SINGAPORE

Investment rules of the world

About

At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

We enjoy being part of your team, bringing experience across sectors, borders and financial products, supporting you on first-of-a-kind deals, in new markets and to grow.

With global perspective, we can help you to realize your financial strategy in whichever markets you do business.

Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please contact us if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.

Singapore

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Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

There are restrictions on offering and selling debt securities under Singapore law.

Unless certain exclusions or exemptions apply, it is unlawful to offer debt securities to the public in Singapore or to request that they are admitted to trading on a regulated market operating in Singapore unless an approved prospectus has been made available to the public.

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What are common issuing methods and types of debt securities?

The most common types of debt securities issued in Singapore are bonds or notes issued on a stand-alone basis or under a program.

Many different types of debt securities are offered in Singapore.

Some common forms include:

- debt securities characterized by the type of interest or payment such as fixed-rate securities, floating-rate securities, variable-rate securities, zero-coupon securities and high-yield bonds;
- guaranteed securities, subordinated securities, perpetual debt securities (ie debt securities that have no specified redemption date);
- asset-backed securities;
- derivative securities such as securities linked to the value of one or more reference asset including shares, commodities, interest rate, currency rate or index, and credit-linked notes;
- hybrid securities (securities with both debt and equity features);
- equity-linked securities such as convertible bonds (debt securities convertible into the equity of the issuer);
- exchangeable bonds (debt securities convertible into the equity of a third party);
- depositary receipts (a security issued by a depositary conferring on the holders beneficial ownership of certain underlying assets held by the depositary for the holders); and
- warrants (securities giving the holders the option to purchase the equity of the issuer or a related company).

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What are the differences between offering debt securities to institutional / professional or other investors?

There are additional requirements that would have to be met in order to offer debt securities to retail investors, including the preparation of prospectuses.

The Monetary Authority of Singapore has, however, recently introduced two new frameworks, namely the Bond Seasoning Framework and the Exempt Bond Issuer Framework which will enable retail investors to invest if certain criteria are satisfied.

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When is it necessary to prepare a prospectus?

All offers of securities require the preparation of a prospectus unless an exemption is available. Possible exemptions include the issue or transfer of securities for no consideration eg employee share option schemes, small personal offers where the total amount raised from such offers within any 12-month period does not exceed S$5 million or such other amounts as may be prescribed by the Monetary Authority of Singapore and an offer to no more than 50 persons within any period of 12 months and under certain conditions.

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What are the main exchanges available?

The Singapore Exchange (SGX) has two principal markets on which debt securities are traded:

- the SGX Mainboard; and
- the SGX Catalist.

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Is there a private placement market?

Singapore does have an active private placement market and companies would have to comply with the rules of the Singapore Exchange Securities Trading Limited for such placements. Save for the foregoing, there are no specific regulations governing the same.

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Are there any other notable risks or issues around issuing or investing in debt securities?

Issuing debt securities

Issuers are required to take responsibility for prospectuses, if applicable, for debt securities. Misleading statements in, or omissions from, any applicable offering document can give rise to both civil and criminal liability under Singapore law. Singapore has various investor protection statutory provisions relevant to liability for an inaccurate offering memorandum. There are also general fraud statutes and liability may also arise under common law through a civil action for deceit, negligent misstatement or misrepresentation.

Investing in debt securities

Debt security terms and conditions typically contain provisions which may permit their modification with the consent of a majority of the investors. If a trust deed is required, it will typically confer certain discretions on the trustee, which may be exercised without the consent of investors and without regard to the individual interests of particular investors. The conditions also provide for meetings of investors to consider matters affecting the investors interests. These provisions typically permit defined majorities to bind all investors including investors who did not attend and vote at the relevant meeting and investors who voted against the majority.

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Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Generally

Establishing a fund, offering fund securities and operating a fund (ie fund management), among other things, are regulated activities subject to regulation by the Monetary Authority of Singapore.

Collective Investment Schemes

There are additional requirements which apply to activities undertaken in relation to 'Collective Investment Schemes' which are schemes comprising the following arrangements (subject to certain specific exceptions set out in the legislation):

- with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of any right, interest, title or benefit in the property or to receive sums paid out of such profits or income;
- where the participants do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions;
- pooling of investors' contributions and profits or income; and
- the property is managed as a whole by or on behalf of a manager.

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What are common fund structures?

Common forms of funds include:

- open-ended and closed-ended funds;
- retail and non-retail funds;
- collective investment schemes; and
- qualified investor structures that invest in, for example, corporate shares or bonds, real property, commodities (for example, precious metals) and derivatives.

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What are the differences between offering fund securities to professional / institutional or other investors?

Retail funds

Retail funds are usually structured as a unit trust and are subject to the Collective Investment Schemes (CIS) regulatory regime, including the CIS code.

For retail schemes constituted in Singapore to be authorized by the Monetary Authority of Singapore, the following would need to be, *inter alia*, complied with:

- lodging a prospectus with the Monetary Authority of Singapore in compliance with the CIS Code; and
- the requirements of the CIS Code.

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Are there any other notable risks or issues around establishing and investing in funds?

There are none to highlight for the summary purposes of this site.

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Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

Fund management companies (FMC) must either be a licensed fund management company which has obtained a capital markets services license under the Securities and Futures Act or be a registered FMC. Both applications are made with the Monetary Authority of Singapore. Each of these FMCs can market their own funds.

Further a person licensed under the Financial Advisers Act (Cap. 110) can market a collective investment scheme.

There are also no restrictions on using intermediaries to market a fund provided the requisite capital markets services license is obtained.

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Are there any restrictions on managing a fund?

Fund management companies (FMC) must either be a licensed fund management company which has obtained a capital markets services license under the Securities and Futures Act or be a registered FMC.

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Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

There are no restrictions on entering into derivative contracts.

The Securities and Futures (Reporting of Derivative Contracts) Act, however, applies to all derivative transactions and requires transactions to be reported to the Monetary Authority of Singapore.

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What are common types of derivatives?

Derivative contracts are entered into in Singapore for a range of reasons including hedging, trading and speculation.

Derivatives may be traded over-the-counter or on an organized exchange. Exchange traded derivatives are also subject to rules under the Singapore Exchange Derivatives Trading Limited.

All of the main types of derivative contract are widely used in Singapore:

- forwards;
- futures;
- swaps (such as interest rate or currency swaps); and
- options (call options and put options).

The value of the derivative contracts is based on the value of the underlying assets. The main classes of underlying asset seen in Singapore are:

- equity;
- fixed income instruments;
- commodities;
- foreign currency; and
- credit events.

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Are there any other notable risks or issues around entering into derivatives contracts?

The derivatives market has seen, and continues to see, the introduction of a significant amount of new regulation and this has led to substantial compliance costs for market participants.

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Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

Lending

Although lending itself is not regulated, the business of lending is regulated by the Moneylenders Act. Except for banks, finance companies, merchant banks, pawnbrokers, and cooperative societies, every person who carries on the business of moneylending must be licensed under the Moneylenders Act. Such lenders (including banks or moneylenders) will need to be authorized by the Monetary Authority of Singapore or the Ministry of Law to conduct such business.

There are no specific requirements around how the agreement is drafted and formatted and what information must be included.

There are no additional restrictions that apply to foreign lenders making loans to Singapore borrowers from a Singapore law perspective. However, banks in Singapore that lend Singapore dollars to non-resident financial institutions for any purpose whether in Singapore or elsewhere are subject to restrictions on the amount that they can lend.

Specific restrictions on lending apply to the purchase of real property, as follows:

- An absolute limit of 35 years on the tenure of all loans for residential property, applies to loans to both individual and non-individual borrowers, as well as refinancing loans, from 6 October 2012.
- The Monetary Authority of Singapore will lower the loan-to-value ratio (LTV) for new residential property loans to borrowers who are individuals if the tenure exceeds 30 years or the loan period extends beyond the retirement age of 65 years. For these loans, the LTV limit will be:
  - 40% for a borrower with one or more outstanding residential property loans; and
  - 60% for a borrower with no outstanding residential property loans.
- The LTV for residential property loans to non-individual borrowers from 50% to 40%.

Further, under the Total Debt Servicing Ratio framework, property loans extended by a financial institution should not exceed a Total Debt Servicing Ratio threshold of 60%. Property loans in excess of the Total Debt Servicing Ratio threshold of 60% should only be granted on an exceptional basis (or unless otherwise exempted under the Total Debt Servicing Ratio framework) and financial institutions should clearly document the basis for granting property loans in excess of the Total Debt Servicing Ratio threshold of 60%.

