FURTHER LIBERALIZING FOREIGN EXCHANGE REGULATIONS

BSP CIRCULAR NO. 1353 S. 1992, August 24, 1992

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Pursuant to Resolution No. 738 dated August 7, 1992 of the Monetary Board further liberalizing the foreign exchange regulations on receipts and disbursements of residents arising from non-trade and trade transactions, pertinent provisions of Central Bank Circular No. 1318 dated January 3, 1992, No. 1338 dated April 28, 1992 on Non-Trade Foreign Exchange Transactions, and No. 1348 dated July 28, 1992 on Foreign Trade Transactions are hereby amended, modified and/or repealed as follows:

Chapter I
Non-Trade Foreign Exchange Transactions
and Transfers of Local Currencies

SECTION 1. Repeal of Chapters I and II of CB Circular No. 1318, and CB Circular No. 1338 — Except as otherwise provided in this Chapter, all the rules and regulations contained in Chapter I (Sections 1 to 8) of CB Circular No. 1318 dated January 3, 1992 entitled "FOREIGN EXCHANGE RECEIPTS AND ACQUISITIONS" and Chapter II (Sections 9 to 31) of the same Circular entitled "GENERAL RULES ON FOREIGN EXCHANGE DISBURSEMENTS AND TRANSFERS OF LOCAL AND FOREIGN CURRENCIES" are hereby repealed.

CB Circular 1338 dated April 28, 1992 containing the RULES ON EXPORT RETENTION FOR SERVICE EXPORTERS" is also hereby repealed.

SECTION 2. Disposition of Foreign Exchange Receipts — As a general rule, foreign exchange may be freely sold and purchased outside the banking system. Foreign exchange receipts, acquisitions or earnings may also be deposited in foreign currency accounts, whether in the Philippines or abroad, or brought out of the Philippines.

However, in order that foreign loans and foreign investments can be serviced with foreign exchange purchased from the banking system, the proceeds of such foreign loans and foreign investments shall continue to be sold to AABs for pesos.

SECTION 3. Sales of Foreign Exchange by AABs — As a general rule, all categories of banks (except Offshore Banking Units [OBUs]) duly licensed by the Central Bank shall be considered as Authorized Agent Banks (AABs).

AABs may sell foreign exchange without need of prior CB approval for any payment on any foreign exchange transaction such as but not limited to:

a. Travel allowances;

b. Educational expenses abroad;

c. Medical and hospitalization expenses;

d. Support of dependents abroad;

e. Port disbursements abroad of aircraft and vessels of Philippine registry or chartered/leased by domestic

operators for fuel, ship's stores and similar supplies, harbor/airfield fees, repairs and maintenance;

f. Mail fees;

g. Fees for correspondence courses;

h. Salvage fees;

i. Foreign advertising costs;

j. International settlement of accounts for telegraph, telegram, cable, radio, satellite and other communication facilities;

k. Membership dues and registration/examination fees;

l. Subscription to foreign magazines or periodicals for non-commercial use;

m. Real property taxes and income taxes due to foreign governments;

n. Commissions on exports, or on inward foreign investments, due foreign agents;

o. Rebates, discounts and refunds of export proceeds due to defective export shipments or late deliveries;

p. Maintenance and administrative expenses of overseas private and government offices;

q. Transfers of emigrant's assets;

r. Remittance of salaries of temporary residents;

s. Technology transfer payments;

t. Royalty fees and payments for copyrights;

u. Producer's shares in movie revenues/TV film rentals;

v. Retainer fees due foreign professionals;

w. Reinsurance premia and payments for losses;

x. Revenues of foreign airlines and shipping companies; and

y. Lease payments.

Payments that are foreign loan-related, including payments for schemes/arrangements which partake of the nature of a loan, shall continue to be governed by existing Central Bank regulations.

SECTION 4. Responsibility of AABs — It shall be the responsibility of AABs to ensure that purchases of foreign exchange are duly supported by documents evidencing the legitimacy of the obligation and of the purpose for the purchase of foreign exchange.

In all cases, AABs selling foreign exchange for remittance abroad shall ensure that taxes, when required, have been paid and that the remittance is net of such taxes.

SECTION 5. Purchase of Foreign Exchange by Tourists — Tourists may purchase foreign exchange from AABs to the extent of the amount shown to have been sold by them for pesos to AABs. Departing tourists may reconvert at airports or other ports of exit unspent pesos of up to a maximum of US$200 or an equivalent amount in any other foreign currency calculated at prevailing exchange rates, without need of showing proof of previous sale by them of foreign exchange to AABs.

