

Banking (Amendment) Regulations 2004

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No. S 256

BANKING ACT (CHAPTER 19)

BANKING (AMENDMENT) REGULATIONS 2004

In exercise of the powers conferred by sections 30 (1)(*d*), 32(5)(*b*), 33(2)(*d*), 35(2)(*e*) and 78(1) and (3) of the Banking Act, the Monetary Authority of Singapore hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Banking (Amendment) Regulations 2004 and shall come into operation on 5th May 2004.

Amendment of regulation 2

2. Regulation 2 of the Banking Regulations 2001 (G.N. No. S 347/2001) (referred to in these Regulations as the principal Regulations) is amended —

- (a) by inserting, immediately after the definition of “funds of a customer under management”, the following definitions:

““liabilities”, in relation to the policies of an insurance fund maintained by an insurer, means such liabilities and expenses of the insurer as are attributable to the business to which the insurance fund relates, but excludes any levy payable by that insurer under section 46 of the Insurance Act (Cap. 142);

“market day”, in relation to a share traded on a securities exchange, means any day which the securities exchange is open for trading of shares;” and

- (b) by inserting, immediately after the definition of “Singapore Government Securities”, the following definition:

““subsidiary” has the same meaning as in section 5 of the Companies Act (Cap. 50);”.

Amendment of regulation 3

3. Regulation 3 of the principal Regulations is amended —

- (a) by deleting the words “dealer or investment advisor licensed under the Securities Industry Act (Cap. 289)” in paragraph (a) and substituting the words “holder of a capital markets services licence under the Securities and Futures Act (Cap.289)”; and
- (b) by deleting paragraph (b).

Amendment of regulation 8

4. Regulation 8 of the principal Regulations is amended by inserting, immediately after paragraph (2), the following paragraph:

“(3) Any bank which contravenes this regulation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for every day or part thereof during which the offence continues after conviction.”.

New Parts VI, VII, VIII and IX

5. The principal Regulations are amended by inserting, immediately after regulation 10, the following Parts:

“PART VI

EXCLUSION OF NON-BENEFICIAL INTERESTS IN OR RIGHTS OVER IMMOVABLE PROPERTY

Exclusion of non-beneficial interests in or rights over immovable property from section 33 of Act

11. For the purposes of determining the aggregate value of the interest in or right over immovable property referred to in section 33(1) of the Act, there shall be excluded such portion of the value of any interest in or right over immovable property or any part thereof held for the benefit of persons other than the bank pursuant to an obligation imposed under any written law, rule of law, contract or order of court.

PART VII

COMPUTATION OF MAJOR STAKES

Meaning of “affiliated entity”

12.—(1) In this Part and Part VIII, “affiliated entity”, in relation to a bank, means —

- (a) any subsidiary of the bank;
- (b) any company in which the bank and its subsidiaries hold in the aggregate a beneficial interest in not less than 20% of the share capital;
- (c) any company in which the bank and its subsidiaries control in the aggregate not less than 20% of the voting power;
- (d) any other company where the directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the bank’s directions, instructions or wishes, or where the bank is in a position to determine the policy of the company; or
- (e) any subsidiary of a company referred to in sub-paragraph (b), (c) or (d).

(2) Notwithstanding paragraph (1)(a), (b), (c) or (e), any beneficial interest in the share capital of, or control of voting power in, a company that is —

- (a) acquired by a bank or any entity referred to in paragraph (1) (referred to in this paragraph as the relevant entity) pursuant to an arrangement with a person who has a trading account with the relevant entity, and transferred to the trading account of that person within 2 market days from the date of acquisition; or
- (b) acquired or held by the relevant entity in the course of satisfaction of debts due to it and disposed of at the earliest suitable opportunity,

shall be excluded for the purpose of determining whether the company is an affiliated entity of the bank.

(3) Notwithstanding paragraph (1)(c), any control of voting power in a company that is held by the bank or its subsidiary —

- (a) for the benefit of any person other than the bank or its subsidiary, or any other affiliated entity of the bank (referred to in this paragraph as the beneficiary) pursuant to an obligation imposed under any written law, rule of law, contract or order of court; and
- (b) used or exercised by the bank or its subsidiary primarily for the benefit of the beneficiary,

shall be excluded for the purpose of determining whether the company is an affiliated entity of the bank, unless —

- (i) the control of voting power in the company is held by a bank's subsidiary that is an insurer registered under the Insurance Act (Cap. 142), through —
 - (A) any insurance fund established and maintained under the Insurance Act for its general business;
 - (B) any insurance fund established and maintained under the Insurance Act for its non-participating policies;
 - (C) any insurance fund established and maintained under the Insurance Act for its participating policies, and which relates to assets held other than for the purpose of meeting the liabilities in respect of the policies of the insurance fund; or
 - (D) any insurance fund established and maintained under the

Insurance Act for its investment-linked policies, and which relates to assets held other than for the purpose of meeting those liabilities in respect of the policies of the insurance fund, the values of which are dependent on the value of the underlying assets; or

- (ii) the Authority (having regard to the specific circumstances of the case including whether the bank or its subsidiaries has investment and voting policies that comply with guidelines issued by the Authority) is of the opinion that the control of voting power in the company is in fact not being used or exercised primarily for the benefit of the beneficiary, and the Authority issues a declaration by notice in writing to the bank that such control of voting power in the company shall, with effect from the date of the declaration, be included for the purpose of determining whether that company is an affiliated entity of the bank.

(4) Notwithstanding paragraph (1)(e), where a company referred to in paragraph (1)(b) or (c) is not an affiliated entity of the bank by virtue of paragraph (2) or (3), its subsidiary shall correspondingly not be regarded as an affiliated entity of the bank.

Holding by affiliated entity deemed to be holding by bank

13.—(1) In determining whether a bank holds a major stake in a company as defined in section 32(7) of the Act —

- (a) any beneficial interest in the share capital of a company held by an affiliated entity of the bank shall be deemed to be a beneficial interest in that share capital held by that bank;
- (b) any control of voting power in a company held by an affiliated entity of the bank shall be deemed to be a control of such voting power held by that bank; and
- (c) any interest in a company (where the directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the bank's directions, instructions or wishes, or where the bank is in a position to determine the policy of the company) held by an affiliated entity of the bank shall be deemed to be an interest held by that bank.