

MALDIVES MONETARY AUTHORITY

PRUDENTIAL REGULATION
No. 04-2009

TRANSACTIONS WITH RELATED PERSONS

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PART I: PRELIMINARY

- 1: Short Title** – Transactions with related persons.
- 2: Authorization** – The Maldives Monetary Authority (MMA) is authorized to issue regulations under Art. 36 read with Art. 29-34 of the MMA Act 1981 (MMA Act) in relation to prudential matters to be complied with by all banks and deposit-taking institutions (collectively 'banks'), or other persons as the regulation may specify.
- 3: Application** – All banks and deposit-taking institutions licensed by the MMA to conduct banking business in the Maldives.
- 4: Definitions** – Terms used within this regulation are as defined in the Act, as defined below, or as reasonably implied by contextual usage:

(1) "**administrator**" – means any person who is a director, executive officer, or member of the audit committee of a bank, including, in the case of a foreign bank, a designated branch manager and other officers who hold a position of executive officer as the term is defined below.

(2) "**bank**" – means all banks and deposit-taking institutions licensed by the MMA to conduct banking business in the Maldives.

(3) "**capital base**" – means Total Capital as defined in Prudential Regulation (#)-2005 Capital Adequacy issued by the MMA.

(4) "**current market value**" – means that value determined by using valuation methods appropriate for the asset, financial instrument or other type of property concerned. The determination of current market value must be documented in writing, show assumptions, analyses and conclusions used, and be available for review by the MMA. The insured amount of property is not acceptable for current market value.

(5) "**executive officer**" – means a person who is an employee of a bank licensed to conduct banking operations in the Maldives who, regardless of title, participates in policy-making functions, or is responsible for any material portion of the business activities of the bank, or is authorized to commit the bank's funds by making loans or investments. The term includes, but is not limited to, the chairman of the board, the president, the managing director, every vice president, and the treasurer of a bank.

(6) "**related person**" – means (a) any administrator of the bank, (b) any person who is related to an administrator by marriage, blood or kinship up to the second degree, including children of the administrator, and any other person residing in the administrator's household who is dependent on the administrator for his support, (c) any person who has a qualifying holding in the bank, and any undertaking in which any such person or any administrator of the bank has a qualifying holding, and any administrator of such person or undertaking, and (d) any undertaking, not subject to consolidation in the preparation of financial statements of the bank, in which the bank holds a qualifying holding, and any administrator of such undertaking. For purposes of this regulation, a related person includes the holding company of which a bank is a subsidiary, and any other company that is affiliated with the bank or holding company through common ownership, control or management.

Also, two or more persons will be considered to be related if one person has the ability, directly or indirectly, to control the other person/s or to exercise significant influence over the financial and operating decisions of the other person/s, or if both persons are subject to common control or common significant influence.

(7) "**transaction**" – means any transaction with a related person, other than a loan or credit exposure to the related person; for purposes of this regulation, the term 'transaction' includes the following transactions between a bank and a related person of the bank:

- (a) purchases, leases or sales of assets, financial or non-financial, tangible or intangible, or movable or immovable property;
- (b) agreements or contracts for the provision or receipt of services, with or without fees, such as accounting, advisory, appraisal, consulting, credit administration and collateral control, data processing, insurance, legal, loan guarantees or agreements of protection, loan processing, managerial advice, safekeeping, staff secondments, technical assistance, training, and other similar financial, operational or professional services;
- (c) borrowings from a related person in the form of notes, subordinated debentures, securities sold under an agreement to repurchase, assumptions or incurrence of a liability, or any similar forms of indebtedness;
- (d) investments in the shares of a related person; or
- (e) any other transaction which, on the basis of its structure, terms or conditions, can reasonably be construed as being, or intended to be, a transfer value between the bank and the related person.

PART II: STATEMENT OF POLICY

- 1: **Purpose** – This regulation is intended to ensure that all transactions between a bank and a related person of the bank –
 - (a) are on substantially the same terms and conditions (on an "arm's length" basis) as the same or similar transactions between a bank and an unrelated person,
 - (b) do not result in capital or income being transferred to a related person in a manner that gives unwarranted preference to the related person,
 - (c) do not adversely affect the solvency, liquidity or profitability of a bank, and
 - (d) are not used as a means of circumventing capital or other regulatory requirements.
- 2: **Scope** – This regulation applies to all transactions as defined above and to all banks licensed and operating in the Maldives.
- 3: **Responsibility** – It is the responsibility of the board of directors of each bank to (a) establish an appropriate policy in respect of transactions with related parties, (b) require management to adopt corresponding procedures to implement the policy, and (c) monitor and ensure compliance to the policy and this regulation.

