



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 822

Series of 2013

Subject : Amendment to the Capital Framework of Foreign Bank Branches

The Monetary Board, in its Resolution No. 1999 dated 28 November 2013, amended the components of capital for purposes of compliance with minimum capital requirements under Section X111 of the Manual of Regulations for Banks (MORB) and the Risk-Based Capital Adequacy Framework for Philippine Branches of Foreign Banks, as follows:

Section 1. Subsection X105.4 of the MORB is re-titled as Capital Requirements of Foreign Banks and amended to contain the capital requirements of foreign banks established as locally incorporated subsidiaries and as branches. The provisions under the previous item d. of Subsection X105.4 and Subsection X105.5 are amended, consolidated and renamed as Minimum Capital Requirements for Foreign Bank Branches under the new Subsection X105.4.b(1) of the MORB. Items b and c of the previous Subsection X105.4 of the MORB are re-titled as permanently assigned capital requirements for foreign bank branches under the new Subsection X105.4.b(2) of the MORB. The new Subsection X105.4 of the MORB reads as:

"Subsection X105.4 (2008 – X121.4) Capital Requirements of Foreign Banks

- a. For locally incorporated subsidiaries.** The minimum capital required for locally incorporated subsidiaries of foreign banks shall be the same as that prescribed by the Monetary Board for domestic banks of the same category.
- b. For foreign bank branches**
 - (1) Minimum Capital Requirements**
 - (a) A foreign bank branch shall comply with the same minimum capital requirements under Section X111 of the MORB and prudential capital ratios applicable to domestic banks of the same category.
 - (b) The total capital of a foreign bank branch shall include permanently assigned capital plus the *Net due to* account and other capital components.
 - (c) Should there be any *Net due* from head office, branches, subsidiaries and other offices outside the Philippines, the same shall be deducted from the capital accounts for purposes of determining compliance with the minimum capital requirements.
 - (d) The amount of *Net due to* which may be included in total capital shall be the lower of the equivalent amount of the permanently assigned capital or the actual balance of the *Net due to* account.

- (e) Current earnings/losses booked in the "Undivided Profits" account shall be included in the *Net due to* account.

For purposes of computing the minimum capital requirements, the balances of undivided profits, unremitted profits not yet approved by the BSP and losses in operation of Philippine Branch of foreign banks shall compose the "Accumulated Earnings" account.

- (f) In computing the actual balance of *Net Due to* account, the amount of Accumulated Earnings as defined under item e above shall be excluded.
- (g) The bank may elect portion of earnings not remitted to the head office as part of assigned capital. In this case, said earnings may no longer be remittable to the head office.
- (h) In complying with the minimum capital requirements, the total capital shall be net of unbooked valuation reserves and other capital adjustments as may be required by the BSP, total outstanding unsecured credit accommodations to DOSRI, both direct and indirect and deferred income tax.
- (i) At no time shall the adjusted capital (total capital less regulatory adjustments) fall below the amount required under Subsection X111.1 of the MORB.
- (j) Where a foreign bank has more than one (1) branch or banking office in the Philippines, all its branches and banking offices shall be treated as a unit for purpose of determining compliance with the legal reserve requirement and with capital requirements prescribed in laws/regulations.

(2) Permanently Assigned Capital Requirements

- (a) *For foreign banks which established branches in the Philippines after the effectivity of Republic Act No. 7721* A foreign bank authorized to establish branches with full banking authority in the Philippines shall inwardly remit and convert into Philippine currency, as permanently assigned capital, the U.S. Dollar equivalent of P210.0 million at the exchange rate prevailing on 05 June 1994 (the date of effectivity of R.A. No. 7721), i.e., P26.979 to US\$1. The foreign bank shall thereby be entitled to establish three (3) branches in locations of its choice.

