

ANNEX A(2)
BANKING (MERCHANT BANKS) REGULATIONS

**SUMMARY OF KEY PROPOSALS IN THE BANKING (MERCHANT BANKS)
REGULATIONS**

Regulation(s)	Key proposals
3	To set out the persons from whom an MB in Singapore may accept deposits in Singapore dollars or otherwise borrow any money in Singapore dollars.
13 to 16	To set out limitations on shareholdings in an MB held or acquired by its qualified major stake entity
17 to 28	To set out anti-commingling requirements imposed on MBs.
33, 34	To set out that the prior approval of the Authority must be obtained for the appointment of head of treasury of an MB.
35	To set out the prescribed maximum term of office for the appointment of a chairman of the board of directors for an MB incorporated in Singapore.
36	To set out the Authority's requirements with respect to risk management of MBs.
37(b)	To allow an offence under section 47, as applied by section 55ZI, of the BA to be compounded by the Authority.

Notes:

- MAS seeks comments on the draft Banking (Merchant Banks) Regulations below.
 - Regulation 8 will align the timeline for submitting returns pursuant to section 35 read with 55ZF(3) of the Banking Act with the timeline for submitting information set out in reporting forms that are to be furnished on a monthly basis in MAS Notice 1003 dated 18 August 2020 (with effect from 1 July 2021), in response to feedback from banks.
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**THIS VERSION OF THE BANKING (MERCHANT BANKS) REGULATIONS
IS IN DRAFT FORM. IT IS SUBJECT TO REVIEW BY THE ATTORNEY
GENERAL'S CHAMBERS**

Banking (Merchant Banks) Regulations

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BANKING (MERCHANT BANKS) REGULATIONS

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the Banking (Merchant Banks) Regulations.

Definitions

2. In these Regulations, unless the context otherwise requires —

“Accounting Standards” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“credit derivative” means any swap, option or other financial derivative the purpose of which is to secure a profit or avoid a loss by reference to the performance by a third party of certain specified obligations or to the change in creditworthiness of the third party;

“fund management” has the same meaning as in Part II of the Second Schedule to the Securities and Futures Act (Cap. 289);

“group”, in relation to a corporation, means a group within the meaning of the Accounting Standards, of which the corporation is a part;

“liabilities”, in relation to the policies of an insurance fund maintained by an insurer, means such liabilities and expenses of the insurer as are attributable to the business to which the insurance fund relates, but excludes any levy payable by that insurer under section 37 of the Deposit Insurance and Policy Owners’ Protection Schemes Act (Cap. 77B);

“market day”, in relation to a share traded on a securities exchange, means any day which the securities exchange is open for trading of shares;

“overseas bank” means a company incorporated, formed or established outside Singapore which carries on banking business only outside Singapore and is not licensed under the Act;

“property corporation” means any body corporate where —

- (a) more than 50% of the total turnover of the body corporate is derived from property-related activities; or
- (b) more than 50% of the total assets of the body corporate comprises interests in or rights over immovable property situate in Singapore, other than such immovable property or any part thereof which is used —
 - (i) as premises for the conduct of any business carried on by the body corporate;
 - (ii) for the business of a hotel, hostel, serviced apartment, boarding house, lodging house or dormitory; or
 - (iii) for community, charity or educational purposes;

“property-related activities” means —

- (a) the construction of or the causing of the construction of any building on, over or under land in Singapore for the purpose of sale by the person carrying out or causing such construction, of any right or interest in the land which would be appurtenant to such building, other than a building or part thereof constructed for use —
 - (i) for the business of a hotel, hostel, serviced apartment, boarding house, lodging house or dormitory; or
 - (ii) for community, charity or educational purposes;
 - (b) the acquisition or holding of any interest in or right over immovable property situate in Singapore for the purposes of rental, or for the purposes of securing a profit from its sale, other than such immovable property or part thereof —
 - (i) used or to be used by the person acquiring or holding the immovable property for occupation by himself or any member of his family or as premises for any business carried on by him;
 - (ii) used or to be used for the business of a hotel, hostel, serviced apartment, boarding house, lodging house or dormitory; or
 - (iii) used or to be used for community, charity or educational purposes;
 - (c) the financing of any activity referred to in paragraph (a) or (b);
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- (d) the making of loans to any property corporation;
- (e) the acquisition or holding as beneficial owner of shares or debentures issued by any property corporation; and
- (f) the acquisition or holding as beneficial owner of debentures the payment of principal or interest on which is contingent, directly or indirectly, on the turnover, profits or cashflow from any activity under paragraph (a), (b), (c), (d) or (e);

“property sector exposure”, in relation to a merchant bank in Singapore, means the aggregate of —

- (a) amounts outstanding to the merchant bank under credit facilities granted to any property corporation or to any related corporation of a property corporation for use by the property corporation;
 - (b) amounts outstanding to the merchant bank under credit facilities granted to any person other than a property corporation —
 - (i) in the case where such person is a corporation, for the purpose of financing or facilitating the property-related activities of that person or its related corporations; and
 - (ii) in any other case, for the purpose of financing or facilitating the property-related activities of that person;
 - (c) amounts of debentures beneficially held by the merchant bank and issued by any property corporation;
 - (d) amounts of debentures beneficially held by the merchant bank and issued by any person other than a property corporation, where the payment of principal or interest is contingent, whether in whole or in part, on the turnover, profits or cashflow from any property-related activity;
 - (e) amounts paid by the merchant bank for securities transferred to it pursuant to a repurchase transaction between the merchant bank and a property corporation, on terms that require the future transfer of equivalent securities by the merchant bank to the property corporation;
 - (f) amounts of contingent liabilities incurred by the merchant bank —
 - (i) in respect of any obligation of a property corporation; or
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(ii) in respect of any obligation of any other person, where such obligation is undertaken in connection with property-related activities;

(g) where the merchant bank has entered into any agreement (including a credit derivative agreement) with any other party under which the other party would secure a benefit or avoid a loss where there is —

(i) a failure by a property corporation to perform its obligations;

(ii) a decline in the creditworthiness of a property corporation; or

(iii) a failure by any person other than a property corporation to perform its obligations where such obligations are undertaken in connection with property-related activities,

the highest amount of such benefit or loss as may be secured or avoided, as the case may be, except to the extent that such amount constitutes part of any amounts under paragraph (f); and

(h) amounts payable to the merchant bank by any property corporation under a bill of exchange or promissory note,

but does not include any amounts in respect of —

(A) credit facilities granted to the Government or to any statutory board;

(B) Singapore Government Securities or bonds issued by any statutory board;

(C) debentures held pursuant to an agreement entered into by the merchant bank for the underwriting of an issue of such debentures, for a period not exceeding 8 weeks from the date of the launch of the issue;

(D) loans, debentures or other assets forming the subject matter of a securitisation transaction where the criteria determined by the Authority for effecting a clean sale of assets by the merchant bank have been complied with; or

(E) any instrument or transaction described in paragraphs (a) to (h) to the extent that the merchant bank would be indemnified or otherwise protected from losses that may be incurred by it under that instrument or transaction pursuant to a guarantee issued by any other bank or merchant bank, or any credit derivative entered into by the merchant bank with any person other than a property corporation;

“Singapore Government Securities” means securities issued by the Government under any written law;

“total eligible assets”, in relation to a merchant bank in Singapore, means the aggregate of —

- (a) amounts outstanding to the merchant bank under credit facilities granted to any person other than a bank, a merchant bank or an overseas bank;
 - (b) amounts of debentures beneficially held by the merchant bank and issued by any other person who is not a bank, a merchant bank or an overseas bank;
 - (c) amounts paid by the merchant bank for securities transferred to it pursuant to a repurchase transaction between the merchant bank and any other party who is not a bank, a merchant bank or an overseas bank, on terms that require the future transfer of equivalent securities by the merchant bank to the other party;
 - (d) amounts of contingent liabilities incurred by the merchant bank —
 - (i) in respect of any obligation of a property corporation; or
 - (ii) in respect of any obligation of any other person, where such obligation is undertaken in connection with property-related activities;
 - (e) where the merchant bank has entered into any agreement (including a credit derivative agreement) with any other party under which the other party would secure a benefit or avoid a loss where there is —
 - (i) a failure by a property corporation to perform its obligations;
 - (ii) a decline in the creditworthiness of a property corporation; or
 - (iii) a failure by any person other than a property corporation to perform its obligations where such obligations are undertaken in connection with property-related activities,the highest amount of such benefit or loss as may be secured or avoided, as the case may be, except to the extent that such amount constitutes part of any amounts under paragraph (d); and
 - (f) amounts payable to the merchant bank by any person, other than a bank, a merchant bank or an overseas bank, under a bill of exchange or promissory note,
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but does not include any amounts in respect of —

- (A) in the case of a merchant bank incorporated in Singapore, any instrument or transaction described in paragraphs (a) to (f) not forming part of the merchant bank's business in Singapore, except to the extent that such instrument or transaction forms part of the property sector exposure of the merchant bank; or
- (B) in the case of a merchant bank incorporated outside Singapore, any instrument or transaction described in paragraphs (a) to (f) not forming part of the merchant bank's business in Singapore.

