



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 718

Series of 2011

Subject: Transactions Involving Voting Shares of Stock

Pursuant to Monetary Board Resolution No. 588 dated 14 April 2011, the provisions of the Manual of Regulations for Banks (MORB) are hereby amended, as follows:

Section 1. Sec. X126 on shares of stock of banks is hereby amended by adding the following paragraph:

"Sec. X126 Shares of Stock of Banks.

" X X X

"For purposes of this section, the term "corporations" shall include partnerships, cooperatives, associations and other juridical persons/entities."

Section 2. Subsec. X126.1 on limits on stockholdings in a single bank is hereby amended to read as follows:

"§ X126.1 Limits of stockholdings in a single bank. The stockholdings of an individual, corporation, family group, or same group of persons in any bank shall be subject to the limits prescribed in Sections 11, 12, and 13 of R.A. No. 8791, R.A. No. 7906, R.A. No. 7353, R.A. No. 7721 and other relevant laws.

- "a.** Foreign individuals and non-bank corporations may own or control up to forty percent (40%) of the voting stock of a domestic bank: *Provided*, That the aggregate foreign-owned voting stock owned by foreign individuals and non-bank corporations in a domestic bank shall not exceed forty percent (40%) of the outstanding voting stock of the bank. The percentage of foreign-owned voting stock in a bank shall be determined by the citizenship of the individual stockholders in that bank.
- "b.** Qualified foreign banks may own or control up to sixty percent (60%) of the voting stock of a domestic bank: *Provided*, That the aggregate foreign-owned voting stock owned by the qualified foreign banks (including the foreign individuals and non-bank corporations) in a domestic bank shall not exceed sixty percent (60%) of the outstanding voting stock of the bank established under R.A. No. 7721.

- "c. A Filipino individual and a domestic non-bank corporation may each own up to forty percent (40%) of the voting stock of a domestic bank. There shall be no ceiling on the aggregate ownership by such individuals and non-bank corporations in a domestic bank.
- "d. An individual and a corporation or corporations which are wholly-owned or a majority of the voting stock of which is owned by him may own only up to a combined forty-percent (40%) of the voting stock of a domestic bank.
- "e. The right of the qualified Philippine corporations, however, under Section 8 of R.A. No. 7721, as implemented under Subsec. X105.12 shall continue to be in force and effect.
- "f. Stockholdings of family groups or related interests. Individuals related to each other within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law, shall be considered family groups or related interests but may each own up to forty percent (40%) of the voting stock of a domestic bank: *Provided*, That said relationship must be fully disclosed in all transactions by such individuals or family groups or related interests.
- "g. Two (2) or more corporations owned or controlled by the same family group or same group of persons shall be considered related interests but may each own up to forty percent (40%) of the voting stock of a domestic bank: *Provided*, That said relationship must be fully disclosed in all transactions by such corporations or related groups of persons in the bank.
- "h. Ceiling on stockholdings in a Coop Bank. The equity investment of any cooperative in any Coop Bank shall not exceed forty percent (40%) of the subscribed capital stock of such Coop Bank.
- "i. Determination of foreign-owned voting stock and citizenship of corporate stockholders in a bank as well as the relationship of stockholders of a bank.
 - "(1) The percentage of foreign-owned voting stock in a bank shall be determined by the citizenship of all the stockholders in that bank.
 - "(2) The citizenship of the corporation, which is a stockholder of a bank shall follow the citizenship of the controlling stockholders of the corporation, irrespective of the place of incorporation.

For purposes hereof, the term "controlling stockholders" shall refer to stockholders holding more than fifty percent (50%) of the voting stock of the corporate stockholders of the bank.

- "(3) The relationship of individuals who are stockholders of a bank shall be determined in accordance with the provisions of Articles 963 to 966 of the Civil Code of the Philippines.

Section 3. Subsec. X126.2 on transfer of shares of stock is hereby amended as follows:

"§ X126.2 Transactions involving voting shares of stock. The following regulations shall govern all transactions involving voting shares of stock of banks.

"For purposes of this subsection, "transaction" shall refer to subscription/issuance, purchase/sale, transfer, conversion of preferred shares or debt instruments into voting shares of stock, and such act, contract, agreement or arrangement whereby a person, whether natural or juridical, acquires voting shares of stock from one person, whether natural or juridical, or is vested the right to vote or the control of the voting shares of stock of a bank.

