

ANNEX 2: REQUIREMENTS FOR UPPER TIER 2 CAPITAL INSTRUMENTS

Requirements Relating to the Reporting Bank Issuing Upper Tier 2 Capital Instruments

1.1 A Reporting Bank intending to issue any Upper Tier 2 capital instrument ("UT2") for the purpose of inclusion as Tier 2 Capital shall:

- (a) consult the Authority well in advance if the instrument has additional features that are not explicitly addressed in paragraph 1.3; and
- (b) obtain the approval of the Authority for the instrument to qualify as Upper Tier 2 Capital.

[MAS Notice 637 (Amendment) 2007]

1.2 In applying for such approval, a Reporting Bank shall:

- (a) submit an appropriate memorandum of compliance stating how the proposed issuance complies with the requirements set out in paragraph 1.3 and identifying the relevant portions of the agreement governing the issuance of the instrument which address the requirements; and
- (b) confirm to the Authority in writing that it has received a written external legal opinion stating that the requirements in paragraph 1.3 have been met.

[MAS Notice 637 (Amendment 2) 2007]

Minimum Requirements for UT2

1.3 To qualify for inclusion as Upper Tier 2 Capital, an UT2 shall satisfy the following requirements:

- (a) the UT2 is issued and fully paid-up in cash. Only the net proceeds received from the issuance of UT2 shall be included as capital;
- (b) the UT2 does not have a maturity date;

[MAS Notice 637 (Amendment) 2007]

- (c) the UT2, if redeemable (whether through a call option, repurchase or otherwise), may only be redeemed at the option of the Reporting Bank with the prior approval of the Authority¹. Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether to grant its approval, have regard to whether the Reporting Bank's capital is likely to remain adequate after redemption;

[MAS Notice 637 (Amendment) 2007]

- (d) the agreement governing the issuance of the UT2 does not have any call option within the first five years from the issue date, other than a call option which may be exercised by the Reporting Bank where:
 - (i) the UT2 was issued for the purpose of a merger with or acquisition by, the Reporting Bank and the merger or acquisition is aborted;
 - (ii) there is a change in tax status of the UT2 due to changes in the applicable tax laws of the country or territory in which the UT2 was issued;
 - (iii) in the case of a merger or acquisition, the UT2 is exchanged for shares or any instrument of the surviving or new Reporting Bank (as the case may be) with terms and conditions that qualify the shares or instrument as equal or higher quality capital; or
 - (iv) there is a change in this Notice relating to the recognition of the UT2 as capital for calculating CAR;

[MAS Notice 637 (Amendment) 2007]

- (e) the agreement governing the issuance of the UT2 does not contain any provision that mandates or creates an incentive for the Reporting Bank to repay the outstanding principal of the instrument

¹ The Authority is not likely to grant any approval for redemption within the first 5 years from the issue date except in any one of the situations set out in paragraph 1.3(d) or where there are strong justifications (e.g. the Reporting Bank makes a simultaneous issue of new capital which is of equal or higher quality).

Approval is likely to be granted after the first 5 years from the issue date:

- (a) where the UT2 is replaced by equal or higher quality capital (including an increase in retained earnings);
- (b) where the Reporting Bank or any of its banking group companies is reducing its operations in Singapore or elsewhere; or
- (c) in any one of the situations set out in paragraph 1.3(d).

[MAS Notice 637 (Amendment) 2007]

early², other than a call option which may be exercised by the Reporting Bank no earlier than 10 years after the issuance of the UT2, accompanied by a provision whereby the dividend or coupon rate payable under the UT2 increases by no more than 100 basis points over the initial rate, less the swap spread between the initial index basis and the stepped-up index basis if the Reporting Bank chooses not to exercise its option, such increase in dividend or coupon rate being the only one during the validity period of the UT2;

[MAS Notice 637 (Amendment) 2007]

- (f) the agreement governing the issuance of the UT2 provides the Reporting Bank with an option to defer any dividend or coupon payment on the instrument, where the Reporting Bank -
 - (i) has not paid or declared a dividend on its ordinary and other classes of preference shares in the preceding financial year; or
 - (ii) determines that no dividend is to be paid on such shares in the current financial year. Such deferred dividends or interest may bear interest, but the interest rate payable on deferred dividends or interest shall not exceed market rates;
- (g) the dividend or coupon rate, or the formulae for calculating dividend or coupon payments, is fixed at the time of issuance of the UT2 and is not linked to the credit standing of the Reporting Bank³;
- (h) the UT2 is available to absorb the losses of the Reporting Bank without it being obliged to cease carrying on business. In this regard, for an UT2 classified legally as debt, this condition may be achieved if the agreement governing the issuance of the UT2 specifically provides for the principal and coupon payments to absorb losses where the Reporting Bank would otherwise be insolvent, or for the holders of the UT2 to be treated as if they were holders of a specified class of share capital in any proceedings commenced for the winding up of the Reporting Bank;
- (i) the holder of the UT2 has a priority of claim in respect of the principal and dividend or coupon payments of the UT2, in the event of a winding up of the Reporting Bank, which is lower than that of depositors, other creditors of the bank, and holders of Lower Tier 2 capital instruments, except where such persons rank equally with, or behind holders of the UT2;

[MAS Notice 637 (Amendment) 2007]

² Examples are a cross-default or negative pledge clause or a restrictive covenant for an UT2 issued as debt.

³ For the avoidance of doubt, this does not preclude linking dividends or coupons to movements in general market indices.

[MAS Notice 637 (Amendment) 2007]

Annex 2

(j) the UT2 is not secured or covered under any arrangement that legally or economically enhances the priority of the claim of any holder of the UT2 as against the persons set out in the paragraph 1.3(i) above;

(k) for any UT2 issued as debt by the Reporting Bank, the holder of the UT2 waives his right to set off any amounts he owes the Reporting Bank against any subordinated amount owed to him due to the UT2 and commits to return any set-off amounts or benefits received to the liquidator;

[MAS Notice 637 (Amendment) 2007]

(l) the subordination provisions of the UT2 are governed by the laws of Singapore. Where the UT2 is to be subject to the laws of a jurisdiction other than Singapore, the Reporting Bank shall satisfy itself and the Authority that all the relevant conditions specified in paragraph 1.3 are met under the laws of that jurisdiction;

(m) the main features of the UT2, in particular paragraphs 1.3(f) to (k) above are disclosed clearly and accurately;

[MAS Notice 637 (Amendment) 2007]

(n) the agreement governing the issuance of the UT2 cannot be changed without prior approval of the Authority as the proposed changes may impact its eligibility as Tier 2 Capital subject to Limits; and

[MAS Notice 637 (Amendment) 2007]

(o) [Deleted by MAS Notice 637 (Amendment) 2007]

(p) where a Reporting Bank issues subordinated debt in a foreign currency, the debt is to be revalued periodically (at least monthly) in terms of Singapore dollars at the prevailing exchange rates. Where the Reporting Bank intends to use a swap to hedge the foreign exchange exposure arising from the foreign currency debt, it shall first consult the Authority on the capital treatment applicable to the hedge.