013), online: Monetary Authority of Singapore <http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Risk-Management/Credit-Risk.aspx>; Monetary Authority of Singapore, "Guidelines on Risk Management Practices—Market Risk" (March 2013), online: Monetary Authority of Singapore <http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Risk-Management/Market-Risk.aspx>; Monetary Authority of Singapore, "Guidelines on Risk Management Practices—Liquidity Risk" (March 2013), online: Monetary Authority of Singapore <http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Risk-Management/Liquidity-Risk.aspx>; Monetary Authority of Singapore, "Banking Licensing Admission Criteria", online: Monetary Authority of Singapore <http://www.mas.gov.sg/regulations-and-financial-stability/regulations-guidance-and-licensing/commercial-banks/bank-licensing.aspx>.

[63] *Banking (Corporate Governance) Regulations 2005* (S. 583/2005 Sing.).

[64] See *e.g.*, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 76, 77; Hoelscher, Taylor & Klueh, "Design and Implementation of DI", *supra* note 24 at 26; Campbell & Cartwright, "Protecting Depositors", *supra* note 2 at 191.

[65] Campbell "Lessons from Northern Rock", *supra* note 2 at para. 71. The criticism of *e.g.* Cartwright and Campbell in 2003 was prophetic, see Campbell & Cartwright, "Co-insurance and Moral Hazard", *supra* note 54 at 17.

[66] House of Commons Report, "Run on the Rock", *supra* note 39 at para. 227; Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 78, 83.

[67] House of Commons Report, "Run on the Rock", *ibid.* at para. 227; Singh & LaBrosse, "Critical Reflections", *ibid.* at 77.

[68] Singh & LaBrosse, "Critical Reflections", *ibid.* at 77; Campbell, "Lessons from Northern Rock", *supra* note 2 at para. 80.

[69] FSB Review, *supra* note 2 at 2, 21.

[70] See Monetary Authority of Singapore, "Review of the Deposit Insurance Scheme in Singapore" (Consultation Paper P004-2010, February 2010), online: Monetary Authority of Singapore <http://www.mas.gov.sg/∼/media/resource/publications/consult_papers/2010/CP_Review_DI_Scheme_25Feb2010.ashx> [MAS DI Review (Feb 2010)], Preface; MAS Response (Sep 2010), *supra* note 39 at para. 4.1.2.

promotion of stability. Customer protection is a more tangible justification for a DI scheme than the more elusive stability objective. At the same time, to the extent that a DI scheme focused on customer protection can optimise any stabilising effects that may be available, it should do so.

III. Depositor Protection in Singapore

A. *Depositor Priority*

The DI provisions are only part, albeit a major part, of the explicit protection afforded to depositors in Singapore. Other protections can be found in the *Banking Act*. For example, an insolvent bank's assets in Singapore are allocated to meet the liabilities of the bank in Singapore in priority to claims by creditors in other jurisdictions.[71] The *Banking Act* also alters the priority of creditors in a bank's insolvency. The usual order of priority in Singapore is that secured creditors take from the insolvent estate to the extent of their security (such as a charge); amongst those that remain, certain creditors (basically the liquidator, revenue authority and employees of the insolvent), receive preferential treatment;[72] the remaining general creditors, including depositors, are accorded lowest priority. General creditors rank *pari passu* with each other and therefore, all receive the same percentage of their claim in the bankrupt estate.[73]

The *Banking Act* changes this *pari passu* principle within the ranks of the general creditors by introducing a hierarchy of priority.[74] The primary beneficiary of this new hierarchy is the DI Fund which receives priority, first in respect of the failed bank's outstanding DI premiums[75] and second, in respect of payments that the DI Fund has made to depositors,[76] to which the DI Fund acquires rights by subrogation.[77] The rationale of prioritising the DI Fund's claim in this way is the imperative of promoting the scheme's viability.[78] Next in line are customers with deposits that are not covered by the DI scheme, such as deposits exceeding the $50,000 limit and foreign currency deposits.[79] Because of the DI Fund's superior status, the practical benefit to depositors from this new hierarchy may not be great, although that will depend on the severity of the bank's insolvency. The lowest priority goes to other banks and non-depositor creditors of the failed bank (such as service providers) who will bear the brunt of the insolvency.

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[71] *Banking Act*, *supra* note 4, s. 61. *c.f.* *Companies Act* (Cap. 50, 2006 Rev. Ed. Sing.), s. 377(3)(c) [*Companies Act*], which ring-fences an insolvent foreign company's assets for its Singapore creditors, recently discussed in *Beluga Chartering GmbH (in liquidation) v. Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (Deugro (Singapore) Pte Ltd, non-party)* [2013] SGHC 60.

[72] *Companies Act*, *ibid*., s. 328(1).

[73] *Bankruptcy Act* (Cap. 20, 2009 Rev. Ed. Sing.), s. 90(6).

[74] *Banking Act*, *supra* note 4, s. 62.

[75] *Ibid*., s. 62(1)(a).

[76] *Ibid*., s. 62(1)(b).

[77] *DIPOPS Act*, *supra* note 5, s. 27.

[78] See *e.g.*, Basel Core Principles, *supra* note 2, Principle 18. According to the MAS, the priority given to the DI Fund helps to keep the DI fund at a modest level, see MAS DI Review (Feb 2010), *supra* note 70 at 9, fn. 8.

[79] *Banking Act*, *supra* note 4, ss. 61(2)(c), (d).

B. *The Provisions of the Deposit Insurance and Policy Owners' Protection Schemes Act*

1. *Scheme Membership*

All banks operating with a full banking licence in Singapore and finance companies, must be members of the DI scheme and pay premiums to the DI agency, unless exempted by the MAS.[80] Full banks and finance companies are the institutions that can engage in retail deposit-taking.[81] Banks holding wholesale and offshore licenses and merchant banks are subject to restrictions that limit their retail customers;[82] their customers are generally other financial institutions, large corporations and high net worth individuals, none of whom are the target beneficiaries of a DI scheme. Restricting compulsory membership of the DI scheme to entities taking retail deposits is consistent with international recommendations and with the consumer protection rationale of the DI scheme in Singapore.[83] In the interests of transparency and promoting market discipline, deposit-takers that are not DI members should make clear statements on their websites and documentation to the effect that they are not covered by the DI scheme.

