



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

CIRCULAR NO. 425 Series of 2004

The Monetary Board, in its Resolution No. 299 dated March 11, 2004, approved the following amendments to Section X303, Subsections X303.1 to X303.5 and Subsection X347.2 of the Manual of Regulations for Banks (MOR) to implement Section 35 of Republic Act (R.A.) 8791, The General Banking Law (GBL) of 2000.

SECTION 1. Section X303 of the MOR and its subsections are hereby amended to read as follows:

SECTION X303. Credit Exposure Limits to a Single Borrower.

- A. Consistent with national interest, the total amount of loans, credit accommodations and guarantees that may be extended by a bank to any person, partnership, association, corporation or other entity shall at no time exceed twenty five percent (25%) of the net worth of such bank. The basis for determining compliance with the single borrower's limit (SBL) is the total credit commitment of the bank to or on behalf of the borrower.
- B. The total amount of loans, credit accommodations and guarantees prescribed in the first paragraph may be increased by an additional ten percent (10%) of the net worth of such bank: Provided, That the additional liabilities are adequately secured by trust receipts, shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable, non-perishable goods which must be fully covered by insurance.
- C. The above prescribed ceilings shall include: (a) the direct liability of the maker or acceptor of paper discounted with or sold to such bank and the liability of a general endorser, drawer or guarantor who obtains a loan or other credit accommodation from or discounts paper with or sells papers to such bank; (b) in the case of an individual who owns or controls a majority interest in a corporation, partnership, association or any other entity, the liabilities of said entities to such bank; (c) in the case of a corporation, all liabilities to such bank of all subsidiaries in which such corporation owns or controls a majority

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interest; and (d) in the case of a partnership, association or other entity, the liabilities of the members thereof to such bank.

- D. Even if a parent corporation, partnership, association, entity or an individual who owns or controls a majority interest in such entities has no liability to the bank, the liabilities of subsidiary corporations or members of the partnership, association, entity or such individual shall be combined under certain circumstances, including but not limited to any of the following situations: (a) the parent corporation, partnership, association, entity or individual guarantees the repayment of the liabilities; (b) the liabilities were incurred for the accommodation of the parent corporation or another subsidiary or of the partnership or association or entity or such individual; or (c) the subsidiaries though separate entities operate merely as departments or divisions of a single entity.
- E. For purposes of this section, loans, other credit accommodations and guarantees shall exclude: (a) loans and other credit accommodations secured by obligations of the Bangko Sentral or of the Philippine Government; (b) loans and other credit accommodations fully guaranteed by the government as to the payment of principal and interest; (c) loans and other credit accommodations secured by U.S. treasury notes and other securities issued by central governments and central banks of foreign countries with the highest credit quality given by any two internationally accepted rating agencies; (d) loans and other credit accommodations to the extent covered by the hold-out on or assignment of, deposits maintained in the lending bank and held in the Philippines; (e) loans, credit accommodations and acceptances under letters of credit to the extent covered by margin deposits; and (f) other loans or credit accommodations which the Monetary Board may from time to time specify as non-risk items.
- F. The wholesale lending activities of government banks to participating financial institutions for relending to end-user borrowers shall at no time exceed a separate limit of thirty-five percent (35%) of net worth, subject to the following guidelines: (a) it shall apply only to loans granted to participating financial institutions (PFIs) on a wholesale basis for on-lending to end-user borrowers; (b) it shall apply only to loan programs funded by multilateral, international or local development agencies, organizations or institutions especially designed for wholesale lending activities of government banks; (c) the end-user borrowers of the PFIs shall be subject to the 25% SBL, not the increased ceiling of 35%; and (d) government banks shall observe appropriate criteria for accrediting PFIs and for the grant/renewal of credit lines to accredited PFIs.
- G. Loans and other credit accommodations as well as deposits maintained with, and usual guarantees by a bank to any other bank or non-bank entity, whether locally or abroad, shall be subject to the limits as herein prescribed.

Deposits of rural banks and cooperative banks (RBs/Coop Banks) with government-owned or controlled financial institutions like the Land Bank of the Philippines and the Development Bank of the Philippines shall not be covered by the SBL imposed under R. A. No. 8791.

In municipalities and cities where there are no government banks, the deposits of RBs/Coop Banks in private banks in said areas shall not be subject to the SBL. Deposits in private banks located in other municipalities/cities shall be covered by the SBL.

