

# CONSULTATION PAPER

P017 - 2013  
December 2013

## Related party transaction requirements for banks

MAS

Monetary Authority of Singapore

## PREFACE

i This consultation paper sets out proposed changes to MAS' requirements on banks' transactions with their related parties ("RPTs"), which are set out in MAS Notice 643 on "Transactions with Related Parties" ("MAS Notice 643") and in the Banking Act ("BA"). The proposed changes are intended to address the industry feedback that MAS has received, as well as to ensure oversight and controls over RPTs, to minimise the risk of abuses arising from conflicts of interest.

ii MAS invites comments from banks in Singapore and interested parties on the proposals made and questions raised in the consultation paper. Electronic submission is encouraged. Please submit your written comments by 15 January 2014 to:

Prudential Policy Department  
Monetary Authority of Singapore  
10 Shenton Way  
MAS Building  
Singapore 079117

Email: [policy@mas.gov.sg](mailto:policy@mas.gov.sg)

iii Please note that all submissions may be made public unless confidentiality is specifically requested.

## 1 INTRODUCTION

1.1 MAS' RPT requirements in the BA and MAS Notice 643 are designed to ensure that banks exercise appropriate oversight and control over their RPTs so as to mitigate the risk of abuses arising from conflicts of interest, as well as for alignment with international best practices including the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision ("BCPs").

1.2 Specifically, under the BA, banks have to report their credit facilities and exposures to related parties to their boards of directors or head offices, as the case may be, and MAS. A bank director also has to declare any interest that he may have in any credit facility from or exposure of the bank, and any office he holds or property he possesses which may conflict with his duties as a director, to the bank's board.

1.3 Further, under MAS Notice 643, banks are required to ensure that:

- (a) all RPTs are conducted at arm's length, i.e. based on terms and conditions that are not more favourable than similar transactions with non-related parties under similar circumstances;
- (b) RPTs with non-standard terms or which attract a material exposure are to be surfaced for prior board approval; and
- (c) all RPTs are monitored and subject to independent review.

1.4 Following the issuance of MAS Notice 643 in April 2013, MAS received feedback from the industry on the implementation challenges relating to the requirements in MAS Notice 643. MAS has carefully considered the feedback received, and proposes changes to some of the RPT requirements to address the issues raised. The proposed changes, as discussed in this consultation paper, are also intended to rationalise the RPT requirements in the BA with those in MAS Notice 643, while ensuring appropriate oversight and controls over banks' RPTs.

1.5 Aside from the proposed policy changes discussed in this consultation paper, MAS is also working to consolidate all of MAS' RPT requirements, including the limits on unsecured lending to banks'

related parties<sup>1</sup> currently set out in MAS Notice 639 on “Exposures to Single Counterparty Groups” (“MAS Notice 639”), and the reporting requirements in MAS Notice 639A on “Exposures and Credit Facilities to Related Concerns”, in MAS Notice 643. MAS will consult on the specific legislative amendments to the BA and MAS Notice 643 at a later juncture.

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<sup>1</sup> For example, a bank’s unsecured lending to any director group (other than persons in limb (d)(i) of the definition of “director group”) cannot exceed S\$5,000. A bank’s unsecured lending to persons in limb (d)(i) of “director group” similarly cannot exceed S\$5,000, unless the amounts in excess of S\$5,000 have been approved by the board of directors or such other persons as may have been approved by the board; in such a case, its aggregate unsecured lending cannot exceed 2% of the bank’s eligible total capital/capital funds. Limb (d)(i) of the definition of “director group” (set out in the Fifth Schedule of the BA) refers to companies in which a bank director is an executive officer.

## 2 DEFINITION OF “TRANSACTION”

2.1 MAS Notice 643 applies to all types of transactions, including both exposure (e.g. credit facilities) and non-exposure transactions (e.g. deposit-taking, service contracts, asset sales and purchases, lease agreements and construction contracts).<sup>2</sup>

### **Nominal transactions**

2.2 MAS has received feedback that it is onerous to require banks to subject all RPTs, regardless of value, to the RPT requirements. Banks have commented that it would not be meaningful to subject, for example, the purchases of consumables, to the RPT requirements because the risk arising from such small transactions would not be commensurate with the effort required to ensure full compliance with the RPT requirements.

2.3 MAS appreciates the concerns raised, and is considering exempting all RPTs below S\$100,000 from the scope of MAS Notice 643.

**Question 1:** MAS seeks views on the proposed exemption of RPTs below S\$100,000 from the scope of MAS Notice 643. MAS asks that specific reasons be given for views on the appropriateness (or otherwise) of the above threshold, and any alternative thresholds as may be suggested.