Compulsory (as opposed to voluntary) membership of the DI scheme promotes market discipline amongst the members, who are well equipped to exercise it although this unavoidably means that stronger members subsidise weaker ones. On the other hand, it is appropriate for there to be some collective responsibility in the industry, and stronger members do benefit from any confidence-boosting effects that the scheme may have.[84] The subsidisation problem may also be offset to some extent by risk-based premiums, as discussed below.[85]

2. *The DI Agency*

The DI scheme in Singapore is administered by the Singapore Deposit Insurance Corporation Limited ("SDIC" or "the Agency"), a company limited by guarantee.[86]

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80 *DIPOPS Act*, *supra* note 5, s. 5.

81 *Banking Act*, *supra* note 4, s. 4A prohibits deposit-taking unless exempt. For finance companies, see *Finance Companies Act* (Cap. 108, 2011 Rev. Ed. Sing.), s. 2 for "financing business" and s. 3.

82 See Monetary Authority of Singapore, "Guidelines for Operation of Wholesale Banks" (31 July 2008), online: Monetary Authority of Singapore <http://www.mas.gov.sg/~/media/resource/legislation_guidelines/banks/guidelines/Wholesale%20Banks%20Guidelines.pdf>; Monetary Authority of Singapore, "Guidelines for Operation of Offshore Banks" (31 July 2008), online: Monetary Authority of Singapore <http://www.mas.gov.sg/~/media/resource/legislation_guidelines/banks/guidelines/Offshore%20Banks%20Guidelines%20_%208%20Jul%2008.pdf>; Monetary Authority of Singapore, "Guidelines for Operation of Merchant Banks" (19 March 2007), online: Monetary Authority of Singapore <http://www.mas.gov.sg/~/media/resource/legislation_guidelines/banks/m_guidelines/Guidelines%20for%20Operation%20of%20Merchant%20Banks.pdf>. Wholesale and offshore banks are also restricted on the number of branches they can operate which means that they are not prominent on the high street.

83 This is consistent with Basel Core Principles, *supra* note 2, Principle 8. See also, FSB Review, *supra* note 2 at 6.

84 See Garcia, *Actual and Good Practices*, *supra* note 39 at 17.

85 *Ibid*.

86 *Deposit Insurance and Policy Owners' Protection Schemes (Designation of Deposit Insurance and Policy Owners' Protection Fund Agency) Notification 2011* (S. 431/2011 Sing.).

The Agency collects premiums and administers the fund. If the compensation process is triggered, it will determine compensation entitlements, make payments from the fund and seek recovery from the failed scheme member.[87] As such, the role of the Agency can be described as that of a 'paybox' as it does not play an active role in the regulation of scheme members or in the resolution of the failed entity.[88] The FSB Review reports that more DI agencies are now playing a hands-on role in the regulation and, if necessary, the resolution of banks.[89] This is supported in some circles on the basis that "strengthening the supervisory capacity and powers of the deposit insurer vis-à-vis its members can have positive implications for bank stability".[90] Nevertheless, the paybox model is not uncommon;[91] it leaves the regulatory function to be performed by another agency—in Singapore's case, by the MAS.

It is apparent that the MAS is closely involved in key aspects of the DI scheme, including: exemption from membership,[92] premium determination,[93] triggering the compensation process,[94] and issuing regulations.[95] The consultation process that preceded the new *DIPOPS Act* was also conducted by the MAS.[96] The paybox function of the DI agent suggests a policy decision that regulatory issues should remain under the purview of the MAS; it therefore avoids duplication of the oversight role and helps contain the costs of the scheme. The DI agent can thus be seen as complementing the MAS's overarching regulatory and supervisory functions.

3. *Funding the Scheme*

There are different ways in which DI can be funded. It may be entirely government funded or wholly funded by the banking community or a hybrid of the two.[97] Another variable is the timing of the funding. It is possible to establish a fund in advance of a crisis (known as '*ex ante*' funding). At the other extreme, a scheme may be funded only when there is an insolvency ('*ex post*' funding) or it may have elements of both.[98] Advantages of an advance fund are that: it is counter-cyclical, which is consistent with the current view that banks should put away in the good years rather

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87 *DIPOPS Act*, *supra* note 5, ss. 57(1), (2).

88 A deposit insurer's role can take different forms, see FSB Review, *supra* note 2 at 16, 17. See also, Basel Core Principles, *supra* note 2 Principle 4; Hoelscher, Taylor & Klueh, "Design and Implementation of DI", *supra* note 24 at 10; Campbell "Lessons from Northern Rock", *supra* note 2 at para. 28.

89 FSB Review, *ibid*. at 4, 16.

90 Thorsten Beck & Luc Laeven, "Deposit Insurance and Bank Failure Resolution: Cross-Country Evidence", in *Deposit Insurance Around the World: Issues of Design and Implementation*, *supra* note 2, 149 at 170 [Beck & Laeven, "DI and Bank Resolution"].

91 Campbell, "Lessons from Northern Rock", *supra* note 2, at para. 28.

92 *DIPOPS Act*, *supra* note 5, ss. 6, 7. The MAS indirectly controls membership of the scheme through the issue and revocation of banking licenses, see *Banking Act*, *supra* note 4, ss. 7, 20.

93 *DIPOPS Act*, *ibid.*, s. 13.

94 *Ibid.*, s. 22.

95 *Ibid.*, *e.g.*, ss. 12(4), 13(3).

96 See MAS DI Review (Feb 2010), *supra* note 70; MAS Response (Sep 2010), *supra* note 39; Monetary Authority of Singapore, "Deposit Insurance and Policy Owners' Protection Schemes Bill" (Consultation Paper P016-2010, December 2010), online: Monetary Authority of Singapore <http://www.mas.gov.sg/~/media/resource/publications/consult_papers/2010/DIandPPF_Consultation_Paper.ashx>.

97 See *e.g.*, Basel Core Principles, *supra* note 2, Principle 11; MacDonald *Deposit Insurance*, *supra* note 25 at 12, 13.