For purposes of this Subsection, the same foreign bank may open three (3) additional branches in locations designated by the Monetary Board by inwardly remitting and converting into Philippine currency, as additional permanently assigned capital the U.S. Dollar equivalent of P35.0 million for every additional branch, computed at the same exchange rate of P26.979 to US\$1. The Monetary Board, in determining the location of the next three (3) branches established pursuant to the provisions of R.A. No. 7721, shall consider, among other things, development requirements of a region and the contribution of a bank branch may make to regional development, expansion

of basic financial services and enhanced access to credit by small and medium-scale enterprises: *Provided*, That the total number of branches for each new foreign bank entrant shall not exceed six (6).

- (b) *For foreign banks with existing branches in the Philippines upon the effectivity of Republic Act No. 7721* A foreign bank with existing branch or branches in the Philippines upon the effectivity of R.A. No. 7721 shall comply with the required permanently assigned capital by inwardly remitting and converting into Philippine currency the U.S. Dollar equivalent of P210.0 million computed at the same exchange rate of P26.979 to US\$1, within a period of one and one-half (1½) years from 05 June 1994.

The said foreign bank may establish up to six (6) branches in addition to its branch or branches existing as 05 June 1994, the first three (3) additional branches in locations of its choice, and the next three (3) additional branches in locations designated by the Monetary Board: *Provided*, That upon establishing any additional branch, the bank shall comply immediately with the permanently assigned capital mentioned in the next preceding paragraph: *Provided, further*, That the said permanently assigned capital shall be the capital for the bank's first three (3) additional branches, including its existing branch or branches, and for each branch established in addition thereto, the U.S. Dollar equivalent of P35 million computed at the same exchange rate of P26.979 to US\$1, shall be inwardly remitted and converted into Philippine currency.

If the permanently assigned capital of the existing branch/es of said foreign bank that has been converted to Philippine currency is sufficient to cover the abovementioned amount of assigned capital required for the additional branches, no additional assigned capital shall be required; otherwise, the foreign bank shall comply immediately with the capital requirements under the above paragraphs.

- (c) **Applicable Exchange Rate** – It is understood that the exchange rate of P26.979 to US\$1 mentioned hereinabove is applicable only to the minimum permanently assigned capital requirements provided in items (a) and (b) above. For other purposes, the exchange rate prevailing at the time of remittance shall be applicable.

Section 2. The provisions of the previous Subsection X105.5 of the MORB are consolidated in item b of Subsection X105.4 of the MORB. The previous Subsection X105.6 of the MORB entitled *Prescribed ratio of net due to and permanently assigned capital* is re-numbered as Subsection X105.5 of the MORB and amended to read as follows:

“Subsection X105.5 Prescribed Ratio of Net Due To Account

The amount of *Net due to* which may be included in Total Capital and Qualifying Capital shall not exceed the amount of permanently assigned capital. The *Net Due to*

account shall exclude portion consisting of accumulated earnings as defined in Item b(1)(e) of Subsection X105.4.

The amount of *Net due to* included in Total Capital and Qualifying Capital as well as the portion of accumulated earnings shall be inwardly remitted and converted into Philippine currency: Provided, That amounts invested in productive enterprises or utilized by Philippine companies for export activities, including foreign currency denominated loans granted to Philippine exporters and loans for productive purposes such as the following: agriculture, fisheries and forestry, manufacturing, mining public utilities, construction and home building, need not be subject to conversion into Philippine currency.

If there is non-compliance with the prescribed *Net due to* required to be inwardly remitted and converted to pesos, the bank shall immediately inwardly remit and convert to Philippine currency the amount of the deficiency.

Branches of foreign bank shall submit the reports prescribed in Appendix 6 to show compliance to this requirement."

Section 3. Subsection X105.6 of the MORB is amended to contain the Risk-Based Capital for Foreign Bank Branches. It shall read as follows:

"Subsection X105.6 Risk-Based Capital for Foreign Bank Branch

- a. Foreign bank branches shall comply with the same risk-based capital adequacy ratios applicable to domestic banks of the same category. The risk-based capital adequacy ratio of a foreign bank branch, expressed as a percentage of qualifying capital to risk weighted assets, shall not be less than 10.0%. Other minimum risk-based capital adequacy ratios include Common Equity Tier 1 (CET1) and Tier 1 capital ratios of 6.0% and 7.5%, respectively. A capital conservation buffer of 2.5%, comprised of CET1 capital, shall likewise be imposed.
- b. In computing the risk-based capital adequacy ratios, qualifying capital shall include permanently assigned capital and *Net due to* account as defined in items (b),(c),(d) and (e) of Subsection X105.4.b(1) of the MORB and other capital components as provided in Appendix 63b.
- c. Tier 1 capital is generally composed of permanently assigned capital and portion of *Net Due to* account particularly consisting of profits which have not been remitted to the head office (net of accumulated losses in operation) and Undivided Profits which represent the "accumulated earnings" of the branch. Other accounts in the *Net due to* account shall be considered as Tier 2 capital.
- d. The guidelines for computing the risk-based capital adequacy ratios are provided in Appendix 63b."

Section 4. Appendix 63b of the MORB is hereby amended as shown in Annex A.

Section 5. Capital Build-up Program. All foreign bank branches shall conduct capital assessment to determine compliance with the new capital requirements. Those banks which

would not be able to comply with the minimum capital requirements and risk-based capital adequacy ratios by 01 January 2014 (based on the new definition of capital as contained herein), must submit a capital build-up program not later than 01 April 2014. The capital build-up program must be approved by the branch's head office and included in the bank's ICAAP requirements.

Section 6. The following subsections of the Manual of Regulations for Banks are likewise amended to read as follows:

"Subsection X153.2 Requirements for establishment of additional branch. In addition to the standard pre-qualification requirement for the grant of banking authorities in Appendix 5, the applicant bank shall comply with requirements prescribed in Subsections X105.4.b.(2) and X105.5."

"Subsection X153.4 Requirements for opening a branch. After a bank's application to establish a branch has been approved, it may open the same subject to the following conditions:

a. xxx

(1) Proof or evidence of inward remittance needed to meet the requirements prescribed in Subsections X105.4.b(2) and X105.5;

xxx"

"Subsection X233.9 Long-Term negotiable certificates of time deposit. The following guidelines shall govern the issuance of long-term negotiable certificates of time deposit (LTNCTD) with minimum maturity of 5 years:

a. xxx

xxx

l. *Issue size and aggregate ceiling.* An issuing bank can issue LTNCTDs up to 300% of its total capital accounts as defined under Subsection X111/X105.4.b. Provided, that each issue/program size does not exceed P5.0 billion pesos. This ceiling shall be subject to a regular review by the BSP.

xxx"

"Section X383 Other Limitations and restrictions. The following limitations and restrictions shall also apply regarding equity investments of banks.

a. *In any single enterprise.* The equity investments of UBs and KBs in any single enterprise shall not exceed at any time twenty-five percent (25%) of the net worth of the investing banks as defined in Sec. X111 and Subsection x105.4.b.

xxx"

"Subsection X441.5 Pre-qualification requirements for a securities custodian/registry

a. xxx

b. xxx

"(1) xxx

"(2) *Branches of foreign banks.* The minimum capital required under Subsection X105.4.b.

xxx."

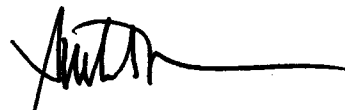
Section 7. Transitory Provisions. The circular shall take effect on 01 January 2014. However, foreign bank branches are given one (1) year from 01 January 2014 to 31 December 2014 to report their *Net Due to account* as a component of Common Equity Tier 1 capital and adjusted capital in accordance with the old capital regime. This treatment of the *Net Due to account* shall be used for capital computations, where prudential and/or regulatory limits are anchored, during the one-year transition period.

The bank shall ensure that transactions, including committed credit facilities, entered by the bank on or before 31 December 2013 shall not be increased, but may be reduced and once reduced, shall not thereafter be increased beyond the prudential and/or regulatory limits based on capital levels on 01 January 2015. Likewise, all new transactions from 01 January 2014 to 31 December 2014 shall already consider the projected capital levels on 01 January 2015.

Section 8. Sanctions. Non-compliance with the capital requirements and prudential and/or regulatory limits under this circular shall subject the bank to sanctions provided under existing banking laws and/or BSP rules and regulations starting 01 January 2015.