"a. Unlawful and void transactions involving voting shares of stock of banks. The following transactions, to the extent of the excess over any of the prescribed ceilings under R.A. No. 8791, R.A. No. 7906, R.A. No. 7353, R.A. No. 7721 and other relevant laws are hereby declared unlawful and void:

- "(1) Any transaction involving voting shares of stock of a bank, if such transaction, in itself, or in relation with other/previous transaction/s shall result in the ownership and control by an individual or corporation of voting shares of stock in excess of any of the following prescribed ceilings:

Under R.A. No. 8791, R.A. No. No. 7906 and R.A. No. 7353		Ceiling
(a)	Voting shares of stock of a Filipino individual or a Philippine non-bank corporation in a domestic bank	40%
(b)	Voting shares of stock of foreign individual or a foreign non-bank corporation in a domestic: i. UB/KB and TB	40%

ii. RB	No foreign stockholdings ¹
(c) Combined ownership of the voting shares of stock of foreign individuals and/or foreign non-bank corporations in a domestic: i. UB/KB ii. TB iii. RB	40% 60% No foreign stockholdings ²
(d) Combined ownership of the voting shares of stock in a domestic bank of an individual and corporation/s which is/are wholly-owned or a majority of the voting shares of stock of which is owned by such individual	40%
Under R.A. No. 7721	
(a) Voting shares of stock of a qualified foreign bank or qualified Philippine corporation in a domestic bank, i.e., UB/KB, TB and RB	60%
(b) Combined ownership of the voting shares of stock of qualified foreign banks (including foreign individuals and non-bank corporations) in a domestic bank, i.e., UB/KB, TB and RB	60%

“(2) Any act, contract, agreement or arrangement, such as voting trust agreement or proxy, which vests in any person, whether natural or juridical, the right to vote or the control of the voting shares of stock of a bank, if such arrangement in itself, or in relation with other/previous transaction/s, shall result in the acquisition of the right to vote or the control of voting shares of stock of the bank, in excess of the prescribed ceilings.

¹ With the exception of shareholdings of Filipino-controlled domestic banks.

² With the exception of shareholdings of Filipino-controlled domestic banks.

"b. Transactions requiring prior Monetary Board approval

- "(1)** Prior approval of the Monetary Board shall be required on transaction involving voting shares of stock of a bank, if such transaction, in itself or in relation with other/previous transactions will:
- "(a)** result in ownership or control of more than twenty percent (20%) of voting shares of stock of a bank by any person whether natural or juridical or which will enable such person to elect, or be elected as, a director of such bank; or
 - "(b)** effect a change in the majority ownership or control of the voting shares of stock of the bank from one group of persons to another group: *Provided*, That in no case shall such transaction be approved unless the bank concerned shall immediately comply with the prescribed minimum capital requirement for new banks, notwithstanding any approved capital build-up program.
- "(2)** The request for prior Monetary Board approval shall be submitted jointly by the transferor-stockholder (or the bank in the case of additional subscription or conversion of preferred shares or debt instruments) and the transferee-stockholder thru the bank to the appropriate department of the SES. The request shall be accompanied by, in the case of transferee-stockholder, the same papers/documents required of incorporators/stockholders of newly established banks as provided in Appendix 37 "Basic Guidelines in Establishing Banks". The corporate secretary shall hold in abeyance the registration of the transaction until the required prior BSP approval is submitted as provided in Subsec. X126.2.c.
- "(3)** In the case of additional subscription, the bank shall not recognize the fund infused by the subscriber in its book as asset and liability or equity unless prior Monetary Board approval is obtained. Pending approval by the Monetary Board, the fund infused by the subscriber shall be placed in an escrow in another bank.
- "(4)** *Sanctions.* Any willful delay in the submission by the transferor and transferee of the request for prior Monetary Board approval, together with the required supporting papers/documents, within sixty (60) calendar days from date of transaction or thirty (30) calendar days from receipt by corporate secretary of request for registration of the transaction, whichever is earlier, shall subject the transferor, the

transferee, or both to the sanctions prescribed under Section 36 of R.A. No. 7653, without prejudice to the appropriate legal actions for the rescission and invalidation of the transaction.

Moreover, any director and/or officer of a bank found to be acting in the interest of an unregistered stockholder shall be subject to the applicable administrative sanctions under Section 37 of R.A. No. 7653, without prejudice to the filing of appropriate criminal charges as provided under Section 36 of R.A. No. 7653.

Furthermore, any violation of the provisions of Subsection X126.2.b(3) hereof shall subject the bank and/or its directors and/or officers to the applicable administrative sanctions under Section 37 of R.A. No. 7653, without prejudice to the filing of appropriate criminal charges as provided under Section 36 of R.A. No. 7653.