The outstanding balance of the deposit in a private depository bank being used by the Thrift Banks/RBs/Coop Banks with authority to accept/create demand or current deposits, to fund checks cleared through the said private depository bank shall also be exempt from the SBL even if there is a government-owned or controlled financial institution in the area.

Subsection X303.1 Definition of Terms.

For purposes of this Circular, the following definitions shall apply:

- a. *Total Credit Commitment* shall include outstanding loans and other credit accommodations, deferred letters of credit less margin deposits, and guarantees. Except as specifically provided, total credit commitment shall be reckoned on credit risk-weighted basis consistent with existing regulations.
- b. *Loans* shall refer to all the accounts under the loan portfolio of a bank as enumerated in the manual of accounts for banks.
- c. *Other Credit Accommodations* shall refer to credit and specific market risk exposures of banks arising from accommodations other than loans such as receivables (sales contract receivables, accounts receivables and other receivables), and debt securities booked as investments.
- d. *Bank Guarantee*. A bank guarantee is an irrevocable commitment of a bank binding itself to pay a sum of money in the event of non-performance of a contract by a third party. The guarantee is a commitment separate and distinct from the principal debt or contract.
- e. *Net Worth* shall mean the total of the unimpaired paid-in capital including paid-in surplus, retained earnings and undivided profit, net of valuation reserves and other adjustments as may be required by the Bangko Sentral.

- f. *Qualifying Capital* shall mean capital as computed under Circular 280 dated March 29, 2001 or as defined by the Monetary Board.
- g. The term "*Control of Majority Interest*" shall be synonymous to "controlling interest" and exists when the parent owns directly or indirectly through subsidiaries more than one half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. Control of majority interest may also exist even when the parent owns one half or less of the voting power of an enterprise when there is:
 - 1. Power over more than one half of the voting rights by virtue of an agreement with other investors; or
 - 2. Power to govern the financial and operating policies of the enterprise under a statute or an agreement; or
 - 3. Power to appoint or remove the majority members of the board of directors or equivalent governing body; or
 - 4. Power to cast the majority votes at meetings of the board of directors or equivalent governing body; or
 - 5. Any other arrangement similar to any of the above.
- h. *Subsidiary* shall refer to a corporation or firm more than fifty percent (50%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by its parent corporation.
- i. *Credit Risk Transfer* shall refer to any arrangement that allows the bank to transfer the credit risk associated with its loan or other credit accommodation to a third party.
- j. *Readily Marketable Goods* shall mean articles of commerce, agriculture or industry of such uses as to make them the subject of constant dealings in ready markets with such frequent quotations as to make their prices easily and definitely ascertainable, or which lend themselves easily to disposal by sale at any time to pay the obligations secured by the said goods.
- k. *Bill of exchange drawn in good faith against actually existing values* shall mean one which is drawn by a seller on the purchaser for the purchase price of commodities sold. A bill of exchange, whether drawn against goods for exports or against goods to be sold locally, which is discounted or purchased by a bank is a bill drawn against existing values only when it is accompanied by shipping documents, warehouse

receipts or other papers, securing title to the goods sold. However, bills of exchange drawn in good faith against actually existing values as defined in this paragraph, which are past due or the maturities of which have been extended, shall be considered as additional loans authorized under the second paragraph of this section and shall be subject to the ten percent (10%) limitation provided therein.

1. *Commercial or business paper actually owned by the person negotiating the same* shall mean a paper arising from an actual business transaction. A trade acceptance or promissory note actually owned by the person negotiating the same is a commercial or a business paper. However, if a bill is drawn against an agent or fictitious drawee, or if a promissory note is executed by an agent or fictitious drawee, neither is a commercial or a business paper. Commercial or business papers actually owned and discounted by the person negotiating the same, which are past due or the maturity of which have been extended, shall be considered as money borrowed and shall be subject to the limitation of twenty-five percent (25%) provided in the first paragraph of this Section.

Subsection X303.2 Rediscounted Papers Included in Loan Limit.

The liabilities to the bank of borrowers whose papers were rediscounted by banks with the Bangko Sentral shall not be deemed as having been extinguished by the rediscount, but shall be considered as still existing and shall be included in determining the SBL until such papers are paid by the borrowers.

Subsection X303.3 Credit Risk Transfer.

Subject to prior approval of the Bangko Sentral, loans and other credit accommodations covered by a legally effective credit risk transfer arrangement such as guarantee, letter of indemnity, standby letter of credit or credit derivative, may be excluded from the total credit commitment of the bank to a borrower in reckoning compliance with the single borrower's limit.

