

**Singapore Institute of Legal Education  
Foreign Practitioner Examinations 2018  
Corporate Finance**

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## Part I: Capital Markets

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Key Definitions

Securities and Futures Act (Chapter 289) ('SFA')

Companies Act (Chapter 50) ('CA')

Business Trusts Act (Chapter 31A) ('BTA')

The Listing Manual of the Singapore Exchange Securities Trading Limited ('Listing Manual')

Code on Collective Investment Schemes ('CIS')

### **A. REGULATOR, EXCHANGE AND CLEARING**

#### **(a) Supervisory, interpretative and enforcement powers of the Monetary Authority of Singapore under Part I, Part II, Part III, Part IV and Part XV of the SFA**

- Approved exchanges and recognised market operators
- Clearing facilities – approved clearing houses and recognised clearing houses
- Capital markets services licence holders

#### **(b) Role of the Singapore Exchange Securities Trading Limited**

- Providing a fair, orderly and transparent market for trading of securities
- Chapter 1 of the Listing Manual

#### **(c) Role of The Central Depository (Pte) Limited**

- Clearing of securities
- Part IIIAA of the SFA
- Securities and Futures (Central Depository System) Regulations 2015
- Securities and Futures (Clearing Facilities) Regulations 2013

**B. LICENSING REGIME AND MARKET MISCONDUCT RESTRICTIONS**

**(a) Licensing regime for financial institutions and intermediaries as holders of capital market services licence or financial advisers**

- Part I and Part IV of the SFA
- Part I and Part II of the Financial Advisers Act (Chapter 110)

**(b) Market misconduct restrictions under the SFA**

- Part XII of the SFA

**C. TYPES OF SECURITIES**

**(a) Shares, debentures, collective investment schemes (including real estate investment trusts) and business trusts**

- Shares or debentures issued by companies incorporated under the CA
- Shares or debentures issued by entities not incorporated under the CA
- Trust units in collective investment schemes
- Trust units in business trusts

**(b) Part XIII of the SFA, Part III and Part IV of the CA, the CIS, the BTA and subsidiary legislations**

**D. PROSPECTUS**

**(a) Prospectus requirements under the SFA (Part XIII of the SFA)**

- Concept of offer to the public has been abolished
- All offerings will require a prospectus unless expressly exempted under the SFA

**(b) Types of offer documents under Part XIII of the SFA**

- Preliminary document
- Final prospectus
- Supplementary prospectus
- Replacement prospectus
- Profile statement
- Offer information statement
- Base prospectus
- Pricing statement

**(c) Power of the Monetary Authority of Singapore to refuse to register a prospectus or to serve a stop order under Part XIII of the SFA (Sections 240, 242, 282C, 282E, 296 and 297 of the SFA)**

**(d) Contents of a prospectus required by Part XIII of the SFA (Sections 243, 282F and 296 of the SFA) and subsidiary legislations (Securities and Futures (Offers of Investments) (Shares and**

**Debentures) Regulations 2005, Securities and Futures (Offers of Investments) (Business Trusts) (No. 2) Regulations 2005 and Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005) and the Listing Manual**

- Reasonable investor test
  - Checklist prescribed by the Monetary of Singapore – for example, the Fifth Schedule to the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005
  - Specific contents requirements pursuant to the listing process
- (e) **Obligation and liability with respect to false or misleading statements or omissions in a prospectus under Part XIII of the SFA (Sections 252, 253, 254, 255, 282M, 282N, 282O, 282P and 302 of the SFA)**
- Lodgment of supplementary or replacement document
  - Obligation to inform about deficiencies in a prospectus
  - Criminal liability
  - Civil liability
  - Defences (due diligence leading to reasonable belief, reasonable reliance, new circumstance or public withdrawal of consent)
  - Other potential liabilities on a prospectus (common law, CA and Misrepresentation Act)
- (f) **Restrictions on publicity and marketing efforts under Part XIII of the SFA (Sections 251, 282L and 300 of the SFA)**
- Restrictions on advertisements and publicity
  - Roadshow and pre-marketing activities
  - Distribution of pre-deal research
- (g) **Securities hawking prohibition under Section 309 of the SFA**

**E. OFFERING AND LISTING PROCESS**

Initial public offering, secondary offering (such as rights issue and placements) and listing process under Part XIII of the SFA and subsidiary legislations and Chapters 1, 2, 3, 4, 7 and 8 of the Listing Manual

