CHAPTER VI

BANK MERGER LAWS IN UK, AUSTRALIA AND SINGAPORE: A COMPARATIVE STUDY

6.1 Introduction: Consolidation has been a recognized progress in the banking industries of many jurisdictions in recent decades. In many emerging markets banks M&A have been driven by government policy initiatives for restructuring. Frequently such initiatives have followed a financial crisis and have become directed towards stabilizing banking system and the economy.  

Banking business being distinct from other kind of businesses requires extensive regulation. There has been a degree of harmony about the need for comprehensive regulatory controls governing operations of financial institutions and financial markets generally. In all jurisdictions main objective of bank regulation is to maintain financial stability, reducing bank failures and protection of consumers. In those line main elements of the bank regulatory system includes: restriction on the kind of businesses in which banks are allowed to engage, licensing of banks, provisions relating to the protection of depositors interest and restrictions on control of banking business.


751 In India, Section 6 of the Banking Regulation Act, 1949 prescribe the Forms of business in which the banks may engage- In Singapore, Section 30 of the Banking Act, 1970(As amended) deals with the non-banking business which bank may engage. Section 5 of Banking Act,1959 in Australia states that “Banking business means: (a) a business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution; or (b) a business that is carried on by a corporation to which Paragraph 51(xx) of the Constitution applies and that consists, to any extent, of:(i) both taking money on deposit (otherwise than as part payment for identified goods or services) and making advances of money; or ii) other financial activities prescribed by the regulations for the purposes of this definition.

752 Section 5,8,10 read with section 159-164 of the FSMA,2000(UK)
The business of banking is loaded with danger, arising mainly from the volatility in the world economy and from human error of misjudgment. Banks operate largely by investing funds deposited with them by the public. Thus the collapse of banks has disastrous effect on the position of its customers or business enterprises and it can induce financial panic. In order to prevent such disastrous effects on the public and on the economy almost all jurisdictions have enacted laws that would regulate the banking business.

The European Central Bank (ECB) expressed the view that one of the root causes of the global financial crisis was that supervision and regulation of banking and financial markets is loosely coordinated. Most jurisdictions have special regulations for banking companies; however there is no difference in the law governing mergers of banking companies. Yet, some countries have laid down separate procedures for bank merger. India, UK, Singapore and Australia have special procedures for the amalgamation of banking companies.

Part-I of the study examines the central reasons for amalgamation of banks in general and the rationale of special bank merger regulations. In this part paper stress upon the risk factor and monopoly are the two main constrains prescribed by the regulators for the disapproval of amalgamation of banks. Part-II of the study examine bank mergers and acquisitions in India from 1969 till 2015 and offers a conceptual explanation of the causes that lead to mergers among the banking

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755 In UK, Part VII of the FSMA regulates the acquisition of the undertaking of banking companies. Court sanctions such schemes. For the purpose of the merger of other companies the provisions of Companies Act, 2006 is applicable. Court has the power to sanction the scheme.
companies during this period. Part-III examines the law governing bank mergers in UK, Australia and in Singapore. In the United Kingdom, Part-VII of Financial Services and Management Act, 2000 govern the transfer of banking business undertaking and it has to be sanctioned by the Court. The Financial Services Act, 2012 and The Financial Services (Banking Reform) Act, 2013 has brought about a number of changes to the UK banking system. The key one is the separation of retail banking from wholesale banking activities. In the light of the above, part IV briefly identifies the type of fundamental regulatory reforms that are needed for the purpose of encouraging more M&A in the Indian banking industry.

Reasons for amalgamation of banking companies: The motivations and expected benefits of bank mergers particularly in the Indian scenario derive from the underlying forces operating in tandem in forced and voluntary mergers. In the case of the former, the policy objective is consolidation of the financial sector and strengthening of the financial sector and consequently mergers are aimed at rescuing weaker institutions and bodies and protecting the interest of the depositors. In the case of the latter, it is competitive aspects that provide the incentive to spread and increase operations and customer bases.

The chief economic reason that encourages bank mergers may be roughly divided into cost reductions and benefits accruing from economies of scale, or access to new markets. Mergers are often

756 Andrew Haynes, ‘The Banking Reform and the Corporate Sector’ 2015 Company Lawyer. P.97
757 Ibid.
758 M. Jayadev and Rudra Sensarma, ‘Mergers in Indian Banking, An Analysis’ 14(4) South Asian Journal of Management 2007(20-47) available at https://uhra.herts.ac.uk/dspace/bitstream/2299/3465/1/902962. The study reveals that when a bank has shown symptoms of sickness such as huge NPAS, and substantial erosion of net worth, RBI has intervened and merged the weak bank with a strong bank.
759 Ibid.
assumed to improve the performance of banks in terms of profitability, by reducing costs incurred or by increasing revenues. Thus studies of post-merger accounting profits, operating expenses and efficiency ratios, relative to the pre-merger performance indicate an increase in profitability. However, further studies indicate that this may not always be so in cases where there is a large lag between the completion of merger and the realization of benefits, the results from it are exactly opposite. Some studies indicate that the firms may benefit from diversification, particularly in the case of banks merging with Non-Banking Financial Companies. In the case of Indian Banking, substantial gains are received from mergers in the form of increased efficiency but to limited short term period, not conclusively in the long run.

The Essential basis of special treatment for banks and more specifically, of closer regulation and supervision of banking institutions all over the world, is premised on several reasons. Firstly, banks operate as a key stone of financial stability, since they accept public deposits are an instrument of monetary policy; have a significant role to play in the flow of cash. In this sense, banks constitute a form of public good and consequently, preventing the spread of collapse in the banking system is vital to the welfare of the economy of the

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762 Ibid.
764 V. Leeladhar, ‘Evolution of Banking Regulation in India – A retrospect on Some aspects’ www.rbidocs.rbi.org accessed on Aug 2009. [The special address delivered by Shri V. Leeladhar, Deputy Governor, Reserve Bank of India at the Banker’s conference (BANCON) 2007 on November 26, 2007]
state. Thus, it is clear that it is a vital matter of state interest to ensure that the banking system is regulated and protected, to enhance the efficiency of the financial sector and also facilitate economic growth of the country.

The differential treatment of banking companies as opposed to non-banking companies was the subject of consideration by the Supreme Court in *Joseph Kuruvilla Vellikunnel v. Reserve Bank of India* 765. In this case, the Supreme Court deduced the following distinctions between the two as constituting the underlying rationale behind their differential treatment:

3. A banking company cannot be compared to an ordinary company, because in the case of a banking company, the interest of the depositors are paramount.

4. The parliament intended the Reserve Bank to have a decisive voice in respect of certain matters pertaining to banking companies, due to the expertise of the bank with relation to banking matters.

6.2 Control of Banking in the United Kingdom: The supervision of banking in the United Kingdom was in the hands of Bank of England until 1998. The Bank of England Act, 1694 authorized the incorporation of the bank by means of public subscription 766. Originally, the object of the bank was to raise the money required for the war with Louis XIV 767. It was prohibited from engaging in the general trade. The Bank of England Act 1696 granted monopoly as regards the carrying on of full-fledged banking business by corporation 768. The bank of England’s three main functions – those of an issuing bank, of a central bank, and of a settlement bank became well established in the 19th century. The first attempt to give the bank’s substantial monopoly of issuing bank notes was made in

765 AIR 1962 SC 1371


767 It also had to transact its business under the style of the governor and company of the Bank of England. The bank was invested with a legal personality and it was a joint stock company. It was authorized to deal in the bill of exchange. It was allowed to deal in gold coins, bullion and silver.