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SECTION 6. Reports (for Statistical Purposes) — (a) All AABs shall report their purchases and sales of foreign exchange to the Central Bank. In the case of commercial banks, expanded commercial banks and specialized government banks, the report shall be submitted daily in IOS Form I. In the case of thrift banks and rural banks, their foreign exchange receipts and disbursements, if any, shall be reported to the Central Bank on a monthly basis, under IOS Form IA (1992); and

b. All residents falling under any of the following categories of non-trade foreign exchange earners shall submit to the Central Bank, a monthly report of their foreign exchange receipts and disbursements, if any, under a report form which shall be prescribed by the Central Bank:

- Recruitment, placement, manning and crewing agencies;

- Insurance companies or agents;

- Communication and telecommunication companies;

- Hotels, restaurants, resorts, gifts shops and duty-free shops, tour operators, travel agents organizing domestic tours and other establishments duly accredited by the Department of Tourism as tourism-oriented establishments;

- Airline owners and operators engaged in international flight operations;

- Shipowners and operators engaged in overseas operations;

- Those engaged in port operations, marine services, catering services, hauling services and other similar services;

- Local agents of foreign carriers;

- Those rendering management, engineering, planning and other services, whether as prime contractors or sub-contractors;

- Those winning construction or supply con-tracts on foreign-assisted projects;

- Overseas construction contractors and construction-related contractors;

- Amusement and gaming establishments;

- Indentors, commission agents, or Philippine representatives of foreign firms;

- Oil companies engaged in selling aviation gasoline, bunker oil and other oil products to aircraft and vessels of foreign companies; and

- Recipients of profits, dividends, earnings, divestment proceeds from outward investments funded with foreign exchange purchased from AABs.

SECTION 7. Import/Export of Philippine Currency — No person may import or export nor bring with him into or out of the country, legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding P5,000.00 without authorization by the Central Bank.

SECTION 8. Inward Foreign Investments — All the provisions of Chapter III of CB Circular No. 1318 on “Foreign Investments in the Philippines” shall remain in full force and effect. However, Section 34, 37, 39, 44 and 45 of said Chapter are hereby amended to read as follows:

> "SECTION 34. Where to Register — (a) Direct Foreign Equity Investment — Direct foreign equity investments shall be registered with the Central Bank, provided, that foreign equity investments in a domestic bank not

listed in the stock exchange shall be registered only after approval of the foreign investment by the Monetary Board.

b. Investment in Government and Other Securities — Applications for registration of foreign investments in certificates of indebtedness issued by the Philippine government, or its political subdivision, agencies/instrumentalities or in securities listed in the Philippine stock exchanges including new issues, additional issues, stock rights, stock dividends, stock warrants, stock splits, over the counter securities transactions and the like, shall be filed by the stock broker/dealer or underwriter with the Central Bank or with the custodian bank designated by the foreign investor. The Central Bank or designated custodian bank shall accordingly issue in quadruplicate the Central Bank Registration Document (CBRD).

A custodian bank shall refer to an AAB of the Central Bank or an OBU appointed by the foreign investor to register his investments and to hold shares for and in his behalf and to represent him in all the necessary actions in connection with his investments in the Philippines."

"SECTION 37. Full and Immediate Repatriation/Remittance Privileges — Foreign investments duly registered with the Central Bank or with a custodian bank duly designated by the foreign investor, shall be entitled to full and immediate capital repatriation/dividend/interest remittance privileges. Without prior Central Bank approval, AABs are authorized to sell and to remit the equivalent foreign exchange at the exchange rate prevailing at the time of actual remittance representing sales/divestment proceeds or dividends/interest of duly registered foreign investment upon presentation of the CBRD which shall serve as the authority to repatriate said divestment/sales proceeds or remittance of cash dividends and/or interest. The repatriation/remittance procedure is outlined in Appendix “B” hereof entitled, "Capital Repatriation/Dividend/Interest Remittance Procedure."

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"SECTION 39. Investments Prior to March 15, 1973 — Capital repatriation or dividend remittance of direct foreign equity investments or investment in listed securities determined by the Central Bank to have been made prior to March 15, 1973 when Central Bank registration was not yet required under existing rules and regulations, shall be allowed thru an AAB."

SECTION 44. Imports and Exports of Stock Certificates of Philippine Firms — No prior Central Bank authority shall be required for the import/export of stock certificates of Philippine firms issued to foreign investors, including investments prior to March 15, 1973 under Section 39 hereof."

