



# VIETNAM GUIDEBOOK FOR BANKS

## *Related Party Transactions*



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## Note to readers

The Guidebook has been developed as a practical tool which reflects global good practices for the definition of, identification, management and reporting of related party transactions in banking. The practices that have been identified have not come from one place but from diverse and applicable practices derived from a number of countries such as Singapore, Malaysia, Italy, Ireland, Hong Kong, Australia, United Kingdom and Canada.

The Guidebook is not expected to reflect or repeat all relevant Vietnamese regulations. These should be clear from the regulations themselves. In any event, sound corporate governance is more than just compliance with the law and regulations. Corporate governance is about corporate behaviour and the tone set at the top by boards and management. Strong corporate governance is conveyed through a company's leadership characteristics, its systems of accountability and through fairness, transparency and responsibility to the institution and its stakeholders.

Finally, this Guidebook is not expected to encompass all governance and disclosure issues but to deal only with those governance policies and procedures to demonstrate and for proper handling of related parties and related party transactions, including transparency and disclosure issues.

## Disclaimer

This Guidebook is intended to illustrate practices in conflicts of interests and related party transaction requirements. It is in plain language with examples and tables. It does not form part of any regulations. It does not amend or vary any regulatory requirements, or absolve banks and / or their directors of any obligations to make their own judgment.

In the development of this Guidebook, consultations with banks and other stakeholders and market practitioners occurred.

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## Common Abbreviations in the Guidebook

<b>Abbreviation</b>	<b>Full name</b>
<b>AGM</b>	Annual General Meeting
<b>ASEAN</b>	Association of South East Asian Nations
<b>BCBS</b>	Basel Committee for Banking Supervision
<b>CEO</b>	Chief Executive Officer
<b>CFO</b>	Chief Financial Officer
<b>COO</b>	Chief Operating Officer
<b>COI</b>	Conflict of Interest
<b>CRO</b>	Chief Risk Officer
<b>FMO</b>	Dutch Development Bank
<b>IAS</b>	International Accounting Standards
<b>IFC</b>	International Finance Corporation
<b>IFRS</b>	International Financial Reporting Standards
<b>ISA</b>	International Standards in Auditing
<b>IT</b>	Information Technology
<b>LCI</b>	Law on Credit Institutions
<b>LOE</b>	Law on Enterprises
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>RP/RPs</b>	Related Party/Related Parties
<b>RPT/RPTs</b>	Related Party Transaction/Related Party Transactions
<b>SB</b>	Supervisory Board <sup>1</sup>
<b>SBV</b>	State Bank of Vietnam
<b>SOE</b>	State-owned Enterprises

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<sup>1</sup> "Ban Kiem Soat" is translated into English in various ways including the Supervisory Board, the Control Board and the Inspection Committee. All three have the same meaning in Vietnamese and will be referred to as the Supervisory Board.

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# The Guidebook

## PART 1. INTRODUCTION

### 1.1. Context and rationale

The government of Vietnam has made commendable efforts to advance corporate governance principles into the legal and regulatory framework in the banking and financial sector. Yet, there are persistent corporate governance weaknesses.

The period from 2010 to 2014 revealed several difficulties in the banking sector and in bank lending practices. High levels of non-performing loans and practices evident from prosecutions of cases such as Vinashin and Asia Commercial Bank demonstrate a need for rigorous, enhanced supervisory review and enforcement and better application of regulations and better bank governance practices, particularly in the area of transparency and disclosure regarding related party transactions (RPTs). More recently, allegations of unlawful lending by Ocean Bank support the need for this Guidebook.

Additionally, in the face of economic downturn, a number of large state-owned enterprises (SOEs) have defaulted on their obligations and others are overleveraged. The banking system has accumulated a significant level of non-performing loans, and many small banks have experienced serious liquidity and solvency problems<sup>2</sup>.

Transparency regarding RPTs is crucial in banks to ensure depositors, investors and regulators alike know and can assess the financial position and soundness of a bank. This is even more crucial in Vietnamese banks as bank ownership structures are complex with many cross shareholdings between private entities, state-owned enterprises and economic groups.

Concerning Vietnam, a pan-ASEAN corporate governance review report notes, in part, “despite improvements, certain poor corporate governance practices continue to prevail... companies lack clear policies covering the review and approval of significant related party transactions”<sup>3</sup>. A 2013 World Bank Review of the Observance of Standards and Codes in Corporate Governance of Vietnam also recommends “improving the protection of minority shareholders by strengthening rules on related party transactions”<sup>4</sup>.

Banks are engines of growth and generate a multiplier impact on the economy. Failure of one bank has a systemically larger impact in the banking system and the economy. Therefore

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<sup>2</sup> World Bank- Vietnam, *Financial Sector Assessment Program (FSAP) Report 92618*, June 2014.

<sup>3</sup> Asian Development Bank, *ASEAN Corporate Governance Scorecard: Country Reports and Assessments, 2013-2014*, Mandaluyong City, Philippines, 2014.

<sup>4</sup> World Bank, *Report on the Observance of Standards and Codes – Corporate Governance (ROSC)*, Washington D.C., 2014.

greater care should be taken in the governance of each bank. Bank business includes borrowing money from individual depositors to make loans to other clients. Banks and bank boards have a duty of care to their depositors and if a problem is suspected, depositors could start a run on the bank. Banks should establish a higher standard of care, higher than ordinary listed companies, to establish and maintain the trust of depositors. A strong RPT environment and leadership 'at the top' is important and empowers internal bank gatekeepers.

Another incentive for good RPT practices is that investors, including foreign investors, view transparency and clarity on RPTs as an indication that the bank actively seeks to identify and to control these transactions, thus reducing the risk of loss, and thus presenting a better investment opportunity.

A consortium comprised of four parties, the State Bank of Vietnam (SBV), International Finance Corporation (IFC), FMO, which is also known as the Netherlands Development Finance Company (FMO's legal name is 'Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.'), and Dragon Capital of Vietnam ('the Consortium'), determined that in the banking sector in Vietnam, there was a need for greater transparency and disclosure surrounding RPTs. Hence, the concept for this Guidebook was established.

The goal of the Guidebook is to encourage commercial banks to raise awareness of good corporate governance and to explain the challenge related party transactions and conflicts of interest present in banking and how they should, in good practices, be managed. Banks should improve their transparency of information in these areas.

## 1.2. Objectives

The overarching goal of this Guidebook is to provide guidance to banks on how they can improve RPT oversight and management and to improve transparency of RPTs in commercial banks in Vietnam.

The specific objectives of the Guidebook are three-fold:

- To raise awareness in Vietnamese commercial banks about international practices for RPTs and on transparency in banking regarding RPTs, and related party lending (RPL);
- To produce a Guidebook that gives concrete assistance to banks to develop adequate practices for RPTs and levels of disclosure to increase transparency for RPTs; and
- To provide to directors and senior management a source of best practice, together with examples, for easy implementation into their banks' corporate governance.

## 1.3. Scope and applicability

This Guidebook is developed specifically for voluntary application by all commercial banks, established and operating in Vietnam. All banks, whether they are Vietnamese or foreign-

owned limited liability companies, joint stock companies or 100% state-owned banks should apply the provisions of this Guidebook as all may affect national financial stability<sup>5</sup>.

The Guidebook respects the legal and regulatory requirements for RPTs applicable for all listed entities. However, it demands a higher standard from all banks due to their position of importance as deposit taking institutions and their impact on the stability of the banking system and the national economy. Although regulations and required disclosures may be less detailed for non-listed banks, especially those that are wholly-owned, these banks can nevertheless pose risks to the financial system. Therefore, it is recommended that all banks should apply the recommendations.

#### **1.4. Legal provisions**

The Guidebook seeks to incorporate current and key applicable regulations in Vietnam which are set down in the legal and regulatory framework. These key regulations relating to RPTs are set out below. Other laws and regulations are applicable also. However, those listed below are the prime instruments.

Banks hold a special position of responsibility to their depositors, to regulators and the public. As such, it is expected that all the laws and regulations below are complied with by all banks, even if some do not directly apply because the bank is not listed, or is privately owned or is state owned. To the extent the regulations themselves may conflict with the Law on Credit Institutions, the Law on Credit Institutions will take precedence.

This Guidebook takes the view that all banks should look to global best practices for RPTs beyond minimal compliance requirements set down in laws, regulations and accounting standards. Therefore, practices endorsed and adopted in other jurisdictions are recommended here, beyond Vietnam's applicable laws and regulations.

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<sup>5</sup> *The Financial Stability Board states that "increasingly, governments have recognized the synergy between macroeconomic and structural policies in achieving fundamental policy goals. Corporate governance is one key element in improving growth and ensuring market integrity and financial stability".*  
*Source: [www.financialstabilityboard.org](http://www.financialstabilityboard.org)*

**Table 1: Key Applicable Regulations**

<b>Vietnam Law or Regulation</b>	<b>Applicability</b>
Law on Enterprises (as amended on 26 November 2014)	July 2015
Law on Credit Institutions (as amended on 17 June 2010)	January 2011
Law on State Bank of Vietnam (as amended on 16 June 2010)	January 2011
Decree 59/2009/ND-CP – on organization and operation of commercial banks	July 2009
Decree 53/2013/ND-CP on the setting up of the Vietnam Asset Management Corporation (VAMC)	July 2013
Decree 34/2015/ND-CP amending some provisions under Decree 53/2013/ND-CP (Decree 53) on the establishment, organisation and operation of VAMC	April 2015
Circular 36/2014/TT-NHNN on stipulating prudential ratios in operations of credit institutions and foreign bank branches	February 2015
Circular 39/2011/TT-NHNN on independent audit of credit institutions and foreign bank branches	February 2012
Circular 121/2012/TT-BTC – On governance applicable to public companies	September 2012
Circular 52/2012/TT-BTC- Information disclosures on the stock market (recently is replaced by Circular 155/2015/TT-BTC, effective from 1/1/2016)	June 2012
Accounting Standards VAS 26 – Related Parties Disclosures issued on 30 December 2003 and Auditing Standard VSA 550 – Related Parties issued on 28 November 2003.	January 2004

It is important to note that the global banking standards setter, the Basel Committee for Banking Supervision (BCBS) sets the tone for national regulations in the banking industry. The BCBS issued its Corporate Governance Principles for Banks in July 2015 and these are the starting point with regard to corporate governance in banks. About RPTs, it states:

“the board should ensure that transactions with related parties (including internal group transactions) are reviewed to assess risk and are subject to appropriate restrictions (e.g. by requiring that such transactions be conducted on arm’s length terms) and that corporate or business resources of the bank are not misappropriated or misapplied.”<sup>6</sup>

BCBS, Corporate Governance Principles for Banks, paragraph 27, 2015.

<sup>6</sup> BCBS, *Corporate Governance Principles for Banks*, para 27, July 2015.

It also devotes several paragraphs<sup>7</sup> to how the board should deal with conflicts of interest; RPTs are considered to be a conflict of interest under the BCBS Corporate Governance Principles (see also section 3.2).

### 1.5. Principles v rules approach

When developing regulations, some jurisdictions take a high-level approach applying broad principles in order to address and regulate RPTs. The UK, Canada and Australia follow this path. Asia generally, Hong Kong, Malaysia and Singapore have formulated more specific rules to control RPTs. No matter the approach, the end goal is the same – to identify related parties and their transactions, to ensure they are not abusive to the bank or its stakeholders and will not distort financial information provided to investors.

### 1.6. Structure and notes on terminology

Sections of the text describe in detail issues in RPTs and give rise to recommendations which are summarised in Table 2 for ease of reference.

Different terms are applied in different jurisdictions to refer to RPTs. Singapore uses the term ‘interested person transactions’. Hong Kong uses the term ‘connected persons’ transactions’. UK and Malaysia use ‘related party transactions’. Australia explains the term as ‘transactions with persons in position of influence’. In this Guidebook, the terms ‘related parties’ and ‘related party transactions’ are used.

Where this Guidebook mentions a ‘board’, or ‘board of directors’, ‘directors’ or ‘members of the board’, the text should also apply to members of the Members’ Council of banks, to those with governance responsibilities in state-owned banks, members of the Supervisory Board, and all directors, executive or non-executive, alternate, nominee or shadow directors<sup>8</sup>. Also the term ‘ban kiem soat’ has been translated variously into English as the Supervisory Board, The Control Board or the Inspection Committee. This Guidebook will use the term Supervisory Board.

### 1.7. General rules for related party transactions

Experience has shown time and again that RPTs have the potential to be unfair or abusive to the extent that in some jurisdictions they are very heavily regulated, or are so heavily scrutinized that a RP will choose, in principle, not to conduct any business with the bank even if permitted.

Conflicted situations challenge the ability of the decision maker to act objectively in the best interests of the bank. All bank related parties and their transactions with the bank should be beyond reproach and even the appearance of conflict avoided. Because of the capacity of one

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<sup>7</sup> Paragraphs 80 to 86 inclusive set down the BCBS requirements regarding COI.

<sup>8</sup> A ‘shadow director’ is defined in UK Company Law, in the Australian Corporations Act and in Malaysian Company Law, as a person who is not validly appointed as a director but acts as a director and / or is one whose wishes directors customarily act in accordance with. In these jurisdictions, a shadow director is thus held liable as director.

party to control or influence the transaction, RPTs are always viewed as possibly conflicted and for this reason should be subject to rigorous review if they are to be approved.

### **Recommendation 1**

Related party transactions are always viewed as situations which are open to possible conflict of interest and should be subject to rigorous review.

In many jurisdictions, RPTs are considered so important that regulators have prohibited RPTs with the bank and/or many related parties choose to do their banking with other institutions rather than their own so they cannot be called into question if they have repayment issues. A RPT that is classified or subject to restructuring sets a very poor 'tone at the top' and is a poor example to other creditors. It also should call into question the continuing role of the RP with the bank. Such situations reduce public trust in those governing the bank.

To protect the bank, its assets and its stakeholders, it is expected that if there is a RPT, it should be made on an arm's length basis, on terms and conditions not more favourable than transactions with non-related parties under similar circumstances. All RPTs should be identified and reported monthly to the board, or its designated committee for review. All material RPTs should be subject to strict review and (dis)approval processes and publicly disclosed.

### **Recommendation 2**

All transactions with the bank should be on arm's length terms and conditions. All RPTs if they occur, should be subject to strict review and (dis)approval processes and publicly disclosed.

In Asia, because of the prevalence of controlling owners including family and state shareholders, and because of the relationship nature of business activities, RPTs in banks may occur. Owners and bank board directors worldwide have moved to tighten requirements concerning identification, approval and disclosure of RPTs and some regulators have prohibited certain types of transactions<sup>9</sup>. Regulators have been tightening enforcement of regulations on RPTs and COI. Any RPT that is classified or leads to a loss for the bank should also have serious consequences for the related party and his/her standing or position in the bank and lead to an evaluation of control factors.

<sup>9</sup> France prohibits loans to directors and managers or guarantees for their benefit. In a similar vein in India, Malaysia, Singapore, Thailand and Korea company laws or their equivalent prohibit these RPTs.

**Recommendation 3**

Any transaction with a related party of the bank should be beyond reproach and where possible even the appearance of a conflict of interest should be avoided. If a RPT does lead to classification or a loss is incurred, the bank should evaluate control factors, review the standing of the related party within the bank and the bank's position on the transaction itself.

If a bank's owners or directors are determined to improve the management and disclosure of RPTs, first they should analyse the current situation within the bank, note the gaps between this and good practice regarding RPTs and establish a well-resourced, board-approved plan for change. The plan should include establishing a framework of systems, structures, policies, procedures and controls within the bank for RPTs. The framework aims at transparent management of relationships and transactions that may be detrimental to the interests of the bank. Banks should establish internal identification, approval and monitoring processes, in addition to regulatory requirements, and should publish information on these practices on their website.

**Recommendation 4**

Commercial banks should undertake a gap analysis between current bank RPT practices, practices required by Vietnam law and regulation, and RPT good practices as presented in the next parts of this Guidebook and develop a plan for improvement. The RPT framework should include systems and structures, policies, procedures and controls for RPTs. The framework should be approved by the board, well resourced, published and reported on to stakeholders.



## Part 1 - Frequently asked questions

*1.1 Q - Why are RPTs the subject of so much scrutiny by bank stakeholders and by the boards of banks?*

1.1 A - Several studies have shown that when banks have a large proportion of RPTs, the margin on loans may be very favourable to the borrower and the risk of default to the bank is much higher (in some extreme cases more than 70 per cent of the total) than on loans to unrelated parties<sup>10</sup>. This level of default can destroy a bank. For example, a study of Bangladeshi Banks after privatization indicates that the greater number of RPTs coincides with other evidence of weak corporate governance and a higher incidence of fraud in the bank<sup>11</sup>.

*1.2 Q - Does this Guidebook supersede any Vietnam laws and regulations?*

1.2 A - No. All Vietnam laws and regulations continue to apply. This Guidebook explains better CG practices in RPTs that are expected of banks striving to contain and manage RPTs transparently.

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<sup>10</sup> Cited in *The Corporate Governance of Banks: A Concise Discussion of Concepts and Evidence*, R. Levine, GCGF Forum 2003.

<sup>11</sup> M. Z. Sharkar, Sobhan and Sultana, *Association Between Corporate Governance and RPTs: A Case Study of the Banking Sector in Bangladesh*, 2007.

## PART 2. KEY RECOMMENDATIONS

This table provides a summary of the recommendations provided throughout the Guidebook that arise from the surrounding text.

**Table 2: Key Recommendations**

Topic		RECOMMENDATIONS
<b>General Rule</b>	1	Related party transactions are always viewed as situations which are open to possible conflict of interest and should be subject to rigorous review.
<b>General Rule</b>	2	All transactions with the bank should be on arm's length terms and conditions. All RPTs, if they occur, should be subject to strict review and (dis)approval processes and publicly disclosed.
<b>General Rule</b>	3	Any transaction with a related party of the bank should be beyond reproach and where possible even the appearance of a conflict of interest should be avoided. If a RPT does lead to classification or a loss is incurred, the bank should evaluate control factors, review the standing of the related party within the bank and the bank's position on the transaction.
<b>General Rule</b>	4	Commercial banks should undertake a gap analysis between current bank RPT practices, practices required by Vietnam law and regulation, and RPT good practices as presented in the next parts of this Guidebook. They should develop a plan for improvement. The framework should include systems and structures, policies, procedures and controls for RPTs. The framework should be approved by the board, well resourced, published, and reported on to stakeholders.
<b>Related parties</b>	5	<p>All banks in Vietnam should develop and adopt their own strong definition of 'related parties' which meets at least the collective minimum of the following key instruments - the Law on Enterprises, the Law on Credit Institutions, securities regulations and IAS 24, and which goes beyond minimal regulatory requirements.</p> <p>A definition of related parties should include clarity on the following persons and their interests:</p> <ul style="list-style-type: none"> <li>i. Directors and Supervisory Board members;</li> <li>ii. Senior management;</li> <li>iii. Significant shareholders;</li> <li>iv. Related entities (including companies, trusts etc); and</li> <li>v. Family members and relatives of directors and Supervisory Board members, senior managers and significant shareholders.</li> </ul>

Topic		RECOMMENDATIONS
<b>Directors</b>	6	When considering RPs, 'directors' should include all persons who act or are seen to be acting in the role of a director, active and influential in board decision making, whether remunerated or not, including Supervisory Board members.
<b>Senior management</b>	7	RPs should include senior management and employees and their interests, those with de facto decision making powers, including: <ul style="list-style-type: none"> <li>i. all management reporting to the CEO or to a board committee;</li> <li>ii. all members of the bank Executive Committee;</li> <li>iii. other senior roles such as company secretary and general counsel, CFO, COO, CRO, Head of Internal Audit;</li> <li>iv. business unit heads (which in Vietnam comprise heads of commercial banks from branches level 1 or branches level 2 or transactions officers), including Heads of Credit, Treasury, Human Relations, Strategy, IT; and</li> <li>v. employees with significant credit approval authority or responsibilities, including members of the credit committee.</li> </ul>
<b>Significant shareholders and groups of related shareholders</b>	8	Banks should recognize as related parties all significant shareholders holding or capable of influencing 5% or more of shares held either directly or indirectly. For transparency, significant shareholders with holdings of 5% or more should be compelled to provide information to the bank on themselves and their related parties. Groups of related shareholders holding collectively 5% or more of shares would also be classified as significant shareholders. Global focus on on those with the capacity to control or influence company decision making.
<b>Related entities</b>	9	Banks should include as RPs, related entities <sup>12</sup> , each deemed related to the other, such as a: <ul style="list-style-type: none"> <li>i. holding / parent company;</li> <li>ii. subsidiary;</li> <li>iii. controlled company (also referred to as affiliate, associate, sister or fellow company); or</li> <li>iv. jointly controlled entity.</li> </ul> Directors and senior managers of the holding company are considered related parties. Directors of related entities should be identified as related parties also.

