



RESPONSE TO FEEDBACK RECEIVED – CONSULTATION ON PROPOSED REQUIREMENTS FOR BANKS’ PRIVATE EQUITY AND VENTURE CAPITAL INVESTMENTS

1 Introduction

1.1 On 16 December 2009, MAS conducted a public consultation on the proposed requirements for banks’ private equity and venture capital (“PE/VC”) investments.

1.2 The consultation period closed on 22 January 2010, and MAS would like to thank all respondents for their comments.

1.3 MAS has carefully considered the feedback received, and where appropriate, incorporated them into the revised regulation. Comments that are of wider interest, together with MAS’ responses, are set out below.

2. Scope of PE/VC Investments

Proposal

2.1 MAS has proposed expanding the current characterisation of PE/VC investments in the Banking Regulations and MAS Notice 630 to encompass a wider range of PE/VC investments, in a manner that is industry-neutral. The revised scope would regard investments where significant stakes are taken in companies with potential for high growth or value creation as PE/VC in nature.

Feedback

2.2 A respondent queried if an investment in a company carrying on a financial business which has the potential for high growth or value creation may qualify as a PE/VC investment.

MAS’ Response

2.3 An investment in a company carrying on a financial business would not qualify for the PE/VC exclusion. An investment in a company carrying

on a financial business is not prohibited under Section 30 of the Banking Act. Banks may apply to MAS for approval under Section 32 of the Banking Act for major stake investments in a company carrying on a financial business.

Feedback

2.4 The current and revised MAS Notice 630 state that a PE/VC investment does not include an investment in a company or firm that is carrying on the business of engaging in property related activities, or a company or firm that is not carrying on any substantial business or is not in operation¹. A respondent proposed that investments in property related activities be included as PE/VC investments. Another respondent queried whether a PE/VC investment that subsequently sells its businesses or assets, or goes into liquidation, resulting in it not carrying any substantial business or being in operation would be regarded as “a company or trust which is not carrying on any substantial business or is not in operation”, and hence not fall within the scope of permitted PE/VC investments.

MAS’ Response

2.5 MAS sets various rules that limit banks' exposure to the property sector in order to minimise the vulnerability of the banking system to a property market downturn. The PE/VC exclusion under the Banking Regulations is not intended to apply to investments in property related activities.

2.6 Investments that have been classified by the bank as PE/VC at the onset of the investment may continue to be classified as PE/VC investments, during and subsequent to the process of liquidation or divestment, and would not be regarded as “a company or trust which is not carrying on any substantial business or is not in operation”.

Feedback

2.7 Respondents sought clarification on:

¹ Paragraph 2.1 of the revised MAS Notice 630 specifies that a PE/VC investment does not include an investment in a company or a trust which is –

- (A) not carrying on any substantial business or is not in operation;
- (B) carrying on the business of engaging in property related activities (as defined in the Banking Regulations 2001); or
- (C) carrying on the business of factoring, leasing equipment or otherwise purchasing debt obligations from others.

- a. whether non-major stake PE/VC investments would be subject to the proposed requirements under the revised MAS Notice 630; and whether PE/VC investments where the bank's stakes are reduced to less than 10% of the investee's share capital would continue to be subject to the proposed requirements under the revised MAS Notice 630; and
- b. whether the proposed requirements under the revised MAS Notice 630 would apply to PE/VC investments held in the insurance funds of a bank's insurance subsidiary.

MAS' Response

2.8 The requirements under the revised MAS Notice 630 do not apply to PE/VC investments which do not fall within the scope of paragraphs 2.1(a), (b), (c), (d), (e), (f), (g) or (h) of the revised MAS Notice 630.

2.9 Regulations 12 and 13 of the Banking Regulations provide that the control of voting power or interest in the company that is held by a bank's subsidiary that is an insurer registered under the Insurance Act, through any insurance fund established and maintained under the Insurance Act for its participating policies or investment-linked policies and which relate to assets held for the purpose of meeting the liabilities in respect of the policies of the insurance fund are not subject to Section 32 of the Banking Act. Hence, the requirements under the revised MAS Notice 630 would not apply to such investments held through the insurance funds of a bank's insurance subsidiary.

Feedback

2.10 Respondents sought clarification on various matters related to PE/VC investment instruments and capital, specifically -

- a. whether options granted to the bank and credit facilities extended to the investee are included as PE/VC investments; and
- b. the basis for computing the value of PE/VC investments.

MAS' Response

2.11 Options granted to banks would be included, where if such options are exercised, the aggregate value of shares held exceeds 10% of the investee's share capital. Credit facilities to investee companies are included within the scope of MAS Notice 630 if they are held concurrently with instruments that

fall within the scope of paragraphs 2.1(a), (b), (c), (d), (e), (f) or (g) of the revised MAS Notice 630.

2.12 The net book value of PE/VC investments is to be used for reporting and for deduction of PE/VC investments from capital funds, where required, as well as for determining whether aggregated PE/VC investments exceed the prescribed investment limits.

3. Duration of Investments

Proposal

3.1 Reduction of the duration of investments to a seven year limit for direct PE/VC investments or investments in funds managed by the bank, and a 12 year limit for PE/VC investments in independent funds. Banks may hold a PE/VC investment in a fund that is managed by the bank or a party related to the bank for 12 years, if the bank's investment in the fund is less than 50% of the total fund size within five years from the date of inception of the fund, or if the duration of investment for each underlying PE/VC investment in the fund is less than seven years.

Feedback

3.2 A respondent proposed not to subject existing PE/VC portfolios to the proposed shorter duration of investments, as the bank may not be able to unilaterally change the duration of investments that had been committed to.

MAS' Response

3.3 MAS will permit existing PE/VC investments to be held for the duration currently permitted under MAS Notice 630.

4. Management Involvement

Proposal

4.1 Allow involvement by bank executives under the bank's private equity business line in management of PE/VC investees, but such involvement should be restricted to strategic issues which are Board-level in nature.

Feedback

4.2 A respondent requested for guidance on the scope of permitted involvement under the revised MAS Notice 630.

MAS' Response

4.3 MAS will clarify within the revised MAS Notice 630 that bank executives under the bank's private equity business line would be allowed to be involved in matters which are typically discussed at the Board level, or strategic issues. This should not pertain to the day-to-day operational matters of the PE/VC investees, or where involvement may give rise to conflicts of interest in the investee's transactions with the bank.

MONETARY AUTHORITY OF SINGAPORE

5 July 2010