



BANGKO SENTRAL NG PILIPINAS

CIRCULAR NO. 895
Series of 2015

Subject: Guidelines on Related Party Transactions

The Monetary Board, in its Resolution No. 1903 dated 13 November 2015, approved the following guidelines on related party transactions (RPTs) of banks and their non-bank financial subsidiaries and affiliates.

Section 1. Section X146 of the Manual of Regulations for Banks (MORB) shall now read as follows:

Section X146. Policy Statement. The Bangko Sentral ng Pilipinas recognizes that transactions between and among related parties create financial, commercial and economic benefits to individual institutions and to the entire group where said institutions belong. In this regard, related party transactions are generally allowed provided, that these are done on an arm's length basis. The BSP expects banks, including their non-bank financial subsidiaries and affiliates, to exercise appropriate oversight and implement effective control systems for managing said exposures as these may potentially lead to abuses that are disadvantageous to the bank and its depositors, creditors, fiduciary clients, and other stakeholders.

Section 2. Section X146.1 of the MORB shall read as follows:

Section X146.1. Definition of Terms. For purposes of this Circular, the following definitions shall apply:

1. **Related parties** shall cover the bank's subsidiaries as well as affiliates and any party (including their subsidiaries, affiliates and special purpose entities) that the bank exerts direct/indirect control over or that exerts direct/indirect control over the bank; the bank's directors; officers; stockholders and related interests (DOSRI), and their close family members, as well as corresponding persons in affiliated companies. This shall also include such other person/juridical entity whose interests may pose potential conflict with the interest of the financial institution (FI), hence, is identified as a related party.
2. **Close family members** are persons related to the bank's directors, officers and stockholders (DOS) within the second degree of consanguinity or affinity, legitimate or common-law. These shall include the spouse, parent, child,

brother, sister, grandparent, grandchild, parent-in-law, son-/daughter-in-law, brother-/sister-in-law, grandparent-in-law, and grandchild-in-law of the FI's DOS.

3. **Corresponding persons in affiliated companies** are the DOS of the affiliated companies and their close family members.
4. **Control** of an enterprise exists when there is:
 - a. Power over more than one-half of the voting rights by virtue of an agreement with other stockholders; or
 - b. Power to govern the financial and operating policies of the enterprise under a statute or an agreement; or
 - c. Power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
 - d. Power to cast the majority votes at meetings of the board of directors or equivalent governing body; or
 - e. Any other arrangement similar to any of the above.

Control is presumed to exist if there is ownership or holding, whether direct or indirect, of 20 percent or more of a class of voting shares of a company.

Should the FI choose to disclaim or rebut the presumption, it should provide facts sufficient to show that there is indeed no control. Further, the FI shall submit a written commitment that: (1) shares owned or held are exclusively for investment purposes; (2) the FI-stockholder will not serve on the board of directors and will not nominate any candidate to serve on the board or otherwise seek board representation; (3) the FI-stockholder will have only limited contacts with bank management that are customary for interested shareholders; (4) the FI-stockholder will engage only in normal and customary transactions with the enterprise; and (5) the FI will not pledge the shares acquired to secure a loan with any institution.

5. **Related party transactions** are transactions or dealings with related parties of the FI, including its trust department, regardless of whether or not a price is charged. These shall include, but not limited to the following:
 - On- and off-balance sheet credit exposures and claims and write-offs;
 - Investments and/or subscriptions for debt/equity issuances;
 - Consulting, professional, agency and other service arrangements/contracts;
 - Purchases and sales of assets, including transfer of technology and intangible items (e.g, research and development, trademarks and license agreements)

- Construction arrangements/contracts;
- Lease arrangements/contracts;
- Trading and derivative transactions;
- Borrowings, commitments, fund transfers and guarantees;
- Sale, purchase or supply of any goods or materials; and
- Establishment of joint venture entities.

RPTs shall be interpreted broadly to include not only transactions that are entered into with related parties but also outstanding transactions that were entered into with an unrelated party that subsequently becomes a related party.

Section 3. Section X146.2 of the MORB shall read as follows:

Section X146.2 Duties and Responsibilities/Roles and Functions.