<sup>12</sup> For a full definition of 'related entities' see IAS 24.9b, *Related Party Disclosures*, IASB 2012, accessed at [www.ifrs.org](http://www.ifrs.org)

Topic		RECOMMENDATIONS
<b>Family members</b>	10	Close family members of directors and senior managers should be included in the definition of related parties and should include family relationships in the first, second and third degree.
<b>Conflict of interest</b>	11	All bank staff and directors should avoid situations that give rise to a conflict of interest or a perceived conflict. They should disclose any possible conflict of interest, related parties and related interests, annually or when changes occur. They should take no part in deliberations, decision making or voting on matters in which they are conflicted. RPTs are always viewed as subject to conflicts of interest and should be actively monitored and subject to specific requirements.
<b>Immaterial and de minimis RPTs</b>	12	<p>All RPs and RPTs should be reported to the board.</p> <p>The regulator, or failing that the bank, should set a low 'de minimis' level for each individual RPT or aggregated similar RPTs with one related party, below which they shall be (dis)approved initially by management, reported to the board and should be approved ex post in aggregate by the board.</p> <p>Companies should elect to set a low 'de minimis' level. It could be lower than any level set by a regulator to demonstrate commitment to controlling RPTs.</p>
<b>Material RPTs</b>	13	Material RPTs of greater significance, at or above the 'de minimis' threshold, should be subject to strict ex ante decision making and (dis)approval processes by the board and / or shareholders (see also Recommendation 21).
<b>Arm's length transactions</b>	14	RPTs should be scrutinised to ensure fair market terms and conditions apply. RPTs should be monitored to ensure normal market terms and conditions are applied throughout the duration of the transaction.
<b>RPT policy</b>	15	<p>Every bank should develop and publish on their website a written RPT policy to deal with related party transactions and should incorporate as a minimum the following elements:</p> <ol style="list-style-type: none"> <li>i. Policy objective</li> <li>ii. Definitions</li> <li>iii. Policy owner</li> <li>iv. Applicability of the policy</li> <li>v. Identification of RPs and RPTs, including thresholds and disclosure requirements</li> <li>vi. Notification, accountabilities and processes</li> <li>vii. Review and (dis)approval processes</li> <li>viii. Monitoring of RPTs</li> <li>ix. Transparency and disclosure / reporting of RPTs</li> <li>x. Publication and promotion of the policy.</li> </ol>

Topic		RECOMMENDATIONS
<b>Board role in RPTs</b>	16	<p>The board should understand its role in dealing with RPTs, including:</p> <ol style="list-style-type: none"> <li>i. oversee the establishment, approval and communication of a policy on RPTs;</li> <li>ii. ensure disclosure of interests and RPTs by directors, senior managers and significant shareholders;</li> <li>iii. oversee effective testing and review of the policy implementation by all related entities, significant shareholders, directors, senior managers and their related parties;</li> <li>iv. ex ante, the board should review, (dis)approve or recommend to shareholders for (dis)approval all material RPTs; and</li> <li>v. oversee the establishment of systems to ensure proper management and reporting of RPTs, including reporting RPTs to the Supervisory Board and external auditor.</li> </ol>
<b>Independent directors role in RPTs</b>	17	<p>Independence of directors should be robustly defined. Independent, non-conflicted directors should be identified and their duties with regard to RPTs formalized in a committee charter. These directors should support implementation of the RPT policy, review and (dis)approval processes and have close interactions with the internal audit function and the external auditor who provide RPT assurance.</p>
<b>Management role in RPTs</b>	18	<p>Management should implement the board approved RPT policy and ensure adequate policies, procedures and controls are established to support the policy. Senior management may approve RPTs under a de minimis level, within their delegated authority limits. All RPTs should be reported regularly to the board or the board committee established for this purpose. One group in senior management should be nominated as accountable for the implementation of the RPT policy, and report on it to the board.</p>
<b>Role of board committee</b>	19	<p>The board appointed committee of independent directors should work closely with:</p> <ol style="list-style-type: none"> <li>i. the compliance function to ensure all regulatory requirements for RPTs are fulfilled;</li> <li>ii. internal audit function to ensure RPT policies and processes are regularly reviewed, tested and reported to be effective; and</li> <li>iii. the external auditor to ensure the effectiveness of RPT policies and processes, that the bank has identified in all its RPs and transactions with them and that the RPTs are appropriately included in the financial statements.</li> </ol> <p>Open interaction between the board committee charged with oversight of RPTs and compliance, internal audit and external audit are key to a robust RPT system.</p>

Topic		RECOMMENDATIONS
<b>RP interests information</b>	20	<p>All related parties should be identified and required to provide detailed disclosures on their interests and on their related parties' interests. The bank should keep a database of this information. The information should at least include:</p> <ol style="list-style-type: none"> <li>i. Name of the person or related party</li> <li>ii. Person or entity they are related to</li> <li>iii. Description of the nature of the relationship</li> <li>iv. Description of their interests</li> <li>v. Description of any transactions with the bank</li> <li>vi. Date of the completion of the declaration.</li> </ol>
<b>Thresholds for RPTs approvals</b>	21	<p>Banks should establish in the RPT policy, transaction bands for:</p> <ol style="list-style-type: none"> <li>i RPTs below the de minimis level where ex ante management (dis) approval is required but no ex ante board review and approval is required; ex post board reporting and approval is still required.</li> <li>ii the level of RPT at which ex ante board (dis)approval is required and which is set at between the de minimis level and a percentage of owners' equity (recommended to be up to 3.0% of owners' equity as per the latest financial statements reviewed or audited by the external auditors);</li> <li>iii the level of RPT where ex ante shareholder (dis)approval is required at a percentage of owners' equity (recommended to be at or above 3.0% of owners' equity as per the latest financial statements reviewed or audited by the external auditors).</li> </ol>
<b>RPT (dis) approvals processes</b>	22	<p>RPT review and approvals processes should be established which consider non-material and material transactions for board approval and also for shareholder approval and reporting.</p> <p>Processes should be established to include:</p> <ol style="list-style-type: none"> <li>i. (dis)approvals processes;</li> <li>ii. aggregation of transactions;</li> <li>iii. recurrent RPTs; and</li> <li>iv. incorporation of any other regulatory commercial bank limits, including those set for total limits allowable for all RPTs.</li> </ol>
<b>RPT documents</b>	23	<p>RPT policy should incorporate requirements for:</p> <ol style="list-style-type: none"> <li>i. published information; and</li> <li>ii. documentation of the review and (dis)approvals process.</li> </ol> <p>Write-off or re-structuring of RPTs is a major matter. More stringent special provisions for approval should apply and require a review by independent directors and lead to a review of the role of the RP him/herself.</p>

Topic		RECOMMENDATIONS
<b>RPT loan processes</b>	24	Quality RPT loan processes require application of the bank credit risk policy by non-conflicted parties and should be supported by documentation, application, appraisal and (dis)approval processes by management.
<b>RPT loan policy alignment with other bank policies</b>	25	Particular additional policies and procedures to protect the bank in RPT credit transactions may be required. These policies and procedures should be aligned with other bank policies and with policies and procedures for related parties and related party transactions.
<b>Monitoring of RPTs</b>	26	<p>The board committee should review and oversee bank monitoring of RPTs, RPs and effective management of RPTs, including monitoring activities of the:</p> <ul style="list-style-type: none"> <li>i. compliance function;</li> <li>ii. risk management function;</li> <li>iii. internal audit function;</li> <li>iv. a whistleblowing function; and</li> <li>v. external auditor.</li> </ul> <p>All RPTs should be reported to the Supervisory Board and the external auditor.</p>
<b>External audit review of RPTs</b>	27	The board committee should review with the external auditor his/her findings on RPT policies and processes related for continuous improvement.
<b>Review of non-conforming RPTs</b>	28	The board committee comprised of non-conflicted parties should review every transaction that has not adhered to bank policies.
<b>Records of RPs and RPTs</b>	29	All RPs and RPTs should be recorded and records should be stored, updated regularly and easily accessible for transaction checking procedures.
<b>Transparency of RPTs</b>	30	Bank should aim to be as transparent as possible regarding their policies and procedures for RPTs. Quality disclosures on RPTs should be substantive, comprehensive and specific to the bank and to the individual RPs. Banks should establish and oversee policies for regular, complete reporting to the board committee and to the board of information on interests, related parties and RPTs. Reporting should include reports to the relevant board committee, to the board, to shareholders and to the public on RPs and RPTs, as recommended in Table 18. In particular, shareholders should receive full information to enable approval decisions on material RPTs and in the Annual Report on all RPTs.
<b>Reporting to the regulator</b>	31	Banks should ensure adequate information is provided to the SBV and should be compliant with regulatory requests. Disclosure of RPTs should be compliant with all regulations and with bank policies and should enable understanding of the full impact of RPTs on the bank.

## PART 3. TOWARDS A COHESIVE RPT FRAMEWORK - APPLICATION OF KEY TERMS

The next steps in development of a framework for managing RPTs are to:

- define related parties;
- identify related parties;
- identify the transactions between RPs or between the bank and RPs;
- ensure the transactions are not negative to the bank's interests;
- establish a review/approval process; and
- make the RPTs transparent through comprehensive disclosure.

An understanding of each step is required.

### 3.1. Who or what are related parties (RPs)?

In identifying 'related parties', the goal is to define it broadly so as to capture all persons, entities and their business interests who may be perceived to have some potential or actual COI or some power, authority or influence, direct or indirect, in a transaction which may potentially be to the detriment of the bank.

Related parties refer to a body corporate, other entity or organization or natural persons in two groups, those that are:

- i. related to the bank or financial institution because of an ownership interest; and
- ii. related otherwise, including directors, senior officers and close family members and their business interests, who may also have some other interest in the bank.

These parties or their transactions with the bank should then be subject to particular policies and procedures to ensure independent scrutiny and determination by non-interested parties to ensure the interests of the bank are not compromised.

Definitions of 'related parties' vary from jurisdiction to jurisdiction and across various sources of standards. Therefore, banks should clearly define 'related parties', within the confines of existing laws and regulations, so all may know who are the individual bank's related parties. The globally accepted minimum for a related party definition is stated in the International Accounting Standard, IAS 24 Related Party Disclosures. This standard is not identical to VAS 26 Related Party Disclosures or the definition in the Law on Credit Institutions; IAS 24 is more rigorous. Globally, application of IAS 24 is expected as a minimum.



A *related party* is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the 'reporting entity').

- (a) A person or a close member of that person's family is related to a reporting entity if that person:
  - (i) has control or joint control over the reporting entity;
  - (ii) has significant influence over the reporting entity; or
  - (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.
- (b) An entity is related to a reporting entity if any of the following conditions applies:
  - (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
  - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
  - (iii) Both entities are joint ventures of the same third party.
  - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
  - (v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
  - (vi) The entity is controlled or jointly controlled by a person identified in (a).
  - (vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

A *related party transaction* is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

*Close members of the family of a person* are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity and include:

- (a) that person's children and spouse or domestic partner;
- (b) children of that person's spouse or domestic partner; and
- (c) dependants of that person or that person's spouse or domestic partner.

Excerpt - IAS 24 Related Party Disclosures

In Vietnam, the Law on Credit Institutions, Article 4.28 defines related parties as:

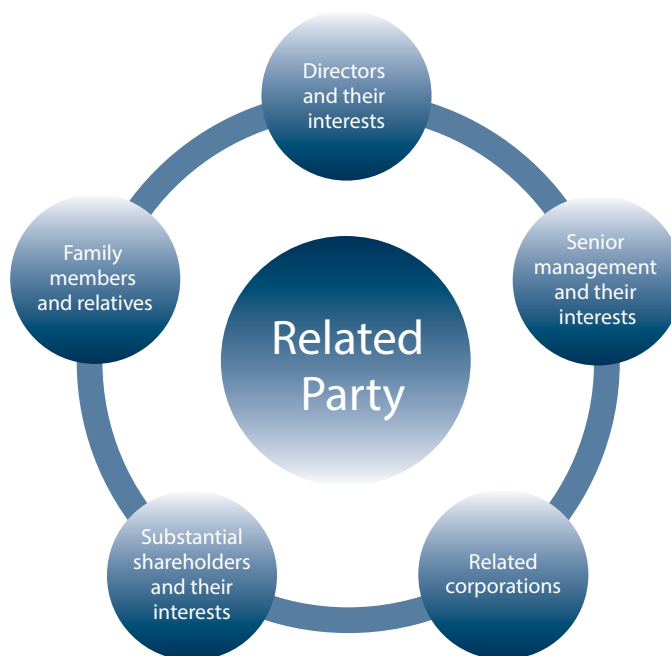
organisations, individuals having a direct or indirect relationship with other organizations that fall in one of the following:

- a) Mother company with its subsidiaries and vice versa; credit institution with its subsidiaries and vice versa; subsidiaries which are owned by the same mother company or the same credit institution with each other; administrators, members of the Board of Controllers of the mother company or of the credit institution, individuals or organizations having the authority to appoint the former with subsidiaries and vice versa;
- b) A company or credit institution with its administrators, members of the Board of Controllers or with companies, credit institutions having authority to appoint those administrators or members of the Board of Controllers and vice versa;
- c) A company or credit institution with organizations, individuals who own five (5) percent or more of charter capital or voting shares of that company or that credit institution and vice versa;
- d) An individual with his / her spouse, parents, children and siblings;
- e) A company or credit institution with individuals who fall into one of the cases stipulated in sub-clause d) of this Clause of administrators, members of the Board of Controllers, capital contributors or shareholders owning five (5) percent or more of charter capital or voting shares of that company or credit institution or vice versa;
- f) Individuals who are authorized by organizations, individuals stipulated in sub-clauses a), b), c), d) and e) of this Clause with authorizing organizations, individuals; individuals who are authorized to represent the portions of capital contribution of the same organization with each other.

In Vietnam, the recently revised Law on Enterprises<sup>13</sup> (LOE) also defines 'related parties'. The LOE is inconsistent with the definition in the Law on Credit Institutions but it includes other elements, such as a wider definition of family members and a comprehensive definition of who is a manager of an enterprise. Additionally, the Law on Credit Institutions is not consistent with the definition of related parties in VAS 26<sup>14</sup> (accounting standards) also applicable in Vietnam. To resolve this lack of clarity, banks should adopt and publish their own definition of related parties that encompasses all requirements of the Law on Credit Institutions, the Law on Enterprises, securities regulations and IAS 24.

<sup>13</sup> *Law on Enterprises, Law No. 68/2014/QH-13. In this Law 'related parties is defined in Article 4.17.*

<sup>14</sup> *Vietnam Accounting Standard 26, Related Party Disclosures, which is not identical to IAS 24, Related Party Disclosures.*

**Figure 1: Recurrent Components of a Definition of a Related Party**

Source: A. Molyneux, adapted from D. Risser, Nestoradvisors, 2015.

A definition of related parties should be high level and broad to capture relevant parties and transactions that present a risk of potential abuse and which is not easily avoided and which can be effectively enforced<sup>15</sup>. Any list of parties to be included as assumed 'related parties' should not be seen as being conclusively finite as other related parties may emerge over time. In the end, the determination of 'related party' is or should be determined by the fact of an individual's or entity's present or future capacity or perception of capacity to control or influence decision making at the bank.

In most jurisdictions directors, including non-executive directors, supervisory board members, senior managers and substantial shareholders and their close family members and any business entities connected to these parties or to the entity itself, are considered 'related parties'. Shareholders who can, directly or indirectly, influence 5% or more of shareholdings or votes are considered related parties.

<sup>15</sup> Source: OECD, *Guide on Fighting Abusive Related Party Transactions in Asia*, Paris, 2009.

### **Recommendation 5**

All banks in Vietnam should develop and adopt their own strong definition of 'related parties' which meets at least the collective minimum of the following key instruments - the Law on Enterprises, the Law on Credit Institutions, securities regulations, and IAS 24, and which goes beyond minimal regulatory requirements.

A definition of related parties should include clarity on the following persons and their interests:

- i. Directors and Supervisory Board members;
- ii. Senior management;
- iii. Significant shareholders;
- iv. Related entities (including companies, trusts etc); and
- v. Family members and relatives of directors and Supervisory Board members, senior managers and significant shareholders.

Each of these elements needs elaboration to understand fully the collective expectations of good corporate governance practices in respect of related parties.

#### **i) Directors**

Directors are expected to act at all times in the interests of the company, be above reproach and avoid even the appearance of a COI. Therefore, when considering a definition of related parties, 'directors' should be clearly and broadly defined.

The term 'directors' should be widely defined to include directors of the bank, supervisory board directors, shadow and alternate directors, executive and non-executive directors and directors of subsidiaries or parent entities and other related entities, and public and private entities. It should include all persons who act in the role of a director, whether paid or unpaid.

The definition of director for related party purposes should also include any entities related to the director in which a director has an interest, whether it is as a director, partner, as senior management or a key administrator, agent, guarantor or as shareholder of significant influence or control. Directors should declare any interests in other entities and transactions, including related party interests and transactions, to the board of the bank and take no part in any decision related to those interests.

**Recommendation 6**

When considering RPs, 'directors' should include all persons who act or are seen to be acting in the role of a director, active and influential in board decision making, whether or not remunerated, including Supervisory Board members.

**ii) Senior management /key managers**

In Vietnam, The Law on Credit Institutions defines senior managers or senior management as 'key managers' as follows:

Key manager of a credit institution includes Chairman and members of the Board of Directors, Chairman, members of the Members' Council, the General Director (Director) and other administrative positions<sup>16</sup> as stipulated in the Charter of the credit institution.

Law on Credit Institutions, Article 4.31

The above definition also includes family members of the first order (spouse, parents, children, siblings) related to key managers. This definition in the Law on Credit Institutions is a narrow interpretation and should be broadened in good practice to include close family members of key managers to the second and third tiers (see also the section on 'close' family members and Table 3 below). The definition of 'related parties' should include all bank senior management and their family members, understood to be all those who can control or who can, directly or indirectly, influence bank decision making.

In good practice the following in senior management would be 'related parties':

- all management reporting to the CEO or to a board committee;
- all members of the bank Executive Committee;
- other senior roles such as company secretary and general counsel, CFO, COO, CRO, Head of Internal Audit;
- business unit heads (which in Vietnam include heads of commercial banks from branches level 1 and branches level 2 or transactions officers) including Heads of Credit, Treasury, Human Relations, Strategy, IT; and

<sup>16</sup> 'Administrative positions' includes business unit heads (which in Vietnam include heads of commercial banks from branches level 1 and branches level 2 or transactions officers) including Heads of Credit, Treasury, Human Relations, Strategy, IT.

- employees with significant credit approval authority or responsibilities, including members of the credit committee.

The definition of senior management also should capture the related interests of senior managers / management, such as other companies or entities where the senior manager may, directly or indirectly, control or significantly influence the entity or where they may be ultimate beneficial shareholders.

Depending on the particular bank structure, there may be other persons who should be designated 'key managers/ senior managers'. De facto capacity to influence decision making within the bank and especially significant transactions, including the determination of lending practices would be a key criterion. Wide definitions of senior management or key administrators are applied globally.<sup>17</sup>

### Recommendation 7

RPs should include senior management and employees and their interests, those with de facto control, influence or decision making powers, including:

- all management reporting to the CEO or to a board committee;
- all members of the bank Executive Committee;
- other senior roles, such as company secretary and general counsel, CFO, COO, CRO, Head of Internal Audit;
- business unit heads (which in Vietnam comprise heads of commercial banks from branches level 1 or branches level 2 or transactions officers) including Heads of Credit, Treasury, Human Relations, Strategy, IT; and
- employees with significant credit approval authority or responsibilities, including members of the credit committee.

### iii) Significant / major shareholders

Significant or major shareholders and shareholdings for determining RPs are usually defined using percentage of ownership. Vietnam law provides:

A related party is an enterprise in which "any person or company owns [shares] at a level entitling it to control issuance of decisions by any managerial entity in such enterprise".<sup>18</sup>

Law on Enterprises, Article 4.17-(g).

<sup>17</sup> Singapore in its MAS 643 identifies 'senior management' broadly.

<sup>18</sup> Law on Enterprises, Article 4.17-(g).

The Law on Enterprises is not specific as to the exact percent level of significant shareholding and therefore of a related party. This is not unusual. Australia is in a similar position in that there is no specific threshold of significant shareholder or shareholding but rather a 'significant interest' is an interest that "has the capacity to influence the vote of a director"<sup>19</sup>. In these circumstances, a bank would set a relevant threshold, relevant to its particular circumstances, usually about 5% or lower.

A 5% shareholding level held either individually or by a group of related shareholders, is set by regulators or applied by banks in the Asian region as the appropriate threshold level for defining substantial shareholders as related parties. Singapore sets a 5% threshold. Malaysia also sets a 5% threshold for substantial shareholders under its Companies Act.

In Vietnam, the Law on Credit Institutions, which is a higher authority for banks than the Law on Enterprises, provides specifically that:

In Article 4.26, a major shareholder of a credit institution means a shareholder owning directly or indirectly five (5) percent or more of voting shares of that joint stock credit institution.

Further, related parties should include "shareholders owning five (5) percent or more of charter capital"<sup>20</sup>. Law on Credit Institutions, Article 4.28.c.

Decree 59/2009/ND-CP<sup>21</sup> also indicates a "major share level means a level of share accounting for 5% or more of the voting equity capital of the bank".

It is recommended banks in Vietnam should apply the 5% specified in the Law on Credit Institutions or a lower percentage when deeming a significant or substantial shareholder.

Banks may wish to apply a lower threshold than regulated if the bank in question seeks to be conservative with respect of the definition of related parties and it is committed to their identification. Such a threshold should consider in aggregate the direct shareholdings of individual shareholders and also shareholdings held by parties (individuals, companies and other organizations) related or connected to the shareholder which s/he can control or significantly influence.

The Law on Credit Institutions concentrates on 'ownership' as the key indicator for related parties. Global practices focus on a broader aspect of 'control and the capacity to influence decision making' in an entity. Banks should consider the upstream shareholdings in the bank's parent company and in other companies within the group when seeking to clarify 'substantial

<sup>19</sup> ASIC, *Related Party Transactions Regulatory Guide*, RG 76.32, 2011.

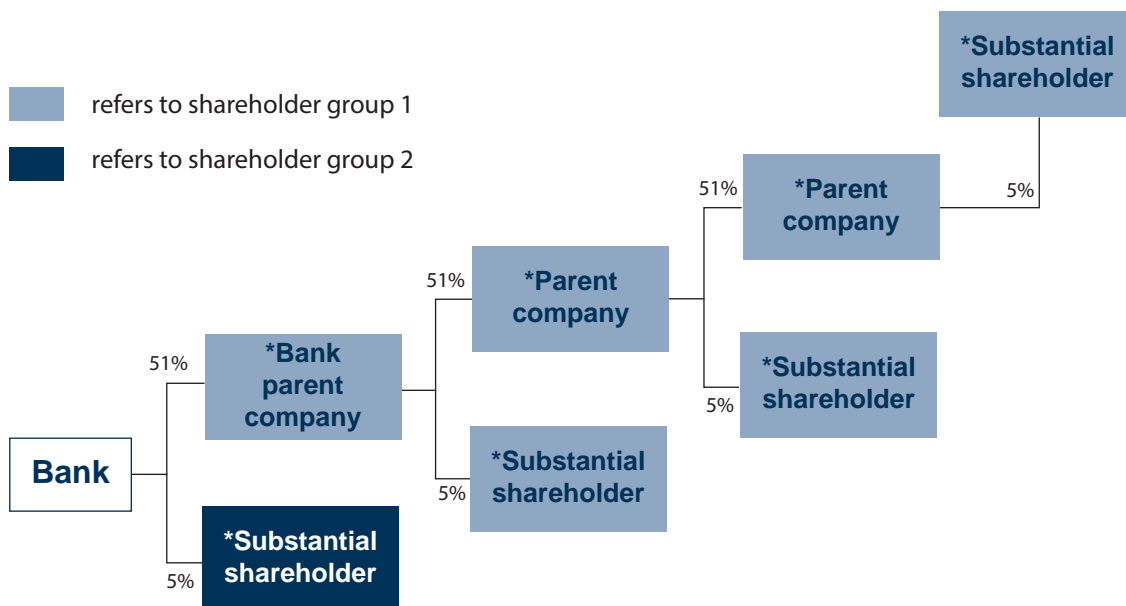
<sup>20</sup> *The Law on Credit Institutions*, Article 4.28 e).

<sup>21</sup> *Decree 59/2009/ND-CP*, Article 5.11.

or significant shareholders' as a parent company has the capacity to significantly influence decisions in its subsidiaries. Transparency of related parties in complex ownership structures, where cross shareholdings are evident, should be considered in any RPT policy.

In Figure 2 below, shareholder group 1 represents a relatively complex ownership relationship with a series of parent companies up to the ultimate parent company. It is important that when considering substantial shareholders, each entity should be taken together with their controlled companies and subsidiaries. Shareholder group 2 shows a simple relationship with only one substantial shareholder.

**Figure 2: Example of 2 substantial shareholder groups**



*\*Includes controlled companies and subsidiaries (where relevant)*

*Source: Nestoradvisors, D. Risser, 2015.*

In Vietnam shareholdings tend to be opaque. In determining a substantial shareholder or shareholding of a group of companies / entities, each shareholder / entity should be taken together with their controlled companies, subsidiaries and affiliates and should include shareholdings held directly and indirectly through related parties. Lack of transparency of ultimate beneficial ownership means certain related parties are not easily detected.

In many jurisdictions<sup>22</sup>, significant shareholders (those meeting the 5% threshold, including any shares held beneficially through other parties or entities) are required to provide to the

<sup>22</sup> Ireland, Norway, United Kingdom, Sweden, Italy, Netherlands and Indonesia are among those who require this.



bank notices of their total shareholding and that of their RPs. To achieve transparency, banks may send to all shareholders annually a simple information request on shareholdings held directly and indirectly. Banks may include in their RPT policy the obligation of shareholders to disclose all shareholdings held directly or indirectly.

A list of significant shareholders should be published by the bank in its annual report and on its website. Many countries, including in Switzerland, Norway, United Kingdom, Sweden, Netherlands and Indonesia require this information and look behind vehicles such as trusts and nominee companies. Domestic intermediaries holding shares for another party should be required either by law or specific bank policy to provide this information.

### **Recommendation 8**

Banks should recognize as related parties all significant shareholders with the capacity to control or influence decision-making, including those holding or capable of influencing 5% of shares or more, held either directly or indirectly. For transparency, significant shareholders with 5% or more should be compelled to provide information to the bank on themselves and their related parties. Groups of related shareholders holding collectively 5% or more of shares, would also be classified as significant shareholders. Global focus is on those with control or the capacity to control or influence company decision making.

#### **iv) Related entities / companies**

In good practices an entity is considered to be a related party if it is a:

- holding / parent company;
- subsidiary;
- controlled company (also referred to as affiliate, associate, sister or fellow company);  
or
- jointly controlled entity.

Entities related in a group structure constitute a risk of abusive related party transactions because one of them, directly or indirectly, has control or significant influence over the other.

Each entity in a group, a financial or non-financial company, listed or non-listed company, public or private company, or other organization, is deemed related to the other. For example, if the entity is a member of the same group, it means that each parent, subsidiary and fellow subsidiary are related to the others. If one entity is an affiliate or joint venture of the other entity or of any one entity within a group, they are considered related.