Borrowing

There are specific restrictions on borrowing for unsecured credit an individual:

- 24 times monthly income from 1 June 2015;
- 18 times monthly income from 1 June 2017; and
- 12 times monthly income from 1 June 2019.

Financial institutions will not be allowed to grant further unsecured credit to an individual whose unsecured borrowings exceed the prevailing borrowing limit for three consecutive months.

Further, the Monetary Authority of Singapore has issued a consultation paper on 30 September 2016 proposing to disallow financial institutions from granting new unsecured credit facilities or credit limit increases to individuals whose outstanding unsecured debt already exceeds 12 times their monthly income. The Monetary Authority of Singapore has stated in the consultation paper that it intends to implement the changes on a prospective basis from 1 June 2017.

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What are common lending structures?

Lending in Singapore can be structured in a number of different ways to include a variety of features depending on the commercial needs of the parties.

A loan can either be provided on a bilateral basis (a single lender providing the entire facility) or syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties (such as agents and trustees which fulfill certain roles for the finance parties), are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one of the syndicate taking the lead in coordinating and arranging the financing.

Loans will be structured to achieve specific objectives, eg term loans, working capital loans, equity bridge facilities, project facilities and letter of credit facilities.

Loan durations

The duration of a loan can also vary between:

- a term loan, provided for an agreed period of time but may sometimes come with a short availability period;
- a revolving loan, provided for an agreed period of time with an availability period that extends nearer to maturity of the loan and which may be redrawn if repaid;
- an overdraft, provided on a short-term basis to solve short-term cash flow issues; or
- a standby or a bridging loan, intended to be used in exceptional circumstances when other forms of finance are unavailable and often attracting a higher margin.

Loan security

A loan can either be secured, unsecured or guaranteed. For more information, see Giving and taking guarantees and security.

Loan commitment

A loan can also be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan can also be repayable on demand, on an amortizing basis (in instalments over the life of the loan) or scheduled (usually meaning the loan is repayable in full at maturity).

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What are the differences between lending to institutional / professional or other borrowers?

For more information see Lending and borrowing – restrictions.

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Do the laws recognize the principles of agency and trusts?

Yes, both principles are recognized as a matter of Singapore law.

For instance, it is possible to appoint an agent to act on behalf of other parties and a trustee to hold rights and other assets on trust for the lenders or secured parties.

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Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to general contractual principles. For example, the Singapore courts will not enforce a penalty and so lenders have to be careful about the rate of default interest charged on a loan. It should be noted though that a contract by an unlicensed moneylender renders the borrower's obligation to repay unenforceable.

Specific types of lending

For more information see Lending and borrowing – restrictions.

Standard form documentation

Finance transactions are likely to be documented on bank standard form documentation prepared in-house which are then subject to negotiations between the bank and the borrower.

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Are there any other notable risks or issues around borrowing?

There are no notable risks or issues around borrowing.

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Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Some of the key areas affecting the giving of guarantees and security are as follows.

Capacity

It is important to check the constitutional documents of a company giving a guarantee or security to ensure it has an express or ancillary power to do so and there are no restrictions on the directors' powers that would be preventative. Under Singapore law, directors must act *bona fide* for what they consider to be in the best interests of the company and not for any collateral purpose; as such, they will need to be able to show that adequate corporate benefit is derived from the company giving the guarantee or security. This is often more difficult in the case of upstream or cross-stream guarantees or security provided by a subsidiary to its parent or sister company. The safe approach is often to have the members of the company approve the giving of the guarantee or security by resolution.

Insolvency

Guarantees and security may be at risk of being set aside under Singapore insolvency laws if the guarantee or security was granted by a company with a certain period of time prior to the onset of insolvency. This would be the case if the company giving the guarantee or security received considerably less consideration, and as such, the transaction was at an undervalue. For such a transaction to be set aside, certain statutory criteria would have to be met, including that the guarantee or security was given within six months (or two years for connected parties) before the presentation of a winding-up petition. Guarantees and security may also be challenged on other grounds relating to insolvency.

Financial assistance

It is unlawful for a public company to provide financial assistance for the purchase of its own (or of its holding company's) shares unless a whitewash resolution is obtained from the shareholders. The prohibition against financial assistance for private companies whose holding company or ultimate holding company is not a public company was abolished on 8 October 2014. Financial assistance in this context would include giving a guarantee or security in connection with the share purchase.

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What are common types of guarantees and security?

Common forms of guarantees

Guarantees can take a number of forms.

A particular distinction worth remembering is between a performance guarantee and a payment guarantee:

- A performance guarantee is a term used to describe both performance bonds (in the context of trade finance) and 'see to it' guarantees (in other contexts):
    - A performance bond describes a financial undertaking used to protect a buyer against the failure of a supplier to deliver goods or perform services in accordance with the terms of a contract. The issuer of the bond undertakes to pay to the buyer a sum of money if the seller fails to deliver the goods or perform the contracted services on time or in accordance with the terms of the contract. However, note that unlike a guarantee, the essential difference is that the obligation to pay is intended to be unconditional and independent of the underlying obligation. The essence of a 'true' performance bond is that it is an unconditional undertaking by a third party to pay the beneficiary upon demand, independent and irrespective of the underlying contract between the beneficiary and the principal. The issuer of a performance bond has primary liability, unlike a guarantor, who has secondary or collateral liability.
    - A 'see to it' guarantee is a promise by the guarantor to see to it that the primary obligor fulfils its obligations under the primary contract. If the primary obligor fails to fulfil its obligations under the primary contract, the guarantor will be in breach of its obligations under the guarantee.
- A payment guarantee is narrower in scope than a performance guarantee as it only covers the payment of money rather than other contractual obligations.

Common forms of security

There are four basic types of security interest that can be created under Singapore law:

- a pledge;
- a lien;
- a charge; and
- a mortgage.

Different types of security are suitable for securing different types of assets.

Under Singapore law it is possible to grant security over all of the assets of a Singapore company or individual assets. Granting security over all of a company's assets will tend to be achieved by way of a debenture which will include:

- a mortgage over real estate;
- a fixed charge over assets which are identifiable and can be controlled by the creditors (such as equipment);
- a floating charge over fluctuating and less identifiable assets (such as stock); and
- an assignment by way of charge over receivables and contracts.

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Are there any other notable risks or issues around giving and taking guarantees and security?

Giving or taking guarantees

To be valid, a guarantee needs to be in writing, signed by the guarantor and provided for good consideration.

Consideration for a guarantee is subject to general contractual principles. In the case of a guarantee, the underlying obligations will usually be the consideration for the guarantee and so it is advisable to execute the guarantee at the same time as executing the underlying obligations to avoid any suggestion of past consideration. Often the guarantee is included in the loan agreement and so this should not be an issue. Also it can be difficult to establish consideration for a guarantee as the primary obligations are between the underlying obligor and beneficiary, for example between the borrower and lender. As a result guarantees are sometimes executed as deeds to avoid any argument about whether good consideration was provided. Deeds have particular execution requirements namely under seal under Singapore law which need to be observed.

Additionally, there is a risk that a guarantee may be set aside if it was procured by undue influence by a borrower or lender. A party being provided with a guarantee should be alive to this issue and take steps to avoid claims of undue influence by, for example, requiring the guarantor to take separate legal advice. Additionally, a guarantee can be vitiated by misrepresentation, unconscionability, mistake and other like factors such as duress.

Giving or taking security

A security document may need to be executed as a deed if it:

- contains a mortgage over land;
- confers a statutory power of sale and power to appoint a receiver; or
- contains a power of attorney.

Once granted, security needs to be properly perfected before it is valid against third parties. Perfection formalities can range from having the secured asset delivered to the security holder, registration of the security and notice being given to third parties. Most charges

created by a Singapore company must be registered at the Accounting and Corporate Regulatory Authority of Singapore within 30 days of its creation. Failure to register within this time will typically mean that the charge will be void against the liquidator and any creditor of the company.

There are no notarization requirements for security documents under Singapore law.

Like guarantees, for a period after a new security interest has been granted, it is at risk of being set aside in certain circumstances under insolvency laws. Reviewable transactions include those conducted at an undervalue, unfair preferences and invalid floating charges.