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<sup>2</sup> Each legally binding arrangement constitutes a single transaction which subsumes all actions taken thereunder. For example, a deposit-taking transaction occurs when the deposit account is first opened. Transfers of funds into and out of the account thereafter will not constitute separate transactions, provided that the terms and conditions of the account remain unchanged. Likewise, the grant of each credit facility constitutes one transaction, and the disbursements made thereunder should not be taken as separate transactions.

### 3 ARM'S LENGTH DEALING REQUIREMENT

3.1 MAS Notice 643 currently requires all RPTs, except loans to directors and employees as part of their overall remuneration package,<sup>3</sup> to be conducted free of conflicts of interest and on no more favourable terms than similar transactions with non-related parties in similar circumstances. However, we have received feedback that, aside from loans, banks also offer other special banking privileges to all staff, regardless of seniority, as part of staff benefits. These can include preferential rates for banking products, such as deposits.

3.2 MAS recognises that banks may offer preferential rates for banking products to staff for staff engagement purposes. MAS therefore proposes expanding the current exception to the arm's length dealing requirement for staff loans to other staff transactions, provided these transactions are granted as part of the officer or employee's overall remuneration package, in accordance with a staff remuneration policy that has been approved by the board.

**Question 2:** MAS invites comments on the exemption of all other staff transactions, besides staff loans, from the requirement that RPTs be conducted on no more favourable terms, provided that these transactions are granted as part of the officer or employee's overall remuneration package, in accordance with a staff remuneration policy that has been approved by the board.

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<sup>3</sup> This is to be subject to the bank's standard credit assessments and approval processes.

## 4 DEFINITION OF RELATED PARTIES

4.1 MAS Notice 643 currently defines a bank's related parties to mean the persons in its director groups, senior management groups, financial group, substantial shareholder groups and related corporation group,<sup>4</sup> as well as any person whose interests, in the opinion of the bank's board of directors, conflict with that of the bank and who is specified by the board as a related party.

4.2 However, this list of related parties may not capture all relationships which are potentially susceptible to abuse, including some of the categories of related concerns listed in section 27(1) of the BA. This is, in part, because the definitions of "director group", "substantial shareholder group" and "financial group" currently used for the RPT requirements in MAS Notice 643 are also used for MAS' large exposure rules in MAS Notice 639. As the large exposure rules are intended to address risks arising from counterparties posing a single risk to the bank because of financial interdependence, the categories of relationships recognised under the large exposure rules do not comprehensively include all the circumstances in which conflicts of interest may arise.

4.3 Separately, MAS has also received feedback about the challenges that banks face in applying the RPT requirements to certain related parties such as subsidiaries and senior management of their head offices.

4.4 In view of the above, MAS proposes several changes to the list of banks' related parties for the purpose of the RPT requirements in MAS Notice 643, to more comprehensively capture all relationships that may be susceptible to abuse, while addressing banks' concerns about their implementation challenges. For the avoidance of doubt, these proposed changes will not apply to the large exposure rules in MAS Notice 639.

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<sup>4</sup> The definitions of "director group", "financial group" and "substantial shareholder group" used in MAS Notice 643 are aligned with those set out in the Fifth Schedule of the BA.

### **Majority-owned subsidiaries**

4.5 MAS has received comments that it may not be appropriate to apply the RPT requirements to banks' transactions with their majority-owned subsidiaries. This is because the interests of the bank in Singapore would generally be aligned with those of its subsidiary, and there would be little risk of abuse arising from conflicts of interest in the bank's transactions with its subsidiaries.

4.6 Preliminarily, MAS sees some merit in the above feedback, especially in relation to majority-owned subsidiaries. For majority-owned subsidiaries, the interests of the subsidiaries should be aligned with those of the bank in Singapore. MAS is therefore considering the exclusion of majority-owned subsidiaries from the list of a bank's related parties for the purpose of MAS Notice 643, and seeks views on the level of the bank's shareholding in the subsidiaries required for the subsidiaries to qualify for the exclusion.

**Question 3(a):** MAS seeks views on whether a bank's majority-owned subsidiaries should be excluded from the bank's list of related parties and, therefore, the scope of MAS Notice 643.

**Question 3(b):** MAS seeks comments on the level of majority shareholding in the subsidiaries required for the subsidiaries to qualify for the exclusion, specifically, whether only subsidiaries where the bank has more than 75% stake should qualify for the exclusion.<sup>5</sup> MAS asks that specific reasons be given for views on the minimum shareholding levels required, or such alternative levels as may be suggested.