98 Basel Core Principles, *ibid*., Principle 11.

than scramble for funds in the lean years;[99] it is better at generating confidence as depositors can be assured that a substantial fund is available to make payments should the need arise;[100] and where the fund is derived from bank premiums, the cost is borne by the banks who benefit from the scheme,[101] including the insolvent bank whose depositors receive reimbursement.[102] In this last respect, however, it is hard to believe that the cost is not ultimately passed on to customers via bank charges or lower interest rates on deposits. The downside of *ex ante* funding is that it can impact a bank's liquidity and deprive them of some capital; it is more expensive as the fund requires administration,[103] and its very existence can exacerbate moral hazard. *Ex post* funding is cheaper and incentivises banks to monitor each other as solvent banks may be required to fund the compensation of a failed bank's depositors.[104] On the other hand, it is less secure as it depends on an injection of funds in a crisis situation and at short notice. The FSB Review shows that there has been a strong trend towards the *ex ante* model in the aftermath of the financial crisis.[105]

In keeping with the trend, Singapore has opted for the establishment of an advance fund built-up by members' premiums.[106] The Singapore fund may be invested conservatively in readily realisable assets.[107] The target size of the fund in Singapore is 0.3% of the insured deposits of scheme members, around $270 million, and the target date for achieving this size is 2020.[108] According to the MAS, the DI fund can be kept to this modest size by the asset maintenance requirements that can be imposed on banks under the *Banking Act*,[109] and the priority given to the DI agency on insolvency.[110] There is provision for a review of premiums when the target-size has been reached.[111] In the event that the fund is insufficient to meet a failed bank's insured liabilities, there is provision for additional premiums to be payable,[112] and the *DIPOPS Act* envisages that the Agency will borrow funds if necessary.[113] Such

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99 See SDIC, "Frequently Asked Questions", *supra* note 35, Question No. 22; MacDonald, *Deposit Insurance*, *supra* note 25 at 19; House of Commons Report, "Run on the Rock", *supra* note 39 at para. 263.

100 According to the FSB Review, depositor confidence during the GFC depended partly on knowing that a sufficiently large fund was available to meet their claims: FSB Review, *supra* note 2 at 21; see also MacDonald, *Deposit Insurance*, *ibid*. at 19.

101 See *e.g.*, FSB Review, *supra* note 2 at 21; Basel Core Principles, *supra* note 2, Principle 11; House of Commons Report, "Run on the Rock", *supra* note 39 at para. 263.

102 See *e.g.*, the discussion in MacDonald, *Deposit Insurance*, *supra* note 25 at 18, 19.

103 See *e.g.*, the Financial Statements of the SDIC, online: Singapore Deposit Insurance Corporation <https://www.sdic.org.sg/pub_fin_statement.php>.

104 Hoelscher, Taylor & Klueh, "Design and Implementation of DI", *supra* note 24 at 8.

105 FSB Review, *supra* note 2 at 2, 6, 21.

106 *DIPOPS Act*, *supra* note 5, ss. 9, 12.

107 *Ibid*., s. 11; see also, SDIC website, *supra* note 35; FSB Review, *supra* note 2 at 22.

108 MAS DI Review (Feb 2010), *supra* note 70 at paras. 3.1-3.4.

109 See *Banking Act*, *supra* note 4, s. 40.

110 MAS DI Review (Feb 2010), *supra* note 70 at 9, fn. 8.

111 Singapore Deposit Insurance Corporation, *Singapore Deposit Insurance Corporation Rules* (13 May 2011), online: Singapore Deposit Insurance Corporation <https://www.sdic.org.sg/documents/SDIC_rules_gazetted_9May11.pdf>, D14-D18 [SDIC Rules].

112 *DIPOPS Act*, *supra* note 5, s. 15. This is regarded as an *ex-post* funding feature and the Singapore scheme may, in this respect, be described as a hybrid, see Basel Core Principles, *supra* note 2, Principle 11.

113 *Ibid*., ss. 9(2)(b), 57(3).

back-up funding is recommended and is particularly important where the fund has not yet attained a critical mass.[114]

Premium calculation is an area of special expertise, and scrutiny of the method used in Singapore is beyond the scope of this paper. At a more general level, there are basically two types of premium: a flat premium and a risk-based premium.[115] The advantage of risk-based premiums is that it forces riskier banks to pay more; this may, to some extent, address moral hazard. There are also disadvantages, not least the difficult task of assessing risk.[116] FSB members are equally divided between the two,[117] with Singapore opting for the risk-based model.[118] Disclosure of information relating to a member's premium and its calculation is prohibited in Singapore.[119] The reason is presumably the adverse conclusions that the market would draw if it could identify the banks that have been assessed as being more risky.[120]

4. *Ambit of Cover*

The *DIPOPS Act* protects the "insured deposits" of "insured depositors".[121] An "insured depositor" is basically any person other than a bank.[122] "Person" has a wide meaning and includes corporate entities and unincorporated associations of persons.[123] Under the 2006 *DI Act*, business deposits were not covered by the DI scheme. Hence, the current provisions represent a significantly wider ambit of protection—all non-bank depositors are eligible. Bearing in mind the consumer protection rationale of DI in Singapore, it is tempting to say that business deposits and those of wealthy individuals (who have other assets) should not be protected. As attractive as it may be to target a DI scheme (particularly one premised on consumer protection) only at those who need it, there are two challenges to doing so. The first is in assessing the need and setting the boundaries of the safety net appropriately; the second is preserving simplicity so that the scheme can be both understood by

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114 Basel Committee on Banking Supervision & the International Association of Deposit Insurers, *Core Principles for Effective Deposit Insurance Systems: A Methodology for Compliance Assessment* (December 2010), online: Bank for International Settlements <http://www.bis.org/publ/bcbs192.pdf> at 18, Principle 11, Essential Criteria No. 2 [*Basel Methodology*]: the Deposit Insurance Fund should have an "assured source(s) of back-up funding for liquidity purposes". See also, FSB Review, *supra* note 2 at 4, 21. In the U.S., for example, the FDIC scheme is "backed by the full faith and credit of the United States government" (U.S., Federal Deposit Insurance Corporation, "Symbol of Confidence" (20 July 2010), online: Federal Deposit Insurance Corporation <http://www.fdic.gov/consumers/banking/confidence/symbol.html#Full>, Full Faith and Credit of US Government.

115 FSB Review, *supra* note 2 at 22; see also, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 79; Demirgüç-Kunt, Kane, Laeven, "DI Design", *supra* note 2 at 11.

116 See *e.g.*, Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 107; House of Commons Report, "Run on the Rock", *supra* note 39 at para. 265.

