



## **MAS NOTICE 643**

21 November 2016

NOTICE TO BANKS

BANKING ACT, CAP 19

### **TRANSACTIONS WITH RELATED PARTIES**

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#### **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 –

- (a) transactions of banks in Singapore with related parties;
- (b) responsibilities of banks in relation to transactions of entities in the bank’s group with related parties,

which seek to minimise the risk of abuse arising from conflicts of interest.

#### **Definitions**

3 For the purposes of this Notice –

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

“**authorised person**”, in relation to a bank incorporated outside Singapore, means one or more persons, or a committee of such persons, as may be authorised by the board of the bank to exercise any of its powers or perform any of its functions or duties under this Notice, either generally or in a particular case;

“**bank group**” –

(a) in relation to a bank incorporated in Singapore, means a group comprising all the branches of the bank located outside Singapore, its subsidiaries and any other entity treated as part of the bank's group of companies according to Accounting Standards; and

(b) in relation to a bank incorporated outside Singapore, means a group comprising its subsidiaries, and any other entity treated as part of the bank's group of entities according to Accounting Standards, that is reflected as an investment in the books of the bank in Singapore in relation to its operations in Singapore;

**"board"**, in relation to an entity, means the board of directors of the entity;

**"independent director"** has the same meaning as in regulation 2 of the Banking (Corporate Governance) Regulations 2005;

**"person"** means any individual, corporation, association, trustee of a trust in relation to the operations of the trust, 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);

**"entity in its bank group"** in relation to a bank, means any entity which forms part of the bank group of the bank, including any branch;

**"related corporation group"** –

(a) in relation to a bank incorporated in Singapore, means a group of entities comprising all the related corporations of the bank, and any branches of the bank located outside Singapore; and

(b) in relation to a bank incorporated outside Singapore, means a group of entities comprising all the related corporations of the bank, its head office and any branches of the bank located outside Singapore;

**"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, of the bank;

(b) any person whose interests, in the opinion of the board of the bank may conflict with those of the bank and who is specified by the board

in the internal documents of the bank, as a related party of the bank for the purposes of this Notice; or

- (c) such other person as the Authority may specify as a related party of the bank by notice in writing to the bank where the Authority is of the opinion that that person's interests conflict with those of the bank and

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(i) the bank is accustomed or under an obligation, whether formal or informal, to act in accordance with that person's directions, instructions or wishes; or

(ii) that person is in a position to determine the policies of the bank;

**“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 of the bank;

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

**“senior management”** —

(a) in relation to a bank incorporated in Singapore, means a senior officer of the bank or any branches of the bank located outside Singapore, in relation to whom conflicts of interest with the bank or any of its branches 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, and the senior officer's family members;

(b) in relation to a bank incorporated outside Singapore, means a senior officer of the branch of the bank located within Singapore, in relation to whom conflicts of interest with the branch 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, and the senior officer's family members;

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

- (a) every 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 board<sup>1</sup>,

but does not include any person who falls within a director group of the bank;

**“transaction”** means any –

- (a) exposure; or
- (b) dealing, including those for which no exposure arises, such as a contract for service, a sale or purchase of assets, a construction contract, a lease agreement, a borrowing or a write-off.

4 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 (Rg. 5). In the case where there is any inconsistency between the meaning in the Act and the Banking Regulations, the meaning in the Act shall prevail.

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<sup>1</sup> For the purpose of the definition of “senior management group”, a 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.

## **Related Party Groups**

5 For the purposes of this Notice, a bank in Singapore may regard an entity as belonging to only one related party group where –

- (a) in the case of a bank incorporated in Singapore, the entity is in the bank's –
  - (i) financial group or substantial shareholder group; and
  - (ii) related corporation group; or
- (b) in the case of a bank incorporated outside Singapore, the entity is in the bank's financial group and related corporation group.

## **General Principle Governing Related Party Transactions**

6 A bank in Singapore shall ensure that every related party transaction is conducted free of conflicts of interest, and that every entity in its bank group does the same.

## **Authorisation and Delegation by Boards**

7 For the purpose of complying with this Notice other than paragraph 15, in the case of a bank incorporated outside Singapore, the bank in Singapore may replace any reference to –

- (a) the board of the bank, with an authorised person of the bank; and
- (b) a special majority of three-fourths of the board of the bank, with a special majority of three-fourths of an authorised person, where the authorised person is a committee.

8 For the purpose of paragraphs 22, 25, 27, 29, and 30, a board may delegate its powers, functions or duties to a board committee comprising a majority of independent directors. Where such powers, functions or duties have been delegated, any reference to a special majority of three-fourths of the board will be a reference to a special majority of three-fourths of the board committee, which shall be determined based on the total number of directors on the board

committee, excluding any directors required to abstain in accordance with paragraph 15.

