

ANNEX A(18)

MAS NOTICE XX (Equivalent of MAS Notice 630 for MBs)

MAS Notice XX

DD MM YYYY

NOTICE TO MERCHANT BANKS
BANKING ACT, CAP 19

Private Equity and Venture Capital Investments

1 Overview

1.1 This Notice is issued pursuant to section 55(1) as applied by section 55ZJ(1) of the Banking Act (Cap. 19) (the “Act”) and applies to all merchant banks in Singapore (“Merchant Banks”) that hold private equity and venture capital investments (“PE/VC investments”) ¹.

1.2 In the case of a merchant bank incorporated outside Singapore, the treatment of PE/VC investments for capital adequacy purposes is a matter for its parent supervisory authority. However, a branch in Singapore of a merchant bank incorporated outside Singapore must comply with all requirements on PE/VC investments as set out in this Notice.

2 Scope of Notice

Definitions

2.1 In this Notice—

“direct PE/VC investment” in relation to a Merchant Bank, means any PE/VC investment which is acquired directly by the Merchant Bank or not held by the Merchant Bank through a fund or a trust structure;

“indirect PE/VC investment” means any PE/VC investment other than a direct PE/VC investment;

“investee” means any company or trust in which a Merchant Bank has made a PE/VC investment;

“PE/VC investments” in relation to a Merchant Bank, means —

- (a) an acquisition or holding of a major stake in any company excluded from the operation of section 32 of the Act, as applied by section 55ZF(2) of the Act, by virtue of [regulation 5] of the [Banking (Merchant Banks) Regulations 2021];
- (b) an acquisition or holding of any beneficial interest exceeding 10% of units or other equivalent measures in a trust;

¹ The capital requirements for the PE/VC investments of a merchant bank incorporated in Singapore are as set out in MAS Notice 1111 (Risk Based Capital Adequacy Requirements for Merchant Banks Incorporated in Singapore).

- (c) control over more than 10% of the voting power in a trust;
- (d) any interest in a trust, where the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act in accordance with the Merchant Bank's directions, instructions or wishes, or where the Merchant Bank is in a position to determine the policy of the trust;
- (e) an acquisition or holding of any partnership capital or other similar interest exceeding 10% in an entity (other than a company or trust);
- (f) an acquisition or holding of convertible debentures issued by an entity, where if such debentures are converted to shares, the aggregate value of shares held exceeds 10% of the entity's share capital;
- (g) an acquisition or holding of warrants or options on shares issued or granted by an entity, where if such warrants or options are exercised, the aggregate value of shares held exceeds 10% of the entity's share capital; or
- (h) an acquisition or holding of debentures or credit facilities, where these are held concurrently with any acquisition, holding or interest specified in the preceding subparagraphs(a), (b), (c), (d), (e), (f) or (g)²

(hereinafter referred to as "**Investment**"),

- (i) which the Merchant Bank has determined to have potential for high growth or value creation; and
- (ii) which is acquired in the manner set out in paragraph 2.2 below;

but does not include an Investment which is –

- (A) not carrying on any substantial business or is not in operation;
- (B) carrying on the business of engaging in property-related activities); or
- (C) carrying on the business of factoring, leasing equipment or otherwise purchasing debt obligations from others.

"net interbank lending", in relation to a merchant bank incorporated outside Singapore, means the total lending by the Merchant Bank to other banks less its total borrowing from other banks. For the purpose of this definition, "banks" has the same meaning as given in paragraph 3 of Annex 1 to Appendix A1 of MAS Notice 1003 (Submission of Statistics and Returns) issued on 18 August 2020.

² To avoid doubt, the requirements in this Notice do not apply where the investment is initially by way of debentures and credit facilities alone. However, if subsequent investments within paragraphs (a), (b), (c), (d), (e), (f) or (g) are acquired, then the requirements of this Notice will apply to both the subsequent investments as well as the debentures and credit facilities.