768 Ibid
the bank notes Act, 1826, under which other banks were precluded from issuing notes for less than $5. The bank’s supervisory function – its role as a central bank developed at a later date. Bank’s indirect control of the banking system was based on its ability to influence interest rates by applying them to the accounts maintained with it. The emergence of the powerful joint stock banks during the last two decades of the 19th century prevented the bank of England from effectively exercising Defacto control it had been able to impose on the banking network earlier. The maintenance of substantial margins with the bank of England began between 1913 and 1914. In terms of structure, the bank remained largely unchanged until 1946 when it was nationalized by the government. In the year 1946 the bank of England’s stock was transferred from the then owners to the treasury solicitor. Bank of England is now a government institution but operates independently of the government. Then came the Bank of England Act, 1946 which gave the general powers to make requests or recommendations to banks and if authorized by the treasury, to issue directions. The Banking Acts of 1979 and 1987 imposed on the bank not only the power but also the duty to supervise the banks authorized by it to carry on a deposit taking business in the United Kingdom. The Banking Act, 1979 and 1987 was the first Act to deal comprehensively with the licensing of institutions entitled to accept deposit from the public. It was superseded by the Banking Act of 1987. The Banking Act, 1979 divided the deposit taking institutions into four groups (a) Bank of England (b) Recognized banks (c) licensed institutions described as ‘licensed deposit takers’ and (d) institutions listed in schedule 1 to the Act such as building Societies and the central banks of EC member countries, which were entitled to accept the deposit from the public without securing a license or authorization. With the collapse of Johnson Matthey Bank, the question of bank supervision was

gland%22&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3D%2522Bank%2522%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff


771 Ibid.,
reviewed by a committee set up by the chancellor of exchequer in December 1984 and chaired by the governed of the Bank of England. In the UK, the Bank of England Act 1998 transferred the Bank of England’s former banking supervision functions to the Financial Services Authority (FSA). Prior to the enactment of it, the legal pedigree for powers of the Bank to conduct financial services supervision rested not only in provisions of the Banking Act 1987, but also in section 101(4) of the Building Societies Act 1986, and in provisions of the Banking Coordination (Second Council Directive) Regulations 1992. Under these laws, the core purposes and strategy of the Bank of England included monetary stability, monetary analysis, monetary operations, banking activities, financial stability, supervision, and surveillance. Though, FSA has acquired the powers to supervise banks, listed money market institutions, and related clearing houses as the single financial services regulator772, it could not withstand the financial crisis between 2008-09. Parliament of UK enacted Financial Services Act, 2012773 and Financial Services (Banking) Reforms Act, 2013 with the objective of strengthening Financial supervision in UK. Financial Services Act, 2012774 established two new statutory bodies replacing the Financial Services Authority (FSA). They are Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA). These two authorities work under the guidance of Bank of England. The literature on FSMA reveals that the market failure led to the need for recognizing an authority to regulate the Financial Services in UK. The main objects of the FSMA are to ensure market confidence, financial stability, and public awareness, protection of consumers and reduction of financial crimes. Part VII of FSMA, 2000 deals with the law and procedure governing transfer of Banking Business.

772 Carlos Conceio, ‘The FSA’s A approach to taking action against market approach’ 2007 Company Lawyer 45, 28(3).
773 Main features of FSA, 2012 and Financial Services (Banking) Reforms Act, 2013 is discussed in detail under 6.1A in Chapter VI of this study.
774 Introductory note to the Act states that It is an “An Act to amend the Bank of England Act 1998, the Financial Services and Markets Act 2000 and the Banking Act 2009; to make other provision about financial services and markets; to make provision about the exercise of certain statutory functions relating to building societies, friendly societies and other mutual societies; to amend section 785 of the Companies Act 2006; to make provision enabling the Director of Savings to provide services to other public bodies; and for connected purposes”
6.3 Financial Service Regulation Reforms in UK- An Overview

The UK financial Service Industry constitutes a significant component of its economy. It is composed of three main sectors; Banking, Insurance and investment business. The regulatory framework for UK financial services, which had developed over the course of the 20th century, was complex and fragmented\textsuperscript{775}. There were multiple regulators, often more than one for each of the three sectors of the industry. The governing legislations and regulatory requirements were embodied in multifarious statutes, delegated instruments, codes and rule books\textsuperscript{776}. The Bank of England, the UK’s Central bank was stripped of its role as a banking regulator by the Bank of England Act 1998, and was formalized under the Financial Services and Markets Act 2000(FSMA)\textsuperscript{777}. However, The Financial Crisis of 2008 and 2009 had an adverse impact on UK’s economy. In order to ensure that the financial service sector manage and control the risks more effectively, United Kingdom enacted The Financial Service Act, 2012\textsuperscript{778} (hereinafter FSA) which came into force on 1 April 2013. This Act has not repealed Financial Services and Markets Act,2000 (hereinafter FSMA,2000). But has brought certain changes to the regulations governing banking and financial sector under the FSMA, 2000. Originally, FSMA, 2000 recognized a tripartite\textsuperscript{779} system that governed the banking and financial sector. During financial crisis Financial Service Authority (FSA) proved to be inefficient and therefore have been abolished. The principal change introduced by FSA 2012 was to establish the Financial Conduct Authority( FCA)\textsuperscript{780} and Prudential Regulatory Authority.

\textsuperscript{775} Gerard Mc Meel, ‘International issues in the Regulation of Financial advice: A United Kingdom perspective- The retail distribution review and the ban on commission payments to Financial intermediaries’ 87 St. John’s Law Review 595(2013)

\textsuperscript{776} Id.,

\textsuperscript{777} Ibid.,

\textsuperscript{778} Introductory note to the Act states that It is an “An Act to amend the Bank of England Act 1998, the Financial Services and Markets Act 2000 and the Banking Act 2009; to make other provision about financial services and markets; to make provision about the exercise of certain statutory functions relating to building societies, friendly societies and other mutual societies; to amend section 785 of the Companies Act 2006; to make provision enabling the Director of Savings to provide services to other public bodies; and for connected purposes”.

\textsuperscript{779} Treasury, Bank of England and Financial Service authority (FSA).

\textsuperscript{780} The objective of the FCA is to ensure that business across the financial services industry and markets is conducted in a manner that furthers the interests of market participants and consumers.
(PRA) as the statutory successor of the FSA and to give each new regulator separate but partially overlapping statutory functions and objectives under FSMA, 2000\(^{781}\).

FSA, 2012 brought certain changes which are essential for the better regulation of financial service sector in general and banks in more specific.

**Notable features of Financial Services Act, 2012:**

1. **Bank of England**\(^ {782}\) is conferred the responsibility for the oversight of UK Financial System as a whole. FSA, 2012 provide for the establishment of ‘Financial Policy Committee’\(^ {783}\) (hereinafter FPC) within Bank of England with the objective of conferring the powers to monitor and respond risks\(^ {784}\).

2. **Prudential Regulation Authority**\(^ {785}\) is constituted under The Bank of England for the purpose of supervising all firms\(^ {786}\) that manage significant risks\(^ {787}\) as part of their business. The PRA\(^ {788}\) authorized firms are known as dual regulated firms because in addition to the PRA regulation of prudential issues, FCA will remain as their business conduct regulator. The general objective of the PRA is to promote the

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\(^{782}\) The Financial Services and Markets Act, 2000 New Section 3O(1) states that “Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in the pursuit by the Bank of its financial stability objective”.