### **Excluded Related Party Transactions**

9 For the purpose of this Notice, any requirement that a bank in Singapore has to comply with (or ensure that every entity in its bank group complies with, as the case may be) in relation to a related party transaction need not apply to the following transactions:

- (a) where the transaction–
  - (i) is between a bank in Singapore or an entity in its bank group and an employee or director of the bank; and
  - (ii) relates to the remuneration of, or staff benefits granted to, the employee or director, as the case may be, pursuant to the human resource policy of the bank or any policy of the bank that pertains to such remuneration or staff benefits, and such policy has been approved by the board of the bank;
- (b) where the value of the transaction is below the nominal threshold set by the bank in Singapore (or entity in its bank group, as the case may be) pursuant to paragraph 10(e);
- (c) where the transaction –
  - (i) is between a bank in Singapore or an entity in its bank group and an entity in the related corporation group of the bank; and
  - (ii) arises from a central risk or liquidity management function or pertains to centrally coordinated services.

### **Implementation of Policies, Procedures and Controls on Related Party Transactions**

10 Every bank in Singapore shall establish and implement policies and procedures, and ensure that each entity in its bank group establishes and

implements policies and procedures, on related party transactions (referred to in this Notice as “RPT PP”), for the purposes of –

- (a) determining the persons in the bank’s 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;
- (b) ensuring that every related party transaction which it enters into is based on terms and conditions<sup>2</sup> that are not more favourable than a similar transaction with a non-related party of the bank under similar circumstances.<sup>3</sup> In the case where there is no similar transaction with a non-related party made under similar circumstances, the bank (or the entity in its bank group, as the case may be) must have, in good faith, been prepared to offer or apply those same terms and conditions to a similar type of transaction had it been made with any non-related party under similar circumstances;
- (c) setting out the materiality thresholds for transactions where exposures arise for any related party group of the bank.<sup>4</sup> Where a new exposure to any person in the related party group would cause

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<sup>2</sup> These terms and conditions shall include those relating to credit assessment, loan tenure, interest rates, fees, amortisation and collateral. Where a related party transaction conducted at arm’s length satisfies the Inland Revenue Authority of Singapore’s “Transfer Pricing Guidelines” issued in relation to section 34D of the Income Tax Act, the transaction may be considered to have satisfied the requirements of the policy in paragraph 10(b).

<sup>3</sup> For the purpose of paragraph 10(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. For example, if the related party charges the bank \$100,000 for the lease of its building, which has factored in a \$10,000 discount as no commission was incurred, the terms and conditions of that transaction shall be compared against the lease of a building from a non-related party which would have cost the bank \$100,000.

<sup>4</sup> A bank may choose to set thresholds for exposures on an aggregate or a more granular basis for any related party group. For example, granular thresholds may be set according to product class for a related party group, or per counterparty within a related party group.

the materiality threshold to be exceeded, the transaction shall be subject to approval in accordance with this Notice;

- (d) setting out the materiality thresholds for related party transactions in which no exposure arises (referred to in this Notice as “non-exposure transaction”), other than for write-offs. Where a new non-exposure transaction exceeds the materiality threshold, the non-exposure transaction shall be subject to approval in accordance with this Notice;
- (e) setting out the nominal thresholds for related party transactions, below which every transaction with the related party may be excluded as a related party transaction for the purposes of compliance with this Notice;
- (f) preventing any person who may, or whose family member may, benefit directly or indirectly, from a related party transaction, from being part of the approval process for the related party transaction;
- (g) ensuring that sample audit checks are conducted periodically to ensure the related party transactions entered into are consistent with its RPT PP, with the frequency of such audit checks to be determined by the Audit Committee of the bank (or that of the entity in its bank group, as the case may be);
- (h) identifying all related party transactions; and
- (i) ensuring that every exception to, and breach of the RPT PP of the bank (or entity in its bank group, as the case may be), is escalated for independent review by one or more appropriate senior management of the bank (or that of the entity in its bank group, as the case may be) and, where the senior management has assessed that there is a risk of conflict of interest, to the board of the bank



(or that of the entity in its bank group, as the case may be) for timely action.<sup>5</sup>

11 In addition to paragraph 10, a bank in Singapore shall, after 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, include in its RPT PP, policies and procedures requiring its board to specify that such a person shall be considered a related party for the purposes of this Notice and to classify and treat each person so specified as a person in a particular related party group.

12 For the purposes of complying with paragraph 10, a bank in Singapore and any entity in its bank group may rely on the RPT PP established by the bank's head office if the RPT PP imposes on the bank (or any entity in its bank group, as the case may be) requirements equivalent to, or more stringent requirements than, that set out in this Notice.

13 A bank in Singapore shall ensure that its board reviews, on a regular basis, the bank's RPT PP to ensure that it complies with this Notice, and ensure that every entity in its bank group ensures that that entity's board does the same.

