Asia Pacific Guide to Lending and Taking Security - Singapore

When lending to borrowers

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# 1. Are there any restrictions in relation to the type of borrower who may borrow foreign currency or in relation to the term of foreign currency and/or the amount of foreign currency borrowed by local entities?

Currently, there are no foreign exchange controls restricting the amount of currency that may be imported or exported in relation to the rights and obligations of parties under a loan agreement.

Further, no limitations nor consent requirements exist for a foreign company or bank to provide loans to Singapore persons. However, the making of loans may constitute the carrying on of banking business (as discussed in the answer to question 2 in the "When considering whether to lend" section) and if so, a banking license must be obtained.

# 2. Are there any restrictions on the rate of interest or default interest that may be charged?

There is no cap on interest rates that may be charged by banks. However, default interest may be unenforceable if a Singapore court decides that it constitutes a penalty. Further, a term that accelerates interest due under a loan upon an event of default may also constitute an unenforceable penalty: see *Ethoz Capital Ltd v. Im8ex Pte Ltd [2023] SGCA 3.*

# 3. Are there any restrictions on particular lenders or classes of lender entering into credit transactions with borrowers?

If a lender is a foreign lender and not regulated (and not required to be regulated) by a regulatory authority in Singapore in relation to its lending activity, there are generally no restrictions under Singapore law on the foreign lender entering into a credit transaction with a borrower in Singapore.

If, however, the lender is based in Singapore or caught by the licensing purviews in Singapore and regulated in Singapore in relation to its lending activity, the restrictions that may be imposed on that lender entering into credit transactions depend on the lender's licensing status and the terms of the applicable license terms. For example, a licensed bank in Singapore is generally not restricted from entering into credit and financing transactions with any borrower in Singapore. However, the MAS may impose restrictions in certain circumstances or in relation to categories of credit transactions, such as the following:

Unsecured credit facilities: There are restrictions in relation to the grant of unsecured non-card credit facilities (except for certain excepted loans made for certain specified purposes) to an individual who is a citizen of Singapore or a permanent resident unless they have an annual income of at least SGD 20,000 at the time of the application for the unsecured credit facility.

Counterparty limits: There are set limits in relation to a bank's permissible exposure to a single counterparty group.

Residential property: There are restrictions on banks intending to grant credit facilities for the purchase of residential property or that are secured by residential property. These restrictions include a limit on the total credit facilities and the tenure of credit facilities that may be granted, prohibitions on interest-only loans and loans involving, or giving effect to, interest absorption schemes, requirements in relation to checks to be conducted with credit bureaus (and the Housing Development Board, if relevant) and a requirement that the borrower also serves as a mortgagor in relation to the residential property used to secure the relevant credit facility.

Debt Service Ratio: There are restrictions in relation to the implementation of the Total Debt Servicing Ratio (TDSR) framework, which requires financial institutions to consider any other outstanding debt obligations when granting property loans to a borrower. Under the TDSR framework, credit facilities that may be granted by financial institutions to individuals (including sole proprietorships and vehicles set up by an individual solely to purchase the property) must not exceed a TDSR threshold of 55%.

Ultimately, the restrictions, if any, that may apply to a particular lender or group of lenders entering into credit transactions depend on the particular circumstances of that transaction. As stated above, the lender's licensing status, the type of transaction being entered into and the type of borrower involved are some of the considerations that may be relevant in determining the restrictions that may apply, but they do not represent an exhaustive list of factors.

# 4. Are there any exchange controls that will apply to payments to be made in foreign currencies or to foreign lenders?

No, there are currently no exchange controls effective in Singapore. The operation of the Exchange Control Act 1953 has been suspended since June 1978.

# 5. Is there any requirement to deduct or withhold tax from any amounts to be paid or repaid to a lender (whether domestic or foreign)? If so, at what rate must tax be deducted and from what kinds of payment?

Under Section 12(6) read with Sections 45/45A of the Income Tax Act, the following payments are subject to Singapore withholding tax if they are made to a non-Singapore resident unless any specific exemptions apply:

Interest, commission, fees or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness that is:

Borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore or any immovable property situated outside Singapore; or

Deductible against any income accruing in or derived from Singapore; or

Any income derived from loans if the funds provided by those loans are brought into, or used, in Singapore.

Notwithstanding the above, as an administrative concession, payments liable to be made to a branch in Singapore of a nonresident company are exempt from withholding tax.

Under the Income Tax Act, a "resident of Singapore," in relation to a company or body of persons, is defined as a company or body of persons the control and management of whose business is exercised in Singapore.

The domestic withholding tax rate for interest payments that are neither derived from any trade or business carried on in Singapore nor effectively connected with any permanent establishment in Singapore is 15%. This may be reduced under the applicable tax treaties, subject to the requisite conditions for treaty benefits being met.

# 6. Are there any “thin capitalization” or other rules that may limit the extent to which interest payments may be deducted for tax purposes?

There are no thin capitalization rules for Singapore tax purposes. The Income Tax Act provides for a tax deduction for interest expenses incurred in relation to any money borrowed by such taxpayer where the Comptroller of Income Tax is satisfied that such interest is payable on capital employed in acquiring income. Further, transactions between related parties should be on an arm's length basis and will generally need to be supported by contemporaneous transfer pricing documentation unless specific exemptions apply.

# 7. Are there any registration, notarization, translation or reporting requirements in relation to the loan documents?

There are no registration, notarization or reporting requirements in relation to loan agreements.

# 8. Are there any stamp, documentary, registration, notarization or other taxes, duties or fees chargeable in relation to the loan documents? If yes, what are the amounts and when are they payable?