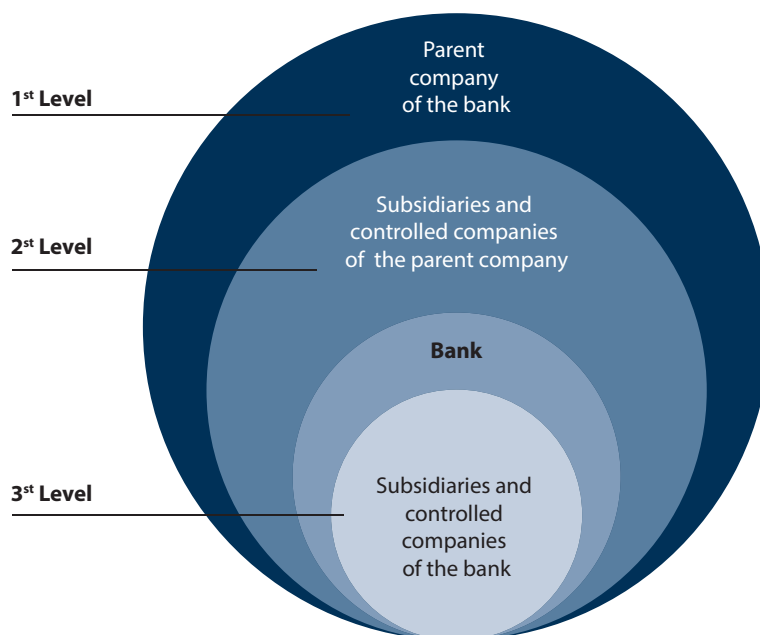
Related entities will include any subsidiary, jointly controlled entities, joint ventures, associates and affiliates of the bank that have the capacity to control or significantly influence decision

making at the bank. Directors of related entities should be considered related parties and senior management of the parent/holding company and should be considered related parties if they are directly or indirectly responsible for the operations of the bank or any other group entity operating in Vietnam.

**Figure 3: Related corporations**

<b>1<sup>st</sup> Level</b>	Bank holding / parent company
<b>2<sup>st</sup> Level</b>	Subsidiaries and controlled companies of the bank holding/parent company
<b>3<sup>st</sup> Level</b>	Subsidiaries and controlled companies of the bank

**Figure 4: Related corporations**



*Source: Nestoradvisors, D. Risser, 2015.*

In Vietnam, The Law on Credit Institutions, Article 4.30 provides that a subsidiary of a credit institution means a company of which:

- a) The credit institution or credit institution and its related parties own more than 50% of charter capital or more than 50% of voting shares; or
- b) The credit institution shall have the right to directly or indirectly appoint most of or all of the members of the Board of Directors, Members' Council, or the General Director of the sub; or
- c) The credit institution shall have the right to amend or supplement the Charter of the sub; or
- d) The credit institution and its related parties shall directly or indirectly control the approval of resolutions, decisions of the Shareholders' Meeting, Board of Directors, Members' Council of the sub.

Law on Credit Institutions Article 4.30

An affiliate is defined as follows:

The Law on Credit Institutions also provides that an affiliate is "any company of which a credit institution or a credit institution and its related parties own more than 11% of charter capital or more than 11% of voting shares". "Such company is an affiliate and not a subsidiary".

Law on Credit Institutions, Article 4.29.

Therefore, the ownership threshold for affiliated companies is between 11% and 50% shareholding and for subsidiaries over 50%.

Banks should consider and determine if the related party definition should extend to companies in which the bank itself serves as a director, partner, executive officer, agent, guarantor or surety. It may also apply to a single bank customer, supplier, or general agent with whom the bank transacts a volume of business, merely by virtue of the economic dependence that may arise.

**Recommendation 9**

Banks should include as RPs, related entities, each deemed related to the other, such as a:

- i. holding / parent company;
- ii. subsidiary;
- iii. controlled company (also referred to as affiliate, associate, sister or fellow company); or
- iv. jointly controlled entity.

Directors and key managers of the holding company are considered related parties. Directors of related entities should be identified as related parties also.

**v) Close family members**

A key element of any definition of 'related parties' are 'family relationships'. The definition should include a broad principles based definition of family relationships assumed to be related to key persons (directors and senior managers). It should include immediate family, both natural and adopted, second tier family members (aunts, uncles, nephews and nieces, cousins and in-laws) and third tier family members (grandparent, grandchildren or equivalent) and close family associates of directors or senior managers. The OECD 2009 guide<sup>23</sup> indicates these three levels of family relationships should be applied.

**Table 3: Degrees of family relationships**

<b>1<sup>st</sup> Degree</b>	Spouse (or domestic partner), brother, sister, parents, child (including adopted and step children)
<b>2<sup>nd</sup> Degree</b>	Cousins, in-laws, aunts, uncles, nephews, nieces
<b>3<sup>rd</sup> Degree</b>	Grandparent, grandchildren and others with capacity to influence

*Source: Adapted from D. Risser, Nestoradvisors, 2015.*

The definition of family members in the Law on Credit Institutions is narrow and limited to first tier family members only (spouse, parents, children and siblings). It therefore is likely to exclude many related parties who might be the source of abusive dealings with the bank. In Vietnam Accounting Standard VAS 26 the full definition of 'close members of the family' as stipulated in IAS 24 does not apply.

<sup>23</sup> OECD (2009), *Guide on Fighting Abusive Related Party Transactions in Asia*.

A better definition may come from using the definition in IAS 24, which states:

“close members of the family of a person are those who may be expected to influence, or be influenced by, that person in their dealings with the entity”.

IAS 24 Related Party Disclosures

The key element to defining a family member hinges on the capacity of a related or connected party to influence or be influenced by a director, Supervisory Board member, senior/key manager or shareholder.

IAS 24 is the basis for definitions of ‘related parties’ and ‘family members’ and is applied in Hong Kong, Singapore, Malaysia and in the United Kingdom and is recommended as a global minimal standard for defining related parties and RPTs.

### Recommendation 10

Close family members of directors and senior managers should be included in the definition of related parties and should include family relationships in the first, second and third degree.

#### vi) Other good practices in defining ‘related parties

Other good practices applied in defining ‘related parties include:

- The board should reserve the authority to declare individuals /entities who, in the opinion of the board, are related parties, as it is difficult in one definition to identify all potential related parties.
- Joint ventures should be included in the related party definition.
- A definition of related parties should extend to current relevant relationships and relationships that would fall within the definition and/or that were in place within the last year.

### 3.2. Conflicts of interest

There is no globally accepted definition of ‘conflict of interest’ (COI), yet the term is widely used in commercial and legal transactions, and is acknowledged in codes of ethics as a reality that may arise at any time. COI may be defined as “the act of pursuing the interests of particular firms or individuals at the expense of the interests of others”.<sup>24</sup> A COI refers to a situation where directors, senior managers, shareholders, employees or others have a direct and competing

<sup>24</sup> IOSCO, *Guidance for Efficient Regulation of Conflicts of Interest Facing Market Intermediaries*, Madrid, October 2010.

interest which actually or potentially conflicts or may be perceived to be in conflict with the person's duties towards the bank. For example, a conflict may arise if a director is nominated by a shareholder and the shareholder demands the director be loyal to the shareholder's interests at the expense of the prudent operations of the bank or if there are private interests of the director that compete with the interests of the bank.

The perception of a COI also exists if an independent informed observer could reasonably assume from the circumstances that there was a pressure or incentive (not necessarily a financial incentive) for the director to act other than in the best interests of the company. This is true even if there is no suggestion that the director would act in such a way – the mere existence of a reasonable perception is sufficient.

RPTs are a specific sub-set of wider COI and should be actively discouraged.

The BCBS in its Corporate Governance Principles for Banks lays out the responsibilities of the board regarding COI and states in paragraph 83:

“The board should have a formal written conflicts-of-interest policy and an objective compliance process for implementing the policy. The policy should include:

- a member's duty to avoid, to the extent possible, activities that could create conflicts of interest or the appearance of conflicts of interest;
- examples of where conflicts can arise when serving as a board member;
- a rigorous review and approval process for members to follow before they engage in certain activities (such as serving on another board) so as to ensure that such activity will not create a conflict of interest;
- a member's duty to promptly disclose any matter that may result, or has already resulted, in a conflict of interest;
- a member's responsibility to abstain from voting on any matter where the member may have a conflict of interest or where the member's objectivity or ability to properly fulfil duties to the bank may be otherwise compromised;
- adequate procedures for transactions with related parties so that they are made on an arm's length basis; and
- the way in which the board will deal with any non-compliance with the policy.

BCBS, Corporate Governance Principles for Banks, 2015.

In corporate governance, directors and managers specifically have a duty of loyalty to the company that precludes them acting or participating in a decision, if s/he has a 'conflict of interest' with the interests of the company. Directors and managers should act at all times in

the best interests of the entity and to the extent reasonably possible avoid even the perception of a conflict of interest.

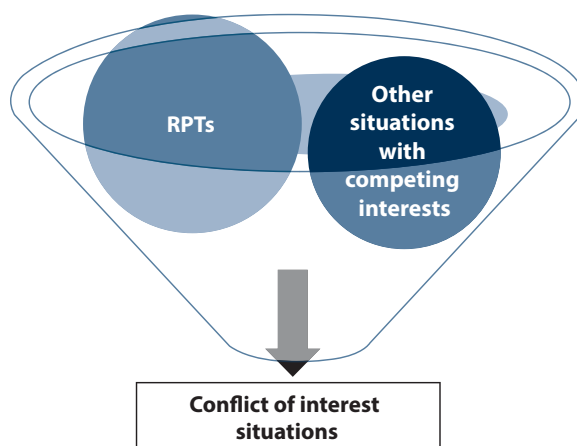
In Vietnam in banking regulations, Decree 59 states clearly:

“Obligations of members of the Board of Directors and the [Supervisory] Board, executive officers, directors of branches, transaction bureaus, subsidiaries and non-business units [include] the duty “to be loyal to interests of their banks; to refrain from using business information, know-how and opportunities of their banks, or abuse their positions, posts and their banks' property for self-seeking purposes or in the interest of other organizations and individuals or to the prejudice of their banks' interests”<sup>25</sup>

COI is not defined in the Law on Credit Institutions. However, it is referred to in several places and where there is a COI, the conflicted party (Board member, member of members' Council or or of the Supervisory Board or a General Director or key manager) should be excluded from decision making or voting<sup>26</sup> as a normal required practice. COI is referred to in Circular 121, especially Chapter V.

A transaction with a related party always implies a possible COI due to the close relationship.

**Figure 5: Relationship Between COI and RPTs**



Source: D. Risser, Nestoradvisors, 2015.

<sup>25</sup> Decree 59/2009/ND-CP, Article 28.3.

<sup>26</sup> Law on Credit Institutions, Article 65.4 and Article 67.2 (l) and Decree 59/2009/ND-CP, Article 48.7 and Article 70.3.c refer to this exclusion from voting or decision making when conflicted. Also LCI Article 34 refers to several situations where the holding of concurrent positions is prohibited. This is because the holding of such concurrent positions would give rise to conflicts of interest.

To help identify possible conflicts of interest and RPTs, a director or other person of control and / or significant influence in a bank should disclose to the entity their related interests annually and when changes occur<sup>27</sup>. Further, the bank should develop and maintain a list of related parties in the bank in order to identify/flag transactions that require special treatment or approvals processes.

Examples of conflicts of interest, which are NOT RPTs are when:

- the bank as an investor places fiduciary funds in its own products;
- the bank prefers one customer over another and neither are related parties;
- the bank is not dealing fairly with customers or collects fees that are not disclosed, or not authorized by applicable law, or are unreasonable;
- a director or senior manager receiving a gift from a company which has made an application for a commercial loan from the bank;
- a bank director taking up a senior management or advisory position in another directly competing bank while still remaining a director of the bank; or
- if the bank, its officer, director or employee engages in unethical behavior, such as trading in bank shares based on price sensitive, confidential information.

### Recommendation 11

All bank directors and staff should avoid situations that give rise to a conflict of interest or a perceived conflict. They should disclose any possible conflict of interest, related parties and related interests annually or when changes occur. They should take no part in deliberations, decision making or voting on matters in which they are conflicted. RPTs are always viewed as subject to conflicts of interest and should be actively monitored and subject to specific requirements.

### 3.3. Related party transactions (RPTs)

Having explained what a related party is, the next step is to identify relevant RPTs and determine the (dis)approval process for the RPT accordingly.

Vietnam Accounting Standard (VAS) 26 Related Party Disclosures, Article 05 outlines a related party transaction as:

“a transfer of resources or obligations between related parties, regardless of whether a price is charged.”

<sup>27</sup> Law on Credit Institutions Article 38.6 and the Law on Enterprises Article 71.1.c require this.



In reality, the definition of 'a transaction' may mean any transaction between a bank in Vietnam or any company or entity in its bank group, and with any of the bank's related parties. A RPT in a bank would mean all exposures or dealings, including those dealings, such as contracts for services, asset purchases and sales, construction contracts, lease agreements, borrowings and write-offs. The list at 4.4.1 of this paper is indicative of transactions that could be RPTs in Vietnamese banks. There may well be other transactions also which should be included and treated as RPTs as the list at section 4.4.1 is not necessarily exhaustive.

These transactions would present a vast number of transactions that could be the subject of this guidance and of review and (dis)approval processes. In particular, RPTs in a bank would include the provision of credit, provision of payment services, lending, factoring, bank guarantees.

To manage the large number of possible RPTs efficiently and effectively, and to ensure informative disclosure, it is normal to differentiate RPTs according to their materiality and conditions. In an OECD review of related party transactions, "all the reviewed economies have moved from controlling transactions to setting the general outlines of the (dis)approvals process and its disclosure. As part of this, they have divided RPTs into those they consider benign"<sup>28</sup> and other larger, non-recurring material transactions. It is recommended Vietnam follow this example.

It is good practice for a regulator, or failing that a bank, to determine a materiality level, or de minimis level, below which RPTs, individually or in aggregate, are considered immaterial, negligible amounts and not worthy of time-consuming ex ante (dis)approval procedures. Approved RPTs should nevertheless be reported to the bank, approved in aggregate ex post by the board, and included in financial statements. Similar transactions with one individual or entity should be aggregated when determining if it falls under the de minimis level.

Several countries state in their regulations thresholds for de minimis RPTs for which special, very strict requirements need not apply, although it is expected that banks would adopt the spirit of the requirements when conducting such transactions. Each country using this approach has set de minimis levels differently, but many countries consider the level of ≤USD100,000 as a de minimis level. Some consider the de minimis level as a proportion of capital.

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<sup>28</sup> OECD, *Related Party Transactions and Minority Shareholder Rights*, Paris, 2012, p22

**Table 4: Examples of de minimis levels**

Country	De minimis threshold level	De minimis threshold USD equivalent
Hong Kong	each RPT < HK\$1,000,000	125,000
Singapore	each RPT < S\$100,000	73,000
Ireland	each RPT €25,000 or <0.5% of capital	30,000
UK	Each RPT ≤ 0.25% of gross assets, profits, market capitalisation or gross capital	
Thailand	each RPT < THB5,000,000	150,000
Malaysia	each RPT < MYR250,000	76,000

Vietnam regulatory guidance to date has not set a de minimis level. In the absence of this regulation, it is recommended that each bank determine a de minimis level in absolute terms (i.e. in set monetary amounts) for each RPT and aggregated similar RPTs with one party, below which RPTs are exempted from ex ante (dis)approvals processes required by that bank. A set monetary amount is easier to understand and communicate across the bank and it makes it harder to hide RPTs and avoid bank RPT requirements.

The de minimis level should be set low so that most RPTs will be subject to individual scrutiny by the board and subject to the ex ante (dis)approvals process. Individual banks may elect to set a lower de minimis level for itself, lower than any level set by a regulator (if it is prescribed) to demonstrate commitment to controlling RPTs.

### **Recommendation 12**

All RPs and RPTs should be reported to the board.

The regulator, or failing that, the bank should set a low 'de minimis' level for each individual RPT or aggregated similar RPTs with one related party, below which RPTs shall be (dis) approved initially by management, reported to the board and should be (dis)approved ex post in aggregate by the board.

Banks should elect to set a low 'de minimis' level. It could be lower than any level set by a regulator to demonstrate commitment to controlling RPTs.

Transactions which are considered material, above the de minimis level, usually have thresholds set at which diverse (dis)approval mechanisms apply. Boards have the primary role in the (dis)approval of RPTs and shareholder (dis)approval may be required for major or even more material transactions.

In the MENA region, because of the prevalence of RPTs and their history of abuse, shareholder (dis)approval remains predominant and very low thresholds have been set. In Asian countries, thresholds have been set for material RPTs requiring shareholder (dis)approval. Such material RPTs should be subject to specific (dis) approval mechanisms and disclosure requirements. For example, Australia uses only one benchmark. The transaction is considered substantial/material when it exceeds 5% of the equity interests of the entity. Bursa Malaysia uses several benchmarks. Singapore is similar to Australia and uses only one benchmark to determine 'material transactions', which for banks is a percentage of capital and for other non-bank entities is a percentage of net tangible assets.

### Recommendation 13

Material RPTs of greater significance, at or above the 'de minimis' threshold, should be subject to strict ex ante decision making and (dis)approval processes by the board and / or shareholders (see also Rec. 21).

### 3.4. Arm's length transactions on market terms

In general, all bank transactions are expected to be conducted at arm's length, where parties to the transaction are well informed, dealing willingly and independently in their own best interests, each striving for the best terms and conditions they can achieve. This would apply to transactions with related parties as with unrelated parties. In doing so, it is assumed this process results in a fair market value for the transaction - a fair outcome for the party and for the bank.

For RPTs, the transaction should have no terms or conditions more favourable than would be offered to the public in the normal course of business or which could be expected to apply in similar transactions on the open market. This seems to be the expectation in Vietnam also.

The Law on Credit Institutions, Article 134.2 states:

"Contracts, transactions and other relationships between controlling companies with their subsidiaries, affiliates shall be established and executed fairly and independently based on the same conditions as those applied to independent legal entities."

Whilst this clause above addresses only transactions between controlling companies and their subsidiaries specifically, other transactions between related persons or entities should be undertaken in the same spirit, at arm's length and on market terms and conditions.

Terms and conditions encompass a whole range of possible matters which in banking would include, but are not limited to, requirements for documentation, applicable interest rates, loan term, collateral and guarantee requirements, loan covenants, non-performance requirements and bad loan workouts, and amortisation schedules. All such terms and conditions should be no more favourable than the terms and conditions applied and required of any other bank client or counterparty for a similar loan in similar circumstances in a normal business transaction<sup>29</sup>.

Fair market terms for RPTs are an area subject to manipulation. Determining comparable market terms requires consideration of qualitative and quantitative characteristics such as these listed below for RPT loans.

**Table 5: Some Issues to Consider – Fair Market Terms in RPTs**

Issue	Consideration
<b>Character / history</b>	Consideration of the borrower, his / her character, past history, determination to repay the loan as would be in the normal course of business
<b>Information</b>	Quality information should be provided as a basis for the loan. There may well be issues with the quality and reliability of the financial information provided. It needs to be scrutinised even more than any other transaction; the information should be reliable, and current.
<b>Information</b>	All the facts surrounding the loan, its use, repayment terms, sources of repayment, normal application processes (which should not be overridden), prevailing and applicable interest rates and possible future changes in these; the different types of risks inherent in different types on loans (term loans for acquisition of capital assets is likely to be at a different interest rate than a short term loan for working capital coverage), should be available.
<b>Terms and Timing</b>	The nature and timing of the transaction itself may give rise to different pricing of loans. For example, a loan for construction and land development may be riskier in an economic downturn and so should be more highly priced than similar loans established in growth periods. RPTs should be reviewed to ensure the terms and conditions are not more favourable than those provided to other bank clients in a similar situation and circumstances.

<sup>29</sup> Market terms and conditions will vary according to economic conditions at the time of the loan granting, industry, sector, history and capacity of the client etc. So determining this is difficult but should be subject to close management review.

Issue	Consideration
<b>Collateral</b>	Collateral for loans may vary in quality and accessibility and change the loan parameters. Collateral should be independently valued, verified and documentation checked for legal accessibility if needed.
<b>Repayment</b>	Capacity of the borrower to repay the loan should be scrutinised. Commercial loans will require reviews of cash flows and consideration of their variability in the economic climate. Interest rates may be higher for clients with lower credit ratings, or those in riskier sectors. RPTs should be treated no differently.

In recent times, the banking sector in Vietnam has experienced several incidents pointing to problems in credit practices, credit quality, with relatively high levels of non-performing loans and issues in related party lending. All boards should ensure there are established practices for RPTs and in particular, independent loan assessment and (dis)approval processes (see also Part 5 of this Guidebook) to ensure relative equivalence of terms and conditions with other like transactions.

Some good practices towards achieving fair market terms and conditions include:

- Demanding and checking quality of and full documentation for the transaction and make decisions predominantly based on such documents;
- Standardisation of documentation and analysis models for RPTs of a similar nature or in a similar product line to ensure they are no different from normal transactions;
- Maintenance of benchmark data for bank products and transactions to ensure comparability with normal product and transaction treatments;
- Segmentation of client-facing roles and transaction analysis roles to reduce the possibility of influence (Chinese walls) and ensure an independent bank view on transaction terms;
- Establishing a policy under which no RPT may be approved by a single individual; all RPT transactions are to be reviewed by a second competent person;
- Sometimes RPTs may be negotiated by independent disinterested parties within the bank or external professional advisors;
- Authorising of immaterial RPTs by senior non-conflicted management or, if material, by non-conflicted, independent board members or shareholders; and
- Review of all RPTs by the bank conduct committee comprised of disinterested parties to ensure all transactions are authorised according to bank policies and authority levels and are fair to the bank.

**Recommendation 14**

RPTs should be scrutinised to ensure fair market terms and conditions are applied. All terms and conditions of RPTs should be monitored to ensure continued application of normal market terms and conditions throughout the duration of the transaction.

**Part 3 - Frequently asked questions**

*3.1 Q - Why is identification of related parties and RPTs so important in a bank?*

3.1 A - It is important because RPTs have the capacity to be unfair to the bank and all other stakeholders if they are not determined at arm's length on normal terms and conditions. To better manage the RPTs, the bank must know the identity of its RPs and so disclosure by key bank personnel of their RPs is crucial to identifying possible abusive RPTs.

*3.2 Q - Why is the definition of RPs in IAS 24 preferred to the application of the VAS 26 or the definition of RPs in the Law on Credit Institutions?*

3.2 A - The definition of related parties in IAS 24 is broader than in Vietnam regulations and includes a wider variety of family members as 'close family members'. This may include aunts, uncles and cousins and even other family members, beyond the first second and third tiers, if they are 'close' to the family i.e. have the capacity to influence or be influenced in a decision.

*3.3 Q - Does the Guidebook apply only to RPTs where all parties to the transaction are in Vietnam?*

3.3 A - No. The principles in the Guidebook should apply to RPTs, wherever transacted and with any parties to the transaction, even if they are cross-border.

*3.4 Q - Does the Guidebook apply only to RPTs where the proposed transaction is a loan from the bank to a RP?*

3.4 A - No. The principles in the Guidebook should apply to all RPTs, whether they are loans, Treasury dealing, deposit taking, account operating or other transactions or dealings between the bank and the RP.

*3.5 Q - If a bank has a director in common with another entity, does it mean the two entities are 'related'?*

3.5 A - Not necessarily. It would depend if this was a relationship with the capacity to influence or control. If the entities are so interconnected that if one experienced financial difficulty and this would affect the other's capacity to repay in a RPT, then yes, they would be considered 'related'.

## PART 4. GOVERNANCE OF RPTs - POLICY, KEY ELEMENTS, ROLES, IDENTIFICATION OF RPs AND RPTs IN BANKING

A general framework for the governance, proper, prudent and good management of RPs and RPTs involves:

- establishing a clear written RPT policy including identification of RPs and with internal thresholds for RPT treatment;
- articulated roles and responsibilities in RPTs assessment, management and oversight;
- regular monitoring and review of the effectiveness of bank procedures regarding RPTs; and
- reporting of RPTs to the board, to shareholders, to regulators and to the public.

RPT procedures should be developed so all RPTs may be identified, reported to the board and referred for (dis)approval in accordance with the prescriptions of the policy.