14 A bank in Singapore shall subject (and ensure that every entity in its bank group subjects) every proposed related party transaction that deviates from its RPT PP to independent review by one or more senior management prior to the bank (or entity in its bank group, as the case may be) entering into the transaction, unless the deviation was already approved by the board of the bank (or that of the entity in its bank group, as the case may be). The bank shall report (and ensure that every entity in its bank group reports) every transaction that deviated from the RPT PP of the bank (or that of the entity in its bank group, as the case may be) to the board of the bank (or that of the entity in its bank group, as the case may be), on a quarterly basis.

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<sup>5</sup> For the avoidance of doubt, the independent review here does not replace the requirement for the prior approval of the board. If the transaction is one which requires prior approval of the board, the bank must still obtain the board's approval before entering into the transaction, unless paragraph 30 applies.

15 A bank in Singapore shall ensure that any director with an interest in a transaction for which approval is required to be sought from the board abstains from voting, and ensure that every entity in its bank group does the same. In the case of a bank incorporated outside Singapore, where any authorised person has an interest in the transaction, the bank incorporated outside Singapore shall seek approval from its board or, from an alternate authorised person who is at least of the same seniority as the authorised person who is interested in the transaction.

16 For purposes of paragraphs 10(i) and 14, a bank in Singapore shall ensure that the senior management conducting the independent review of a related party transaction recuse himself from conducting the review if he has any interest in the transaction and ensure that every entity in its bank group does the same.

### **Identification of Related Parties**

17 A bank in Singapore shall exercise due care 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.

18 A bank in Singapore shall require its directors, senior management and substantial shareholders to declare once every calendar year (referred to in this paragraph as “annual declaration”) to its board—

- (a) all persons whose interests may conflict with those of the bank. Such persons shall include, at the minimum, all persons in the bank’s director groups, senior management groups and substantial shareholder groups; and
- (b) the applicable limb of the definition of “related party” which the person would come under.

19 A bank in Singapore may rely on the annual declarations and such other information as may come to its attention to identify its related parties and be considered to have complied with the requirements in paragraph 17 where it does so. For the purpose of paragraph 18, ‘director’, ‘senior management’ and ‘substantial shareholder’ shall exclude the family members of the respective directors, senior management and substantial shareholders.

### **Materiality Thresholds to be Established**

20 For the purposes of paragraphs 10(c) and 10(d), the bank shall, at the minimum –

- (a) set separate materiality thresholds for exposures to each related party group of the bank<sup>6</sup>;
- (b) set separate materiality thresholds for each type of non-exposure transaction (other than write-offs) with a related party;
- (c) take into account the nature, scope, frequency, value of and risks associated with its related party transactions when setting the materiality thresholds;
- (d) on an annual basis, seek the approval of the board for the materiality thresholds that the bank sets pursuant to sub-paragraphs (a) and (b). The bank shall ensure that in assessing whether to approve the thresholds, the board has regard to the factors stated in sub-paragraph (c); and
- (e) where approval is given in accordance with sub-paragraph (d) by the board, document the reasons given by the board in giving the approval and submit such document to the Authority upon the Authority's request;

and ensure that all entities in its bank group does the same.

### **Nominal Thresholds to be Established**

21 In relation to paragraph 10(e), the bank shall –

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<sup>6</sup> A bank may choose to set thresholds for exposures on an aggregate or a more granular basis for any related party group. For example, granular thresholds may be set according to product class for a related party group, or per counterparty within a related party group. Aggregate exposures to related party groups are still to be reported pursuant to MAS Notice 639A.

- (a) set separate nominal thresholds for each type of related party transaction;
- (b) take into account the nature, scope, frequency, value of and risks associated with each type of related party transactions in setting such nominal thresholds;
- (c) on an annual basis, seek the approval of the board for the nominal thresholds that are set for each type of related party transaction. The bank shall ensure that in assessing whether to approve the nominal thresholds, the board has regard to the factors stated in sub-paragraph (b); and
- (d) where approval is given under sub-paragraph (c) by the board, document the reasons given by the board in giving the approval and submit such document to the Authority upon the Authority's request;

and ensure that all entities in its bank group does the same.

#### **Related Party Transactions Requiring Prior Approval of the Board**

22 A bank in Singapore shall –

- (a) obtain the approval of a special majority of three-fourths of its board; and
- (b) ensure that every entity in its bank group obtains the approval of a special majority of three-fourths of the entity's board,

before the bank (or the entity in its bank group, as the case may be)--

- (i) enters into a related party transaction which exceeds the applicable materiality threshold set pursuant to paragraph 10(c) or (d), as the case may be; or
- (ii) writes off any of its exposures to any of the bank's related parties.