"SECTION 45. Reportorial Requirements — The remitting AAB shall transmit on transaction date to the Central Bank a copy of the CBRD with all the remittance transactions duly recorded thereon, together with a copy of the broker’s sales invoice or other proof of sale or cash dividend schedule, for post audit and updating of Central Bank records."

SECTION 9. Amendment of Appendices to CB Circular No. 1318 — Appendices “A”, “B”, and “C” of CB Circular No. 1318 are hereby amended, the respective full texts of which are hereto attached.

SECTION 10. Outward Investments by Philippine Residents — The provisions of Chapter IV (Sections 46, 47 and 48) of CB Circular No. 1318 on “Outward Investments by Philippines Residents,” are hereby amended to read in full as follows:

"SECTION 46. Outward Investments by Philippine Residents — A resident may invest abroad without prior Central Bank approval in any of the following cases:

a. the investments are funded by withdrawals from foreign currency deposit units (FCDUs); or

b. the funds to be invested are not sourced from AABs; or

c. the funds to be invested are sourced from AABs but in amounts of less than $1 million per investor per year."

"SECTION 47. Requirements for Outward Direct Investments — An application to purchase foreign exchange for outward direct investments, whether or not prior Central Bank approval is required, shall be accompanied by the following documents:

a. Project feasibility study on the foreign exchange earnings to be generated with priority for the development of new market for Philippine products;

b. Statement as to whether the area of investment shall be made in industries whose period of gestation is fairly short, and whose products have developed markets abroad;

c. Proposed financial scheme of the project;

d. Projected income for three (3) years; and

e. Such other documents as may be required on a case-to-case basis.

"SECTION 48. Inward Remittance and Sale to AABs — Foreign exchange acquired or received by residents as dividends/earnings/divestment proceeds from outward investments funded from foreign exchange purchased from AABs, shall be inwardly remitted within fifteen (15) days from the date they acquired ownership thereof, and shall be sold for pesos to AABs within three (3) business days from their receipt in the Philippines."

SECTION 11. Offshore Banking System — All the provisions of Chapter V (Sections 49 to 64) of CB Circular No. 1318 on the “Offshore Banking System” shall remain in full force and effect, except that Section 57 of said Chapter is hereby amended to read as follows:

"SECTION 57. Peso Deposits — OBUs may open and maintain peso deposit accounts with domestic agent banks exclusively for the following purposes:

a. To meet administrative and other operating expenses, such as salaries, rentals and the like;

b. To pay the peso equivalent of foreign exchange sold by beneficiaries of inward remittances of Filipino overseas workers or of Filipino or multinational companies, coursed through the OBUs’ correspondent banks abroad; and

c. To pay the peso equivalent of foreign exchange sold by beneficiaries of export L/Cs negotiated with the OBUs.

The peso deposit accounts shall be funded exclusively by inward remittances of foreign exchange eligible to form part of the Philippine international reserves.

OBUs may also sell inward remittances of foreign exchange for pesos to the Central Bank through the Treasury Department, for credit to the demand deposit account of the designated commercial bank for account of the OBU."

SECTION 12. Representative Offices of Foreign Banks — All the provisions of Chapter VI (Sections 65 to 73) of CB Circular No. 1318 on the "Representative Offices of Foreign Banks" shall remain in full force and effect.

SECTION 13. Foreign Currency Deposit System — All the provisions of Chapter VII (Sections 74 to 92) of CB Circular No. 1318 on the “Foreign Currency Deposit System” shall remain in full force and effect, as provided therein, except for Sections 76, 77 and 85 thereof which are hereby amended to read as follows:

SECTION 76. Authorized Transactions — (a) Thrift banks which are granted a certificate of authority to operate an FCDU are authorized to engage in the following transactions in any acceptable foreign currency;

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1. Accept deposits and trust accounts (for banks authorized to engage in trust operations) from residents and non-residents;

2. Deposit, on short-term maturity, with foreign banks abroad, OBUs, and other FCDUs;

3. Invest in foreign currency-denominated debt instruments, which are of short-term maturity and are readily marketable;

4. Grant short-term foreign currency loans as may be allowed by Central Bank regulations;

5. Borrow, on short-term maturity, from other FCDUs; and from foreign banks abroad and OBUs, subject to existing rules on foreign borrowings;

6. Engage in foreign currency-foreign currency swap with the Central Bank, OBUs, and other FCDUs.

b. Commercial banks, which are authorized to operate under the expanded foreign currency deposit system under Section 75 hereof, may engage in the following transactions in any acceptable foreign currency;