\(^{783}\) The Committee is charged with a primary objective of identifying, monitoring and taking action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system. The FPC has a secondary objective to support the economic policy of the Government. Available at http://www.bankofengland.co.uk/financialstability/Pages/fpc/default.aspx.

\(^{784}\) The FPC is a statutory sub-committee of Court. Its members are the Governor, three of the Deputy Governors, the Chief Executive of the Financial Conduct Authority (FCA), the Bank’s Executive Director for Financial Stability Strategy and Risk, four external members appointed by the Chancellor, and a non-voting representation of the Treasury http://www.bankofengland.co.uk/financialstability/Pages/fpc/default.aspx.

\(^{785}\) The PRA’s role is defined in terms of two statutory objectives to promote the safety and soundness of these firms and, specifically for insurers, to contribute to the securing of an appropriate degree of protection for policyholders.

\(^{786}\) Banks and other deposit takers, insurance companies, and large investment banks. http://www.bankofengland.co.uk/pra/Pages/default.aspx

\(^{787}\) The PRA makes forward-looking judgments on the risks posed by firms to its statutory objectives. Those institutions and issues which pose the greatest risk to the stability of the financial system is the focus of its work. http://www.bankofengland.co.uk/pra/Pages/default.aspx

\(^{788}\) The Financial Services and Markets Act, 2000 (new sections 2A to 2M)
safety and soundness of regulated firms. The PRA will implement policies to ensure that firms carry on their business in a way that avoid adverse effects on the financial system and attempt to minimize any wider effects of a firm’s failure. PRA is responsible for micro-prudential regulation of the largest firms considered systematically important to the UK economy and market. PRA has operational independence from the Bank of England [BoE] in respect of its day-to-day supervision, with a focus on setting institution-specific capital requirements.

3. Financial Conduct Authority (FCA) is another notable amendment brought through FSA, 2012 and incorporated under the FSMA, 2000. FCA is a self standing body that would oversee the conduct of business by all regulated firms including those prudentially regulated by the PRA. It will also be the prudential regulator of any financial services firm that’s not regulated by PRA. FCA inherits the FSA’s role as a listing authority and will be responsible for the regulation of UK wholesale financial markets including investment exchanges.

The move to a new twin peaks model of a regulation comes with implementing laws that require both regulators to consult each other on a number of issues, including applications to be made by UK regulated firms. Both PRA and FCA take a more judgment based and interventionist approach to regulation. Each regulator expects to challenge senior management business decisions – that conflict with regulatory objectives, although they acknowledge that their own decisions may be proven wrong in time. In short UK regulators will aim to prevent what they see as the flawed decision making that led to financial crisis.

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789 Banks, insurance companies and investment firms.


791 The Financial Services and Markets Act,2000 new Section 1A to 1 O.


793 Ibid.,


795 Ibid.,

796 Ibid.,
The Financial Services (Banking Reform) Act, 2013: In addition to the changes brought by the Financial Services Act, 2012, The Financial Services (Banking Reform) Act, 2013 has brought about a number of changes to the UK banking system. The key one is the separation of retail banking from wholesale banking activities. Act states that the ‘deposit taking’ is a core activity and core services are those which relate to this. Financial Services (Banking) Reform Act 2013 extends the powers of PRA and FCA to make sure that the business of "ring fenced bodies" is carried on in a manner which safeguards their core banking business in the UK and which minimizes the risk of it causing or becoming involved in systemic failure. The Treasury has the power to extend the range of activities so defined and to determine that those holding investors’ deposits can deal as principal in investments, and the range can be extended further having regard to the risks involved. There is, however, a critical limitation. It can only be done: "[I]f the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services." Bank deposits are now deemed a preferential debt for insolvency purposes up to the amount covered at the time by the Investors’ Compensation Scheme. Depositor preference will place depositors in a preferential position over other creditors if a bank fails. This does not provide double protection as

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797 Andrew Haynes, ‘The Banking Reform and the Corporate Sector’ 2015 Company Lawyer. P.97
798 Ibid.
799 The Financial Services (Banking Reform) Act, 2013 Section 1
800 Section 4 of the Financial Services (Banking Reform) Act, 2013 inserts a new part 9B into the Financial Services and Markets Act, 2000 providing for ‘ring fencing’.
801 The Financial Services and Markets Act, 2000, Section 142 A defines “Ring –Fenced Body”. 142A (1) In This Act ring- fenced body means a UK institution which carries on one or more core activities in relation to which it has a part 4A permission.(2) But “ring –fenced body” does not include- (a) building society within the meaning of ‘Building Societies Act,1986 or (b) a UK institution of a class exempted by order made by the treasury…….” Section 142B defines ‘Core activities’. 142B(1) Reference to this Act to a core activity are to be read in accordance with this section. Section 142B(2)The Regulated activity of accepting deposits ( whether carried on in the United Kingdom or elsewhere is ) a core activity unless it is carried on in circumstances specified by the treasury by order. Section 142C defines ‘Core-Services’.
802 FSMA,200 Section 142 D
803 Financial Services(Banking Reform)Act,2013 section 13 inserted a new paragraph after 15A in Sch.6 to the Insolvency Act,1986
the depositors get back their money, up to the protected limit, but the first call will be to take the money from the failed institution to the exclusion of other creditor rather than government.  

Financial Market regulation is more complex in UK compared to India. In UK, FSMA regulate Banking, Insurance and investment companies through Bank of England, PRA and FCA. There is a need for ‘entity centric regulation’ instead of general regulation of Financial Services and Markets, to emphasise on the protection of depositors of banking companies. Financial institutions provide services that are critical to the smooth operation of the global economy and every national economy. Hence, specific regulations followed in India are an appropriate model for banking regulations. In India each sector is given due care through the establishment of separate legislations and regulators. For Eg, Insurance business is regulated by IRDA, Capital Market transactions by SEBI and Banking matters by RBI. However, RBI must adopt the practice followed in UK for the protection of ‘Core Banking Activity’ and the concept of ‘ring fenced bodies’. Currently banks are permitted to engage in non-banking business connected with banking business due to multifarious role being played by the banking institution. This situation is somewhat dangerous as it may lead the banks to concentrate more on non-banking business with the profit earned from the banking business which may lead to the failure of banking companies. Banks are quasi trustees of public deposits and thus bound to ensure the interest of public depositors. RBI must regulate banking and related transactions however there can be delegated bodies under the control of RBI which can regulate the core banking activities and non-banking activities separately. It should be noted that bank regulation differs fundamentally from the regulations accorded in other sectors. In other sectors primary concern is prevention of abuse of monopoly situations so that the price is strictly regulated. In commercial banking, regulation is rarely

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804 Andrew Haynes, ‘The Banking Reform and the Corporate Sector’ 2015 Company Lawyer. P.97


806 Even though restrictions are provided under the Banking Regulation Act, 1949, in Section 6- Forms of business in which banking companies may engage and Section 19 – Restriction on the nature of subsidiaries.
concerned with monopoly or price but is concerned rather with the depositor’s interest.

6.4 Part-VII of FSMA on Bank Mergers in UK: Part VII of the FSMA introduced a new procedure to facilitate the transfer of banking business by means of a scheme sanctioned under Part VII. In certain limited respects—and especially insofar as it provides for court sanction—in this part the legislation draws on the structures adopted for the approval of a scheme of arrangement or reconstruction under Part 26 of the Companies Act 2006.