### 4.1. Policy outline

In most jurisdictions, a related party transaction framework and policy is required of banks. In its Guidelines - Corporate Governance Principles<sup>30</sup>, the Basel Committee for Banking seeks jurisdictions to require that boards should develop, implement and monitor a formal written policy for conflicts of interest and RPTs. It is already a requirement in Australia under Prudential Standard SPS 521. RPT policies are also required in Ireland, Italy and India. The Bank of Mauritius requires adherence to a basic framework to manage risks with regard to RPTs. The Monetary Authority of Singapore requires a RPT policy to be established.

Every bank in Singapore shall establish a policy on related party transactions and put in place adequate procedures to implement it, if it, or any person in its bank group, may enter into any related party transaction or write off any exposure to any of the bank's related parties. Every bank in Singapore shall include policies on and procedures to implement the [requirements].

MAS Notice 643 Transactions with Related Parties

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<sup>30</sup> BCBS, *Guidelines – Corporate Governance Principles for Banks, Bank of International Settlements, 2015.*

It is accepted practice that a bank should outline its RPT policy as a part its governance framework. Applicable elements for RPTs should be included in a specific bank RPT policy and/or any bank-shareholder agreement. The rigour of a bank's RPT policy and its related procedures is a signal of a bank's commitment not to engage in abusive self-dealing. It sends a clear message to all bank personnel and their related parties concerning the policies and processes for handling RPTs. The policy should systematically define principles and processes to distinguish material RPTs and the bank handling of these. It should enable the distinction of RPTs as abnormal transactions and potentially abusive. The goal is that all RPTs should be subject to scrutiny and not be the subject of special favour. RPT policies are expected to vary from bank to bank; larger banks tend to have more comprehensive policies.

### Examples of good RPT policies can be found at:

- [http://www.group.intesasanpaolo.com/scriptlsir0/si09/contentData/view/20120906\\_Reg\\_Part\\_i\\_corr\\_Sogg\\_coll\\_UK.pdf?id=CNT-04-00000000BFA23&ct=application/pdf](http://www.group.intesasanpaolo.com/scriptlsir0/si09/contentData/view/20120906_Reg_Part_i_corr_Sogg_coll_UK.pdf?id=CNT-04-00000000BFA23&ct=application/pdf)  
([http://www.group.intesasanpaolo.com/scriptlsir0/si09/contentData/view/20120906\\_Reg\\_Part\\_i\\_corr\\_Sogg\\_coll\\_UK.pdf?id=CNT-04-00000000BFA23&ct=application/pdf](http://www.group.intesasanpaolo.com/scriptlsir0/si09/contentData/view/20120906_Reg_Part_i_corr_Sogg_coll_UK.pdf?id=CNT-04-00000000BFA23&ct=application/pdf))
- <http://www.citigroup.com/citi/investor/data/relatedpartypol.pdf?ieNocache=32>

The first of the examples is from a bank in Italy where the regulator has a strict policy for related party transactions. The second example is from a global bank company operating across.

### RELATED PARTY TRANSACTIONS

OCBC Bank has established policies and procedures on related party transactions. These include definitions of relatedness, limits applied, terms of transactions, and the authorities and procedures for approving and monitoring the transactions. The Audit Committee reviews material related party transactions and keeps the Board informed of such transactions, if any. Measures are taken to ensure that terms and conditions of related party lending are not more favourable than those granted to non-related obligors under similar circumstances. The Bank also complies with the SGX-ST Listing Manual on interested person transactions<sup>31</sup>.

OCBC, [www.ocbc.com](http://www.ocbc.com)

In developing a RPT policy, the policy should be clear in its objectives, comprehensive, and sufficiently broad in its application to capture the vast bulk of related parties and RPTs where control or significant influence of individuals or entities may sway a decision. Clear definitions are therefore most important.

Objectives of the RPT policy should be formulated and articulated. The board should be accountable for the RPT policy, for approving it and should ensure its publication and appli-

<sup>31</sup> The excerpt is taken from the OCBC website, wherein it describes the policies it has for OCBC governance purposes.



cation. The policy should state the owner of the policy within the bank. The owner will be accountable for the development and regular review of the policy and for internal contact regarding policy matters. A RPT policy should clearly articulate roles and accountabilities for review, (dis)approval, monitoring and disclosure of RPTs. Publication of the policy on the bank website and on a bank intranet portal are recommended. The policy should also be forwarded to controlled companies related to the bank for their application.

### **Recommendation 15**

Every bank should develop and publish on its website a written RPT policy to deal with related party transactions and should incorporate as a minimum the following elements:

- i. Policy objective
- ii. Definitions
- iii. Policy owner
- iv. Applicability of the policy
- v. Identification of RPs and RPTs, including thresholds and disclosure requirements
- vi. Notification, accountabilities and processes
- vii. Review and (dis)approval processes
- viii. Monitoring of RPTs
- ix. Transparency and disclosure/reporting of RPTs
- x. Publication and promotion of the policy

## **4.2. Roles in RPTs**

### **4.2.1. Bank accountability**

All banking enterprises should ensure that every RPT is conducted free of conflicts of interest. The terms and conditions shall be at arm's length and in compliance with laws and regulation and bank policies. Banks should establish specific policies to ensure identification, review, (dis)approval, monitoring of RPTs and appropriate processes and systems. All RPTs should be documented and recorded.

### **4.2.2. Board accountability for RPTs**

Directors' responsibilities are prescribed in the Law on Credit Institutions, the Law on Enterprises and in Circular 121. In respect of related party transactions, it is expected the board will:

Issue internal rules on organization, management and operation of the credit institution in compliance with this Law and relevant laws, except for issues falling within the authority of the board of controllers or the general meeting of shareholders.

Law on Credit Institutions Article 63.12

Circular 121 on corporate governance also recommends that entities take relevant measures regarding related party transactions and measures that will protect the lawful interests of parties related to the entity.

Circular 121 Articles 24 and 25.

These regulations are in line with the general duty of directors to be loyal to the bank, act in good faith to protect the bank's interests and to make decisions in the best interests of the bank. In good practices, independent non-conflicted directors have a primary role in reviewing RPTs, in the (dis)approval of material RPTs and for ensuring RPTs are well managed and disclosed. This duty should prevent any director acting otherwise and is reflected in new Corporate Governance Principles for Banks, issued from the Basel Committee in July 2015.

The board should ensure that transactions with related parties (including internal group transactions) are reviewed to assess risk and are subject to appropriate restrictions (e.g. by requiring that such transactions be conducted on arm's length terms) and that corporate or business resources of the bank are not misappropriated or misapplied.

Corporate Governance Principles for Banks, BCBS, 2015

Board responsibilities for dealing with conflicts of interest and RPTs in banks in Singapore, Malaysia, Hong Kong and Chinese Taipei are consistent and specific in their requirements. Other countries such as Canada, the UK and Australia have similar provisions in this regard. The challenge is to ensure board accountability for RPTs; for ex ante (dis)approval of material RPTs, without the board itself becoming too involved or operating in the role of management. The board's approach to RPTs should remain strategic and include the following activities.

**Table 6: Board role in RPTs**

	<b>Board Role</b>
1	Establish and approve a policy on conflicts of interest and on related party transactions.
2	Ensure management puts in place adequate procedures to see the policy is implemented.
3	Specify the particular group in management responsible for the policy and its effective implementation.
4	Ensure adequate processes are in place to check the efficiency and effectiveness of the policy and its implementation.
5	Set out in the policy minimal criteria for any proposed related party transactions, including materiality thresholds for transaction (dis)approval processes and ensure the establishment of procedures for the review and (dis)approval of material RPTs and large credit transactions with RPs.
6	Ex ante, review and (dis)approval of material RPTs above a de minimis level and review and recommendation of material RPTs which require ex ante shareholder (dis) approval.
7	Ensure no related party, or person or entity which may benefit from a transaction participates in decision making in regard to the transaction.
8	Require directors, senior management and significant shareholders to disclose to the board any and all conflicts of interest or situations in which a reasonable person may perceive a conflict of interest in advance or as they arise.
9	At least annually, review the policy to ensure its continuing relevance and adequacy.
10	Not to usurp management's responsibilities for all transactions, yet to oversee a robust RPT process.
11	Oversee reporting of all RPTs to the Supervisory Board and external auditor.

**Recommendation 16**

The board should understand its role in dealing with RPTs, including to:

- i. oversee the establishment, approval and communication of a policy on RPTs;
- ii. ensure disclosure of interests and RPTs by directors, senior managers and significant shareholders;
- iii. oversee effective testing and review of RPT policy implementation by all related entities, significant shareholders, directors, senior managers and their related parties;
- iv. ex ante, review and (dis)approve or recommend to shareholders for (dis)approval all material RPTs; and
- v. oversee the establishment of systems to ensure proper management and reporting of RPTs, including reporting of all RPTs to the Supervisory Board and the external auditor.

**4.2.3. Role of independent, non-conflicted directors**

Independent directors<sup>32</sup> have a central role in assisting the board to fulfil its function in overseeing RPTs. In an OECD thematic peer review across 30 jurisdictions with in-depth reviews of six countries' practices for RPTs, it found that:

“all reviewed economies with the exception of France<sup>33</sup> make extensive use of independent board members to approve [RP] transactions, sometimes aided by independent experts”<sup>34</sup>

The definition of an independent director differs marginally from one market to another; however, its main components remain the same. The general principle is that an independent director should be free of links to management, controllers (major or significant shareholders, family or state shareholders, family members), and others that could influence his / her judgment. S/he should be capable of independent, objective judgment.

In Vietnam, the Law on Credit Institutions does not define independent directors. The Law on Enterprises also does not define independent directors but it does recognise their use and

<sup>32</sup> See Appendix 1 for commonly accepted definitions of independent directors as applied by UK Corporate Governance Code and the International Finance Corporation.

<sup>33</sup> In France this role is undertaken by the external auditor.

<sup>34</sup> OECD, *Related Party Transactions and Minority Shareholder Rights*, Paris 2012.

capacity for performing an oversight function and for implementation of control over the management and operation of the company<sup>35</sup>.

The possible contribution of independent directors is recognised in Decree 59<sup>36</sup> which states that there should be at least two independent members of the bank board and that the Chairman may be an independent director. Further Decree 59, in Article 22 set out below, does indicate conditions under which directors of a credit institution may be considered independent.

#### Criteria and conditions on independence of independent members of the Board of Directors

1. Being other than those working for banks or their subsidiaries, or having worked for banks or their subsidiaries any time for the last 3 years.
2. Being other than those enjoying salaries, remunerations and other allowances paid by the banks in addition to amounts enjoyed by members of the Board of Directors.
3. Spouses, parents, adoptive parents, biological children and adopted children, and biological siblings of these persons who do not fall into any of the following cases: owning at least 5% of the voting equity capital of joint-stock commercial banks; acting as managers or members of the Supervisory Board of banks or their subsidiaries at present or any time in the last 3 years.
4. Being other than managers or members of the Supervisory Boards of banks at any time in the last 5 years; neither owning nor representing the ownership of at least 1% of the voting equity capital of joint-stock commercial banks.
5. Not joining affiliated persons defined in Clause 11, Article 5 of this Decree in owning at least 5% of the voting equity capital of joint-stock commercial banks.

Decree 59/2009/ND-CP, Article 22.

This is similar but not identical to the criteria in Appendix 1. The example from the UK in Appendix 1 are even more stringent than Article 22 above and should be considered if a bank wishes to aspire to best practices in this respect. The UK definition has a general requirement that the independent board member be independent in character and judgement and excludes those with a material business relationship.

Independent members of the board, and others not conflicted in a transaction under discussion or a party to the transaction, often form a board committee which reviews RPTs or may use an existing board committee comprised of independent directors, or extend the role

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<sup>35</sup> *Law on Enterprises, Article 134.1.b*

<sup>36</sup> *Decree 59/2009/ND-CP Article 16.2*

of the audit committee if the bank has one, to review RPTs. The relevant committee should have accountability for oversight of RPTs included in the committee charter and have specific powers to enable this oversight. These powers would include the power to ask for and receive in a timely manner additional reports on RPTs, additional information with regard to specific RPTs, and the power to examine a particular deal. The committee may need to convene regular meetings to fulfil its role in respect of RPTs.

**Table 7: Role of Non-conflicted, Independent Directors**

	<b>Role of Non-conflicted, Independent Directors</b>
1	oversee processes to ensure conflicts of interest and RPTs are disclosed to the board
2	review material and non-recurrent RPTs and any transaction on non-market terms
3	may participate as independent parties on the RPT committee
4	issue a written, reasoned, opinion for the board on the bank's interests in material RPTs, including the material correctness of the related terms and conditions of the RPT
5	recommend the (dis)approval of RPTs to the board or for board recommendation to shareholders for (dis)approval by non- interested shareholders without delay
6	oversee an annual check on the effectiveness of RPT policies and processes
7	are the communications channel between the external auditor and the board on the auditor's review of RPTs, the application of RPT policies and RPT disclosures

In the one-tier board system prevalent in the UK, US, India, Singapore and many other jurisdictions, the role of an independent reviewer of RPTs is undertaken often by the Audit Committee of the board, comprised of independent directors. In the two-tier system as in Italy and Chile, it is a Committee of Directors of non-interested parties, which undertakes this role. It is essential that each member of any group undertaking this role is in fact truly independent and not beholden to any control or significant influence that may impair judgment. Singapore has established guidance to directors on how to manage the affairs of an audit committee in respect of RPTs. Hong Kong Listing Rules Chapter 14 A is also most specific on accountability for connected transactions within that jurisdiction.

In Vietnam it is important that the board identify either a committee of the board or an audit committee of the board, as permitted by the Law on Enterprises, comprised of non-conflicted, independent members or securely allocate the relevant duties of oversight of RPTs to a distinct and responsible group/committee within the board comprised of non-conflicted parties. This group should interact with the internal audit function and the external auditor on RPT matters.

Temporary replacements for members of the committee should be provided for in case of a conflict of interest arising in one committee member or if there is a need for an urgent review of a RPT. It is likely that board members who are indebted to the bank to any significant degree would not be classified as independent directors or non-conflicted, as they may be swayed by their indebtedness. Further, they would not appear to be independent. Board members who may not be classified as independent directors but who may be not conflicted in a particular transaction, may join such a sub-committee of the board to assist the review of particular transactions. Independent advisors may also assist in the review processes for RPTs as long as they are genuinely independent. No party to the transaction or any party related to those interested in the transaction should participate in its deliberation.

### **Recommendation 17**

Independence of directors should be robustly defined.

Independent, non-conflicted directors should be identified and their duties and powers with regard to RPTs formalized in a committee charter. These directors should support implementation of the RPT policy, review and (dis)approval processes and have close interaction with the internal audit function and the external auditor who provide RPT assurance.

#### **4.2.4. Role of management**

There is no one simple 'fix all' for robust treatment of RPTs. RPTs require quality policies, controls and practices implemented by the board and management. It is management's role to ensure the appropriate handling of all transactions in accordance with bank approved policies and procedures. In detail, management should fulfil the roles specified below.

**Table 8: Role of Management in RPTs**

	Role of Management in RPTs
1	Ensure the RPT policy, established and approved by the board, is implemented and controls are in place to ensure their effectiveness and that other bank processes are aligned with the policy and complied with.
2	Institute specific control procedures to ensure adequate RPT documentation, robust independent analysis of RPTs, appropriate application of RPT assessment policies, and transparent decision-making, and reporting of RPTs.
3	Approve de minimis RPTs within their authority levels.
4	Be responsible for identifying all RPTs, for appropriate handling of RPTs, and flagging unusual and problematic transactions.
5	Be required to report directly to the board committee charged with RPT oversight, any undue influence in a bank transaction by a director, senior management or significant shareholder
6	Overtly support and communicate RPT policies, practices and controls to all relevant staff

Management should institute specific control procedures to ensure adequate RPT documentation, robust analysis of the transaction, correct application of policies in the RPT assessment, decision-making, and reporting of RPTs. This should include proof of the assessment of de minimis RPTs. Training of senior management to support the identification, management and disclosure processes for conflicts of interest and related party transactions may also be required.

One group within bank management is normally allocated management responsibility for the policy, for its implementation and for reporting on RPTs. The responsible party(s) may be any one of the following: company secretary, the legal office, the compliance group, the corporate governance group or corporate conduct group, the risk management function or the chief risk officer (if one is appointed).

### Recommendation 18

Management should implement the board approved RPT policy and ensure adequate policies, procedures and controls are established to support the policy. Senior management may approve RPTs under a de minimis level within their delegated authority limits. All RPTs should be reported regularly to the board or the board committee established for this purpose. One group in senior management should be nominated as accountable for the implementation of the RPT policy, and regularly report on it to the board.



#### **4.2.5. Other roles – compliance, internal audit, external audit**

##### *Compliance Function*

The compliance function of the bank has a role in the RPTs oversight process. It must ensure that the process and the transactions are compliant with prevailing regulations and bank policy, and are reported to the board and the regulator as required. The compliance function should ensure robust systems are in place to support proper recording and tracking of RPTs. This requires modern compliance systems, skilled, well-trained compliance staff, adequate resources and quality IT systems. The compliance function should report to the board on compliance with RPT regulations and bank policy.

##### *Internal Audit*

The internal audit function of the bank has a role to play in regularly reviewing and testing RPT policies, their administration and management and assuring the board committee of independent directors responsible for overseeing RPTs on the effective functioning of the RPT policy. The internal audit function should report on the effectiveness of the RPT policy and its controls directly to the independent directors accountable for RPT oversight. Any exceptions to the policy's application should be notified immediately and directly to the committee responsible and concurrently to bank management. In some countries, management is required to report any RPTs to the external auditor who will then assess the transactions and report on them to the board.

##### *External Audit*

Under International Standards on Auditing (ISAs), the independent external auditor has stringent requirements regarding RPTs and should specifically review RPTs when performing an audit of financial statements and assure the bank that RPT processes are effective. This assurance includes that RPTs have been identified, properly treated and included in the financial statements. In twelve jurisdictions in the Middle East and North Africa (MENA) region, external auditors are required to review RPTs before they are reported on to shareholders at the AGM. This is also the case in many instances in Asia – in Singapore, Malaysia, Hong Kong, Chinese Taipei and others.

International Standards in Auditing (ISA), as Vietnamese Standards in Auditing (VSA) are applicable in Vietnam<sup>37</sup>. The external auditor is accountable for review of RPTs and should not complete the audit until s/he is satisfied RPTs are included in the financial statements.

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<sup>37</sup> Circular 39 also specifies the general audit framework for credit institutions and foreign banks in Vietnam. Circular 39 requires that if a bank receives a 'qualified opinion' or an exception report, perhaps for an anomaly in a RPT, then such a bank should select another audit firm to re-audit the issue. In global practices this is unusual. The initial external auditor should be accountable for assurances on RPTs and should not complete the audit until s/he is satisfied.

ISA 550 states:

The auditor has a responsibility to perform audit procedures to identify, assess and respond to the risks of material misstatement arising from the entity's failure to appropriately account for or disclose related party relationships, transactions or balances in accordance with the requirements of the framework.

Even if the applicable financial reporting framework establishes minimal or no related party requirements, the auditor nevertheless needs to obtain an understanding of the entity's related party relationships and transactions sufficient to be able to conclude whether the financial statements, insofar as they are affected by those relationships and transactions:

- (a) Achieve fair presentation (for fair presentation frameworks); or
- (b) Are not misleading (for compliance frameworks).

*International Standard in Auditing, ISA 550 – Related Parties*

The external auditor can provide valuable insights to the board or the audit committee on the systems required to maintain robust RPT oversight and should be able to advise on how to set up and develop the RPT oversight process.

### **Recommendation 19**

The board appointed committee of independent directors should work closely with the:

- i. compliance function to ensure RPTs comply with all regulatory and bank policy requirements;
- ii. internal audit function to ensure RPT policies and processes are regularly reviewed, tested and effective; and
- iii. external auditor to ensure the effectiveness of RPT policies and processes, that the bank has identified all its RPs and RPTs and that all RPTs are correctly included in the financial statements.

Open interaction between the board committee charged with oversight of RPTs and compliance, internal audit and external audit are key to a robust RPT system.

### 4.3. Information on related parties

#### 4.3.1. Identification of related parties

It is important that the parties to which the policy applies are defined and clearly identified.

Each definition discussed at the beginning of this paper (see Part 3) should be applied in turn and be the basis for identification of related parties. The following terms should be defined:

- directors of the board;
- directors of the supervisory board;
- senior management;
- managers in decision making roles;
- major or significant shareholders holding 5% or more of shares;
- related entities to the bank and related entities to the shareholders; and
- other related persons and close family members of all individuals who would be considered related parties.

These parties should be:

- identified by their name and their interests, shareholdings and other interests identified;
- should be disclosed annually to the bank;
- in a form specified by the bank; and
- changes to these disclosures of related parties or interests should be notified immediately to the policy owner and to the board.

Any changes to these disclosures of interests are to be notified immediately to the policy owner and to the board.

Individuals should be responsible for notifying the bank of changes in their interests' disclosures and for notifying any changes in interests of close family members of which they are aware. The legal representatives of any corporate or other entity shall disclose to the bank any changes to their interest position.

The bank should keep a current database of interests of all related parties and their interests. When undertaking a potential transaction, the relevant bank business units should check the database.

#### **Article 39 Responsibility to publish related interests**

1. Members of the board of management or members' council, members of the board of controllers, the general director (director) and deputy general director (deputy director) of a credit institution must publish the following information to the credit institution:

- (a) Name and address of head office, lines of business, serial number and date of issuance of business registration certificate and place of business registration of any enterprise or economic organization in which such person or a related person owns a capital contribution portion or shares in his / her/ their name or authorizes or entrusts another organization or individual to own in the latter's name, of five or more per cent of the charter capital;
- (b) Name and address of head office, lines of business, serial number and date of issuance of business registration certificate and place of business registration of any enterprise in which such person and a related person is currently a member of the board of management or members' council, a member of the board of controllers, or the general director (director).
2. The publication of information pursuant to clause 1 of this article and changes in relevant information shall be made in writing within seven (7) business days from the date on which the [event] occurs or the change arises.
3. The credit institution must [also] publish the information prescribed in clause 1 of this article annually to the general meeting of shareholders or members' council of the credit institution, and shall display and retain such information at the head office of the credit institution.

Law on Credit Institutions Article 39

All banks should establish policies and procedures for recording directors, senior management, significant shareholders and their related parties' declarations of interests. Any change to the interests of parties under the RPT policy should be notified immediately it becomes evident and within 7 days as prescribed. Some countries require notification within 2 days.

### **Recommendation 20**

All related parties should be identified and required to provide detailed disclosures on their interests and on their related parties' interests. The bank should keep current a database of this information. The information should at least include:

- i. Name of the person or related party
- ii. Person or entity they are related to
- iii. Description of the nature of the relationship
- iv. Description of their interests
- v. Description of any transactions with the bank
- vi. Date of the completion/update of the declaration.

## 4.4. Related party transactions in banking

### 4.4.1. Types of related party transactions in the banking sector

The scope of transactions that fall under RPT rules should be broad. It should essentially include all exposures or dealings. It should include contracts for services, asset purchases and sales, construction contracts, lease agreements, borrowings and write-offs, whether or not entered into in the ordinary course of business or whether entered into directly or indirectly. VAS 26.19 includes a list of examples of RPTs. An indicative, but not necessarily exhaustive, list for banking transactions is provided below.

**Table 9: Possible RPTs in Banking**

<ul style="list-style-type: none"> <li>• Granting of credit or any transactions similar to credit granting</li> <li>• Providing guarantees to related parties</li> <li>• Accepting, intervening for honour of bills of related parties</li> <li>• Acquiring loans made by third-parties to related parties</li> <li>• Providing securities as collateral in credit granting</li> <li>• Deposit, conditional sales contract, repurchase agreement and any other arrangement made to obtain credit</li> </ul>	<ul style="list-style-type: none"> <li>• Deposit-taking</li> <li>• Asset sales and purchases</li> <li>• Asset repurchase agreements</li> <li>• Selling, giving or renting properties to related parties</li> <li>• Investments in equity or other securities of related parties</li> <li>• Derivatives such as swaps, forwards, options, futures, loan syndications</li> <li>• Underwriting of securities<sup>38</sup></li> <li>• Asset lease agreements</li> <li>• Conditional sales agreement</li> <li>• Construction contracts</li> <li>• Service contracts</li> <li>• Establishment of joint venture entities</li> <li>• Consulting or professional service contracts (e.g. hiring of senior managers or employees in bank)</li> </ul>
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*Adapted from: Nestoradvisors, D. Risser, 2015.*

<sup>38</sup> Banks in Vietnam are NOT permitted to underwrite securities. However, this might be done by a relevant bank's securities company and so wider checking is necessary.

