

MAS Notice 1012

11 June 2021

NOTICE TO MERCHANT BANKS
BANKING ACT, CAP. 19

CREDIT FACILITIES TO A COUNTERPARTY OR GROUP OF COUNTERPARTIES

1 This Notice is issued pursuant to section 55ZE(1) of the Banking Act (Cap. 19) (the “Act”) and applies to all merchant banks incorporated in Singapore (“Merchant Banks”).

2 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.

3 For the purposes of this Notice –

“bank” means –

- (a) any company which holds a valid licence under section 7 or 79 of the Act; or
- (b) any entity established or incorporated in a foreign country or jurisdiction which is approved, licensed, registered or otherwise regulated by a bank regulatory agency of the foreign country or jurisdiction to carry on banking business under the laws of the foreign country or jurisdiction;

“bank regulatory agency”, in relation to a foreign country or jurisdiction, means an authority in the foreign country or jurisdiction exercising any function that corresponds to a regulatory function of the Authority under the Act;

“banking group”, in relation to a Merchant Bank, means the Merchant Bank and its banking group entities;

“banking group entity”, in relation to a Merchant Bank, means any subsidiary or any other entity which is treated as part of the Merchant Bank’s group of entities according to the Accounting Standards;

“capital funds”, in relation to –

- (a) a Merchant Bank, has the same meaning as in paragraph 3 of MAS Notice 1001, at the Merchant Bank standalone (“Solo”) level; and
- (b) a banking group, has the same meaning as in paragraph 3 of MAS Notice 1001, at the consolidated (“Group”) level;

“counterparty” means –

- (a) at the Solo level, a person who has an obligation to the Merchant Bank as a result of the Merchant Bank’s contractual or other arrangements; and

- (b) at the Group level, a person who has an obligation to the Merchant Bank or any of its banking group entities, as a result of the contractual or other arrangements of the Merchant Bank or its banking group entities;

“credit facilities” means any of the following:

- (a) the granting by a Merchant Bank of advances, loans and other facilities whereby a counterparty of the Merchant Bank has access to funds or financial guarantees;
- (b) the holdings by a Merchant Bank of debt instruments¹ issued by a counterparty of the Merchant Bank;
- (c) the incurring by a Merchant Bank of other liabilities on behalf of a counterparty,

where such funds, financial guarantees, holdings and other liabilities are denominated in Singapore dollars;

“credit facilities limit” means the respective limits described in paragraphs 5, 6 and 7, as the case may be;

“family member” has the same meaning as in the Fifth Schedule to the Act;

“group of counterparties” means a group of persons where –

- (a) at least one person in the group is a counterparty to the Merchant Bank or any of its banking group entity; and
- (b) one person in the group is able to control or influence every other person in that group;

“public sector entity” means –

- (a) a regional government or local authority that is able to exercise one or more functions of the central government at the regional or local level; or
- (b) an administrative body or non-commercial undertaking responsible to, or owned by, a central government, regional government or local authority, which performs regulatory or non-commercial functions.

4 For the purposes of the definition of “group of counterparties” in paragraph 3, and the Annex, a company (“Company A”) exercises control or influence over another company (“Company B”) if Company A, directly or indirectly, –

- (a) holds 20% or more of the voting shares of Company B;
- (b) has the power to determine the composition of the board of directors of Company B; or
- (c) has the power to exercise controlling influence over the management and policies of Company B.

¹ Examples are bonds and floating rate notes.

5 Subject to paragraphs 7 and 8, a Merchant Bank must not permit, at the Solo level, the aggregate of its credit facilities to any counterparty or group of counterparties to exceed 30% of the capital funds of the Merchant Bank.

6 Subject to paragraphs 7 and 8, a Merchant Bank –

- (a) must aggregate the credit facilities of the Merchant Bank and its banking group entities to the same counterparty or group of counterparties; and
- (b) must not permit, at the Group level, the aggregate of the credit facilities of its banking group to any counterparty or group of counterparties to exceed 30% of the capital funds of its banking group.