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Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

Banking Act
Finance Companies Act
Monetary Authority of Singapore Act
Hire-Purchase Act
Payment System (Oversight) Act 2006
Securities and Futures Act
Securities and Futures (Licensing and Conduct of Business) Regulations
Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005
Code on Collective Investment Schemes

Consumer credit

Consumer Protection (Fair Trading) Act

Mortgages

Land Titles Act
Registration of Deeds Act

Corporations

Companies Act

Funds and platforms

Financial Advisers Act
Financial Advisers Regulations
Insurance Act

Other key market legislation

Moneylenders Act
Limited Liability Partnership Act
Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013

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Regulatory authorization

Who are the regulators?

The Monetary Authority of Singapore is the central bank of Singapore and the main regulator for all financial regulated activities.

The Accounting and Corporate Regulatory Authority is the regulator of business entities and other corporate service providers.

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What are the authorization requirements and process?

To conduct a regulated activity in Singapore in the financial services sector, a firm must apply to the Monetary Authority of Singapore for authorization if applicable. As the main regulator, the Monetary Authority of Singapore authorizes a firm under legislation applicable to the regulated activity it conducts. Commercial banks are primarily authorized under the Banking Act, financial advisors are authorized under the Financial Advisers Act and capital markets intermediaries are authorized under the Securities and Futures Act.

To obtain authorization, a firm must apply to the Monetary Authority of Singapore with supporting documentation such as constitutional documents, financial information and business plans and must also fulfil all requisite criteria.

Under the Securities and Futures Act, an application fee ranging from S$200 to S$1,000 must be paid, depending on the authorization sought. The application fee is regulated under the Securities and Futures Act. Prospective applicants who intend to conduct banking business in Singapore are encouraged to contact the Monetary Authority of Singapore at an early stage to discuss plans prior to submitting a formal application.

Authorized firms are listed in the Financial Institutions Directory of the Monetary Authority of Singapore.

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What are the main ongoing compliance requirements?

Ongoing compliance requirements differ depending on the type of license obtained. Typically, threshold conditions regarding the maintenance of adequate financial resources and reporting requirements are ongoing requirements for authorized firms. An annual license fee is also typically payable.

The Monetary Authority of Singapore may take regulatory and enforcement action for a failure to comply with ongoing compliance requirements, resulting in sanctions for regulated entities including a possible revocation of authorization.

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What are the penalties for failure to be authorized?

A person (including a company) conducting a regulated activity without being authorized or exempt commits an offence and is liable to fines ranging from S$2,000 to S$250,000 and imprisonment (if applicable), or both.

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Regulated activities

What finance and investment activities require authorization?

Generally

The following are key areas of finance and investment activities regulated and/or requiring authorization in Singapore:

- commercial banking activities including receiving money on current or deposit account, paying and collecting checks and making advances to customers and in particular (merchant banking activities must be conducted and operated within the Guidelines for Operation of Merchant Banks issued by the Monetary Authority of Singapore);
- finance companies in the business of, *inter alia*, borrowing money from the public by acceptance of deposits and issuing certificates or other documents acknowledging indebtedness to the public, as well as providing credit facilities;
- insurers carrying on insurance business in Singapore, including direct life and/or general insurance business, life and/or general reinsurance business or captive insurance;
- activities relating to securities, futures and fund management, including, among other things, dealing in securities, trading in futures contracts, leveraged foreign exchange trading, advising on corporate finance, fund management, real estate investment trust management, securities financing, providing credit rating services and providing custodial services for services;
- financial advisory services, including advising others on investment products, issuing research reports covering investment products, marketing of collective investment schemes, and arranging life policies for others, other than a contract of reinsurance;
- money brokers who provide broking services dealing with banks and financial institutions licensed, approved, registered or regulated by the Monetary Authority of Singapore for direct access to money brokers in Singapore;
- money-changing and remittance business involving the buying and selling of foreign currency notes;
- business trusts that run and operate business enterprise;
- trust companies which provide trust or trustee services for investment and wealth management purposes, such as succession planning; and
- payment and settlement systems.

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Are there any possible exemptions?

Where finance and investment activities, taken as a whole, fall within the remit of multiple pieces of legislation, entities may be exempt from the multiple authorization and/or licensing requirements under applicable legislation. For example, where banks provide capital markets and financial advisory services, the Financial Advisers Act, the Securities and Futures Act and the Banking Act are applicable to their regulated activities but they are generally exempt from licensing requirements pursuant to the Financial Advisers Act and the Securities and Futures Act.

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Do any exchange controls or other restrictions on payments apply?

Singapore does not operate any foreign currency controls.

There may be anti-money laundering and tax considerations to take into account. Depending on the way the business is conducted, an analysis on whether a remittance license is required should be conducted.

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What are the rules around financial promotions?

Rules

The Monetary Authority of Singapore issued principle-based Guidelines on Standards of Conduct for Marketing and Distribution Activities which took effect from 1 April 2017. These guidelines set out safeguards that financial institutions should apply when marketing and selling financial products and services to retail customers.

Exemptions

The Guidelines on Standards of Conduct for Marketing and Distribution Activities apply to financial institutions which conduct marketing and distribution activities targeting retail customers only, and the representatives who act on behalf of these financial institutions.

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Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The most commonly used legal entity is a limited company, which is a body corporate with separate legal personality and which limits the liability of its members.

Limited companies can either be private (denoted by the suffix Private Limited, Pte Ltd, Sendirian Berhad or Sdn Bhd) or public (denoted by the suffix Limited, Ltd or Berhad). At least one director of a limited company must be ordinarily resident in Singapore. There are no minimum share capital requirements to set up a company in Singapore, however, companies which intend to carry on regulated business (such as banking, money lending or fund management activities) may be subject to minimum capital requirements.

The number of members in a private company limited by shares is restricted to a maximum of 50. The constitution of a private limited company must provide for restrictions on the transfer of shares by its members, for example by providing that transfers require the approval of directors or imposing a right of first refusal for existing members.

There is no limit on the number of members of a public limited company, however, if a public limited company is listed on the Singapore Exchange Securities Trading Limited, at least 10% of the issued shares in each class listed must be publicly held. Such public listed company would also be subject to the Rules of the Singapore Exchange Securities Trading Limited.

A company may convert from private to public or public to private by special resolution of its members and lodging certain documentation with the Accounting and Corporate Regulatory Authority of Singapore.

A limited liability partnership (LLP) established under the Limited Liability Partnership Act may also be used. Like a company, a LLP has a separate legal personality. At least one manager of the LLP must be ordinarily resident in Singapore.

Funds

Investment funds typically take the form of:

- a collective investment scheme structure, being a trust established using a trust deed between a manager and trustee;
- a corporate entity; or
- a limited partnership structure.

Fund management activities must be conducted by a company incorporated in Singapore, which must hold a Capital Markets Services license for fund management. The relevant persons (as defined in guidelines issued by the Monetary Authority of Singapore), must be, *inter alia*, considered 'fit and proper' by the Monetary Authority of Singapore. There are certain exemptions from such requirements under the Securities and Futures Act.

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Is it possible to conduct lending or investment business through a branch or establishment?

A branch office without a separate legal identity from that of its parent company may be registered in Singapore, which may conduct any business activities conducted by its parent company. The branch office must have the same name as its parent company and it must comply with the Companies Act, for example provisions requiring the branch office to have its registered office address in Singapore and to appoint an authorized representative who is ordinarily resident in Singapore. Approval of the Monetary Authority of Singapore may be required in certain circumstances. For applicants that are incorporated in a foreign country, they should satisfy the Monetary Authority of Singapore that the branch in Singapore would be subject to proper management oversight and be able to comply with all laws and regulations governing its operations.

Alternatively, a subsidiary private limited company may be incorporated in Singapore with a legal identity separate from its parent company.

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FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Overview

The Singapore government and the Monetary Authority of Singapore (MAS) have actively encouraged the growth of the FinTech industry to entrench Singapore as a global financial hub and further its initiative to transform Singapore into a 'Smart City'. Compared to Western markets, market and consumer maturity in Southeast Asia is lower since a large part of the population is underbanked or unbanked and has limited access to smart technologies. This presents different challenges for companies wishing to enter the FinTech space and for FinTech investors, as entrepreneurs are limited in the extent to which they can employ technological advances in their innovations.

In Singapore, FinTech innovations are within the payments and marketplace lending space, which provide platforms for new consumers to access traditional banking services.

