



# **BANK OF MAURITIUS**

## **Guideline on Related Party Transactions**

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## INTRODUCTION

In terms of section 28(2) of the Banking Act 2004, the Bank of Mauritius may determine limits to which a bank or non-bank deposit taking institution may grant credit to a related party and to all related parties. Accordingly, the Guideline on Related Party Transactions (Guideline) sets out the limits and other rules governing related party transactions of banks and non-bank deposit taking institutions.

### **Related parties**

The concept of related parties used in this Guideline is different and distinct from the concept of closely related customers used in the *Guideline on Credit Concentration Risk*. The latter signifies a relationship between customers, which constitutes a common risk to the financial institution in the extension of credit facilities, but such customers are not necessarily related to the financial institution.

Related parties, whether body corporates or natural persons, fall into two main groups:

- (a) those that are related to a financial institution because of ownership interest; and
- (b) those that are related otherwise, such as directors and senior officers who may also have some ownership interest in the financial institution.

### **Purpose**

The Bank of Mauritius, through this Guideline, enunciates the basic framework of risk management to be put in place by financial institutions with regard to related party transactions.

### **Authority**

This Guideline is issued under the authority of section 50 of the Bank of Mauritius Act 2004 and section 100 of the Banking Act 2004, and in accordance with section 28(4) of the Banking Act 2004.

### **Scope of application**

This Guideline applies to all banks and non-bank deposit taking institutions licensed under the Banking Act 2004.

## **Effective date**

The revised Guideline shall come into effect on 12 May 2022.

## **Interpretation**

In this Guideline,

“**Act**” means the Banking Act 2004;

“**Bank**” means the Bank of Mauritius established under the Bank of Mauritius Act 2004;

“**control functions**” mean those functions that have a responsibility independent from management to provide objective assessment, reporting and/or assurance. This includes the risk management function, the compliance function and the internal audit function;

“**credit exposure**” has the same meaning as credit exposure/facility in the *Guideline on Credit Concentration Risk*;

“**financial institution**” means any bank or non-bank deposit taking institution licensed by the Bank;

“**independent director**” has the same meaning as in the Banking Act 2004;

“**market terms and conditions**” means

- i. in respect of a loan or other credit facilities, the terms and conditions are no more favourable than those offered to the public by the financial institution in the ordinary course of business;
- ii. in respect of other transactions, the terms and conditions, including those relating to price, rent, or interest rate, that might be reasonably expected to apply to similar transactions in an open market where parties deal at arm’s length, acting knowledgeably and willingly; and
- iii. the adoption of follow-up and enforcement actions that might be reasonably expected of a prudent person in similar situations;

“**related party**” in relation to a financial institution has the same meaning as in the Banking Act 2004;

“**senior officer**” of a financial institution has the same meaning as in the Banking Act 2004;

“**significant interest**” has the same meaning as in the Banking Act 2004;

**“subsidiary”** has the same meaning as in the Companies Act 2001; and

**“tier 1 capital”** has the same meaning as in the Guideline on Scope of Application of Basel III and Eligible Capital.

## SECTION I - GOVERNANCE FRAMEWORK

### Policy on Related Party Transactions<sup>1</sup>

1. Financial institutions having related party transactions shall establish a comprehensive board-approved policy on related party transactions, either on a stand-alone basis or integrated with relevant existing policies, and taking into consideration the requirements of this Guideline.
2. The policy on related party transactions shall among others, include:
  - a. the approval process and approval authorities including, *inter alia*, for new credit limits/ engagements, renewal of existing limits/ engagements and changes in terms and conditions;
  - b. prudent rules and limits for all credit exposures to related parties and other transactions with related parties;
  - c. a requirement for shareholders with significant interest, beneficial owners, directors, senior officers and other body corporate that control the financial institution or which the financial institution controls to declare the entities controlled by them and (in case of natural persons) their spouse, child, parent or ascendant or descendant; and
  - d. processes to monitor compliance with the policy including set limits.

### Responsibilities of the Board of Directors<sup>2</sup>

3. The board of directors of a financial institution shall:
  - a. review and approve the policy on related party transactions periodically at intervals not exceeding one year;
  - b. require the senior management of the financial institution to establish policies, systems and procedures to among others comply with the policy on related party transactions and requirements of this Guideline;
  - c. ensure that the policies, systems and procedures are subject to regular review by control functions to ensure their continuing effectiveness, adequacy and enforcement;
  - d. establish procedures to ensure that board members and staff with conflict of interest are excluded from the approval and monitoring process of related party transactions;
  - e. ensure that the financial institution has a robust system of checks and balances to monitor

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<sup>1</sup> Introduced on 12 May 2022.