### **Director group**

4.7 Under section 27(1)(c) of the BA, any company of which any of the directors of the bank is a director or an agent is deemed to be the bank's related party. However, such companies are not caught under

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<sup>5</sup> Under section 184(1) of the Companies Act, a resolution is a special resolution where it has been passed by not less than a three-fourths majority of the members entitled to attend and vote at a general meeting.



the current definition of “director group” in the Fifth Schedule of the BA. MAS therefore proposes including companies of which bank directors are directors or agents in the definition of “director group” used for the purpose of MAS Notice 643.<sup>6</sup>

**Question 4:** MAS seeks views on the proposed expansion of the definition of “director group” used in MAS Notice 643 to include companies of which bank directors are directors or agents.

### **Senior management group**

4.8 MAS has received feedback that it is onerous for a bank incorporated outside Singapore to apply the RPT requirements to the senior management of its head office, as currently required under MAS Notice 643. MAS had defined the senior management of a bank incorporated outside Singapore to include the senior management of its head office as conflicts of interest may arise in transactions between the bank in Singapore and its head office’s senior management. On the other hand, MAS recognises that as the head office’s senior management is located outside Singapore, it would be difficult for the bank in Singapore to identify and track the senior management’s related concerns regularly for the purpose of compliance with the RPT requirements.

4.9 Given this, MAS proposes to confine the definition of “senior management” of a bank incorporated outside Singapore to the senior management of the bank in Singapore. Notwithstanding this change, MAS intends to ensure that it may, where it has concerns with the transactions entered into by a bank with a specific person<sup>7</sup>, specify that person as a “related party” of the bank for the purpose of the RPT requirements, on a case-by-case basis.

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<sup>6</sup> For the avoidance of doubt, MAS currently has no plans to similarly expand the definition of “director group” used for the large exposure rules in MAS Notice 639.

<sup>7</sup> Such a person may be a member of the senior management of the bank’s head office, or any other person.

**Question 5:** MAS seeks views on whether the definition of “senior management” in MAS Notice 643 for a bank incorporated outside Singapore should be confined to the senior management of the bank in Singapore.

4.10 In addition, to align the scope of the definition of “senior management group” with that of “director group”, MAS is considering capturing companies of which a member of the senior management is a director or an agent within the definition of “senior management group”.

**Question 6:** MAS seeks views on whether the definition of “senior management group” used in MAS Notice 643 should be expanded to include companies of which senior management members are directors or agents.

4.11 Under section 27(1)(e) of the BA, any of a bank’s officers (other than directors), employees or other persons who receive remuneration from the bank (other than for professional services rendered to the bank) in excess of one year’s emoluments of the officer, employee or person, is deemed to be the bank’s related party. MAS’ view is that it suffices to apply the RPT requirements in MAS Notice 643 to the senior management of the bank, as the risk of conflicts of interest is likely to be greater in such cases. As such, MAS does not intend to include the persons listed under section 27(1)(e) of the BA as a related party of the bank for the purpose of MAS Notice 643.

4.12 MAS will consult on the specific legislative drafting amendments to reflect the above at a later juncture.

### **Related corporation group**

4.13 The RPT requirements in MAS Notice 643 currently apply to the “related corporation group” of a bank. This is defined as the bank’s head office outside Singapore (if any) and all the related corporations of the

bank. For the avoidance of doubt, and to minimise any duplication in the requirements, the requirements in MAS Notice 643 will apply to RPTs between a bank incorporated in Singapore and the entities in its related corporation group only if these entities are not already caught within its substantial shareholder group or financial group.<sup>8</sup> Similarly, the requirements in MAS Notice 643 will apply to RPTs between a bank incorporated outside Singapore and the entities in its related corporation group only if these entities are not already caught within the bank's financial group.<sup>9</sup>

4.14 MAS will consult on the specific legislative drafting amendments to reflect the above at a later juncture.

### **Entities in which banks are interested**

4.15 Under subsection 27(1)(b) of the BA, any firm and limited liability partnership ("LLP") of which a bank is a partner, a manager, an agent, a guarantor or surety is deemed to be related to the bank. Further, under subsection 27(1)(d), any company of which a bank is a director, an executive officer, an agent, a guarantor or a surety is deemed to be related to the bank. However, these entities are currently not caught as a "related party" of a bank under MAS Notice 643.

4.16 To ensure that banks exercise comprehensive oversight over their transactions with all their related parties, MAS is considering expanding the list of banks' related parties for the purpose of the RPT requirements to include firms, LLPs and companies of which banks are directors (where applicable), partners (where applicable), executive officers, agents, guarantors or sureties. Each entity would constitute a separate related party group on its own.

**Question 7:** MAS seeks comments on whether the list of banks' related parties in MAS Notice 643 should be expanded to include firms, LLPs and companies of which banks are directors (where applicable), partners

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<sup>8</sup> The bank incorporated in Singapore already has to comply with MAS Notice 643 in relation to its transactions with entities in its substantial shareholder group and financial group.