**F. RELATED ISSUES**

Related legal, regulatory, governance and tax issues commonly encountered in a fund raising exercise

- (a) **Code of Corporate Governance**
- (b) **Interested person transactions – Chapter 9 of the Listing Manual and Appendix 6 of the CIS)**
- (c) **Substantial shareholding or unitholding notifications – Part VII of the SFA**
- (d) **Tax incentives for debt capital market fundraising and Islamic financing**

Reading List

**A. LEGISLATION**

- The legislations and subsidiary legislations mentioned above.

**B. BOOKS AND ARTICLES:**

- Hans Tjio, Wan Wai Yee and Yee Kwok Hon, Principles and Practice of Securities Regulations in Singapore
- Walter Woon, Company Law
- Baxt, Black and Hanrahan, Securities and Financial Services Law
- Philip Wood, The Law and Practice of International Finance
- Woon, Chew and Tjio, "Securities Regulation in Singapore" in *International Securities Regulation* (2005, Oceana)
- Andrew Hicks, "Commercial Candour and Integrity in Singapore: The City Country Club Case" [1986] 28 MLR 288
- Margaret Chew, "The Securities Regulator in Civil Pursuit: Quere a New Enforcement Option" [1999] SJLS 596
- Hans Tjio, "The Regulation of Unit Trusts and Trustees' Powers to Invest in Them" [1999] SJLS 148
- Hans Tjio and Lee Suet Fern, "Developments in Securities Law and Practice" (Singapore Academy of Law Conference 2006, Developments in Singapore Law Between 2001 and 2005).
- ABS: Listings Due Diligence Guidelines by the Association of Banks in Singapore

**C. CASES:**

- *New Zealand Stock Exchange v Listed Companies Association Inc* [1984] 1 NZLR 699
- *Chapmans Ltd v Australian Stock Exchange Ltd* [1994] 14 ACSR 726, [1996] 474 FCA
- *Theresa Chong v Kin Khoon & Co* [1976] 2 MLJ 253
- *Choo Pit Hong Peter v PP* [1995] 2 SLR 255
- *FAI Insurance v Pioneer Concrete* [1986] 10 ACLR 801
- *Corporate Affairs Commission (SA) v Australian Central Credit Union* [1985] 10 ACLR 59
- *Public Prosecutor v Huang Sheng Chang* [1983] 2 MLJ xcvi
- *Re Chen Chung Ying Winston* [1989] 1 MLJ 340
- *Ikumene Singapore Pte Ltd v Leong Chee Leng* [1992] 2 SLR 890
- *Lim & Tan Securities Pte v Sunbird Pte Ltd* [1992] 1 SLR 258
- *Daly v Sydney Stock Exchange* [1986] 4 ACLC 283
- *Lum Chang Securities Pte Ltd v Liam Beng Hian* [1993] 2 SLR(R) 214
- *Associated Asian Securities Pte Ltd v Lee Kam Wah* [1993] 1 SLR 585

- *Chien Chung Ming v Kay Hian & Co* [1992] 1 SLR 242
- *Brunninghausen v Glavanics* [1999] 32 ACSR 294
- *Tai Kim San v Lim Cher Kia* [2001] 1 SLR 607
- *RT v Public Prosecutor* [2007] SGDC 73
- *Auston International Group Ltd v Public Prosecutor* [2008] 1 SLR(R) 882; [2007] SGHC 219
- *RU v PP* [2007] SGDC 70
- *Yeo Poh Siah v Public Prosecutor* MA34/2007
- *Oversea-Chinese Banking Corp Ltd v Asia Pacific Links and another* [2011] 1 SLR 906

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## Part II: Banking

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### Primary and Secondary Materials

Relevant reading material and/or texts include the following:

- Peter Ellinger et al, Ellinger's Modern Banking Law 5ed (Oxford University Press, 2011)
- Poh Chu Chai, Law of Banker and Customer 6ed (LexisNexis, 2016)
- Poh Chu Chai, Banking Law (LexisNexis, 2011)
- Andrew McKnight The Law of International Finance 2017 (Chapter 2)
- Daniel K Tarullo Banking on Basel, 2008
- Chalmers and Guest, Bills of Exchange, (18th ed. 2016)
- Poh Chu Chai, Negotiable Instruments (7th ed. 2014)
- Chitty on Contracts, (28th ed. 2015, Chapter 34.)
- Wadsley and Penn, The Law Relating to Domestic Banking (2nd Edition, 2000)
- Cranston, Principles of Banking Law, (2002), ch's 8 – 10, esp ch 8
- Halsburys Laws of Singapore, Vol 12 'Finance & Banking', (2017), esp pp 445-494
- Hapgood, Paget's Law of Banking, (2014), ch's 16 - 17
- Proctor, Goode on Payment Obligations in Commercial & Financial Transactions (2016), ch IV
- Commentary on UCP 600

### **A. THE REGULATION OF BANKING**

#### **(a) Mandatory introductory reading**

- Derrick Ware, Basic Principles of Banking Supervision, 1996, published by the Centre for Central Banking Studies, Bank of England (available from <http://www.bankofengland.co.uk/education/ccbs/handbooks/pdf/ccbshb07.pdf>)
- Basel Committee for Banking Supervision, Core Principles for Effective Banking Regulation -Sep 1997 (available from <http://www.bis.org/publ/bcbsc002.htm>)

#### **(b) Other reference materials**

- The Monetary Authority of Singapore Act, Cap 186, ss 3, 4, 28
- Banking Act, Cap 19
- Banking Regulations 2004 (as amended)
- MAS Notices, Guidelines & Circulars, available at [www.mas.gov.sg](http://www.mas.gov.sg), including:
  - MAS, Objectives and Principles of Financial Supervision in Singapore – April 2004, revised Sept 2015
  - Classification of Instruments Issued by MAS, 2012
  - Moneylaundering and counter-terrorist financing - Notice to Banks 626, Nov 2015

- Guidelines for the Prevention of Moneylaundering, Nov 2015
- Securitisation - MAS Notice 628, Dec 2007
- Internet Banking and Technology Risk Management Guidelines, June 2013
- Circular No FSG 61/2001 Responsibility for Internet Banking Security

**(c) Financial intermediaries**

- Banks - Banking Act, Cap 19
- Finance Companies - Finance Companies Act, Cap 108
- Merchant Banks - Monetary Authority of Singapore Act, Cap 186
- Securities (exchange, brokers etc) – Securities and Futures Act, Cap 289
- Financial Advisers – Financial Advisers Act, Cap 110
- Moneylenders - Moneylenders Act, Cap 188
- Insurance companies – Insurance Act, Cap 142

**B. BASIC PRINCIPLES OF BANKING LAW**

**(a) The notion of a bank and of banking business**

- Common law definitions
  - *Commissioners of State Savings Bank of Victoria v Permewan, Wright & Co* (1915) 19 CLR 457
  - *United Dominion Trust Ltd v Kirkwood* [1966] 2 QB 431
  - *Re Roe's Legal Charge* [1982] 2 Lloyd's Rep 370
  - *Libyan Arab Foreign Bank v Bankers Trust Co* [1988] 1 Lloyd's Rep 259
- Statutory definitions
  - s 2 Banking Act: *Vernes Asia Ltd v Trendale Investment Pte Ltd* [1988] 1 MLJ 357
  - s 2 Bills of Exchange Act

**(b) Who is a customer?**

- Significance of an account: *Great Western Railway Co v London & County Banking Co* [1901] AC 414
- Duration of the account: *Cmmrs of Taxation v English Scottish & Australian Bank Ltd* [1920] AC 683
- Agreement to open an account: *Woods v Martins Bank* [1959] 1 QB 55

**(c) The banker-customer relationship**

- Legal nature of the relationship: *Foley v Hill* (1848) 2 HL Cas 28
- Features of the relationship: *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110

**(d) The 2008 financial crisis**

- 'Wall Street Meets Main Street: Understanding the Financial Crisis' Eamonn K Moran