Peer to peer funding and marketplace lending

Peer-to-peer (P2P) funding includes both P2P lending and P2P equity platforms. Unlike traditional banks, P2P lending firms operate a platform which connects borrowers and lenders, instead of applying funding raised from a deposit-based relationship. Furthermore, while P2P lending platforms were initially used mainly to help startups raise capital, they now operate across many industries and finance assets which could previously only be financed by bank funding. Examples include lending platforms which deal in consumer loans, real estate or student lending.

P2P lending platforms and other forms of marketplace lending have presented an ever increasing challenge to traditional financial service providers largely because their technological innovation leads to greater efficiency, cost savings and flexibility and their ability to service small and medium-sized enterprises (SMEs) that have been turned down by traditional banks in the post financial crisis era.

MoolahSense (set up in 2014) and FundingSocieties (set up in 2015) were some of the successful early pioneers of marketplace lending in Singapore. They have entered into a partnership with DBS Bank to refer successful borrowers to the bank for larger loans and other traditional banking services. FundedHere and Crowdo are other key marketplace lending players, and they provide both equity and lending based platforms. We can expect to see a longer list of crowdfunding platforms in time to come, as the number of platforms receiving licenses from the MAS is increasing.

Industry specific platforms have also taken off in Singapore. One example is CoAssets – a Singapore grown, Australian listed crowdfunding platform founded in 2013 – which focuses on real estate funding. Another example, Crowdo, earlier this year announced a strategic partnership with BFI Finance, a multi finance company in Indonesia, to offer customers (particularly SMEs) loans for vehicles and fixed assets.

Many of these domestic funds have also been expanding their operations to include securitizing loans through invoice financing which is particularly favorable for asset light SMEs.

HOW ARE MARKETPLACE LENDING PLATFORMS FUNDING THEMSELVES?

Marketplace lending includes P2P-type structures often operated through an electronic platform provider as well as crowdfunding and also direct-to-retail financing mechanisms. The increase in demand for credit through these marketplace platforms has also been appealing to larger pools of available capital, such as private equity and venture capital funds as well as institutional sponsors. Funding platforms will now often be backed by institutional finance in addition to, or rather than, individual investors on a traditional P2P basis.

ISSUES FOR STARTUP MARKETPLACE LENDERS

In general terms, marketplace lending has not been as successful in Singapore as it has been in the US or the UK, mainly because the local financial market is not large enough to achieve the scale and success of American P2P platforms such as Lending Club. This is a difficult challenge to overcome for Singapore's relatively small domestic funds since they do not have access to the kind of business /investor data that banks have access to and since not many P2P platforms have partnered with banks in Singapore, unlike in the UK or US.

Blockchain, smart contracts and cryptocurrencies

WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology in which data is recorded on computers, by way of a P2P mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions which reflect the transactions and parties to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure.

Specialist users on the system apply advanced computing software to identify time stamped blocks, verify the accuracy of the blocks using sophisticated algorithms and add the verified blocks to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (eg in the case of cryptocurrencies such as bitcoin) or providing an indisputable record for example relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that once authorized, can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

There seems to be a great push to make Singapore a world leader in distributed ledger technology with many users in Singapore testing the application of blockchain in areas such as:

- interbank payments;

- verifying and reconciling trade finance invoices; and
- executing and verifying the performance of contracts.

Examples of FinTechs in the blockchain space include Attores, a Singaporean FinTech startup which utilizes the ethereum platform (a blockchain that records smart contracts) to allow its customers to create and execute tailored smart contracts securely, while building an open repository of smart contracts. In September 2017, IBM announced it was piloting blockchain technology for managing the design, management and execution of its contracts with Bank of Tokyo Mitsubishi on the IBM cloud.

The Singapore government, acting through its FinTech office, is taking the lead in developing the application of blockchain technology in Singapore. The FinTech office was set up in May 2016 by the MAS and the National Research Foundation, to serve as a one-stop virtual entity for all FinTech matters and to promote Singapore as a FinTech hub. In a keynote address in November 2016, the Managing Director of the MAS expressed that there was an important opportunity for the government to build blockchain infrastructure that the private sector could meaningfully use. He discussed examples in banking, KYC, consent standards in big data and payment infrastructure for mobile payments as possible areas within which blockchain could be successfully deployed. However, attracting and recruiting talent and developing local talent remains an important challenge for the Singapore government, which it is actively trying to overcome the issue by hosting events such as the annual FinTech festival since November 2016 (for more information, see here).

In March 2017, the MAS completed phase 1 of a proof-of-concept project named 'Project Ubin' to conduct domestic inter-bank payments using blockchain. The project was formed in partnership with R3 and a consortium of financial institutions, and was borne out of a need to explore the use of blockchain in financial transactions. The project evaluated the implications of having a tokenized form of the Singapore dollar (SGD) on a distributed ledger, and its potential benefits to Singapore's financial ecosystem. If blockchain-based interbank payments are successful, it could lead to faster settlements in securities and bond trading. The report for the project, however, mentioned the potential issue of credit risk liability and stated that an appropriate legal structure is required to ensure that the transfer of digital SGD is equivalent to a full and irreversible transfer of the underlying claim on the central bank's currency. This would help ensure that there is no credit risk associated with the creation, distribution, use or redemption of the digital SGD.

With an unprecedented push for the adoption of blockchain led by Singapore's government, Singapore is on its way to being at the forefront of the technology, and perhaps an example of how blockchain can work to improve the lives of its citizens.

WHAT ARE SMART CONTRACTS AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOS)?

Developments in blockchain are also providing an ability to transfer and rely on instructions verified within the electronic system in the form of so called 'smart contracts'. These contracts have been converted into code and are then executed and enforced by the blockchain network on the occurrence of an event. This reduces the need for intermediaries to collect, store and act on communicated information.

Smart contracts are essentially pre-written computer codes which are stored and replicated on distributed ledger platforms such as blockchain. Execution takes place over the network, eliminating the need for intermediary parties to confirm the transaction, leading to self-executing contractual provisions. These contracts can be as simple as moving a balance from one account to another or advanced, more-complex interactions with the outside world using so called 'Oracles'. With Oracles, the contract code consults with a service outside of the blockchain network to make a decision. This may entail receiving a confirmation that an event has occurred, such as payment, which automatically executes a further step in the contract, such as the transfer of an asset, which might be in digital form or by delivering instructions to a person or warehouse to release the asset for delivery.

DAOs are essentially online, digital entities that operate through the implementation of pre-coded rules. These entities often need minimal to zero input into their operation and they are used to execute smart contracts, recording activity on the blockchain. DAOs can be particularly challenging to regulate, depending on their software engine, the nature of transactions they are completing or other unique features. Questions of ownership and responsibility for resulting acts of DAOs can also be brought to question if any technical issues arise with their operation.

WHAT IS A CRYPTOCURRENCY?

As defined by the Monetary Authority of Singapore, a digital token is a cryptographically secured representation of a token holder's right to receive a benefit or perform a specified function. A virtual currency (examples include bitcoin or ether), also known as cryptocurrency, is a type of digital token.

Initial coin offerings and token based products

WHAT IS AN INITIAL COIN OFFERING (ICO)?

ICOs are a form of digital currency or token using blockchain technology. ICOs are often a means by which funds are raised for a new blockchain or cryptocurrency venture (the market for ICOs is currently booming). ICOs come in a wide variety of forms and may be used for a wide range of purposes. Some forms of ICOs may be directed at customers or suppliers as a form of loyalty initiative or a form of access or purchasing power (preferential or otherwise) in respect of assets of the issuer's business. Other forms may be more focused on raising initial funding. It is essential to examine the legal and regulatory basis for any ICO, as an unauthorized offering of securities is illegal and may result in criminal sanctions in a number of jurisdictions. Legal analysis of the underlying token will determine if it should be treated as a specified investment or form of regulated security or is more appropriately a form of asset that is not itself subject to the regulatory regime.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;
- the ability to earn rewards for various forms of participation on the platform; and
- prospective return on the investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- technical milestones applicable to the project;
- basis and security of underlying technology;
- amount of coin or token that is reserved or available to the issuer and its sponsors and the basis of existing rights;
- quality and experience of management; and
- compliance with law and all regulatory requirements.

The nature of the business and the purpose and structure of the token offering will typically be set out in a white paper available to potential purchasers.

