

122 SHARES OF STOCK OF BANKS

The following shall govern transactions affecting shares of stock of banks and the limits on stockholdings in a single bank or in several banks.

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

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, as amended by R.A. No. 10574, R.A. No. 7721 as amended by R.A. No. 10641, and other relevant laws as summarized in the table below:

Particulars	Ceiling
(a) Voting shares of stock of a foreign individual or a foreign non-bank corporation in:	
i. UB/KB and TB	40%
ii. RB	60%
(b) Aggregate ownership of the voting shares of stock of foreign individuals and/or foreign non-bank corporations in:	
i. UB/KB	40%
ii. TB/RB	60%
(c) Voting shares of stock of a qualified foreign bank in UB, KB, TB and RB	100%
(d) Combined ownership of the voting shares of stock of qualified foreign banks in UB, KB, TB and RB	100%
(e) Voting shares of stock of a Filipino individual or a Philippine non-bank corporation in:	
i. UB/KB and TB	40%
ii. RB	60%
Voting shares of stock of a qualified Philippine Corporation in UB, KB, TB and RB, prior to the effectivity of R.A. 10641 (7 August 2014)	60%
(f) Combined ownership 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 in:	
i. UB/KB and TB	40%
ii. RB	60%

- a. Any foreign individual or non-bank corporation may each own or control up to forty percent (40%) only of the voting stock of a UB, KB or TB: *Provided*, That the aggregate foreign-owned voting stock owned by foreign individuals and non-bank corporations shall not exceed forty percent (40%) of the voting stock of the UB/KB, and sixty percent (60%) in the case of TBs.

For RBs, non-Filipino citizens, excluding foreign banks, may each or in the aggregate, own, acquire or purchase, up to sixty percent (60%) of the voting stock in an RB.

The percentage of foreign-owned voting stock in a bank shall be determined by the citizenship of the individual or corporate stockholders in that bank.

- b. Qualified foreign banks may own or control up to 100% of the voting stock of a domestic bank.
 - c. Any Filipino individual or a domestic non-bank corporation may each own up to forty percent (40%) only of the voting stock of a UB, KB or TB, and up to sixty percent (60%) only of the voting stock of a rural 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 UB, KB or TB, and up to a combined sixty percent (60%) of the voting stock of a RB.
 - e. 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 and may each own up to forty percent (40%) of the voting stock of a UB, KB or TB and up to sixty percent (60%) of the voting stock of an RB: *Provided*, That said relationship must be fully disclosed in all transactions by such individuals or family groups or related interests.
 - f. 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 UB, KB or TB and up to sixty percent (60%) of the voting stock of an RB: *Provided*, That said relationship must be fully disclosed in all transactions by such individuals or family groups or related interests.
 - g. 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.
 - h. 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 stocks 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.

In the case of RBs, a corporate stockholder thereof shall be deemed Filipino-owned if it is organized under the laws of the Philippines and at least sixty percent (60%) of its capital is owned by Filipino citizens.

- (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.

Transactions involving voting shares of stocks. The following regulations shall govern all transactions involving voting shares of stocks in banks.

For purposes hereof, “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, as amended by R.A. No. 10574, R.A. No. 7721 as amended by R.A. No. 10641 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 prescribed limits of stockholdings in a bank.
- (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.

- 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 (1) 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 appropriate supervising department of the Bangko Sentral. 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 33*. The corporate secretary shall hold in abeyance the registration of the transaction until the required prior Bangko Sentral approval is submitted as provided hereof.
- (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 independent bank, such as, in the form of an escrow deposit or deposit with hold-out agreement showing availability/hold-out of funds for the said purpose.
- (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 35 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 under Item “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 bonafide 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/Bangko Sentral regulations as provided under Item “a” *hereof*; 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 (1) group of persons, as provided under Item “b” *hereof*.

If the request for registration of transaction will cause the voting shares of stocks of an individual or a corporation to exceed the ceilings prescribed by laws/Bangko Sentral 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 (1) group of persons, requiring prior Monetary Board approval as provided under this Item “b” *hereof*, 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/Bangko Sentral 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 Delayed/Unsubmitted report, a Category A-2 report, shall subject the bank to the corresponding penalties in accordance with Sec. 171 (*Non-compliance with the Bangko Sentral reporting standards*).

Sanctions. The corporate secretary found to have willfully falsely certified/submitted misleading statements and/or violated any of the provisions under Item “c” *hereof* 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.