A Part VII scheme placed before the court must satisfy two essential requirements if the court is to have jurisdiction to sanction it. First of all, the business to be transferred must satisfy a 'banking business' definition. Secondly, the transferor must satisfy certain authorization requirements. Part VII allows the court to sanction a 'banking business transfer scheme'. The parties must therefore establish that the arrangements presented to the court do, in fact, qualify for this label. In order to do so, the transfer arrangements must involve a scheme

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807 So far in India, no bank mergers have been disapproved solely on the basis of competition law constraints.

808 Section 104 of the FSMA provides that: “No insurance business transfer scheme or banking business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1)”. It should be explained that Pt VII of the FSMA consists of ss 104-117 of that Act.

809 Proctor, ‘Bank Restructuring under the Financial Services and Markets Act’ (2003) JIBLR471. See also Moore, ‘Banking Business Transfer Schemes under Part VII of FSMA 2000’ (2002) 23 (7) JIBFL 353. Part VII also deals with the transfer of insurance business. Prior to FSMA the intending purchaser of a banking business had three possible means of completing that acquisition: (1) He could acquire the corporate entity which owned that business. There are a number of difficulties with this approach. In particular, directors and shareholders might wish to dispose of part only of the business contained with that entity (2) He could take an assignment of the loans, security and other contractual rights which constitute the assets of the business, and he could undertake to perform the obligations associated with it—principally, the repayment of customer deposits. (3) He could promote a private Act of Parliament to effect the transfer, in terms which would override some of the difficulties noted in (2), above.

810 In UK, The companies Act, 2006 - Part-26 deals with scheme of arrangement under Ss. 894-901, Mergers under Ss.904-918A, Division under Ss.919-931.

811 see FSMA, s 106.
‘under which the *whole or part* of the business to be transferred includes the accepting of deposits’. In some respects it defines the extent of the court's jurisdiction to sanction a business transfer. In particular:

a) The business to be transferred must *include* the acceptance of deposits. This seems to imply that the activities to be transferred involve the taking of deposits as an integral part of the business.

b) The reference to the *whole or part* of the transferred business consisting of the acceptance of deposits reflects the obvious point that the acceptance of deposits cannot constitute a business on its own. It must be part of a wider business involving the making of loans or some other means by which the deposits are turned to account.

c) Whilst the transferred business must therefore include deposit taking, this should be seen as a qualifying, rather than a limiting, criterion. The court will also have jurisdiction to order the transfer of the wider activities, provided that they can properly be described as 'banking business'. Consequently, the court could order the transfer to the transferee of (i) the obligation to repay the deposits, (ii) the benefit of the loan book and associated security, and (iii) the benefit of any asset management agreements, documentary credits, or any other, similar arrangements with the customers of the bank. Ultimately, of course, the scheme placed before the court should define the business to be transferred, and the court will have to determine whether all of the business so described constitutes 'banking business' within the framework of its jurisdiction. It is to be anticipated that the court will take a broad view of the expression. As noted above, the transferor

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812 The court seems to have adopted such an approach in *Re WASA International Insurance Co* [2002] EWHC 2698. It should be noted in passing that Pt VII does not allow the court to sanction business transfers which would be more appropriately handled under legislation on building societies or credit unions, or which constitutes the merger or division of a public company under Pt 27 of the Companies Act 2006: see FSMA, s 106(3).
must also meet certain authorization requirements laid down by section 106. Where the scheme is proposed by a UK authorized person as transferor, then courts in the UK can sanction the transfer of the business even though the transferee may intend to continue the business abroad. This may not be as unlikely as it sounds; where the customers of the business are spread around the world, they may not be very concerned if their accounts are to be transferred to another part of the banking group in another part of the globe. Accordingly, where the transferor is a UK authorized person, the court may sanction the business transfer even though it will subsequently be carried on abroad. A more limited approach is adopted where the transferor is a "foreign institution. In such case, the court's jurisdiction is essentially territorial; it can only sanction the transfer of the business if it is currently carried on in this country and the transferee intends to continue in that fashion. It would plainly be inappropriate for an English court to claim jurisdiction over a transfer by a foreign company of its overseas business.

**Procedure under Part-VII Scheme:** First of all, the application to court to sanction the scheme must be advertised in the London, Edinburgh, and

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813 The transferor must be a 'UK authorized person', that is to say, an entity formed, an entity formed in the United Kingdom and which is authorized by the FSA to accept deposits - See the definition in FSMA, s 106(5). In such a case, the transferee must intend to carry on that business either in the United Kingdom or elsewhere. In such a case, the deposit-taking business must be carried on in the United Kingdom, and the transferee must intend to continue the business in the UK.

Alternatively, the transferor must be a person who has permission to accept deposits in this country but who is not authorized to do so by the FSA. In other words, the transferor must be an EC credit institution which has exercised its rights to carry on business in the United Kingdom, principally under the supervision of its home State regulator.

814 In this context, it should be noted that a banking business is carried on in the United Kingdom if it is managed from the UK and the accounts are maintained in the UK. This conclusion is not affected by the fact that many or most of the customers may be resident elsewhere.
Belfast Gazettes and in two daily newspapers in the United Kingdom. This provides an opportunity to depositors and other customers to obtain a statement setting out the terms and effect of the scheme. These materials will enable them to decide whether exercise their statutory right of objection to the scheme. Secondly, it must be demonstrated that the transferee institution has adequate financial resources. Since it would be difficult for the court to make such an assessment, the requirement is satisfied by the production of an appropriate certificate from the authority responsible for the supervision of the transferee's business. In the case of a transferee which is a UK authorized institution, this will be the FSA; a transferee from another EU Member State must produce the certificate from its home State regulator; and in any other case, the certificate must be

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815 The form of the notice must be approved in advance by the FSA: see art 5(3) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625). Although not expressly stated, it is assumed that the FSA would not approve the notice unless (i) it states the date and place of the hearing set for the application and (ii) refers to the right of interested parties to appear at, and object to, the application under FSMA, s 110.

816 On the requirement to prepare such a statement, see art 5(4) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625).

817 FSMA, s 110 allows for participation in the hearings by (i) the FSA and (ii) any person claiming to be adversely affected by the scheme (including employees of the transferor or the transferee). In practice, it must be unlikely that depositors or other customers will exercise their right to object to a banking business transfer scheme. A disaffected depositor can simply withdraw his money and place it with another institution. A borrower is unlikely to be affected since he is a debtor, rather than a creditor, of the bank.

818 Although the legislation does not specifically so state, this must mean that the transferee will have adequate financial resources immediately following the transfer, taking account of the additional assets thereby acquired and the additional liabilities thereby assumed.
issued by the supervisor in the jurisdiction in which the transferee's head office is situate.\textsuperscript{819}

Thirdly, it must be shown that the transferee has the necessary authorization to carry on the business in the jurisdiction to which it is to be transferred;\textsuperscript{820} plainly, \textit{it} would be inappropriate for the court to sanction the transfer if this would result in the conduct of unlawful banking business in the country concerned. The best evidence will be copies of the relevant licenses themselves, accompanied by any appropriate legal opinions. Finally, the court must make a more general assessment; it may only sanction the scheme if, in all the circumstances, it considers that it is appropriate to do so\textsuperscript{821}. Once the Court sanctions the scheme, it shall come into effect.\textsuperscript{822}

The Major differences between bank mergers in UK and India are that

Firstly, in UK, Part VII of FSMA is the law applicable for bank mergers and FSA is the regulator of the same. But FSA has no power to sanction a scheme so as to make it statutorily binding on all the parties to the transaction. In UK, Part VII transfers or scheme under FSMA is applicable to commercial banking companies irrespective of their constitution and structure.