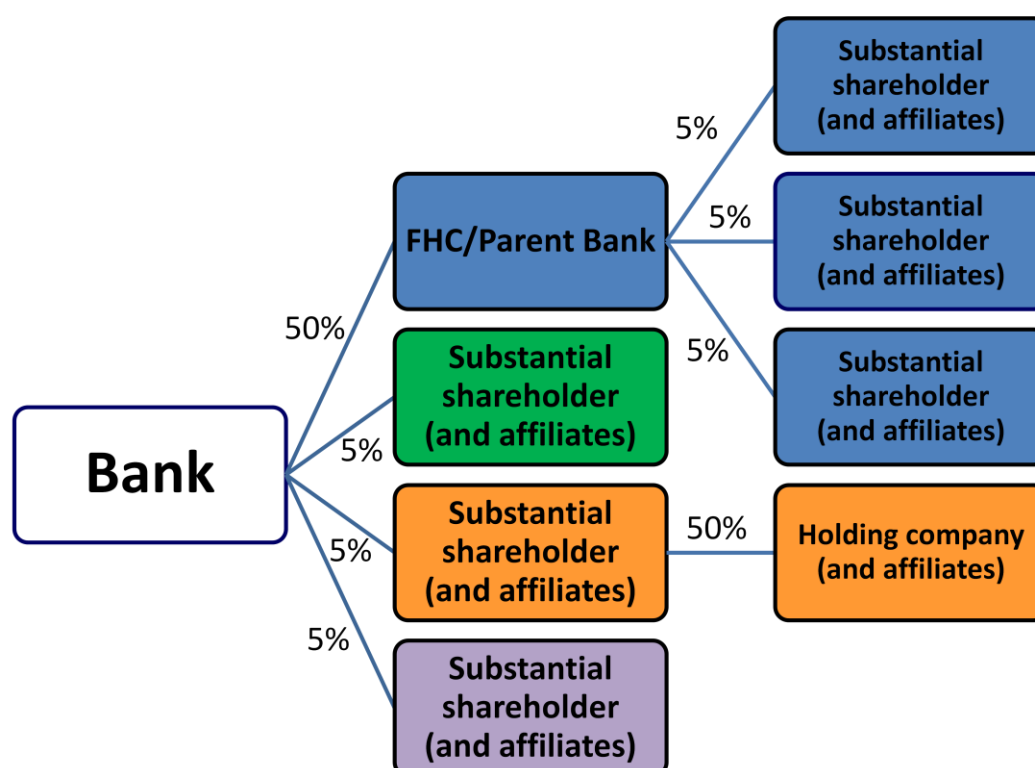
<sup>9</sup> The bank incorporated outside Singapore already has to comply with MAS Notice 643 in relation to its transactions with entities in its financial group.

(where applicable), executive officers, agents, guarantors or sureties.

### **Substantial shareholder group**

4.17 The term “substantial shareholder group” (“SSG”) is designed to capture the substantial shareholders (5% shareholding threshold) of a locally incorporated bank, and their respective affiliates. Where the bank is a subsidiary of a financial holding company (“FHC”)<sup>10</sup> or parent bank<sup>11</sup>, all the substantial shareholders of the FHC or parent bank will form part of the SSG, constituted with reference to the FHC or parent bank. Every other substantial shareholder of the bank will form its own and separate SSG. This is illustrated in Diagram 1 below.

Diagram 1: Illustration of the current definition of “substantial shareholder group”, with each SSG is indicated in a different colour

