AMENDING CIRCULAR NO. 1389, AS AMENDED

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Pursuant to Monetary Board Resolution No. 789 dated August 17, 1994, the pertinent provisions of Circular No. 1389 dated April 13, 1993 (Consolidated Foreign Exchange Rules and Regulations), as amended by Circular No. 1393 dated June 23, 1993, and Bangko Sentral (BSP) Circular Nos. 2, 5, 16 and 31 dated August 25, 1993, September 15, 1993, March 7, 1994 and July 19, 1994, respectively, are hereby amended as follows:

SECTION 1. Section 11 is hereby amended to read as follows:

> "Section 11. Documents Against Acceptance (D/A) and Open Account (O/A) Arrangements. — Under a D/A arrangement, the shipping documents are released to the importer by the local bank concerned thru the seller's bank upon the importer's acceptance of the seller's bill of exchange obligating the importer to pay for the shipment at some future date. Under an O/A arrangement, the shipping documents are sent and released by the seller directly to the importer without coursing the documents thru the banks, upon the importer's promise to pay at some future date after shipment.
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> "1. Registration. — Importations under D/A and O/A arrangements shall be registered with the Bangko Sentral upon availment for monitoring purposes through the submission to the BSP by the importer through its authorized agent bank of the duly accomplished Record of Goods Imported (RGI) and the pertinent import permit (if applicable).
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> "2. Payments. — Payments sourced from the commercial banking system shall not be effected for unregistered DA/OA imports. Payments prior to maturity date may be made, provided these are for duly registered accounts. Payments after the original maturity date may be allowed without prior Bangko Sentral approval, provided that:
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> - the importer has previously reported to BSP the extension of the maturity period not later than 30 days from scheduled due date; and
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> - the cumulative length of the maturity periods including all extensions, does not in any case exceed one (1) year from date of draft acceptance for D/A and B/L (Bill of Lading) date for O/A.
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> "3. Mechanics of Registration. — Appendix 3 of this Circular contains the mechanics of reporting and registration of D/A and O/A imports."

SECTION 2. Section 18.2 is hereby amended to read as follows:

> "2. Other Authorized Modes. — Payments for exports may also be made thru Export Advances without prior approval of the BSP. Export Advances shall refer to all payments/remittances received before shipment, including prepayments and Red Clause Advances.
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> "Bank draft/telegraphic transfer, buyer's checks, traveller's checks or acceptable foreign currency notes may be used in export advance, but for buyer's checks, the same shall be cleared before shipment."

SECTION 3. Section 23.1 is hereby amended to read as follows:

> "1. Loans of the following public sector entities irrespective of maturity, creditor and source of foreign exchange for servicing thereof, except short-term FCDU loans covered by Section 24.4:"

SECTION 4. Section 24 is hereby amended to read as follows:

"SECTION 24. Loans Not Requiring Prior Central Bank Approval. — The following loans may be granted without prior approval of the Bangko Sentral:

"1. Loans of the private sector from FCDUs/offshore sources irrespective of maturity, to be serviced using foreign exchange purchased from outside of the banking system.

"2. Short-term (with maturity not exceeding one (1) year) loans of financial institutions, both public and private, for normal interbank transactions, e.g., interbank call loans and general liquidity loans.

"3. Short-term loans of the private sector in the form of export advances from buyers abroad.

"4. Short-term loans of the following private and public sector borrowers from FCDUs:

"a. Commodity and service exporters — provided these loans are used to finance export-related import costs of goods and services, as well as, peso cost requirements.

Service exporters shall refer to Philippine residents engaged or proposing to engage in rendering technical, professional or other services which are paid for in foreign exchange.

Indirect exporters may likewise borrow to fund export-related costs, which may include both foreign exchange, as well as, peso costs. Indirect exporters shall refer to cottage/small and medium industries (producers/manufacturers) that have supply arrangements with direct exporters who are holders of an export letter of credit or a confirmed purchase order/sales contract from a foreign buyer.

"b. Producers/manufactures, including oil companies and public utility concerns — provided, the loans are used to finance import costs of goods and services necessary in the production of goods by the borrower concerned. Producers/manufacturers shall refer to any person or entity who undertakes the processing/conversion of raw materials into marketable form through physical, mechanical, chemical, or other means or by special treatment or a series of actions that results in a change in the nature or state of the products.

Public utility firms shall refer to any business organization which regularly supplies the public with commodities or services such as electricity, gas, water, transportation, telegraph/telephone services and the like.

Proceeds of FCDU loans shall not be eligible for deposit in an FCDU account if to be serviced using foreign exchange purchased from the banking system.