Whereas in India, though there are various types of banking companies governed by special statutes a scheme of arrangement between a banking company and creditors can be sanctioned by the High court only if it is certified by the RBI that the scheme is not detrimental to the interest of the depositors of such banking company.\textsuperscript{823} The High Court’s sanction is limited only for the purpose of a scheme of

\textsuperscript{819} On these requirements, see FSMA, s 111(2)(a) read together with Pt II of Sch 12 to the Act. It should be noted that additional notice requirements apply where the transferee is authorized in another Member State.

\textsuperscript{820} FSMA, section 111 (2)(b).

\textsuperscript{821} FSMA, Section 111(3).

\textsuperscript{822} It corresponds to S.230-234 of the Companies Act,2013 in India.

\textsuperscript{823} Section 44B of the Banking Regulation Act,1949(India)
arrangement or compromise between the banking company and its creditors and its members. But for the mergers or acquisition the permission of the High Court is not required. RBI is the sole authority to approve the same irrespective of the nature of banking company.

Secondly, in UK, under the FSMA, the Court not only sanctions the scheme of arrangement but also the business transfers and acquisition of banking companies. The role of FSA is silent during Part VII a transaction under FSMA. India the power to approve the merger is with RBI. But if the merger is between a banking company and a non-banking financial company the court get the power to sanction the same.

6.5 Regulation of Bank Mergers in Australia: Australia has a complex array of laws that govern and influence the conduct of banking practice, including remarkably significant barriers to entry limit the number of banks able to be established within Australia and in turn limits the competitive forces that might otherwise exist as between an increased number of banks offering services.  

Australian Bank merger Policy: Globalization and the entry of new players have caused many existing participants in the Australian financial services industry to adopt new strategies to gain competitive advantage. These strategies include moves to provide new types of financial products as well as outsourcing to and entering into alliance with, technology service providers. Till recently a narrow approach was followed by the Australian Government towards bank mergers. It prohibited mergers among Australia’s

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825 Michael Falk, “Australia: Banking Regulation- Code of Banking Practice” 2002 Journal of International Banking Law 76
827 Francesca Rush, “Proposed Reforms to the Australian Banking Act” 1998 International Banking and Financial Law” 29
The four largest banks i.e. National Australia Bank Ltd, Common Wealth Bank of Australia, Westpac Banking Corporation and Newzealand Banking and the AMP and National Mutual Holdings Ltd. The Government’s reasoning was that it believed that there was insufficient competition in the Australian banking sector. Nevertheless it is in favour of approving the acquisition of Australian bank by a foreign bank. Australia’s big four banks dominate the Australian Banking sector holding 73% of the national banking market. These major banks are a result of a series of bank mergers over the past 150 years, however there are concerns that any greater concentration of the sector, especially as a result of acquisitions of second-tier banks by any of the big four, will result with less consumer choice, reduced competition and job losses. Since late 1990’s Australia’s banking system has operated according to the “Four Pillar Policy” the purpose of the same is that there should be no fewer than four major banks to maintain appropriate levels of competition in the banking sector and

**Regulation of Australian Banks:** The activities of the Australian banks are supervised and controlled by the Reserve Bank of Australia, within a framework of statutory and policy-based rules and guidelines. Responsibility for the supervision of Australian Banks rests with the Reserve Bank of Australia (RBA), established by the Reserve Bank Act, 1959. The RBA is the offspring of The Commonwealth Bank of Australia, which was created by the Act of Parliament in 1911. The commonwealth bank operated both as commercial bank and as central bank until, 1959, when its central banking activities were split out into a separate institution renamed the Reserve Bank of Australia.

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830 The common wealth bank, Westpac, ANZ and National Australia Bank Ltd,
832 The Reserve Bank is appointed the central bank of Australia, acts as a banker and financial agent to the federal government and some state and territory governments, and manages the federal government’s notes and coin issues.
The Role of Reserve Bank of Australia: The legislative framework governing activities of the Reserve Banks consist of the Reserve Bank Act, The Banking Act (Commonwealth 1959), the Financial Corporations Act (Commonwealth, 1974) and the regulations made pursuant to these Acts. The Financial Corporations Act gives powers to the Reserve Bank in relation to non-bank-financial corporations, such as merchant banks, enabling financial information to be collected regarding their activities. The RBA Act and the Banking Act constitute the source of the Reserve Bank’s powers and duties regarding banks. It exercises a de-facto supervisory role substantially in excess of its apparent statutory basis. It should be noted that the Reserve Bank is not a department of the Government. It is required to inform the Government of the monetary and banking policy it has determined. Members of the Reserve Bank Board are appointed by the Governor-General (who acts on the recommendation of the Government), and the Reserve Bank is required to report annually to the Parliament. Section 11 of the Reserve Bank Act sets out a procedure to be followed in the event of a difference of opinion between the Government and the Reserve Bank Board. In that event, the Governor-General (acting with the advice of the Federal Executive Council) may determine the Bank's policy, and the Government will accept responsibility for its adoption. In practice, there is a close relationship between the Government and the Board of

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834 Section 10(2) of the Reserve Bank Act provides that: It is the duty of the [Reserve Bank] Board, within the limits of its powers, to ensure that the monetary and banking policy of the Bank is directed to the greatest advantage of the people of Australia and that the powers of the Bank under this Act, the Banking Act 1959 and the regulations under that Act are exercised in such a manner as, in the opinion of the Board, will best contribute to --

(a) the stability of the currency of Australia;

(b) the maintenance of full employment in Australia; and

(c) the economic prosperity and welfare of the people of Australia.

This duty is coupled with a more specific responsibility contained in Division 2 of the Banking Act: ‘It is the duty of the Reserve Bank to exercise its powers and functions under this Division for the protection of the depositors of the several banks.
the Reserve Bank, with the Government having ultimate responsibility for monetary policy.

**Regulation of Bank Mergers:** In Australia under the Banking Act, 1959, only the Reserve Bank of Australia and bodies corporate that are ADI’s (Authorized Deposit taking Institution) are treated as banks\(^{835}\) for the purpose of the said Act and no other entities shall carry on banking business\(^{836}\). Australian Prudential Regulatory Authority (APRA) is the body vested with the power to authorize an entity to carry on banking business in Australia\(^{837}\). Section 38- A read with Schedule 1 of the Banking Act, 1959 deals with ADI (Authorized Deposit taking Institutions) merger. The Act states that the State and Territory Laws will be applicable for the merger of banking companies situated in those

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\(^{835}\) Sec -9 of the Australian Corporations Act,2001 deals with general definitions- It defines an ADI as *Australian ADI*

*ADI* means:

(a) an ADI (authorized deposit-taking institution) within the meaning of the *Banking Act 1959*; and

(b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution. *Australian bank* means an Australian ADI that is permitted under section 66 of the *Banking Act 1959* to assume or use:

(a) the word bank, banker or banking; or

(b) any other word (whether or not in English) that is of like Import to a word referred to in paragraph (a).