PART II

CONTROL OF DEPOSIT-TAKING ACTIVITIES

Prescribed persons under section 55U(1)(a)

3. – For the purposes of section 55U(1)(a)(i) of the Act, a merchant bank in Singapore may accept deposits in Singapore dollars or otherwise borrow any money in Singapore dollars from—

- (a) any bank;
- (b) any finance company licensed under the Finance Companies Act (Cap. 108);
- (c) any shareholder of the merchant bank; or
- (d) any company controlled by any shareholder of the merchant bank.

Exemption from section 4A(1) and (2) of Act

4.—(1) Subject to paragraph (3), section 4A(1) of the Act does not apply to any foreign entity in respect of any deposit accepted in Singapore, on behalf of the foreign entity by its agent bank, from any qualifying depositor in Singapore.

(2) Subject to paragraph (3), section 4A(2) of the Act does not apply to any agent bank of a foreign entity in respect of —

- (a) any offer or invitation to make any deposit, or to enter or offer to enter into any agreement to make any deposit, with the foreign entity; or
 - (b) any advertisement containing such offer or invitation,
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where such offer, invitation or advertisement is made or issued to qualifying depositors in Singapore by the agent bank on behalf of the foreign entity.

(3) An agent bank which accepts or solicits deposits from a qualifying depositor on behalf of a foreign entity in the circumstances specified in paragraph (1) or (2) must provide the following information to the qualifying depositor, in writing, when soliciting or accepting any deposit from the qualifying depositor:

- (a) the name of the foreign entity;
- (b) the jurisdiction where the deposit account would be opened;
- (c) the class of licence or registration, or the type of approval or other instrument of regulation, that the foreign entity holds or has obtained in the jurisdiction where the deposit account would be opened;
- (d) a statement to the effect that the class of licence or registration, or the type of approval or other instrument of regulation, permits the foreign entity to accept deposits in the jurisdiction where the deposit account would be opened; and
- (e) a statement to the effect that the deposit account would not be subject to the supervisory oversight of the Authority but that of the relevant supervisory authority in the jurisdiction where the deposit account would be opened and maintained.

(4) To avoid doubt, this regulation does not affect the operation of section 55U(1)(a) and (b) of the Act.

(5) In this regulation, unless the context otherwise requires —

“agent bank”, in relation to a foreign entity, means a merchant bank which is a branch or subsidiary of the foreign entity;

“foreign entity” means any corporation established or incorporated outside Singapore that is licensed, registered, approved or otherwise regulated to carry on banking business under the laws of the jurisdiction in which it is established or incorporated;

“qualifying depositor” means —

- (a) an individual, a trustee or a person within the meaning of section 4A(1)(a)(i), (iii) or (iv) (as the case may be) of the Securities and Futures Act (Cap. 289);
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- (b) a corporation with net assets or net group assets exceeding \$10 million in value (or its equivalent in a foreign currency) or such other amount as the Authority may prescribe under section 4A(1)(a)(ii) of the Securities and Futures Act in place of the first amount, as determined by —
 - (i) the most recent audited balance-sheet of the corporation (whether on an individual or on a group basis); or
 - (ii) where the corporation is not required to prepare audited financial statements regularly under the Companies Act (Cap. 50), a balance-sheet of the corporation (whether on an individual or on a group basis) certified by the corporation as giving a true and fair view of the state of affairs of the corporation and its group (where applicable) as of the date of the balance-sheet, which date must be within the preceding 12 months; or
- (c) a corporation which acts as a trustee for the customers of a person carrying on the business of fund management with total assets under management exceeding \$10 million in value (or its equivalent in a foreign currency).

PART III

EXCLUSION OF CERTAIN MAJOR STAKE ENTITIES

Exclusion of certain entities from operation of section 32 as applied by section 55ZF(2) of Act

5.—(1) The Authority excludes, from the operation of section 32 as applied by section 55ZF(2) of the Act —

- (a) any entity which carries on a business prescribed in regulation 26 (whether as its principal business or otherwise);
- (b) any other entity whose principal business is that of investing in any entity referred to in sub-paragraph (a).

(2) The exclusion in paragraph (1) does not apply to —

- (a) any entity that is not carrying on any substantial business or not in operation;
- (b) any entity that is carrying on the business of engaging in property-related activities;
- (c) any entity that is carrying on the business of factoring, leasing equipment or otherwise purchasing debt obligations from others; or
- (d) any entity or class of entities, specified by the Authority by notice in writing by reference to a merchant bank or a class of merchant banks.

Exclusion of wholly-owned subsidiaries of merchant bank held primarily for segregating risks arising from carrying on business prescribed in regulation 27

6.—(1) Subject to paragraph (2), the Authority excludes from the operation of section 32 as applied by section 55ZF(2) of the Act any wholly-owned subsidiary of a merchant bank in Singapore acquired or held primarily for the purpose of segregating risks that arises from the carrying on of any business prescribed in regulation 27(1) so as to prevent such risks from affecting the financial soundness and stability of the merchant bank.

(2) The exclusion under paragraph (1) of any wholly-owned subsidiary of a merchant bank in Singapore from the operation of section 32 as applied by section 55ZF(2) of the Act applies if—

- (a) the merchant bank has an agreement with the wholly-owned subsidiary to allow the Authority and any person appointed by the Authority, at any time, to obtain any information from the wholly-owned subsidiary and to inspect the books of the wholly-owned subsidiary;
 - (b) where the wholly-owned subsidiary is a financial institution regulated by an overseas regulatory authority, the merchant bank is satisfied, from its own due diligence or from having taken professional advice, that the Authority and any person appointed by the Authority are not prohibited from obtaining any information from, or inspecting the books of, the wholly-owned subsidiary; and
 - (c) the merchant bank ensures that the wholly-owned subsidiary of the merchant bank carries on its business in a manner that satisfies such conditions relating to the operations or activities of the wholly-owned subsidiary as the Authority may impose, from time to time, by notice in writing.
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(3) For the purpose of this regulation, a company is a wholly-owned subsidiary of a merchant bank if none of the members of the company, or none of the persons holding any ownership interest in the company, is a person other than the merchant bank.

PART IV

PROPERTY SECTOR EXPOSURE

Property sector exposure limit

7.—(1) The property sector exposure of a merchant bank in Singapore must not exceed 35% of the total eligible assets of that merchant bank.

(2) Notwithstanding paragraph (1), the Authority may, if it considers appropriate in the particular circumstances of a merchant bank in Singapore, require the property sector exposure of that merchant bank not to exceed such other percentage as it may determine, for such period and subject to such conditions as it may determine.

(3) Any merchant bank which contravenes this regulation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for every day or part thereof during which the offence continues after conviction.

Submission of returns

8. Every merchant bank in Singapore must, within 14 days from 31st December of each year, submit a return to the Authority on its property sector exposure in the form set out in the First Schedule.

PART V

COMPUTATION OF MAJOR STAKES

Meaning of “affiliated entity”

9.—(1) In this Part and Part VI, “affiliated entity”, in relation to a merchant bank, means —

- (a) any subsidiary of the merchant bank;
 - (b) any entity in which the merchant bank and its subsidiaries hold in the aggregate a beneficial interest in not less than 20% of the share capital, accumulated funds or contributed capital;
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- (c) any entity in which the merchant bank and its subsidiaries control in the aggregate not less than 20% of the voting power;
- (d) any other entity where the management of the entity 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 entity; or
- (e) any subsidiary of an entity referred to in sub-paragraph (b), (c) or (d).

(2) Notwithstanding paragraph (1)(a), (b), (c) or (e), any beneficial interest in the share capital, accumulated funds or contributed capital of, or control of voting power in, an entity that is —

- (a) acquired by a merchant bank or any entity referred to in paragraph (1) (referred to in this paragraph as the relevant entity) pursuant to an arrangement with a person who has a trading account with the relevant entity, and transferred to the trading account of that person within 2 market days from the date of acquisition; or
- (b) acquired or held by the relevant entity in the course of satisfaction of debts due to it and disposed of at the earliest suitable opportunity,

must be excluded for the purpose of determining whether the entity is an affiliated entity of the bank.