“related party”, in relation to a Merchant Bank, includes its head office, any of its branches, or any of its related companies.

Types of Investments

- 2.2 A Merchant Bank must acquire an Investment using one or more of the following methods:
- (a) the financing of the Investment’s growth or expansion, funding research and development activities, operational improvements, or engaging new management;
 - (b) delisting the Investment from a securities exchange;
 - (c) corporate restructuring³;
 - (d) such other method which the Merchant Bank has determined to be common in the industry for acquiring such Investments.

Related Companies

- 2.3 Where a company –
- (a) is the holding company of another company;
 - (b) is a subsidiary of another company; or
 - (c) is a subsidiary of the holding company of another company,

that first-mentioned company and that other company are deemed to be related to each other.

2.4 In the case of a company which has a board of directors and a share capital, the definition of “subsidiary” and “holding company” shall be as set out at section 5 of the Companies Act (Cap 50) where all references to “corporation” shall be replaced with “company”.

2.5 In the case of any other company, a company is deemed to be a “subsidiary” of another company if the latter company is in a position to determine or govern the financial and operating policies of the first-mentioned company; and a company is deemed to be a “holding company” of another company if the first-mentioned company is in a position to determine or govern the financial and operating policies of the latter company.

2.6 The expressions used in this Notice, shall, except where defined in this Notice or where the context otherwise requires, have the same meanings as in the Act and in the [Banking (Merchant Banks) Regulations].

3 Duration of PE/VC Investments

3.1 Subject to paragraph 3.3 and 3.5, a Merchant Bank must not hold any direct PE/VC investment for a period exceeding 7 years from the date of its first investment in the investee.

³ Such as a reorganisation, merger, consolidation, recapitalisation, buy-out, buy-in, joint venture, spinoff, or equity carve-out.

3.2 Subject to paragraph 3.4 and 3.5, a Merchant Bank must not hold any indirect PE/VC investment—

- (a) where such investee is managed by the Merchant Bank or a related party, for a period exceeding 7 years from the date of its first investment in the investee;
- (b) where such investee is not managed by the Merchant Bank or a related party, for a period exceeding 12 years from the date of its first investment in the investee;
- (c) where such investee is managed by the Merchant Bank or a related party, and
 - (i) the Merchant Bank's investment in the investee is less than 50% of the total size of the investee after five years from the date of its first investment in the investee; or
 - (ii) each underlying PE/VC investment invested through the investee is held for a period not exceeding 7 years,

for a period exceeding 12 years from the date of its first investment in the investee.

3.3 Subject to paragraph 3.5, a Merchant Bank must not hold any direct PE/VC investment, where the date of first investment in the investee was made prior to [effective date of notice], for a period exceeding 10 years from the date of its first investment in the investee.

3.4 Subject to paragraph 3.5, a Merchant Bank must not hold any indirect PE/VC investment, where the date of first investment in the investee was made prior to [effective date of notice], and —

- (a) where such investee is managed by the Merchant Bank or a related party, for a period exceeding 10 years from the date of its first investment in the investee; or
- (b) where such investee is not managed by the Merchant Bank or a related party, for a period exceeding 15 years from the date of its first investment in the investee.

3.5 A merchant bank incorporated in Singapore may hold a PE/VC investment beyond the relevant holding period as set out in paragraphs 3.1, 3.2, 3.3 or 3.4 (as the case may be) ("relevant holding period"), if the merchant bank deducts the net book value of the PE/VC investment which is held beyond the relevant holding period from its capital funds in accordance with Notice 1111 (Risk Based Capital Adequacy Requirements for Merchant Banks Incorporated in Singapore) ⁴.

4 Valuation of PE/VC Investments

Unless otherwise directed by the Authority, every Merchant Bank must ensure that regular reviews of all its directly held PE/VC investments to ascertain their net book values after provisioning for permanent diminution in the values of the PE/VC investments are conducted by a person who is independent of the officers involved in the process of making the PE/VC investment, and the PE/VC investments are valued prudently.