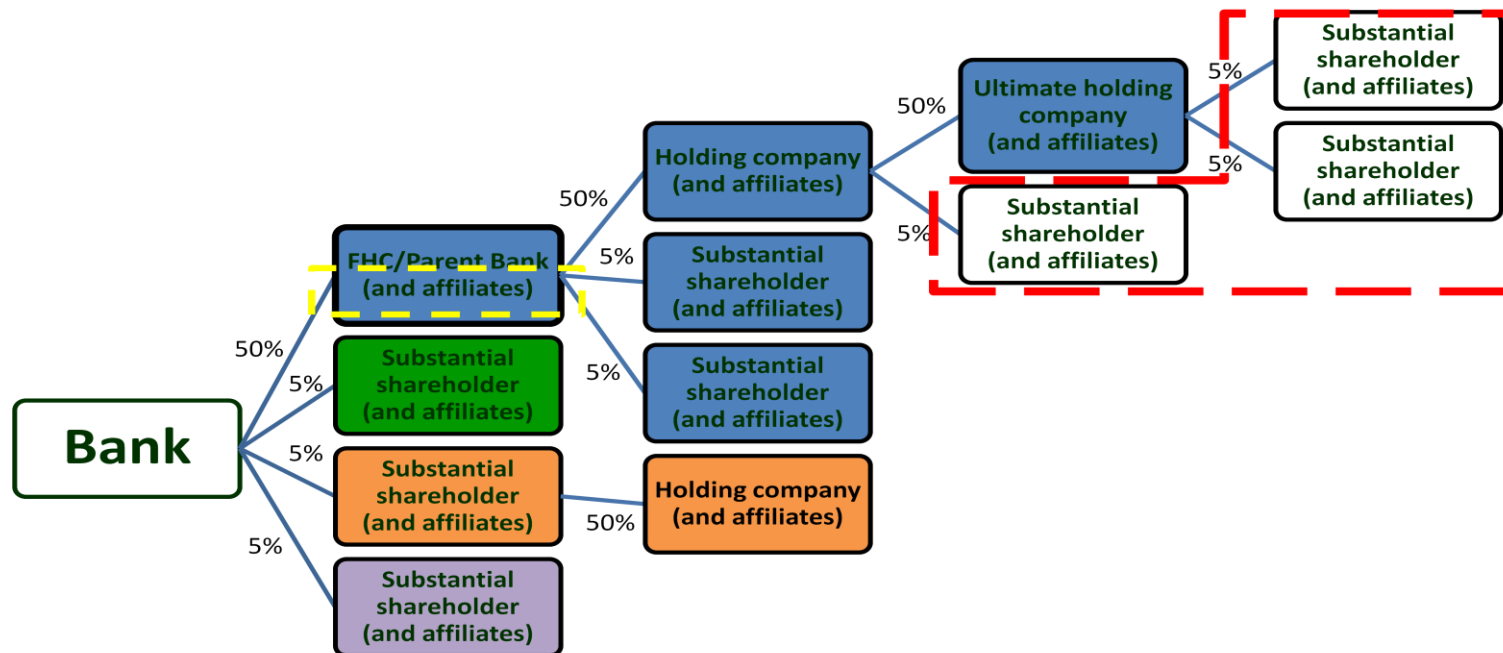


<sup>10</sup> Under section 2 of the BA, a “financial holding company” means a company belonging to a class of financial institutions approved as financial holding companies under section 28 of the Monetary Authority of Singapore Act.

<sup>11</sup> Under the Fifth Schedule of the BA, a “parent bank”, in relation to a bank, means a bank incorporated in or outside Singapore of which the first-mentioned bank is a subsidiary. Section 2 of the BA further defines “bank” to mean any company which holds a valid licence under section 7 or 79 of the BA.

4.18 However, where the bank is held by a series of holding companies (which are neither its parent bank nor FHC), the substantial shareholders of the holding companies (and their respective affiliates) may not be captured within the definition of SSG. The excluded entities are delineated in red in Diagram 2 below.

Diagram 2: Illustration of the current definition of “substantial shareholder group”, with the entities which fall outside the current definition delineated in red and yellow



4.19 However, MAS' policy intent is for all substantial shareholders of a bank or its group, who may exert an influence over the bank, to be captured within the bank's SSG. Otherwise, the RPT requirements would apply differently to different banks, depending on their group structure. MAS is therefore considering expanding the definition of SSG to include the substantial shareholders of all the holding companies (both ultimate and intermediate holding companies) of a locally incorporated bank (and their respective affiliates).<sup>12</sup>

**Question 8:** MAS invites comments on whether it would be appropriate to amend the definition of SSG for the purpose of MAS Notice 643, to include the substantial shareholders of all the holding companies (both ultimate and intermediate holding companies) of a bank incorporated in Singapore (and their respective affiliates). If feedback is provided that such an amendment would not be appropriate, MAS asks that detailed reasons be given.

4.20 The 5% shareholding threshold used to define a "substantial shareholder" of a locally incorporated bank is aligned with that in section 81 of the Companies Act. MAS seeks views on aligning the shareholding threshold used in the definition of the substantial shareholders of banks incorporated in Singapore for the purpose of the RPT requirements in MAS Notice 643 with that in section 81 of the Companies Act.

**Question 9:** MAS seeks views on aligning the shareholding threshold for determining the substantial shareholders of a bank incorporated in Singapore for the purpose of MAS Notice 643 with the 5% shareholding threshold in the Companies Act. MAS asks that detailed reasons be provided for any alternative shareholding thresholds suggested.