13 N C Banking Institute 5 (available on LexisNexis)

**(e) The Singapore Banking Act**

- Licensing
  - CP 3 'Licensing criteria'
  - ss 4, 7, 8, 20, 21 Banking Act
    - ❖ *Vernes Asia Ltd v Trendale Investment Pte Ltd*
  - MAS 'Admission Criteria'
  - Commercial bank licenses: Full; Wholesale; Offshore; Representative office
- Use of word 'bank'; use of bank name
  - CP 2 'Permissible activities'
  - ss 5, 5A Banking Act
- Deposit –taking
  - CP 2 'Permissible activities'
  - ss 4A, 4B Banking Act: the notion of a deposit, deposit-taking business, exemptions and exclusions
  - *SCF Finance Ltd v Masri* (No. 2) [1987] 1 QB 1002
  - *Morgan Grenfell & Co Ltd v Welwyn Hatfield DC* [1995] 1 All ER 1
- Capital requirements
  - CP 6 'Capital adequacy', CP 7 'Risk management process'
  - ss 9, 9A, 10 Banking Act
  - Basel I & II
- Segregation of financial and non-financial businesses/ Prohibited Business
  - Part V, Banking Act
  - CP 13 'Market risks'
  - ss 30, 31, 32 Banking Act; (compare Finance Companies Act, ss. 25 -26)
- Lending/exposure limits
  - CP 8 'Credit risk' – CP 12 'Country and transfer risks'
  - s 29 Banking Act (compare Finance Companies Act, s 23(1)(d-f))
  - MAS Notice 639
  - MAS Notice 632
  - MAS Notice 645
- Liquidity
  - CP 14 'Liquidity risk'
  - ss 38, 39 Banking Act
  - MAS Notice to Banks No. 613 'Minimum Liquid Assets'
- Accounts and audits



- CP 17 'Internal control and audit', 22 'Accounting and disclosure'
- ss 25, 58 Banking Act
- Banking secrecy
  - Section 47, Banking Act and Banking (Professional Relationship) Notification
  - MAS Notice No 634 on Banking Secrecy - Conditions for Outsourcing (19 Feb 2003; Last update: 25 May 2004)
  - See generally, "Banking Secrecy - The Singapore Position", Asia Business Law Review No 18, October 1997 at page 25-34
  - Third schedule of Banking Act
- Depositor protection
  - ss 61, 62 Banking Act
  - Deposit Insurance Act, Cap 77A
  - Government guarantee of deposits
- Securitisation
  - MAS Notice No 628 on Securitisation (14 Dec 2007)
  - MAS Circular FSG 43/2000: MAS Notice 628 - Asset Securitisation by Banks

**(f) Regulation under MAS Act**

- Merchant Banks
  - MAS Act, s. 28
  - MAS Guidelines for Operation of Merchant Banks
- Money Laundering
  - Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act
  - See generally, "Money Laundering - Legal Implications of the Drug Trafficking (Confiscation of Benefits) Act", Asia Business Law Review No 4, April 1994 at page 35
  - CP 18 'Abuse of financial services'
  - MAS Act, s 27B
  - Notice to Banks 626 on Prevention of Money Laundering, and Guidelines
    - a. Client due diligence
    - b. Suspicious transactions
    - c. Reporting

**C. NEGOTIABLE INSTRUMENTS**

**(a) Concept of negotiability**

- Assignment of Choses in Action
  - Section 4(8), Civil Law Act, Cap. 43 (1999).
- Attributes of Negotiability
  - Section 31 and 38; Bills of Exchange Act, Cap. 23 (2004).
  - *Miller v. Race* (1758) 1 Burr. 452; 1 Smith L.C. (13th ed.)
  - *Raphael v. Bank of England* (1855) 17 C.B. 161.
- Non-Negotiable Instruments
  - Sections 8, 35, 81 and 82; Bills of Exchange Act.
  - *Hibernian Bank Ltd. v. Gysin and Hanson* [1939] 1 K.B. 483.
  - *T. S. Aroonasalam Chitty v. Seah Eng Koon* [1934] M.L.J. 164.