(a) **Board Duties and Responsibilities.** The board of directors shall have the overall responsibility in ensuring that transactions with related parties are handled in a sound and prudent manner, with integrity, and in compliance with applicable laws and regulations to protect the interest of depositors, creditors and other stakeholders. Towards this end, the board of directors shall carry out the following duties and responsibilities:

1. To observe good governance and approve an overarching policy on the handling of RPTs to ensure that there is effective compliance with existing laws, rules and regulations at all times, that these are conducted on an arm's length basis, and that no stakeholder is unduly disadvantaged. A group-wide RPT policy shall be adopted, encompassing all entities within the banking group, taking into account their size, structure, risk profile and complexity of operations.

The RPT policies shall include, but not be limited to the following:

- a. *Definition of related parties.* The policy shall clearly define "related parties". It shall identify persons and companies that are considered the bank's related parties. The policy shall require Management to periodically review and update the inventory of related parties to capture organizational and structural changes in the FI and its related parties.
- b. *Coverage of RPT policy* The coverage of the RPT policy shall capture a broader spectrum of transactions, covering not only those that give rise to credit and/or counterparty risks but also those that could pose material/special risk or potential abuse to the FI and its stakeholders.

Transactions that were entered into with an unrelated party that subsequently becomes a related party may be excluded from the limits and approval process required in the policy. However, any alteration to the terms and conditions, or increase in exposure level, related to these transactions after the non-related party becomes a related party shall subject the RPT to the requirements of the policy. The prospective treatment should, however, be without prejudice to supervisory actions that may be enforced for transactions noted to have not been conducted on an arm's length basis.

- c. *Guidelines in ensuring arm's length terms.* The policy shall have clear guidelines in ensuring that RPTs are conducted in the regular course of business and not undertaken on more favorable economic terms (e.g., price, commissions, interest rates, fees, tenor, collateral requirement) to such related parties than similar transactions with non-related parties under similar circumstances. This shall include guidance for an effective price discovery mechanism to ensure that transactions are engaged into at terms that promote the best interest of the FI and its stakeholders. The price discovery mechanism may include, but not limited to, acquiring the services of an external expert, opening the transaction to a bidding process, or publication of available property for sale.
- d. *Conflicts of interest.* The policy shall cover the identification and prevention or management of potential or actual conflicts of interest which may arise. The members of the board, stockholders, and management shall disclose to the board whether they directly, indirectly or on behalf of third parties, have a financial interest in any transaction or matter affecting the FI. Directors and officers with personal interest in the transaction shall abstain from the discussion, approval and management of such transaction or matter affecting the bank.
- e. *Materiality thresholds and excluded transactions.* The policy shall include materiality thresholds for RPTs, which shall be set at a level where omission or misstatement of the transaction could pose significant risk to the FI and could influence the economic decisions of its board of directors. Materiality threshold may be set for each type of transaction and for each related party group, depending on the nature of the transaction and risks involved. The RPT policy may also identify transactions excluded from the materiality threshold requirement, such as transactions concerning deposit operations, regular trade transactions involving purchases and sales of debt securities traded in an active market, and those granted under BSP-approved fringe benefit programs.

Materiality threshold levels will vary from one FI to another depending on the nature, scope, frequency, value of, and risks associated with the RPT. The FI shall document the justifications for the materiality thresholds and exclusions set.

The BSP may direct an FI to reduce its materiality threshold or amend excluded transactions if the BSP deems that the threshold or exclusion is inappropriate considering the bank's size, risk profile, and risk management systems.

- f. *Internal limits for individual and aggregate exposures.* To ensure that RPTs are within prudent levels, the policy shall, in addition to existing prudential limits which shall be complied at all times, include internal limits or sub-limits for individual and aggregate exposures to a related party and for aggregate exposures to all related parties that are consistent with the FI's risk appetite, risk profile, and capital strength.

The internally set limits shall be tied in with the bank's internal definition of capital. Breaches in limits shall be reported to the board of directors with the decision of the board to accept the exposure or to take steps to address the breaches, as may be necessary, duly documented in the minutes of meetings.

- g. *Whistle blowing mechanisms.* The policy shall include effective whistleblowing mechanisms consistent with the corporate values and codes of conduct set by the board of directors. The policy shall encourage employees to communicate, confidentially and without the risk of reprisal, legitimate concerns about illegal, unethical or questionable RPTs. It shall include guidance on how and by whom legitimate material concerns should be reported, investigated and addressed by an objective independent internal or external body, senior management and/or the board itself.