(3) Despite paragraph (1)(c), any control of voting power in an entity that is held by the merchant bank or its subsidiary —

- (a) for the benefit of any person other than the merchant bank or its subsidiary, or any other affiliated entity of the merchant bank (referred to in this paragraph as the beneficiary) pursuant to an obligation imposed under any written law, rule of law, contract or order of court; and
- (b) used or exercised by the merchant bank or its subsidiary primarily for the benefit of the beneficiary,

must be excluded for the purpose of determining whether the entity is an affiliated entity of the merchant bank, unless —

- (i) the control of voting power in the entity is held by a merchant bank's subsidiary that is an insurer licensed under the Insurance Act (Cap. 142), through —
 - (A) any insurance fund established and maintained under the Insurance Act for its general business;
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- (B) any insurance fund established and maintained under the Insurance Act (Cap. 142) for its non-participating policies;
 - (C) any insurance fund established and maintained under the Insurance Act for its participating policies, and which relates to assets held other than for the purpose of meeting the liabilities in respect of the policies of the insurance fund; or
 - (D) any insurance fund established and maintained under the Insurance Act for its investment-linked policies, and which relates to assets held other than for the purpose of meeting those liabilities in respect of the policies of the insurance fund, the values of which are dependent on the value of the underlying assets; or
- (ii) the Authority (having regard to the specific circumstances of the case including whether the merchant bank or its subsidiaries has investment and voting policies that comply with guidelines issued by the Authority) is of the opinion that the control of voting power in the entity is in fact not being used or exercised primarily for the benefit of the beneficiary, and the Authority issues a declaration by notice in writing to the merchant bank that such control of voting power in the entity must, with effect from the date of the declaration, be included for the purpose of determining whether that entity is an affiliated entity of the merchant bank.

(4) Notwithstanding paragraph (1)(e), where an entity referred to in paragraph (1)(b) or (c) is not an affiliated entity of the merchant bank by virtue of paragraph (2) or (3), its subsidiary must correspondingly not be regarded as an affiliated entity of the merchant bank.

Holding by affiliated entity deemed to be holding by merchant bank

10.—(1) In determining whether a merchant bank holds a major stake in an entity as defined in section 55ZF(2) of the Act —

- (a) any beneficial interest in the share capital, accumulated funds or contributed capital of an entity held by an affiliated entity of the merchant bank must be deemed to be a beneficial interest in that share capital, accumulated funds or contributed capital held by that merchant bank;
 - (b) any control of voting power in an entity held by an affiliated entity of the merchant bank must be deemed to be a control of such voting power held by that merchant bank; and
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- (c) any interest in an entity (where the management of the entity 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 entity) held by an affiliated entity of the merchant bank must be deemed to be an interest held by that merchant bank.

(2) Paragraph (1) does not apply to any beneficial interest in the share capital, accumulated funds or contributed capital of, control of voting power in, or interest in, an entity that is acquired or held by an affiliated entity and transferred or disposed of by the affiliated entity in the manner referred to in regulation 9(2)(a) or (b).

(3) Paragraph (1)(b) or (c) does not apply to any control of voting power or interest in an entity that is held by an affiliated entity of a merchant bank —

- (a) for the benefit of any person other than the affiliated entity, the merchant bank or any other affiliated entity of the merchant bank (referred to in this paragraph as the beneficiary), pursuant to an obligation imposed under any written law, rule of law, contract or order of court; and
- (b) used or exercised by that affiliated entity primarily for the benefit of the beneficiary,

unless —

- (i) that affiliated entity is an insurer licensed under the Insurance Act (Cap. 142), and it holds the control of voting power or interest in the entity through any of the insurance funds specified in regulation 9(3)(i)(A) to (D); or
- (ii) the Authority (having regard to the specific circumstances of the case including whether the affiliated entity has investment and voting policies that comply with guidelines issued by the Authority) is of the opinion that the control of voting power or interest in the entity is in fact not being used or exercised primarily for the benefit of the beneficiary, and the Authority issues a declaration by notice in writing to the merchant bank that paragraph (1)(b) or (c), as the case may be, must, with effect from the date of the declaration apply to the control of voting power or interest in the entity held by that affiliated entity.

Affiliated entity over which the merchant bank has no effective control

11.—(1) Where an entity falls within the definition of “affiliated entity” under regulation 9(1)(a), (b), (c) or (e), but not regulation 9(1)(d), and the Authority is satisfied that —

- (a) the affiliated entity is not under the effective control of the merchant bank;
and
- (b) the merchant bank is not exposed to any material risk by virtue of —
 - (i) that affiliated entity’s beneficial interest in the share capital, accumulated funds or contributed capital of other entities;
 - (ii) that affiliated entity’s control of voting power in other entities; or
 - (iii) that affiliated entity’s interest in other entities,

the Authority may, by notice in writing to the merchant bank, declare that regulation 10(1) does not apply to any beneficial interest in the share capital, accumulated funds or contributed capital of any entity, any control of voting power in any entity, or any interest in any entity, held by that affiliated entity, and in such event, regulation 10(1) does not apply accordingly with effect from the date specified in the declaration, until such time as the declaration is revoked.

(2) The Authority may upon making a declaration under paragraph (1) and from time to time, impose such conditions as the Authority considers appropriate and if any of the conditions are not complied with at any time, the Authority may revoke the declaration by notice in writing to the merchant bank.

(3) The Authority may vary or revoke any condition imposed under paragraph (2).

(4) Without prejudice to paragraph (2), the Authority may, by notice in writing to a merchant bank, revoke a declaration made under paragraph (1) if the Authority is satisfied that —

- (a) the affiliated entity has come under the effective control of the merchant bank; or
- (b) the merchant bank has become exposed to material risk by virtue of —
 - (i) that affiliated entity’s beneficial interest in the share capital, accumulated funds or contributed capital of other entities;
 - (ii) that affiliated entity’s control of voting power in other entities; or
 - (iii) that affiliated entity’s interest in other entities,

and in such event, regulation 10(1) applies to that affiliated entity accordingly with effect from the date specified in the notice of revocation.

(4) Without prejudice to paragraph (3), a declaration under paragraph (1) is automatically revoked if and when the affiliated entity falls within the definition of

“affiliated entity” under regulation 9(1)(d), whether or not that affiliated entity continues to fall within the definition of “affiliated entity” under regulation 9(1)(a), (b), (c) or (e).

PART VI

LIMITATION OF MUTUAL SHAREHOLDINGS

Definitions of this Part

12. In this Part —

“holding company” has the same meaning as in section 5 of the Companies Act (Cap. 50);

“major stake” has the same meaning as in section 55ZF(2) of the Act;

“qualified major stake entity”, in relation to a merchant bank, means an affiliated entity of the merchant bank in which the merchant bank holds a major stake.

Limitation of mutual shareholdings

13.—(1) A qualified major stake entity of a merchant bank incorporated in Singapore must not acquire or hold shares in the merchant bank which has the effect of enabling it, whether alone or jointly with other qualified major stake entities of the merchant bank, to control more than 2% of the voting power in the merchant bank.

(2) A qualified major stake entity of a merchant bank incorporated in Singapore must not acquire or hold shares in any holding company of the merchant bank which has the effect of enabling it, whether alone or jointly with other qualified major stake entities of the merchant bank, to control more than 2% of the voting power in the holding company.

(3) A qualified major stake entity of a merchant bank incorporated in Singapore must not acquire or hold shares in the merchant bank and any of the holding companies of the merchant bank which has the effect of enabling it, whether alone or jointly with other qualified major stake entities of the merchant bank, to control —

(a) any percentage of the voting power in the merchant bank; and

(b) any percentage of the voting power in any of the holding companies of the merchant bank,

such that the sum total of the percentages referred to in sub-paragraphs (a) and (b) (notwithstanding that they are percentages of voting powers in different companies) exceeds 2.

(4) A merchant bank incorporated in Singapore must not cause or knowingly permit any of its qualified major stake entities to acquire or hold shares in the merchant bank or any holding company of the merchant bank in contravention of paragraph (1), (2) or (3).

(5) For the purposes of determining whether there is a contravention of paragraph (1), (2), (3) or (4), any control of voting power in a merchant bank or any holding company of the merchant bank that is held by a qualified major stake entity of that merchant bank —

- (a) for the benefit of any person other than the qualified major stake entity or any other qualified major stake entity of that merchant bank (referred to in this paragraph as the beneficiary), pursuant to an obligation imposed under any written law, rule of law, contract or order of court; and
- (b) used or exercised by the qualified major stake entity for the benefit of the beneficiary,

is disregarded, unless —

- (i) the qualified major stake entity is an insurer licensed under the Insurance Act (Cap. 142), and the control of voting power is held by it through any of the insurance funds specified in regulation 9(3)(i)(A) to (D); or
- (ii) the Authority (having regard to the specific circumstances of the case including whether the qualified major stake entity has investment and voting policies that comply with guidelines issued by the Authority) is of the opinion that the control of voting power in the merchant bank or holding company of the merchant bank is in fact not being used or exercised primarily for the benefit of the beneficiary, and the Authority issues a declaration by notice in writing to the qualified major stake entity that such control of voting power in the merchant bank or holding company of the merchant bank must, with effect from the date of the declaration, be included for the purpose of determining whether there is a contravention of paragraph (1), (2), (3) or (4).

