

MAS NOTICE 643

2 April 2013

NOTICE TO BANKS
BANKING ACT, CAP 19

TRANSACTIONS WITH RELATED PARTIES

Introduction

- 1 This Notice is issued pursuant to section 55(1) of the Banking Act (Cap.19) (“the Act”) and applies to all banks in Singapore.
- 2 It sets out the Authority’s requirements relating to transactions of banks in Singapore with related parties, which seek to minimise the risk of abuses arising from conflicts of interest.

Definitions

- 3 For the purpose of this Notice —

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

“**bank group**” means a bank in Singapore, its subsidiaries and any other company treated as part of the bank’s group of companies according to Accounting Standards and in the case of a bank incorporated outside Singapore, only where such subsidiary or company is reflected as an investment in the books of the bank in Singapore in relation to its operations in Singapore;

“**board**”, in relation to a bank in Singapore, means the board of directors of the bank;

“**person**” means any individual, corporation, association or body of persons, whether corporate or unincorporated, sole proprietorship, partnership or limited liability partnership as defined under the Limited Liability Partnerships Act (Cap. 163A);

“**related corporation group**”, in relation to a bank in Singapore, means its head office outside Singapore (if any) and all the related corporations of the bank;

“related party”, in relation to a bank in Singapore, means —

- (a) any person in a director group, senior management group, financial group, substantial shareholder group or related corporation group; or
- (b) any person whose interests, in the opinion of the board of the bank or, in the case of a bank incorporated outside Singapore, such persons as may be authorised by its board (“the authorised person”), conflict with that of the bank and who is specified by the board or the authorised person, in the internal documents of the bank, as a related party for the purpose of this Notice;

“related party group”, in relation to a bank in Singapore, means any director group, senior management group, financial group, substantial shareholder group or related corporation group;

“related party transaction” means any transaction between a bank in Singapore or any company in its bank group, and any of the bank’s related parties;

“senior management”, in relation to a bank in Singapore, means a senior officer of the bank in relation to whom conflicts of interest may arise (for example, the chief executive officer, deputy chief executive officer, chief financial officer, chief operating officer, chief risk officer, business heads and employees with significant credit approval responsibilities, including members of the credit committee), and the senior officer’s family members;

“senior management group”, in relation to a bank in Singapore, means a group of persons comprising —

- (a) any senior management of the bank;
- (b) every firm or limited liability partnership in which the senior management is a partner, a manager, an agent, a guarantor or a surety;
- (c) every individual of whom, and every company of which, the senior management is a guarantor or surety; and
- (d) every company in which the senior management —
 - (i) is an executive officer;
 - (ii) owns more than half of the total number of issued shares, whether legally or beneficially;
 - (iii) controls more than half of the voting power; or
 - (iv) controls the composition of the board¹;

but does not include any person who falls within a director group; and

¹ For the purpose of the definition of “senior management group”, a member of the senior management of a bank is deemed to control the composition of the board of a company if he has any power, exercisable by him without the consent or concurrence of any other person, to appoint or remove all or a majority of the directors of the company. The senior management of a bank incorporated outside Singapore means the senior management of the bank in Singapore, as well as that of its head office.

“transaction” means any exposure or dealing, including those for which no exposure is incurred, such as a contract for service, a sale or purchase, a construction contract, a lease agreement, any borrowing or any write-off.

- 4 For the avoidance of doubt, for the purpose of this Notice, “child”, in relation to a director, senior management and substantial shareholder, shall include the individual’s natural children, adopted children and step-children.
- 5 The expressions used in this Notice, shall, except where defined in this Notice or where the context otherwise requires, have the same meanings as in the Act, including the Fifth Schedule to the Act, and in the Banking Regulations.

General Principles Governing Related Party Transactions

- 6 Subject to paragraph 7 below, a bank in Singapore shall ensure that every related party transaction is —
 - (a) conducted free of conflicts of interest; and
 - (b) based on terms and conditions that are not more favourable than similar transactions with non-related parties under similar circumstances.² The terms and conditions shall include those relating to credit assessment, loan tenure, interest rates, fees, amortisation and collateral.
- 7 A bank in Singapore may grant a loan to any of its employees or directors on more favourable terms than those to a party which is not a related party where the loan is —
 - (a) part of the overall remuneration package for the employee or director, as the case may be; and
 - (b) subject to the standard credit assessments and approval processes of the bank.

Board and Management Control of Related Party Transactions

- 8 Every bank in Singapore shall establish a policy on related party transactions and put in place adequate procedures to implement it, if it or any person in its bank group may enter into any related party transaction or write off any exposure to any of the bank’s related parties.³ Every bank in Singapore shall include policies on and procedures to implement the following:

² For the purpose of sub-paragraph 6(b), a related party transaction for which lower costs will be incurred (for instance, because no sales and marketing costs have to be incurred) shall be compared with a transaction of a similar type with a non-related party with a similar cost.