4.21 Aside from the definition of the substantial shareholders of a bank incorporated in Singapore, MAS is also looking at rationalising the

<sup>12</sup> For the avoidance of doubt, MAS currently has no plans to similarly amend the definition of "substantial shareholder group" used for the large exposure rules in MAS Notice 639.

extent to which the affiliates of these substantial shareholders are captured within the banks' SSGs. Currently, companies in which a substantial shareholder has at least 20% shareholding interest are deemed to be the substantial shareholder's affiliates, and therefore captured within the bank's SSGs. MAS is considering whether the 20% shareholding threshold is appropriate for the purpose of the RPT requirements, and whether there is any alternative shareholding threshold that would be more suitable.

**Question 10:** MAS seeks views on the 20% shareholding threshold for determining the affiliates of substantial shareholders of a bank incorporated in Singapore for the purpose of MAS Notice 643. MAS asks that detailed reasons be provided for any alternative shareholding thresholds suggested.

4.22 Further, the associates (20% shareholding threshold) of the substantial shareholders of banks' FHCs and parent banks are caught in the banks' SSG as "affiliates", subject to a carve-out for the "major stake entities" (defined in section 32 of the BA) of the FHCs and the parent banks. For consistency with the scope of the SSG definition, MAS proposes amending the definition of "affiliate" by deleting the carve-out for FHCs and parent banks' major stake entities, so that their associates are caught within banks' SSGs. With this amendment, the entities delineated in yellow in Diagram 2 will fall within banks' SSGs.

**Question 11:** MAS invites comments on the deletion of the carve-out for the major stake entities of the FHC and parent bank of a bank incorporated in Singapore, from the definition of "affiliate" for the purpose of MAS Notice 643.

## 5 BOARD APPROVAL REQUIREMENT<sup>13</sup>

5.1 Under MAS Notice 643, the following RPTs have to be surfaced to the board (or authorised persons, in the case of a bank incorporated outside Singapore) for prior approval:

- (a) an exposure that, when aggregated all other exposures of the same type to the same related party group, exceed the materiality threshold approved by the board for that transaction type, for that related party group;
- (b) a transaction with non-standard terms<sup>14</sup>; and
- (c) a write-off of an exposure to a related party.

To comply with (a), banks are required to set materiality thresholds for each related party group and for each exposure type (e.g. unsecured loans, mortgages), taking into account the nature, scope, frequency, value of and risks associated with its RPTs.

5.2 MAS has since received feedback that it is unnecessary to subject intra-group transactions to prior board approvals, as such transactions typically pose lower risks of conflict of interest, especially where they are conducted for hedging purposes or are service agreements arising from the bank group's centralisation of certain functions. The concern was that subjecting intra-group transactions to all RPT requirements would impair the efficiency of regional funding and treasury activities conducted by the banks through Singapore. Banks also commented that it was onerous to ascertain whether an intra-group transaction is on non-standard terms for the purpose of this requirement.

5.3 MAS Notice 643 requires prior board approval to be obtained for material exposures to related parties and non-standard RPTs, to ensure that the board has oversight over the transactions that pose greater risks. On the other hand, MAS appreciates that intra-group activities

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<sup>13</sup> In addition, under MAS Notice 643, banks are required to ensure that every RPT is reported through an independent review or audit process. RPTs also have to be monitored by senior officers of the bank, on both a per transaction and aggregated basis, and on an ongoing basis to ensure compliance with both the RPT policy of the bank and MAS Notice 643. MAS' intention was for RPTs to be subject to banks' usual compliance/audit processes, and will amend paragraph 8(g) of the MAS Notice 643 to clarify that sample audit checks will suffice.

<sup>14</sup> For the avoidance of doubt, RPTs with more favourable terms (non-arm's length RPTs) form a subset of RPTs with non-standard terms. A RPT can be on no more favourable terms, even though these terms are non-standard (e.g. customised transactions). Only RPTs with non-standard terms have to be surfaced for prior board approval.



may be impeded by the approval requirement, as such intra-group transactions are often voluminous. In addition, MAS appreciates the operational challenges in determining whether each intra-group transaction entered into is on non-standard terms. Further, banks will, in any event, have to report all their exposures and credit facilities to their related parties to their boards on a quarterly basis, which will enable the boards to review the aggregate exposures on a regular basis.

5.4 MAS has also received feedback about the difficulty the industry faced in determining whether a RPT was subject to standard terms and conditions. For example, it was difficult to determine if a leasing agreement was subject to standard terms, given that different premises leased would naturally translate into different terms and conditions. In view of the above, MAS proposes only requiring material RPTs to be surfaced for prior board approval.