The goal is to identify all bank transactions that are RPTs and then to ensure they are not abusive or detrimental to the bank. The transactions systems in a bank should be constructed to enable the matching of identified individuals and their RPs and entities with any relevant transactions they or their entities may undertake.

**Table 10: Some Indicators of Possibly Abusive RPTs**

	Indicators of Possibly Abusive RPTs
1	Borrowing or lending on an interest-free or low interest basis or one that is significantly different from the rates prevailing at the time of the transaction
2	Selling or buying real estate at prices significantly at variance with the appraised value
3	Exchanging property for a similar property in a non-monetary transaction
4	Making loans with no scheduled terms for when or how the funds will be repaid
5	Unrealistic collateral valuations
6	Circular or complex arrangements between related parties
7	Transactions with 'unnecessary middlemen' or highly complex transactions or transactions with entities with overly complex organisational structures
8	Payments for services at inflated prices
9	Transactions occurring but not being recognized in accounting systems and unusual transactions at quarter or year end
10	Loans to parties that do not seem to have the capacity to repay
11	Loans advanced ostensibly for a valid business purpose and later written off as uncollectible
12	Significant RPTs at the end of the reporting period
13	Transactions with the bank for funds by several RPs linked to one another or linked to a significant shareholder
14	Existence of RPTs that do not receive the approval required under the Law on Credit Institutions, the Law on Enterprises, or the relevant bank's charter or RPT policy

Interbank transactions are a normal part of banking. However, over time they may operate to expose the bank to RPTs due to the closeness of relationships between particular banks or particular bank personnel. These transactions should be monitored in a similar manner as RPTs.

#### **Part 4 - Frequently asked questions**

*4.1 Q - What lending is subject to the recommendations of the Guidebook?*

4.1 A - The Guidebook captures loans, quasi-loans and any credit transaction which results in an exposure or potential exposure, including guarantees.

*4.2 Q - Do RPTs include bank credit card debt and overdrafts?*

4.2 A - Yes.

*4.3 Q - Is the external auditor considered a RP?*

4.3 A - No. The external auditor is not considered a 'related party' as under the auditor's professional standards and regulations, s/he is prohibited from holding any significant financial stake (including loans) with any entity they audit.

## PART 5. RPT REVIEW AND APPROVALS PROCESS

### 5.1. RPTs initial issues

Prior to (dis)approval, each RPT should be reviewed and assessed to ensure protection of bank assets and of bank interests. The list of required information in Table 11 below is by no means exhaustive but it does include sufficient information to help identify any possible abusive issues in RPTs.

#### 5.1.1. Documentation

All RPTs should be documented fully. International Accounting Standard IAS 24 -Related Party Disclosures requires certain information should be disclosed to the market when a RPT is entered into and serves as a starting point for RPT information. Table 11 outlines the minimum information that should be provided to the review process and required prior to (dis)approval.

**Table 11: Information for RPTs**

	Required Information for RPTs
1	All requirements of Article 39, Law on Credit Institutions – see section 5.4.1
2	Name of party/ies to the transaction
3	Name of related parties and related entities
4	Description of relationship
5	Date RPT is reviewed and (dis)approved and name of person (dis)approving the transaction
6	Purpose and rationale for the transaction
7	Type of exposure
8	Amount of approved transaction
9	Total amount of current outstanding transactions with this party
10	Outstanding amount or carrying amount
11	Terms and conditions, including any changes to the terms and conditions of the RPT
12	Security provided, its value and accessibility
13	Documentation



### **5.1.2. Parties to the transaction**

It is important to identify the parties to either side of the transaction. In RPTs with entities with complex shareholding arrangements, it is important to identify all the details of inter-company or cross shareholding relationships. Identification of ultimate controlling shareholders and details of offshore subsidiaries or parties to the transaction is necessary.

It is important to consider if all conflicted parties have been identified and ensure they are not participating in the transaction, not advising or voting on the transaction. This may require some investigation of family and business relationships and regarding private entities.

### **5.1.3. Consideration of assets as part of the transaction**

Assets may be offered as part of a transaction as collateral or may be the subject of a loan. An understanding of the asset itself, its position, location and transferability is necessary. Details of the parties who own the asset, including a copy of the deed of ownership should be reviewed. Legal access and practical access to the asset should be clarified.

If an asset is part of a transaction, its value should be independently verified using the bank methodology provided. Property and equities can be difficult to value. The credentials of the valuer should be carefully scrutinised and recorded. Current market conditions and market prices should be used as comparatives for applying market terms and conditions.

## **5.2. Thresholds for review/(dis)approval processes**

Review and (dis)approval of RPTs remains a key shareholder protection issue. Regulatory approaches globally vary widely (see also earlier discussion at 3.3). Nevertheless, decision making with regard to RPT (dis)approvals should be clearly articulated. In most jurisdictions, the board is responsible for taking decisions regarding material RPTs. In regions where there is a large number of RPTs in any one entity, where the board may be influenced by controlling shareholders (families or state shareholders), or where there is history of RPTs that contribute a large amount to non-performing loans, or where regulatory monitoring and enforcement is not strong, even more prescriptive approaches and mechanisms have emerged as good practices which take into account materiality and conditions of transactions. In Asia, Singapore, Malaysia, Hong Kong and Thailand have adopted this approach.

As described in section 3.3 earlier, RPTs can be distinguished between those transactions which are immaterial and have a relatively negligible impact on the bank and those which are material and of greater significance and impact. For these immaterial transactions, (dis)approvals and reporting processes can be reduced. Transactions below the de minimis level should be required to be (dis)approved in the normal course of bank management, adhering to bank policies, processes, and delegated authorities, reported to the board in aggregate terms monthly for ex post approval and reported to shareholders annually in the financial statements.

### 5.2.1 Setting Review/Approvals Thresholds – material transactions

In Vietnam the Law on Credit Institutions provides that is a duty and power of the board:

**To approve** contracts between the credit institution and subsidiary companies or affiliated companies of the credit institution; contracts between the credit institution and members of the board of directors or Control Board, the general director (director), major shareholders or their related persons which are equivalent to twenty (20) percent or more of the charter capital of the credit institution as recorded in its most recent audited financial statements **or at a smaller specific percentage if stipulated in the charter of the credit institution**. In this case, the relevant member shall not be entitled to vote.

Law on Credit Institutions Article 63.10

Further shareholders have the capacity to determine bank trading contracts as follows:

To decide on the bank's trading contracts neither banned nor restricted under the Law on Credit Institutions, the Law Amending and Supplementing a Number of Articles of the Law on Credit Institutions and guiding documents with members of the Board of Directors and Control Board, the Director General, shareholders holding major shares and their related persons, which are equivalent to 20% of the bank's own **capital or less or another lower ratio stated in the bank charter**. In this case, related members have no voting right.

Decree 59/20009/ND-CP, Article 46.9

In the regulations cited above, the additional emphasis has been added by this author to draw attention to the fact that a lower threshold than that which is required by laws and regulations may be set by individual banks in their bank RPT policy for (dis) approvals by the board or by shareholders.

The materiality thresholds set in the Law on Credit Institutions and in Decree 59 for board approval and shareholder (dis)approval respectively, are relatively high when compared to thresholds set in other countries and the setting of a lower threshold for board (dis)approvals of RPTs is recommended. It is recommended that a bank in its RPT policy voluntarily set a lower threshold.

The Law on Enterprises also requires that:

Contracts and transactions between the company and the following parties must be approved by the General Meeting of Shareholders or the Board of Directors:

- (a) Shareholders or authorized representative of shareholders holding more than ten (10) per cent of the ordinary shares of the company and their related persons;
- (b) Members of the Board of Directors, CEO and their related persons;
- (c) Enterprises stipulated in article 159.2 of this Law.

Law on Enterprises, Article 162.1

In any event in Vietnam a contract or a transaction with board members, the CEO and their related parties and related entities must be approved by the shareholders' meeting or board of directors.

Transactions requiring board approval should be those of a value above a fixed de minimis amount and below a value of a set percentage of capital, at or above which shareholder (dis) approval is required. The threshold should be set relative to the risk to the particular entity and the risks arising from the nature, scope, frequency and value associated with RPTs. In setting particular thresholds, banks should also consider global good practices and the degree to which it wishes to protect shareholder interests.

**Table 12: Examples of Thresholds set for Board and Shareholder Approval of Material RPTs in Banks<sup>39</sup>**

Threshold	De minimis	Board approval	Shareholder Approval
Country			
India	None	All RPTs require approval of Audit Committee of board except material RPTs requiring shareholder approval	Above 10% of annual consolidated turnover of the bank
Canada		If the aggregate exposure to any related party group is > 2% of the bank's regulatory capital	
Thailand	Each RPT < THB 5,000,000	Between THB 5,000,000 and up to 5% of capital	5% of capital or above

<sup>39</sup> Note: the thresholds set for banks and financial institutions tend to be different from those set for listed companies generally and which are not financial institutions. Banks use a '% of capital' or '% of owners' equity' measure rather than a % of assets or turnover commonly used by non financial institutions.

Threshold Country	De minimis	Board approval	Shareholder Approval
Singapore	Each RPT < S\$100,000	Transaction < 0.5% of capital or between S\$100,000 and S\$2 million whichever is lower, or if any RPTs lead to an aggregate exposure to any related party group of > 2% of the bank's Tier 1 capital	5% of capital or above
Malaysia	Each RPT < MYR 250,000 or 1% of capital	All material RPTs which are all transactions or contracts in excess of MYR 250,000 or in excess of 1% of capital, whichever is lower.	5% of capital or above
Philippines global bank		All material RPTs below 2% of capital	All material RPTs at or above 2% of capital

The regulations in Singapore specify upper limits. Within these upper limits, individual banks are required to set threshold limits for (dis)approval processes for RPTs and notify these limits to the regulator (see MAS 643 below). Singapore specifically distinguishes limits for RPT exposures for a particular RP group e.g. RPTs which, in aggregate, give an exposure to an RP group of at or above 2% of capital must be approved by the board.

13 A bank in Singapore shall –

- (a) set separate materiality thresholds on an aggregate basis for each type of related party transaction where an exposure arises (e.g. mortgages, unsecured lending and trade finance facilities) with each related party group;
- (b) take into account the nature, scope, frequency, value of and risks associated with its related party transactions in setting the aforesaid materiality thresholds;
- (c) report the materiality thresholds set, and any changes thereto, to the Authority in the 'Additional Information' section of its quarterly statements submitted pursuant to MAS Notice 639A "Exposures and Credit Facilities to Related Concerns"; and
- (d) where any of the materiality thresholds is exceeded, immediately report the fact that the threshold has been exceeded to its board or (in the case of a bank incorporated outside Singapore) the authorised person.

A bank in Singapore shall provide its justification for the materiality thresholds set pursuant to paragraph 13(a) to the Authority, upon the Authority's request. The Authority may direct a bank in Singapore to reduce any materiality threshold where the Authority is of the opinion that it is inappropriate, taking into consideration the factors set out in paragraph 10 (a).

Excerpt from Monetary Authority of Singapore, MAS 643

For Vietnam, it is recommended that independent directors or non-conflicted persons on the board of a bank review current RPT practices and recommend to the board to include in its RPT policy thresholds for RPT (dis)approvals, including a threshold for RPTs requiring board (dis)approval by non-conflicted directors.

It is suggested that the threshold for board (dis)approval threshold should be for all RPTs up to a value of 3.0% of owners' equity<sup>40</sup>. Similar transactions with an individual relevant party or his / her related parties should be aggregated when applying the 3.0% level for board (dis) approval. Boards may also set thresholds for aggregate exposures to related party groups above which board (dis)approval is always required.

It is also recommended that all transactions with RPTs at or above the threshold of 3.0% of owners' equity and those RPTs required by law/ regulations, should be reviewed and recommended by the board prior to ex ante (dis)approval by a majority of non-interested shareholders.

The level of 3.0% of owners' equity has been suggested for Vietnam given the relative problems and incidence of RPTs evident in Vietnam and the level and quality of bank controls around credit assessment and due diligence. In addition, the average capitalisation of Vietnamese banks, the relative size of RPTs that might occur and that should be (dis)approved through formal board or shareholder processes, and the relative risks associated with related party groups in Vietnam in order to protect bank and minority shareholder interests all indicate that a relatively low threshold is appropriate.

RPTs requiring board approval complements a requirement for shareholder (dis) approval. Shareholder (dis)approval is generally limited to those RPTs either required for shareholder (dis)approval by law and other applicable regulations, such as all transactions between the bank and a board member or the CEO, and all large RPTs. For clarity, it is recommended that every bank in Vietnam establish thresholds above which it determines a RPT is considered material and therefore should be subject to (dis)approval of non-conflicted, non-interested shareholders. This threshold is recommended to be at or above 3.0% of owners' equity.

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<sup>40</sup> Value of owners' equity as per the latest financial statements reviewed or audited by the external auditors.

The concept of materiality for setting RPT thresholds for (dis)approval processes should not only consider setting numeric thresholds but also should consider the circumstances of the RPTs. Although some RPTs may appear to be less than a certain threshold, a materiality test may prove that they are material to one or more related counter-parties and as such might be submitted for either (dis)approval of the board or shareholders. Generally, it is accepted that information is material if its omission or misstatement could influence economic decisions of users.

### **Recommendation 21**

Banks should establish in the bank's RPT policy, transaction bands for:

- i) RPTs below the de minimis level where ex ante management approval is required but no ex ante board review and approval is required; ex post board reporting and approval is still required;
- ii) The level of RPT at which ex ante board (dis)approval is required and which is set at between the de minimis level and a percentage of capital (recommended to be up to 3.0% of owners' equity<sup>41</sup>);
- iii) The level of RPT where ex ante shareholder (dis)approval is required at a percentage of owners' equity (recommended to be at or above 3.0% of owners' equity).

In good practices and for transparency, thresholds set by a bank in its RPT policy should be reported to the State Bank of Vietnam (SBV), and made public on the company website. The SBV may request the bank to justify the threshold levels it sets.

#### **5.2.2. Transactions of minor importance – below a de minimis level**

A de minimis amount should be set for insignificant transactions, either individual transactions or for transactions with one related party in aggregate. Transactions below this de minimis level should be approved ex ante by senior management, recorded and monitored and ex post reported to the board. See also discussion at 3.3.

The board may delegate to non-interested parties in senior management such as the credit review committee, the capacity to approve RPTs below a de minimis level. Nevertheless, all relevant information should be provided to the decision maker (see Table 11). Any approval process should include the provision of full documentation to the process, a review of the terms and conditions of the transaction, including those related to loan term, interest rates, fees, collateral where applicable, and any write off policy related to the RPT.

<sup>41</sup> This threshold has considered factors such as the average level of capitalisation of Vietnamese banks, likely levels of transactions the bank would wish to control, and the desire to limit RPTs and to ensure transparency. Banks may always determine a lower level than this recommended threshold.

Management approved RPTs should be reviewed periodically by the independent board committee responsible for RPT oversight. The board or the board committee should require it receives regular monthly reports on RPTs and then should approve these transactions ex post to ensure board accountability for all RPTs. The status and aggregate credit exposure to each related party and any write-offs on RPTs that occur, should be monitored. In their RPT policy, banks should also set limits for total exposures to any individual RP or group of related RPs, either in one transaction or in aggregate (see 5.2.6).

### **5.2.3. Board (Dis)approval process for material transactions**

Material RPTs should be subject to ex-ante review and (dis)approval by either the board or shareholders, and be subject to additional reporting requirements. Any person with a conflict of interest, or who is a participant or beneficiary of the RPT, should not participate in the discussion or any decision regarding the RPT and should not vote to determine it.

Board (dis)approval for material related party transactions should be after review by the independent board committee, perhaps an audit committee, charged with RPT review responsibilities. In 65% of countries reviewed by the OECD<sup>42</sup> for RPT practices, board (dis)approval or decision is normally after a recommendation of the board committee charged with their scrutiny, a committee of non-interested, independent members. The board committee of independent non-conflicted directors should review all documentation and the terms and conditions of a RPT and make a clear recommendation to the board for its approval or not.

In Vietnam where audit committees are not prevalent, the review process preliminary to a board decision by disinterested parties should be allocated to a committee formed for the purpose, comprised of independent directors of the board and/or independent non-conflicted members of the board. This group designated to review and recommend RPTs should be comprised of competent and skilled directors, with adequate time for a full review of the relevant RPTs, and who are demonstrably independent and not conflicted.

### **5.2.4. Shareholder (dis)approval process for material transactions**

In Vietnam shareholder review and approval at the General Meeting of Shareholders is required for RPTs above a value of 20% of charter capital. It is the recommendation of this Guidebook (see 5.2.1 above and Recommendation 21) that a significantly lower threshold for shareholder approval be set in the RPT policy. Shareholder approval of RPTs is also required by law or regulation for RPTs with board members, supervisory board members, the CEO and senior managers.

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<sup>42</sup> OECD Corporate Governance Factbook, Paris, 2015.

To approve contracts valued at more than twenty (20) per cent of the charter capital of the credit institution as recorded in its most recent audited financial statements or at a lower percentage if stipulated in the charter of the credit institution between the credit institution [on the one hand] and a member of the board of management or [Supervisory Board members], the general director (director), a major shareholder or a related person of a manager, of a member of the board of controllers or of a major shareholder; and a subsidiary company or affiliated company of the credit institution.

Law on Credit Institutions Article 59.2.q

Further Decree 59 Article 41.2.l requires the Shareholders' Meeting:

To decide on the bank's trading contracts neither banned nor restricted under the Law on Credit Institutions, the Law Amending and Supplementing a Number of Articles of the Law on Credit Institutions and guiding documents with members of the Board of Directors and [Supervisory Board], the Director General, shareholders holding major shares and their affiliated persons, which are valued at more than 20% of the bank's own capital or another lower ratio stated in the bank charter. In this case, involved shareholders have no voting right. A contract or transaction is approved when shareholders representing at least 65% of the total number of remaining votes so agree.

Article 23.4 in the Circular 121 on corporate governance also demands that any loan or guarantees to members of the board or members of the supervisory board or to executive director or other managers shall be decided by the Shareholders' Meeting.

In order to better control RPTs in Vietnam, it is recommended that a lower threshold for ex ante shareholder consideration of material RPTs, lower than 20% of charter capital, be set by individual banks, as allowed by the Law on Credit institutions<sup>43</sup>. The recommended level for shareholder approval of RPTs should be established at a low level, recommended at or above 3.0% of owners' equity. In Vietnam, shareholder (dis)approval of RPTs requires a vote of 65% of shareholders for transactions above 20% of capital. Shareholder approval should be prior to the enactment of the transaction. In a shareholder vote to (dis) approve RPTs, related parties or interested / conflicted parties should not vote.

Shareholders if they are to consider RPTs should have sufficient information to enable judgment for (dis)approval. In good practices, information (see also Documentation in section 5.4.2) for such decisions should be comprehensive and should include:

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<sup>43</sup> *Law on Credit Institutions Article 63.10, Article 59.2.q and Article 67.2.k*



- i. all information required for (dis)approval process;
- ii. provision in full, in writing to all shareholders in a timely manner for their evaluation;
- iii. a review and recommendation by independent and non-conflicted members of the board and their recommendation; and
- iv. an independent opinion provided on the fairness to the bank of the RPT.

In summary therefore and for clarity the reporting and (dis)approvals mechanisms might apply according to the table below.

**Table 13: Summary of Recommended Approval and Reporting for RPT Thresholds for Vietnam**

Threshold	Approval	Reporting
Below a de minimis level	Approved by non-conflicted senior management by delegation of authority and ex post review and approval in aggregate by the board	Yes – to board monthly in aggregate with individuals names and annually to shareholders
At or above de minimis level and below 3.0% of owners' equity	Board approval required ex ante, after independent board committee review and recommendation	Yes – to board for individual material RPTs Yes – to shareholders annually
At or above 3.0% of owners' equity	Ex ante approval by non-interested shareholders required. Board review and recommendation is advised.	Yes – to shareholders for individual material RPTs above the threshold
All other transactions as prescribed in law and all non-loan <sup>44</sup> director transactions and non-loan transactions with CEO and their related parties; All transactions with shareholders holding $\geq 10\%$ of ordinary shares	Ex ante approval by non-interested board or shareholders required	Yes - to shareholders – no threshold applicable

<sup>44</sup> Loans to directors, CEO and Deputy-CEO and their close family members are not permitted under LCI Article 126.

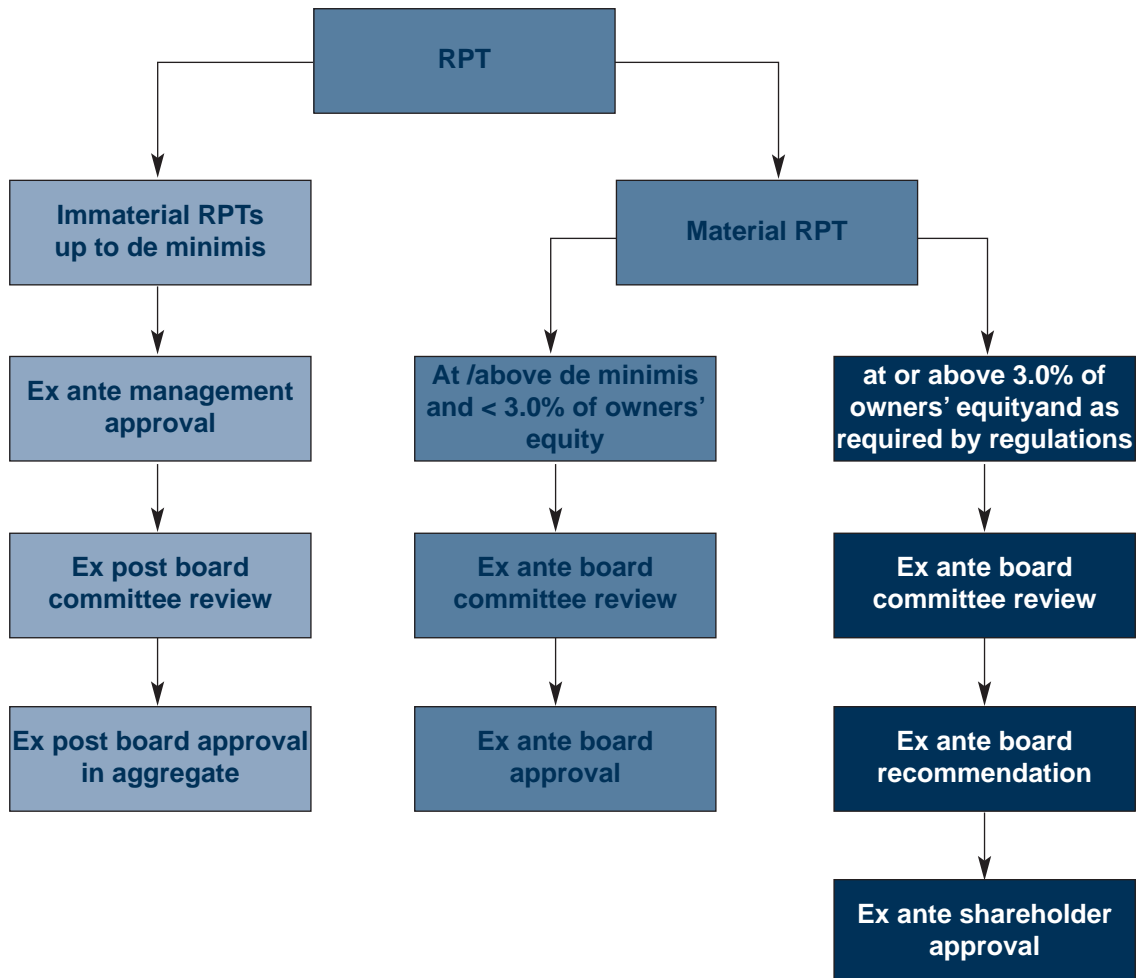
**Figure 6: RPT Approval Process**

Figure 6 above indicates that all RPTs will be approved, or recommended, by the board either ex post or ex ante. Some even larger and more material transactions will require shareholder approval.