1. Accept deposits and trust accounts (for banks authorized to engage in trust operations) from residents and non-residents;

2. Deposit with foreign banks abroad, OBUs and other FCDUs;

3. Invest in foreign currency-denominated debt instruments;

4. Grant foreign currency loans as may be allowed by the Central Bank;

5. Borrow from other FCDUs; and from non-residents and OBUs, subject to existing rules on foreign borrowings;

6. Engage in foreign currency-foreign currency swap with the Central Bank, other FCDUs, and OBUs;

7. Engage in foreign exchange trading; and with prior Central Bank approval, engage in financial futures and options trading;

8. On request/instructions of its foreign correspondent bank, it may:
i. issue letters of credit for a non-resident importer in favor of a non-resident exporter;

ii. pay, accept, or negotiate drafts/bills of exchange drawn under the letter of credit;

iii. make payment to the order of the non-resident exporter.

Provided, that the foreign correspondent bank shall deposit sufficient foreign exchange with the FCDU issuing the letter of credit to cover all drawings."

"SECTION 77. Foreign Currency Cover Requirements — FCDUs shall maintain at all times, a one hundred percent (100%) cover for their foreign currency liabilities. For purposes of complying with this requirement, the principal offices in the Philippines of the authorized banks and all its branches located therein shall be considered as a single unit. The foreign currency cover shall consist of the following:

a. For Thrift Banks —

1. Foreign currency deposits with the Central Bank;

2. Foreign currency deposits of short-term maturity, with foreign banks abroad, OBUs, and other FCDUs;

3. Short-term foreign currency loans authorized by the Central Bank except those classified by the Central Bank as bad or uncollectible debts;

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4. Investments in foreign currency-denominated debt instruments, which are of short-term maturities and are readily marketable;

5. Foreign currency notes and coins on hand;

6. Foreign currency swapped with the Central Bank, OBUs and other FCDUs;

7. Foreign currency interests receivable;

8. Such other assets, as may be determined by the Monetary Board as eligible cover.

b. Commercial Banks — In addition to the above, the following shall also be considered as eligible asset cover:

1. Foreign currency loans maturing beyond one (1) year granted with prior Central Bank approval, except those classified by the Central Bank as bad or uncollectible debts;

2. Investments in foreign currency-denominated debt instruments, irrespective of maturity.

For purposes of this Section, only real accounts shall qualify as eligible asset cover."

"SECTION 85. Eligibility as Collateral — Deposits under the Foreign Currency Deposit System are eligible as collateral for peso loans or for foreign currency loans to both domestic juridical entities and/or resident individuals."

SECTION 14. Fiscal Agency Service — All the provisions of Chapter VIII (Sections 93 to 99) of CB Circular No. 1318 on “Fiscal Agency Service” shall remain in full force and effect except Section 95 thereof which is hereby repealed. AABs may sell foreign exchange to the Government without prior Central Bank approval, in accordance with Section 3 of this Circular.

Furthermore, Sections 94 and 97 of said Chapter VIII are hereby amended to read as follows:

> "SECTION 94. Functions and Services — Subject to the usual auditing requirements, the Central Bank shall perform the following specific fiscal agency service (FAS) functions when requested by the Government, to wit:
>
> a. Directly service the foreign exchange requirements of the Government;
>
> b. Engage the services of AABs to service such foreign exchange requirements in accordance with existing Central Bank policy, rules and regulations;
>
> c. Administer the fiscal agency funds (FAF) of the Government for the account of the Treasurer of the Philippines (TOP) US dollar working fund deposited with various PNB overseas branches and other depository banks abroad;
>
> d. Execute fund transfers from above accounts to other accounts upon order of TOP; and
>
> e. Perform such other functions as may be duly authorized by the Government."
>
> "SECTION 97. Settlement of Fiscal Agency Transactions — (a) In cases where the foreign exchange is sold by the Central Bank and TOP provides the corresponding peso equivalent for the FAS transactions, the peso equivalent shall be settled thru TOP deposit accounts maintained with Central Bank as TOP may direct. For this purpose, such FAS transactions shall always be supported by a specific written authorization from the TOP, among other documents;
>
> b. In cases where the foreign exchange is sold by the AABs and TOP provides the corresponding peso equivalent of said transactions, the peso equivalent of said transactions, shall be settled thru the clearing

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account of the servicing AAB with Central Bank. The appropriate TOP deposit account with Central Bank shall be accordingly charged/debited. Said FAS applications shall always be supported by a specific written authorization from TOP, among other documents;

c. In cases where the foreign exchange is sold by the AABs but the government agency/office provides the peso equivalent of such transactions, said agency/office concerned shall settle the peso equivalent thereof directly with the servicing AAB.