Qualified major stake entity over which the merchant bank has no effective control

14.—(1) Where a qualified major stake entity falls within the definition of “affiliated entity” of a merchant bank under regulation 9(1)(a), (b), (c) or (e) but not regulation 9(1)(d), and the Authority is satisfied that —

- (a) the entity is not under the effective control of the merchant bank; and
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- (b) the merchant bank is not exposed to any material risk by virtue of —
 - (i) that entity’s beneficial interest in the share capital, accumulated funds or contributed capital of other entities;
 - (ii) that entity’s control of voting power in other entities; or
 - (iii) that entity’s interest in other entities,

the Authority may, by notice in writing to the merchant bank, declare that any shares held by that entity in the merchant bank or any holding company of the merchant bank, must be excluded for the purpose of determining whether there is a contravention of regulation 13(1), (2), (3) or (4) and in such event, the exclusion must take effect from the date specified in the declaration until such time as the declaration is revoked.

(2) The Authority may upon making a declaration under paragraph (1) and from time to time, impose such conditions as the Authority considers appropriate and if any of the conditions are not complied with at any time, the Authority may revoke the declaration by notice in writing to the merchant bank.

(3) The Authority may vary or revoke any condition imposed under paragraph (2).

(4) Without prejudice to paragraph (2), the Authority may, by notice in writing to a merchant bank, revoke a declaration made under paragraph (1) if the Authority is satisfied that —

- (a) the entity has come under the effective control of the merchant bank; or
- (b) the merchant bank has become exposed to material risk by virtue of —
 - (i) that entity’s beneficial interest in the share capital, accumulated funds or contributed capital of other entities;
 - (ii) that entity’s control of voting power in other entities; or
 - (iii) that entity’s interest in other entities,

and in such event, any shares held by that entity in the merchant bank or any holding company of the merchant bank must, with effect from the date specified in the notice of revocation, be included for the purpose of determining whether there is a contravention of regulation 13(1), (2), (3) or (4).

(5) Without prejudice to paragraph (4), a declaration under paragraph (1) shall automatically be revoked if and when the entity falls within the definition of “affiliated entity” under regulation 9(1)(d), whether or not the entity continues to fall within the definition of “affiliated entity” under regulation 9(1)(a), (b), (c) or (e).

Offences, penalties and defences

15.—(1) Any person who contravenes regulation 13 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine of \$2,500 for every day or part thereof during which the offence continues after conviction.

(2) A qualified major stake entity of a merchant bank shall not be guilty of an offence in respect of a contravention of regulation 13(1), (2) or (3) if the qualified major stake entity proves that —

- (a) it became a qualified major stake entity of the merchant bank by virtue of, or the contravention resulted from, circumstances beyond its control; or
- (b) it had, at the time of its acquisition or holding of shares in the merchant bank or any holding company of the merchant bank, reasonable grounds for believing that such acquisition or holding would not result in a contravention of regulation 13(1), (2) or (3), as the case may be,

and it had, within 14 days of becoming aware of the contravention, notified the Authority in writing of the contravention and taken such action as directed by the Authority within such time as may be determined by the Authority.

(3) A merchant bank shall not be guilty of an offence in respect of a contravention of regulation 13(4) if the merchant bank proves that —

- (a) the contravention resulted from circumstances beyond its control; or
- (b) it did not know and had no reason to suspect that there was an acquisition or holding of shares in itself or any of its holding companies by its qualified major stake entity or entities which would result in it being in contravention of regulation 13(4),

and it had, within 14 days of becoming aware of the contravention, notified the Authority in writing of that contravention, and taken such action as directed by the Authority within such time as may be determined by the Authority.

(4) Except as provided in paragraphs (2) and (3), it is not a defence for a person charged with an offence in respect of a contravention of regulation 13 to prove that the person did not intend to or did not knowingly contravene regulation 13.

Grace period for mutual shareholdings

16.—(1) Where a qualified major stake entity of a merchant bank would, but for this paragraph, be guilty of an offence under regulation 15(1) by virtue of its shareholding in the merchant bank or any of the merchant bank's holding companies immediately before

[*the commencement date*], it is not liable under that regulation until [*12 months after the commencement date*] provided that it does not do any act that causes an increase in such shareholding.

(2) Where a merchant bank would, but for this paragraph, be guilty of an offence under regulation 15(1) by virtue of its qualified major stake entity's shareholding in itself or any of its holding companies immediately before [*the commencement date*], it shall not be so liable under that regulation until [*12 months after the commencement date*] provided that it does not cause or permit its qualified major stake entity to do any act that causes an increase in such shareholding.

(3) In this regulation, "commencement date" means the date of commencement of section 43 of the Banking (Amendment) Act 2020.

PART VII

PRESCRIBED BUSINESSES

Definitions of this Part

17. In this Part —

"asset" includes any commodity as defined in section 2 of the Securities and Futures Act (Cap. 289);

"building" means any immovable property that has undergone development as defined in section 3 of the Planning Act (Cap. 232);

"foreclosed property", in relation to a merchant bank in Singapore or major stake entity, means the whole or any part of any residential, commercial or industrial land or building that has been acquired by the merchant bank or entity, as the case may be, acting in its capacity as the mortgagee of the whole or that part of the land or building, as the case may be, pursuant to an action for foreclosure;

"investment property", in relation to a merchant bank in Singapore or major stake entity, means the whole or any part of any residential, commercial or industrial land or building that has been acquired or is held by the merchant bank or entity, as the case may be, as an investment;

"land" means any immovable property that has not undergone development as defined in section 3 of the Planning Act (Cap. 232);

"major stake entity", in relation to a merchant bank in Singapore, means an entity in which the merchant bank has acquired or holds a major stake;

“merchant banking group”, in relation to a merchant bank incorporated in Singapore, means the merchant bank, its subsidiaries, and all other entities treated as part of the merchant bank’s group of companies for accounting purposes according to Accounting Standards;

“property enhancement” means —

- (a) in relation to a building, the carrying out of any works for the refurbishment, improvement or alteration of, or addition to, the building which —
 - (i) do not amount to demolition or reconstruction of the building; and
 - (ii) do not vary the gross floor area of the building by more than 20%; and
- (b) in relation to any part of a building, the carrying out of any works for the refurbishment, improvement or alteration of, or addition to, that part of the building which —
 - (i) do not amount to demolition or reconstruction of that part of the building; and
 - (ii) do not vary the gross floor area of that part of the building by more than 20%;

“property management”, in relation to the whole or any part of any land or building, means the maintenance and management of the whole or that part of the land or building, as the case may be, and includes the procurement of security services and lease and tenancy administration in relation to the whole or that part of the land or building, as the case may be, but does not include property enhancement.

Prescribed property-related businesses

18. For the purposes of section 55V(1)(d) of the Act, the Authority prescribes the following property-related businesses as businesses that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on:

- (a) the business of providing property management services in relation to —
 - (i) any investment property that has been acquired or is held by —
 - (A) in the case of a merchant bank incorporated in Singapore, any entity in its merchant banking group;
 - (B) in the case of a merchant bank incorporated outside Singapore, the merchant bank in Singapore;
 - (ii) any foreclosed property that has been acquired or is held by —
 - (A) in the case of a merchant bank incorporated in Singapore, any entity in its merchant banking group;
 - (B) in the case of a merchant bank incorporated outside Singapore, the merchant bank; or
 - (iii) the whole or any part of any building that is occupied and used —
 - (A) by the merchant bank for the carrying on of any business or class of business referred to in section 55V(1) of the Act; or
 - (B) in the case of a merchant bank incorporated in Singapore, by any entity in its merchant banking group for the carrying on of that entity's business;
- (b) the business of managing and coordinating property enhancement works in relation to —
 - (i) any property referred to in sub-paragraph (a)(i) or (ii) that is a building; or
 - (ii) any building referred to in sub-paragraph (a)(iii).

Prescribed alternative financing business

19.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (2), the business of purchasing and selling assets is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, if such business is carried on under the following arrangement:

- (a) the merchant bank, at the request of and for the purpose of financing the purchase of each of those assets by a customer, purchases the asset from the seller in circumstances where the asset is existing at the time of the purchase;
 - (b) the merchant bank sells the asset to the customer;
 - (c) the customer is under a legal obligation to the merchant bank to take delivery of the asset;
 - (d) the amount payable by the customer for the asset (the marked-up price) is greater than the amount paid by the merchant bank for the asset (the original price), and the difference between the marked-up price and original price is the profit or return to the merchant bank for providing such financing to the customer;
 - (e) the merchant bank does not derive any gain or suffer any loss from any movement in the market value of the asset other than as part of the profit or return referred to in sub-paragraph (d); and
 - (f) the marked-up price or any part thereof is not required to be paid until after the date of the sale.
- (2) The merchant bank must notify the Authority of its —
- (a) intention to commence the business referred to in paragraph (1); or
 - (b) commencement of such business within 14 days after the commencement of such business.