\(^{836}\) Section 8 of the Banking Act,1959 –Australia Only the Reserve Bank and bodies corporate that are ADIs may carry on banking business

(1) A body corporate is guilty of an offence if:

(a) the body corporate carries on any banking business in Australia; and

(b) the body corporate is not the Reserve Bank; and

(c) the body corporate is not an ADI; and

(d) there is no determination in force under section 11 that this subsection does not apply to the body corporate.

Penalty: 200 penalty units.

\(^{837}\) Section 9 read with Section 66 of the Banking Act,1959- Section 9 gives power to APRA to authorize the company to carry on banking business. Section 66 deals with written consent from the APRA for a company to carry banking business
States and Territories. Section 5G(8) of The Australian Corporations Act, 2001 expressly states that the provisions of the said Act have no application to

Section 38A read with Schedule -1 of the Banking Act, 1959 (Australia)- Section 38-

**Operation of certain State and Territory laws relating to ADI mergers**

(1) Any law of the Commonwealth with which a provision of a law of a State or Territory referred to in Schedule 1 would, but for this subsection, be inconsistent has effect subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision.

(2) Without prejudice to its effect apart from this subsection, each provision of a law of a State or Territory referred to in Schedule 1 has or shall be deemed to have had, as the case may be, by force of this subsection, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(3) If, at any time after the commencement of this Part, a law of a State or Territory is passed or made for the purpose of, or for the purpose of making provision consequent upon or in relation to, the merger of 2 or more ADIs, the Treasurer may, in his or her discretion, by signed writing published in the *Gazette*, declare that law to be a law to which this subsection applies.

(4) Where a declaration is made under subsection (3) in relation to a law of a State or Territory:

(a) any law of the Commonwealth with which a provision of that law of a State or Territory would, but for this paragraph, be inconsistent has effect, subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision; and

(b) without prejudice to its effect apart from this paragraph, each provision of that law of a State or Territory has, or shall be deemed to have had, as the case may be, by force of this paragraph, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(5) A reference in this section to the prescribed day in relation to a provision of a law of a State or Territory is a reference to the day on which that provision comes or came into operation.

Schedule -1 of the Banking Act, 1959 states that the following State and Territory Laws for merger of ADIs.

The Commercial Bank of Australia Limited (Merger) Act, 1982 of New South Wales

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of New South Wales

The Commercial Bank of Australia Limited (Merger) Act, 1982 of Victoria

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of Victoria

Commercial Bank of Australia Limited Merger Act 1982 of Queensland

Commercial Banking Company of Sydney Limited Merger Act 1982 of Queensland

The Commercial Bank of Australia Limited (Merger) Act, 1982 of South Australia

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of South


Australia

The Commercial Bank of Australia Limited (Merger) Act 1982 of Western Australia
The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Western Australia
Commercial Bank of Australia Limited (Merger) Act 1982 of Tasmania
Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Tasmania
The Commercial Bank of Australia Limited (Merger) Act 1982 of the Northern Territory
The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of the Northern Territory
The Commercial Bank of Australia Limited (Merger) Ordinance 1982 of the Australian Capital Territory
The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982 of the Australian Capital Territory
Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982 of the Australian Capital Territory. Legislations prescribe the procedure for transferring the banking business from transferor bank to the transferee bank along with other rights and liabilities of the transferor. All the said legislations deal with fair treatment to the employees during mergers.

The Bank Merger Act, 1997 of Western Australia states that the power to initiate the merger between two or more banking companies is vested with the governor of the state. But the same need to be approved by the treasurer. A certificate issued by the treasurer is a conclusive proof before all courts and tribunal of the merger under the Act. Bank mergers in Australia are completely controlled by the states through the enactment of specific legislations for the same. Bank mergers are, therefore, subject not only to prudential requirements but are also considered in the wider context of 'the national interest', and are subject to a 'public interest' test. There is no indication in the Banking Act as to what constitutes 'the national interest'. The court has no role to play in the merger of banking companies. Bank mergers are also subject to Australian Trade Practices Act, 1974 which is aimed at preventing concentrations at the Australian Banking Sector.

6.6 Bank Mergers and Acquisitions in Singapore: Bank Merger is usually understood in Singapore as a coming together of two or more companies through one acquiring control of another, ie takeover. There is no fusion of companies dealt neither under the Singapore companies Act nor under the Banking Act, 1971.

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839 Ss.6,7 & 8 read with Section 17 of The Bank Merger Act,1997 applicable to Western Australia
840 Section 19 of the Bank Merger Act,1997 (Western Australia)
Banks in Asia are not as profitable as they once were. As a result many are considering for mergers and acquisitions as a solution. Singapore has generally sought to provide a welcoming environment to banks and financial institutions. At the same time, it views strong supervision and regulation as a key pillar of such an environment, being essential to creating a stable financial system. As a well-known international financial hub, there are over 125 commercial banks in Singapore, including 5 local banks, 120 foreign banks. Since the liberalization of the banking sector by the Singapore government in 2001, local banks underwent mergers and acquisitions in order to compete with the foreign banks. Banking business in Singapore is regulated by the Banking Act, 1971 and Monetary Authority of Singapore Act, 1970. Monetary Authority of Singapore (MAS) enjoys de facto control over the banking companies in Singapore de jure control is by the Ministry of finance of

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843 Philip Gilligan & John Banks, “Bank Mergers and Restructuring in Asia” Available at www.lovels.com

844 Ibid., Banks are primarily governed by the Banking Act (“BA”) and its subsidiary legislation, as well as the various notices, circulars, and guidelines issued by the MAS. Banks that provide investment banking and financial advice services would also be subject to the requirements of the Securities and Futures Act (“SFA”) and the Financial Advisers Act (“FAA”). Banks incorporated in Singapore are required to comply with the requirements of the Banking (Corporate Governance) Regulations 2005 (“CG Regulations”). They are also required to comply on a comply-or-disclose basis with the MAS’s Guidelines on Corporate Governance for Banks, Financial Holding Companies and Direct Insurers which are incorporated in Singapore (“CG Guidelines”). The CG Regulations and the CG Guidelines do not apply to banks that operate as branches in Singapore. Banks incorporated in Singapore that are also listed on the Singapore Exchange may, as listed companies, also be required to comply, on a comply-or-disclose basis, with the requirements of the Code of Corporate Governance 2012, in respect of their annual reports for financial years commencing after 1 November 2012.

845 Rachel Kent(Ed.,) Banking Regulations, Global Legal Group( Singapore) Ist Edn., available at www.google.com

846 https://secure.mas.gov.sg/fid/. Also see Annexure-1, List of Banks Regulated by MAS(Monetary Authority of Singapore).


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Singapore Government. In Singapore, Commercial banks in Singapore fall into the following categories: full license banks, restricted license banks, and offshore license banks. These three are regulated by the Banking Act of 1971. Banks may also do business through representative offices or as merchant banks. Merchant banks are regulated by the Companies Act 1967.

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851 Full license bank: Banks with full license for commercial banking are authorized to transact all banking activity in Singapore, both domestic and foreign. Thus, they are authorized to operate current accounts, savings and fixed deposit accounts, commercial letters of credit, and trust receipts. In addition, they may finance exports and imports, transfer funds, and purchase and sell traveler's checks and currencies. Full license banks may give advice on trade, investment, and foreign exchange regulations, and may furnish credit reports. Many of the full license banks have also been granted Asian Currency Unit licenses to participate in the Asian Currency Market. Thirteen domestically incorporated full license banks and twenty-four foreign full license banks existed in 1982. The consensus is that MAS will not grant additional full licenses in the foreseeable future absent exceptional circumstances.