23 The special majority of three-fourths of the board in paragraphs 22, 25, 27, 29, and 30 shall be determined based on the total number of directors on the board, excluding any directors required to abstain in accordance with paragraph 15.

24 Where approval of a transaction with a related party is obtained under paragraph 22, 25, 27, 29, or 30, a bank in Singapore shall ensure that the approval is given in relation to all the terms and conditions of the transaction<sup>7</sup> and ensure that every entity in its bank group does the same.

25 A bank in Singapore (or an entity in its bank group) may seek the pre-approval of a special majority of three-fourths of its board for particular transaction types which fall within the description set out in paragraph 22. For the avoidance of doubt, where the bank (or entity in its bank group, as the case may be) has obtained the pre-approval of its board for all the terms and conditions<sup>8</sup> of that particular transaction type, the bank (or entity in its bank group, as the case may be) does not need to obtain approval (under paragraph 22) before entering into each of these transactions.

26 Notwithstanding paragraph 22, a bank in Singapore (or an entity in its bank group, as the case may be) does not need to obtain the approval referred to in that paragraph where -

- (a) the bank (or the entity in its bank group, as the case may be) enters into a transaction with an entity in the related corporation group or financial group of the bank; or
- (b) the bank (or any entity in its bank group, as the case may be) enters into any of the following non-exposure transactions:

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<sup>7</sup> This would include the terms and conditions relating to the loan tenure, interest rate, fees and collateral, where applicable.

<sup>8</sup> This would also include those relating to loan tenure, interest rate, fees and collateral, where applicable.

- (i) transactions that are offered on standard terms and conditions to all customers;<sup>9</sup> or
- (ii) transactions for which the bank (or any entity in its bank group, as the case may be) does not determine any of the terms and conditions governing the transaction.<sup>10</sup>

27 Where a transaction has been approved in accordance with paragraphs 22, 25, 27, 29, or 30, a bank shall obtain the approval of a special majority of three-fourths of its board (and, where the transaction is entered into by an entity in its bank group, ensure that that entity obtains the approval of three-fourths majority of the entity's board) before any increase in the existing exposure of the transaction (the "proposed increase") or change to the terms and conditions governing the transaction unless-

- (a) the change is within a year from the initial approval of the transaction or the most recently approved increase in exposure (if any), whichever is later; and
- (b) the change in terms and conditions is not material; and
- (c) if the change is an increase in exposure--
  - (i) the proposed increase is less than 5%; and
  - (ii) the total increase in exposure (including the proposed increase) over the preceding 12 months is less than 5%.

28 For transactions pre-approved under paragraph 25, the date of approval for the purposes of paragraph 27 will be taken to be the date that the transaction was entered into.

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<sup>9</sup> Examples of such non-exposure transactions are deposit-taking services, brokerage services, custody services, and the sale of investment products.

<sup>10</sup> An example would be where the bank acts as an intermediary to the transaction between two or more parties, such as the customer's purchase of insurance products from an insurer through the bank or entity in its bank group, as the case may be.

29 In the case of a related party transaction which is entered into with –

- (a) a person prior to him becoming a related party; or
- (b) a related party prior to the effective date of this Notice,

a bank shall obtain (and, where the transaction is entered into by an entity in its bank group, ensure that that entity obtains) the approval of a special majority of three-fourths of the board of the bank (or that of the entity in its bank group, as the case may be) before increasing or writing-off the exposure or changing any terms and conditions governing the transaction where –

- (i) the transaction is one which exceeds the applicable materiality threshold set pursuant to paragraph 10(c) or (d), as the case may be; or
- (ii) the transaction involves a write-off.

30 Notwithstanding paragraph 22, a bank in Singapore (or an entity in its bank group, as the case may be) may obtain the approval of a special majority of three-fourths of its board (or that of the entity's board, as the case may be) no later than one month after entering into a transaction with a related party, where–

- (a) the bank (or the entity in its bank group, as the case may be) had to enter into the transaction on an urgent basis;
- (b) the terms and conditions governing the transaction allows the bank (or the entity in its bank group, as the case may be) to terminate or void the transaction without any conditions and penalties in the event that such approval is not obtained within the required time; and
- (c) the bank (or the entity in its bank group, as the case may be) has procedures in place to ensure that it is able to exercise its right to terminate or void the transaction in accordance with sub-paragraph (b).

31 Where a bank (or an entity in its bank group, as the case may be) is unable to obtain the approval referred to in paragraph 30 and does not immediately

terminate and void the transaction, the bank shall immediately inform the Authority.

**Effective Date**

32 This Notice shall take effect on 21 November 2018.

33 MAS Notice 643 dated 2 April 2013 is cancelled with effect from 21 November 2018.

**\*Notes on History of Amendments**

1. MAS Notice 643 dated 2 April 2013
2. MAS Notice 643 dated 21 November 2016