"c. Duties of a corporate secretary. In all transactions, which may lawfully come to the knowledge of the corporate secretary involving voting shares of stock of a bank such as but not limited to subscription/issuance, purchase/sale, transfer, conversion of preferred shares or debt instruments into voting shares of stock, or registration of voting trust agreements, or any form of agreement vesting the right to vote or the control of the voting shares of stock of the bank, the corporate secretary shall, before registering the transaction or agreement in the stock and transfer book of the bank:

- "(1) ascertain the identity and citizenship of the subscriber, purchaser, transferee or recipient of voting shares of stock, voting trustee, proxy or person vested with the right to vote, and for this purpose, he should require the subscriber, transferee or recipient of voting shares of stock, voting trustee, proxy or the person vested with the right to vote to submit proof of citizenship, which may consist, in case of a corporation, of a certified true copy of the articles of incorporation, accompanied by the affidavit of the corporate secretary of the corporation, certifying to the correctness and accuracy of the list of stockholders, their citizenship and the percentage of shares owned by them;
- "(2) require the subscriber, purchaser, transferee or recipient of voting shares of stock, voting trustee, proxy or person vested with the right to vote, at the time of the receipt of the request for registration of transaction, to disclose all information with respect to persons related to the subscriber, transferee or recipient of voting shares of stock, voting trustee, proxy or person vested with the right to vote, within

the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law, as well as corporations, where the subscriber, transferee or recipient of voting shares of stock, voting trustee, proxy or person vested with the right to vote has controlling interest, and the extent thereof;

- “(3) require the subscriber, purchaser, transferee or recipient of voting shares of stock to execute an affidavit (sample format shown in Appendix 4) stating, among other things, that the subscriber, transferee or recipient of voting shares of stock is a *bona fide* owner of the said shares of stock, that he/she is not an agent, assignee, proxy, nominee or a dummy of any person, whether natural or juridical, and that he/she acknowledges full awareness of (a) the prohibitions against ownership of voting shares of stock in excess of the ceilings prescribed by laws/BSP regulations as provided in Subsec. X126.2.a; and/or (b) the requirement for prior Monetary Board approval for transactions resulting to significant ownership of voting shares of stock of a bank by any person, whether natural or juridical, or by one group of persons, as provided in Subsec. X126.2.b.

“If the request for registration of transaction will patently cause the voting shares of stocks of an individual or a corporation to exceed the ceilings prescribed by laws/BSP regulations, the corporate secretary shall deny the registration of the transaction and forthwith inform the parties to the transaction in writing.

“If the request for registration of transaction would result to the significant ownership of the voting shares of stock of a bank by any person, whether natural or juridical, or by one group of persons, requiring prior Monetary Board approval as provided in Subsec. X126.2.b, and no such prior Monetary Board approval is submitted, the corporate secretary shall hold in abeyance the registration of the transaction and forthwith inform the parties to the transaction in writing.

“In the event the corporate secretary has reason to doubt the legality of the transaction sought to be registered, he/she may commence an action before the appropriate body;

- “(4) promptly inform stockholders (a) who have reached any of the ceilings prescribed by laws/BSP regulations of their ineligibility to own or control more than the applicable ceiling or (b) who would own voting shares of stock requiring prior Monetary Board approval; and

- “(5) disclose the ultimate beneficial owners of bank shares held in the name of Philippine Central Depository (PCD) Nominee Corporation in the annual (or quarterly whenever changes occur) report on Consolidated List of Stockholders and Their Stockholdings (BSP 7-16-11), which report shall be made under oath by the corporate secretary. Any willful delay in the submission of said report, a Category A-2 report, shall subject the bank to the corresponding fines for delayed reports in accordance with the provisions of Subsec. X192.2 to be reckoned on the day following the due date of submission until the correct report is submitted to the BSP.

Sanctions. The corporate secretary found to have willfully falsely certified/submitted misleading statements and/or violated any of the provisions of Subsec. X126.2.c shall be subject to the applicable administrative sanctions under Section 37 of R.A. No. 7653. The imposition of the said administrative actions is without prejudice to the filing of appropriate criminal charges as provided under Section 35 of R.A. No. 7653 for the willful making of false or misleading statement.