**(b) Classification of negotiable instruments**

- Bills of Exchange
  - Section 3, Bills of Exchange Act.
- Cheques
  - Section 73, Bills of Exchange Act.
- Promissory Notes/ Standby letters of credit
  - Section 92, Bills of Exchange Act.
  - Uniform Customs and Practices for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 ("**UCP 600**")
  - International Standby Practices ("**ISP 98**")

**(c) Bills of exchange**

- Parties to bill
- Unconditional Order
  - (a) Section 3, Bills of Exchange Act.
  - (b) *Little v. Slackford* (1828) 1 Mood. & M. 171.  
*Ong Kim Lian v. Kwek Beng Choo* (1914) S.S.L.R. 10.
- Time of Payment
  - (a) Section 11, Bills of Exchange Act.
  - (b) *Korea Exchange Bank Ltd. v. Debenhams* (Central Buying) Ltd. [1979] 1 Lloyd's Rep. 548.  
*Williamson v. Rider* [1962] 2 All E.R. 268.  
*Claydon v. Bradley* [1987] 1 All E.R. 522.
- Signing Bill

- Section 23, Bills of Exchange Act.
- Dates, Sums and Figures
  - Sections 3, 9, 10, 11, 12, 13 and 64, Bills of Exchange Act.
- Acceptance of Bills of Exchange
  - Sections 17, 18, 19, 39, 40, 41-44 and 54, Bills of Exchange Act.
- Transfer and Negotiation
  - Sections 31-37, 55 and 56, Bills of Exchange Act.
  - *Leonard v. Wilson* (1834) 2 Cr. & M. 589.
  - *Bird & Co. (London) Ltd. v. Thomas Cook & Son Ltd.* (1937) 156 L.T. 415.
  - *Arab Bank Ltd. v. Ross* [1952] 2 Q.B. 216.
  - Requisites of indorsement: BEA, s. 32;
  - Blank and special: BEA, s. 34;
  - Conditional and restrictive indorsements: BEA, ss. 33, 35
  - Negotiation to party already liable: BEA, s. 37.
  - Dishonour by Non-payment
    - *Lombard Banking v. Central Garage & Engineering Co.* [1963] 1 Q.B. 220.
    - *Eaglehill Ltd. v. J. Needham Builders Ltd.* [1972] 3 All E.R. 895.
    - *Mohamed Amirdin v. Varatharajan* [1968] 2 M.L.J. 83.
    - *Fiorentino Comm Giuseppe Sr1 v. Farnesi* [2005] 2 All E.R. 737.
    - *City Hardware Pte. Ltd. v. Goh Boon Chye* [2005] 1 S.L.R. 754.
    - *Henny Sutanto v. Chandra Suwandi* [2005] S.G.C.A. 45
- Suing on a Negotiable Instrument
  - Sections 14, 45, 46 and 86, Bills of Exchange Act.
  - *Kennedy v. Thomas* [1894] 2 Q.B. 759.
  - *Wong Fook Heng v. Amixco Asia Pte. Ltd.* [1992] 2 S.L.R. 342.
  - *James Lamont & Co. Ltd. v. Hyland Ltd.* [1950] 1 K.B. 585.
  - *Nova (Jersey) Knit Ltd. v. Kammgarn Spinnerei GmbH* [1977] 1 Lloyd's Rep. 463.
  - *Marina Sports Ltd. v. Alliance Richfield Pte. Ltd.* [1990] 3 M.L.J. 5.
  - *BMI Building Material International GmbH v. Roberto Building Material Pte Ltd.* [1999] 2 S.L.R. 39.
  - *Yee Chow Fah v. Multihorizon Sdn. Bhd.* [1999] 6 M.L.J. 175.
  - *Cheng Song Chuan (trading as Trade Sources Enterprise) v. Chin Ivan* [2008] SGHC 39
  - *Smith v Lloyd's TSB Group plc* [2001] QB 541

**(d) Cheques**

- Definition

- Sections 3 and 73, Bills of Exchange Act.
- Post-dated Cheques
  - Section 13, Bills of Exchange Act.
- Crossed Cheques
  - Sections 76, 77, 78, 81 and 82 Bills of Exchange Act.
  - *Great Western Ry. v. London & County Banking Co.* [1901] A.C. 414.
  - *Ringham v. Hackett* (1980) 124 S.J. 201.
  - *Algemene Bank Nederland NV v. Happy Valley Restaurant Pte. Ltd.* [1991] 2 M.L.J. 289.
- "Marking" of Cheques
  - *Bank of Baroda Ltd. v. Punjab National Bank* [1944] A.C. 176.

**(e) Promissory notes/ standby letters of credit**

- Definition
  - Sections 92-98, Bills of Exchange Act.
- Acknowledgement of Debt Not a Promissory Note
  - *Nawab Major Sir Mohammad Akbar Khan v. Attar Singh & Ors* [1936] 2 All E.R. 545.
  - *Fook Lee Tin Mining Kongsu v. Gurdev Singh* [1952] M.L.J. 55.
  - *International Trust & Finance Ltd. v. Chui Pui Cheng* [1987] 2 M.L.J. 678.