Other foreign equity investment in domestic banks. Except as otherwise covered under Sec. 103 and this Section on Limits of stockholdings in a single bank, the following guidelines shall be observed on equity investments of foreigners in domestic banks:

- a. The prior authority of the Monetary Board shall be obtained by foreign banks, including their subsidiaries and their holding companies having majority holdings in such foreign banks, whenever acquiring more than forty percent (40%) of the voting stock of a domestic bank, including foreign-owned shares outstanding and foreign-held as of 27 April 1973 and which continued to be held by the foreign stockholder up to the date of the acquisition by the foreign banks.
- b. The prior authority of the Monetary Board is not required if the foreign investor is: (1) an individual; (2) a non-financial entity; or (3) a non-bank financial entity which is not owned or controlled by a bank, its subsidiary or holding company, and the investor is acquiring foreign-owned shares in existing domestic banks: *Provided*, That said shares were outstanding and foreign held as of 27 April 1973 and which continued to be foreign-held up to the date of acquisition by the foreign investor.
- c. The maximum stockholdings foreigners may own in domestic banks shall continue to be governed by existing provisions of law.

- d. Only foreign-owned shares directly funded by inward remittance of foreign exchange sold to the local banking system are qualified for registration with the Bangko Sentral through its appropriate department for capital repatriation and remittance of profits/dividends privileges, in accordance with existing Bangko Sentral rules and regulations.

Convertibility of preferred stock to common stock. Out of the convertible preferred shares of stock which KBs/TBs may henceforth be authorized to issue, at least fifty percent (50%) of each such issue, shall be convertible into common stock at the option of the holders thereof after five (5) years from date of issue: *Provided, however, That:*

- a. The bank concerned may allow the conversion of such preferred stock into common stock even before the lapse of five (5) years from date of issue;
- b. At the time of the sale of the preferred stock, both classes thereof (one with convertibility feature and the other without convertibility feature) shall be offered to the purchasers, with the purchasers having the option to acquire either or both classes of preferred stock; and
- c. Preferred shares of stock with a cumulative feature issued by banks shall automatically be convertible into common shares of stock at the option of the holders thereof whenever the right as may be acquired by the holders by virtue of such cumulative feature are not satisfied by the bank within a period of three (3) years from date of issue.
- d. Conversion of preferred shares of stock into voting/common shares of stock, regardless of convertibility features and notwithstanding any provision of existing Bangko Sentral 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 under this Section on Transactions involving voting shares of stocks, Item “b”.

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

Issuance of redeemable shares: conditions; certification and report; sanctions.

- a. *Conditions.* Banks may issue redeemable shares subject to the following conditions:

- (1) The applicant bank prior to the approval of the amendment of articles of incorporation to issue redeemable preferred shares, has complied with the requirements under Items “B1” to “B6”, *Appendix 5*.

The articles of incorporation of an applicant bank shall incorporate the conditions in Items “a (3)(a)”, “a(3)(b)”, “a(3)(c)” and “a(3)(d)” of this Section.

- (2) The applicant bank prior to the issuance of redeemable shares shall comply with, in addition to the conditions in Item “(1)” above, the requirements under Items “B7”, “B8”, and “B12” to “B16”, *Appendix 5*.

- (3) The applicant bank after the issuance of redeemable shares shall comply with the following:

- (a) Redemption of shares shall be allowed at the specific dates or periods fixed for redemption only upon prior approval of the Bangko Sentral and, where the conditions of the issuance specifically state, only if the shares redeemed are replaced with at least an equivalent amount of newly paid-in shares so that the total paid-in capital stock is maintained at the same level immediately prior to redemption: *Provided*, That the redemption shall not be earlier than five (5) years after the date of issuance: *Provided, further*, That such redemption may not be made where the bank is insolvent or if such redemption will cause insolvency, impairment of capital or inability of the bank to meet its debts as they mature;
- (b) A sinking fund for the redemption of preferred shares is to be created upon their issuance. This is to be effected by the transfer of free surplus to a restricted surplus account. The fund shall not be available for dividends. The guidelines for the establishment and administration/ management of sinking fund for the redemption of redeemable private preferred shares are shown in *Appendix 48*.
- (c) The issuing bank shall not treat in any way redeemable preferred shares as time deposit, deposit substitute or other form of borrowings;
- (d) No dividend shall be declared or paid on redeemable shares in the absence of sufficient undivided profits, free surplus;
- (e) The issuing bank shall execute within ten (10) days after the first issuance a Deed of Undertaking (see *Appendix 38*), to be signed by its directors and principal officers, binding them to comply with the requisites and conditions set forth in Items “(a)” to “(d)” above;