³ A bank incorporated outside Singapore does not have to establish its own policy and procedures, and may rely on its head office’s policy and procedures governing related party transactions, if its head office’s policy and procedures meet the requirements in this Notice.

- (a) determining the persons in its related party groups and identifying every person in relation to whom a conflict of interest may arise vis-à-vis the bank but who is not already caught under a related party group and requiring its board or (in the case of a bank incorporated outside Singapore) the authorised person to specify that such a person shall be considered to be a related party for the purpose of this Notice and to classify and treat each person so specified as a person in a particular related party group;
- (b) identifying every write-off to a related party and every related party transaction, including a transaction which has yet to be entered into and a situation in which a non-related party (with whom a bank or a company in its bank group has entered into a transaction) subsequently becomes a related party;
- (c) setting out the criteria which have to be satisfied for any proposed related party transaction;
- (d) setting out the materiality thresholds on an aggregated basis for particular transaction types where exposures arise for any related party group, above which its transaction with a related party shall be subject to prior approval in accordance with sub-paragraph (e) below;
- (e) subject to paragraph 20 below, requiring:
 - (i) every transaction with a related party which does not meet the criteria specified pursuant to sub-paragraph (c);
 - (ii) every transaction with a related party where an exposure arises which, when aggregated with all other related party transactions of that type with that related party group, crosses the materiality threshold specified pursuant to sub-paragraph (d) for that transaction type for that related party group;
 - (iii) the write-off of any exposure of the bank to any of the bank's related parties,to be subject to prior approval by:
 - (A) in the case of a bank incorporated in Singapore, a special majority of three-fourths of its board;
 - (B) in the case of a bank incorporated outside Singapore, a special majority of three-fourths of its board or the authorised person, as the case may be;
- (f) preventing any person who may, or whose family member may, benefit (directly or indirectly) from a related party transaction or a write-off of an

exposure to a related party from being part of the approval process for the related party transaction or write-off, respectively, and the bank shall conduct periodic independent checks to verify that the aforesaid requirement is fully complied with;

- (g) ensuring that every related party transaction and write-off of an exposure to a related party is reported through an independent credit review or audit process, and monitored by senior officer(s) of the bank on an ongoing basis to ensure compliance with both the policy of the bank on related party transactions and this Notice; for the purpose of this sub-paragraph, the senior officer(s) of the bank shall monitor every of the bank's related party transactions on both a per transaction basis and aggregated basis (i.e. all related party transactions with each related party group); and
- (h) ensuring that every exception to and breach or likely breach of the policy of the bank on related party transactions is reported to the appropriate senior officer(s) and, if necessary, to the board for timely action.

9 A bank in Singapore shall ensure that its board or (in the case of a bank incorporated outside Singapore) the authorised person approves and reviews annually the bank's policy on related party transactions and the adequacy of the procedures to implement the policy.

10 A bank in Singapore shall exercise reasonable diligence in determining the persons in its related party groups and identifying every person in relation to whom a conflict of interest may arise vis-à-vis the bank but who is not already caught under a related party group, and fully document its efforts to do so. A bank in Singapore shall provide to the Authority evidence of its efforts to determine the persons in its related party groups and identify every person in relation to whom a conflict of interest may arise, as well as the assessment of its board or (in the case of a bank incorporated outside Singapore) the authorised person as to whether such a conflict may arise, upon the Authority's request.

11 A bank in Singapore shall require its directors, senior management and substantial shareholders (who are individuals) to declare to its board or (in the case of a bank incorporated outside Singapore) the authorised persons all persons whose interests may conflict with that of the bank which shall include, at the minimum, all persons in their respective director groups, senior management groups and substantial shareholder groups, annually. A bank in Singapore shall be entitled to rely on the annual declarations and such other information as may come to its attention to identify its related parties and fulfil its obligations under paragraph 10 above. For the purpose of this paragraph, 'director', 'senior management' and 'substantial shareholder' shall exclude the family members of the respective directors, senior management and substantial shareholders.

12 The criteria to be specified pursuant to paragraph 8(c) above shall require, at a minimum, every related party transaction to be subject to standard terms and conditions which are identical to those for similar transactions with a non-related party

under similar circumstances.⁴ More detailed criteria, which may differ for different types of transactions, may also be specified. For the avoidance of doubt, a highly customised related party transaction for which standard terms and conditions cannot be specified shall be subject to prior approval in accordance with paragraph 8(e) above.

