

RE: CONSOLIDATED FOREIGN EXCHANGE RULES AND REGULATIONS

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Pursuant to Monetary Board Resolution No. 231 dated September 6, 1993, 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 are hereby clarified/amended/modified as follows:

1. All references to the Central Bank of the Philippines in Circular No. 1389, as amended, shall refer to the Bangko Sentral ng Pilipinas.

2. Part One, Chapter II (Foreign Trade Transactions), Section 17 on Export Declaration (ED) is hereby amended such that Offshore Banking Units (OBUs) are likewise authorized to issue and register an ED or a Monthly ED, as well as amend and cancel said ED/MED in connection with their negotiation of export L/Cs and in handling other export transactions allowed under Sec. 52 of this Circular.

3. Part Two, Chapter I (Foreign Currency Loans and Guarantees) is hereby amended as follows:

- Inclusion of the following additional provisions to Section 24:

"24.6. Private sector loans not guaranteed by foreign governments/official export credit agencies covering importations of freely importable commodities under deferred letters of credit."

"24.7. 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."

- Revision of Sections 28.2, 30.1, 30.2 and 31.2 to read as follows:

"28.2. Private sector loans granted pursuant to Sections 24.4, 24.5, 24.6 and 24.7 shall be reported to the Bangko Sentral for registration purposes using forms prescribed for the purpose."

"30.1. The following guarantees shall continue to be referred to the Bangko Sentral for prior approval:

- Guarantees for account of the public sector as well as those to be issued by government-owned and controlled corporations in favor of non-residents; and

- Guarantees issued by foreign banks and financial institutions to secure obligations of residents partaking the nature of a foreign loan which require prior Bangko Sentral approval pursuant to Sec. 23 hereof."

"30.2. The following guarantees for account of the private sector shall not require prior Bangko Sentral approval but should be reported for registration purposes to be eligible for servicing using foreign exchange to be purchased from the banking system in the event of a default by the principal obligor:

a. Guarantees to be issued by local banks and financial institutions including government financial institutions in favor of non-residents such as:

1. Payment guarantees (e.g., bid bonds, performance bonds, advance payment bonds); and

2. Guarantees to secure foreign obligations of residents which do not partake the nature of a foreign loan.

b. Guarantees to be issued by foreign banks and financial institutions as well as other foreign entities to secure peso loans/FCDU loans authorized under Sec. 24.4 as well as foreign obligations (which do not partake the nature of a foreign loan) of local firms. Proceeds of guarantees where the beneficiary is a resident shall be inwardly-remitted and sold to the banking system.

As a prerequisite to the issuance of guarantees under Item a, the following documents shall be submitted to the guarantor:

1. Registration papers of domestic accountee with the Securities and Exchange Commission (for corporation/partnership) or with the Bureau of Domestic Trade (for single proprietorship).
2. Contract and/or other documents which serve as basis for the issuance of the guarantee.

Applications for registration shall be filed with the Bangko Sentral using the prescribed forms together with documents specified in attached Appendix 12. (see below)

"31.2. Payments related to financing schemes involving foreign exchange commitments of up to US\$1 million or its equivalent, as well as Bangko Sentral-approved transactions under paragraph 1 above may be serviced as they fall due without prior Bangko Sentral approval in line with the relevant provisions of the covering agreement/contract, a copy of which shall be submitted to the servicing bank."

4. Part Two, Chapter II (Foreign Investments), Section 44 (Outward Investments by Philippine Residents) is hereby amended to read as follows:

"44. Outward Investments by Philippine Residents.

A resident may invest only if:

1. the investments are funded by withdrawals from foreign currency deposit units (FCDUs); or
2. the funds to be invested are not among those required to be sold to AABs for pesos: or
3. the funds to be invested are sourced from AABs but in amounts of less than \$1 Million per investor per year.

An application to purchase foreign exchange for outward investments, whether or not prior Bangko Sentral approval is required, shall be accompanied by the following:

- a. a project feasibility study, investment proposal/subscription agreement, bond/stock offering circular and such other documents showing the nature and place of the investment; and
- b. a written undertaking to inward remit and sell for pesos thru AABs the dividends/earnings or divestment proceeds from outward investments funded by FX purchased from AABs as required herein.

A monthly report covering foreign exchange purchased from AABs in the prescribed form shall be submitted to Bangko Sentral for monitoring purposes. Non-compliance shall be subject to the penalties prescribed in Section 91 of this Circular. Outward investments in amounts of US\$1 million or more shall require prior approval and registration by the Bangko Sentral.

Foreign exchange acquired or received by residents as dividends/earnings or divestment proceeds from outward investments funded by foreign exchange purchased from AABs shall be inwardly-remitted within fifteen (15) banking days from date of receipt and sold for pesos thru AABs within three (3) banking days from receipt in the Philippines."

5. Part Three, Chapter I (Offshore Banking Units of Foreign Banks), Sections 52.3 and 52.4.a are hereby amended to read as follows:

"52.3. Open letters of credit (L/Cs) for importations of resident-borrowers, provided such importations shall be funded by a Bangko Sentral-authorized OBU foreign currency loan to the resident-borrower involved."

"52.4.a. OBUs shall bring in foreign exchange which shall be sold to the domestic banking system."

6. Part Three, Chapter III (Foreign Currency Deposit System), Section 73.2.a. is hereby amended to read as follows:

"73.2.a. Bangko Sentral — authorized foreign currency loans maturing beyond one (1) year except those classified by the Bangko Sentral as bad or uncollectible debts. (Bangko Sentral-authorized foreign currency loans shall include those with specific approval by the Bangko Sentral as well as those extended pursuant to Sec. 24.1 of this Circular.)"

This Circular shall take effect immediately.

Adopted: 15 Sept. 1993

(Sgd.) GABRIEL C. SINGSON
Governor

APPENDIX 12

DOCUMENTS TO BE SUBMITTED WITH APPLICATION FOR REGISTRATION OF GUARANTEES

A. For Guarantees Issued By Local Banks and Financial Institutions

1. Guarantee document/s (standby letter of credit; letter of guarantee; standby documentary credit) indicating therein the specific obligation being guaranteed;
2. Registration papers of the domestic accountee with the Securities and Exchange Commission (for corporation/partnership) or with the Bureau of Domestic Trade (for single proprietorship), unless previously submitted to the External Debt Department (EDD);
3. Contract and/or other documents which serve as basis for the issuance of the guarantee; and
4. Unnotarized indemnity agreement between the domestic accountee and guarantor, if any.

B. For Guarantees Issued by Foreign Entities

1. Guarantee document/s (standby letter of credit; letter of guarantee; standby documentary credit) indicating therein the specific obligation being guaranteed;
2. Registration papers of the domestic accountee with the Securities and Exchange Commission (for corporation/partnership) or with the Bureau of Domestic Trade (for single proprietorship), unless previously submitted to EDD;
3. Contract and/or other documents which serve as basis for the issuance of the guarantee;
4. Unnotarized indemnity agreement between the domestic accountee and guarantor, if any;
5. Certification from the domestic creditor on the nature, committed amount, outstanding amount, purpose and terms of the domestic obligation as well as the project for which the obligation was obtained/incurred; and

6. Clearance from the Inter-Agency Committee on Domestic Borrowings of Foreign Firms for the peso obligation covered by the guarantee (applicable only for borrower-firms with foreign equity investment exceeding 40% of total equity).

NOTE: Photocopies of documents to be submitted shall be certified as true copies by the Senior/Executive Vice President or officer of equivalent rank of the agent bank, or the original copies thereof shall be presented to EDD for verification purposes.

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