



The Central Bank of Myanmar (the “CBM”) recently published several directives relating to corporate governance aspects of banks’ operation.

RECENT DIRECTIVES BY CENTRAL BANK OF MYANMAR

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Highlights of this note

- ▶ 1. Directive on Fit and Proper Criteria
- ▶ 2. Directive on Directors of Bank
- ▶ 3. Directive on Related Parties

The Central Bank of Myanmar (the “CBM”) recently published several directives relating to corporate governance aspects of banks’ operation. The directives covered, among others the following topics:

Sl. No.	Directive	Proposed date of entry into force
1.	Fit and proper criteria for the appointment of directors and other officers of a bank	Effective on and from the date that falls on the expiry of 12 months from 25 March 2019.
2.	Directors’ election, tenure, conflicts of interest, oath of office and liabilities	Effective on and from the date that falls on the expiry of 12 months from 25 March 2019.
3.	Appointment of external auditors	Effective on and from the next financial year.
4.	Lending transactions with related parties and regulatory reporting requirements thereto,	Effective on and from 25 March 2019.
5.	Acquiring substantial interest in a bank	Effective on and from 25 March 2019.

(the directives in items (1) - (5) are collectively referred to as the “**Directives**” where the context so requires)

In this issue we cover directives 1, 2 and 4 above.

1. Directive on Fit and Proper Criteria

Directive 8/2019 (“**Directive 8**”) elaborates on the fit and proper criteria (the “**Criteria**”) for appointment of directors and other executive officers of banks (the “**Officers**”) as enumerated under section 76 of the Financial Institutions Law (the “**FIL**”).

Directive 8 helps to ascertain whether an individual meets the Criteria against the backdrop of specific parameters of (1) honesty, integrity and reputation, (2) competence and capability and (3) financial soundness.

The following is the key item in this Directive:

Prior approval of CBM: a bank needs to seek and obtain prior approval from CBM for the appointment of the elected individuals as directors and chief executive officer of the bank, 30 days prior to such appointment. The application to the CBM should be accompanied by relevant documents as set out in this Directive. The CBM has the discretion to carry out background checks necessary to verify the contents of such documents.

This Directive provides for additional clarity on a number of issues such as the parameters to ascertain fit and proper criteria, the CBM application process and the documents thereof.

2. Directive on Directors of Bank

Directive 9/2019 (“**Directive 9**”) or the Directive on Directors of Bank sheds further light on the several provisions in the FIL in relation to the directors and board of directors of banks in Myanmar.

Some of the main takeaways are as follows:

- 1. Number of board members:** minimum of 5 and maximum of 15.
- 2. Independent Non-Executive Director:** Every board of directors having 11 members must have at least 1 such director and those having more than 11 members must have at least 2 such directors. An independent non-executive director is defined as a person that holds less than 5% of the voting shares of the bank and is not a related party in relation to the bank. For the purposes of this Directive 9, the constituents of a related party are the same as defined under the FIL and is described in the infographic on page 4.
- 3. Tenure:** 3 years and such term can be renewed for not more than 3 consecutive times.
- 4. Election at AGM:** the bank shall formally elect the directors, from the list of candidates approved by the CBM, at its annual general meeting.
- 5. Oath of office:** every director elected to the board of directors must sign an oath of office in the prescribed form within 30 days of his/her election. The prescribed format requires such director to declare, among other things, that he/she is not a director of any other bank or financial institution. A copy of the oath is required to be provided to CBM within 14 days from the date of such oath.
- 6. Conflicts of interest policy:** the board of directors of a bank requires to adopt a formal written conflicts of interest policy. The board of directors and Officers of a bank are required to disclose all direct, indirect, substantial financial and commercial interests of the directors and officers and his/her relative in the bank. It also states what items should be included in the written conflicts of interest policy.



This Directive provides clarity in respect of responsibilities of directors of banks. The introduction of a format for the purpose of taking the oath of office by the directors essentially formalizes the extant provision in the FIL and is one step towards good governance of banks in Myanmar.

3. Directive on Related Parties

Directive 11/2019 (“**Directive 11**”) elaborates on transactions with related parties (“**RPT**”) of banks and lays down documentation and reporting requirements in relation to such transactions.

Directive 11 also provides for additional clarity as to which persons shall be regarded as having control over management of a bank and which terms of a transaction can be regarded as “market terms and conditions”.

Some of the main takeaways are as follows:

- 1. Lending to related parties and shareholders:** a bank shall not lend to related parties and shareholders holding more than 5% of the voting shares of the bank unless such transaction has been approved by a vote of two-thirds or more the board of directors (excluding the director who is a related party) and secured by collateral and negotiated on market terms and conditions.
- 2. Exception to prohibition on related party lending:** a bank can lend to Officer who is an employee

of the bank provided such lending is under a scheme applicable to employees of the bank.