117 FSB Review, *supra* note 2 at 22, 23.

118 *DIPOPS Act*, *supra* note 5, s. 13; *Deposit Insurance and Policy Owners' Protection Schemes (Deposit Insurance) Regulations 2011* (S. 239/2011 Sing.), r. 6, 7 [*DI Regulations*]; see also, FSB Review, *ibid.* at 22.

119 *Ibid.*, s. 20.

120 See MacDonald, *Deposit Insurance*, *supra* note 25 at 20.

121 *DIPOPS Act*, *supra* note 5, s. 22.

122 *Ibid.*, s. 2, "insured depositor". Banks (as depositors) are excluded from the DI safety net. "Bank" includes an entity that would need to be licensed as a bank if it operated in Singapore.

123 *Interpretation Act* (Cap. 1, 2002 Rev. Ed. Sing.), s. 2.

depositors and implemented by the Agency without difficulty.[124] Like natural persons, not all businesses are equal in sophistication, size and financial muscle. There is therefore, a credible argument in favour of extending DI protection to small businesses which can be viewed as being in a similar position to consumer depositors.[125] DI measures in other jurisdictions reflect different approaches.[126] For example, the U.K. DI scheme protects 'eligible claimants'—primarily individuals and small businesses[127] while the U.S. scheme extends protection to businesses although the protection available for individuals is greater than for corporations.[128] In Singapore, the relatively modest cover limit (discussed below), to some extent, compensates for the broad ambit of protected depositors and preserves the incentive of bigger depositors (whether personal or business in nature) to exert market discipline.[129]

In Singapore, joint account holders are treated individually as insured depositors and are each entitled to the cover limit. Joint account holders are presumed to have an equal share in the joint account,[130] which is aggregated with credit balances in any individual accounts they may have. While corporates and partnerships are covered in their own right, a sole proprietorship account is aggregated with the personal accounts held by the sole proprietor.[131] A partnership account is subject to the cover limit irrespective of the number of partners.[132] Trust accounts are independently covered and are not aggregated with the personal accounts of the trustee.[133]

While Parliament has opted for simplicity in defining insured depositors, greater complexity exists in the definition of an insured deposit.[134] An insured deposit is a Singapore dollar deposit in a Singapore branch of a Scheme member which is either in a savings, fixed deposit, current or supplementary savings scheme ("SRS")[135] account , or is held in designated accounts pursuant to the Central Provident Fund Scheme ("CPF").[136] The MAS may also prescribe that a particular product qualifies for cover.[137]

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[124] See also, MAS Response (Sep 2010), *supra* note 39 at para. 2.2.2.

[125] See MAS Response (Sep 2010), *ibid.* at para. 2.1.2, 4.1.2; see also, Basel Core Principles, *supra* note 2, Principle 8; FSB Review, *supra* note 2 at 6.

[126] See a list of various possibilities in MacDonald, *Deposit Insurance*, *supra* note 25 at 15.

[127] U.K., Financial Conduct Authority, *Financial Conduct Authority Handbook—Compensation* (June 2013), online: Handbook Online <http://media.fshandbook.info/content/full/COMP.pdf>, Comp 4.2. For an overview of the U.K. scheme, see Comp 1.3. For a layman's summary, see U.K., Financial Services Compensation Scheme, "Eligibility Rules", online: Financial Services Compensation Scheme <http://www.fscs.org.uk/what-we-cover/eligibility-rules>.

[128] See Federal Deposit Insurance Corporation, "Deposit Insurance Summary" (1 January 2013), online: Federal Deposit Insurance Corporation <http://www.fdic.gov/deposit/deposits/dis/index.html>.

[129] See MacDonald, *Deposit Insurance*, *supra* note 25 at 17, 18.

[130] Unless the bank's records indicate otherwise, see *DIPOPS Act*, *supra* note 5, s. 23(3).

[131] *Ibid.*, s. 22(1).

[132] *Ibid.*

[133] *Ibid.*, s. 22(2).

[134] See *ibid.*, First Schedule.

[135] The supplementary savings scheme is an optional savings scheme for retirement. For further details see the Ministry of Finance website (online: Ministry of Finance <http://app.mof.gov.sg/index.aspx>).

[136] The CPF Scheme is a savings and pension scheme operating in Singapore. An insured deposit includes monies held under the Central Provident Fund Investment Scheme and the Central Provident Fund Minimum Sum Scheme. For further details see the Central Provident Fund Board website (online: Central Provident Fund Board <http://mycpf.cpf.gov.sg>).

[137] *DIPOPS Act*, *supra* note 5, First Schedule. In this respect, see *DI Regulations*, *supra* note 118, r. 15.

Excluded are deposits with non-scheme members,[138] foreign branches of scheme members, structured deposits and foreign currency deposits. The rationale for excluding structured deposits and foreign currency deposits is that they are viewed as investments and not working capital.[139] It is conceivable that, under this scheme, deposits of a hybrid nature may be hard to classify. Both deposits and structured deposits are, however, defined concepts and any dispute about classification can ultimately be resolved by the courts.[140] The exclusion of foreign currency deposits goes against the trend reported in the FSB Review which says that most FSB members do cover foreign currency deposits.[141] For example, according to the website of the Hong Kong Deposit Protection Board, structured deposits are excluded from protection, as are investment products like shares, bonds and unit trusts, but foreign currency deposits are included.[142] On the other hand, foreign currency deposits are not covered in Australia.[143] Extending cover to foreign currency deposits brings additional risks such as the possibility of the domestic currency weakening against the foreign currency.[144] Similarly, deposits in foreign branches expose the DI scheme to risks beyond the control of the regulator. Given the conservative character of DI cover in Singapore, the exclusion of foreign currency deposits and deposits in foreign branches is not surprising.

5. *Level of Cover*

The *DIPOPS Act* covers deposits in Singapore dollar savings, current, fixed deposit and SRS accounts up to a combined maximum of S$50,000[145] per depositor per scheme member.[146] The cover limit is calculated per insured depositor and not per account. Thus, an insured depositor's balances in different accounts, including his share of a joint account, are aggregated for the purposes of calculating the compensation to which he is entitled.[147] Certain CPF accounts are independently covered up to S$50,000.[148] This means that a Singapore citizen or permanent resident (being those who participate in the CPF scheme) is potentially covered up to S$100,000.