Prescribed purchase and sale business

20.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (2), the business of purchasing and selling assets is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, if such business is carried on under the following arrangement:

- (a) for the purpose of making funds of a customer available to a merchant bank, the customer appoints the merchant bank or any other person as agent, to purchase on his behalf, an asset for an amount of money (the original price), in circumstances where the asset is existing at the time of the purchase;
 - (b) the merchant bank purchases the asset from the customer at a price (the marked-up price) that is greater than the original price, and sells the asset or appoints the customer, or any other person as an agent of the merchant bank, to sell the asset on its behalf;
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- (c) the merchant bank and customer, respectively, do not derive any gain or suffer any loss from any movement in the market value of the asset other than the difference between the marked-up price and the original price (which represents the profit or return to the customer for making funds available to the bank); and
 - (d) the marked-up price or any part thereof is not required to be paid by the merchant bank to the customer until after the date of sale of the asset by the merchant bank.
- (2) The merchant bank must notify the Authority of its —
- (a) intention to commence the business referred to in paragraph (1); or
 - (b) commencement of such business within 14 days after the commencement of such business.

Prescribed inter-bank purchase and sale business

21.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (3), the business of purchasing and selling assets is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, if such business is carried on under the following arrangement:

- (a) for the purpose of making funds of the merchant bank (“A”) available to another bank or merchant bank (“B”), A purchases, or appoints B or any other person as an agent of A to purchase on its behalf, an asset for an amount of money (the original price), in circumstances where the asset is existing at the time of the purchase;
- (b) B purchases the asset from A at a price (the marked-up price) that is greater than the original price, and sells the asset, or appoints A, or any other person as an agent of B, to sell the asset on its behalf;
- (c) A and B, respectively, do not derive any gain or suffer any loss from any movement in the market value of the asset other than the difference between the marked-up price and the original price (which represents the profit or return to A for making funds available to B); and
- (d) the marked-up price or any part thereof is not required to be paid by B to A until after the date of sale of the asset by B.

(2) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (3), the arrangement set out in paragraph (1), in circumstances where the roles of A and B are

reversed, is prescribed as a business that any merchant bank in Singapore may carry on or enter into any partnership, joint venture or other arrangement with any person to carry on.

(3) The merchant bank must notify the Authority of its —

- (a) intention to commence the business referred to in paragraph (1); or
- (b) commencement of such business within 14 days after the commencement of such business.

Prescribed leasing business

22.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (2), the business of leasing assets (whether in the form of movable or immovable property) is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, if such business is carried on under the following arrangement:

- (a) the merchant bank, or the merchant bank's agent, purchases an asset at the request of a customer for an amount of money (the original price) for the purposes of financing the use or purchase, or both, of the asset by the customer;
 - (b) the merchant bank, or the merchant bank's agent, leases the asset to the customer;
 - (c) in a case where the asset is not in existence at the time the merchant bank, or the merchant bank's agent, leases the asset to the customer, an amount of money (the advance payment) may be paid by the customer to the merchant bank, or the merchant bank's agent, for the subsequent use of the asset;
 - (d) an amount of money (the rental) is paid by the customer to the merchant bank, or the merchant bank's agent, for the lease of the asset;
 - (e) the merchant bank, or the merchant bank's agent, appoints the customer, or a third party, to take on the obligations in connection with the use of the asset, including its maintenance and insurance;
 - (f) in the event of an early termination of the lease, the customer, or a third party, must purchase the asset from the merchant bank, or the merchant bank's agent, at a price determined at the start of the lease (the early termination price);
 - (g) upon expiry of the lease —
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- (i) where the aggregate of all rental and advance payments made under the lease is greater than the original price, the merchant bank, or the merchant bank's agent, must, whether with or without consideration, transfer the ownership of the asset to the customer or a third party;
 - (ii) where the aggregate of all rental and advance payments made under the lease is equal to or less than the original price, the customer or a third party must purchase the asset from the merchant bank, or the merchant bank's agent, at a sale price determined at the start of the lease (the sale price), which amount must be consideration for the transfer of the asset;
 - (h) the total amount payable by the customer and such third party referred to in either sub-paragraph (f) or (g), if any, for the asset comprising —
 - (i) the advance payment;
 - (ii) the rental; and
 - (iii) the sale price or early termination price,is greater than the original price, and the difference between the total amount payable and original price is the profit or return to the merchant bank for providing such financing to the customer;
 - (i) the merchant bank, or the merchant bank's agent, does not derive any gain or suffer any loss from any movement in the market value of the asset, including total loss of the asset, other than as part of the profit or return referred to in sub-paragraph (h).
- (2) The merchant bank must notify the Authority of its —
- (a) intention to commence the business referred to in paragraph (1); or
 - (b) commencement of such business within 14 days after the commencement of such business.

Prescribed joint purchase and periodic sale business

23.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (2), the business of jointly purchasing and selling (on a periodic basis) assets (whether in the form of movable or immovable property) is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other

arrangement with any person, if such business is carried on under the following arrangement:

- (a) the merchant bank, or the merchant bank's agent, jointly purchases an asset with the customer at the request of the customer and contributes an amount of money towards the purchase price (the contribution) for the purposes of financing the use or purchase, or both, of the asset by the customer;
 - (b) the merchant bank, or the merchant bank's agent —
 - (i) sells a portion of its share of the asset on a periodic basis to the customer for an amount of money determined at the start of the arrangement (the redemption); and
 - (ii) leases the unsold portion of its share of the asset to the customer for an amount of money determined at the start of the arrangement (the rental);
 - (c) in a case where the asset is not in existence at the time of the joint purchase and the merchant bank, or the merchant bank's agent, leases the unsold portion of its share of the asset to the customer, an amount of money (the advance payment) may be paid by the customer to the merchant bank, or the merchant bank's agent, for the subsequent use of that portion of the asset;
 - (d) the merchant bank, or the merchant bank's agent, appoints the customer, or a third party, to take on the obligations in connection with the use of the asset, including its maintenance and insurance;
 - (e) in the event of an early termination of the arrangement, the customer must purchase from the merchant bank, or the merchant bank's agent, the remainder of the unsold portion of the merchant bank's, or the merchant bank's agent's, share of the asset at a price determined at the start of the arrangement (the early termination price);
 - (f) upon expiry of the arrangement, the customer must have purchased from the merchant bank, or the merchant bank's agent, the whole of the merchant bank's, or the merchant bank's agent's, share of the asset and obtained full ownership of the asset;
 - (g) the total amount payable by the customer for the asset comprising —
 - (i) the advance payment;
 - (ii) the redemption;
 - (iii) the rental; and
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- (iv) the early termination price,
is greater than the contribution, and the difference between the total amount payable and the contribution is the profit or return to the merchant bank for providing such financing to the customer;
 - (h) the merchant bank, or the merchant bank's agent, does not derive any gain or suffer any loss from any movement in the market value of the asset, including total loss of the asset, other than as part of the profit or return referred to in sub-paragraph (g), except in circumstances provided in sub-paragraph (i); and
 - (i) in a case where the customer is unable to pay the merchant bank, or the merchant bank's agent, the early termination price, the merchant bank, or the merchant bank's agent, may sell the asset to a third party at a price lower than the outstanding amount payable by the customer.
- (2) The merchant bank must notify the Authority of its —
 - (a) intention to commence the business referred to in paragraph (1); or
 - (b) commencement of such business within 14 days after the commencement of such arrangement.

Prescribed purchase and sale business at spot price

24.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (2), the business of purchasing and selling assets at spot price is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, if such business is carried on under the following arrangement:

- (a) for the purposes of effecting payment resulting from the carrying on of any business by the merchant bank under section 55V(1)(a), (b) or (c) of the Act —
 - (i) the merchant bank undertakes to purchase an asset from a customer (bank purchase undertaking);
 - (ii) the customer undertakes to purchase an asset from the merchant bank (customer purchase undertaking);
 - (iii) the merchant bank undertakes to sell an asset to a customer (merchant bank sale undertaking); or
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- (iv) the customer undertakes to sell an asset to the merchant bank (customer sale undertaking),
for an amount of money determined at the time the undertaking is given by the merchant bank or the customer, as the case may be (the agreed price);
 - (b) where the merchant bank purchase undertaking is exercised by the customer, or the customer sale undertaking is exercised by the merchant bank, the merchant bank will purchase the asset from the customer at the agreed price in circumstances where the asset is existing at the time of the purchase, and immediately sells the asset to a third party at spot price;
 - (c) where the customer purchase undertaking is exercised by the merchant bank, or the merchant bank sale undertaking is exercised by the customer, the merchant bank will purchase the asset from a third party at spot price in circumstances where the asset is existing at the time of the purchase, and immediately sells the asset to the customer at the agreed price;
 - (d) the merchant bank does not take physical delivery of the asset; and
 - (e) the merchant bank does not derive any gain or suffer any loss from any movement in the market value of the asset other than the difference between the spot price and the agreed price.
- (2) The merchant bank must notify the Authority of its —
 - (a) intention to commence the business referred to in paragraph (1); or
 - (b) commencement of such business within 14 days after the commencement of such business.