SECTION 15. Gold Transactions — Except as herein otherwise provided the provisions of Chapter IX of CB Circular No. 1318 on “Gold Transactions” shall remain in full force and effect.

Section 102, 105 and 106 of the same Chapter are hereby amended to read as follows:

"SECTION 102. Sale of Gold — Gold from small-scale miners shall be sold to the Central Bank. All other forms of gold, including primary and secondary gold may, at the option of the owner or producer thereof, be sold and delivered to the Central Bank."

"SECTION 105. Sale of Gold Grains/Pellets — The Central Bank may sell gold grains/pellets to jewelry manufacturers and other industrial users upon application at the gold-selling price plus a service fee to cover cost including cost of conversion and packaging of gold grains and pellets."

"SECTION 106. Purchases/Sales by Private Sector — Except as provided for in this Circular, purchases and sales of gold and/or gold-bearing metals in the Philippines may be made by and between Philippine residents without specific approval from Central Bank.

Banks may buy and sell gold in the international free gold market."

Section 107 on "Export of Gold", Section 108 on “Import of Gold”, and Section 109 on "Gold Forwarding Hedging" under Chapter IX of CB Circular No. 1318 are hereby repealed.

SECTION 16. Final Provisions of CB Circular No. 1318 — All the provisions in Chapter X of CB Circular No. 1318 insofar as they are not inconsistent with, or contrary to the provisions of this Circular, shall remain in full force and effect: Provided, however, that any regulation on non-trade foreign exchange transactions which has been repealed, amended or modified by this Circular, violations of which are the subject of pending actions or investigations, shall not be considered repealed insofar as such pending actions or investigations are concerned, it being understood that as to such pending actions or investigations, the regulations existing at the time the cause of action accrued shall govern.

Chapter II
Foreign Trade Transactions

SECTION 17. Amendments to CB Circular No. 1348 — All the provisions of Circular No. 1348 dated July 28, 1992, entitled REVISED MANUALS OF RULES AND REGULATIONS GOVERNING FOREIGN TRADE TRANSACTIONS, shall remain in full force and effect. However, Sections 19, 22, 26, 27, 28, 37, 40, 41, 42, 43, and 46 of said Circular are hereby amended to read as follows:

"SECTION 19. General Policy — It is the policy of CB to encourage commodity exports which generate foreign exchange earnings for the country. Accordingly, commodity exports are allowed without restriction except for certain commodities which are regulated for reasons of national interest."

"SECTION 22. Monthly Export Declaration (MED) — The use of a MED may be allowed by the AAB for exports that are frequent and recurring, using the same form for Export Declaration (ED) under Section 21 but adding the word “Monthly” to the form title provided that the exporter shall submit a summary report to the AABs of all shipments effected under the said MED. The authority to use such MED shall be valid for one (1)

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year."

"SECTION 26. Amendments — Amendments to the ED may be allowed by AABs at any time before export negotiation."

"SECTION 27. Cancellation of ED — Requests for cancellation of an ED may be given due course by an AAB upon surrender to the AAB of the unused original (ED1) copy of the ED."

"SECTION 28. Authorized Modes — Payment for exports may be made under any of the following modes:

a. Letter of Credit (L/C) — a written instrument issued by a foreign bank upon the request of its client, the foreign buyer-importer, allowing the seller-exporter to draw drafts/be paid subject to compliance with the terms and conditions stated in the written instrument;

b. Documents Against Payment (D/P) — whereby the shipping documents are released to the buyer by the foreign bank concerned thru the exporter's bank only upon receipt of the buyer's payment for the shipment thru the former bank;

c. Documents Against Acceptance (D/A) — whereby the shipping documents are released to the buyer by the foreign bank concerned thru the exporter's bank upon the buyer's written acceptance of the exporter's bill of exchange, obligating to pay for the shipment at some future date;

d. Open Account (O/A) — a mode of payment whereby the shipping documents are sent and released by the exporter directly to the buyer, without coursing the documents thru the banks, upon the buyer's promise to pay at some future date after shipment;

e. Cash Against Documents (CAD) — whereby the buyer pays the exporter upon the former's receipt of the shipping documents sent to him by the exporter either directly or thru the banks;

f. Prepayment/Export Advance — whereby payment is effected before shipment. If remittance is effected within 30 days before shipment, it shall be considered prepayment but if effected more than 30 days before shipment, the remittance shall be considered as an export advance and reported as such in accordance with this Circular.