Outstanding transactions entered by the bank in 2014 which have exceeded prudential and/or regulatory limits by 01 January 2015 shall be subject to sanctions starting on the same date. Transactions entered by the bank on or before 31 December 2013 which remained outstanding as of 01 January 2015 shall not be subject to sanctions unless increased beyond prudential and/or regulatory limits anchored on capital level as of 01 January 2015.

FOR THE MONETARY BOARD:



AMANDO M. TETANGCO, JR.

Governor

13 December 2013

**RISK-BASED CAPITAL ADEQUACY FRAMEWORK
FOR THE PHILIPPINE BANKING SYSTEM
(Appendix to Sec. X115 and Sec.4115Q (2008-4116Q))**

"Introduction

"Part I. Risk-based capital adequacy ratio

"xxx

"Part II. Qualifying capital

"Qualifying Capital

"xxx

Section A – Domestic Banks

xxx

4. The following must be deducted from / (added to) CET1 capital

- o. Minority Investments (below 10% of voting stock) in banks and quasi-banks, and other financial allied undertakings xxx**

xxx

Section B - Branches of Foreign Banks

Common Equity Tier 1 (CET1) Capital

10. Common Equity Tier 1 (CET1) Capital shall be comprised of;

- a. Permanently Assigned capital¹;**
- b. Accumulated Earnings;²**
- c. Other Comprehensive Income**
 - (1) Net unrealized gains or losses on available for sale (AFS) securities³;and**
 - (2) Cumulative foreign currency translation;**

¹ Shall include unremitted earnings elected by the branch to be part of assigned capital

² Pertains to the sum of undivided profits, unremitted profits not yet approved by the BSP, net of losses in operation of Philippine Branch of foreign banks;

³ For early adopters of PFRS 9, this account shall refer only to "Net Unrealized gains(losses) on AFS equity securities; For AFS debt securities, refer to Footnote No.5. In view of the continuing evaluation by the Basel Committee on the appropriate treatment of unrealized gains/losses with respect to the evolution of the accounting framework, the BS will revise its relevant regulation once the treatment of fair value adjustments in the calculation of CET1 has been determined.

Regulatory Adjustments to CET1 Capital

11. The regulatory adjustments to CET1 capital are provided in paragraph 4, as applicable.

Additional Tier 1 (AT1) Capital

Tier 2 Capital

12. Tier 2 capital shall be composed of -

- a. Net due "to" head office, branches, subsidiaries and other offices outside the Philippines *Provided*, That should there be any "Net due from account", the same shall be deducted from Tier 2 capital.

The amount of net due to shall be subject to the following:

- 1) The amount of net due to/from shall exclude the amount of Accumulated earnings included in CET1 capital;

Accumulated Earnings shall be composed of the balances of undivided profits, unremitted profits not yet approved by the BSP and losses in operation of Philippine Branch of foreign banks.

- 2) The amount of net due "to" which may be included in Tier 2 capital shall not exceed the amount of permanently assigned capital

Provided, That the amount of net due to included in qualifying capital shall be inwardly remitted and converted into Philippine currency.

- b. General loan loss provision, limited to a maximum of 1.00% of credit risk-weighted assets, and any amount in excess thereof shall be deducted from the credit risk-weighted assets in computing the denominator of the risk-based capital ratio;

Regulatory Adjustments to Tier 2 capital

13. The regulatory adjustments to T2 capital for branches of foreign banks are provided in paragraph 8, as applicable.
14. Any asset deducted from qualifying capital in computing the numerator of the risk-based capital ratio shall not be included in the risk-weighted assets in computing the denominator of the ratio.

Part III. Capital Conservation Buffer

- "1. A Capital Conservation Buffer of 2.5% of risk-weighted assets, comprised of CET1 capital, shall be required of U/KBs (both domestic and branches of foreign banks) and their subsidiary banks and quasi-banks.

xxx

4. Elements subject to the restriction on distributions include dividends, profit remittance, in the case of foreign bank branches, share buybacks, discretionary payments on other Tier 1 capital instruments, and discretionary bonus payments to staff.

"xxx