

371 SCOPE OF AUTHORITY

The following rules shall govern the investment of banks in the equities of allied undertakings, whether financial or non-financial, and non-allied undertakings, as well as the establishment/acquisition of subsidiaries and affiliates abroad.

Conditions for investment in equities. A bank shall not invest in the equity of any enterprise, if the investing bank is in any of the following situations:

- a. Its capital is impaired, whether by actual losses or unbooked allowance for credit losses required by the Bangko Sentral;
- b. Its lending operations had been suspended on account of reserve or capital deficiency, until such suspension shall have been lifted for at least one (1) year and sufficient reserves or capital shall have been maintained;
- c. It incurred losses from its operations during the preceding year;
- d. It has not fully booked the allowance for credit losses and other capital adjustments required by the Bangko Sentral;
- e. It has exceeded the individual and aggregate ceilings as well as the ceiling on unsecured credit accommodations to DOSRI; and
- f. Its ratio of past due loans to total loan portfolio exceeds twenty percent (20%).

Guidelines for major investments. The following are the guidelines for major acquisitions or investments by a bank including corporate affiliations or structures to implement Section 50 of R.A. No. 8791.

- a. *Definition.* Major investments are those investments in allied or non-allied undertakings including corporate affiliations or structures that give the bank significant interest and/or control, such as stockholdings sufficient to elect one (1) member to the acquired entity's board of directors.
- b. *Criteria for major investments.* Any major investment by a bank should be approved by the bank's board of directors. In acting on such investments the Board shall consider the following:
 - (1) Such investment must be in accordance with the bank's business plan and management objectives, taking into consideration the economic developments and future prospects. The interests of the different stakeholders of the bank – shareholders, depositors and creditors – should always be considered before any investment is made.
 - (2) Such investments will complement/ support the main business of the banks. Extra caution should be taken when investing in activities where the bank has no managerial or technical

expertise, or businesses/industries, which are high-risk.

- (3) Bank management shall provide for an efficient and effective “exit mechanism” or contingency plan in case the investee’s operations fail or do not prosper.

c. *Prior Bangko Sentral approval; information/ documents required.* Subject to prior approval of the Bangko Sentral, banks may invest in allied or non-allied undertakings, including corporate affiliations or structures. A bank intending to make such investment shall submit the following information/ documents to the appropriate supervising department of the Bangko Sentral for evaluation:

- (1) Name of the company;
- (2) Type of business activities;
- (3) Board of directors’ approval on such investments;
- (4) Certification from the bank’s board of directors that the criteria enumerated in Item “b” are complied with;
- (5) Management contract;
- (6) Financial information and other information about financial strengths, e.g., projected balance sheet and income statements for the first three (3) years;
- (7) Members of the board and senior management;
- (8) Interest to be held by the bank and the manner in which such interest will be held; and
- (9) Conformity of the investee company for Bangko Sentral to examine its books.

The Bangko Sentral may impose conditions on any approval, including conditions to address financial, managerial, safety and soundness, compliance, or other concerns. Further, the Bangko Sentral may disapprove a proposed investment if it finds that the proposal would constitute an unsafe or unsound banking, or would violate any law, regulation, Monetary Board directive, or any condition imposed by, or written agreement with, the Bangko Sentral.

The Bangko Sentral may prescribe other guidelines/regulations as it may consider necessary to ensure that banks’ major investments do not expose the banks to undue risks or hinder effective supervision.

d. *Examination and inspection.* Whenever deemed necessary, Bangko Sentral shall have the authority to examine investee companies or to verify information provided by other supervisory authorities such as the SEC.

The Bangko Sentral shall have the authority to seek corrective action, to issue orders to terminate activities with or divest an interest in an investee company, if it believes that such

action is necessary to prevent or redress unsafe or unsound banking by such company that poses a material risk to the financial safety, soundness or stability of a bank.