⁴ The Authority is prepared to consider exempting PE/VC investments held beyond the relevant holding periods from being deducted from the merchant bank's capital funds only under exceptional circumstances.

5 Involvement in Management

5.1 Subject to paragraph 5.3, a Merchant Bank must not take part in the day-to-day management of an investee.

5.2 A Merchant Bank must ensure that none of the directors or employees of the Merchant Bank serves as an executive director of an investee.

5.3 A Merchant Bank must ensure that none of the employees of the Merchant Bank is involved in any strategic issue or issues which are typically discussed at Board level of the investee, unless –

- (a) the employee is employed primarily by the Merchant Bank to carry out the activities of the PE/VC business unit;
- (b) the employee is not involved in the day-to-day operations of the investee; and
- (c) the employee's involvement does not give rise to conflicts of interests in any of the investee's transactions with the Merchant Bank.

5.4 Subject to paragraph 5.5, a Merchant Bank may take part in the day-to-day management of an investee if –

- (a) there are circumstances which are, in the opinion of the Merchant Bank, extenuating circumstances, such as the need for prompt action in the event of a stress situation, including the loss of the investee's senior management or the impending insolvency or bankruptcy of the investee;
- (b) the Merchant Bank's participation does not exceed 6 months, or such longer period as the Authority may approve; and
- (c) within 3 months of taking part, the Merchant Bank provides the Authority with relevant details as to the extent of, and the reasons for, doing so.

5.5 The Merchant Bank must cease to take part in the day-to-day management of an investee if the Authority informs the Merchant Bank that in the opinion of the Authority, there are no extenuating circumstances.

6 Risk Management Framework

A Merchant Bank must have in place a written policy on risk management for its PE/VC investments, which must include policies and procedures (where applicable) on types of PE/VC investments that the Merchant Bank may invest in, risk identification and mitigation, pre-specified investment limits (including single investment limits, industry investment limits, geographical limits and limits based on the stage of investment), due diligence, investment approval, post-investment monitoring, accounting and valuation, and exit strategies.

7 Qualification of Persons Engaged in PE/VC Investment Activities

7.1 As investing in a PE/VC investment requires skill, experience and judgment on the part of an individual, a Merchant Bank must employ professionals with relevant work experience and knowledge to manage its PE/VC investments.

7.2 A Merchant Bank must have in place a written policy for assessing the qualifications of employees of the Merchant Bank entrusted to handle PE/VC investments, and managers in investees not managed by a related party.

8 PE/VC Investment Approval

8.1 A Merchant Bank must have in place a stringent internal assessment and approval process for each PE/VC investment. A Merchant Bank must keep detailed records of all PE/VC investments assessed and approved in accordance with such processes. The Merchant Bank must ensure that such detailed records include, for each PE/VC investment, all of the following:

- (a) an investment assessment stating the objective of the PE/VC investment;
- (b) the performance benchmarks set, including the target internal rates of return and the expected holding period;
- (c) the exit strategy for the PE/VC investment.

9 Record-keeping requirements⁵

9.1 A Merchant Bank must ensure that each PE/VC investment is identifiable and that separate records for each PE/VC investment are kept for internal monitoring purposes.

10 Reporting Requirements

10.1 Every Merchant Bank must submit to the Authority a copy of each policy referred to in paragraphs 6 and 7.2 within 90 days of [the effective date of this Notice], in respect of existing PE/VC investments (where such policy has not been previously submitted to the Authority).

10.2 A Merchant Bank which intends to acquire or hold a PE/VC investment after [effective date of this Notice] must implement the relevant policies, including the policy on risk management referred to in paragraph 6 and the policy for assessing the qualifications of employees and managers referred to in paragraph 7.2 and submit copies of such policies to the Authority prior to the acquisition of any PE/VC investment. A Merchant Bank must notify the Authority in writing of any material changes in these policies as soon as practicable.