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[138] Only full banks and finance companies are required to be members, as discussed above.

[139] See SDIC, "Frequently Asked Questions", *supra* note 35, Question No. 12. See also, Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 134.

[140] "Structured deposit" is defined in the *Financial Advisers (Structured Deposits—Prescribed Investment Product and Exemption) Regulations* (Cap. 110, Reg. 7) 2007 Rev. Ed. Sing.; "Deposit" is defined in the *DIPOPS Act*, *supra* note 5, s. 2.

[141] FSB Review, *supra* note 2 at 21.

[142] Hong Kong Deposit Protection Board, "Coverage", online: Hong Kong Deposit Protection Board <http://www.dps.org.hk/en/coverage.html> [HKDPB, "Coverage"].

[143] For an overview of the Australian scheme, see Australian Prudential Regulation Authority, "Financial Claims Scheme for Authorised Deposit-taking Institutions" (1 February 2012), online: Australian Prudential Regulation Authority <http://www.apra.gov.au/CrossIndustry/Documents/ADI%20Financial%20Claims%20Scheme%20FAQ%2001%2002%2012.pdf> at 4 [APRA, "Financial Claims Scheme"].

[144] See the discussion in Garcia, *Actual and Good Practices*, *supra* note 39 at 12.

[145] *DIPOPS Act*, *supra* note 5, First Schedule.

[146] *Ibid.*, s. 22(1), First Schedule. This means that depositors can spread their Singapore dollar deposits around member banks to maximise the protection available although there are usually financial and practical reasons not to do so.

[147] *Ibid.*, s. 22(1).

[148] *Ibid.*, s. 22(4), First Schedule.

There is no formula by which to calculate an appropriate level of cover for deposit insurance and setting the cover limit is essentially a balancing act involving more of a political decision than an economic one.[149] By way of comparison, the Deposit Guarantee Schemes Directive applicable in the European Economic Area mandates cover of €100,000; in compliance with this Directive, depositors in the United Kingdom now enjoy cover of up to £85,000 per depositor per authorised institution;[150] in Hong Kong the level of cover is HK$500,000 per depositor per institution.[151] Australia's Financial Claims Scheme covers up to ASD$250,000 per depositor, per institution.[152] DI cover in the United States under the Federal Deposit Insurance Corporation is extensive: the minimum cover is US$250,000. Different account categories (single accounts, joint accounts, certain retirement accounts and trust accounts) qualify for independent levels of cover. Total cover for individuals may extend to millions of dollars.[153] Business accounts (companies, partnerships and unincorporated associations) are covered for up to US$250,000. In money terms therefore, the level of cover in Singapore is more modest in comparison to other financial centres.[154]

The FSB Review points out that the "adequacy of coverage is primarily a function of the proportion of covered deposits and depositors rather than of the absolute coverage level."[155] According to an International Monetary Fund study, between 80-90% of a country's deposits by number and around 20% of the total value of deposits, should be covered.[156] Based on the available figures, Singapore's scheme apparently meets this benchmark, with full cover for more than 90% of the depositors embraced by the scheme,[157] which extends to nearly 20% of the total value of deposits.[158] Although precise comparisons are not possible, according to published figures, the Hong Kong scheme protects about 90% of depositors,[159] the U.K. protects around

[149] See House of Commons Report, "Run on the Rock", *supra* note 39 at paras. 228, 233.

[150] See U.K., Financial Services Compensation Scheme "What We Cover", online: Financial Services Compensation Scheme <http://www.fscs.org.uk/what-we-cover/>. See also, House of Commons Report, "Run on the Rock", *ibid*. at paras. 229-231; McVea, "FSCS and DI Reform", *supra* note 11 at 403.

[151] See HKDPB, "Coverage", *supra* note 142.

[152] See Australian Prudential Regulation Authority, "Financial Claims Scheme", online: Australian Prudential Regulation Authority <http://www.apra.gov.au/crossindustry/FCS/Pages/default.aspx>; FSB Review, *supra* note 2 at 11, 16.

[153] See FDIC Website, *supra* note 10.

[154] At current exchange rates, the cover limit in Hong Kong is about $80,000 which is more than the $50,000 cover in Singapore on bank accounts but less than the $100,000 cover which is available in Singapore if the CPF-account cover is included.

[155] FSB Review, *supra* note 2 at 20. See also, Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 134.

[156] Garcia, *Actual and Good Practices*, *supra* note 39 at 14.

[157] See the statement of Mr. Lim Hng Kiang, Minister for Trade & Industry and Deputy Chairman, Monetary Authority of Singapore in *Deposit Insurance and Policy Owners' Protection Schemes Bill* Second Reading, *supra* note 6; also, MAS DI Review (Feb 2010), *supra* note 70 at para. 1.8; MAS Response (Sep 2010), *supra* note 39 at para. 4.1.3.

[158] See FSB Review, *supra* note 2 at 19, Figure 2.

[159] See Hong Kong Deposit Protection Board, "FAQ", online: Hong Kong Deposit Protection Board <http://www.dps.org.hk/en/faq.html>; Hong Kong Deposit Protection Board, Press Release, "Deposit Protection Scheme operates smoothly for 5 years" (20 September 2011), online: Hong Kong Deposit Protection Board <http://www.hkma.gov.hk/eng/key-information/press-releases/2011/20110920-5.shtml>.

98% of individual deposits,[160] and around 99% of deposit accounts are fully protected in Australia.[161]

Should Singapore increase its cover limit? I suggest not. The higher the cover, the greater the cost and the danger of moral hazard.[162] It is also evident that, in percentage terms, even if there was a large increase in the cover limit, only a small difference is made to the number of customers that substantially benefits.[163] For example, \$20,000 gave full protection to 86% of the insured depositors in Singapore in 2006; more than doubling the cover in 2011 (to \$50,000), gave full protection to about 91% of insured depositors.[164] At a certain point, the main beneficiaries of increased levels of cover would be those who are not the primary target of a DI scheme, such as more substantial businesses and wealthier individuals. While the level of cover in Singapore is not over-generous, the large percentage of depositors fully covered is competitive with other countries and consistent with the primary objective of DI in Singapore–to protect consumer depositors. For these reasons, Singapore's level of cover arguably represents an optimal balance between protection, cost and avoiding complacency. The adequacy of the cover limit should, however, be monitored and adjustments made so as to keep up with inflation.