853 Restricted license bank: Prior to 1971, the only bank license available in Singapore was the full license. To attract more licensed banks to Singapore, the restricted license was developed and implemented in 1971. Thirteen banks had not been granted restricted licenses as of 1982. These banks may engage in the entire range of banking business except they are not permitted to accept time deposits of less than S $250,000, nor have savings accounts. They are also restricted to one location in Singapore. They may be authorized in the foreign exchange market and may be licensed as Asian Currency Units. Restricted license banks have been very active in the Singapore market. Most are oriented toward wholesale corporate banking, rather than personal banking.

854 Offshore license banks. In 1974, MAS introduced the offshore license to the Singapore market. When first introduced, offshore license banks were restricted to business outside Singapore. They were authorized to deal in foreign exchange and operate Asian Currency Units, but could not offer account facilities. In 1978 the restrictions on offshore banks were relaxed and offshore banks can now offer credit and other facilities to Singapore residents. The only limit is the maximum amount of S$30 million on credit to any Singapore resident without MAS approval. Offshore banks can now effectively compete in the domestic Banking market including current account, overdraft trust receipt, and letters of credit facilities. Fifty offshore banks existed in Singapore in 1982.

855 Representative offices. Foreign banks may also do business in Singapore through representative offices. These offices are limited to promoting foreign bank business and providing the foreign bank with Singapore market information. Many banks open representative offices and intend to apply for an offshore. License if business warrants.

856 Merchant banks. Merchant banks engage in finance, investment, assets, mergers of corporations, and other related transactions. They are allowed to accept deposits only from banks and finance companies, and are not allowed to deal in foreign exchange or Asian Currency Units without MAS approval. Most merchant banks in Singapore operate as
Sections 215A to 215J of the Companies Act, 1967 deals with the amalgamation or merger of Singapore companies. Commercial banks are the most important financial institutions in Singapore. Since 2000, the Singapore Government had introduced major reforms in the banking sector by encouraging more competitions by means of mergers and consolidation among foreign banks and among the local banks.

joint ventures between local and foreign banks. The Companies Act of 1967 and MAS regulate the activities of merchant banks.

857 Companies Act, 1967 (Singapore)


861 Philip Gilligan and John Banks ‘Why Asian Banks are turning for M&A’ 21 International Financial Law Review 41(2002). Authors state that merger wave among the banks of Singapore already started with OUB and UOB and Keppel Capital holdings and OCB. Also cited in Notes: ‘Development in Banking Law- Mergers and Acquisitions International’ 2002 Annual Review of Banking Law 92 available at www.westlawinternational.org. The article cites the case studies of bank mergers in some of the developed economies. From Singapore the Merger between UBO and OUB is reproduced here- On June 22, 2001, DBS Holdings Ltd. (“DBS”), Singapore's biggest banking group at the time, announced a $5.16 billion unsolicited bid for the country's fourth-largest bank, Overseas Union Bank Ltd. (“OUB”). The takeover attempt, which would have made DBS the third-largest bank in Asia outside of Japan, eventually failed, however, in the face of a friendly offer from Singapore's second-largest bank, United Overseas Bank Ltd. (“UOB”). Not only did DBS's unsuccessful bid to acquire OUB greatly embarrass the bank, the failure also caused it to lose its number-one position in Singapore to the group formed by the UOB-OUB merger. The end result may prove to be the creation of new competition for all Singapore banks in the years to come, since completion of the deal between UOB and OUB increases consolidation among domestic financial institutions, a step the government has said is necessary before foreign banks will be granted full access to Singapore markets. For UOB, the opportunity to fold OUB into its operations was an attractive prospect promising merger synergies as well as an estimated annual cost savings of $114 million, or about 16-20% of the combined entity's fiscal 2000 operating costs. In addition, while negative reaction to DBS's plans to issue new shares in order to finance its bid for OUB quickly drove the bank's stock price to a two-year low in the days immediately following the announcement of its takeover attempt, UOB was able to fund its competing offer by issuing subordinated debt at a lower-than-expected coupon rate due to strong investor demand for the notes. While some job losses following the merger were inevitable given the significant overlap in operations at the two banks, analysts maintain that the cuts suggested by UOB appear excessive in light of the fact that
Banking Regulations in Singapore: The Banking Act of 1971\textsuperscript{863}, brought Singapore’s banking legislation together into a complete legislation. The Ministry of Finance of Singapore is the ultimate government regulatory authority over the banking sector. The ministry controls and administers the banking industry through a wholly owned government corporation, the Monetary Authority of Singapore -MAS\textsuperscript{864}. MAS\textsuperscript{865} is governed by the

OUB’s total staff strength is only about 3,100. Furthermore, these measures come at a time when unemployment in Singapore is rising and government officials have been urging employers to use wage reductions rather than job eliminations to lower costs. Among the East Asian Countries Singapore has emerged as a financial centre.

\begin{itemize}
\item[Ibid.]
\item[863] The Act specifies the minimum capital required for all banks operating in Singapore. Banks centered in Singapore with principal offices in the republic must have capital of S$3 million. A bank with its principal office outside Singapore must have capital of S$6 million and must maintain at least S$3 million of head office funds in Singapore. The Monetary Authority of Singapore (MAS) must approve the type of assets held for the minimum capital account. In addition, MAS may require banks to maintain a minimum cash balance. MAS may vary the percentage balance to implement its current policy regarding bank liquidity. The percentage required cannot surpass thirty percent of the bank's indebtedness. A bank may also be required to maintain a minimum amount of liquid assets. Every licensed bank must keep a reserve fund, but if MAS finds that the total reserve fund of a licensed bank whose principal office is located abroad is sufficient for its transactions, it may exempt the bank from maintaining the reserve fund in Singapore. Ref: Section 9, 34, 35&18 of the Banking Act, 1971.
\item[864] Established in 1971, MAS performs all the functions of a central bank except issuing currency, which has continued to be under the authority of the Currency Board. MAS objectives are to act as a government banker, encourage exchange conditions that will aid the country's economic growth, and combine the monetary and banking functions of the commissioner of banking, the commissioner for finance companies, the accountant-general, and the controller of foreign exchange.
\item[865] Viv Hall, ‘Central Bank Governance: Common Elements or different models?’ Hongkong Institute for Monetary Research, Working Paper No.20/2003. Available at www.westlaw.org wherein it states that the legislated objective for the MAS is to promote, within the context of the government’s general economic policy, monetary stability and credit and exchange conditions conducive to growth of the economy. That objective is also very broadly stated, and does not provide immediate clarity on a specific objective for monetary policy. As a result, the ultimate goal for MAS monetary policy has, until recently, been subject to some confusion. In particular, it has not been well understood precisely what has been the MAS ultimate objective, and what has been its operational objective. The degree of public misunderstanding has since been lessened through the issuing of documents entitled Singapore’s Exchange Rate Policy and Monetary Policy Operations in Singapore. They state (MAS, 2001, p 2; 2003, pp 12, 13) that the primary objective of monetary policy is to promote price stability (or low inflation) as a sound basis for sustainable economic growth.
\end{itemize}
Monetary Authority of Singapore Act of 1970. The MAS has compartmentalized the financial sectors through issuing licenses which allow competition within a sub-market but not among various types of financial institutions. The MAS is also responsible for the supervision of banks, insurance companies, financial institutions, the securities and futures industry. As roles in financial services are converging, Singapore has consolidated its regulatory regimes. Singapore has an integrated financial regulatory structure comprised of the Ministry of Finance, the Monetary Authority of Singapore (MAS), and the SDIC. “Singapore has had a unitary regulatory authority for the financial sector” ever since the establishment of the MAS as a statutory board on January 1, 1971 under the Monetary Authority of Singapore Act of 1970.