- (f) The conditions in Items “(3)(a)”, “(3)(b)”, “(3)(c)” and “(3)(d)” above shall be incorporated in the certificates of stock; and
 - (g) Shares issued with the replacement requirement upon redemption shall be eligible as Upper Tier 2 capital for purposes of computing qualifying capital as provided in applicable and existing capital adequacy framework. Shares issued without such condition shall be eligible as Lower Tier 2 capital.
- b. *Certification and report.* The bank shall submit within fifteen (15) days after every issuance of at least twenty percent (20%) of the redeemable shares whether issued in series or at one (1) time, a certification signed by its President/Chairman under oath, stating that the requirements under Items “a(1)” and “a(2)” above, including all other conditions that the Bangko Sentral may impose, have been complied with. The applicant bank shall, not later than ten (10) days from the end of reference year, submit a yearly report of issuances of preferred shares to the appropriate supervising department of the Bangko Sentral indicating therein the name/s of the subscriber/s, the date the shares were issued and the number/amount of shares issued.
- c. *Sanctions.* Any violation of the foregoing provisions shall be subject to the following sanctions:
- (1) On the bank:
 - (a) For failure to comply with Items “a(3)(a)” to “a(3)(d)” above:
 - (i) Suspension of branching privilege;
 - (ii) Prohibition against granting of new unsecured loans to DOSRI;
 - (iii) Prohibition against declaration of dividends;
 - (iv) Denial of access to Bangko Sentral rediscounting facilities;
 - (v) Revocation of authority to accept government deposits and to handle government funds as a result of agency agreements with the BIR, SSS, etc.
 - (b) For failure to infuse capital in an amount at least equivalent to amount of redeemed shares as required in Item “a(3)(a)”:
 - (i) Sanctions in Item “(a)” above;
 - (ii) No new loans and investments, except in government securities;
 - (iii) P1,000 fine per day until the required infusion is made.
 - (c) If the certification submitted by the bank required in these guidelines is found to be false, suspension of authority to issue preferred shares for one (1) year.

- (d) For failure to submit report of issuance of redeemable preferred shares, a fine of P1,200 for UBs/KBs; P600 for TBs; and P180 for RBs/Coop Banks per day of default until the report is submitted.

(2) On the directors and officers:

- (a) For violation of any of the terms of the Deed of Undertaking, the following shall be imposed against the officers and directors of the bank who signed the deed:
 - (i) First offense – A fine of P500 per day for each violation from the time the violation was committed or up to the time the violation is corrected;
 - (ii) Second and subsequent offenses – A fine of P5,000 per day from the time the violation was committed up to the time the violation is corrected.
- (b) If the certification submitted by the bank as required in these guidelines is found to be false, a fine of P5,000 per day from the time the certification was made up to the time the certification was found to be false, shall be imposed against the certifying officer.

Stock options/warrants. A bank may grant options/warrants to subscribe at par to its capital stock: *Provided, That:*

- a. Provisions authorizing such options warrants shall be embodied in its articles of incorporation and in its by-laws; and
- b. Such options/warrants may be granted for a maximum period of three (3) years from the date such options/warrants become effective.

Dealings with stockholders and their related interests. Dealings of a bank with any of its stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others. Towards this end, every natural person acquiring shares cumulatively amounting to at least two percent (2%) of the total subscribed capital of a domestic bank must disclose all relevant information on all persons related to him within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common law as well as corporations, partnership or associations where he has controlling interests. A corporation acquiring shares amounting to at least two percent (2%) of the total subscribed capital of a domestic bank must disclose its controlling stockholders or group of stockholders as well as the corporations, partnerships or association where such controlling stockholders or group of stockholders have controlling interest.

The foregoing information shall also be disclosed in cases of the following transactions: avilment of credit facility from the bank; purchase or sale of asset from/to the bank; leasing property from or to the

bank; providing janitorial, messengerial, security and other services to the bank; and such other transactions as may be required to be disclosed by the Monetary Board. Where the stockholdings of such individual/organization together with his/its related interests amount to at least two percent (2%) of the total subscribed capital stock of the bank, the foregoing transactions shall be subject to the procedural requirements and the reportorial requirements prescribed under Sec. 346.

(Circular Nos. 1002 dated 10 May 2018, 963 dated 27 June 2017, 890 dated 2 November 2015, and 888 dated 9 October 2015)