Prescribed procurement business

25.—(1) For the purposes of section 55V(1)(d) of the Act, and subject to paragraph (2), the business of procuring and selling assets (whether in the form of movable or immovable property) is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, if such business is carried on under the following arrangement:

- (a) the merchant bank, or the merchant bank's agent, at the request of the customer and for the purposes of financing the procurement and the use or purchase, or both, of an asset by the customer, commissions the customer to construct the asset in accordance with the customer's specifications for an amount of money (the purchase price);
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- (b) contemporaneously with the commissioning referred to in sub-paragraph (a) —
 - (i) the merchant bank, or the merchant bank's agent, and the customer enter into an arrangement prescribed under regulation 23B where the asset is not in existence at the time the asset is leased to the customer (the lease arrangement); or
 - (ii) the customer gives an undertaking to the merchant bank, or the merchant bank's agent, to purchase the asset from the merchant bank, or the merchant bank's agent, immediately after the transfer of the ownership of the asset to the merchant bank, or the merchant bank's agent, by the customer under sub-paragraph (e)(i) (the purchase undertaking);
 - (c) the customer procures the construction of the asset by a third party;
 - (d) the merchant bank, or the merchant bank's agent, makes payment of the purchase price to the customer on a periodic basis (the progress payment);
 - (e) one of the following takes place:
 - (i) the customer transfers the ownership of the asset to the merchant bank, or the merchant bank's agent, on a mutually agreed date on or after the completion of the construction of the asset by the third party;
 - (ii) the customer refunds all progress payments to the merchant bank, or the merchant bank's agent, and the lease arrangement or the purchase undertaking, as the case may be, is cancelled; or
 - (iii) the merchant bank, or the merchant bank's agent, agrees to the substitution of the asset that is the subject of the lease arrangement or the purchase undertaking with a comparable asset, and the customer transfers the ownership of the comparable asset to the merchant bank, or the merchant bank's agent, on a mutually agreed date;
 - (f) the merchant bank, or the merchant bank's agent, does not take physical delivery of the asset or the comparable asset;
 - (g) at the end of the arrangement, the merchant bank, or the merchant bank's agent, transfers ownership of the asset, or of the comparable asset, to the customer pursuant to the lease arrangement or the purchase undertaking, except in the circumstances referred to in sub-paragraph (e)(ii);
-

- (h) the amount payable by the customer for the asset, or the comparable asset, is greater than the purchase price, and the difference between the total amount payable and the purchase price is the profit or return to the merchant bank for providing such financing to the customer; and
 - (i) the merchant bank, or the merchant bank's agent, does not derive any gain or suffer any loss from any movement in the market value of the asset, including from the total loss of the asset, other than the profit or return referred to in sub-paragraph (h).
- (2) The merchant bank must notify the Authority of its —
- (a) intention to commence the business referred to in paragraph (1); or
 - (b) commencement of such business within 14 days after the commencement of such business.

Prescribed private equity or venture capital business

26.—(1) For the purposes of section 55V(1)(d) of the Act and subject to paragraphs (3) and (4), a business (not being a business referred to in section 55V(1)(a), (b) or (c) of the Act) which —

- (a) is carried on by a company or the trustee of a trust; and
- (b) satisfies the requirement in paragraph (2),

is prescribed as a business that any merchant bank in Singapore may carry on, or with whom a merchant bank in Singapore may enter into any partnership, joint venture or any other arrangement to carry on, whether in Singapore or elsewhere.

(2) The business referred to in paragraph (1) is one which the merchant bank in Singapore has determined to have potential for high growth or value creation.

(3) The reference to a company or trustee of a trust in paragraph (1) excludes a company or trustee which —

- (a) is not carrying on any substantial business or not in operation;
 - (b) is carrying on the business of engaging in property-related activities; or
 - (c) is carrying on the business of factoring, leasing equipment or otherwise purchasing debt obligations from others.
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Prescribed non-financial business

27.—(1) For the purposes of section 55V(1)(d) of the Act and subject to paragraphs (3) to (7), a business which fulfils the following criteria is prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or any other arrangement with any person to carry on, whether in Singapore or elsewhere:

- (a) the business is related or complementary to any of the core financial business which is carried on by the merchant bank;
- (b) the business is not any other business prescribed for the purposes of section 55V(1)(d) of the Act or approved under section 55V(1)(e) of the Act;
- (c) the business is not any of the following types of business:
 - (i) property development;
 - (ii) provision of hotel and resort facilities;
 - (iii) property management;
 - (iv) owning, operating or investing in facilities for the extraction, transportation, storage or distribution of commodities; and
 - (vi) owning, operating or investing in facilities for processing, refining or otherwise altering commodities;
- (d) the business is not any other business prescribed in paragraph (2).

(2) For the purposes of section 55V(1)(d) of the Act and subject to paragraphs (6) to (7) –

- (a) any business –
 - (i) from which the merchant bank does not receive or intend to receive any revenue;
 - (ii) which has no asset value recorded on the merchant bank's balance sheet; and
 - (iii) which does not result in any exposure for the merchant bank; and
- (b) any business which is incidental to the business which a merchant bank may carry on under this paragraph,

are each prescribed as a business that any merchant bank in Singapore may carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, whether in Singapore or elsewhere, if such business is related or complementary to any of the core financial business which is carried on by the merchant bank.

(3) A merchant bank in Singapore may carry on any business prescribed in paragraph (1) if, and only if —

- (a) the merchant bank puts in place risk management and governance policies and procedures that are commensurate with the risks posed by the business;
- (b) where the merchant bank is a merchant bank incorporated in Singapore, it has obtained the approval of its board of directors for the risk management and governance policies and procedures mentioned in sub-paragraph (a);
- (c) where the merchant bank is a merchant bank incorporated outside Singapore and its head office —
 - (i) has never carried on the business before, it has obtained the approval of its board of directors; or
 - (ii) has carried on the business before, it has obtained the approval of an authorised person, for the risk management and governance policies and procedures mentioned in sub-paragraph (a);
- (d) the merchant bank notifies the Authority of the following matters:
 - (i) the business which will be carried on;
 - (ii) any regulation or licensing requirement that the business is or will be subject to, whether in Singapore or elsewhere;
 - (iii) the merchant bank's investment in the business;
 - (iv) the date on which the business will commence;
 - (v) where applicable, the partnership, joint venture or arrangement which it has in place for carrying on such business,

at least 14 days prior to the earliest of the following:

(AA) any public announcement of the merchant bank's carrying on of the business (whether on its own or by entering into a partnership, joint venture or other arrangement with any person);

(BB) the signing of any agreement to carry on the business or in the case where the merchant bank is entering into a partnership, joint venture or other arrangement with any person to carry on the

business, the signing of the agreement to enter into such partnership, joint venture or arrangement;

(CC) the effective date on which the merchant bank will be carrying on the business (whether on its own or by entering into a partnership, joint venture or other arrangement with any person);

- (e) the merchant bank notifies the Authority of any change to the matters in relation to which information had been provided in the notification mentioned in sub-paragraph (d), prior to making the change or as soon as the merchant bank becomes aware of the change; and
- (f) the merchant bank obtains prior approval from the Authority for the issuance of any guarantee, indemnity, letter of comfort or any other letter that imposes similar obligations on the merchant bank as a guarantee or indemnity, or similar expectation on the bank as a letter of comfort in respect of the business.

(4) A merchant bank in Singapore must limit the Aggregate Non-Financial Business Size of the businesses prescribed in paragraph (1) and regulation 26(1) carried on by it (if any) —

- (a) where the merchant bank is a merchant bank incorporated in Singapore, to —
 - (i) 30% of its capital funds or such other percentage as the Authority may approve in any particular case; and
 - (ii) 30% of the capital funds of its merchant banking group or such other percentage as the Authority may approve in any particular case (where applicable); or
- (b) where the merchant bank is a merchant bank incorporated outside Singapore, to 4% of its total assets (less inter-bank lending) or such other percentage as the Authority may approve in any particular case.

(5) A merchant bank in Singapore must provide reports to the Authority in accordance with the requirements specified in the Second Schedule, and provide such other information as the Authority may require in relation to any business prescribed in paragraph (1) that is carried on by the merchant bank.

(6) If the Authority, having regard to the specific circumstances of a merchant bank in Singapore (including whether the risk management and governance policies and procedures of the merchant bank are sufficiently robust to effectively monitor and manage the risks of the merchant bank), or in the event that any of the conditions or requirements imposed on the merchant bank are not satisfied by the merchant bank at any point in time, issues to the merchant bank a written declaration that paragraph (1) or (2) no longer applies to the merchant bank in relation to any business specified in the declaration from a specified date, then paragraph (1) or (2) does not apply to the merchant bank from the specified date with respect to that specified business.

(7) The Authority may, at any time where it considers it to be necessary in the circumstances, by notice in writing require a merchant bank in Singapore to carry on any business prescribed in paragraph (1) in a wholly-owned subsidiary of the merchant bank.

