

382 ACQUIRED ASSETS IN SETTLEMENT OF LOANS

The following rules shall govern assets acquired in settlement of loans.

Posting. Banks shall post at all times in a conspicuous place in the premises of their head office and each of their branches and other banking offices a list of acquired assets together with the corresponding lowest price at which the bank is willing to sell such property. However, this requirement shall not relieve the bank from the requirement under Section 52 of R.A. No. 8791 to dispose of such acquired assets.

Booking.

a. ROPA in settlement of loans through foreclosure or dation in payment shall be booked under the ROPA account as follows:

- (1) Upon entry of judgment in case of judicial foreclosure;
- (2) Upon execution of the Sheriff's Certificate of Sale in case of extrajudicial foreclosure; and
- (3) Upon notarization of the Deed of Dacion in case of dation in payment (*dacion en pago*).

ROPA shall be booked initially at the carrying amount of the loan (i.e., outstanding loan balance adjusted for any unamortized premium or discount less allowance for credit losses computed based on PAS 39 provisioning requirements, which take into account the fair value of the collateral) plus booked accrued interest less allowance for credit losses (computed based on PAS 39 provisioning requirements) plus transaction costs incurred upon acquisition (such as non refundable capital gains tax and documentary stamp tax paid in connection with the foreclosure/purchase of the acquired real estate property): *Provided*, That if the carrying amount of ROPA exceeds P5.0 million, the appraisal of the foreclosed/purchased asset shall be conducted by an independent appraiser acceptable to the Bangko Sentral.

b. The carrying amount of ROPA shall be allocated to land, building, other non-financial assets and financial assets (e.g., receivables from third party or equity interest in an entity) based on their fair values, which allocated carrying amounts shall become their initial costs.

c. The non financial assets portion of ROPA shall remain in ROPA and shall be accounted for as follows:

- (1) Land and buildings shall be accounted for using the cost model under PAS 40 "Investment Property";
- (2) Other non financial assets shall be accounted for using the cost model under PAS 16

“Property Plant and Equipment”;

- (3) Buildings and other non-financial assets shall be depreciated over the remaining useful life of the assets, which shall not exceed ten (10) years and three (3) years from the date of acquisition, respectively; and
 - (4) Land, buildings and other non-financial assets shall be subject to the impairment provisions of PAS 36 “Impairment”¹.
- d. Financial assets, shall be reclassified and booked in accordance with *Appendix 27*, except interests in subsidiaries, associates and joint ventures, which shall be booked under Equity Investments in Subsidiaries, Associates and Joint Ventures and accounted for in accordance with Item “b(1)” Sec. 172 (*Philippine Financial Reporting Standards/Philippine Accounting Standards*).
 - e. ROPAs that comply with the provisions of PFRS 5 “Non-Current Assets Held for Sale” shall be reclassified and accounted for as such.
 - f. Claims arising from deficiency judgments rendered in connection with the foreclosure of mortgaged properties shall be lodged under the real account “Deficiency Judgment Receivable”; while probable claims against the borrower arising from the foreclosure of mortgaged properties shall be lodged under the contingent account “Deficiency Claims Receivable”.
 - g. *Appraisal of properties.* Before foreclosing or acquiring any property in settlement of loans, it must be properly appraised to determine its true economic value. If the amount of ROPA to be booked exceeds P5.0 million, the appraisal must be conducted by an independent appraiser acceptable to the Bangko Sentral. An in- house appraisal of all ROPAs shall be made at least every other year: *Provided*, That immediate re-appraisal shall be conducted on ROPAs which materially decline in value.
 - h. *Non-cash payment for interest.* FIs that accept non-cash payments for interest on their borrowers’ loans shall book the acquired assets as ROPA. The amount to be booked as ROPA shall be the booked accrued interest less allowance for credit losses (computed based on PAS 39 provisioning requirements): *Provided*, That if the carrying amount of ROPA exceeds P5.0 million, the appraisal of the foreclosed/ purchased asset shall be conducted by an independent appraiser acceptable to the Bangko Sentral. The carrying amount of ROPA shall be allocated in accordance with Item “b” and shall be subsequently accounted for in accordance with Item “c” above.