Subsection X303.4 Exclusions from Loan Limit.

- a. The discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper which are actually owned by the person, company, corporation or association negotiating the same;

- b. Credit accommodations to finance the importation of rice and corn to the extent of one hundred percent (100%) of the net worth of the bank concerned

shall be excluded in determining the SBL prescribed herein, subject to the following conditions:

1. The importation shall be made in pursuance of a national policy duly enunciated by the National Government;
2. The importation shall have been approved by the National Economic Development Authority (NEDA);
3. The letter of credit shall specify that importation shall be made with certification from the National Food Authority (NFA), or the consular establishment of the Philippine government at the source of any such shipment to the effect that the commodity being imported is either rice or corn; and
4. The related bills of lading shall specify in addition to the name of the importer concerned, that the NFA shall be the consignee of the shipment.

c. The portion of loans and other credit accommodations covered by the guarantee of Industrial Guarantee and Loan Fund;

d. The total liabilities of a commercial paper issuer for commercial paper held by a Universal Bank (UB) as a firm underwriter shall not be counted in determining compliance with the SBL within a period of one hundred eighty (180) days from the acquisition of the commercial paper by the UB: *Provided*, That in no case shall such liabilities exceed five percent (5%) of the net worth of the UB beyond the normal applicable SBL;

e. The portion of loans and other credit accommodations covered by guarantees of international/regional institutions/multi-lateral financial institutions where the Philippine Government is a member/shareholder, such as the International Finance Corporation and the Asian Development Bank.;

f. Loans and other credit accommodations or portion thereof, specifically provided for with valuation reserves; provided, that the bank has no unbooked valuation reserves;

g. Loans and other credit accommodations as a result of an underwriting or sub-underwriting agreement of debt securities outstanding for a period not exceeding thirty (30) calendar days.

Subsection X303.5 Sanctions.

Violations of the provisions of the foregoing rules shall be subject to the following:

a. Monetary Penalties - Fines of one-tenth of one percent (1/10 of 1%) of the excess over the ceiling but not to exceed Thirty Thousand Pesos (P30,000.00) a day for each SBL violation shall be assessed on the bank to be reckoned from the date the excess started up to the date when such excess was eliminated: *Provided*, That a maximum fine of Five Hundred Pesos (P500.00) a day for each violation shall be imposed against banks with total resources of less than P50 million at the time of granting of loan/credit accommodation.

b. Other Sanctions

First Offense – Reprimand for the directors/officers who approved the credit availment which resulted in the excess with a warning that subsequent violations will be subject to more severe sanctions.

Subsequent Offenses –

1. Fine of One Thousand Pesos (P1,000.00) for directors/officers who approved the credit availment which resulted in the excess.
2. Suspension of the bank's branching privileges and access to Bangko Sentral rediscounting facilities until the excess is eliminated.
3. Other penalties as the Monetary Board may impose depending on the gravity of the offense.

SECTION 2. Subsection X347.2 of the MOR is hereby amended to read as follows:

Subsection X347.2. Ceiling. The total guarantees or similar arrangements, the nature of which requires the guarantor to assume the liabilities/obligations of third parties in case of their inability to pay, that may be issued by a bank and outstanding at any given time, shall not exceed One Hundred Percent (100%) of the bank's qualifying capital.

SECTION 3. Transitory Provision

Outstanding credit commitments of a bank as of the effectivity of this circular which are within the ceiling prescribed under current regulations but will exceed the limitations prescribed herein shall not be subject to penalty for a period of one (1) year or until said credit commitments become past due or are extended, renewed or restructured whichever comes later: Said credit commitments shall, however, be reported to the Bangko Sentral within fifteen (15) banking days from the effectivity of this circular.

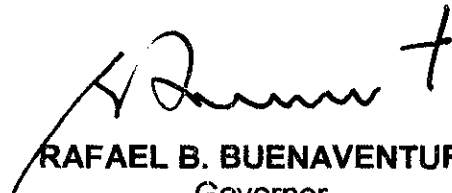
SECTION 4. Repealing Clause

This Circular supersedes/amends/modifies provisions of existing circulars, memoranda and/or regulations that are inconsistent herewith.

SECTION 5. Effectivity

This Circular shall take effect fifteen (15) days following its publication in a national newspaper of general circulation.

FOR THE MONETARY BOARD:



RAFAEL B. BUENAVENTURA
Governor

25 March 2004