5.5 In sum, taking the feedback above into account, as well as to ensure that the board continues to have sight of the transactions that pose greater risks, MAS is considering:

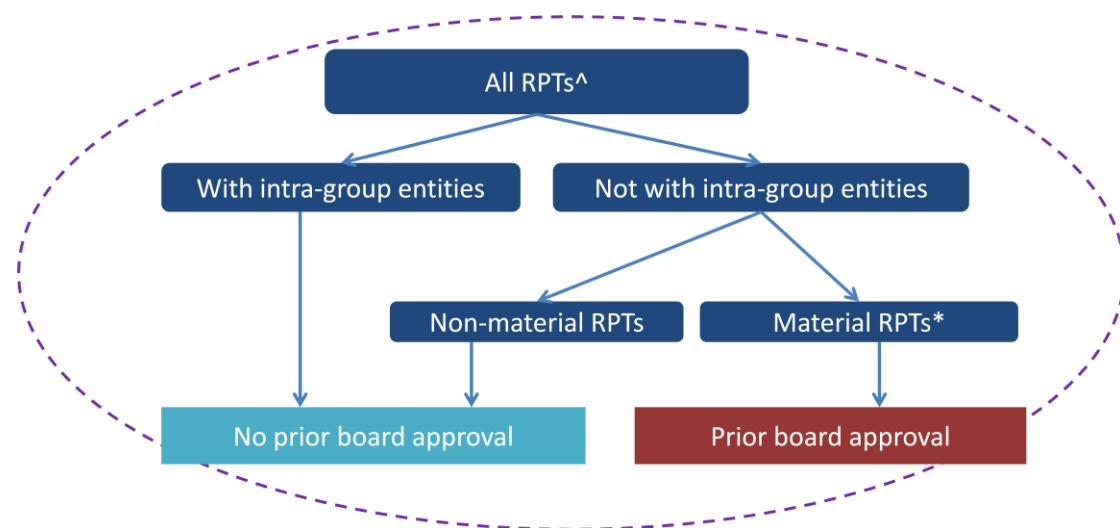
- (a) exempting intra-group transactions, i.e. transactions where the counterparty is part of the bank's related corporation group or financial group, from the requirement to obtain prior board approval<sup>15</sup>;
- (b) removing the requirement that non-standard transactions be surfaced for prior board approval<sup>16</sup>;
- (c) retaining the existing requirement that prior approval be obtained for aggregated exposures to a related party group that cross a materiality threshold; and
- (d) requiring that banks seek prior approval for material non-exposure RPTs on a per transaction basis.

Cumulatively, these proposals should ameliorate the operational challenges in implementing the board approval requirement.

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<sup>15</sup> Or, the approval of authorised persons, in the case of a bank incorporated outside Singapore.

<sup>16</sup> Or, the approval of authorised persons, in the case of a bank incorporated outside Singapore.

**Diagram 3:** Illustration of the revised prior approval requirement

*Conducted on no more preferential terms and conditions, and subject to sample audit checks and quarterly reporting requirements (in the case of exposures)*

<sup>^</sup> Excludes nominal transactions. (Please refer to Question 1 of this Consultation Paper.)

<sup>\*</sup> Determined on an aggregate basis with respect to exposure transactions, and on a per transaction basis with respect to non-exposure transactions

**Question 12:** MAS seeks views on whether the prior approval requirement in MAS Notice 643 should be amended such that banks only need to obtain prior approval for RPTs:

- (a) where the counterparty is not an intra-group entity; and
- (b) if aggregated exposures to a related party group exceed a specified materiality threshold; or
- (c) if a non-exposure transaction exceeds a specified materiality threshold.

5.6 Aside from the types of transactions that have to be surfaced for prior board approval, banks have also provided feedback on the difficulty they face in setting separate materiality thresholds for different transaction types (e.g. mortgages and unsecured credit facilities) for different related party groups, and thereafter separately aggregating and tracking their exposures against these different materiality thresholds. It was commented that it would be administratively less burdensome to monitor aggregated exposures against a single materiality threshold, akin to the approach currently taken under the

large exposure rules. Alternatively, some suggested that the materiality threshold be set on a per-transaction basis.

5.7 While MAS Notice 643 currently allows banks the flexibility to determine their own materiality thresholds, taking into account the nature and scale of their operations, and the types and value of the RPTs that they typically enter into, some banks preferred that MAS provide guidance on the materiality threshold to be applied, to give clarity for the industry and ensure a level playing field.

5.8 To address the above concerns, and to ensure that material RPTs continue to be subject to enhanced oversight, MAS is considering specifying an aggregated materiality threshold for all exposures, regardless of exposure type, to any related party group (since such exposures already have to be aggregated for the purpose of compliance with the large exposure limits in MAS Notice 639). MAS is also considering a per transaction materiality threshold for any non-exposure transaction with a related party, for the requirement to obtain prior board<sup>17</sup> approval under MAS Notice 643:

- (a) an aggregate threshold of 2% of the bank's CET1 capital or capital funds (in the case of a bank incorporated in and outside Singapore, respectively)<sup>18</sup> for exposures to any related party group; and
- (b) a per-transaction threshold of 0.05% of the bank's CET1 capital or capital funds (as the case may be), or \$2 million, whichever is lower, for any non-exposure transaction with a related party.