6. *The Compensation Triggers*

It appears that the intention of the *DIPOPS Act* is to give the final say in triggering the compensation mechanism to the MAS.[165] Thus, it is provided that an insured depositor is entitled to compensation for insured deposits held with a "failed scheme member".[166] A failed scheme member is one in respect of which the regulator has

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[160] British Bankers Association, "Financial Stability and Depositor Protection: Strengthening the Framework—BBA Response to the Tripartite Consultation Document", online: The National Archives <http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/BBA_British_Banking_Association.pdf> at 36, para. 5.1 [BBA Response].

[161] See Austl., Office of The Hon. Wayne Swan MP: Deputy Prime Minister and Treasurer, Press Release, "New Permanent Financial Claims Scheme Cap to Protect 99 Per Cent of Australian Deposit Accounts in Full" (11 September 2011), online: Treasury Portfolio Ministers Portal <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/109.htm&pageID=003&min=wms&Year=&DocType>.

[162] See FSB Review, *supra* note 2 at 3, 34; House of Commons Report, "Run on the Rock", *supra* note 39 at para. 233; Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 134.

[163] See MAS DI Review (Feb 2010), *supra* note 70 at para. 1.8; MAS Response (Sep 2010), *supra* note 39 at para. 4.1.3.

[164] See *Deposit Insurance and Policy Owners' Protection Schemes Bill* Second Reading, *supra* note 6; it should be noted that there was also an increase in the range of depositors covered. The previous U.K. limit of £35,000 fully covered 96% of individual depositors while the new limit of £85,000 protects close to 99% of individual deposits—only 3% more. See BBA Response, *supra* note 160 at para. 5.1.

[165] Aside from the terms of the *DIPOPS Act*, *e.g.*, s. 22, this view is reinforced by the SDIC, see Singapore Deposit Insurance Corporation, "Deposit Insurance Payout", online: Singapore Deposit Insurance Corporation <https://www.sdic.org.sg/di_payout.php> [SDIC, "DI Payout"], which says, "MAS may decide that a deposit insurance payout should be made if: A court order has been made to wind up a DI Scheme member; or MAS has determined that a DI Scheme member is insolvent, unable or likely to become unable to meet its obligations, or about to suspend payments".

[166] *DIPOPS Act*, *supra* note 5, ss. 22(1), (2), (4).

decided that compensation should be paid.[167] At the same time, there are provisions in the *DIPOPS Act* that can be interpreted as entitling some insured depositors,[168] to compensation once a winding up order has been made, *i.e.* without the need for a decision by the regulator.[169] It is unclear whether it was intended to create such a bifurcated system and a clarifying amendment would be optimal.

This raises the important question of whether the compensation mechanism should rest on a discretion vested in the regulator (or any other person or entity) or whether an insured depositor should acquire a right to compensation on an objectively ascertainable event, such as a winding up order.[170] There are reasons why a regulator may want to control the activation of the DI scheme. One reason is that in the event of a systemic collapse, the DI Fund is unlikely to be able to meet all the claims of insured depositors. DI is not intended to, and cannot, deal with a systemic crisis.[171] In such circumstances, a regulator will have good reason not to trigger the DI scheme as the DI fund is unlikely to be able to meet all the claims. In the (unlikely) event of such a systemic calamity, however, government intervention will in any event be required and any rights that depositors may otherwise acquire under the DI scheme can be suspended by emergency legislation. Such a suspension would be part of a much larger crisis management operation.[172] Another reason for regulators to control the activation of the compensation process is for flexibility. They may, for example, wish to trigger the compensation process even before a winding up order is made. But such flexibility can be achieved while at the same time establishing a bottom-line that in the event of a winding up order, compensation will be payable. The regulator may also wish to have flexibility to explore or finalise alternative options to activating the DI scheme, such as transferring the deposit liabilities of the failed bank to a bridge bank or to give the DI Agency some lead time to prepare for the logistical challenge of meeting a large number of anxious depositors' claims. Yet in such a case, the MAS can apply to the court under the *Banking Act*, for a moratorium on legal proceedings (including a winding up application) against a bank.[173]

Depositors can arguably challenge a decision by the regulator not to activate the DI scheme by invoking legal principles that control the exercise of administrative discretionary powers,[174] but this offers only a limited control because of the inevitable delay in the resolution of such an action and the uncertainty of the outcome. Undoubtedly, the MAS (as regulator in whom the triggering discretion vests) would be motivated by the best interests of the public, should a scheme member get

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[167] *Ibid.*, s. 2. The scope for the regulator to make such determination arises where a winding up order is made in respect of a scheme member (whether in Singapore or elsewhere), or where the regulator considers that a member is insolvent or will imminently suspend payments to depositors, see *DIPOPS Act*, *ibid.*, s. 21.

[168] See *DIPOPS Act*, *ibid.*, ss. 23(1), (2).

[169] *Ibid.*, ss. 23(1), (2) read with s. 21(1)(a).

[170] The Basel Core Principles, somewhat ambiguously, say that depositors "should have a legal right to reimbursement up to the coverage limit", see Basel Core Principles, *supra* note 2, Principle 17; see also, MacDonald, *Deposit Insurance*, *supra* note 25 at 14.

[171] *Basel Methodology*, *supra* note 114 at 33.

[172] See *e.g.*, Garcia, *Actual and Good Practices*, *supra* note 39 at 44.

[173] *Banking Act*, *supra* note 4, s. 54.