ICOs have become increasingly popular as a way for startups in Singapore to raise funding. Millions of US dollars have been raised through ICOs in Singapore over the last year. Digix, a platform which trades gold backed tokens issued for ethereum, raised US$5.5 million in under 12 hours in 2016, while blockchain startup TenX recently raised close to US$80 million to support the development of a protocol enabling transactions across different blockchains.

TenX is only one of many startups in the digital tokens and cryptocurrency based products space which has raised money to help finance or support the development and application of cryptocurrencies and other tech startups in Singapore. Cofund.it provides a platform much like a P2P lending or equity funding platform to connect startups in the blockchain and cryptocurrency space to investors and experts for both funding and advice. Cross Coin, a Singapore special purpose vehicle, raised US$5 million in one day through an ICO to fund and develop 60 to 70 Russian and Eastern European technology startups in Starta Accelerator, a New York accelerator. FundYourselfNow, which dubbed itself as the first cryptocurrency crowdfunding platform in Southeast Asia, has created a platform to allow entrepreneurs to raise funds for their projects using virtual currencies such as bitcoin or ethereum, instead of regular currency.

Other startups such as Coss and HelloGold Foundation aim to bring cryptocurrencies to the mass market by adopting crypto and blockchain based services and products into a user friendly and intuitive environment.

For information on the regulation of ICOs, see FinTech products and uses – particular rules.

Artificial intelligence and robo advisory systems

Digital advisory systems which employ artificial intelligence, such as robo advisory systems, have become increasingly popular in Singapore over recent years. As defined by the MAS, digital advisory services refer to the provision of advice on investment products using automated, algorithm based tools, usually online and with limited or no human interaction.

Since the availability of digital advisory services will increase investor choice and market competition and provide access to low cost investment advice, the MAS has refined the licensing and business conduct requirements for digital advisory service providers.

Digital advisors may operate with a capital markets services license (CMSL) for fund management or for dealing in securities under the Securities and Futures Act (SFA), or a financial advisor's license under the Financial Advisers Act (FAA), depending on their business models and the specific activities that they undertake. Current regulations mean that financial institutions which are already regulated under the SFA or the FAA can provide digital advisory services. In line with this, OCBC Bank Singapore recently announced plans to launch a robo advisory service targeted at accredited investors, in partnership with WeInvest. Bambu, a Singapore business-to-business robo advisor services provider, has developed a white label platform for financial institutions to offer robo advisory to their customers. One of their offerings is called 'Robo-in-a-box', which is a one-stop-shop for any company to offer end-to-end digital solutions to retail investors. Another one is called the 'Intelligent Advisor', which is a propriety algorithm-ranking tool for relationship managers to improve customer experience targeted at high-net-worth investors. Bambu has signed partnerships with notable industry players including Tigerspike, Thomson Reuters and Finantix.

In June 2017, the MAS released a consultation paper on proposals to facilitate the provision of digital advisory services. These proposals discuss the governance, supervision and management of algorithms for robo advisors to ensure integrity and robustness in the delivery of financial advice. At the same time, the MAS recognizes that some digital advisors whose activities fall into fund management and who intend to obtain a CMSL in fund management to service retail investors may not be able to meet the five-year corporate track record requirement of managing funds for retail investors in a jurisdiction which has a regulatory framework that is comparable to Singapore.

In order to make it easier for entities offering digital advisory services to operate in Singapore, among other concessions, these proposals state that the MAS is prepared to admit digital advisors (which operate as fund managers under the SFA) to offer their services to retail investors even if they do not have a five year corporate track record or do not meet the minimum total assets under management requirement (S$1 billion), provided they meet safeguards such as:

- offering diversified portfolios of non complex assets;
- having key management staff with relevant collective experience in fund management and technology; and
- undertaking an independent audit of the advisory bureau within one year of operations on key risk areas (ie prevention of money laundering and countering the financing of terrorism, handling of client moneys and assets, technology risk and suitability of advice).

However, the MAS would require the providers of digital advisory services to manage the new technology risks associated with these activities. The public consultation on these proposals ended on 7 July 2017 but the proposals have not yet been finalized.

Data analysis and cloud computing

Cloud computing refers to the use of a network of remote servers hosted on the internet to store and process data, instead of relying on a local server or personal computer. It provides economies of scale, delivers operational efficiencies and, like data analysis, is an enabler for a variety of other FinTech innovations.

There has been a growing trend among financial institutions to outsource aspects of their service delivery to cloud operators. In July 2017, as part of its Guidelines on Outsourcing Risk Management, the MAS set out specific guidelines on the use of cloud services by financial industry players. These mainly required cloud service providers to be aware of the risks to data confidentiality and data recovery posed by cloud services such as multi location processing and to carry out the necessary due diligence and implement appropriate risk management processes.

In this light touch regulatory environment, many startups have begun innovating in the cloud computing and data analytics space. Smartkarma and Call Level, both founded in 2014, provide services based on data analysis for investors. Call Level simplifies tracking investors' personal investments using tailored notifications which are generated from market analysis whereas Smartkarma provides research and transparency into Asian markets, combining intelligence from analysts, data scientists, academics and industry experts, to help investors enhance returns and proactively manage their investment strategies.

Business-to-business (B2B) platforms such as Matchmove, which provides cloud computing services to enterprises (in the form of a fully customizable secure mobile wallet service) to help businesses increase customer loyalty and user engagement are also popular in Singapore. Innovation using data analysis is also being deployed in the B2B services arena. FitSense is an analytics platform that collaborates with insurance companies to provide data analytics which allows insurance companies to personalize policies for anyone with a smartphone or wearable technology, thereby reducing insurance premiums.

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Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

GENERAL

Singapore has recently announced plans to become a 'Smart Nation' and it has recognized that the financial sector is ideally placed to play a leading role since the financial services industry offers vast scope for innovation and the application of technology. The government aims to work towards a 'Smart Financial Centre' where technological innovation is pervasive.

The Securities and Futures Act (SFA) is the main legislation regulating capital markets and the financial investments sector. Section 82 of the SFA provides that no person shall, whether as principal or agent, carry on business in any prescribed regulated activity or hold himself out as carrying on such business unless it holds a capital markets services license (CMSL) issued by the Monetary Authority of Singapore (MAS) in respect of that prescribed regulated activity. Regulated activities include dealing in securities, fund management, advising on corporate finance, providing custodial services for securities and securities financing, amongst others. Therefore, generally, unless a licensing exemption is invoked, all financial institutions would be required to obtain a CMSL. In some instances, the Financial Advisers Act may also be applicable.

The MAS is the main financial services regulator in Singapore. Generally, the MAS's regulatory approach towards FinTech can be described as activity-based regulation to keep pace with innovations. MAS believes that regulation must not front-run innovation since this may stifle or potentially derail innovation or the adoption of useful technology. However, it puts equal emphasis on keeping pace with innovation in order to assess what the risks might be and continually evaluates whether it is necessary to regulate or leave technologies and industries to evolve further. The MAS will only bring regulation in when the risk posed by new technology becomes material or crosses a threshold. Any regulation ought to be proportionate to the risk posed.

In order to provide a safer, less expensive and more controlled environment within which FinTechs can innovate, the MAS has set up a regulatory sandbox framework for financial institutions to test their innovations. This will provide FinTech firms with a space within which to experiment with their technology, even if they are not able to anticipate every risk or meet every regulatory requirement.

To enter the regulatory sandbox, the relevant FinTech must apply to the MAS. The MAS and the applicant will then define the boundaries within which the experiment will take place. The MAS will also determine the specific legal and regulatory requirements, which it is prepared to relax for the duration of the experiment within these boundaries. The sandbox has been a huge success, attracting proposals that leverage on a range of technologies, including blockchain, machine learning and big data analytics. PolicyPal, an insurance technology startup which allows customers to buy and manage insurance policies through a mobile application, is the first 'graduate' of the sandbox.