13 A bank in Singapore shall –

- (a) set separate materiality thresholds on an aggregate basis for each type of related party transaction where an exposure arises (e.g. mortgages, unsecured lending and trade finance facilities)⁵ with each related party group;
- (b) take into account the nature, scope, frequency, value of and risks associated with its related party transactions in setting the aforesaid materiality thresholds;
- (c) report the materiality thresholds set, and any changes thereto, to the Authority in the ‘Additional Information’ section of its quarterly statements submitted pursuant to MAS Notice 639A “Exposures and Credit Facilities to Related Concerns”; and
- (d) where any of the materiality thresholds is exceeded,⁶ immediately report the fact that the threshold has been exceeded to its board or (in the case of a bank incorporated outside Singapore) the authorised person.

A bank in Singapore shall provide its justification for the materiality thresholds set pursuant to paragraph 13(a) to the Authority, upon the Authority’s request. The Authority may direct a bank in Singapore to reduce any materiality threshold where the Authority is of the opinion that it is inappropriate, taking into consideration the factors set out in paragraph 13(b).

14 Where a bank’s transaction with a related party where an exposure arises is surfaced for prior approval pursuant to paragraph 8(e)(ii) above, the bank shall require the board or (in the case of a bank incorporated outside Singapore) the authorised person to consider, when assessing whether to approve the transaction, all the existing related party transactions of that type with the same related party group. Where the board or the authorised person is of the view that any of the existing transactions between the bank and its related party is on more favourable terms than similar transactions with

⁴ Market terms and conditions, as well as standard template contracts of the bank which are offered to both related parties and non-related parties, can generally be deemed to be standard terms and conditions for the purpose of this paragraph.

⁵ A bank shall, at the minimum, set separate materiality thresholds for these types of exposures to each related party group. A bank may set even more granular thresholds where appropriate.

⁶ This may occur, for instance, when the transactions between companies in the bank group and the bank’s related parties, in aggregate, exceed the materiality threshold specified for that type of transactions with that related party group.

non-related parties under similar circumstances,⁷ the bank shall, to the extent that it is able to under the terms of those transactions, take such steps as may be necessary to unwind or exit those transactions.

- 15 The special majority of three-fourths of the board, as required in paragraph 8(e) above, shall be determined based on the total number of directors on the board (excluding any directors required to abstain in accordance with paragraph 17 of this Notice).
- 16 Where approval of a transaction with a related party or write-off of an exposure to a related party is required under paragraph 8(e) above, a bank in Singapore shall ensure that the approval is given in relation to all the terms and conditions of the transaction or write-off, including those which relate to loan tenure, interest rate, fees and collateral (where applicable).
- 17 A bank in Singapore shall ensure that any director with an interest in a transaction or write-off for which approval is required to be sought from the board abstains from voting. In the case of a bank incorporated outside Singapore, where the authorised person (if there is more than one authorised person, all such persons) has an interest in the transaction or write-off, the bank incorporated outside Singapore shall seek approval from its board.
- 18 Any increase in an existing exposure or change to the terms and conditions governing a transaction that has been approved in accordance with the requirements in paragraph 8(e), shall be approved in accordance with paragraph 8(e)(A) or 8(e)(B), as the case may be, unless, on an aggregated basis, from the time of the first increase and over a period of one year, the exposure is increased by less than 5%, and the change in terms and conditions is not material.
- 19 Any increase in an existing exposure or change to the terms and conditions governing a transaction with a related party, where the related party was a non-related party before the increase or change or where the transaction was entered into before this Notice came into effect, shall be subject to the requirement for prior approval if any of the conditions in paragraphs 8(e)(i), (ii) or (iii) are met. Save as aforesaid,

(a) a transaction with a related party which was not a related party before:

(i) the exposure which arose therefrom increased; or

(ii) its terms and conditions were changed, and

(b) a transaction entered into before this Notice came into effect,

are not subject to the requirement for prior approval in paragraph 8(e).

⁷ For the avoidance of doubt, the bank's board and authorised person(s) may take such other factors into consideration as they may be required to, to fully discharge their obligations to the bank.

- 20 Subject to paragraphs 21 and 22, on an exceptional basis, a bank in Singapore may obtain the approval required under paragraph 8(e) after entering into a transaction with a related party, if the transaction needs to be entered into on an urgent basis.
- 21 A bank shall obtain the approval referred to in paragraph 20 no later than one month from the date the transaction is entered into, failing which the bank shall immediately terminate and void the transaction.
- 22 For the purpose of paragraph 21, a bank shall reserve the right to unconditionally terminate and void the transaction without any penalties in the terms and conditions of the transaction, if the transaction is not approved in accordance with paragraph 8(e) above within one month of the date the transaction was entered into. A bank in Singapore shall have procedures in place to ensure that it exercises its right to terminate and void such transactions.

Effective Date

- 23 This Notice shall take effect on 1 July 2014.