**(f) Reading materials**

- Raymond Jack, Documentary Credits
- ICC: Users' Handbook for Documentary Credit under UCP 600

**(g) Rights of parties**

- Holder
  - Sections 2 and 38, Bills of Exchange Act.
  - *Good v. Walker* (1892) 61 L.J.Q.B. 736.
  - *Midland Bank Ltd. v. R.V. Harris* [1963] 1 W.L.R. 1021.
- Holder for Value
  - Sections 27 and 83, Bills of Exchange Act.
  - *Westminster Bank v. Zang* [1966] A.C. 182.
  - *Barclays Bank v. Astley Industrial Trust* [1970] 2 Q.B. 527.
  - *MK International Development Co. Ltd. v. The Housing Bank, Financial Times*, January 22, 1991
- Holder in Due Course
  - Sections 29, 30 and 38, Bills of Exchange Act.

- *Jade International v. Robert Nicholas Ltd.* [1978] 1 Q.B. 919.
- *Hon Chee Enterprise v. British Markitex Ltd.* [1982] 1 M.L.J. 149.
- *Osterreichische Landerbank v. S'Elite Ltd.* [1980] 2 Lloyd's Rep. 139.
- Illegal Consideration
  - *Sun Cruises Ltd. v. Overseas Union Bank Ltd.* [1999] 3 S.L.R. 404.
  - *Star Cruise Services Ltd. v. Overseas Union Bank Ltd.* [1999] 2 S.L.R. 412.
  - *Pet Far Eastern (M) Sdn. Bhd. v. Tay Young Huat & Ors.* [1999] 5 M.L.J. 558.
  - *Star City Pty. Ltd. v. Tan Hong Woon* [2002] 2 S.L.R. 22.
  - *Liao Eng Kiat v. Burswood Nominees Ltd.* [2004] 4 S.L.R. 690.
  - *Ritz Hotel Casino Ltd. & Anor. v. Datu Seri Osu Hj Sukam* [2005] 3 C.L.J. 390
  - *Poh Soon Kiat v Desert Palace Inc* [2010] 1 S.L.R. 1129.

## D. BANKER-CUSTOMER

### (a) Bank and its customer

- Nature of relationship
  - Debtor-creditor relationship
  - *Foley v Hill* (1848) 2 HL Cas 28
  - Demand for repayment
  - *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110
  - *Bank of America NTSA v Herman Iskandar* [1998] 2 SLR 265
  - *Damayanti Kantilal Doshi v. Indian Bank* [1999] 2 SLR 306 (H.C.); [1999] 4 SLR 1 (C.A.)

### (b) Bank's duty of care – Conventional banking transactions

- Fiduciary obligations?
  - *Woods v Martins Bank*
- Duty to exercise reasonable care and skill
  - *Selangor United Rubber Estates Ltd v Cradock (No. 3)* [1968] 1 WLR 1555
  - *Lipkin Gorman v Karpnale & Co* [1989] 1 WLR 1340, CA
  - *Bank of Credit and Commerce International (Overseas) Ltd. v. Akindele* [2001] Ch. 437.
  - *Barlow Clowes International Ltd. v. Eurotrust International Ltd.* [2006] 1 All E.R. 333.
  - *Abou-Rahmah v. Abacha* [2007] 1 All E.R. (Comm.) 827.
  - *Bumiputra-Commerce Bank Bhd. v. Top-A Plastic Sdn. Bhd.* [2008] 5 M.L.J. 34.