### **5.2.5. Aggregated transactions**

Similar transactions with one related party and / or a related entity should be aggregated, treated as if they are one transaction when applying materiality thresholds, even if individual transactions are below the de minimis level. This requirement is applicable in order to discourage individuals and entities from splitting RPTs into a series of small transactions. In some jurisdictions, all transactions with one related party transacted over a period of one year are required to be aggregated.

Information to enable the aggregation of RPTs does require quality data input into robust trading and aggregation systems, thus enabling review by the compliance function and transparency on RPTs.

### **5.2.6. Total limits on transactions with related parties**

Notwithstanding the de minimis and materiality thresholds set in an RPT policy, banks normally also have a limit on the total credit provision they may provide to a single counterparty and his / her related parties.

In Vietnam, the Law on Credit Institutions provides:

#### *Limits on extension of credit*

1. The total balance of extension of credit to a single client shall not exceed fifteen (15) per cent of own capital of the commercial banks, foreign bank's branches, people's credit funds or micro-finance institutions; the total outstanding credits provided to a single borrower and her / his related persons shall not exceed twenty-five (25) per cent of own capital of commercial banks, foreign bank's branches, people's credit funds or micro-finance institutions.

Law on Credit Institutions Article 128.1

In summary for commercial banks in Vietnam:

- Maximum total extension of credit to one single client shall not exceed 15% of bank capital;
- Maximum total extension of credit to one single client including its RPs shall not exceed 25% of bank capital.

Vietnam's regulation is similar in style to practices in other countries. However, there is nothing to prevent a bank in its own RPT policy determining a lower limit of total commitment to a particular RP if it wishes to be more conservative. It may also choose to determine a total limit to all RPTs the bank undertakes at any one time.

In Malaysia, the additional limits for total exposures to RPs are that exposures to related parties shall not exceed 100% of the bank's total capital or 25% of the total outstanding credit exposures, whichever is the lower.

In Ireland, additional limits to related party transactions provide that in total all RPTs with all related parties, individuals plus entities, shall not exceed 15% of the bank's total funds.

**Recommendation 22**

RPT review and (dis)approval processes should be established which consider non-material and material transactions for board (dis)approval and also for shareholder (dis)approval and reporting.

Processes should be established to include:

- i. approvals mechanisms;
- ii. aggregation of transactions;
- iii. approval of recurrent transactions; and
- iv. incorporation of regulatory commercial bank limits, including those set for total limits allowable for all RPTs.

**5.3. Criteria for approval**

In the pre-approval process, management should ensure that the following issues are addressed.

The review process should include that the RPT:

- i. is in the interest of the bank itself and beneficial to the bank;
- ii. has a sound business purpose for the RP and is in the ordinary business of the bank;
- iii. counterparty is clearly identified, including challenges presented through cross shareholdings and opacity of beneficial shareholders;
- iv. is with a party (an RP) that has the paying capacity to service the debt as structured and agreed;
- v. is on terms and conditions not more favourable than any other similar transaction in similar circumstances, suitable and substantively correct, including all contractual terms related to fees, disbursements, collateral and write offs;
- vi. if it is part of a set of more complex transactions, that they have a sound business purpose and the bank's interests are not impacted by the complexity of associated transactions;
- vii. has been fully documented, appraised by non-interested bank staff;
- viii. has been independently valued and financial projections rigorously checked;
- ix. is the result of substantive, independent bank oversight to protect the bank's interests;
- x. recognizes the size and impact of all the related party's interests in the transaction;

- xi. provisions, limits, any guarantees and collateral are adequate for the bank's protection;
- xii. cross border impacts in the transaction have been fully investigated and understood;
- xiii. recognizes the impact of the RPT on the bank and the impact is within the bank's own risk appetite and framework;
- xiv. has been identified and correctly classified as a material or immaterial RPT;
- xv. has complied with all other applicable bank policies and processes and regulatory requirements; and
- xvi. the final recommendation is sound, reasonable and justifiable in the light of all the facts.

#### **5.4. RPTs information, documentation of (dis)approvals, write-off process**

The board should be responsible for establishing effective policies for information, documentation, (dis)approval and any extraordinary write-off to protect the best interests of the bank. All RPT write-offs should be the subject of board scrutiny and approved by the board, a decision of disinterested independent board members. (See also role of independent directors, 4.2.3) Such a re-structure or write off should lead to a review of the position of the RP with the bank.

##### **5.4.1. Information Requirements**

The Law on Credit Institutions and IAS 24 (see Table 11 requirements) both stipulate information that must either be provided to the bank and published, or that must be provided to shareholders regarding RPs and RPTs.

###### *Responsibility to publish related interests*

1. Members of the board of management or members' council, members of the board of controllers, the general director (director) and deputy general director (deputy director) of a credit institution must publish the following information to the credit institution:
  - (a) Name and address of head office, lines of business, serial number and date of issuance of business registration certificate and place of business registration of any enterprise or economic organization in which such person or a related person owns a capital contribution portion or shares in his / her / their name or authorizes or entrusts another organization or individual to own in the latter's name, of five or more per cent of the charter capital;
  - (b) Name and address of head office, lines of business, serial number and date of issuance of business registration certificate and place of business registration of any enterprise in which such person and a related person is currently a member

of the board of management or members' council, a member of the board of controllers, or the general director (director).

2. The publication of information pursuant to clause 1 of this article and changes in relevant information shall be made in writing within seven (7) business days from the date on which the [event] occurs or the change arises.
3. The credit institution must [also] publish the information prescribed in clause 1 of this article annually to the general meeting of shareholders or members' council of the credit institution, and shall display and retain such information at the head office of the credit institution.

Law on Credit Institutions, Article 39

Such is the breadth of information to be managed, banks should develop and maintain a database of all related parties, their interests, their related parties and their transactions with the bank. The information required by Article 39 of the Law on Credit Institutions also requires changes to that information:

- i. must be published within 7 days. Good practices would suggest publication through a press release and simultaneously on the bank website;
- ii. must be provided at the General Meeting of Shareholders; and
- iii. retained at the bank head office.

#### **5.4.2. Documentation of RPTs Review/(Dis)Approvals Process**

Good practices suggest all recommendations for and (dis)approvals of RPTs are in writing and encompass records of:

- i. Persons (dis)approving the RPT at each stage of the process; any negative opinion at any stage should trigger independent board committee review;
- ii. A list of the documentation provided;
- iii. Description of the transaction, giving economic reasons for it and bank interest in the transaction;
- iv. Identity of related parties and relationships;
- v. Characteristics and financial details of the RPT, including cash components of the amount paid, fair value of any financial instruments, maximum amount that may be disbursed, any maximum amount that is covered by a guarantee;
- vi. A record of any negotiations that take place and their outcome;

- vii. Clear statement that the RPT is on market terms and conditions, including information on benchmarks applied and a statement that reflects consideration of the fairness of the transaction;
- viii. Rationale and evidence, if required, for any deviation from market terms or conditions;
- ix. Statement of any shortcomings in either the process or the documentation found by final approvers; and
- x. A clear statement of recommendation, or (dis)approval.

### **5.4.3. Write-off or changes in existing terms and conditions**

Any write-off or re-structuring of RPTs should not be considered part of 'normal business' as they set a very poor example and erode public trust. Indeed, any write-off or restructuring of a RPT would suggest the need to review the standing of the related party within the bank. Any exposures or increases in exposures or changes to the terms and conditions of material transactions with a related party should be reported immediately to the board and be subject to review of the independent committee of the board (see also 5.2.3).

Changes to terms and conditions should be fully documented, recorded and (dis) approved by either the board or the shareholders, depending on materiality. Such changes in terms and conditions are often subject to a special majority vote of the board of 75% of all independent, non-interested directors or a special majority vote of shareholders of 75% of non-conflicted, non-interested shareholders. Singapore applies these prescriptions to write-offs, and increases or changes to terms and conditions of RPTs. The special majority vote is higher than the initial vote of 65% of non-interested, non-conflicted parties.

### **Recommendation 23**

The RPT policy should incorporate requirements for:

- i. published information;
- ii. documentation of the review and approvals process.

Write-off or re-structuring or changes in terms and conditions of RPTs is a major matter. More stringent special provisions for (dis)approval should be in place and require review by independent directors and lead to a review of the role of the RP him/herself.

## **5.5. RPTs lending practices**

### **5.5.1. Overview - RPT credit approval process**

A bank should develop full and detailed procedures for credit approval processes for RPTs. These should be understood and applied in the credit approval process. These procedures should be regularly reviewed and updated.

Of particular importance is the credit granting / approval process which may be standardised across a number of types of credits, for example, for particular products or it may be individual for specific borrowers or larger loans. In either case the processes for approval should be explained in the policy and applied to all relevant credits granted, including RPTs. The individual process should be reviewed by at least two non-conflicted persons (the 'four eyes' policy) to ensure all is according to the established policies. Given all RPTs should be on normal market terms and conditions, any unusual transactions, such as loans with unusual terms or with unusual transaction activity or changes, should be subject to a special review and approval system.

Finally, after undergoing the normal credit appraisal process, a material transaction should be notified to the board committee for RPT ex ante (dis)approval (or recommendation to shareholders), and ex post if it falls under the 'de minimis' level.

### **5.5.2. Credit appraisal**

The credit appraisal stage may consider different appraisal processes for different types of borrowers and will vary between corporate credit applicants and personal credit customers. RPTs should have the appropriate process applied as if the transaction was a RPT transaction. Credit applicants, including RPTs, should provide recent, audited financial statements in support of their application. All RPTs should follow the RPT approvals process. (see sections 5.2.2, 5.2.3 and 5.2.4).

At a minimum, the appraisal process should examine the elements provided in Table 14 below. Table 14 presents an overview only of the credit appraisal process. Each step in the process should be documented, fully explained and adhered to by all credit personnel.

**Table 14: Credit Appraisal Requirements**

	Requirements of the credit appraisal process
1	The amount, purpose and structure of the facility;
2	Rationale for granting the loan to a RPT, with indication of guarantees required;
3	A thorough understanding of the borrower, including analysis of the credit risk of the borrower, integrity of the applicant, reputation in credit history and previous record in credit repayment with the bank; perhaps also an independent check on the classification of risk;
4	Risk profile including, borrower total exposure and sensitivity of the sector to economic conditions, including the current and forecast operating environment of the borrower;
5	A description of how the interest rate was fixed considering the market risk-free rate and the credit risk of the borrower; a comparison of the rate of interest on the loan with other similar applications on the market, explaining any reasons for the discrepancy;



Requirements of the credit appraisal process	
6	Capacity to repay and source of repayment, a review of the business plan, projected cash flows and scenario analysis, including assessment of financial liquidity and the level of indebtedness;
7	Physical inspection of the borrower's premises to understand the business and its size and complexity and the application of the credit funds;
8	Value and enforceability of collateral or guarantees;
9	Management capacity in the borrower; and
10	Background information on shareholders and beneficial owners and directors.

In some banks good credit application processes focus on the "5Cs" – *capacity* of a borrower to repay the credit; *collateral* which is the adequacy and accessibility of security the bank controls if the borrower defaults; and *character* of the borrower including the quality and reputation of the person or the management team of the borrowing entity, the planned use for the credit and the strength of their intentions to repay the loan. A strong *capital position* of the entity and a relatively lower level of debt should indicate a better capacity to repay the loan. *Covenants* which define the actions or limits a borrower must or must not take or achieve, such as limits on gearing, interest cover and working capital, may be added to the loan conditions.

The credit approval process should be segmented so no one individual has the capacity to determine a credit alone. For example, the bank branch manager who receives the credit request and who has contact with the potential borrower, should originate documentation related to the loan, but should not analyse the proposal, recommend or approve it. Approval authorities should be set, commensurate to the positions and expertise of individuals in the management hierarchy and related to the size and complexity of the transactions under consideration. Authority limits should be approved by the board, reserving to the board the approval of large credit exposures over a set limit and those transactions required by any other regulation or bank policy.

The design of the credit approval process should be one of checks and balances and should be in place from the first client / borrower request. Bank materials should explain each of the steps involved in the process from commencement with 'front office' to 'back office' to approval. It should identify the personnel accountable for each stage and the actions and documentation required. The goal is to apply a consistent robust evaluation and rating scheme to credit proposals and the same to all RPT loans.

In any event, the whole process should result in a thorough understanding of the borrower, the purpose and structure of the credit, the source of its repayment, the exposure to the bank and how the exposure fits with the bank Credit Risk Policy.

**Recommendation 24**

Quality RPT loan processes require application of the bank credit risk policy by non-conflicted parties and be supported by documentation, application, appraisal and (dis) approval processes by management.

**5.5.3. Credit transactions with related parties – special issues**

Matters for attention in the development and design of a Credit Risk Policy and credit risk procedures for related party transactions in particular should include:

- i. A description of the types of credit transactions and credit exposures subject to the procedures;
- ii. Clarity as to the related parties affected by the procedures;
- iii. A stated requirement for RPTs comply with other bank policies and procedures applicable to credit transactions;
- iv. Credit limits for RPTs for individual/entities should be set and limits should also be set for transactions with the same individual/entity in aggregate;
- v. No party with an interest in the transaction should participate in the deliberation, decision making or management of the exposure;
- vi. Creditworthiness should be carefully checked to see it is no less than normal requirements of other persons, parties or groups of parties;
- vii. The terms and conditions should not be more favourable than for other counterparties in similar circumstances; and
- viii. The loan should be consistent with all bank policies and procedures, including risk management policies and procedures and related party transaction policies and procedures of the bank.

**Table 15: Special Review Issues for RPT Loans**

	Issue
1	Special review to ensure the transaction is in the interest of the bank
2	Transactions should be (dis)approved by the board or shareholders if material
3	If the credit transaction is below a de minimis level set by the bank in its RPT policy, (dis) approval should be by at least two specifically delegated, non-conflicted officers

	Issue
4	Monitoring of related party credit transactions should be undertaken by independent non-conflicted parties, should be on-going and the results of reviews reported directly to both the board and the audit committee of the board or the responsible board committee
5	Market terms for the loan should be identified, explained, especially benchmarks used for interest rate setting, collateral or guarantees
6	At the due diligence stage of any bank transaction, the personnel should check with IT systems to ensure none of the parties to the transaction are RPs.
7	RPTs, their status and any aggregated exposures to individuals or particular RP groups, such as directors, should be regularly reported to the board
8	Exemptions to normal application approval processes for related parties should be minimal and any exemptions explained, justified and noted in loan documentation
9	Documentation relating to RPT credit exposures should be recorded, maintained, updated regularly and available for inspection by the banking regulator and the external auditor
10	All unusual or problematic transactions should be escalated to a higher authority for review.

### Recommendation 25

Particular additional policies and procedures to protect the bank in RPT credit transactions may be required. These policies and procedures should be aligned with other bank policies and with policies and procedures for related parties and related party transactions.

#### 5.5.4. Other Tips in Credit Processes

##### *Documentation*

Documentation is an essential part of the credit process and RPTs should be no exception. Full documentation of all key stages in the transaction should be required and retained for the:

- i. credit application
- ii. credit analysis
- iii. credit approval
- iv. credit monitoring
- v. collateral valuation

- vi. impairment recognition and
- vii. realization of security.

Documentation should be standardised for similar transactions, completed for all proposals, certified by appropriate personnel, maintained, updated and indexed for easy access.

#### *Credit administration*

RPT credit administration processes should be no different from ordinary loan administration processes. However additional vigilance is recommended. The credit portfolio should be properly administered, loan agreements well prepared, renewal notices sent systematically and credit files updated regularly. Collateral value should be monitored and records updated where required. The administration should ensure the borrower is making timely repayments according to the agreement and has in place any bank loan requirements such as insurance and documentation before the credit is disbursed.

#### *Monitoring progress / system for managing problem credits / loans*

RPT loan abuses highlight the importance of good and on-going loan monitoring processes. To safeguard against potential losses, problem credits need to be identified early so prompt corrective action can be taken.

Early warning systems are a part of monitoring for problem credits. The bank will need to define criteria for identifying and reporting problem credits and develop a system of warning signs for individual borrowers, such as defaults on interest or principal payments and for each major credit exposure sector. For example, for the commercial real estate sector, checks for concentrations of exposures should include associated activities in construction, land development and other associated loans in residential properties. Exposure to residential mortgage lending may require the bank to introduce conservative loan-to-value (LTV) and debt-to-income (DTI) ratio requirements. Early warning systems should also have reminder procedures to follow up defaults and which trigger risk controlling processes in due time. Those tasked with monitoring require high quality analytic skills, sometimes difficult to find.

Regular diligence around monitoring limits and escalation of breaches is becoming commonplace. Checklists of counterparties, industries and entities under stress may be developed and built into the monitoring system. Major exposures to particular markets may require prudent and specific bank policies. Specific individuals should be tasked to monitor credit quality and should be required to pass information to those responsible for assigning internal risk ratings to the credit. Periodic reviews are a fundamental part of monitoring as are reviews undertaken at rollovers and should be factored into the monitoring program.

#### *IT Systems requirements*

Amongst other things, the credit record keeping and administrative process and credit monitoring require well-resourced, sophisticated management information systems with predefined aggregation and reporting formats which can provide early indicators for further review. Information system capacity often presents a challenge to banks. Banks should ensure

they develop the technology for the proper conduct of banking business, that systems are integrated and audited, to assure good management of operations and oversight effectiveness.

## **Part 5 - Frequently asked questions**

*5.1 Q – When the RPT Committee of the board are reviewing a possible loan RPT, what are the kinds of questions they should be asking?*

5.1A – They should review the terms and conditions of the transaction to be sure they are on market and fair terms, cover the issues raised in 5.3 above and questions should be about:

- the purpose of the transaction and the prevailing economic environment impact on the transaction;
- the bona fides of the beneficiary of the transaction, his/her capacity to repay the loan and other transactions the beneficiary may already have with the bank;
- the proposed interest rate on the loan to check if it is comparable to market rates for entities with similar risk profiles and credit ratings;
- the collateral for the loan and if it has been externally valued by an independent valuer and what are the assumptions of the independent valuer; and
- what is the schedule proposed for the loan payments.

## PART 6. MONITORING OF RPs AND RPTs

Changes regarding conflicts of interests, related parties and related party transactions can occur at any time, thus requiring continual monitoring. It is incumbent on any party with knowledge of such changes that they report this information to a responsible body or person within the bank. The responsible body / person may vary from bank to bank. It may be the nominated board committee responsible for RPT oversight, the compliance section of the bank, the company secretary or the internal audit function. The roles of each of these should be clearly stated in the RPT policy so changes can be easily reported and systematically recorded.

All changes in RPs and RPTs should be monitored by bank business units, notified to the compliance function and reported to the board committee. The bank management credit committee should review all problematic RPTs and escalate these for attention of the board committee and the board. All RPTs should be reported to the Supervisory Board and the External Auditor.

### **6.1. Board and board committee monitoring**

Oversight of monitoring of RPTs falls to the board and the board committee responsible for RPTs. The board and the board committee should regularly receive reports on RPTs from management.

Changes in related parties, in shareholdings, in terms, conditions and exposures of all RPTs should be escalated immediately by relevant business units to the board or board committee, and reported to the compliance function. The board committee should recommend any corrective measures for problematic RPTs.

### **6.2. Compliance function monitoring**

Compliance function activities ensure that bank and relevant parties adhere to laws, regulations and bank policies. The compliance function's role in RPTs should be to make regular checks and report on the presence, ongoing effectiveness and reliability of procedures and suitability of systems to ensure compliance with the RPT policy, other internal requirements and external regulatory requirements. It may be the first point of reporting RPs, RPTs and changes to RPTs and is often responsible for all record keeping, notification of interests, notification of RPTs and changes to notifications regarding RPTs in a timely manner, usually amending records within two days. For example, it should check the coherence and completeness of required information disclosures provided to the bank on RPs and request additional information and confirmations, if necessary. The compliance function should have in place particular surveillance measures for all RPTs, especially where terms and conditions change.

### 6.3. Risk management function monitoring

It is important that the roles of the risk management and compliance functions do not overlap or leave gaps. Collaboration between the two functions is necessary.

The risk management unit and the Chief Risk Officer (CRO) should be required to ensure that all relevant business units identify any related party relationships. Risk management should ensure standardised processes for bank activities include a check for RPs as a part of normal transaction review procedures. Some departments may be particularly tasked to monitor company groups or significant shareholders in order to monitor for major RPT risks. Risk management should also assess, in accordance with the system of delegated powers, lending transactions to ensure the conditions applied to a RPT loan are appropriate, at arm's length and on normal market terms and conditions. It is also likely to have a role in ensuring sound records and processes for aggregation of RPTs.

Further the risk management unit should oversee the measurement of risks underlying the relationships with related parties, check compliance with set limits allocated to the various operating structures and units, and check that the activities undertaken by each business unit, including RPTs, is in line with the risk appetite set out in internal policies. The risk management function acts as a support to quality RPT management.

### 6.4. Internal audit monitoring

The internal audit function of a bank (see also 4.2.5) should include a review of the application and effectiveness of the RPT policy in its audit plan, using a risk-based approach. It should regularly review RPs, RPTs, the RPT approval processes and that any change to RPTs is recorded. Internal Audit should review the effective and appropriate application of thresholds. A regular internal audit review of non-performing loans, loan carry costs and provisioning should assist transparency and disclosure.

Any non-performing RPTs should be most unusual, monitored more specifically, and subject to specific, regular reports to the board/board committee of independent directors and questions asked regarding the on-going role of the RP in the bank. Internal Audit should report on these matters directly to the independent board committee overseeing RPTs, the Supervisory Board and directly to the board on any serious concerns, such as potential or actual classification of a RP exposure or write-off.

### 6.5. Whistle-blowing

Whistle-blowing is a mechanism to provide employees, contractors or suppliers, a way through which to report suspected wrongdoing at the bank, i.e. speaking out in a confidential manner in the public interest. An example of a bank whistle-blowing policy is provided at Appendix 5.

It is usual for a whistle-blowing policy to encourage the communication of bona fide concerns relating to the lawful and ethical conduct of business, audit and accounting procedures or related matters. Normally the policy will also set out to protect those who communicate bona fide concerns from any retaliation for such reporting.

Confidential and anonymous mechanisms such as a confidential hotline or an appointed person for receipt of concerns should be made available and should be described in the RPT policy. It may be the company secretary or a designated person in the independent board committee responsible for RPT oversight who is the nominated person to receive concerns. Anonymous reporting does not serve to satisfy a duty to disclose an individual's own potential involvement in a conflict of interest or in unethical or illegal conduct. The policy owner is normally the recipient of such disclosures or a nominated member of the board, usually an independent director.

### **Recommendation 26**

The board committee should review and oversee comprehensive bank monitoring of RPTs, RPs, and effective management of RPTs, including the activities related to RPTs of the:

- i. compliance function;
- ii. risk management function
- iii. internal audit function,
- iv. a whistleblowing function; and
- v. external auditor.

All RPTs should be reported to the Supervisory Board and the External Auditor.

### **6.6. External auditor's confirmation of RPT policies and processes**

The external auditor (see also 4.2.5) can support transparency and quality disclosures on RPTs through his/her role of reviewing bank financial statements. The International Auditing Standard, ISA 550 requires the auditor to perform procedures to identify, assess and respond to the risks of material misstatement in financial statements arising from the entity's failure to appropriately account for or disclose related party relationships, transactions or balances. VSA 550 is the nationally adopted equivalent of ISA 550.

It is normal for the external auditor to convey to the audit committee, if there is one, and to relevant board members, board committees, or the Supervisory Board its findings in relation to related parties and RPTs as they affect the financial statements. Also, the external auditor can confirm the overall suitability of the RPT policy and procedures and can raise any weakness s/he sees in the policy.