Regulation of peer-to-peer funding and marketplace lending

The MAS announced initiatives in June 2016 to improve small and medium-sized enterprises' access to equity and lending-based crowdfunding from accredited and institutional investors by relaxing certain financial requirements for capital markets intermediaries that deal in securities and clarifying the application of certain exemptions from prospectus requirements. Its approach is to regulate equity and lending-based crowdfunding platforms within the existing regulatory framework and accept lower regulatory requirements in accordance with the risks and characteristics of the business model (eg serving only accredited investors and institutional investors, and not handling clients' monies) of the relevant entity. The MAS does not see a need to create a new investor class for equity or lending based crowdfunding since the framework is already calibrated to treat retail and non-retail investors differently. As at June 2016, in light of the high risks inherent in equity crowdfunding, the MAS does not intend to remove the regulatory safeguards such as prospectuses that apply where securities are offered to retail investors but is working to refine its guidelines to facilitate the intermediation of offers to investors (including retail investors) under the existing framework and continues to monitor developments and may make adjustments to the approach in the future, if warranted.

CMSL REQUIREMENT

Generally, an equity and lending based crowdfunding platform operator will require a CMSL since it will be dealing in securities (ie by facilitating the offer of debentures even if the platform operator does not itself offer the debentures) or advising on corporate finance (as defined in the Securities and Futures Act) unless it qualifies under one of the prescribed exemptions from the requirement to hold a

CMSL. Requirements under the Financial Advisers Act may also apply where financial advisory services are provided by the platform operator to investors who wish to invest in the securities.

Following a public consultation held in 2015, the MAS has simplified the financial pre-qualifications to be met by platform operators to allow them to obtain a CMSL for dealing in securities. Therefore, if the platform operators only serve accredited and institutional investors, do not hold or handle customer money, assets or positions and do not act as principal against customers, the base capital requirement for dealing licensees will be reduced from S$250,000 to S$50,000 and the requirement to maintain a security deposit of S$100,000 with the MAS will be removed.

In assessing corporate license applications, where an applicant platform operator does not possess the requisite five years' corporate track record (as set out in the Guidelines on Criteria for the Grant of a CMSL other than for Fund Management), the MAS will consider other factors in place of the corporate track record, such as the experience and track record of the shareholders and the key officers of the applicant.

OFFER OF SECURITIES

In addition to the requirement to have the appropriate CMSL, under section 239(3) of the SFA, any invitation to lend money to an entity (eg a company) is deemed to be an offer of debentures, which is a type of security. The entity offering debentures is required to prepare and register a prospectus with the MAS in accordance with the SFA unless it falls within one of the several prospectus exemptions. Currently, securities-based crowdfunding (SCF) can be carried out, albeit in a limited way, without the need to register a prospectus if it is done in reliance on existing prospectus exemptions, such as the small offer exemption under the SFA.

Under section 272A of the SFA, crowdfunding platform operators may make personal offers of securities, up to S$5 million within any 12 month period, without a prospectus (referred to as the small offers exemption), subject to certain conditions. As of June 2016, the MAS has amended the investor pre-qualification process found in the MAS's Guidelines on Personal Offers made regarding the Exemption for Small Offers in order to make it easier for SCF platform operators to rely on the existing regulatory framework for small offers, to raise funds through SCF including from retail investors. However, to ensure investors (including retail) are fully aware of the risks and deterred from investing if they are unable to accept the potential losses, the MAS has concurrently strengthened the existing risk disclosures to require any licensed crowd-funding platform operator appointed by an offeror to intermediate the offeror's small offers online; and such an offeror is to provide, at the minimum, a prescribed risk disclosure statement to each potential investor and obtain the investor's acknowledgement that he is fully aware of and accepts the risks. The MAS has also advised however that in appointing a licensed SCF platform operator to intermediate the offeror's small offers, the offeror should satisfy itself that the SCF platform operator has the necessary procedures to ensure that the revised pre-qualification process, as well as the revised risk disclosure and acknowledgement requirements, are complied with.

Offerors can also rely on prospectus exemptions under sections 274 and 275 of the SFA to make offers of securities to accredited investors and institutional investors through SCF without a prospectus. To ensure that offers made in reliance of the abovementioned prospectus exemptions are limited in scope and reach, and are not subject to mass solicitation, offers to accredited investors are subject to specified conditions, including a restriction on any advertisement on the offer (Advertising Restriction). Although the MAS has clarified the scope of the advertising restriction for offers made pursuant to the prospectus exemptions, the bottom line remains that as exempted offers are intended to be offers that are restricted in scope, these offers should not be subject to any mass solicitation, advertising or canvassing. If the platform operator of a 'restricted access platform' (as opposed to an 'unrestricted access platform') has conducted due diligence to confirm that investors who have access to the platform are within the scope of the prospectus exemption (eg accredited investors), the publication of statements containing information on the offeror and the terms of the offer on the platform would not be regarded as a breach of the Advertising Restriction.

Licensed platform operators may still offer equity securities to retail investors by registering and providing a prospectus or by utilizing some of the other statutory exemptions (such as the small offers exemption described above) to issuing a prospectus.

Regulation of payment services

Payment services are currently governed by two separate pieces of legislation: the Money Changing and Remittance Businesses Act (MCRBA) which governs stored value and the Payment Systems (Oversight) Act (PS(O)A) which governs remittance businesses. With the advent of FinTech, payments and remittances and the providers of these services can no longer be easily classified and differentiated.

In August 2016, the MAS released a consultation paper on the proposed changes to the payments regulatory framework and the establishment of a National Payments Council to drive innovation, as well as to create a more efficient and competitive business environment. The proposals bring payment services regulations under a single framework that will provide for the licensing, regulation

and supervision of all payments services including stored value facility holders, remittance companies and virtual currency intermediaries. Regulation will be applied on the basis of the activity carried out by the service provider and entities will only be required to apply for a single license to undertake several payment activities. The proposed regulation also aims to strengthen standards of consumer protection, anti-money laundering and cybersecurity related to payment activities.

The consultation was the first in a series of consultations on the proposed governance model for Singapore. The proposals from these consultations do not yet appear to have been implemented.

Regulation of Initial Coin Offerings (ICOs), cryptocurrencies and token based products

In light of the booming ICO market in Singapore, the MAS clarified in August 2017 that the offer/issue of digital tokens which constitute 'products' regulated under the SFA will be regulated by the MAS. Where tokens fall within the definition of securities in the SFA, the issuer is subject to licensing requirements under the SFA (unless exempt) and is required to lodge and register a prospectus with the MAS prior to the offer of such tokens (unless exempted). Any platform facilitating the secondary trading of these tokens would also have to be approved or recognized as an approved exchange or recognized market operator under the SFA.

In line with other countries, the MAS has previously confirmed that virtual currencies are not specifically regulated but that intermediaries in virtual currencies would be regulated for money laundering/terrorist financing risks. It is considering introducing regulations to prevent money laundering/terrorist financing risks involving digital tokens which are not virtual currencies, in the near future.

Application of data protection and consumer laws

The increasing sophistication and use of technology within FinTech, data analysis tools and the applications of big data means that more data than ever is being collected and stored. Data protection in Singapore is governed by the Personal Data Protection Act 2012 which fully came into effect in 2014. It governs the collection, use, disclosure and care of personal data (whether electronic or non-electronic) and recognizes individuals' rights to protect their personal data and their rights of access and correction.

Money laundering regulations

In order to be compliant with anti-money laundering regulations, companies operating in the FinTech sector must collect the right information to conduct appropriate 'know your customer' procedures. This includes determining the business model's risk of money laundering and carrying out enhanced due diligence if the model is high risk. FinTech companies dealing with online payments and internet-based stored value facility holders are two sub-categories which have been identified as high risk. The MAS has issued guidance papers and 'Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism' for different types of FinTech business models. These outline the specific requirements and standards to be met by each type of institution.

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What type of funding arrangements and incentives are available to FinTech businesses?

Early stage

SEED INVESTMENT

Initial investment in FinTech businesses may be provided by family and friends of the founders, other high net worth individuals (often known as angel investors) or equity crowdfunding investors in return for an equity stake. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know how and expertise to assist in the company's development. Seed investors would typically not require the same controls over the business as, for example, venture capital providers.

Investors may also apply to the Singapore government's Angel Investors Tax Deduction Scheme between 1 March 2010 and 31 March 2020. If approved as an angel investor, the investor will receive a 50% tax deduction of the investment at the end of a two year holding period when he or she commits a minimum of S$100,000 in a qualifying startup.

The Singapore government also stimulates private sector investments into innovative Singapore-based technology startups with strong intellectual property rights and market potential through its Startup SG Equity Scheme by co-investing in them with an independent, qualified third-party investor. The government's Startup SG Founder Scheme aims to provide mentorship support and startup capital

grants to first-time entrepreneurs with innovative business concepts. This scheme provides up to S$30,000 by matching S$3 to every S$1 raised by the entrepreneur.