These shall be subject to the following conditions:

1. Upon receipt of the prepayment/export advance intended as prepayment or export advance, the buyer or the exporter shall disclose to the AAB such fact and the date the shipment is to be effected;

2. Bank draft/telegraphic transfer, buyer's checks, traveller's checks or acceptable foreign currency notes may be used in prepayment/export advance, but for buyer's checks, the same shall be cleared before shipment; and

3. The AAB may give due course to availments by exporters of export advances from buyers, regardless of amount, under "red clause" or similar provisions in the L/C, P.O. or S.C. provided the maturity of said advances does not exceed 360 days from availment date. Advances over 360 days may also be allowed subject to CB approval.

Shipping Documents as used in the above definitions, shall refer to the original and all other copies of the Bill of Lading/Air Waybill, Commercial Invoice and other documents evidencing the export shipment which are needed by the buyer to take possession of the shipment at destination.

g. Intercompany Open Account Offset Arrangement (Interco O/A) — whereby the exporter offsets its payables to against its receivables from, its parent/affiliate company abroad; and

h. Exports on Consignment — Exports whereby payment is contingent upon the sale to third parties abroad of the exported commodities by consignee, may be allowed without prior CB approval.

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"SECTION 37. Amount of Retention — Any commodity exporter may retain 100% of his foreign exchange receipts from exports and may freely use the same for any purpose."

"SECTION 40. FCDU Loans to Exporters — Exporters may avail themselves of short-term loans from FCDUs of duly authorized local banks without CB approval subject to existing rules and regulations."

"SECTION 41. Rediscounting — An AAB may rediscount with the CB eligible paper of its exporter-clients in accordance with existing CB guidelines."

"SECTION 42. Forfeiting — An exporter may sell to an Offshore Banking Unit (OBU) or a financial institution abroad its export bill and all its rights over an export shipment provided that the sale shall be without recourse to the exporter and any previous holder of the obligation and the foreign exchange proceeds thereof shall be considered export proceeds."

"SECTION 43. Gold — All export of gold in any form may be allowed except for gold from small-scale mining which is required to be sold to CB pursuant to Republic Act No. 7076 dated June 27, 1991. Gold from small-scale mining includes panned gold."

"SECTION 46. MED Without Foreign Exchange — A MED without FX may be allowed for frequent and recurring no-dollar exports using the same form for ED under Section 45 but adding the word "Monthly" to the form title provided that the exporter shall submit a summary report to the AABs of all shipments effected under the said MED. The authority to use such MED shall be valid for one year."

SECTION 18. Repealing Clause — The following sections of Circular 1348 are hereby repealed:

a. Section 11. Importation under Lease/Lease-Purchase and Similar Arrangements;

b. Section 29. Intercompany Open Account Offset Arrangements (Interco O/A);

c. Section 30. Exports on Consignment;

d. Section 32. Inward Remittance and Payment Period;

e. Section 33. Exports Requiring Prior CB Approval;

f. Sections 38 and 39. Use of the SFCDA; and

g. Section 47. No-Dollar Exports Requiring Prior CB Approval.

Section 48.B.5 on Report on SFCDA Opened, Closed and Outstanding Balances During the Report Month, together with Appendix 22 of CB Circular No. 1348, are hereby deleted.

In view of the further liberalization of foreign exchange regulations under this Circular and the repeal of Section 108 of CB Circular 1318 on Import of Gold, Appendix 9 of CB Circular No. 1348 is hereby amended by deleting therefrom the commodities with the following classification codes: 971.01-01; 971.01-02; 971.01-03; 971.01-04; 971.01-06; 971.01-07; 971.01-08; 971.02-00; and 971.03-00.

This Circular shall take effect September 1, 1992.

Adopted: 24 Aug. 1992

(SGD.) JOSE L. CUISIA, JR.
Governor

Appendix "A"

FOREIGN INVESTMENTS — REGISTRATION

PROCEDURE

General Provisions — All foreign investments registered with the designated custodian bank or directly with the Central Bank shall be issued a Central Bank Registration Document (CBRD), Annex "A-1". The custodian bank shall submit to the Central Bank, for post audit, all copies of CBRDs issued by it, together with all supporting documents enumerated in this Appendix, within two (2) banking days from issuance of said CBRDs. The original copy of the CB-post audited CBRD shall be returned to the issuing custodian bank or the appointed representative in the Philippines of the foreign investor for use in the eventual capital repatriation and remittance of cash dividends thru AABs.