PART III: IMPLEMENTATION AND SPECIFIC REQUIREMENTS

- 1: **Minimum Requirements** – The following minimum requirements shall apply to all transactions with a related person:
 - (a) Conformance to policy. All transactions between a bank and a related person shall conform to a written policy that has been approved and adopted by a majority of the entire board of directors and such policy must be adequate to ensure compliance with this regulation and with prudent banking practices;

(b) Declaration of interest. If a person is a related person in respect of a proposed transaction with a bank, that person must declare his interest in the proposed transaction in writing to the board of directors prior to the board voting on the transaction. If a transaction is made without the person's knowledge, then he must declare his interest to the board of directors not later than two business days after becoming aware that the bank entered into a transaction in which he is a related person.

(c) Non-preferential terms. All transactions between a bank and a related person shall be at "arm's length", i.e. must be on substantially the same terms and conditions in respect of charges, fees, interest rate, liability, maturity, price, repayments, risk, security, etc. as the same or similar transactions between a bank and an un-related person;

(d) Prior Board approval. Any single transaction between a bank and a related person that exceeds Rf 250,000 shall be pre-approved by a majority of the entire board of directors. If the transaction involves a related person who is a director of the bank, that director may not participate in the discussions or vote in respect of the transaction.

For purposes of this regulation, multiple transactions that, in substance, comprise a single transaction will be combined and treated as a single transaction. In addition, for purposes of applying the Rf 250,000 threshold, the amount of a transaction, or the total amount of combined transactions, will be considered the aggregate amount to be paid (or received) for services received (or given), or the book value at the time of the transaction of an asset to be sold or purchased or a liability to be assumed or incurred.

2: Prohibited Transactions – No bank shall:

- (a) purchase a low quality asset from a related person; or
- (b) incur a liability to or for a related person in respect of a low quality asset; or
- (for purposes of (a) and (b), a low quality asset is any asset that is, or should be, classified as Special Mention or a lower grade according to the MMA regulation on Asset Classification and Provisioning)
- (c) sell or transfer an asset to a related person at a price or value that is below the current market value of that asset; or
- (d) purchase or lease an asset from a related person at a price or value that is above the current market value of that asset.

3: Reporting Requirements – Each bank shall submit returns in respect of exposures in the form and frequency as the MMA may prescribe.

PART IV: CORRECTIVE MEASURES

1: Remedial measures and sanctions – If a bank, its directors or managers violate any provision of this regulation in a willful, negligent or flagrant manner which results, or threatens to result, in an unsafe or unsound condition of the bank or that threatens the interests of depositors, creditors or the general public, or if the bank, its directors or managers fail to comply with the instructions and reporting requirements in this regulation, the MMA may take any one or more of the corrective measures or impose any administrative penalties as provided in the MMA Act. Such measures and penalties may include, but are not limited to, any or all following –

- (a) Issue a warning to the bank;
- (b) Enter into an informal agreement with the bank for correcting violations and any unsafe and unsound practices and conditions;
- (c) Issue an order to the bank requiring it to cease and desist from particular actions and further to take affirmative actions to correct violations and any unsafe & unsound

practices and conditions;

- (d) Require the board of directors to inject additional capital funds;
- (e) Restrict the scope of activities of the bank including imposing limitations on any foreign exchange activities, granting of credit, making of investments, acceptance of deposits, borrowing of money, or other activities as the MMA may deem appropriate;
- (f) Suspend access to the credit facilities of the MMA;
- (g) Suspend or require the removal of any directors, executive officers or managers;
- (h) Appoint an advisor or a conservator;
- (i) Impose an administrative penalty on the bank or any of its directors, executive officers or managers; or
- (j) Hold personally liable and seek restitution from, as the law allows, any directors, executive officers or major shareholders of the bank; or
- (k) Suspend or revoke the bank's license.

PART V: EFFECTIVE DATE

- 1:** **Effective date** – This regulation shall come into effect on 18th May 2009

Questions relating to this regulation should be addressed to the Senior Executive Director, Financial Sector Division, Maldives Monetary Authority.