- h. *Restitution of losses and other remedies for abusive RPTs.* The policy shall include measures that would cut losses and allow recovery of losses or opportunity costs incurred by the FI arising from RPTs that are not engaged on arm's length terms. The policy shall also include the manner of handling personnel, officers or directors, who have been remiss in their duties in handling RPTs.

The overarching policy will consolidate all existing policies that address the above requirements or may make reference to already existing policies.

2. To approve all material RPTs, those that cross the materiality threshold, and write-off of material exposures to related parties, and submit the same for confirmation by majority vote of the stockholders in the annual stockholders' meeting. Any renewal or material changes in the terms and conditions of RPTs shall also be approved by the board of directors.

All final decisions of the board on material RPTs, including important facts about the nature, terms, conditions, original and outstanding individual and aggregate balances, justification and other details that would allow stockholders to make informed judgment as to the reasonableness of the transaction, must be clearly disclosed during stockholders meetings and duly reflected in the minutes of board and stockholders' meetings.

3. To delegate to appropriate management committee the approval of RPTs that are below the materiality threshold, subject to confirmation by the board of directors. This shall, however, exclude DOSRI transactions, which are required to be approved by the board. All decisions under the delegated authority must be properly recorded in the minutes of the committee meetings.
4. To establish an effective system to:
 - Determine, identify and monitor related parties and RPTs;
 - Continuously review and evaluate existing relationships between and among businesses and counterparties; and
 - Identify, measure, monitor and control risks arising from RPTs.

The system shall be able to define related parties' extent of relationship with the FI; assess situations in which a non-related party (with whom a bank has entered into a transaction) subsequently becomes a related party and vice versa; and generate information on the type and amount of exposures to a particular related party. The said system will facilitate submission of accurate reports to the regulators/supervisors. The system as well as the overarching policies shall be subject to periodic assessment by the internal audit and compliance functions and shall be updated regularly for their sound implementation. The overarching policy and the system shall be made available to the BSP and audit functions for review. Any changes in the policies and procedures shall be approved by the board of directors.

5. To maintain adequate capital against risks associated with exposures to related parties. In this regard, material risks arising from RPTs shall be considered in the capital planning process. The prescribed scenario/stress tests under the capital

planning process shall also capture RPTs in order to determine whether the FI is well-insulated from any going concern issue of related parties.

6. To oversee the integrity, independence, and effectiveness of the policies and procedures for whistleblowing. The board should ensure that senior management addresses legitimate issues on RPT that are raised. The board should take responsibility for ensuring that staff who raise concerns are protected from detrimental treatment or reprisals.
7. To constitute an RPT Committee in addition to the committees prescribed under Section X141.3c(7) of the Manual of Regulations for Banks (MORB) on the creation of board committees, and to provide adequate resources to said Committee, including the authority to procure the assistance of independent experts, if necessary, to assess the fairness of RPTs. For this purpose, the constitution of an RPT Committee shall apply to banks that are part of a conglomerate and to banks directed by the BSP to constitute said Committee.

The RPT Committee shall be composed of at least three (3) members of the board of directors, two (2) of whom shall be independent directors, including the chairperson. The Committee shall at all times be entirely composed of independent directors and non-executive directors, with independent directors comprising majority of the members. In case a member has conflict of interest in a particular RPT, he should refrain from evaluating that particular transaction. The Compliance Officer or Internal Auditor may sit as resource persons in said Committee.

(b) Responsibilities of the RPT Committee. The RPT Committee shall:

1. Evaluate on an ongoing basis existing relations between and among businesses and counterparties to ensure that all related parties are continuously identified, RPTs are monitored, and subsequent changes in relationships with counterparties (from non-related to related and vice versa) are captured. Related parties, RPTs, and changes in relationships shall be reflected in the relevant reports to the board and regulators/supervisors.
2. Evaluate all material RPTs to ensure that these are not undertaken on more favorable economic terms (e.g., price, commissions, interest rates, fees, tenor, collateral requirement) to such related parties than similar transactions with non-related parties under similar circumstances and that no corporate or business resources of the bank are misappropriated or misapplied, and to determine any potential reputational risk issues that may arise as a result of or in

connection with the transactions. In evaluating RPTs, the Committee shall take into account, among others, the following:

- a. The related party's relationship to the bank and interest in the transaction;
- b. The material facts of the proposed RPT, including the proposed aggregate value of such transaction;
- c. The benefits to the bank of the proposed RPT;
- d. The availability of other sources of comparable products or services; and
- e. An assessment of whether the proposed RPT is on terms and conditions that are comparable to the terms generally available to an unrelated party under similar circumstances. The bank shall have in place an effective price discovery system and have exercised due diligence in determining a fair price for RPTs.