(8) In this regulation, unless the context otherwise requires —

“Aggregate Non-Financial Business Size” means the total balance sheet asset value or total exposures (whichever is the higher of the 2) or such other measure of the size of the businesses as the Authority may specify by notice in writing, of

- - (a) all businesses prescribed in paragraph (1) that the merchant bank is carrying on;
 - (b) all businesses prescribed in regulation 26(1) that the merchant bank is carrying on;
 - (c) all businesses carried on by the merchant bank’s major stake entities that are acquired or held in accordance with regulation 28(1);
 - (d) all businesses prescribed in paragraph (1) that the merchant bank’s major stake entities are carrying on where —
 - (i) the merchant bank has obtained the approval of the Authority under section 32 as applied by section 55ZF(2) of the Act for acquiring or holding such entities; and
 - (ii) the approval granted by the Authority under sub-paragraph (i) is subject to conditions which include the bank having to comply with the requirements in regulation 28(1);
 - (e) all businesses referred to in section 55V(1)(a) to (c) of the Act and prescribed under section 55V(1)(d) of the Act (other than this regulation) that the merchant bank’s major stake entities are carrying on and where —
 - (i) the merchant bank has not obtained the Authority’s approval under section 32 as applied by section 55ZF(2) of the Act for acquiring or holding such entities;
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- (ii) such entities are acquired or held by the merchant bank in accordance with the requirements in regulations 28(1); and
- (iii) the merchant bank complies with regulation 28(3) in relation to such entities; and

- (f) all businesses for which the Authority has granted approval to the merchant bank under section 55V(1)(e) of the Act and such approval is subject to conditions which include the merchant bank having to comply with the requirements in paragraph (3);

“authorised person”, in relation to a merchant bank incorporated outside Singapore, means one or more persons, or a committee of persons, authorised by the board of directors of the merchant bank to approve the risk management and governance policies and procedures of the business carried on by the merchant bank in Singapore;

“capital funds” —

- (a) in relation to a merchant bank incorporated in Singapore, means the capital of the merchant bank that is used for the purposes of calculating its capital adequacy requirements under section 10 as applied by section 55ZB of the Act; or
- (b) in relation to the merchant banking group of a merchant bank incorporated in Singapore, means the capital of the merchant banking group that is used for the purposes of calculating the merchant banking group’s capital adequacy requirements under section 10 as applied by section 55ZB of the Act;

“core financial business”, in relation to a merchant bank, means the core business activities that the merchant bank carries out based on its particular business model which are —

- (a) businesses referred to in section 55V(1)(a), (b) and (c) of the Act; or
 - (b) businesses prescribed under section 55V(1)(d) of the Act which are similar to the businesses referred to in section 55V(1)(a), (b) and (c) of the Act in terms of economic substance and risks; and
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“net interbank lending”, in relation to a bank incorporated outside Singapore, means the total lending by the merchant bank to other banks less its total borrowing from other banks.

Exemption from section 32 as applied by section 55ZF(2) of Act in respect of prescribed non-financial business

28.—(1) A merchant bank in Singapore may acquire or hold, directly or indirectly, a major stake in any entity without the approval of the Authority if -

- (a) the entity carries on a business prescribed in regulation 27(1) or regulation 27(2) (whether as its principal business or otherwise), or the principal business of the entity is that of investing in any entity that carries on a business prescribed in regulation 27(1) or regulation 27(2) (whether as its principal business or otherwise);
 - (b) the Aggregate Non-Financial Business Size of the merchant bank after acquiring or holding the entity does not exceed –
 - (i) where the merchant bank is a merchant bank incorporated in Singapore—
 - (A) 30% of its capital funds or such other percentage as the Authority may approve in any particular case; and
 - (B) 30% of the capital funds of its merchant banking group or such other percentage as the Authority may approve in any particular case (where applicable); or
 - (ii) where the merchant bank is a merchant bank incorporated outside Singapore, 4% of its total assets (less interbank lending) or such other percentage as the Authority may approve in any particular case;
 - (c) the merchant bank puts in place risk management and governance policies and procedures that are commensurate with the risks posed by the business;
 - (d) where the merchant bank is a merchant bank incorporated in Singapore, it has obtained the approval of its board of directors for the risk management and governance policies and procedures mentioned in sub-paragraph (c);
 - (e) where the merchant bank is a merchant bank incorporated outside Singapore and its head office —
 - (i) has never carried on the business before, it has obtained the approval of its board of directors; or
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- (ii) has carried on the business before, it has obtained the ~~written~~ approval of an authorised person, for the risk management and governance policies and procedures mentioned in sub-paragraph (c);
 - (f) the merchant bank notifies the Authority of the following matters:
 - (i) the business which is carried on by the major stake entity;
 - (ii) any regulation or licensing requirement that the major stake entity is or will be subject to, whether in Singapore or elsewhere;
 - (iii) the merchant bank's investment in the major stake entity;
 - (iv) the date on which the major stake entity will be acquired or held, at least 14 days prior to the earliest of the following:
 - (AA) any public announcement of the acquisition or holding of the major stake entity;
 - (BB) the signing of any agreement to acquire or hold the major stake entity;
 - (CC) the effective date of the acquisition or holding of the major stake entity;
 - (g) the merchant bank notifies the Authority of any change to the matters in relation to which information had been provided in the notification mentioned in sub-paragraph (f), prior to making the change or as soon as the merchant bank becomes aware of the change ;
 - (h) the merchant bank obtains prior approval from the Authority for the issuance of any guarantee, indemnity, letter of comfort or any other letter that imposes similar obligations on the merchant bank as a guarantee or indemnity, or similar expectations on the bank as a letter of comfort in respect of the business carried on by the major stake entity; and
 - (i) in the case where the major stake entity will be a subsidiary of the merchant bank —
 - (i) the merchant bank has an agreement with the major stake entity to allow the Authority and any person appointed by the Authority, at any time, to obtain any information from the entity and to inspect the books of the entity; and
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- (ii) where the major stake entity is regulated by an overseas regulatory authority, the merchant bank is satisfied, from its own due diligence or from having taken professional advice, that the Authority and any person appointed by the Authority are not prohibited from obtaining any information from, or inspecting the books of, the entity.

(2) To avoid doubt, the major stake entity referred to in paragraph (1) may also carry on businesses referred to in section 55V(1)(a),(b) and (c) of the Act or prescribed under section 55V(1)(d) of the Act which are similar to the businesses referred to in section 55V(1)(a), (b) and (c) of the Act in terms of economic substance and risks, whether as its principal business or otherwise, or be an entity whose principal business is that of investing in any entity that carries on such businesses.

(3) A merchant bank in Singapore must provide reports to the Authority in accordance with the requirements specified in the Second Schedule, and provide such other information as the Authority may require, in relation to any major stake entity held or acquired by the merchant bank under this regulation.

(4) If the Authority, having regard to the specific circumstances of a merchant bank in Singapore (including whether the risk management and governance policies and procedures of the merchant bank are sufficiently robust to effectively monitor and manage the risks of the major stake entity), or in the event that any of the conditions or requirements imposed on the merchant bank are not satisfied by the merchant bank at any point in time, issues to the merchant bank a written declaration that paragraph (1) no longer applies to the merchant bank in relation to any major stake entity specified in the declaration from a specified date, then paragraph (1) does not apply to the merchant bank from the specified date with respect to that specified major stake entity.

(5) In this regulation, “Aggregate Non-Financial Business Size”, “authorised person”, “capital funds” and “net interbank lending” have the same respective meanings as in regulation 27(8).

PART VIII

TRANSFER OF BUSINESS AND SHARES AND RESTRUCTURING OF MERCHANT BANK

Particulars to be published

29. For the purposes of section 55C(2)(d) as applied by section 55ZK of the Act, the transferor must publish the following particulars:

- (a) the names of the transferor and the transferee;
- (b) a summary of the transfer, including a description of the nature and the effect of the transfer; and
- (c) the addresses of the respective offices of the transferor and transferee at which, and the period during which, the report referred to in section 55C(2)(a) as applied by section 55ZK of the Act would be kept for inspection by any person who may be affected by the transfer.

PART IX

DEPOSIT LIABILITIES OF MERCHANT BANK

Liabilities which are included in deposit liabilities of merchant bank

30. For the purposes of section 62(3)(b) as applied by section 62B(5) of the Act, “deposit liabilities”, in relation to a merchant bank, include the liabilities of a merchant bank to a person under the following arrangement:

- (a) the person pays a sum of money to his agent or the merchant bank for the purpose of making his funds available to the merchant bank and to enable his agent or the merchant bank to purchase an asset on his behalf, being an asset that exists at the time of the purchase;
 - (b) the merchant bank purchases the asset from the person at a price (the marked-up price) that is greater than the sum of money paid by the person, and sells the asset;
 - (c) the person and the merchant bank, respectively, do not derive any gain or suffer any loss from any movement in the market value of the asset other than the difference between the marked-up price and the sum of money paid by the person (which represents the return to the person for making his funds available to the merchant bank); and
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- (d) no part of the marked-up price is required to be paid by the merchant bank to the person until after the date of sale of the asset by the merchant bank.

