

## 342 TRANSACTIONS, COVERED AND NOT COVERED

**Transactions covered.** The terms *loans, other credit accommodations and guarantees* as used herein shall refer to transactions of the bank which involve the grant of any loan, advance or other credit accommodation in any form whatsoever, whether renewal, extension or increase, and shall include:

- a. Any advance by means of an incidental or temporary overdraft, cash item, "vale", etc.;
- b. Any advance of unearned salary or other unearned compensation for periods in excess of thirty (30) days;
- c. Any advance by means of DAUDs;
- d. Outstanding availments under an established credit line;
- e. Drawings against an existing letter of credit;
- f. The acquisition of any note, draft, bill of exchange or other evidence of indebtedness upon which the bank's DOSRIs may be liable as makers, drawers, acceptors, endorsers, guarantors or sureties;
- g. Indirect lending such as loans or other credit accommodations granted by another financial intermediary to said DOSRIs from funds of the bank invested in the other institution's trust or other department when there is a clear relationship between the transactions;
- h. The increase of an existing indebtedness, as well as additional availments under a credit line or additional drawings against a letter of credit;
- i. The sale of assets, such as shares of stock, on credit; and
- j. Any other transactions as a result of which the bank's DOSRIs become obligated or may become obligated to the lending bank, by any means whatsoever to pay money or its equivalent.

**Transactions not covered.** The terms *loans, other credit accommodations and guarantees* as used herein shall not refer to the following:

- a. Advances against accrued compensation, or for the purpose of providing payment of authorized travel, legitimate expenses or other transactions for the account of the bank or for utilization of maternity and other leave credits;

- b. The increase in the amount of outstanding credit accommodations as a result of additional charges or advances made by the bank to protect its interest such as taxes, insurance, etc.;
- c. The discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, including, but not limited to, the acquisition by a domestic bank of export bills from any of its DOSRI which are drawn in accordance with the terms and conditions of the covering letters of credit: *Provided*, That the transaction shall automatically be subject to the ceilings as herein provided once the DOSRI who is a party to the transaction becomes directly liable to the bank;
- d. Transactions with a foreign bank which has stockholdings in the local bank where the foreign bank acts as guarantor through the issuance of letters of credit or assignment of a deposit in a currency eligible as part of the international reserves and held in a bank in the Philippines to secure other credit accommodations granted to another person or entity: *Provided*, That the foreign bank stockholder shall automatically be subject to the ceilings as herein provided in the event that its contingent liability as guarantor becomes a real liability; and
- e. Interbank call loan transactions.

**Applicability to credit card operations.** The credit card operations of banks shall not be subject to these regulations where the credit cardholders are bank's DOSRI: *Provided*, That (a) the privilege of becoming a credit cardholder is open to all qualified persons on the basis of selective criteria which are applied by the bank to all applicants thereof; and (b) the bank's DOSRIs reimburse/pay the bank for the billed amount in full on or before the payment due date in the billing or statement of account, as set by the bank for all other qualified credit card holders on availments made for the same period on their credit cards. However, the transaction shall be subject to applicable DOSRI regulations if the bank's DOSRIs:

- a. fail to reimburse/pay the bank within the period mentioned herein; or
- b. on the outset, opt for deferred payment scheme, and the availment is booked by the bank.

For purposes of this Section, *stockholders and related interests* refer to individual credit card holders.

**Loans, other credit accommodations and guarantees granted to subsidiaries and/or affiliates.**

- a. *Ceilings.* The total outstanding loans, other credit accommodations and guarantees to each of the bank's subsidiaries and affiliates shall not exceed ten percent (10%) of the net worth of the lending bank: *Provided*, That the unsecured loans, other credit accommodations and guarantees to each of said subsidiaries and affiliates shall not exceed five percent (5%) of such net worth:

*Provided, further,* That the total outstanding loans, other credit accommodations and guarantees to all subsidiaries and affiliates shall not exceed twenty percent (20%) of the net worth of the lending bank: *Provided, finally,* That these subsidiaries and affiliates are not related interest of any of the director, officer, and/or stockholder of the lending bank.