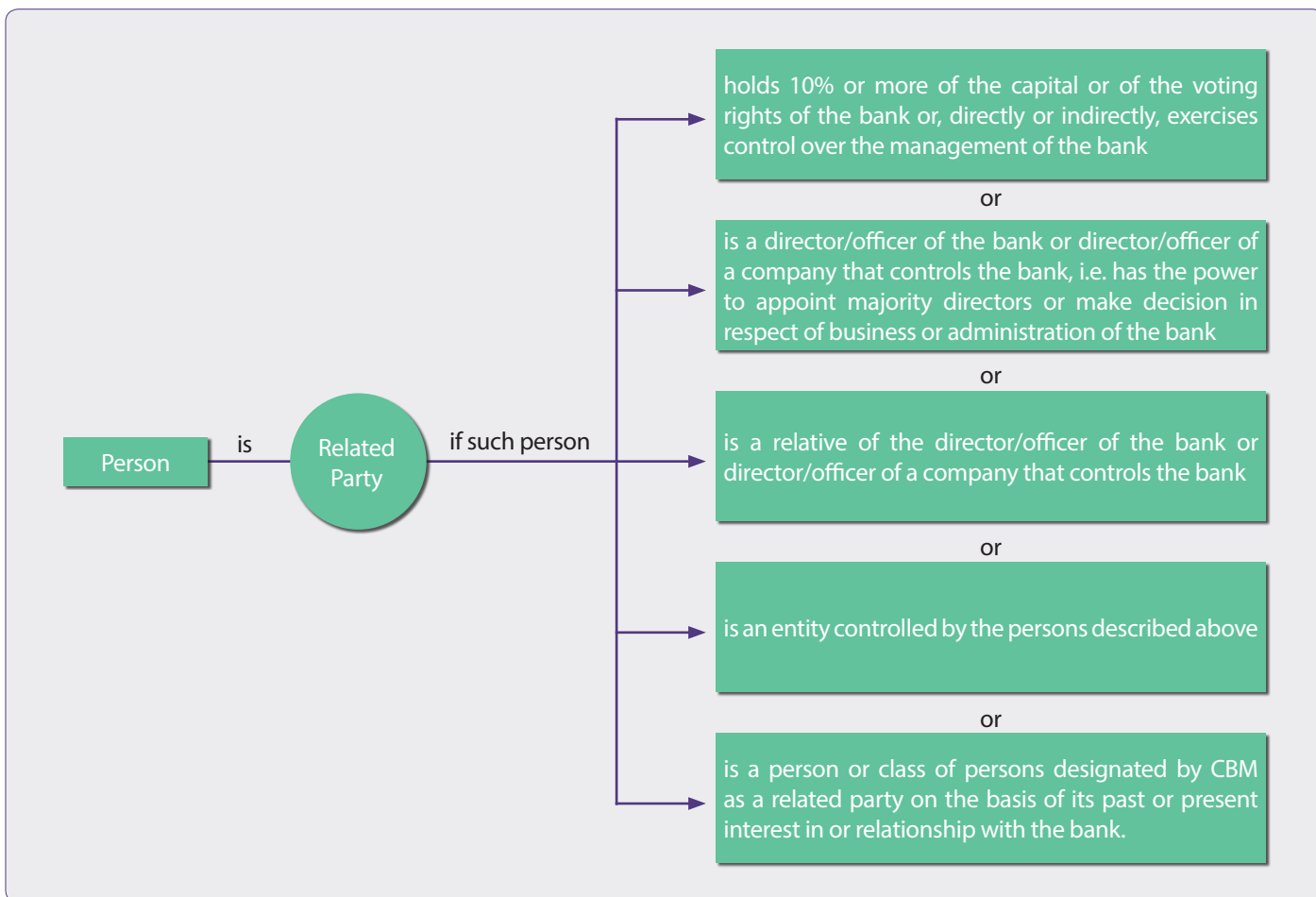
- 3. Deduction from Tier 1 capital:** all loans to related parties shall be deducted by the bank from its Tier 1 capital whether such loan is on or off balance sheet.
- 4. Documentation and reporting:** all RPT approved by the board of directors must be recorded in the minutes of the meeting. The banks are required to disclose all RPT and relationships and all payments from such related parties should be documented. Further, the banks are required to report all RPT to the

Banking Supervision Department (the “**BSD**”) of the CBM on a monthly basis in accordance with the format prescribed by the CBM.

- 5. Resolving existing RPT:** in the event where banks have RPT in their books that violate Directive 11, they are required to provide a written plan to the BSD on how to resolve such issue, within 30 days from the date of this Directive.

This Directive clarifies the RPT provisions in the FIL by setting out clear cut guidelines in terms of documentation and reporting requirements for RPT.

Infographic on the definition of related party in accordance with Directive 11/2019



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