All RPTs that are considered material based on bank's internal policies shall be endorsed by the RPT Committee to the board of directors for approval.

3. Ensure that appropriate disclosure is made, and/or information is provided to regulating and supervising authorities relating to the bank's RPT exposures, and policies on conflicts of interest or potential conflicts of interest. The disclosure shall include information on the approach to managing material conflicts of interest that are inconsistent with such policies; and conflicts that could arise as a result of the bank's affiliation or transactions with other related parties.
 4. Report to the board of directors on a regular basis, the status and aggregate exposures to each related party as well as the total amount of exposures to all related parties.
 5. Ensure that transactions with related parties, including write-off of exposures, are subject to periodic independent review or audit process.
 6. Oversee the implementation of the system for identifying, monitoring, measuring, controlling, and reporting RPTs, including the periodic review of RPT policies and procedures.
- (c) **Roles of Senior Management and Self-Assessment Functions.** Senior management shall implement appropriate controls to effectively manage and monitor RPTs on a per transaction and aggregate basis. Exposures to related parties shall also be monitored on an ongoing basis to ensure compliance with the FI's policy and BSP's regulations.

The internal audit function shall conduct a periodic formal review of the effectiveness of the FI's system and internal controls governing RPTs to assess consistency with the board-approved policies and procedures. The resulting audit reports, including exceptions or breaches in limits, shall be communicated directly to the Audit Committee.

The compliance function shall ensure that the FI complies with relevant rules and regulations and is informed of regulatory developments in areas affecting related parties. It shall aid in the review of the FI's transactions and identify any potential RPT that would require review by the Board or RPT Committee. It shall ensure that the RPT policy is kept updated and is properly implemented throughout the FI.

Section 4. Section X146.3 of the MORB shall read as follows:

Section X146.3. Disclosure and Regulatory Reporting. Banks shall adequately disclose in their Annual Report, if applicable, the overarching policies and procedures for managing RPTs, including managing of conflicts of interest or potential conflicts of interest; responsibility of RPT Committee; nature, terms and conditions, as well as original and outstanding individual and aggregate balances, including off-balance sheet commitments, of material RPTs.

In addition to the required reports on DOSRI and transactions with subsidiaries and affiliates under existing regulations:

1. Universal/Commercial banks that are part of conglomerates shall report all entities in the conglomerate structure where it belongs (Annex A). The conglomerate structure shall likewise disclose beneficial owners of shareholdings that are in the name of PCD Nominee Corporation. The report on conglomerate structure shall be submitted to the BSP within 30 calendar days after the end of every calendar year.
2. Banks shall submit a report on material exposures to related parties, which shall include the material RPTs of their non-bank financial subsidiaries and affiliates, based on the bank's/non-bank financial institution's internal definition (Annex B) within 20 calendar days after the end of the reference quarter starting with the quarter ending 31 March 2016. Supervised non-bank financial subsidiaries and affiliates are therefore expected to report their material RPTs to the parent bank, which in turn shall report same to the BSP.

Transactions concerning deposit operations, credit card availments, regular trade transactions involving purchases and sales of debt securities traded in an active

market, are excluded from the reporting requirement to BSP. Provided, that credit card lines with amounts falling within the definition of "material transactions" shall be reported to the BSP upon approval of the line.

Lease contracts and other similar contracts with recurring payment transactions shall only be reported once, upon approval of said transaction by the board of directors. In case the parties involved in the transactions are both supervised by the BSP, only the lessor, in case of a lease contract, or the party engaging/requesting for the services of the other bank, in case of other contracts, shall submit the report.

This section amends the reporting requirement on group structure and the report on significant transactions required under Subsection X141.3c(9) of the MORB on group structures.

