

FOREIGN GUARANTEES TO BE ISSUED BY FOREIGN BANKS AND FINANCIAL INSTITUTIONS AS WELL AS OTHER FOREIGN ENTITIES TO SECURE PESO OBLIGATIONS OF LOCAL FIRMS

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Pursuant to Monetary Board Resolution Nos. 16 and 48 dated January and 24, 1990; respectively, the following rules and regulations shall govern foreign guarantees to be issued by foreign banks and financial institutions as well as other foreign entities to secure peso obligations of local firms:

I. For purposes of this Circular, the word “guarantee”, as used herein, shall include Standby Letters of Credit, and all other agreements/documents which have the nature of a guarantee.

II. Foreign guarantees to be issued by foreign banks and financial institutions as well as other foreign entities covered by this Circular shall no longer require prior Central Bank approval. However, these transactions are required to be registered with the Central Bank through the Management of External Debt Department (MEDD) to be eligible for remittance of payment or conversion into a foreign loan or foreign equity investment of the amount drawn guarantees, guarantee fee and other charges/expenses related to the issuance of the guarantee, if any.

III. To be eligible for registration, subject guarantees shall conform with the following guidelines:

- Guarantees issued by foreign banks and financial institutions shall have an all inclusive cost not exceeding 2% p.a. with no additional fees to be charged by the foreign accountee. No charges shall be allowed in the case of guarantees issued by foreign entities with existing investments in the borrower-firm.

- In case of default, the foreign obligation arising from drawing under a CB-registered guarantee may be:

- a. settled through outward-remittance of foreign exchange subject to the limitations prescribed in Item III.3 below and the prior Central Bank approval through MEDD;

- b. converted into equity investment of the foreign guarantor/accountee in the borrower-firm or in other domestic firms, subject to prior CB approval through the Foreign Exchange Operations and Investments Department and to regulations then in force; or

- c. converted into a long-term foreign loan subject to prior CB-approval through MEDD, provided that the guaranteed peso loan shall be eligible for foreign financing, i.e., the project and purpose of the loan are consistent with CB policies on foreign borrowings at the time of conversion.

- The covering guarantee document shall contain the following proviso:

“The liability of the local borrower-firm under, or resulting from, the guarantee shall in no case exceed the amount of its peso obligation, the corresponding amount in foreign exchange of which, for purposes of outward remittance or conversion into foreign loan or equity investment, shall be determined at the rate of exchange prevailing at the time of such outward remittance or conversion: Provided, That in no case shall the total amount of foreign exchange which may be outward remitted or converted exceed the total amount of foreign exchange inwardly remitted.”

- Applications for registration of new guarantees shall be filed within 15 days from date of issuance of the foreign guarantee together with the following documents:

- a. Certificate of Registration of the local borrower with the Securities and Exchange Commission (SEC) or Bureau of Domestic Trade, as the case may be, unless previously submitted to MEDD;
- b. Clearance from the Inter-Agency Committee on Domestic Borrowings of Foreign Firms for the peso obligation covered by the foreign guarantee, when applicable;
- c. Certification from the domestic creditor on the amount, purpose and terms of the peso obligation covered, as well as the project for which said peso obligation was obtained/incurred;
- d. Copy of the foreign guarantee document;
- e. Certification from the foreign issuing bank, financial institution or other entity on the rate/amount of fees/charges incident to the guarantee; and
- f. Indemnity Agreement between the foreign accountee and local borrower, if any.

- Subsisting guarantees as of this date may be amended to comply with the requirements under this Circular in which case the application for registration shall be filed within 15 days from issuance of the amended guarantee,.

IV. 1. Applications for outward-remittance of foreign exchange relative to CB-registered guarantees covered by this Circular shall be filed with MEDD through an authorized agent bank duly supported by the following documents:

a. Payment for guarantee fees and other charges/expenses

— Billing from the foreign issuing bank/entity showing detailed computation of the guarantee fee and other charges/expenses.

b. Payments for drawings against guarantee -

1. Certification from a Senior/Executive Vice President or officer of equivalent rank of an authorized agent bank covering the inward-remittance and conversion into pesos through the local banking system of the foreign exchange proceeds of drawing against the guarantee showing the amount and date/s thereof;
2. Documents evidencing settlement of the peso obligation covered by the guarantee duly certified by the Senior/Executive Vice-President or officer of equivalent rank of the local creditor bank/financial institution/entity;
3. Draft or other proofs of drawing against the guarantee;
4. Detailed statement of amount due to foreign guarantor or foreign accountee of the guarantee;
5. Certification by the local borrower as to the source of funding of the proposed remittance;
6. Certification from the SEC as to the status of the local borrower (i.e., whether under liquidation or rehabilitation, etc.); and clearance for the borrower-firm to settle the obligation involved;

2. Outward-remittances of foreign exchange allowed herein shall cover payments due to the foreign guarantor/accountee as of the date of this Circular based on the prevailing exchange rate at the time of remittance.

3. Outward-remittance of initial payment for guarantee fee/opening commission prior to registration of a new guarantee may be allowed subject to prior approval of the Central Bank, through MEDD.

V. Submission by beneficiary of the guarantee within 5 days from end of reference month, of a status report

indicating the amounts of the covered peso obligation, guarantee and drawings, etc. in accordance with attached form (Annex A). The first report covering status as of end February, 1990 shall be submitted on or before March 15, 1990.

Photocopies of documents to be submitted to the Central Bank pursuant to this Circular shall be certified as true copies by the Senior/Executive Vice President or officer of equivalent rank of an authorized agent bank.

Any violation of the provisions hereof shall be subject to the monetary penalties and administrative sanctions similar to those prescribed under Circular No. 809 dated June 26, 1981.

This amends Item c. of Circular No. 983 dated December 6, 1983 insofar as it pertains to foreign guarantees covering peso obligations of domestic firms.

All other provisions of said Circular shall continue to be in force.

This Circular shall take effect immediately.

Adopted: 26 Jan. 1990

(SGD). JUAN QUINTOS, JR.

Officer-In-Charge

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