1. Direct Foreign Equity — Direct foreign equity investments which under existing laws have to be registered with the Securities and Exchange Commission (SEC) or Bureau of Trade Regulation and Consumer Protection (BTRCP) shall be extended Central Bank Registration Document (CBRD) upon the recommendation of either agency concerned to facilitate repatriation of divestment proceeds or remittance of cash dividends or interest.

Direct foreign equity investments not required by law to be registered with SEC/BTRCP shall be registered directly with the Central Bank.

The following are the procedures for registration and the requisite supporting documents:

- For Cash Investment — The application in the prescribed form shall be filed directly with the Central Bank together with the following supporting documents:

  i. Credit advice or bank certification signed by an officer of the appropriate department/unit with the rank of Assistant Vice President (AVP) showing the amount of foreign exchange inwardly remitted and converted to pesos thru an AAB; and

  ii. Sworn certification of the appropriate officer of the investee attesting to the number of shares and amount paid for the investment.

- For Investment in kind — The application shall be filed directly with Central Bank together with the following supporting documents:

  i. Shipping documents;

  ii. SGS Clean Report of Findings; and

  iii. Sworn certificate of the appropriate officer of the investee attesting to the number of shares and amount paid for the investment.

- For investments in financial institutions which are governed and regulated by the Central Bank — Central Bank Supervision and Examination Sector clearance shall be required in addition to the abovestated supporting documents.

- Registration as foreign investments of capitalized oil/geothermal exploration expenditures — The application for registration shall be filed directly with Central Bank together with the following supporting documents:

  i. Government-approved service contract;

  ii. Copy of the Office of Energy Affairs (OEA) letter-validation of expenditures showing, among others, the distribution of validated expenditures among the partners under the service contract.

2. Foreign Investment in Government/Listed Securities — The application for registration shall be accompanied with the following supporting documents:

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a. For new purchases/new or additional issues/stock rights

i. Purchase invoice, or subscription agreement and/or proof of listing in the local stock exchange for new/additional issues/stock rights;

ii. Credit advice or bank certification signed by an officer of the appropriate department/unit with the rank of AVP showing the amount of foreign exchange inwardly remitted and its conversion date and rate; and

iii. Transfer instructions of the stock broker/dealer (either Form D or DT).

b. Stock dividends accruing to duly registered investments:

i. Stock dividend notice

c. Stock split

i. Stock split notice

3. Existing CB Registered Investments — Registration documents on existing CB registered investments shall be replaced with new CBRDs by the custodian bank. Copies of the new CBRDs shall be submitted to the Central Bank for post audit. Registration documents on investments registered directly with the Central Bank shall similarly be replaced with the new CBRDs.

4. Surrender of CBRD to CB — Whenever the remaining number of shares appearing on the CBRD has been fully sold/utilized, the AAB which effected the last remittance shall surrender to the Central Bank for cancellation.

Appendix "B"

FOREIGN INVESTMENTS — CAPITAL
REPATRIATION/DIVIDEND/INTEREST
REMITTANCE PROCEDURE

I
Capital Repatriation
The repatriation of sales/divestment proceeds or dividends/interest which accrued to duly registered direct foreign equity investments or investments in government/listed securities shall be effected by AABs without prior Central Bank approval upon presentation of the new CB Registration Document (CBRD). The AAB which effected the remittance shall indicate the details of the remittance in the appropriate blank spaces on the “Repatriation Record” and “Record of Cash Dividend/Branch Profits” of the CBRD, and shall be duly signed/initialed by the remitting officer in the appropriate space provided for the purpose.

II
Investments Registered Prior to the
Effectivity of this Circular
1. Direct Foreign Equity Investments — The remittance of cash dividends which accrued to CB registered direct foreign equity investments shall be effected thru an AAB upon presentation of the following documents:

- Central Bank Confirmation Document;

- Corporate Secretary’s sworn certification on the approval by the company’s Board of Directors of the declaration of the dividend and the amount of dividend payable to the foreign investor;

- Clearance to declare cash dividends from the Inter-Agency Committee on Domestic Borrowings of Foreign Firms in case of a foreign firm whose total subscribed capital stock is more than 40% foreign-owned or

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certification by the appropriate officer of the remitting company that the remittance shall not be financed by domestic borrowings, if below 40%; and

- Audited financial statements covering the dividend declaration.