<sup>2</sup> Amended on 12 May 2022.



compliance with the regulatory limits, uphold impartiality and prevent credit activities of any kind which override established credit approval policies and procedures when granting credit facilities to related parties;

- f. ensure that any transaction with related parties that may have a material effect on the stability and solvency of the financial institution is identified and dealt with in a timely manner;
- g. ensure that it is promptly apprised of material developments on related party transactions; and
- h. receive periodic reports, at intervals not exceeding three months, from the Audit Committee, the Risk Management Committee, senior management, the Chief Risk Officer, control functions and other relevant functions on related party transactions. The report shall, inter alia, cover:
  - i. new related party transactions;
  - ii. the performance of the bank's related party exposures including compliance with policies and procedures (including internal/ regulatory limits), breach of covenants, deterioration in credit quality, impairment of assets and non-perfection of collateral;
  - iii. the performance of services provided by related parties and other arrangements/ contracts with related parties including compliance with agreed service level agreements; and
  - iv. the findings and status of recommendations of control functions, the Audit Committee and the Risk Management Committee in respect of related party transactions.

### **Conflicts of Interest<sup>3</sup>**

- 4. The financial institution shall have in place a suitable framework duly approved by its board to avoid any actual or perceived conflict of interest by board members and the staff approving/monitoring the related party transactions.
- 5. The framework shall encompass a clearly defined approval process and a policy on conduct, ethics and gifts/entertainment among others.

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<sup>3</sup> Introduced on 12 May 2022.

## **Approval of Related Party Transactions<sup>4</sup>**

6. The board shall approve the following:
  - a. the terms and conditions for credit facilities to the staff of the financial institution under the terms and conditions of employment contracts;
  - b. credit facilities to staff which are not in line with the terms and conditions as approved by the board under (a) above;
  - c. credit exposures to related parties where the aggregate of credit exposures to any single related party and/or its group of connected counterparties exceed 2 per cent of the Tier 1 capital of the financial institution or MUR500 million, whichever is lower;
  - d. any other transaction with related parties where the aggregate amount due by/to any single related party and/or its group of connected counterparties exceed 2 per cent of the Tier 1 capital of the financial institution or MUR500 million, whichever is lower; and
  - e. all related party transactions posing special risks to the financial institution.
7. The board shall establish the approval authorities and processes for related party transactions which do not meet the criteria set out at paragraph 6 for board approval. Such transactions should be reported to the board on a regular basis. The board shall ensure that:
  - a. the approval authorities are commensurate with the riskiness, size and complexity of the transactions; and
  - b. in no case a related party transaction is approved by a forum consisting of less than three persons at senior management level with the exception of staff loans under the terms and conditions of employment contracts as approved by the board.
8. Notwithstanding paragraph 7, a board may opt for all related party transactions to be approved by the board.
9. Board members and the staff of the financial institution approving/monitoring the related party transactions shall declare their interest (if any) and shall, in the case of conflict of interest, be excluded from the approval/monitoring process of related party transactions. The declaration of interest shall be duly documented.
10. All transactions with related parties must be carried out on terms and conditions that are at least as favourable to the financial institution as market terms and conditions.

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<sup>4</sup> Introduced on 12 May 2022.

11. Notwithstanding paragraph 10, a financial institution may grant credit facilities to its staff which are not at prevailing market terms and conditions, provided that these terms and conditions:
  - a. are within the terms and conditions of employment contracts; and
  - b. have been approved by the board.
12. The approving authority shall ensure that:
  - a. credit facilities extended to staff are within board approved terms and conditions; and
  - b. all other related party transactions are at market terms and conditions.

The approval including compliance with market terms and conditions should be duly documented.

### **Write-off of Related Party Exposures**

13. Write-offs of related party credit exposures shall be subject to the prior approval of the board of directors.

## **SECTION II - RULES GOVERNING RELATED PARTY TRANSACTIONS**

14. Paragraphs 16 to 18 define the categories of exposures that would be considered as related party exposures.
15. As a general rule, related party transactions include the following<sup>5</sup>:
  - a. Credit exposure, that is credit, financial leasing, non-fund based commitments such as documentary credits, guarantees on behalf of a related party, acquiring a loan made by a third party to a related party, investment in equity or other debt instruments of a related party, and any other commitment to provide funds or substitute of funds to a related party;
  - b. placements made by the financial institution with a related party;
  - c. conditional sales agreements with a related party;
  - d. consulting or professional service contracts with a related party;
  - e. deposits placed with the financial institution by a related party;

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<sup>5</sup> Amended on 12 May 2022.

- f. acquisition, sale or lease of assets of a related party; and
- g. any pecuniary relationship or other transactions or arrangement with a related party (including by way of service arrangements or contracts).

### **Regulatory limits on credit exposures to related parties**

For the purpose of determining the regulatory limits on exposures to related parties, the latter are classified into the following three categories:

#### ***Category 1***

- 16. This includes credit exposures to
  - a. a person who has significant interest in the financial institution;
  - b. a director of the financial institution;
  - c. a director of a body corporate that controls<sup>6</sup> the financial institution;
  - d. the spouse, child and parent of a natural person covered in (a) or (b) or (c) above;
  - e. any entity that is controlled<sup>7</sup> by a person described in (a) or (b) or (c) or (d) above; and
  - f. any entity in which the financial institution has significant interest, excluding a subsidiary of the financial institution as mentioned in paragraph 17(e).