"5. Short-term loans of private exporters/importers from Offshore Banking Units (OBUs) and foreign banks with branches in the Philippines, provided that:

"a. The loans are not covered by a guarantee from a government financial institution/corporation;

"b. The loans shall be exclusively used to finance specific trade transactions, i.e., to liquidate/pay for import obligations and/or in the case of export financing transactions, to fund the borrower's pre-export financing requirements and shall not be refinanced by a medium-/long-term foreign currency loan;

"c. Proceeds of loans intended to pay for foreign exchange requirements shall be paid directly to the supplier/creditor, while amounts intended to fund pre-export peso costs shall be inwardly-remitted and sold to the banking system;

"d. Drawdown and registration requirements under Sec. 27 and 28 hereof shall be complied with;

"e. Any assignment of the loan by the creditor concerned shall be reported to BSP within five (5) days from date of assignment;

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"f. Creditor banks shall submit the following reports to BSP:

"1) their short-term lending program for private sector borrowers for the next six months indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries; and,

"2) monthly report on loans granted to eligible borrowers using Report Form CBP 6-24-24 — Consolidated Report on Loans Granted by OBUs and Foreign Banks with Local Branches to Residents together with proofs of drawdown/loan utilization.

"g. The borrowers shall submit monthly reports on transactions and status of their short term loans within three (3) banking days after end of reference month using Report Form ST-2.

"6. Short-term loans of private exporters/importers from other offshore sources/creditors, provided that all provisions of Sec. 24.5 are complied with, except item (f), and that the loans shall be granted against BSP approved short-term relending programs of foreign creditors. Creditors shall submit to the Bangko Sentral their short-term relending program for Philippine borrowers indicating their proposed credit limit together with a list of prospective borrowers/beneficiaries. These relending programs shall be valid for one year, but shall be subject to semi-annual review if commitment and/or utilization for the semester shall be below 50% of total relending limit.

"7. Private sector loans not guaranteed by foreign governments/official export credit agencies covering importations of freely importable commodities under deferred letters of credit (L/Cs) or open account/documents against acceptance (OA/DA) arrangements with a term of more than one (1) year.

"8. Private sector loans granted by foreign companies to their local branches/subsidiaries, irrespective of amount and maturity, provided these are used to finance eligible projects/costs cited under Sec. 25 hereof."

SECTION 5. Section 28.2 is hereby amended to read as follows:

"2. Private and public sector loans granted pursuant to Sections 24.4 and 24.5 shall be reported to the Bangko Sentral for registration purposes using forms prescribed for the purpose. All other loans shall be registered subject to the submission of an application for registration as provided in Sec. 28.1."

SECTION 6. Section 31 is hereby amended to read as follows:

"SECTION 31. Registration and Servicing of Other Financing Schemes/Arrangements.

"1. Financing schemes which would involve option to purchase arrangement or transfer of ownership after a certain period of time as in the case of Build-Operate-Transfer (BOT), Build and Transfer (BT) arrangements shall be registered with the Bangko Sentral to be eligible for servicing using foreign exchange to be purchased from the banking system.

"2. Applications for registration shall be filed by the implementing agency/proponent with the Bangko Sentral within one month from contract signing using the attached BSP-MEDD Form No. 9.

"3. Implementing agencies/proponents of projects under BOT/ similar financing arrangements shall submit the following reports to Bangko Sentral:

- Yearly Projected Funding Requirements for BOT/Other Similar Financing Schemes (MEDD Form BOT 1A), on or before September 30 of the year preceding the reference period; and

- Monthly Report on Payment under BOT/Other Similar Financing Schemes (MEDD Form BOT 1B) within ten (10) working days from end of reference month.

"4. Payments related to financing schemes duly registered, as well as, those previously noted/approved by the Bangko Sentral may be serviced as they fall due."

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SECTION 7. Section 74 is hereby amended to read as follows:

> "SECTION 74. Foreign Currency Deposit with the Bangko Sentral. — Foreign Currency deposit with the Bangko Sentral equivalent to at least 15% as a form of foreign currency cover referred to in Section 4 of Republic Act No. 6426 shall be optional on FCDUs of commercial banks and thrift banks. The Bangko Sentral may pay interest on the foreign currency deposit and if requested shall exchange the foreign currency notes and coins into foreign currency instruments drawn on its depository banks."

SECTION 8. Appendix 3 is hereby amended to read as follows:

"Appendix 3

"Reporting & Registration Requirements for D/A and O/A Imports

> "1. Importers shall submit through their authorized agent bank (AAB) the duly accomplished Record of Goods Imported (RGI) and the pertinent commercial invoices , import permit and copy of the CRF, if applicable, for registration purposes. Submission shall be within two (2) days from availment/receipt of documents but not later than maturity date of the D/A or O/A.
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> "2. AABs shall consider the reported DA/OA importation as registered only if same has been assigned a registration number by the BSP.
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> "3. AABs shall not service the foreign exchange requirements upon maturity of any D/A-O/A obligation that was not duly registered as prescribed herein.
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> "4. AABs shall report repayments of the D/A-O/A obligations effected in the prescribed FED Form 1 (formerly IOS Form 1) Schedule 14 (formerly Shed. 16) indicating in the third column thereof the registration number assigned in addition to the RGI Account Reference Number.
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> "5. AABs shall enjoin importers making use of the DA/OA facility to file requests for registration within the two (2) day prescriptive period."

This Circular shall take effect immediately.

Adopted: 27 Aug. 1994

(SGD.) GABRIEL C. SINGSON
Governor

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