CROWDFUNDING

In relation to equity crowdfunding, the sector is well established in Singapore and may be appropriate for a FinTech business in the early stages since they often have limited cashflow, making it easier for them to offer shares in exchange for services or investment in the business. Reward-based crowdfunding, where investors will receive tangible benefit to a product that a startup is developing, is also used in Singapore but more commonly found in the entertainment or fashion industry where consumers may feel a stronger personal affinity towards the products.

ACCELERATORS

There are various incubators or accelerators in the Singapore market which offer support, facilities and funding for startups, often in return for an equity stake. For example:

- The incubator fund Expara (which works closely with the Singapore government) provides services, mentorship and training, and invests money in innovative enterprises including FinTech companies and has previously invested in market-leading FinTech players such as CoAssets (the first listed marketplace lending platform in Asia) and 2C2P (a payment services provider).
- United Overseas Bank worked with SGInnovate (a government-backed technology agency) to create FinLab, a FinTech-focused accelerator initiative that successfully produced a number of interesting FinTech companies in 2016 (including Attores, CardUp and Nickel) and is currently off and running for its second cohort.

In order to support accelerators, the Monetary Authority of Singapore (MAS) runs the Startup SG Accelerator which provides funding and non-financial support to further enhance incubators' initiatives and expertise in nurturing high potential startups.

Venture capital and debt

Venture capital (VC) funding is a type of equity investment usually targeted at early stage FinTech companies with an established business and some trading history. VC provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions. The benefit of having a venture capitalist as an investor for a FinTech startup is that the VC is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

In order to promote venture capital financing for enterprises and in recognition of the factors differentiating a VC fund from other investment funds, the MAS published a consultation paper in February 2017 proposing a simplified authorization process and regulatory framework for venture capital managers and plans to implement the new rules towards the end of 2017. These proposals focus primarily on the fitness and proprietary assessment of VC managers. Therefore, unlike fund managers, VC managers will not be required to have experience as directors and representatives with at least five years of relevant experience in fund management and they can expect a shortened application process. To the extent that there are contractual safeguards to provide sufficient protection to a VC's sophisticated consumer base, the MAS is also looking to exempt VC managers from the business conduct requirements applied to asset managers in general.

An additional funding option is venture debt, which is typically structured as a three year term loan (or series of loans), which is secured against a company's assets and includes an equity element allowing the debt provider to acquire shares in the company. However, venture debt providers will usually only invest into companies that have already received investment through venture capital.

Platform lending

Peer-to-peer (P2P) lending platforms bring individual borrowers and lenders together without the involvement of traditional banks. P2P lending does not involve equity investments, and instead interest is paid on the money borrowed.

The total amount that has been financed by the most active players in the P2P lending in Singapore is still negligible compared to the total debt/invoice financing market, though some of the companies have reached a monthly financing volume of several million Singapore dollars. Further, very few players publish their total loan book statistics. Capital Springboard claims to have financed around S$160 million, Capital Match S$44 million, Invoice Interchange S$17 million and Validus S$22 million. These amounts are commendable for startups, but cannot be compared to the overall funding market that is estimated by the MAS at S$633 billion (comprising total loans and advances to non-bank customers) in May 2017.

Senior bank debt and capital markets funding

SENIOR BANK DEBT

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis depending on the creditworthiness and asset base of the business. In contrast to capital markets funding which is often covenant-lite, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdraft, accounts management and general liquidity purposes.

CAPITAL MARKETS FUNDING

Singapore has both debt and equity capital markets which are accessible to businesses of certain size. Raising funds by way of an initial public offering (IPO) is therefore a popular funding arrangement for FinTech companies that have grown to a certain size.

In 2015, CoAssets listed its shares on the Australian Securities Exchange (ASX) in a deal that represented the first IPO of a Singapore grown P2P lender. Ayondo, a FinTech firm specializing in financial trading technologies, is planning a listing on the Singapore Exchange (SGX) in 2017. Upon its completion, the company will be the first FinTech company to be listed on the SGX.

CONVERTIBLE BONDS/LOAN NOTES

FinTech companies may issue bonds as a way of raising more competitive funding. A popular funding tool for fast growing FinTech businesses is to issue convertible bonds or loan notes which are essentially a hybrid between debt and equity. Convertible instruments begin as a loan accruing interest and are convertible into shares in the issuing company at prescribed prices in certain circumstances.

Incentives and reliefs

The regulatory sandbox (as described in FinTech products and uses – particular rules) is a key factor in attracting FinTechs to Singapore. Beyond the regulatory sandbox, there are other tax incentives promoting innovation, research and development and intellectual property management. These incentives also seek to attract new technologies into Singapore.

One of the schemes is the Productivity and Innovation Credit (PIC) scheme which was introduced in Budget 2010. Under the PIC scheme, qualifying businesses may enjoy up to 400% tax deductions/allowances for qualifying expenditure incurred in any of the six qualifying activities (such as research and development or acquisition of PIC IT equipment,) from 2011 to 2018. The concern is that with the phasing out of the PIC scheme in 2018, this could have an adverse effect on the momentum of innovation developed in Singapore over the past few years.

The MAS has also organized a return of the FinTech Festival in November 2017 and launched a new FinTech and Innovation Group within the MAS to provide information and advice to FinTech entrepreneurs.

Finally, the MAS has committed S$225 million over the next five years under the Financial Sector Technology and Innovation scheme (FSTI) to attract FinTech firms to set up innovation centers in Singapore. The FSTI scheme also has a 'Proof of Concept Scheme' which provides support to both financial and non-financial institutes in early stage development of innovative projects.

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Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

Buying and selling loans is common.

A loan can be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

The most common ways of selling loans are:

- **Novation** – A novation is a full legal transfer of the party's rights and obligations. It is a tripartite arrangement between the existing parties and the transferee and results in a fresh contract being formed between the continuing party and the transferee and the transferor being released from its obligations.
- **Assignment** – An assignment is a transfer of rights only, not obligations. Subject to any contractual restrictions, assignment can be done without the consent of the debtor. An assignment can be effected as either an equitable assignment or legal assignment depending on whether certain statutory requirements have been satisfied.
- **Sub-participation** – A sub-participation is a transfer of the economic interest in a loan without changing the legal relationship between the existing parties. Sub-participations involve the buyer taking on double credit risk, both on the seller as well as the borrower.

Loan transfers are commonly documented using standard form contracts drafted in-house by banks subject to negotiations between parties. For more complex transactions, a more bespoke form of sale and purchase agreement would tend to be used. The form and content of the transfer documentation will depend on the nature of the loan assets being sold.

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What are the main considerations when transferring a loan and related security?

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by the seller's legal advisors. Some of the key considerations include:

- **confidentiality** – whether the seller of the loan is allowed to disclose information relating to the loan to a potential purchaser;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential purchaser;
- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred;
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- **transfer mechanics** – whether there are any steps and formalities that need to be taken to transfer the loan in accordance with its terms; and
- **consent** – whether a transfer requires the consent or notification of any other parties.

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Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

Steady progress has been made in Singapore over the last few years in terms of privatization. Significantly, there has been a big leap in energy sector privatization. Notably, in recent years, there has been a rise of public-private partnership (PPP) projects, which involve collaboration between various types of private sector companies and the public agency.

Energy

Since 1995, the power system assets have been structured to facilitate commercialization and subsequent privatization. As at the end of December 2008, the Singapore Government's investment arm, Temasek Holdings (Private) Limited, had divested Singapore's three main power generating companies, representing a big part of the transition towards a fully liberalized power market in Singapore.

The Energy Market Authority (EMA) was established in 2001 as part of the government's efforts to liberalize the electricity market. As a regulator, the EMA also ensures a reliable and secure energy supply and promotes effective competition.

Telecoms infrastructure

The telecommunications networks (fixed and mobile) are all privately owned.

In January 2000, the Singapore Government decided to advance the introduction of full market competition in the telecommunications sector.

Transport infrastructure

Singapore currently adopts a privatized approach for transport infrastructure. Singapore's land transport authority, the Land Transport Authority (LTA), regulates and oversees all three main modes of public transport in Singapore, ie taxis, buses and trains, and ensures that they meet safety and service standards. However, the day-to-day operations of running the MRT train systems, bus systems and taxi services are the responsibility of private operators.