#### ***Category 2***

- 17. This includes credit exposures to
  - a. senior officers, which are outside the terms and conditions of employment contracts;
  - b. the spouse, child and parent of senior officers;
  - c. senior officers of a body corporate that controls<sup>6</sup> the financial institution;
  - d. any entity that is controlled<sup>7</sup> by a person described in (a) or (b) or (c) above; and

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<sup>6</sup> For this purpose, 'control' has the same meaning as in the Companies Act 2001.

<sup>7</sup> For this purpose, a natural person shall be deemed to control an entity if he/she owns, directly or indirectly, 10 per cent or more of the capital or voting rights of that entity. In other cases, it has the same meaning as in the Companies Act 2001.

- e. a subsidiary of the financial institution with no shareholder (natural person) holding directly or indirectly more than a significant shareholding in the parent financial institution.

### ***Category 3***

- 18. This includes credit exposures to senior officers, which are within the terms and conditions of employment contracts.

### ***Regulatory limits***

- 19. Credit exposure to any single borrower/group of connected counterparties who are related parties to the financial institution shall be governed by the *Guideline on Credit Concentration Risk*, subject to the following conditions:
  - a. the aggregate of credit exposures to and investments in equity shares of all related parties in Category 1, other than investments in subsidiaries and associates, should not exceed 60 per cent of the financial institution's Tier 1 capital; and
  - b. the aggregate of credit exposures to and investments in equity shares of all related parties in Category 1 and Category 2, other than investments in subsidiaries and associates, should not exceed 150 per cent of the financial institution's Tier 1 capital.
- 20. The Bank may consider requests for the grant of facilities to related parties, which would cause the credit exposure of a financial institution to exceed the regulatory limits. Such requests shall be entertained by the Bank on the express condition that the additional credit exposure shall be deducted from the financial institution's Tier 1 capital. The Bank may also impose other conditions thereto.
- 21. The treatment of lending of a capital nature by banks to their subsidiaries and associates shall be in accordance with the *Guideline on Scope of Application of Basel III and Eligible Capital*. Consequently, such exposures shall be excluded from the regulatory limits.

### ***Exemptions from regulatory limits***

- 22. A financial institution shall be exempted from the regulatory limits on the following credit exposures:
  - a. a credit exposure to the extent to which it is collateralised by deposits with the financial institution or Government of Mauritius securities or a loan to the extent to which it is guaranteed by the Government of Mauritius;

- b. a credit exposure to the extent to which it is collateralised by securities issued by another government or a loan to the extent to which it is guaranteed by another government provided that the exposure is:
  - i. denominated and funded in its national currency, and
  - ii. approved by the Bank under paragraph 6 of the *Guideline on Standardised Approach to Credit Risk* for a zero per cent risk weight;
- c. a credit exposure to parastatal bodies and to an entity in which Government has more than 50 per cent shareholding;
- d. inter-bank transactions as part of treasury operations;
- e. credit exposures, including aggregate credit exposures to a group of connected counterparties as defined at Annex II to the *Guideline on Credit Concentration Risk*, representing less than 2 per cent of the financial institution's Tier 1 capital; and
- f. category 3 type of related party exposures.

### **SECTION III - MONITORING OF RELATED PARTY TRANSACTIONS**

- 23. A financial institution shall have adequate information systems to monitor its related party credit exposures and identify exceptions. The financial institution should keep a list of related parties, which should be updated regularly.
- 24. The control functions shall conduct regular reviews to ascertain whether established policies, limits and procedures in relation to related party transactions are strictly adhered to and remain adequate and effective.

#### **Disclosure of interest<sup>8</sup>**

- 25. A financial institution shall ensure that disclosures of interest are made in accordance with the provisions of section 48 of the Banking Act 2004.
- 26. Where a financial institution is not certain about the status or relationship between its customer/borrower regarding the related party issues (when dealing with related parties other than directors and senior officers), it may request the customer/borrower to submit necessary written information to ascertain the related party status.

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<sup>8</sup> Amended in September 2012.

#### **SECTION IV - DISCLOSURE AND REGULATORY REPORTING**

27. A financial institution shall disclose its related party transactions in accordance with the requirements of the *Guideline on Public Disclosure of Information*.
28. A financial institution shall report to the Bank on a quarterly basis, in such form and manner as may be determined by the Bank, all information relating to credit exposures to related parties, including exemptions from the regulatory limits on credit exposures detailed under paragraph 22.

#### **SECTION V - TRANSITIONAL PROVISION**

29. Financial institutions shall take necessary measures to be in full compliance with this revised Guideline by 30 September 2022.

*Bank of Mauritius*  
*12 May 2022*