The board committee responsible for oversight of RPTs should view the external auditor as an aid to controlling potentially abusive RPTs as the external auditor can:



- Alert the bank to unusual transactions;
- Raise concerns about particular policies or processes and their effectiveness;
- Understand the complex structures which may subject to abuse; and
- Apply their skills to support quality RPT practices.

### **Recommendation 27**

The relevant board committee and/or board members and/or the Supervisory Board should review with the external auditor his/her findings on RPT policies and processes for continuous improvement.

### **6.7. RPTs – not reported or approved**

If transactions come to light that have not been reported through the appropriate channels or to the appropriate persons, or approved as required by the law, regulation, or specific bank policies, there should be effective ways for the transaction to be dealt with and/or for shareholders to obtain legal redress if necessary.

In some countries, such as India and Singapore, the bank itself may void transactions it finds which have not adhered to the law, regulations or company policies. Singapore allows banks to void a transaction, or the terms and conditions of the transaction, without penalties if the transaction has not been subjected to the prescribed approval processes.

India requires that if a bank finds a RPT that has not been reported to the board, then the independent committee of non-conflicted members of the board may review, ratify, revise or terminate the transaction ex post.

In good practices, all material RPTs not initially reported to the board or (dis)approved in the normal processes of ex ante consideration, should be reviewed by the committee of independent board members, by the board and reported to shareholders. Many countries have strengthened their Company Law to ensure effective shareholder redress. China and Indonesia have strengthened their respective company laws to ensure privately enforceable shareholder rights in such situations.

The Law on Enterprises does allow for such legal redress.

A shareholder or a group of shareholders owning at least one per cent of the number of ordinary shares for six consecutive months has the right, on its own behalf or on behalf of the company, to initiate a legal action regarding civil liability against a member of the Board of Directors or the CEO who:

- (c) Implement their assigned rights and obligations contrary to the provisions of law, the charter of the company or resolutions of the General Meeting of Shareholders;
- (d) Use information, know-how or business opportunities of the company for their own personal benefit or for the benefit of other organizations or individuals;
- (dd) Abuse their positions and powers and use assets of the company for their own personal benefit or for the benefit of other organizations or individuals.

Law on Enterprises Article 161.1

### Recommendation 28

The board committee comprised of disinterested, non-conflicted parties should review every RPT that has not adhered to bank policies.

## Part 6 – Frequently asked questions

*6.1 Q - Why is it important to actively monitor all transactions with RPTs?*

6.1 A - Economic or personal conditions may change over time, which may lead to problems or default. Restructuring or write-offs of RPTs threaten the reputation of the bank, should be viewed as highly suspect and lead to a review of the RPs position with the bank.

*6.2 Q - Why is it important for the RPT review committee or the Audit Committee of the board to engage with the external auditor on RPTs?*

6.2 A - The external auditor, under his/her own professional standards is required specifically to see that RPTs are included in the financial statement of the bank. In checking this, the external auditor may come across unusual transactions which should be drawn to the attention of the bank or an area where controls are weak. This information can help the RP review committee undertake its role.

*6.3 Q – Why is a whistleblowing function recommended?*

6.3 A – Most fraudulent transactions are detected internally through corporate controls, internal analysis and internal tip-offs<sup>45</sup>. The whistleblowing mechanism allows this information to flow quickly up to the board.

<sup>45</sup> PWC, Global Economic Crime Survey 2014 indicates that 48% of frauds are detected in these three ways.

## PART 7. TRANSPARENCY AND DISCLOSURE ON RPTs

### 7.1 . General principles for transparency and disclosure

The Basel Committee for Banking Supervision (BCBS) stresses the importance of transparency and disclosure. The BCBS guidance, Corporate Governance Principles, Principle 12 states:

“the governance of the bank should be adequately transparent to its shareholders, depositors, other relevant stakeholders and market participants”<sup>46</sup>

As emphasised in existing BCBS guidance on bank transparency, it is difficult for shareholders, depositors, other relevant stakeholders and market participants to effectively monitor and properly hold the board and senior management accountable where there is insufficient transparency. The objective of transparency in the area of corporate governance is therefore to provide these parties with the information necessary to enable them to assess the effectiveness of the board and senior management. A transparent and strong disclosure regime is a pivotal feature of efficient markets and permits investors to determine their buy or sell decisions and is important to stakeholders in holding the bank and senior management accountable. Transparency and disclosure builds trust and confidence of investors and depositors and helps to attract capital.

The global expectation is that all banks, even those for whom disclosure requirements may differ because they are not listed, should disclose relevant and useful information, which is not generic but is specific to the bank.

**Table 16: Good Practices in RPT Disclosure and Approval**

	Good Practices
1	All RPTs should be disclosed to the board and to the shareholders and incorporated in the financial statements.
2	All RPTs should be (dis)approved by the board or recommended by the board to shareholders.
3	Some relatively small, negligible RPTs may be reviewed, initially by management, and later reported and approved by the board. All material transactions should be (dis)approved ex ante, either by the board or by the shareholders.
4	All RPTs should be reported to shareholders in aggregate at least annually.

<sup>46</sup> Basel Committee on Banking (BCBS), *Corporate Governance Principles for Banks, 2015, Basel*.

Disclosure should include, but not be limited to, material information on the bank's objectives, organisational and governance structures and policies (in particular the content of any corporate governance or remuneration code or policy and the process by which it is implemented), major share ownership and voting rights and related party transactions.

The bank should also disclose key points concerning its risk exposures and risk management strategies without breaching necessary confidentiality.

Disclosure should be accurate, clear and presented such that shareholders, depositors, other relevant stakeholders and market participants can consult the information easily. Timely public disclosure is desirable on a bank's public website, in its annual and periodic financial reports, or by other appropriate means.

BCBS, Corporate Governance Principles for Banks, 2015.

### **7.1.2. Material and non-material disclosures**

Disclosure should include, but not be limited to, material information on the bank's objectives, organisational and governance structures and policies (in particular the content of any corporate governance or remuneration code or policy and the process by which it is implemented), major share ownership and voting rights and related party transactions.

BCBS, Corporate Governance Principles for Banks, 2015.

Materiality can be an obscure term that is defined slightly differently in different jurisdictions. So in relation to RPTs, it is best practice for a regulator, or failing that, a bank to clearly state the level at which it determines transactions are non-material, and therefore assumed to be insignificant. This is the origin of the establishment of a de minimis level for RPTs. All transactions at or above this threshold are considered 'material' and so should be subject to strict disclosure requirements.

### **7.1.3. Timing of disclosures – continuous, on-going and immediate, quarterly, annual**

For information to be useful, it does need to be timely. Examples of events that are likely to require immediate disclosure are the announcement of a merger or acquisition, sales or purchases of bank shares by directors, the acquisition or loss of a significant contract, occurrence of an event of default under a debt financing agreement, changes in substantial shareholders' and directors' interests and related party transactions. Timely public disclosure is desirable on a bank's public website, in its Annual Report, in periodic reports or press releases, disclosures to the stock exchange or the regulator or by other means.

In Vietnam, Circular 121 at Article 23.3 recognises the time imperative of information and requires disclosure of material RPTs within 24 hours of approval of the transaction on the bank website and to the securities regulator.

In most jurisdictions, bank issuers have continuous or on-going disclosure rules which require it to announce information that is likely to materially affect the price or value of its securities or is necessary to avoid the establishment of a false market in the issuer's securities. Such regulation for timeliness of information regarding RPTs should apply to all listed and non-listed banks as shareholders, depositors, investors, other stakeholders, and regulators have vested interests in the bank activities.

#### **7.1.4. Placement and security of disclosures**

Trust and confidence in a bank is built when there is regular, quality and easily accessible information provided to external parties, potential and current investors, to the regulator, on the bank website, in its annual report and available at the Shareholders Meeting. It is essential that a bank fully discloses all material RPTs to the market and explains whether or not they are concluded as arm's length transactions.

#### **7.2. RPT Records**

All banks should establish and maintain adequate records, which identify related parties and their related interests and which specifies their transactions with the bank. These records should be regularly updated by relevant individuals as required.

In Vietnam, the LCI recognises the importance of quality reliable information to the banking business and requires banks:

To ensure that files of the credit institution are archived in order to provide data serving managerial and executive activities, control of all activities of the credit institution, and activities of checks, supervision and inspection by the State Bank.

Law on Credit Institutions, Article 38.4

Therefore, it is recommended that global good practices be applied to information management to ensure:

- i. provision of timely, relevant information internally and externally;
- ii. equal, timely and cost-efficient access to relevant information;
- iii. information technologies are applied to maximise information dissemination; and

- iv. a good website with current information should include bank policies, press releases, annual reports, summary other reports, transactions reports, bank organisational charts, and lists of significant shareholders.

### **7.2.1. Responsibilities for information – a database**

An information database of disclosures of interest of RPs and RPTs should be established. It should encompass specific field headings for all COI, RP and RPT information requirements. The information register should be the nominated responsibility of one individual, for example, the general counsel of the bank or the head of compliance, and should be checked by the internal auditor at least annually to ensure the completeness and accuracy of disclosures internally to the bank and to the board and externally to others regarding RPs and RPTs. The external auditor should also access the register as part of his review of RPTs preliminary issuing an audit report and closure of the audit.

The information database should be regularly updated and as soon as new information arises or is provided and the nominated officer should review and assure the board and the external auditor at least annually of the information's currency and accuracy.

### **7.2.2. Responsibilities for information – Directors, senior management, and significant shareholders**

It should be the responsibility of each director, senior manager and significant shareholders to provide accurate and updated information immediately it arises or as in good practices at least within 7 days of the change.

Information updates should be regularly required of directors and senior managers through the completion annually of a formal and signed declaration of interests which will, at a minimum, disclose their interests, their related parties, including close family members, related entities (by name) and their and their interests' outstanding transactions (credit arrangements, contracts etc). All information so provided should be checked and updated in the information database.

Table 17 provides a list of information that should be included in the database.

**Table 17: Database Record Requirements for RPs and RPTs**

	<b>Record Details</b>
1	Name of related party, individual or entity (director, senior manager, significant shareholder)
2	Particular positions, interests in the bank and other interests
3	Name of related parties of person / entity nominated in line 1, and for each RP, a description of their relationship

Record Details	
4	Description of RPT
5	Name of party to the transaction
6	Name of related party
7	Relationship in the bank
8	Date RPT is reviewed and (dis)approved and by whom
9	Purpose / rationale for the transaction
10	Type of exposure
11	Amount of approved transaction
12	Outstanding amount or carrying amount
13	Terms and conditions, including any changes to the terms and conditions of the RPT
14	A statement regarding the extent to which related parties are expected to benefit from the transaction
15	Changes to terms and conditions of RPT
16	Security
17	Record of completion

These records of interests and RPTs should be available to the SBV and the external auditors of the bank for inspection at any time.

### Recommendation 29

All RPs and RPTs should be recorded and records should be stored, updated regularly and easily accessible for transaction checking procedures.

### 7.3. Disclosure of RPTs

The requirements for disclosure of RPTs vary from country to country and depend on applicable regulations, the nature and size of transactions and the recipients of the report. The most common forms of reporting are:

- to the board of directors and board committee charged with RPT oversight;
- to the Shareholders Meeting;
- in the Annual Report in the corporate governance report (see Appendix 2);
- in the Annual Report in the Financial Statements (see Appendices 3 and 4);
- to regulators (see Appendices 6 and 7); and
- to shareholders and the general public on the company website and in other documents.

Other reports on related party transactions are often required reporting by regulators, either securities commission, the banking supervisor or tax authorities for periodic filings and ad hoc notifications.

In Vietnam there are many laws, regulations, decrees, circulars and guidance that determine all applicable requirements for full disclosure of related parties and related party transactions. They have diverse provisions, which are not harmonised (See Table 18). However, when taken together, regulations incentivise full and complete disclosure on these matters. In this situation banks and responsible persons at banks should be considering how much they can disclose in these areas, not how little. Related parties should be disclosed by name and specific details disclosed about the nature and purpose of material RPTs and the name of the particular RP involved.

**Table 18: Key Legal Requirements for Disclosure on RPTs in Vietnam**

Law on Credit Institutions	<p>Article 38.6 requires banks and managers of credit institutions, which includes directors, senior management, administrators to disclose interests and conflicts of interests.</p> <p>The bank itself must ensure the information on related parties and related interests is also collected and published within the bank and to shareholders at the Shareholders Meeting (Law on Credit Institutions Article 39).</p>
Law on Enterprises	<p>LOE requires public disclosure of related interests of joint stock enterprises assuming the bank charter does not prescribe other stricter provisions (Law on Enterprises Article 159). The requirements include:</p> <p>Reporting of the list of related persons and corresponding transactions between them and the company to GMS; declarations of interests of directors, supervisory board members, CEO and other managers.</p>



VAS 26 Related Party Disclosures	VAS 26 is all about RPT disclosures. It is an amended version of IAS 24. The VAS 26 definition of related parties is not as complete as the IAS 24 version. It is recommended that revised version of IAS 24 be applied in full in the notes to financial statements.
Circular 121 on Corporate Governance	Provides that all public companies and their relevant members, directors, management and other managers should avoid conflicts of interest and take specific steps regarding related parties and related party transactions (Circular 121 Articles 23 and 28). They provide for disclosure requirements to the shareholders meeting, to the board, in the annual report and semi-annual report.
Vietnam tax authorities	Require information on RPTs on its Form 03/07.
Banks	Each bank should consider and make all disclosures as prescribed in the bank charter or as required in a shareholders agreement.

Given all these incentives for transparency and for the disclosure of conflicts of interests, related parties and RPTs, it may be easier to establish simple, written rules to identify global good practices regarding who should disclose, what should be disclosed, to whom it should be disclosed and how it should be disclosed.

A general principle is that there should be maximum transparency from all banks because of their importance to financial stability, including on RPTs so that others may understand the nature of relationships within the bank and with other parties external to the bank and they can assess the effect of such interests and transactions on the bank's activities and performance. While limited liability companies are sheltered from the highest demands of disclosures, all banks, including limited liability banks, should be subject to similar requirements because of their importance to national financial stability.

#### **7.4. Disclosures to the board, board committee and shareholders**

There should be regular disclosures on related parties, their interests and RPTs to the board and / or to the board committee charged with RPT oversight and to the RPT policy owner or compliance function. There should also be considerable disclosures made to shareholders so they may understand the magnitude and impact of RPTs on the bank. Such is the importance and complexity of reporting requirements for RPTs, sophisticated information systems should be used to store, aggregate and report them.

##### **7.4.1. Quality of RPT disclosures**

Good RPT disclosures should be substantive, comprehensive and specific to banks, specific to a particular bank and to their particular approach to RPTs oversight and to the particular individuals involved in RPTs. A survey of good RPT reporting practices was undertaken by

Ontario Securities Commission staff<sup>47</sup>. The examples below are adapted from and reflect their findings.

For example, a generic and uninformative disclosure describing bank management of RPTs in an annual report follows.

The audit committee reviews and approves all material related party transactions in which the bank is involved or which the bank proposes to enter into.

A better statement would be as follows:

The bank's management team discusses all related party transactions. In considering related party transactions, management will assess the materiality of related party transactions on a case-by-case basis with respect to both the qualitative and quantitative aspects of the proposed related party transaction. Related party transactions that are in the normal course are subject to the same processes and controls as other transactions, that is, they are subject to standard approval procedures and management oversight, but will also be considered by management for reasonability against fair value. Related party transactions that are found to be material are subject to review and approval by the bank's audit committee which is comprised of independent directors.

A generic and uninformative disclosure of a particular RPT follows.

During the year, the bank paid \$120,000 to a director as lease payments. As at December 31, 2014, the amount outstanding to the director was \$10,000.

A better approach would be as follows:

During the year, the bank paid \$120,000 to Mr. Nguyen Diep Bao, a director of the bank, as lease payments for leasing the space used as the bank's information storage warehouse. The current lease expires on December 31, 2015. The terms of the lease were reviewed by disinterested directors of the Board, and were found to be comparable to market terms. The lease is to be reviewed by disinterested directors of the Board every two years and renewed on the condition that the terms are comparable to, or more favourable than, market terms. As at December 31, 2014, the amount outstanding to Mr. Nguyen Diep Bao was \$10,000, representing the amount for one month's rent.

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<sup>47</sup> Ontario Securities Commission, Staff Notice 51-723, January 2015.

### 7.4.2. Recommended sources, recipients and contents of disclosures

The summary below, outlines RPT reporting:

- i. disclosures to be made, more of a routine nature;
- ii. internal reporting to the board;
- iii. board reporting to shareholders; and
- iv. reporting to the public on material RPTs.

**Table 19: Summary of Good RPT Disclosure Practices – Board, Board Committees and Shareholders**

Report by	Report to	Details	Frequency
Routine disclosures of interests and RPT policy management			
Directors, senior management and related parties, significant shareholders	RPT policy owner or compliance function	<ul style="list-style-type: none"> <li>Disclosure of interests</li> <li>Related parties, including names, entities related and nature of relationship</li> </ul>	Annually and ad hoc reporting when changes occur
RPT policy owner, perhaps compliance officer or IA function	Board committee of independent directors	<ul style="list-style-type: none"> <li>Review and recommendations for changes to the RPT policy</li> <li>Diagnostic report on RPTs – state, level of activity</li> </ul>	Annually Annually
Internal disclosures to board level on RPTs			
Directors, senior management and related parties, significant shareholders	RPT policy owner or compliance function or board committee	<ul style="list-style-type: none"> <li>All related party transactions including name of RP, nature and amount of transaction, terms and conditions of transaction, rationale for transaction. All terms and conditions shall include loan tenure, interest rates, fees, collateral information etc and changes to the terms and conditions.</li> </ul>	At the earliest time possible (within 24 hours)
Management, probably credit committee	Board committee	<ul style="list-style-type: none"> <li>Report of all RPTs approved under the de minimis level including details of:               <ul style="list-style-type: none"> <li>Name of related party;</li> <li>Description of RPT (terms, conditions, amounts)</li> </ul> </li> </ul>	After each credit committee meeting
Board committee of independent directors	Board	<ul style="list-style-type: none"> <li>Summary report of all de minimis RPTs for board approval monthly</li> <li>Summary report on all material and reviewed RPTs for board approval</li> </ul>	Monthly or at each board meeting Monthly or at

Report by	Report to	Details	Frequency
		<p>including name of RP, nature, amount, terms and conditions of RPT and committee recommendations</p> <ul style="list-style-type: none"> <li>• Summary report on all material RPTs for board review and recommendation for shareholder approval including name of RP, nature, amount, terms and conditions of RPT and committee recommendations. This report should include recommendations for approval by the shareholders any changes to the terms and conditions of the original RPT</li> <li>• Summary report on any material thresholds exceeded with details, any discovered non-reported RPTs, including the treatment and / or approval undertaken and any RPTs recommended for termination/voiding by the bank and any problematic RPTs.</li> </ul>	<p>each board meeting</p> <p>Annually or ad hoc</p> <p>Monthly or at each board meeting</p>
Board committee of independent directors	Board	<p>Consolidated report on RPTs including:</p> <ul style="list-style-type: none"> <li>• Status of RPTs;</li> <li>• Aggregate exposures to related parties/related party groups;</li> <li>• Total aggregated exposure to RPTs;</li> <li>• Associated risks with RPTs;</li> <li>• Details of RPTs approved under de minimis rules in RPT Policy;</li> <li>• Status of recurring RPTs approved according to guidelines set by the Board; Annual listing of recurring RPTs, including RPs, nature aggregated amounts, terms and conditions, rationale.</li> </ul>	All items to be reported quarterly and annually
<b>Disclosures to shareholders</b>			
Board	Shareholders	<ul style="list-style-type: none"> <li>• RPT policy and its contents</li> </ul>	Permanently and regularly updated
Board	Shareholders on specific transactions for approval	<ul style="list-style-type: none"> <li>• Comprehensive and descriptive report on material RPTs for <i>shareholder (dis) approval</i> including: <ul style="list-style-type: none"> <li>- name of RP;</li> <li>- description of interest of RPs;</li> <li>- nature, purpose and amount of RPT;</li> <li>- terms and conditions of RPT;</li> </ul> </li> </ul>	Annually or ad hoc as required

Report by	Report to	Details	Frequency
		<ul style="list-style-type: none"> <li>- any independent valuation on the transaction; and</li> <li>- a statement from the board recommending the RPT and affirming the RPT is on market terms and conditions.</li> </ul>	
Board	Shareholders in Annual Report	<ul style="list-style-type: none"> <li>• Report in notes to Financial Statements on all RPTs included in the financial statements as per IAS 24</li> </ul>	Semi-annually and annually (examples in Appendices 3 and 4)
Board	Shareholders in Annual Report	<ul style="list-style-type: none"> <li>• Report in the Corporate Governance Report, a part of the Annual Report, on RPT framework, policy and processes and their application within the bank</li> </ul>	Annually (examples provided in Appendices 2, Appendix 6)
<b>Disclosures to shareholders and the market place</b>			
Board	Shareholders and to the market place	<ul style="list-style-type: none"> <li>• Report on each and all material RPTs for shareholder (dis) approval including comprehensive information, especially name of RP, description of RP or director interest in transaction, nature, amount, terms and conditions of RPT and board recommendation with independent committee recommendation</li> </ul>	As required  Immediate public notification of material RPTs on website, to market and to regulators.

It is recommended that RPT bank policies, annual reports and announcements on RPs and RPTs be made available to the public on the bank's website. Potential investors are then able to see the bank commitment to transparency of RPTs, may understand the impact of RPTs on the bank and take comfort in the policies and procedures the bank has in place to address associated risks.

**Recommendation 30**

Banks should aim to be as transparent as possible regarding their policies and procedures for RPTs.

Quality disclosures on RPs and RPTs should be substantive, comprehensive and specific to the bank and the individual RP.

Banks should establish and oversee policies for regular, complete reporting to the board committee and to the board of information on interests, related parties and RPTs.

Reporting should include reports to the relevant board committee, to the board, to shareholders and to the public on RPs and RPTs as recommended in Table 18.

In particular, shareholders should receive full information to enable approval decisions on material RPTs and in the Annual Report on all RPTs.

**7.5. Reporting to the regulator**

Each bank should regularly report to the SBV as it requires, to allow for adequate monitoring of the affairs of the bank. Article 13.2 of LCI requires credit institutions in Vietnam to provide the State Bank of Vietnam (SBV) information relating to their business operations.

The regulator has special interest in all related parties and their involvement in the bank. Therefore, the SBV has specified information to be reported to it and the style and format of such reporting. In Official Letter no 1054/NHNN-DBTK, dated 14 February 2015, the SBV set out extensive new reporting requirements, applicable from February 2015 onwards. Particular forms have specified the information and the format of reporting required. Key SBV documents related to RPTs are listed below. Form 4 can be reviewed at Appendix 7. All forms can be accessed at [www.sbv.gov.vn](http://www.sbv.gov.vn)

**Table 20: Relevant SBV Forms Applicable under Letter 1054/NHNN-DBTK**

Form Number	Topic	Required
Form 04	Report on credit granting to a client, a client and its related parties	Monthly
Form 05	Report on credit granting to individuals/entities who are subject to credit restrictions and on credit granting for share investment and trading	Monthly
Form 07	Report on Vietnamese individual shareholders	Monthly
Form 08	Report on foreign individual shareholders	Monthly

Form Number	Topic	Required
Form 09	Report on institutional shareholders	Monthly
Form 10	Report on shareholdings of 'other' credit institutions and related parties at the credit institutions	Monthly
Form 11	Report on shareholdings of a group of related parties	Monthly
Form 12	Report of shareholdings of shareholders who are related parties of members of the board of directors, supervisory board and board of management of the credit institution	Monthly
Form 13	Report on cross shareholdings between the credit institution and its corporate shareholders and related parties	Monthly
Form 17	Report on capital contribution, share purchase of the credit institution, its subsidiaries and affiliates	Monthly
Form 18	Report on capital contribution, share purchase of the credit institution in enterprises	Monthly
Form 21	Financial relationship between the credit institution and each of its domestic subsidiary and affiliate	Quarterly
Form 23	Financial relationship between the credit institution and each branch, subsidiary, affiliate operating overseas	Quarterly

### 7.5.1. Certification of RPT reports to the SBV.

It is good practice that all reports to the SBV regarding related party transactions should be certified by two bank senior executives and the external auditor. If an individual report is filed by an individual related party, it should be certified by that individual; if the RP is another legal entity filing the information, then the report should be certified by two executives from the legal entity. It is also normal practice that any errors or omissions detected in information on RPTs that has been filed with the central bank, the central bank should be notified as soon as possible and at least within five days and the information corrected.