7 A Merchant Bank may, with the approval of the Authority, increase the credit facilities limit in paragraph 5 or 6(b) to not more than 100% of the capital funds of the Merchant Bank or its banking group, as the case may be, subject to any of the following conditions:

- (a) the credit facilities in excess of the credit facilities limit in paragraph 5 or 6(b) must be fully guaranteed by the head office or one or more shareholders of the Merchant Bank;
- (b) the capital base of the Merchant Bank or its banking group, as the case may be, must be enlarged through any of the following:
 - (i) an increase in paid-up capital from the head office or one or more shareholders of the Merchant Bank;
 - (ii) an increase in subordinated loans from the head office or one or more shareholders of the Merchant Bank where such subordinated loans –
 - (A) have a minimum 7-year original maturity;
 - (B) are extended for a further term once the unexpired term falls below 2 years and subsequent extensions are made for so long as the subordinated loan is required to make up for the shortfall in capital funds required for the Merchant Bank to comply with the credit facilities limit in paragraph 5 or 6(b);
 - (C) do not have any performance or other covenants attached which may trigger immediate or early repayment;
 - (D) do not have any cross-default clauses or negative pledges;
 - (E) must automatically convert into capital to provide a cushion for losses arising from bad and doubtful debts, unless the Merchant Bank undertakes a reconstruction of its capital which the Authority may, on the request of the Merchant Bank, approve in writing; and
 - (F) comply with such other conditions which the Authority may impose on the Merchant Bank in writing.

8 For the purposes of complying with the credit facilities limit, a Merchant Bank when aggregating its credit facilities or the credit facilities of its banking group, as the case may be, may exclude the following:

- (a) any credit facility granted to the Government or any body corporate or unincorporate established by or under any written law to perform or discharge a public function in Singapore;
- (b) any credit facility granted to a bank or a merchant bank;
- (c) any loan or advance made against telegraphic transfers;
- (d) any facility granted against any letter of credit or any bill or guarantee or any document in respect of any import into, or export from, Singapore;
- (e) any other type of credit facilities which the Authority may, on the request of the Merchant Bank, approve in writing.

9 For the purposes of complying with the credit facilities limit, a Merchant Bank must apply the credit facilities limit to the amount of credit facilities granted, or the amount outstanding under the credit facilities, whichever is the higher².

10 For the purposes of aggregating credit facilities to a group of counterparties pursuant to paragraphs 5 and 6, a Merchant Bank must aggregate credit facilities granted to different persons within the group of counterparties in accordance with the requirements set out in the Annex, and apply the credit facilities limit to the aggregate amount of such credit facilities.

11 Notwithstanding that a person may not be included in a group of counterparties, a Merchant Bank must aggregate the credit facilities granted to one or more persons with that of a group of counterparties if there are reasons for the Merchant Bank to regard the credit facilities as connected in such a way so as to pose a single risk to the Merchant Bank.

12 Where a Merchant Bank becomes aware that the aggregate of its credit facilities to any counterparty or group of counterparties has breached the credit facilities limit, the Merchant Bank must –

- (a) notify the Authority immediately;
- (b) assess the effect of the breach in terms of the risks posed to the Merchant Bank;
- (c) prepare a plan to rectify the situation and inform the Authority of its plan; and
- (d) undertake prompt corrective action in accordance with the plan prepared pursuant to sub-paragraph (c).

² To avoid doubt, for fully disbursed loans, a Merchant Bank must apply the credit facilities limit to the amount outstanding under the credit facilities.

Restrictions on Granting of Credit Facilities

- 13 A Merchant Bank must not –
- (a) permit the aggregate of its unsecured credit facilities to any of the following persons, to exceed five thousand dollars:
 - (i) any of its directors or their family members, or a firm in which it or any of its directors or their family members, has an interest (as a partner, manager or agent) or to any individual or firm whereby any of its directors or their family members is a guarantor;
 - (ii) any related corporation that is not a bank; or
 - (b) permit the aggregate of its unsecured credit facilities to any of its employee other than a director, to exceed one year's emolument of that employee.

14 For the purposes of paragraph 13, "unsecured credit facilities" means, credit facilities granted without security, or in respect of any credit facility granted with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the Authority is satisfied that there is no established market value, on the basis of a valuation approved by it.

Implementation of Policies on Concentration of Exposures to a Counterparty or Group of Counterparties

15 A Merchant Bank must establish and implement policies to limit, manage and monitor the concentration of its exposures (regardless of currency denomination) to any counterparty or group of counterparties at both the Solo and Group levels. The Merchant Bank must ensure that its board of directors, or a designated committee of its board of directors, approves these policies.