[174] See *e.g.*, M.P. Jain, *Administrative Law of Malaysia and Singapore*, 4th edn. (Petaling Jaya, Selangor: LexisNexis, 2011), Chapter XIV; H.W.R. Wade & C.F. Forsyth, *Administrative Law*, 10th edn. (Oxford: Oxford University Press, 2009), Chapter 11.

into trouble; nevertheless, it is submitted that for the DI scheme to fulfil its consumer protection role, customers should have the certainty that in the event of a winding up order, they will be entitled to compensation without any further requirements to be fulfilled.[175] Such bottom-line certainty will also help cement a positive perception of the safety net offered by the DI scheme and enhance any prospect the scheme has of averting bank runs. At the same time, the regulator should have the flexibility to trigger the compensation process earlier when it is in the public interest to do so.[176] Having said that, where a triggering discretion does vest in the regulator, the consumer protection objective would be enhanced by an obligation to make a decision within a short, defined time-period after a bank is wound up.[177]

7. *Payment of Compensation: The Mechanics*

If the compensation mechanism of the *DIPOPS Act* is triggered, the Agency will compute the entitlements of insured depositors and compensate them accordingly. Thereafter, the Agency will claim by subrogation the amount it has paid to insured depositors and as discussed above, it has priority in respect of that claim. International norms emphasise the need for prompt payment and clarity on the timing of payments.[178] This is consistent with the consumer protection objective of DI and is necessary if it is to have a prospect of averting a bank run. Customers' fear of delay in receiving reimbursement is a factor that has been identified as contributing to the run on Northern Rock[179] and post mortems of the Northern Rock crisis in the U.K. echo the imperative of prompt payment.[180] Payment within seven days is apparently the 'emerging best practice'.[181] The U.K.'s Financial Services Compensation Scheme (the "FSCS") says it aims to pay most claims within seven days' of a bank failing and within 20 working days for more complex claims.[182] The U.S. FDIC says that it aims to pay within 2 days of a bank's failure.[183] In Singapore, the SDIC says that payments will be made "as soon as possible"[184] and "promptly".[185] The logistical

[175] See *e.g.*, Hong Kong's *Deposit Protection Scheme Ordinance*, (Cap. 581, L.N. 110 of 2006), s. 22(1)(a)(i).

[176] This view is consistent with those expressed in an IMF Report on the Australian Financial Claims Scheme which also requires a triggering declaration to activate the compensation process, see International Monetary Fund, *Australia: Financial Safety Net and Crisis Management Framework—Technical Note* (Country Report No. 12/310, 21 November 2012), online: International Monetary Fund <http://www.imf.org/external/pubs/ft/scr/2012/cr12310.pdf> at para. 47 [IMF Country Report]. See also, *Banking Act 1959* (Cth.), s. 16AD(1). For an overview of the Australian scheme, see APRA "Financial Claims Scheme", *supra* note 143.

[177] MacDonald, *Deposit Insurance*, *supra* note 25 at 14.

[178] Basel Core Principles, *supra* note 2, Principle 17; FSB Review, *supra* note 2 at 2, 7.

[179] House of Commons Report, "Run on the Rock", *supra* note 39 at paras. 237, 238, 240. See also, the criticism of McVea, "FSCS and DI Reform", *supra* note 11 at 402.

[180] House of Commons Report, "Run on the Rock", *ibid*. at para. 218; see also, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 77, 78, 83; McVea, "FSCS and DI Reform", *ibid*. at 406.

[181] See IMF Country Report, *supra* note 176 at para. 7.

[182] U.K., Financial Services Compensation Scheme, "How Long Will It Take?", online: Financial Services Compensation Scheme <http://www.fscs.org.uk/your-claim/how-long-will-it-take>.

[183] See Federal Deposit Insurance Corporation, "When a Bank Fails—Facts for Depositors, Creditors, and Borrowers: Payment", online: Federal Deposit Insurance Corporation <http://www.fdic.gov/consumers/banking/facts/payment.html>.

[184] SDIC, "DI Payout", *supra* note 165.

[185] SDIC, "Frequently Asked Questions", *supra* note 35, Question No. 21.

task of ascertaining the entitlements of depositors should not be underestimated; nevertheless, a firmer commitment to a timeframe for repayment is preferable to the well-intentioned yet vague statement by the SDIC; a specific commitment may not be feasible but a target timeframe should at least be identified. Where final payments cannot be made quickly, the *DIPOPS Act* gives the Agency the power to make interim payments[186]—a valuable tool with which to meet the goal of consumer protection.

A challenge to making rapid payment is obtaining a reliable record of depositor's funds. This requires adequate access to the insolvent bank's records.[187] In Singapore, this need for information is contemplated by bank secrecy provisions, which allow for disclosure of customer information to the regulator for the purposes of the DI scheme[188] and to the Agency in connection with making compensation payments from the DI Fund.[189]

8. *Publicity*

There is near-universal agreement amongst commentators that public awareness of a country's DI scheme is essential.[190] The Northern Rock experience suggests that the U.K. public were insufficiently informed of the DI scheme at the time of its difficulties and this is viewed as a factor contributing to the bank run witnessed there.[191] Publicity is essential if DI is to fulfil a confidence-boosting role. My own informal survey of the publicity of the DI scheme in Singapore is that it is patchy and can be improved.[192] On one view, low-visibility is not inconsistent with the consumer protection objective of DI in Singapore. A low-visibility approach to DI can be defended on the basis that consumer protection can be accomplished without widespread publicity. Indeed, low publicity is one way to reduce moral hazard. On the other hand, it can be argued that consumer protection requires that customers should know that they are protected, and the SDIC website suggests that the avoidance of panic is one of the objects of DI.[193] Enhanced publicity may even bring additional stability benefits, without a significant increase in moral hazard as

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[186] *DIPOPS Act*, *supra* note 5, s. 57(2)(d).

[187] FSB Review, *supra* note 2 at 25.

[188] *Banking Act*, *supra* note 4, Third Schedule Part II No. 9; see also, *DIPOPS Act*, *supra* note 5, s. 64; the *Banking Act* also makes provision for ongoing disclosure to the regulator and gives the regulator powers of inspection and rights to information, in both solvent and insolvent scenarios, see *e.g.*, *Banking Act*, *supra* note 4, ss. 36, 43, 44, 49, 58.

[189] *Banking Act*, *ibid*., Third Schedule Part II No. 10. See also, *Deposit Insurance and Policy Owners' Protection Schemes (Deposit Insurance) Regulations 2011* (S. 239/2011), reg. 11; SDIC Rules, *supra* note 111, D14-D18.

[190] See *e.g.*, Basel Core Principles, *supra* note 2, Principle 12; House of Commons Report, "Run on the Rock", *supra* note 39 at paras. 241-243; Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 79 *et seq.*; McVea, "FSCS and DI Reform", *supra* note 11 at 402, 407, 408.

[191] House of Commons Report, "Run on the Rock", *ibid*. at para. 243.