10.3 Every Merchant Bank must submit to the Authority information on its PE/VC investments, as at 30th June and 31st December of each year, in accordance with the format specified in Annex A, no later than the 30th of the following month. A Merchant Bank must submit to the Authority information on its PE/VC investments held beyond the relevant holding periods, where the net book value has been deducted from capital, as at 31st December of each year, in accordance with the format specified in Annex B, no later than the 30th of the following month.

11 Effective Date

This Notice shall take effect on DDMMYYYY.

⁵ The Authority encourages Merchant Banks to carry out their PE/VC investment business through a separately incorporated subsidiary to separate the Merchant Bank's PE/VC investment business from its other financial businesses. It is recommended that PE/VC investment functions be retained within the Merchant Bank only if such PE/VC investment is an indirect PE/VC investment made solely in an investee that is not managed by the Merchant Bank or a related party.

MERCHANT BANKS' SCHEDULE FOR PRIVATE EQUITY/VENTURE CAPITAL INVESTMENTS

Name of Financial Institution: _____

As at dd/mm/yyyy

(1) Investing company or firm	(2) Investee company or firm	(3) Type of business	(4) Date of First Investment	(5) Value of shareholding over investee's capital (%)	(6) Value of debt instruments and credit facilities (\$'000)	(7) Net book value of investment (\$'000)	(8) Net book value as percentage of (i) capital funds (for merchant banks incorporated in Singapore) or (ii) total assets less net interbank lending (for merchant banks incorporated outside Singapore)	
							<u>(a) Merchant Bank (%)</u>	<u>(b) Group (%)</u>
Total								

Instructions

Please complete the above table to facilitate MAS' monitoring of the Merchant Bank's private equity and venture capital investments. Please indicate if the figures given are audited.

Item (1) - This refers to the name of the Merchant Bank or its subsidiary.

Item (2) - This refers the name of the investee company or firm.

Item (3) - This refers to the industry, in which the investee company is conducting its business e.g. Consumer products/services, Communications, Electronics, Energy, Manufacturing, Medical/biotechnology, Information Technology.

Item (4) - This refers to the date of the initial PE/VC investment.

Item (5) - This refers to the value of the PE/VC investment as a percentage of the capital of the investee company or firm.

Item (6) - This refers to the value of the debt instruments and the credit facilities extended to the investee company or firm.

Item (7) - This refers to the net book value of the PE/VC investment.

Item (8) (a) - For merchant banks incorporated in Singapore, this refers to the net book value of the PE/VC investment expressed as a percentage of the capital funds. For merchant banks incorporated outside Singapore, this refers to the net book value of the PE/VC investment expressed as a percentage of relevant total assets, where "relevant total assets" is the value of total assets less net interbank lending.

Item (8) (b) - For merchant banks incorporated in Singapore, this refers to the net book value of the PE/VC investment expressed as a percentage of the capital funds at the group level. For merchant banks incorporated outside Singapore, this is not applicable.

Instructions

Please complete the above table to facilitate MAS' monitoring of the Merchant Bank's private equity and venture capital investments that are held past permitted holding periods. Please indicate if the figures given are audited.

Item (1) - This refers to the name of the Merchant Bank or its subsidiary.

Item (2) - This refers the name of the investee company or firm.

Item (3) - This refers to the industry, in which the investee company is conducting its business e.g. Consumer products/services, Communications, Electronics, Energy, Manufacturing, Medical/biotechnology, Information Technology.

Item (4) - This refers to the date of the initial PE/VC investment.

Item (5) - This refers to the date of the end of the permitted holding period for the PE/VC investment.

Item (6) - This refers to the date when the PE/VC investment is expected to be fully divested.

Item (7) - This refers to the value of the PE/VC investment as a percentage of the capital of the investee company or firm.

Item (8) - This refers to the value of the debt instruments and the credit facilities extended to the investee company or firm.

Item (9) - This refers to the net book value of the PE/VC investment.