Effective Date

16 This Notice takes effect on 1 July 2021.

Aggregation of credit facilities to a group of counterparties**Company**

1 For the purposes of aggregating credit facilities to a group of counterparties at the Solo level or the Group level, a Merchant Bank, when aggregating credit facilities granted by it or its banking group, as the case may be, –

- (a) must aggregate credit facilities granted to a counterparty with credit facilities granted to the subsidiaries of the counterparty and other companies under the control or influence of the counterparty; and
- (b) need not aggregate credit facilities granted to a counterparty, which is a subsidiary of a company or is under the control or influence of a company (referred to in this paragraph as company A), with credit facilities granted to the other subsidiaries of company A and other companies under the control or influence of company A, if company A is not borrowing from the Merchant Bank or its banking group, as the case may be, except in the following situations:
 - (i) company A has provided a guarantee to the Merchant Bank or its banking group, as the case may be, for the credit facilities granted to the counterparty, and the Merchant Bank or its banking group, as the case may be, looks primarily to the guarantee for repayment of such credit facilities;
 - (ii) the credit facility granted to the counterparty is for the use or accommodation of company A or other subsidiaries of company A or other companies under the control or influence of company A;
 - (iii) where credit facilities are granted to two or more counterparties under the control or influence of company A, and the businesses of such counterparties are inter-dependent. The Merchant Bank must aggregate credit facilities to all inter-dependent counterparties, unless the credit facilities granted to an inter-dependent counterparty are granted on the counterparty's own merits, being supported by the credit standing of the counterparty as evidenced by its cash flow, capital size, profitability and other financial indicators.

2 For the purposes of paragraph 1(b)(iii) of this Annex, a counterparty ("Counterparty C") is inter-dependent with another counterparty ("Counterparty D") if 50% or more of Counterparty C's gross revenue or expenditure is derived from transactions with Counterparty D.

Partnership

3 Subject to paragraph 4 of this Annex, a Merchant Bank must aggregate credit facilities granted to a partnership with credit facilities granted to every partner of the partnership, regardless of the purpose or use of the proceeds, except for credit facilities granted to a limited partner of the partnership where the proceeds of the credit facilities are not used for the partnership.

4 Where a partner of a partnership is a company, a Merchant Bank must aggregate credit facilities granted to the partner and credit facilities granted to the partnership attributable to the

partner, with credit facilities granted to a company of which the partner is a subsidiary or is under the control or influence, unless –

- (a) the partner has sufficient financial resources to repay the credit facilities granted to the partner and credit facilities granted to the partnership attributable to the partner; and
- (b) such aggregation is not otherwise required based on paragraph 1 of this Annex.

5 A Merchant Bank must aggregate credit facilities granted to persons engaged in a common enterprise whether in the form of a partnership, joint venture or other association.

Foreign Government, Foreign Public Sector Entity and Company owned by Foreign Government

6 A Merchant Bank must aggregate credit facilities granted to foreign governments, foreign public sector entities and companies owned by foreign governments, except where –

- (a) the Merchant Bank is satisfied that the counterparty has sufficient financial resources to repay the credit facility;
- (b) the proceeds of the credit facility are used for the counterparty's own business, which must be stated in the credit facility agreement or otherwise in writing by the counterparty; and
- (c) the Merchant Bank maintains credit files containing the following information for such period of time that the credit facility remains outstanding:
 - (i) the legal status of the counterparty, its ownership, and any form of control that may be exercised directly or indirectly by the government involved;
 - (ii) financial standing of the counterparty for at least 3 years prior to the grant of the credit facility;
 - (iii) the purpose of the credit facility;
 - (iv) the counterparty's means of repaying the credit facility based on its financial history, present and projected economic and financial performance and availability of guarantee or financial support from third parties.

Individual

7 All credit facilities granted to an individual and any of his associates including family members must be aggregated, except where –

- (a) the individual has sufficient financial resources to repay the credit facility; and
- (b) the proceeds from the credit facility are for the individual's own use, which must be stated in the credit facility agreement or otherwise in writing by the individual.