### 7.5.2. Suggested report types and contents

*Information regarding related parties.*

Good practices demand the regulator should be informed of the policies and procedures the bank has in place to determine related parties and RPTs and their management and assessment as they arise, including processes the bank has instigated to control RPTs, thresholds the bank establishes and uses to determine the materiality of RPTs, and (dis)approval and monitoring

processes. The regulator can then assess the adequacy of bank policies and processes for controlling RPTs.

Periodic information is required by the banking regulator on related parties including their name, full contact details, relationship to the bank, whether a natural person or legal entity, direct or indirect control or influence, individual or joint control and on credit transactions with related parties.

Also periodic reports on approved RPTs should be provided to the regulator in aggregate, indicating types of related party transactions, including the granting of credit; purchase, sale or transfer of assets; management or service fees. For each transaction the details to be reported include the nature, amount, rationale for the transaction, related parties in the transaction, clearly indicating the party's relationship to the bank and their benefits or interests in the transactions. Any changes to terms and conditions of material RPTs should also be reported.

The bank should retain for bank regulator review all documentation associated with RPTs. Retention of documents / information for listed banks is ten years as required under the Securities Law, Chapter 2, Article 7.1.4. All banks, listed or unlisted, should retain documents and information for a similar period.

#### *Information regarding the bank organizational structure*

The organizational structure of the bank, its affiliates and significant or influential shareholders should be reported to the banking regulator in such a manner as to make transparent the bank's major and influential shareholders, key management and the control and management of bank subsidiaries and other interests. Official Letter No. 1054 does require information on:

- i. individual shareholders, Vietnamese and foreign;
- ii. institutional shareholders;
- iii. shareholdings of the board, supervisory board, senior management and their related parties;
- iv. cross shareholdings;
- v. capital contributions; and
- vi. financial relationships between subsidiaries and affiliates.

#### *Information regarding changes to the bank organizational structure and changes of personnel*

Periodic reports should be provided by the bank to the SBV regarding changes to contact details, bank structure, affiliates and influential shareholders, directors and key management and personnel changes, and the date of period covered in the report to enable SBV understanding of RPs and RPTs in individual banks.



### **Recommendation 31**

Banks should ensure adequate information is provided to the SBV and should be compliant with regulatory requests.

Disclosure on RPTs should be compliant with all regulations and with bank policies and should enable understanding of the full impact of RPTs on the bank.

## **Part 7 – Frequently asked questions**

*7.1 Q – Why is disclosure on RPTs critical to regulators and shareholders?*

7.1 A – Disclosure is critical on RPTs. Such disclosures help regulators understand better the particular exposures of a bank and it enables shareholders to identify RPTs and RPs and assists shareholders by lowering the risk of unfair transactions and tunnelling by controlling shareholders.

*7.2 Q – Should a credit institution make a report on RPTs to the SBV even if it has no RPTs?*

7.2 A – Yes. A report is required even it is a 'nil' return. The report should be in the form and style of Official Letter No. 1054/NHNN-DBTK (February 2015).

## References

Vietnamese legislation, regulations and other legal instruments have been cited throughout the document and served as base references for this Guidebook. Other references are:

## Rules, Guides and Advisories from Regulators

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- Central Bank of India, Related Party Transaction Policy, 2014. – [www.central-bankofindia.co.in](http://www.central-bankofindia.co.in)

### Ireland

- Central Bank of Ireland, Code of Practice on Lending to Related Parties, 2013 – [www.centralbank.ie](http://www.centralbank.ie)

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- CONSOB, Bianchi et al., Regulation and Self-regulation of related party transactions in Italy, January 2014. – website as above

### **Malaysia**

- Bank Negara, Related Party Transactions, BNM/RH/GL 018-6 June 2013. – [www.bnm.gov.my](http://www.bnm.gov.my)
- Bank Negara, Risk Governance, March 2013. – website as above
- Bank Negara, Guidelines on Credit Transactions with Connected Parties, July 2014. – website as above

### **Mauritius**

- Bank of Mauritius, Guideline on Corporate Governance, August 2012. – [www.bom.mu](http://www.bom.mu)
- Bank of Mauritius, Guideline on Credit Risk Management, December 2003. – website as above
- Bank of Mauritius, Guideline on Related Party Transactions, September 2012. – website as above

### **Singapore**

- Guidelines on Addressing Conflicts of Interest, SFA 04-G06, April 2013. – [www.mas.gov.sg](http://www.mas.gov.sg)
- MAS Notice 643 on RPT Transactions, as amended, June 2014. – website as above
- Related Party Transaction Requirements for Banks – a Consultation Paper, December 2012. – website as above

### **Thailand**

- Notification of the Bank of Thailand, 36/2551, Guidelines on Conducting Transactions with Major Shareholders or Business with Beneficial Interests (related lending), August 2008. – [www.bot.or.th](http://www.bot.or.th)
- Notification of the Bank of Thailand, 54/2008, Guidelines for Calculation of Credit Risk for Commercial Banks, 2008. – website as above.

## PART 8. APPENDICES

### Appendix 1 - Definition of Independent Director

The UK Corporate Governance Code, September 2014 states (at B.1.1):

The board should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the company or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance related;
- pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.

## Appendix 2: Example – Related Party Transactions Disclosure in Governance Report Extract from DBS Singapore Annual Report 2014 - www.dbs.com

### Related party transactions

The Group has embedded procedures to comply with all regulations governing related party transactions, including those in the Banking Act, MAS directives and the SGX Listing Rules. The Banking Act and MAS directives impose limits on credit exposures by the Group to certain related entities and persons, while the SGX Listing Rules cover interested person transactions in general.

All new directors are briefed on all relevant provisions that affect them. If necessary, existing credit facilities to related parties are adjusted prior to a director's appointment, and all credit facilities to related parties are continually monitored. Checks are conducted before the Group enters into credit or other transactions with related parties to ensure compliance with regulations.

As required under the SGX Listing Rules, the following are details of interested person transactions in 2014.

Name of Interested Person	Aggregate value of all Interested Person Transactions in 2014 (excluding transactions less than SGD 100,000)
Aetos Security Management Pte Ltd Group	1,531,488
CapitaLand Limited Group	332,400
Certis CISCO Security Pte Ltd Group	29,585,530
MediaCorp Pte Ltd Group	259,000
Sembcorp Industries Ltd Group	2,647,200
Singapore Airlines Limited Group	451,848
Singapore Telecommunications Limited Group	61,624,166
SMRT Corporation Ltd Group	3,885,646
StarHub Ltd Group	5,422,033
Temasek Management Services Pte Ltd Group	288,896
<b>Total Interested Person Transactions (SGD)</b>	<b>106,028,207</b>

### Material contracts

Since the end of the previous financial year, no material contracts involving the interest of any director or controlling shareholder of the Group has been entered into by the Group or any of its subsidiary companies, and no such contract subsisted as at 31 December 2014, save as disclosed via SGXNET.

### Dealings in securities

In conformance with the "black-out" policies prescribed under SGX Listing Rules, the Group's directors and employees are prohibited from trading in the Group's securities one month before the release of the full-year results and two weeks before the release of the first, second and third quarter results. In addition, business units and subsidiaries engaging in proprietary trading are restricted from trading in the Group's securities during the black-out period.

Prior to the commencement of each black-out period, Group Secretariat will send an email to all directors and employees to inform them of the duration of such period.

In addition, Group Management Committee members are only allowed to trade in the Group's securities within specific window periods (15 market days immediately following the expiry of each black-out period) subject to pre-clearance. With effect from February 2015, Group Management Committee members are also required to obtain pre-approval from the CEO before any sale of the Group's securities. Similarly, the CEO is required to seek pre-approval from the Chairman before any sale of the Group's securities. As part of our commitment to good governance and the principles of share ownership by senior management, the CEO is expected to build up and hold at least the equivalent of three times his annual base salary as shareholding over time.

### Appendix 3 – Example - Related Party Transactions Disclosure in Financial Statements Extract from DBS Singapore Annual Report 2014 – www.dbs.com

## 39 RELATED PARTY TRANSACTIONS

**39.1** Transactions between the Company and its subsidiaries, including consolidated structured entities, which are related parties of the Company, have been eliminated on consolidation and are not disclosed in this Note.

**39.2** During the financial year, the Group had banking transactions with related parties, consisting of associates, joint ventures and key management personnel of the Group. These included the taking of deposits and extension of credit card and other loan facilities. These transactions were made in the ordinary course of business and carried out at arms-length commercial terms, and were not material.

In addition, key management personnel received remuneration for services rendered during the financial year. Non-cash benefits including performance shares were also granted.

**39.3** Total compensation and fees to key management personnel<sup>(a)</sup> are as follows:

In \$ millions	The Group	
	2014	2013
Short-term benefits <sup>(b)</sup>	44	42
Share-based payments <sup>(c)</sup>	23	20
<b>Total</b>	<b>67</b>	<b>62</b>
Of which: Company Directors' remuneration and fees	14	12

(a) Includes Company Directors and members of the Management Committee who have authority and responsibility in planning the activities and direction of the Group. The composition and number of Directors and Management Committee members may differ from year to year

(b) Includes cash bonus based on amount accrued during the year, to be paid in the following year

(c) Share-based payments are expensed over the vesting period in accordance with FRS102

## **Appendix 4: - Example – RPTs Disclosures in Financial Statements**

**Extract from Annual Report, Nedbank Limited, South Africa, 2013 – [www.nedbank.co.za](http://www.nedbank.co.za)**

### **NOTES TO FINANCIAL STATEMENTS (continued)**

#### **RELATED PARTIES**

##### **50.1. Relationship with parent, ultimate controlling party and investees**

The group's parent company is Nedbank Group Ltd, which holds 100% (2012: 100%) of Nedbank Ltd's ordinary shares. The ultimate controlling party is Old Mutual plc, incorporated in the UK

Material subsidiaries of the group are identified in note 52 and associate companies and joint arrangements of the group are identified in note 51.

##### **50.2. Key management personnel compensation**

Key management personnel are those persons who have authority and responsibility for planning, directing and controlling the activities of the group, directly or indirectly, including all directors of the company and its parent, as well as members of the Executive Committee who are not directors, as well as close members of the family of any of these individuals.

Details of the compensation paid to the board of directors and prescribed officers and details of their shareholdings in the company are disclosed in the Remuneration report. Compensation paid to the board of directors and compensation paid to other key management personnel, as well as the number of share options and instruments held, are shown below:



Rm	Directors	Key management personnel	Total
<b>Compensation 2013</b>			
Directors' fees	11		11
Remuneration – paid by subsidiaries	78	151	229
Short –term employee benefits	43	118	161
Grant on exercise of options	35	33	68
	89	151	240
<b>2012</b>			
Directors' fees	12		12
Remuneration – paid by subsidiaries	78	141	219
Short –term employee benefits	39	104	143
Grant on exercise of options	39	37	66
	90	141	231
<b>Number of share options and instruments 2013</b>			
Outstanding at the beginning of the year	641 194	1 686 127	2 331 321
Granted	165 168	441 334	606 502
Forfeited		(11 541)	(11 541)
Exercised	(238 648)	(449 627)	(688 275)
Outstanding at end of the year	574 714	1 666 293	2 238 007
<b>2013</b>			
Outstanding at the beginning of the year	1 008 974	1 724 046	2 733 020
Granted	185 799	492 998	678 797
Forfeited	(221 040)	(302 190)	(523 320)
Exercised	(328 539)	(228 727)	(557 266)
Outstanding at end of the year	641 194	1 686 127	2 331 321



### 50.3. Related-party transactions

Transactions between Nedbank Ltd and its subsidiaries, which are related parties, have been eliminated on consolidation and are not disclosed in this note. Transactions between Nedbank Ltd and its other related parties are disclosed below. All of these transactions were entered into in the normal course of business.

Outstanding balances	Due from / (owing to)	
Rm	2013	2012
<b>Parent / Ultimate controlling party</b>		
Deposits owing to Old Mutual Life Assurance Company (SA) Ltd	(749)	(13)
Bank accounts owing to Nedbank Group Ltd	(482)	(487)
Bank balances owing to Old Mutual Life Assurance Company (SA) Ltd	(5 970)	(4 966)
Accounts payable owing to Old Mutual plc	(1)	(6)
<b>Fellow subsidiaries</b>		
Loan due from Old Mutual Asset Managers (SA) (Pty) Ltd		
Loans due Nedgroup Securities (Pty) Ltd	7 141	2 973
Loans owing to Nedbank Malawi Ltd	(60)	(66)
Loans due from other fellow subsidiaries	2 326	1 182
Deposits owing to Old Mutual Asset Managers (SA) (Pty) Ltd	(60)	(100)
Bank balances owing to Old Mutual Asset Managers (SA) (Pty) Ltd	(5)	(5)
Deposits owing to Nedgroup Securities (Pty) Ltd	(1 339)	
Deposits owing to Syfrets Securities Ltd	(1 881)	(1 613)
Deposits owing to other fellow subsidiaries	194	(213)
Bank balances owing to other fellow subsidiaries	(1 212)	(861)
Equity derivatives with fellow subsidiaries	(6)	(10)
Interest rate contracts with various fellow subsidiaries	7	11
<b>Associates</b>		
Loans due from associates	1 492	585

<b>Outstanding balances</b>	<b>Due from / (owing to)</b>	
<b>Rm</b>	<b>2013</b>	<b>2012</b>
Deposits owing to associates	(12)	(10)
Bank balances owing to associates	(9)	(5)
<b>Key management personnel</b>		
Mortgage bonds due from key management personnel	32	48
Deposits owing to key management personnel	(33)	(30)
Deposits owing to entities under the influence of key management personnel	(1 398)	(826)
Bank balances due from key management personnel	4	3
Bank balances owing to key management personnel	(40)	(30)
Bank balances due from entities under the influence of key management personnel	35	1
Bank balances owing to entities under the influence of key management personnel	(362)	(289)
<p>The WIPHOLD and Brimstone consortia and Aka Capital (Pty) Ltd are related parties, since certain key management personnel of the company have significant influence over these entities. These entities are participants in the Nedbank Eyethu BEE schemes and the share-based payments reserve recognised in respect of these entities and key management personnel is detailed below:</p>		
WIPHOLD consortium	(108)	(108)
Brimstone consortium	(107)	(107)
Key management personnel - directors	(48)	(40)
Key management personnel – other	(113)	(88)
Share-based payments reserve	(376)	(343)
<b>Long-term employee benefit plans</b>		
Bank balances owing to Nedgroup Medical Aid Fund		(4)
Bank balances owing to Nedgroup Pension Fund	(64)	(99)
Bank balances and deposits owing to other funds	(275)	(308)

## Appendix 5: Example of a Whistle-blowing Policy

### Excerpt from Commonwealth Bank of Australia Website ([www.commbank.com.au](http://www.commbank.com.au)), accessed on 3 May 2015

We are committed to embedding a culture of 'speaking up'. Our Whistleblower hotline is available to any employee who wishes to raise a concern.

#### Embedding a culture of 'speaking up'.

To achieve the Group's vision, we are committed to maintaining an ethical work environment and embedding a "speak up" culture. We do not tolerate any act which constitutes fraud, bribery and corruption, breaches of any law or internal policy.

Our whistleblower hotline is available to any employee who wishes to raise a concern. Reports can be made in confidence and without fear of reprisals via a dedicated telephone number or email address. All reports raised are taken seriously and where appropriate, investigated fully. No employee is discriminated against in any way as a result of reporting a concern in good faith.

#### Group Whistleblower Protection Policy

Often those making disclosures are concerned with the confidentiality of the disclosure, the manner in which the disclosures are dealt with, and the fear of repercussions arising from making such a disclosure.

Our Whistleblower protection policy and procedures ensure that reports are treated appropriately and that the employee raising the concern is protected. The Whistleblower protection policy reinforces the message from the Group's senior management and Board that those making a disclosure can trust the matter will be dealt with honestly, professionally and confidentially.

The policy complies with the Australian Standard AS 8004-2003 - Whistleblower Protection Program for Entities, and ensures that any person making a disclosure is not personally disadvantaged or discriminated against.

The policy applies to all businesses within the Group, including subsidiaries and joint ventures where the Group has a controlling interest, in Australia or overseas. It is applicable to all directors, employees, temporary staff, contractors, suppliers and service providers.

Staff are encouraged to report any actual incidents of fraud or unethical behaviour, or any suspicions of such, through regular internal communications and training.

Service providers, suppliers and their employees with information relating to any act of internal fraud or unethical behaviour by Commonwealth Bank staff have the option of reporting the issue in the following manner:

- Whistleblower Hotline: 1800 222 789
- Reverse charge from overseas on +61 2 8841 6666
- Email the information to [whistleblower@cba.com.au](mailto:whistleblower@cba.com.au)

#### Monitoring compliance

Group Security is responsible for the investigation of incidents reported through the Whistleblower program and reports to the Audit Committee on a periodic basis on the Whistleblower process.

The Group Whistleblower Protection Policy is subject to Annual Review.

### Appendix 6: Information on RPTs required by Vietnam Circular 52-2012-TT-BTC

The following is an excerpt from Annex III – Corporate Governance Report Format

#### III. Change in list of related persons of the public company in accordance with article 6.34 of the Law on Securities (6-month / annual report):

No.	Name of organization / individual	Securities trading account (if available)	Position at the company (if available)	ID card / business registration No.	Date of issuance of ID card / business registration	Place of issuance of ID card / business registration	Address	Time of becoming a related person	Time of no longer being a related person	Reason

#### IV. Transactions of internal shareholders and related persons (6-month / annual report):

List of internal shareholders and related persons

No.	Name of organization / individual	Securities trading account (if available)	Position at the company (if available)	ID card / business registration No.	Date of issuance of ID card / business registration	Place of issuance of ID card / business registration	Address	Number of Shares owned at the end of the period	Shares Ownership ratio at the end of the period	Note

**Appendix 7: Required Report Format from SBV on Credit Granting to a Client and to its Related Party – Form 4**

Reporting entity .....

Equity ..... (Billion VND)

Charter Capital/funded capital .....

**REPORT ON CREDIT GRANTING TO A CLIENT, A CLIENT AND ITS RELATED PARTIES**

(Month.....Year.....)

Unit: Million VND, %

No.	Criteria/ Name of Client	ID number /tax code	Credit granting										Credit granting for share investment and trading		The time duration for the credit limit which exceeds the threshold has been approved	The number of the official letter in which the exceeding credit limit has been approved	Remark			
			Of which										Ratio of total credit investment and trading	Ratio of total credit balance for share investment and trading per charter capital						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)			(14)	(15)	(16)	(17)	(18)	(19)
			Total credit balance	Loan	Financial lease	Discounting, re-discounting, valuable notes	Factoring	Investment in corporate bond	Credit card	Other credit granting	Guarantee and other authorized credit granting	Ratio of total credit balance per equity	Total value of collaterals for credit balance	Credit balance for share investment and trading	Ratio of total credit balance for share investment and trading	Credit limit which exceeds the threshold has been approved	The time duration for the credit limit which exceeds the threshold has been approved	The number of the official letter in which the exceeding credit limit has been approved	Remark	
<b>I.</b>	<b>Credit which exceeds the threshold for a client and/or for a client and its related parties</b>																			
1	Client A Client A's related parties - Client A1 - Client A2																			
	Total for Client A and its related parties																			
2	Client B Client B's related parties - Client B1 - Client B2																			
	Total for Client B and its related parties																			

No.	Criteria/ Name of Client	ID number /tax code	Credit granting										Credit granting for share investment and trading		Remark					
			Of which										Credit balance for share investment and trading	Ratio of total credit balance for share investment and trading per charter capital, funded capital						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)			(14)	(15)	(16)	(17)	(18)	(19)
	<b>TOTAL CREDIT WHICH EXCEEDS THE THRESHOLD</b>																			
II	Credit which exceeds the threshold for a client and/or a client and its related parties has been approved by SBV, but actual granted credit has not yet exceeded the allowable threshold																			
I	Client X Client X's related parties - Client X1 - Client X2																			
	Total for Client X and its related parties																			
2	Client Y Client Y's related parties - Client Y1 - Client Y2																			
	Total for Client Y and its related parties																			

No.	Criteria/ Name of Client	ID number /tax code	Credit granting										Credit granting for share investment and trading			Remark				
			Of which										Credit balance for share investment and trading (15)	Ratio of total credit balance for share investment and trading per charter capital, funded capital (16)	Credit limit which exceeds the threshold has been approved (17)		The time duration for the credit limit which exceeds the threshold has been approved (18)	The number of the official letter in which the exceeding credit limit has been approved (19)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)				(14)			(15)	(16)
	TOTAL CREDIT WHICH EXCEEDS THE THRESHOLD HAS BEEN APPROVED BY SBV BUT NOT YET EXCEEDED THE THRESHOLD																			
III	Credits other than the ones in Section I and II above for a client and its related parties																			
1	Client M Client M's related parties - Client M1 - Client M2																			
	Total for Client M and its related parties																			
2	Client N Client N's related parties - Client N1 - Client N2																			
	Total for Client N and its related parties																			
	TOTAL CREDIT GRANTED TO [A CLIENT AND ITS] RELATED PARTIES IN SECTION III																			

1. *Applicable subject: credit institutions, branches of foreign banks (except People Credit Funds and micro financial institutions)*
2. *Deadline of the report: latest by 12th of the next month of the reporting month*
3. *Mode of reporting: e-report*
4. *Report recipient: Banking Supervisory Agency*
5. *Reporting preparation guidance:*

*Credit institutions should base on credit limits regulated in the Circular No.36/2014/TT-NHNN dated 20 Nov 2014 regarding prudential ratios and limits in the activities of credit institutions, branches of foreign banks for report preparation*

*Credit in foreign currencies should be converted into VND, using average inter-bank exchange rate of the last working day of the report month which is announced by SBV or the accounting exchange rate of the credit institutions, foreign bank branches if the average inter-bank exchange rate which is announced by SBV is not available*

- *Section I: provides statistic data of credit by types specified in column (5) - (12) for a client and its related parties which exceeds the threshold, and of credits for share investment, trading in column (15) (if any)*

*For each client and/or each client and its related parties with credit which has been allowed to exceed the threshold: the exceeding credit limit which has been approved should be clearly specified in column (17); the time duration for the exceeding credit limit which has been approved should be clearly specified in column (18); the number of the official letter in which the exceeding credit limit has been approved should be clearly specified in column (19)*

- *Section II: provides statistic data of credit by types specified in column (5) - (12) for a client and its related parties which exceeds the threshold and has been approved by SBV, but actual granted credit has not yet exceeded the threshold, and of credits for share investment, trading in column (15) (if any)*

*For each client and/or each client and its related parties with credit which has been allowed to exceed the threshold: the exceeding credit limit which has been approved should be clearly specified in column (17); the time duration for the exceeding credit limit which has been approved should be clearly specified in column (18); the number of the official letter in which the exceeding credit limit has been approved should be clearly specified in column (19)*

- *Section III: provides statistic data of credit by types specified in column (5) - (12) for a client and its related parties (other than the one exceeding the threshold in section I and the one exceeding the threshold but the actual not yet exceeding the threshold in section II), and of credits for share investment, trading in column (15) (if any)*

**Note:** *For sections I, II and III, report is required only for the related parties who have the credit balance with the reporting entity*

*Column 4 = column 5 + column 6 + column 7 + column 8 + column 9 + column 10 + column 11 + column 12*

*Column 13 = column 4 \* 100/ Equity of the credit institution, foreign bank branches (absolute number only, no %; eg.: 50% should be 50, 0.5% should be 0.5)*

*Column 16 = column 15 \* 100/ Charter capital or funded capital (absolute number only, no %; eg.: 50% should be 50, 0.5% should be 0.5)*