**Question 13:** MAS seeks views on the following materiality thresholds for the prior approval requirement:

- (a) an aggregate threshold of 2% of the bank's CET1 capital or capital funds (as the case may be) for exposures to any related party group; and

<sup>17</sup> Or, the approval of authorised persons, in the case of a bank incorporated outside Singapore.

<sup>18</sup> CET1 (or Common Equity Tier 1) capital is defined in MAS Notice 637 on "Risk based capital adequacy requirements for banks incorporated in Singapore".

Capital funds is defined as the net head office funds of the net and such other liabilities as defined in MAS Notice 601 on "Capital Funds, Net Head Office Funds and Head Office Capital Funds".

- (b) a per-transaction threshold of 0.05% of the bank's CET1 capital or capital funds (as the case may be), or \$2 million, whichever is lower, for any non-exposure transaction with a related party.

MAS asks that specific and detailed reasons be given for views on the appropriateness (or otherwise) of the above thresholds, and such alternative thresholds as may be suggested.

## 6 MAS' POWER TO UNWIND/RESTRICT RELATED PARTY TRANSACTIONS

6.1 Under section 27(3) of the BA, where it appears to MAS that any credit facility from or exposure of the bank is to the detriment of the interests of the bank's depositors, MAS may direct the bank to secure repayment of the credit facility or reduce the exposure. To prevent similar credit facilities and exposures from being granted and incurred in the future, MAS may additionally prohibit or impose restrictions on the grant of further credit facilities, and/or direct the cessation of or impose restrictions on further exposures, to the person.

6.2 MAS' powers under section 27(3) of the BA are currently confined to exposures and credit facilities. However, non-exposure transactions, which include the sale and purchase of land and other significant assets, may also cause significant harm to depositors if their terms are unfavourable to the bank. As such, MAS proposes extending its power to direct the unwinding of, and prohibit/restrict further, credit facilities and exposures under section 27(3) to all types of transactions, including non-exposure transactions. This would also be consistent with the scope of transactions captured under MAS Notice 643.

**Question 14:** MAS seeks views on the proposed extension of MAS' power under section 27(3) of the BA to direct the unwinding of, and prohibit/restrict further, credit facilities and exposures to all types of transactions including non-exposure transactions.

## 7 DIRECTOR DISCLOSURE REQUIREMENTS

7.1 Section 28(1) of the BA requires every director of a bank in Singapore to declare to the bank's board any interest, whether direct or indirect, that he has in any credit facility from or exposure of the bank<sup>19</sup> as soon as practicable.<sup>20</sup> For the purpose of the above disclosure requirement, it shall be sufficient for the director to give a general notice to the board that:

- (a) he is an officer or a member of a specified company, or a partner or manager of a specified firm or specified LLP; and
- (b) he is to be regarded as having an interest in any credit facility or exposure which may thereafter be granted to or acquired in respect of that company, firm or LLP.<sup>21</sup>

7.2 The ultimate responsibility for safeguarding the bank's interest lies with the board of directors, and the board is charged with the responsibility of approving RPTs which pose greater risks. Directors with an interest, whether direct or indirect, in a RPT are also required to abstain from voting in respect of the RPT. It is therefore important for directors to declare any conflicts of interest (including potential conflicts of interest) that they may have in any transaction entered into by the bank. Such disclosures should extend beyond credit facilities and exposures to include non-exposure transactions as well, since the risk of abuses arises equally with non-exposure transactions (which include asset sales and purchases and leasing agreements).

7.3 MAS therefore proposes extending the section 28(1) declaration requirement, from only credit facilities and exposures, to capture non-exposure transactions as well.

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<sup>19</sup> Or any proposed credit facility from, or proposed exposure, of the bank.

<sup>20</sup> This requirement does not apply where the interest of the director consists only of being a member or creditor of a company which is interested in a credit facility from or an exposure of the bank, if the interest of the director may properly be regarded as of a trivial nature.

<sup>21</sup> This is provided that:

- (a) the declaration specifies the nature and extent of his interest in the company, firm or LLP;
- (b) his interest is not different in nature from or greater in extent than the nature and extent so specified in the notice at the time any credit facility is granted or any exposure is acquired; and
- (c) it is given at a board meeting, or the director takes reasonable steps to ensure that it is brought up and read at the next board meeting after it is given.

**Question 15:** MAS invites comments on the proposed extension of the requirement in section 28(1) of the BA for bank directors to declare their interest in any credit facility from or exposure of the bank to non-exposure transactions.



Monetary Authority of Singapore