**Legal Regime for Bank Mergers in Singapore:** Though Singapore has only five local banks as its own, there is a well regulated regime for all the banks operating in Singapore. But these five banks dominate the market even in the presence of large number of foreign banks. Bank mergers in Singapore are not governed by the Companies Act of Singapore. Singapore government is not so favorable towards acquisition of Singapore’s local banks by foreign banks but

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MAS Act was amended in 1972. The amendment allowed MAS greater powers. MAS policies are determined by a board of directors chaired by the minister of finance. As part of its regulatory function, MAS grants licenses to financial institutions, controls renewal of licenses, and approves operations for other types of financial institutions. Licenses and approvals are usually granted to any institution with an international network wishing to expand in Singapore. An institution seeking to open in Singapore may be encouraged to join local institutions in a joint venture operation.


Number of Financial Institutions and Relevant Organizations Regulated by Monetary Authority of Singapore (as on 27 Sep 2014.) Available at [https://secure.mas.gov.sg/fid/](https://secure.mas.gov.sg/fid/)


it provides for the presence of Singapore’s banks in other jurisdiction. A study conducted by Prof. Adrian E.Tschoegal\textsuperscript{872} of University of Pennsylvania states that in a service industry such as banking, licensing is difficult because of the intangibility of some of the assets such as relationship with home country firms. Exporting is too difficult because unlike in the case of goods, the production of service requires that the producer should be in contact with the customer. Furthermore, it is frequently more cost-effective for a bank to go to the customer’s countries than to have customer’s come to bank’s home country.\textsuperscript{873}

Section 14\textsuperscript{874} - 14C\textsuperscript{875} of the Banking Act, 1971 governs the mergers of banking companies in Singapore\textsuperscript{876}. Bank mergers are subject to the approval

\begin{table}[h]
\begin{tabular}{|c|c|}
\hline
\textbf{Section 14 of the Banking Act, 1971(Singapore) Mergers} & (1) A bank incorporated in Singapore shall not be merged or consolidated with, or be taken over by, any other body corporate or unincorporated without the prior written approval of the Minister. \\
& (2) The Minister may approve an application made under subsection (1) if — \\
& (a) the Authority is satisfied that — \\
& (i) the body corporate or unincorporated is a fit and proper person or body of persons; and \\
& (ii) having regard to the likely influence of the body corporate or unincorporated, the business of the bank will be or will continue to be conducted prudently and the provisions of this Act will be or will continue to be complied with in relation to such business; and \\
& (b) the Minister is satisfied that it is in the national interest to do so. \\
& (2A) The parties to a proposed merger or consolidation, in respect of which an application is made under this section, shall furnish such information as the Minister or the Authority may require for the purposes of subsection (2) \\
& (3) Without prejudice to the generality of subsection (1), for the purposes of this section, a bank shall be deemed to be merged with a body corporate or unincorporated if the bank or its shareholders enter into any agreement or arrangement under which all or substantially all of the business of the bank is to be managed, and under which the shareholders of the bank will be accorded rights, as if the bank has been merged with such body corporate or unincorporated, as the case may be. \\
\end{tabular}
\end{table}

\begin{table}[h]
\begin{tabular}{|c|c|}
\hline
\textbf{Approval by Minister for merger of certain banks} & 14A.(1) Subject to this section and section 14B, on the joint application of a bank and one or more banks which are wholly-owned subsidiaries of that bank, the Minister may approve the merger of those banks and issue a certificate of approval. \\
\end{tabular}
\end{table}

\textsuperscript{872} Adrian E.Tschoegal, ‘International Expansion of Singapore’s largest banks’ (Working Paper) Published by Wharton Financial Institutions Centre, University of Pennsylvania (2001)

\textsuperscript{873} Ibid.,

\textsuperscript{874} Section 14 of the Banking Act, 1971(Singapore) Mergers 

\textsuperscript{875} 14C

\textsuperscript{876} Banking Act, 1971
and satisfaction of Minister\textsuperscript{877}. The minister may approve the merger if it is in the national interest and if the companies have complied with the provisions of the banking. The decision of the minister is final and it is not subject to judicial review\textsuperscript{878}. MAS have no role in the merger of banking companies.

\begin{enumerate}
\item The issue of a certificate of approval by the Minister under subsection (1) merges the banks that are parties to the merger agreement on which the application for the certificate of approval is based.
\item Where a certificate of approval is issued under subsection (1) merging the banks, the merger shall for all purposes be deemed to have occurred and to be effective on the date mentioned in sub-section (4).
\item A certificate of approval issued under subsection (1) shall have no force or effect until a copy of the certificate and the merger agreement on which it is issued is lodged with the Registrar of Companies, and upon being so lodged the certificate shall take effect on and from the date of lodgment.
\item No application to the Minister for a certificate of approval merging 2 or more banks may be made under subsection (1) unless —
\begin{enumerate}
\item The merger is between a bank and one or more banks which are wholly owned subsidiaries of that bank;
\item The banks proposing to merge have entered into a merger agreement; and
\item The application for the certificate of approval is made within 2 weeks from the date of execution of the merger agreement referred to in paragraph (b)
\end{enumerate}
\item Where a certificate of approval is issued under subsection (1) merging the banks, those banks shall publish a notice of the approval of the merger at least once in a local Malay, English, Chinese and Tamil language daily newspaper within one week from the date of the certificate of approval.
\item For the avoidance of doubt, it is hereby declared that sections 210 and 212 of the Companies Act (Cap. 50) shall not apply to the banks which have jointly applied for a certificate of approval under subsection
\end{enumerate}

14B \textbf{Condition for issue of certificate of approval:} (1) The Minister shall not issue a certificate of approval under section 14A unless the application thereof is supported by satisfactory evidence that the applicants have complied with the requirements of that section in relation to the merger.

(2) Nothing in this Act shall be construed as precluding the Minister from refusing to issue or approve the issue of any certificate of approval under section 14A and any decision of the Minister under that section shall be final and shall not be called in question in any court.

14C \textbf{Effect of merger:} As from the date mentioned in section 14A(4), the provisions set out in the Second Schedule shall have effect and shall apply to the banks that are parties to the merger agreement on which a certificate of approval is issued under section 14A(1).

\textsuperscript{875} \textit{Ibid.},

\textsuperscript{876} Sections 215A to 215J of the \textit{Companies Act}, 1967 facilitate the amalgamation or merger of Singapore companies.

\textsuperscript{877} Section 14(2) of the Banking Act of 1971, Singapore.

\textsuperscript{878} Section 14B(2) (2) Nothing in this Act shall be construed as precluding the Minister from refusing to issue or approve the issue of any certificate of approval under section 14A and any decision of the Minister under that section shall be final and shall not be called in question in any court.
Though Singapore has well regulated banking system, the Banking Act regulates not only the banks but also insurance, securities and various other businesses. Thus MAS may not be able to focus only on the banking business. This may not be healthy for a healthy economy where there is a need for a unified regulator exclusively for banks.