### (c) Banking secrecy

- Duty implied at common law

- *Tournier v National Provincial & Union Bank* [1924] 1 KB 461
- *Robertson v Canadian Imperial Bank of Commerce* [1994] 1 WLR 1493
- *Jackson v. Royal Bank of Scotland* [2005] 1 All E.R. (Comm.) 337.
- Exceptions to common law duty
  - Disclosure in the public interest
  - Disclosure in the bank's interest
  - Disclosure in compliance with the law
  - Express/implied consent
  - *Soh Chun Seng v. CTOS-emr Sdn. Bhd.* [2004] 5 C.L.J. 47.
- Statutory obligation of secrecy in Singapore
  - s 47(1) Banking Act
  - *PSA Corp Ltd. v. Korea Exchange Bank* [2002] 3 S.L.R. 37.
  - *Susilawati v. American Express Bank Ltd* [2009] 2 SLR 737
  - Article: Booyesen, "Banking Secrecy in Singapore and the Customer's consent to Disclosure" [2011] 26 JIBLR 28
- Exceptions to the statutory obligation
  - Third Schedule Part I exceptions
  - Third Schedule Part II exceptions – further disclosure prohibited
  - *Turner v. Royal Bank of Scotland Plc.* [1999] 2 All E.R. (Comm.) 664.
- Relationship between statutory obligation and common law duty
  - s 47(8) Banking Act
- Cross-border banking and intervention of foreign courts
  - *A-G of Hong Kong v. Zaayah Wan Chik* [1995] 2 M.L.J. 620.

**(d) Combination of accounts**

- Nature of right
  - *Re European Bank, Agra Bank Claims* (1872) LR 8 Ch App 41
  - *National Westminster Bank Ltd v Halesowen Presswork & Assemblies Ltd* [1972] AC 785
- When accounts may be combined
  - *Garnett v M'Kewan* (1872) LR 8 Ex 10
  - *Greenwood Teale v William, Williams, Brown & Co* (1894) 11 TLR 56

**(e) Credit and security - General overview**

- Types of borrowing and financing / loan documentation
  - Bilateral / syndicated
  - Revolving / term

- Lending to a company
- Lending to a REIT / business trust
- Lending to the real estate sector
- Term Sheet
- Recommended reading material
  - Philip Wood, 2008 "Law and Practice of International Finance", University Edition, Chapters 7 to 9
  - Eilis Ferran, 2008 "Principles of Corporate Finance Law", Chapter 11
  - Ravi Tennekoon, 1991 "Law and Regulation of International Finance", Chapters 3 to 5
  - Tan Cheng Han (ed.) 2009 "Walter Woon on Company Law", Chapter 12
  - Sample of LMA Single Currency Revolving Facility Agreement
  - LMA's Users Guide to Investment Grade Primary Documentation
  - LMA's Guide to Syndicated Loan
  - Tolley's Commercial Loan Agreements
  - Code on Collective Investment Schemes, in particular, the Property Funds Appendix
  - Business Trusts Act
  - Ellinger's Modern Banking Law, 5<sup>th</sup> Edition 2011, 755 – 765, 781 – 787, 794 – 797
  - Poh Chu Chai Banking Law (2011) Chapter 7 (pp132 on), 150 – 152
  - P Rawlings "Avoiding the obligation to lend" [2012] JBL 89, esp 100 – 110
  - Maple Leaf Micro Volatility Master Fund v Rouvroy [2009] EWHC 257 (Comm), [2009] 1 Lloyds Rep 975
  - Housing Developers (Project Account) Rules
  - MAS 632 Residential Property Loans

**(f) Security / Undertakings**

- Types of security / undertakings
  - Mortgages / charges / assignments / debentures
  - Quasi-securities e.g. reservation of title / set-off arrangements
  - Subordination
- Conflict of law issues on taking security interests
- Statutory versus common law assignment
- Perfection of security

**(g) Recommended reading materials**

- Roy Goode, "Legal Problems of Credit and Security"

- Philip Wood, "Comparative Law of Security Interests and Title Finance"
- *MacMillan Inc. v Bishopsgate Investment Trust plc & Ors* (No. 3)
- Section 4(8), Civil Law Act
- *Re SSSL Realisations*

**(h) Guarantees**

- Recommended reading material
  - James O'Donovan, "The Modern Contract of Guarantee"
  - Philip Wood, "Comparative Law of Security and Guarantees"

**(i) Enforcement of security**

- Insolvency-related issues e.g. undervalue transaction, unfair preference
- Moratorium on security enforcement
- Anti-deprivation principle
- Recommended reading material
  - Sections 227, 328, 329 and 330 of the Companies Act
  - Companies (Application of Bankruptcy Act Provisions) Regulations
  - Sections 98 and 99 of the Bankruptcy Act
  - *British Eagle International Air Lines Ltd v Cie Nationale Air France*
  - Sections 21, 24 and 25 of the Conveyancing and Law Property Act