Liabilities which are not included in deposit liabilities of merchant bank

31. For the purposes of section 62(3)(ii) as applied by section 62B(5) of the Act, “deposit liabilities”, in relation to a merchant bank, do not include the liabilities of a merchant bank in respect of a sum of money paid to the merchant bank by or on behalf of any person in consideration for the issue to him by the merchant bank of bonds or negotiable certificate of deposits.

PART X

MISCELLANEOUS

Definition of “subsidiary” in section 48AA as applied by section 55ZJ of Act

32.—(1) For the purpose of the definition of “subsidiary” in section 48AA(5) as applied by section 55ZJ(1) of the Act, an entity (called in this regulation *S*) is a subsidiary of another entity (called in this regulation *A*) if —

- (a) *A* —
- (i) controls the composition of the board of directors of *S*; or
 - (ii) controls more than half of the voting power in *S*; or

(b) *S* is a subsidiary of an entity which is a subsidiary of *A*.

(2) For the purpose of paragraph (1)(a)(i), *A* is treated as having control of the composition of the board of directors of *S* if *A* has any power, exercisable by *A* without the consent or concurrence of any other person, to appoint or remove all or a majority of —

- (a) the directors of *S*; or
- (b) the equivalent of the directors of *S*.

(3) For the purposes of paragraph (1)(a), in determining whether *A* controls the composition of the board of directors of *S*, or controls more than half of the voting power in *S* —

- (a) any power exercisable by *A* in a fiduciary capacity is to be disregarded;
 - (b) subject to sub-paragraphs (c) and (d), any power exercisable —
-

- (i) by a nominee for *A* (except where *A* is concerned only in a fiduciary capacity); or
 - (ii) by a subsidiary of *A* or a nominee for the subsidiary (except where the subsidiary is concerned only in a fiduciary capacity),is to be treated as exercisable by *A*;
- (c) any power exercisable by any person by virtue of the provisions of any debentures of *S* or of a trust deed for securing any issue of any debentures of *S* is to be disregarded; and
- (d) any power exercisable by, or by a nominee for, *A* or its subsidiary (not being a power exercisable as mentioned in sub-paragraph (c)) is not to be treated as exercisable by *A* if —
 - (i) the ordinary business of *A* or its subsidiary (as the case may be) includes the lending of money; and
 - (ii) the power is exercisable by way of security only for the purpose of a transaction entered into in the ordinary course of that business.

Prescribed appointments for merchant bank incorporated in Singapore

33.—(1) The appointment of the head of treasury is prescribed as an appointment in a merchant bank incorporated in Singapore to which section 53A(1)(d) as applied by section 55ZJ(1) of the Act applies.

(2) In this regulation, “head of treasury”, in relation to a merchant bank incorporated in Singapore, means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the merchant bank; and
- (b) is principally responsible for the management and conduct of the treasury operations of the merchant bank.

Prescribed appointment for merchant bank in Singapore of merchant bank incorporated outside Singapore

34.—(1) The appointment of the head of treasury is prescribed as an appointment for the merchant bank in Singapore of a merchant bank incorporated outside Singapore to which section 53A(2)(b) as applied by section 55ZJ(1) of the Act applies.

(2) In this regulation, “head of treasury”, in relation to the merchant bank in Singapore of a merchant bank incorporated outside Singapore, means any person, by whatever name described, who —

- (a) is in the direct employment of, or acting for or by arrangement with, the merchant bank in Singapore; and
- (b) is principally responsible for the management and conduct of the treasury operations of the merchant bank in Singapore.

Prescribed term

35. For the purposes of section 53A(5)(b) as applied by section 55ZJ(1) of the Act, a term of 3 years is prescribed as the maximum term for which a person appointed under section 53A(1)(b) as applied by section 55ZJ(1) of the Act as a chairman of the board of directors of a merchant bank incorporated in Singapore may hold such office or appointment.

Risk management of merchant bank

36.—(1) A merchant bank must, in a manner that is commensurate with the nature, scale and complexity of its business —

- (a) implement effective internal controls to regularly identify, measure, evaluate, monitor, report and control risks associated with the business activities of the merchant bank;
 - (b) ensure that compliance of the merchant bank with the internal controls mentioned in sub-paragraph (a) is audited by an internal audit process of the merchant bank;
 - (c) where any officer, committee, sub-committee or group of persons has a discretionary power to commit the merchant bank to any financial undertaking or to expose the merchant bank to any business risk —
 - (i) establish limits on the discretionary power that are appropriate, having regard to the business activities of the merchant bank; and
 - (ii) set out the limits mentioned in sub-paragraph (i) in writing;
 - (d) keep documentation sufficient to demonstrate —
 - (i) compliance by the merchant bank with the internal controls mentioned in sub-paragraph (a); and
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- (ii) compliance by each officer, committee, sub-committee or group of persons who has a discretionary power with the limits mentioned in sub-paragraph (c)(i).

(2) Any merchant bank which contravenes paragraph (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine of \$25,000 for every day or part of a day during which the offence continues after conviction.

Compoundable offences

37. The following offences may be compounded by the Authority in accordance with section 69 of the Act:

- (a) any offence (other than a continuing offence) under the Act or any regulations made under the Act which is punishable with a fine only;
- (b) any offence (other than a continuing offence) under section 55Z(5)(a), section 28(7) as applied by section 55ZD(2), section 47 as applied by section 55ZI, section 50(7) or (8) as applied by section 55ZJ(1), section 52(2)(a) as applied by section 55ZJ(1) or section 55N(2)(a) as applied by section 55ZK(1) of the Act;
- (c) any offence under section 66(1) of the Act, where the non-compliance by the merchant bank mentioned in that provision constitutes a compoundable offence under paragraph (a) or (b).

FIRST SCHEDULE

Regulation 8

ANNUAL REPORTING FOR SECTION 55ZF(3) READ WITH SECTION 35, BANKING ACT

Name of Merchant Bank: _____

Property sector exposure ratio as at _____ (year)

All figures to nearest S\$'000

Item	Numerator	
1.	Property sector exposure from credit facilities to property corporations	
2.	Property sector exposure from credit facilities to corporations other than property corporations	

3.	Property sector exposure from credit facilities to Individuals	
4.	Property sector exposure from debt instruments	
5.	Property sector exposure from guarantees to borrowers	
6.	Property sector exposure from performance bonds and qualifying certificate guarantees	
7.	Other property sector exposure from contingent liabilities	
	Total property sector exposure numerator (A)	
	Denominator	
8.	Total non-bank loans	
9.	Total non-bank debt instruments	
10.	Total contingent liabilities (items 5 + 6 + 7)	
	Total property sector exposure denominator (B)	
	Property sector exposure ratio i.e. (A)/(B)	%
	Other Figures	
11.	Owner-occupied housing loans	

SECOND SCHEDULE

Regulation 27(5)

REQUIREMENTS FOR REPORTS TO BE SUBMITTED TO AUTHORITY

1. A merchant bank in Singapore must submit to the Authority, within 30 days from the end of each quarter of a year, or such later date as may be approved in writing by the Authority, the following information in relation to that quarter:

- (a) balance sheet asset value, revenue numbers, and exposures of all businesses prescribed in regulation 27(1) that are carried on by the merchant bank;
 - (b) balance sheet asset value, revenue numbers, and exposures of all businesses prescribed in regulation 26(1) that are carried on by the merchant bank;
 - (c) balance sheet asset value, revenue numbers and exposures of all businesses carried on by the merchant bank's major stake entities that are acquired or held in accordance with regulation 28(1);
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- (d) balance sheet asset value, revenue numbers and exposures of all businesses prescribed in regulation 27(1) that the merchant bank's major stake entities are carrying on where –
 - (i) the merchant bank has obtained the approval of the Authority under section 32 as applied by section 55ZF(2) of the Act for acquiring or holding such entities; and
 - (ii) the approval granted by the Authority referred to in sub-paragraph (i) is subject to conditions which include the merchant bank having to comply with the requirements in regulation 28(1);
 - (e) balance sheet asset value, revenue numbers and exposures of all businesses referred to in section 55V(1)(a) to (c) of the Act and prescribed under section 55V(1)(d) of the Act (other than businesses prescribed in regulation 27(1)) that the bank's major stake entities are carrying on and where –
 - (i) the merchant bank has not obtained the Authority's approval under section 32 of the Act as applied by section 55ZF(2) of the Act for acquiring or holding such entities;
 - (ii) such entities are acquired or held by the bank in accordance with the requirements in regulation 28(1); and
 - (iii) the merchant bank complies with regulation 28(3) in relation to such entities;
 - (f) balance sheet asset value, revenue numbers and exposures of all businesses for which the Authority has granted approval to the bank under section 55V(1)(e) of the Act and such approval is subject to conditions which include the merchant bank having to comply with the requirements in regulation 27(3);
 - (g) the Aggregate Non-Financial Business Size as defined in regulation 27(8) of the merchant bank; and
 - (h) utilisation of the regulatory limits prescribed in regulation 27(4).
-