Loans, other credit accommodations and guarantees granted by a bank to an entity (often a special purpose entity or SPE) that is a subsidiary or affiliate of that bank for the purpose of project finance as defined under Sec. 344 (*Exclusion from the thirty percent (30%) unsecured individual ceiling for project finance*) shall be subject to a separate individual limit of twenty-five percent (25%) of the net worth of the lending bank, subject to the following conditions:

- (1) That the unsecured portion thereof shall not exceed twelve and one-half percent (12.5%) of such net worth when the project is already operational;
  - (2) That such project finance loans are for the purpose of undertaking initiatives that are in line with the priority programs and projects of the government;
  - (3) That the lending bank shall ensure that the standard prudential controls in project finance loans designed to safeguard creditors' interests are in place, which may include pledge of a borrower's shares, assignment of the borrower's assets, assignment of all revenues and cash waterfall accounts, and assignment of project documents;
  - (4) That the lending bank shall consider its total project finance exposures in complying with Sec. 361 (*Large exposures and credit risk concentrations*) and Sec. 143 (*Credit limits, large exposures, and credit risk concentrations*) on the guidelines in managing large exposures and credit risk concentrations;
  - (5) That the subsidiary or affiliate is not a related interest of any of the director, officer, and/or stockholder of the lending bank; and
  - (6) That the total outstanding loans, other credit accommodations and guarantees to all subsidiaries and affiliates shall be subject to the aggregate limits for related party transactions.
- b. *Exclusions from the ceilings.* The following loans, other credit accommodations and guarantees shall be excluded in determining compliance with the ceilings prescribed in Item "a" above:
- (1) loans, other credit accommodations and guarantees secured by assets considered as non-risk under existing Bangko Sentral regulations;

(2) Interbank call loans; and

(3) The portion of loans and other credit accommodations covered by guarantees of international/regional institutions/multilateral financial institutions where the Philippine Government is a member/shareholder, such as the International Finance Corporation and the Asian Development Bank.

c. *Procedural requirements.* The following provisions shall apply if a bank grants a loan, other credit accommodation or guarantee to any of its subsidiaries and affiliates.

(1) *Approval of the board, when to obtain.* Except with prior written approval of the majority of all the members of the board of directors, no loan, other credit accommodation and guarantee shall be granted to a subsidiary or affiliate.

(2) *Approval by the board, how manifested.* The approval shall be manifested in a resolution passed by the board of directors during a meeting and made of record.

(3) *Determination of majority of all the members of the board of directors.* The determination of the majority of all the members of the board of directors shall be based on the total number of directors of the bank as provided in its articles of incorporation and by-laws.

(4) *Contents of the resolution.* The resolution of the board of directors shall contain the following information:

(a) Name of the subsidiary or affiliate;

(b) Nature of the loan or other credit accommodation or guarantee, purpose, amount, credit basis for such loan or other credit accommodation or guarantee, security and appraisal thereof, maturity, interest rate, schedule of repayment and other terms;

(c) Date of resolution;

(d) Names of the directors who participated in the deliberation of the meeting; and

(e) Names in print and signatures of the directors approving the resolution: *Provided*, That in instances where a director who participated in the board meeting and who approved such resolution failed to sign, the corporate secretary may issue a certification to this effect indicating the reason for the failure of the said director to sign the resolution.

- (5) *Transmittal of copy of board approval; contents thereof.* A copy of the written approval of the board of directors, as herein required, shall be submitted to the appropriate supervising department of the Bangko Sentral within twenty (20) banking days from the date of approval. The copy may be a duplicate of the original, or a reproduction copy showing clearly the signatures of the approving directors: *Provided*, That if a reproduction copy is to be submitted, it shall be duly certified by the corporate secretary that it is a reproduction of the original written approval.

*(Circular Nos. 1001 dated 30 April 2018, 978 dated 27 October 2017, and 914 dated 23 June 2016)*