Additional supporting documents shall be required on the following foreign investments:

- For investments in banks — Clearance from the Supervision and Examination Sector (SES) Department of the Central Bank;

- For investments in insurance companies — Clearance from Office of the Insurance Commissioner (OIC);

- For investments in oil companies operating in the Philippines — Clearance from the Bureau of Energy Utilization.

2. Investments in Government/Listed Securities — (a) The application for remittance of cash dividend in listed securities shall be filed with an AAB by the Transfer Agent or by the investor's designated custodian bank for foreign investment registered by said custodian banks or those under their custodianship. It shall be supported with the following documents:

i. Schedule showing the names of investors and addresses, STD numbers of the securities involved, gross amount of cash dividend, tax withheld and net amount requested for remittance;

ii. Central Bank Confirmation Document, if applicable;

iii. Stock exchange dividend notice;

iv. Clearance from the Inter-Agency Committee on Domestic Borrowings in case of foreign firms whose total subscribed capital stock is more than 40% foreign owned or bank certification from the appropriate officer of the remitting company that the remittance of cash dividends is not financed by domestic borrowings, if below 40%; and

v. Audited financial statement/s for the period covering the dividend declaration.

b. Application for remittance of interest accruing to foreign investments in government securities shall be filed with an AAB and shall be accompanied with the following supporting documents:

i. Proof of Central Bank registration;

ii. Copy of Advice to payee if redeemed thru CB; or

iii. Any document indicating the amount of interest earned on the securities if redeemed thru an AAB and interest is not paid thru discount.

III
For Investments Registered After the
Effectivity of this Circular

The remittance of cash dividends which accrued to foreign investments registered after the effectivity of this Circular, and of cash dividends in the custody of the custodian banks prior to the effectivity of this Circular, shall be allowed without prior Central Bank approval thru an AAB upon presentation of the CBRD. The remitting bank shall verify the remaining number of shares appearing in the CBRD as of the record date of the dividend declaration against the base share/s reflected in the submitted cash dividend schedule and shall deduct from the gross amount the applicable BIR taxes.

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Appendix "C"

FOREIGN INVESTMENTS — PROCEDURES
FOR TEMPORARY PLACEMENTS
OF DIVESTMENT PROCEEDS/
PROFITS/CASH DIVIDENDS

1. Notice of the Deposit — The broker/applicant shall submit to the Central Bank, within two (2) banking days from date of deposit, a notice of deposit of divestment proceeds/cash dividends/interest together with the following documents:

a. Deposit of Divestment Proceeds

i. Sales invoice issued by the stock broker or contract of sale in case of listed securities or direct foreign equity investment, respectively:

ii. Proof of deposit

b. Deposit of Cash Dividends/Interest

i. Schedule of cash dividend;

ii. Stock exchange dividend notice;

iii. Clearance from Inter-Agency Committee on Domestic Borrowings of Foreign Firms in case of foreign firms whose total subscribed capital stock is more than 40 percent foreign owned or Corporate Secretary's sworn certification that the remittance shall not be financed by domestic borrowings if less than 40 percent;

iv. Latest audited financial statements covering the dividend declaration; and

v. Proof of deposit.

c. In the case of interest accruing to foreign investments in government securities, proof of Central Bank registration and certification on the amount of interest shall be submitted.

After receipt of the notice of deposit, the Central Bank shall send an acknowledgment letter to the broker/applicant copy furnished the custodian bank.

2. Repatriation/Reinvestment of the Deposit — The application of the eventual repatriation of said deposit shall be filed with the custodian bank or with an AAB together with the following supporting documents.

a. Original copy of the Central Bank acknowledgment letter;

b. Bank certification of earnings from said deposit;

In case the deposits have been utilized for reinvestment, the applicant or stock broker shall register the reinvestment with the Central Bank or with the investors' designated custodian bank which shall issue the Central Bank Registration Document (CBRD upon submission of the following documents:

i. Original copy of the Central Bank acknowledgment letter;

ii. Purchase invoice issued by the stock broker or Contract of Sale in case of listed securities or direct equity investment respectively; and

iii. Transfer instruction of the broker (Form D/DT) for investment in listed securities or sworn statement of the appropriate officer of the investee attesting to the number of shares and amount paid for the investment, in case

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of direct equity investment.

The CBRD issued by the custodian bank together with the requisite supporting documents shall be submitted to the Central Bank for post audit within two (2) banking days from its issuance.

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