“d. Requirement for newly established banks. Entities which may hereinafter apply for a license to engage in banking business shall, before being allowed to operate, submit -

- “(1) An alphabetical list of stockholders with the number and percentage of voting shares of stock owned by them;
- “(2) A separate list containing the names of stockholders who own voting shares of stock in the bank and who are related to each other within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law (in the case of individuals) as well as corporations which are wholly-owned or a majority of the stock of which is owned by any of such stockholders, including their subsidiaries; and
- “(3) An affidavit under oath (sample format shown in Appendix 4) from each of the stockholders attesting, among other things, that he/she/it is the bonafide owner of the voting shares of stock of the bank in his/her/its own right, and not as an agent, assignee, proxy, nominee or a dummy of any other person, natural or juridical.

Section 4. Subsec. X126.4 on convertibility of preferred stock to common stock is hereby amended by adding Item “d” as follows:

"§ X126.4 Convertibility of preferred stock to common stock

"x x x

"d. Conversion of preferred shares of stock into voting/common shares of stock, regardless of convertibility features and notwithstanding any provision of existing BSP regulations to the contrary, shall be:

"(1) effected only to the extent of the prescribed ceilings under existing laws; and

"(2) subject to prior Monetary Board approval whenever said conversion will result to significant ownership of the voting/common shares of stock of a bank by any person, whether natural or juridical, or by one group of persons, as provided in Subsec. X126.2.b.

"The foregoing provision must be specifically stated in the certificates of preferred shares of stock."

Section 5. Appendix 4 on format of affidavit on transfer of stock is hereby amended as per attached Annex A.

Section 6. Appendix 6 on reports required of banks is hereby amended to reclassify Consolidated List of Stockholders and Their Stockholdings (BSP 7-16-11) from Category B to Category A-2 report.

Section 7. Effectivity. This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


JUAN D. DE ZUÑIGA, JR.
Officer-in-Charge

26 Apr 2011

FORMAT OF AFFIDAVIT ON TRANSACTIONS INVOLVING VOTING SHARES OF STOCK
[Appendix to Subsec. X126.2.c.3 and X126.2.d.3]

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

AFFIDAVIT

I, _____, also known as _____
with business address at _____ after having been duly sworn to in
accordance with law depose and state that:

1. I am the subscriber, purchaser, transferee, or recipient of (state quantity) shares representing ____ percent of voting shares of stocks of (state name of bank), hereinafter to be referred to as "Bank", by virtue of (state instrument of subscription, purchase/sale, transfer, acquisition, etc.) dated _____.

2. In acquiring equity in the Bank, I acted with full awareness and understanding that the Bank is a duly organized domestic banking corporation, exercising and enjoying a right, franchise and privilege to engage in _____ banking business, decreed by law to be a nationalized industry, wherein at least _____ percent of the voting stock should be owned by citizens of the Philippines and that there exist prohibitions under the law against the holding by any person, whether natural or juridical, of voting shares of stock in excess of _____ of the voting shares of stock of the Bank. I am also aware of the requirement for prior Monetary Board approval of significant ownership of voting shares of stock by any person, natural or juridical, or by one group of persons as provided in Subsec. X126.2.b of the Manual of Regulations for Banks (MORB).

3. Consonant with the policy of the Government as provided for in Commonwealth Act No. 108, as amended (The Anti-Dummy Law), and R. A. No. 8791, (The General Banking Law of 2000), I hereby declare as follows:

- a. The (state instrument of transfer) was not simulated to evade the provisions of the Constitution and Commonwealth Act. No. 108, as amended or the provisions of R. A. No. 8791, particularly Sections 11, 12 and 13 imposing maximum equity holdings by any person, whether natural or juridical, in banks;

- b. That I acquired said voting shares of stock for valuable consideration from my own funds;
- c. As such subscriber, purchaser, transferee, or recipient, I have title over said voting shares of stock; and
- d. That I am the bona fide owner of voting shares of stock of the bank in my own right, and not as an agent, assignee, proxy, nominee or dummy of any person, whether natural or juridical.

4. This Affidavit is executed for the purpose of stating under oath my bona fide title over the voting shares of stock of the Bank; that in acquiring title over said voting shares I gave valuable consideration; and that I shall comply with the requirements of all laws, rules and regulations with respect to my conduct as stockholder of the Bank.

IN WITNESS WHEREOF, I hereby affix my signature this _____ day of _____, 20__ at _____.

Affiant

SUBSCRIBED and sworn to before me this _____ day of _____ 20__, affiant exhibiting to me his (valid identification document/s) No. _____ issued at _____ on _____ 20__.

Notary Public

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