Section 5. Section X146.4 of the MORB shall read as follows:

Section X146.4. Applicability to Branches of Foreign Banks. The governance principles and requirements embodied in this Circular shall be complied with by branches of foreign banks, to the extent possible, given their distinct organizational set-up. The General Manager of Country Manager is the principal officer that will oversee the implementation of the governance principles embodied in this Circular. Branches of foreign banks are not covered by the reportorial requirement on conglomerate structure.

Section 6. Section X146.5 of the MORB shall read as follows:

Section X146.5. Supervisory Enforcement Actions. The BSP reserves the right to deploy its range of supervisory tools to promote adherence to the requirements set forth in these guidelines and bring about timely corrective actions and compliance with BSP directives. In this regard, the BSP may, among others, issue directives or sanctions on the Bank and responsible persons which may include restrictions or prohibitions from certain authorities/activities; and warning, reprimand, suspension, removal and disqualification of concerned bank directors, officers and employees.

Section 7. Renumbering of MORB Provisions. Section X147 of the MORB shall now read as ***"Profit Sharing/Compensation and Other Benefits"***. The provisions on ***"Profit Sharing Programs"*** shall be transferred from Section X146 of the MORB to Subsection X147.1. Moreover, the provisions on ***"Compensation and Other Benefits of Directors and Officers"*** shall be transferred from Section X147 of the MORB to Subsection X147.2.

Section 8. Transitory Provision. Banks, including their FI subsidiaries and affiliates, shall be given six months from effectivity of this Circular to comply with the RPT requirements.

This Circular shall take effect fifteen (15) calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


AMANDO M. TETANGCO, JR.
Governor

14 December 2015

Category:

Category A-1

Deadline:

30 calendar days after
the end of the calendar
year

Name of Bank	Code
Address	

Report on Conglomerate Structures

As of	(Year-End)
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REPUBLIC OF THE PHILIPPINES)

_____) S.S.

I solemnly swear that all matters set forth in this report are true and correct, to the best of my knowledge and belief.

(Signature of Officer/Alternate)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____ 20 __, affiant exhibiting to me his
Community Tax Certificate No. __ A
on _____ 20 ____.

Notary Public
Until December 31, 200 _____
PTR No. _____
Place _____

Doc. No. _____
Page No. _____
Book No. _____
Series of _____

CONGLOMERATE MAP/ORGANIZATIONAL STRUCTURE ¹⁾

Name of Bank		Bank Code
Date		

¹⁾ Organizational structure/diagram of the conglomerate.

Ownership Details/Board of Directors/Senior Officers ^{1/}

Name of Bank

Bank Code

Date _____

[illegible]

^{1/} Senior Officers shall refer to Senior Vice President positions and up

^{2/} Indicate those holding 10% or more of the voting stock

Category:

Annex B
Category A-1

Deadline:

20 calendar days after
the reference quarter

Name of Bank		Code
Address		

Report on Material Related Party Transactions

As of	
	(Quarter-End)

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

I solemnly swear that all matters set forth in this report are true and correct, to the best of my knowledge and belief.

(Signature of Officer/Alternate)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____ 20 __, affiant exhibiting to me his
Community Tax Certificate No. __ A
on _____ 20 __.

Notary Public
Until December 31, 200 _____
PTR No. _____
Place _____

Doc. No. _____
Page No. _____
Book No. _____
Series of _____

Name of Bank	Bank Code
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Date _____

Parent Bank/QB and Subsidiary/Affiliate	Related Counterparty	Relationship Between the Parties	Transaction Date	Type of Transaction	Amount/Contract Price	Terms	Rationale for Entering into the Transaction
A. Bank/QB							
a. Subsidiaries and Affiliates							
b. DOSRI							
c. Others							
B. Subsidiary 1							
a. Subsidiaries and Affiliates							
b. DOSRI							
c. Others							
C. Subsidiary 2							
a. Subsidiaries and Affiliates							
b. DOSRI							
c. Others							
D. Affiliate 1							
a. Subsidiaries and Affiliates							
b. DOSRI							
c. Others							
E. Affiliate 2							
a. Subsidiaries and Affiliates							
b. DOSRI							
c. Others							

Please indicate in the last column (rationale for entering into the transaction) if the counterparty was a non-related party at the time when the transaction was entered into.