**(j) Financial assistance**

- Section 76 of the Companies Act
- Recommended reading material:
  - Walter Woon, "Company Law"

**(k) Security over shares**

- Scrip-based shares
- Scripless shares
  - Section 130 of the Companies Act
  - Central Depository System

**(l) Charges**

- Whether a charge under s131 has been created
- Fixed versus floating charges
- Registration of charges
  - Sections 131 to 141 of the Companies Act



**(m) Recommended reading material**

- *National Westminster Bank plc v Spectrum Plus Limited and others and others*
- *Rayford Homes Ltd v Bank of Scotland plc*
- *In re SSSL Realisations (2002) Ltd (in liquidation) and In re Save Group plc (in liquidation)*
- Re Brightlife [1086] 1Ch 200
- Asiatic Enterprise (Pte) Ltd v UOB [1999] SGCA 85
- Walter Woon, "Company Law"
- W.J. Gough, "Company Charges"
- Lee Eng Beng "Invisible and Springing Security Interests in Corporate Insolvency Law" [2000] 12 SACLJ 210

**(n) Disclosure of interest**

- Section 156 of the Companies Act

**(o) Prohibition of loans / securities**

- Section 163 of the Companies Act

**(p) Ultra vires doctrine**

- Section 25 of the Companies Act

**(q) Commercial benefit**

- *Rolled Steel Products (Holdings) Ltd v British Steel Corp*

**(r) Execution of Documents**

- Stamp Duties Act
- Sections 23, 25, 41, 41A, 41B and 41C Companies Act
- *R (on the application of Mercury Tax Group Ltd and another) v HMRC & Others*

**E. BOILERPLATE PROVISIONS IN BANKING DOCUMENTS**

- Rights of Third Parties
- Waiver
- Bank's Discretion
- Set-off and Combination of Accounts
- Conclusive Evidence
- Entire Agreement
- Assignment
- Banker's Lien
- Negative Pledge
- Default

- Pari Passu
- Material Adverse Change
- Recommended reading material
  - P R Word "Pari Passu clauses – what do they mean?" {2003} JIBFL 371
  - R Cranston, Principles of Banking Law (2<sup>nd</sup> Edition 2002 – reprinted 2009), pp 315 – 321
  - R Youard "Default in International Loan Agreement I and II" [1986] JBL 276 at 378
  - R Hooley, "Material Adverse Change Clauses" after 9/11 "in S Worthington (ed) Commercial Law and Commercial Practice (Hart 2003)
  - Zakrewski, "Material adverse change and material adverse effect provisions: construction and application" [2011] LFMR 344
  - Booyesen "Pay Now – Argue Later: Conclusive Evidence Clauses in Commercial Loan Contracts" [2014] JBL 31
  - McLauchlan "The Entire Agreement Clause: Conclusive or a Question of Weight" (2012) 128 LQR 521
  - Hans Tjio "Of Prohibitions on Agreements, Restrictive Covenants and Negative Pledges in Commercial Law: Clogs on Commerce" (1994) 6 SAclJ159
  - Contracts (Right of Third Parties) Act Chapter 53B
  - Goode "Contractual Prohibitions Against Assignment" (2009) LMCLQ 300
  - Treitel, "The Law of Contract" (3-066 – 3-092)
  - R Hooley "Controlling Contractual Discretion" (2013) 72 CLJ 65

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## Part III: Alternative Business Structures

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**There are various forms of alternative business structures which may be established in Singapore under different statutes and they are set out below -**

- A. Sole proprietorship  
Business Registration Act (Cap 32)
- B. Partnership  
Partnership Act (Cap 391)
- C. Company  
Companies Act (Cap 50)
- D. Limited Partnership  
Limited Partnership Act (Cap 163B)
- E. Limited Liability Partnership  
Limited Liability Partnership Act (Cap 163A)
- F. Business Trust  
Business Trusts Act (Cap 31A)
- G. Real Estate Investment Trust  
Securities and Futures Act (Cap 289) – Sections 283 to 308  
Code on Collective Investment Schemes (in particular Appendix 6 – Investment: Property Funds)

**For the purposes of the FPE, the focus will be on the laws and regulations relating to Business Trusts and Real Estate Investment Trusts.**

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