The following documents (among others) are chargeable with stamp duty under the Stamp Duties Act 1929:

Loan agreements that contain security trust provisions in respect of trust property that includes immovable property situated in Singapore and/or shares.

Security documents that create security over immovable property situated in Singapore and/or shares and are not signed under hand only.

This is subject to the general rule that instruments relating exclusively to things to be done outside Singapore are exempt from stamp duty.

A nominal stamp duty of SGD 10 would apply to a loan agreement containing a security trust provision that is chargeable with stamp duty.

Ad valorem duty subject to a maximum of SGD 500 would apply to a security document chargeable with stamp duty, at the following rates:

For a security (other than an equitable mortgage) for the payment or repayment of money, 0.4% of the amount of said money.

For an equitable mortgage for the payment or repayment of money, 0.2% of the amount of said money.

Stamp duty has to be paid within 14 days of execution if it is executed in Singapore or within 30 days after it is received in Singapore if it is executed only outside Singapore. Please note that specific rules as to when an instrument is executed or received may apply if the instrument is an electronic instrument for stamp duty purposes, and this will depend on the relevant facts and circumstances.

# 9. Does the law recognize the subordination of the debt that a debtor owes to one creditor to that which the debtor owes to another creditor? If yes, how is this usually effected?

Yes, Singapore law recognizes the subordination of debts.

Generally, subordination of debts is effected by way of contract.

There is no legislation in Singapore in relation to the validity of contractual subordination in the event of the insolvency of the debtor company. Therefore, case law will determine the position in Singapore in relation to this question.

In the 2006 English case of *Re SSSL Realisations (2002) Ltd (in liquidation) and another company* [2006] EWCA Civ 7, the English Court of Appeal gave weight to the commercial expectation of the parties and held that if group companies enter into subordination agreements of this nature with their creditors while solvent, they and their creditors should be held to the bargain when the event for which the agreement was intended to provide (insolvency) occurs.

The court held that a subordination agreement is valid and binding. It is likely that the Singapore courts would adopt the same position.

# 10. Are there any classes of unsecured and unsubordinated creditor whose claims against a debtor would rank equally with or above those of the debtor’s other unsecured and unsubordinated creditors (e.g., the claims of employees and tax authorities or the claims of creditors under particular kinds of instrument)? If yes, what classes of creditors are preferred?

Yes. The order of payment of those claims is set out in the answer to question 1 of the "If things go wrong" section.

# 11. Are there any consumer protection or similar laws that apply if credit is made available to individuals or other classes of debtor? If yes, what laws are applicable?

Singapore's consumer protection regime is made up of generic consumer laws supplemented by industry-specific requirements. The relevant governing legislation for consumer protection is set out in the Sale of Goods Act 1979, the Unfair Contract Terms Act 1977 and the Consumer Protection (Fair Trading) Act 2003.

The Consumer Protection (Fair Trading) Act was amended in 2009 to govern unfair practices in relation to all financial products and financial services regulated by the MAS and also all commodity trading under the Commodity Trading Act 1992. The ambit of the Consumer Protection (Fair Trading) Act covers the following:

All banking activities under the Banking Act.

Financial products provided by a financial adviser under the Financial Advisers Act.

Activities relating to dealing in securities, fund management, marketing collective investment schemes and trading in futures and leveraged foreign exchange under the SFA.

The MAS, as the central bank, also maintains tight supervision on consumer products offered in the financial market. Certain more complex products such as structured deposits, structured notes and unit trusts are categorized as Specified Investment Products (SIPs). Customers will have to pass certain knowledge assessments before they are allowed to trade in SIPs.

Consumers who have disputes with financial institutions may also approach the Financial Industry Disputes Resolution Centre Ltd (FIDReC), which facilitates the mediation and adjudication of consumer disputes.

Finally, in practice, regulated banks also adhere to industry codes established by the Association of Banks in Singapore, such as the Code of Consumer Banking Practice.

# 12. Are there any prohibitions or limitations on the extent to which a company can give financial assistance for the purchase of: (a) its own shares or those of any affiliated company; or (b) assets owned by it or any affiliated company?

**Private companies**

As of 1 July 2015, there is no prohibition in relation to financial assistance being given by private companies (other than private companies that are subsidiaries of public companies).

**Public companies**

The Companies Act 1967 ("**Companies Ac**t") prohibits a public company (or its subsidiary) from providing financial assistance for the acquisition of its own shares and the shares of its holding company.

There is, however, an exception in the Companies Act and the giving of financial assistance is not prohibited if:

Giving the financial assistance does not materially prejudice the following:

The interests of the company or its shareholders

The company's ability to pay its creditors

The company's board of directors passes a resolution ordering the following:

That the company should give the financial assistance

That the terms and conditions under which the financial assistance is proposed to be given are fair and reasonable to the company

The directors' resolution sets out, in full, the grounds for the directors' conclusions and resolutions are lodged by the company with the Accounting and Corporate Regulatory Authority known as ACRA.

The Companies Act also contains a further list of transactions that are expressly carved out from the financial assistance prohibition.

If the above exception and carve-outs do not apply, prohibited financial assistance may still be allowed if it is "whitewashed" under the prescribed "whitewash" procedures. There are generally three "whitewash" methods, which are as follows:

Director-approved financial assistance

Shareholder-approved financial assistance

A court-sanctioned whitewash procedure

If there is a breach of the prohibition in relation to financial assistance in the Companies Act, each officer of the company in default is guilty of an offense and liable on conviction to a fine not exceeding SGD 20,000 and/or to imprisonment for a term not exceeding three years.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.