The day-to-day operations of running the MRT train systems are the responsibility of two main public transport operators in Singapore, SMRT Trains Ltd and SBS Transit. These operators are responsible for the daily operations of trains and their maintenance. The main bus operators in Singapore include SBS Transit Ltd, SMRT Buses Ltd, Tower Transit Singapore and Go-Ahead Singapore. Bus operations are regulated by the Public Transport Council (PTC). There are currently seven taxi operators in Singapore, which are regulated by the LTA.

Other infrastructure

While most of the attention has been focused on privatization in the energy markets, the water and waste industries have also made significant progress in reaching out to the private sector for progress. For example, design, build, finance and operate (DBFO) desalination and NEWater projects have formed the backbone of the Public Utilities Board's (PUB) existing procurement strategy for private sector participation in new capital works.

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Are there special rules for investing in energy and infrastructure?

Generally

There is no specific regime governing or restricting investment in energy or infrastructure projects in Singapore over and above existing regulation for investors and funders more generally but a particular proposed investment may be subject to legislative or regulatory control (eg merger control rules). As regards the planning and implementation of the underlying energy or infrastructure project (in which the investment is to be made), the legal/regulatory position relevant to that project must be considered. For example, a project involving development on land will require planning permission or a development consent order; and a project may require environmental authorizations/permits and/or sector specific regulatory consents or licenses.

Energy

Under the Electricity Act and the Gas Act, no person is permitted to supply or engage in activities related to the supply of electricity or gas respectively in Singapore without the appropriate license to do so issued by the Energy Market Authority (EMA).

Certain types of licenses issued by EMA may be subject to controls and restrictions on the ownership or transfer of shares in the licensees.

The EMA may designate any electricity licensee (DEL) or any entity (DE) or any business trust (DBT) operated by such licensee to be subject to additional restrictions. In particular, prior written approval of the EMA is required for:

- the appointment of chief executive officer, director or chairman of any DEL; and
- any person to acquire the business of a DEL or a DE as a going concern, or certain prescribed levels/forms of control over a DEL, DE or DBT.

Telecoms infrastructure

Although the Singapore telecommunication services market has been fully liberalized since 1 April 2000, pursuant to the Telecommunications Act, any person operating and providing telecommunication systems and services in Singapore has to be licensed by the Info-communications Development Authority of Singapore (IDA). Further, although there are no foreign equity limits or restrictions imposed on licensees, any such licensee must be a company incorporated in Singapore.

The IDA may designate any telecommunication licensee (DTL) or any trust (DT) or any business trust (DBT) operated by such licensee to be subject to additional restrictions. In particular, prior written approval of the IDA is required for:

- the appointment of chief executive officer, director or chairman of any DTL; and
- any person to acquire any part of the business as a going concern, or certain prescribed levels/forms of control over a DTL, DT or DBT.

Transport infrastructure

Under the Bus Services Industry Act 2015, any person operating a bus service in Singapore has to be licensed by the Land Transport Authority (LTA), or otherwise authorized to do so by contract with the LTA. Similarly, any person operating a rapid transit system in Singapore has to be licensed by the LTA. There are no express foreign equity restrictions imposed on such licensees.

With effect from 2016, Singapore will adopt a new contracting model which will enable the Singapore Government to make public bus services more responsive to changes in ridership. Under this model, LTA will determine the bus services to be provided and the service standards, and bus operators will bid for the right to operate these services.

Other infrastructure

Singapore is generally an open economy with minimal foreign ownership or investment restrictions. However, there is legislation relating to particular industries which limits or requires prior regulatory approval for share ownership in companies engaged in those industries. Those industries are generally industries perceived to be critical to national interest, such as banking, insurance and media.

Additionally, the Competition Act prohibits certain business practices that restrict competition in the market and prohibits mergers and acquisitions that substantially, or may be expected to substantially, lessen competition within the Singapore market.

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What is the applicable procurement process?

In general, competitive bidding is the preferred procurement procedure of multilateral agencies. Public bidding processes have several advantages for host governments. A bid process increases competition among potential providers of the goods or services, minimizes the cost of the solicited good or service, and fosters public support and credibility for the project by ensuring that the process is transparent and thereby free of bribes and other corruption.

Investing in energy and infrastructure

The general procurement process would involve the following stages:

- refinement of appraisal;
- the Invitation to Tender (ITT);
- receipt and evaluation of bids;
- selection of preferred bidder and the final evaluation;
- contract award and financial close; and
- contract management.

Financing energy and infrastructure

The general procurement process would be similar.

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What are the most common forms of funding / investing in energy and infrastructure?

The principal forms of private sector funding/investment in energy and infrastructure in Singapore (including in relation to public-private partnerships) are as follows.

Funding

Common forms of funding in energy and infrastructure include:

- public financing where the government uses funds from either tax revenue or public sector borrowing such as bonds;
- loans made on a corporate-finance basis (balance sheet debt);
- loans made on a project-finance basis (to a special purpose project company) on medium- to long-term bases – such loans may later be syndicated to other funders;
- bond finance;
- mezzanine debt (in some sectors);
- refinancing of the debt in operational projects; and
- asset financing.

Investing

Common forms of investing in energy and infrastructure include:

- 'equity' investment in special purpose vehicles or entities that may have a portfolio of interests, ie share capital and subordinated sponsor loans; and
- secondary market investment in operational projects (acquisition of 'equity').

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Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

When the Monetary Authority of Singapore considers that an authorized firm or regulated individual may have breached the ongoing compliance requirements, it will launch a formal investigation. This may result in regulatory sanctions.

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What regulatory penalties may apply?

When a breach has taken place, the Monetary Authority of Singapore may impose a financial penalty or censure, or withdraw regulated status against the firm and/or regulated individuals. The regulator will publicize these penalties.

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What criminal penalties may apply?

Following formal investigation, the regulators have powers to impose criminal penalties in certain cases, including:

- insider dealing and misleading statements and practices;
- breaches of the money laundering regulations; and
- conducting regulated activities when not authorized.

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Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

No stamp, registration, transfer or other similar taxes are payable on the advance, transfer or assignment of a loan.

Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

Most security interests created by Singapore companies and Singapore limited liability partnerships must be registered at the Accounting and Corporate Regulatory Authority of Singapore to perfect the security and ensure it is valid against third parties. The grant of most security interests over Singapore real estate should be registered at the Singapore Land Authority to ensure that the security interest takes effect as a legal charge. Fees are payable for such registrations but it would be unusual for such fees to be of a material amount.

Other forms of registration may also be required (or be advisable), depending on the nature of the asset over which security is taken. Such registrations may also require the payment of fees.

Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?

There is generally no charge to stamp duty, registration, transfer or other similar taxes on the issue, transfer or assignment of a debt security.

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Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?

Secured lenders and secured debt security holders take priority over the Inland Revenue Authority of Singapore on enforcement of security.

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Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

Withholding tax is applicable where a person is liable to pay another person (not known to such person to be resident in Singapore) any interest, commission, fee or any other payment in connection with any loan or indebtedness or in connection with any arrangement, management, guarantee, or service relating to any loan or indebtedness, if such payments are borne, directly or indirectly, by a person resident in Singapore or a Singapore permanent establishment of a person not resident in Singapore or if such payments are deductible against any income accruing in or derived from Singapore, unless exempted under applicable regulations.

If so:
What is the rate of withholding?

The applicable withholding tax rate for any interest, commission, fee or other payment in connection with any loan or indebtedness is 15%, if such income is derived by a person not resident in Singapore through operations carried on outside Singapore.

What are the key exemptions?

Payments made from 21 February 2014 onwards to a Singapore permanent establishment of a person not resident in Singapore, including Singapore branches of non-resident banks, are not subject to withholding tax.

Until 31 March 2021, specified entities such as banks licensed under the Banking Act or approved under the Monetary Authority of Singapore Act, finance companies licensed under the Finance Companies Act and certain other financial institutions do not need to withhold tax on any interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness which is made to persons not resident in Singapore (and without a permanent establishment in Singapore), where the payments are made for the purposes of the trade or business of such specified entities.

In addition, if the person receiving the income is a resident of a country which has entered into a double tax treaty with Singapore, the applicable double tax treaty may provide for a reduced withholding tax rate or an exemption.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes, the analysis described above is applicable to both interest payments under a loan or other form of debt security.

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Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding taxes (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (eg by virtue of incorporation, residence or local branch)?

No.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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