[192] The websites and a branch from each of six retail banks were visited. Overall, DI information was not prominent. Website information should be more visible and consumer orientated. In the branches, only three banks had the SDIC DI pamphlet available on request, of which only one had it on display. Officers in two of the other banks were familiar with the scheme and offered some information; in the last bank, officers shook their heads when asked for DI information. The SDIC website and pamphlet are helpful and informative.

[193] SDIC, "Frequently Asked Questions", *ibid*., Question No. 22.

the depositors affected are unlikely to have the capacity or incentive to exert market discipline.

Numerous countries are currently embracing a perceived need for greater publicity,[194] and it was recently reported that moves are underway in Singapore to implement standardised disclosure of DI by scheme members.[195] Such disclosure must be easy to understand and widely disseminated. The information should identify the deposits that are covered, the cover limit, the gross payment feature, and some information relating to the timing and method of compensation.[196] Depositors should be informed on the opening of an account whether it is covered by the DI scheme or if it ceases to be covered;[197] bank statements can be used to convey key information.[198] Customers should also be informed of the risk-averse option of spreading deposits amongst member institutions.[199] Public awareness should be assessed regularly and publicity adjusted accordingly.[200]

IV. Conclusion

Despite the criticisms that can be made of a DI scheme, it is today regarded as an important feature of a country's overall regulatory framework.[201] International consensus favours the establishment of a DI scheme, and the debate is not so much about whether to have DI but how best to structure it.[202] Demirgüç-Kunt, Kane and Laeven identify "six commonsense principles of good [DI] design" which they say no government should ignore:[203]

(1) Cover limits so as to preserve the incentive of large and institutional depositors to practice market discipline;

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[194] See *e.g.*, FSA Policy Statement, *supra* note 34 at para. 1.7 and the website of the Hong Kong Deposit Protection Board (online: Hong Kong Deposit Protection Board <www.dps.org.hk>). Generally, see FSB Review, *supra* note 2 at 2, 27.

[195] The Straits Times reported that scheme members were being required to standardise their disclosure of the deposit insurance scheme (Cheryl Ong "Deposit insurance: Standardising disclosures by banks, finance firms" *The Straits Times* (5 January 2013), online: BT Invest <http://www.btinvest.com.sg/insurance/general-insurance/deposit-insurance-standardising-disclosures-by-banks-finance-firms/>).

[196] Leaflets, posters and stickers in bank branches, advertisements in the media, prominent links on banks' websites and an informative website by the scheme agency are all ways in which the profile of the scheme can be raised amongst the general public; see *e.g.*, House of Commons Report, "Run on the Rock", *supra* note 39 at para. 243; FSA Policy Statement, *supra* note 34 .

[197] See House of Commons Report, "Run on the Rock", *ibid.* at para. 249; FSA Policy Statement, *supra* note 34 at para 1.7.

[198] According to SDIC, "Frequently Asked Questions", *supra* note 35, Question No. 8, "account opening forms and deposit account statements will disclose which deposit products are covered"; see also, Singh & LaBrosse, "Critical Reflections", *supra* note 28 at 83.

[199] See *e.g.*, U.S., Federal Deposit Insurance Corporation, "FDIC Insurance Coverage Basics" (31 December 2012), online: Federal Deposit Insurance Corporation <http://www.fdic.gov/deposit/deposits/insured/basics.html>, "How much insurance coverage does the FDIC provide?" See also, House of Commons Report, "Run on the Rock", *supra* note 39 at para. 243.

[200] FSB Review, *supra* note 2 at 7.

[201] See *e.g.*, McVea, "FSCS and DI Reform", *supra* note 11 at 409.

[202] New Zealand is a notable absentee from the list of countries with an explicit DI scheme.

[203] Demirgüç-Kunt, Kane & Laeven, "DI Design", *supra* note 2 at 23.

(2) Compulsory scheme membership so that the scheme does not only cover high risk institutions;
(3) Joint responsibility between the public and private sectors for oversight of the scheme to enhance oversight of the scheme through the establishment of checks and balances;
(4) Restricting the resources of the scheme to its fund so that taxpayer funds are not tapped unless extraordinary circumstances require otherwise;
(5) Appropriate pricing of DI that reflects the risk borne by the DI scheme to promote its viability;[204] and
(6) Active involvement of deposit insurers in the resolution of failed banks to promote the viability of the scheme.

The preceding discussion suggests that on the whole, Singapore's DI scheme conforms with these recommendations. Thus, DI cover in Singapore is restricted in various ways: quantum, protected depositors and the type of account held. Membership of the scheme is compulsory for those institutions taking deposits from the public and the Singapore government has indicated that the DI provisions define the protection that is available to depositors.[205] An assessment of the appropriateness of the pricing of the DI scheme is a technical question beyond the scope of this paper;[206] but Singapore uses risk-based premiums which, if accurately assessed, should reflect the risk imposed on the DI scheme. The principle of joint responsibility for the scheme is based on the view that it best avoids conflicts of interest that may prevent optimal decisions from being made in the event of a bank's failure.[207] The SDIC board is drawn from the public and private sectors and is accountable to the Minister of Finance.[208] Although Singapore's DI Agent is not active in the regulation and resolution of failed banks, the MAS is the common denominator which performs this function and plays a key role in important aspects of the DI scheme.[209]

The Singapore scheme has been designed to meet the challenges posed by bank failure in the Singapore context. There are aspects of the scheme that I argue can be improved: publicity, a firmer commitment to prompt payment and giving depositors a right to compensation on a bank's winding up. Overall, Singapore's DI scheme measures favourably against international best practice and is consistent with its stated goal of protecting consumers in the event of a bank's failure. The proof of the pudding is ultimately in the eating; hopefully, however, the DI scheme will not be put to this test.

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[204] Laeven, "Pricing of Deposit Insurance", *supra* note 3 at 136.
[205] See *Deposit Insurance Bill 2005* Second Reading, *supra* note 31 at para. 13.
[206] See *e.g.*, Laeven, "Pricing of Deposit Insurance", *supra* note 3.
[207] Beck & Laeven, "DI and Bank Resolution", *supra* note 90 at 151.
[208] *DIPOPS Act*, *supra* note 5, s. 60.
[209] See *e.g.*, the discussion by Beck & Laeven, "DI and Bank Resolution", *supra* note 90 at 166; also Garcia, *Actual and Good Practices*, *supra* note 39 at 19: "To limit conflicts of interest, a system with public backing is best run by a government agency".