The provisions of Booking in this Section shall be applied retroactively to all outstanding ROPAs and sales contract receivables: *Provided*, That for properties acquired before 01 January 2005, the carrying amount of the acquired properties when initially booked under ROPA shall be the cost subject to depreciation and impairment testing, which shall be reckoned from the time of acquisition.

Sales contract receivable.

- a. Sales Contract Receivable (SCR) shall be recorded based on the present value of the installments receivables discounted at the imputed rate of interest. Discount shall be accreted over the life of the SCR by crediting interest income using the effective interest method. Any difference between the present value of the SCR and the derecognized assets shall be recognized in profit or loss at the date of sale in accordance with the provisions of PAS 18 "Revenue": *Provided, furthermore*, That SCR shall be subject to impairment provision of PAS 39.

The provisions of Sales Contract Receivable in this Section shall be applied retroactively to all outstanding ROPAs and SCRs: *Provided*, That for properties acquired before 01 January 2005, the carrying amount of the acquired properties when initially booked under ROPA shall be the cost subject to depreciation and impairment testing, which shall be reckoned from the time of acquisition.

- b. SCRs which meet all the requirements/conditions enumerated below are hereby considered performing assets and therefore, not subject to classification:
- (1) That there has been a downpayment of at least twenty percent (20%) of the agreed selling price or in the absence thereof, the installment payments on the principal had already amounted to at least twenty percent (20%) of the agreed selling price;
 - (2) That payment of the principal must be in equal installments or in diminishing amounts and with maximum intervals of one (1) year;
 - (3) That any grace period in the payment of principal shall not be more than two (2) years; and
 - (4) That there is no installment payment in arrear either on principal or interest: *Provided*, That an SCR account shall be automatically classified "Substandard" and considered non-performing in case of non-payment of any amortization due: *Provided, further*, That an SCR which has been classified "Substandard" and considered non-performing due to non-payment of any amortization due may only be upgraded restored to unclassified and/or performing status after a satisfactory track record of at least three (3) consecutive payments of the required amortization of principal and/or interest has been established.

Joint venture of banks with real estate development companies

- a. *Policy statement*. It is the policy of the Bangko Sentral to encourage banks to dispose of their ROPAs in settlement of loans and other advances either through foreclosure or *dacion en pago* as

well as other properties acquired as a consequence of a merger/consolidation which are no longer necessary for their banking operations. Towards this end, banks are hereby authorized to enter into Joint Venture Agreements (JVA) with real estate development companies for the development of said properties, subject to the requirements prescribed herein.

- b. For purposes of joint venture of banks with real estate development companies in this Section, *joint venture* shall refer to a contractual arrangement/undertaking between a bank and a duly registered real estate development company (developer) for the purpose of developing the abovementioned properties of the bank. The bank contributes said properties to the undertaking while the developer contributes all the development funds, resources, technical expertise, equipment, personnel and all other requirements desired or needed for the implementation and completion of the undertaking including marketing, where applicable. The bank and the developer shall be bound by the contract that establishes joint control of the undertaking. Although the developer may be designated as operator or manager of the undertaking, it does not, however, absolutely control the undertaking but only acts in accordance with the authorities granted to him under the JVA.
- c. *Forms of a joint venture.* A bank and a developer may undertake a joint venture under the following forms:
- (1) A jointly-controlled operation/ undertaking, which does not involve the establishment of a corporation, partnership or other entity, or a financial structure that is separate from the bank and the developer themselves. Under this form of joint venture, the rights and obligations of the bank and the developer shall be governed primarily by their contract that must clearly specify the following:
 - (a) authority of the developer to develop/subdivide the property and subsequently, to sell the individual lots under a special power of attorney;
 - (b) sharing in the sales proceeds of the developed ROPAs or in the developed lots;
 - (c) sharing in taxes;
 - (d) sharing in the assets of the joint venture particularly in the developed/ subdivided lots should there still be unsold lots at the time of termination of the joint venture; and
 - (e) name under which the subdivided lots shall be registered pending their sale.
 - (2) A jointly-controlled entity, which involves the establishment of a new juridical entity, preferably a corporation that is separate and distinct from the bank and the developer. A jointly controlled corporation may be established either for the purpose of developing properties of banks for immediate sale or converting them into earning assets such as hotels and shopping malls.

d. *Requirements and limitations in a joint venture.* A bank desiring to enter into a JVA with a developer for the purpose of developing its ROPAs and/or other properties acquired as a consequence of merger/consolidation shall comply with the following:

- (1) The JVA shall be approved by the board of directors of the bank.
- (2) The bank's contribution to the joint venture, in whatever form undertaken, shall be limited to ROPAs and properties acquired as a consequence of the bank's merger/consolidation with another bank/ financial institution.
- (3) The bank shall not recognize income out of its contribution to the joint venture, regardless of the agreed valuation of said properties.
- (4) The bank shall not provide funds to the joint venture either as a loan or capital contribution.
- (5) The JVA or contractual arrangement shall clearly stipulate the rights and obligations of the bank and the developer.
- (6) The bank shall secure prior Monetary Board approval of the JVA.

e. *Application for authority to enter into JVA.* A bank desiring to enter into a JVA with a developer for the purpose of developing its ROPAs and other properties acquired as a consequence of its merger/ consolidation with another bank/FI shall secure prior Monetary Board approval of said agreement. For that purpose, the concerned bank shall submit an application for Monetary Board approval to the appropriate supervising department of the Bangko Sentral. The application shall be signed by the bank's president or officer of equivalent rank and shall be accompanied by the following documents/information:

- (1) The name of the developer;
- (2) Name of the principal stockholders and officers as well as members of the board of directors of said company;
- (3) Relationship of the bank with the developer, if any;
- (4) List and brief description of the properties to be contributed by the bank including their market values, book values and the valuation agreed upon under the proposed JVA;
- (5) Certification by the bank's president or officer of equivalent rank that the JVA is strictly in compliance or will strictly comply with the requirements of Joint venture of banks with real estate development companies in this Section; and
- (6) Such other documents/information that the concerned department of the SES may require.

f. *Non-financial allied undertaking.* All types of banks are hereby authorized to invest in the equities of companies engaged in real estate development as a non- financial allied undertaking, subject to the following conditions:

- (1) Investments shall be limited to ROPAs and other properties acquired as a consequence of a bank's merger/ consolidation with another bank/FI;

- (2) Investments shall be subject to existing Bangko Sentral requirements applicable to investments in non-financial allied undertakings; and
- (3) If there is already an existing subsidiary or affiliate relationship between the bank and the investee corporation prior to the investment, the bank shall not recognize income out of its invested properties. The excess of the value of the capital stock received by the bank over the book value of its invested properties shall be booked as *"Deferred Credits"*.
- g. *Accounting treatment.* Accounting treatment of the properties contributed by a bank to a joint venture or invested in the equities of developers.
- (1) In a joint venture in the form of a jointly controlled operations/undertaking, which does not involve the establishment of a corporation or other entity, the bank shall continue to recognize in its books the properties contributed to the undertaking. However, the regular provisioning against probable losses required under existing regulations may be discontinued upon execution and implementation of the JVA.
- (2) In a joint venture in which a corporation is created, the bank shall book the properties contributed to the undertaking as investment pursuant to the provisions of PAS 31. It shall also recognize its interest in the corporation using the proportionate consolidation method or the equity method as long as it continues to have joint control over the corporation: *Provided*, That the bank shall not recognize income out of its contribution to the joint venture. The excess of the value of the capital stock received by the bank over the book value of the contributed properties shall be credited to the account *"Deferred Credits"*.
- (3) Properties invested in equities of developers shall be booked in accordance with the PAS: *Provided*, That the bank shall not recognize income out of the properties invested if there is already an existing subsidiary or affiliate relationship between the bank and the investee corporation prior to the investment, regardless of the agreed valuation of said properties. The excess of the agreed valuation of said properties over their book value shall be booked as *"Deferred Credits"*.
- h. *Coverage.* The provisions of Joint venture of banks with real estate development companies in this Section shall apply to ROPAs existing, as well as those which may be acquired by banks in settlement of non-performing or past due loans and advances outstanding, as of 09 March 2006 and to properties acquired as a consequence of merger or consolidation which are outstanding in the books of banks as of said date.
- i. *Sanctions.* Any violation of the provisions of Joint venture of banks with real estate development

companies in this Section and/or any misrepresentation in the certification and information required to be submitted to the Bangko Sentral shall subject the bank and the officer or officers responsible therefore, to the penalties provided under Sec. 35, 36 and 37 of R.A. No. 7653.

(Circular No. 1011 dated 14 August 2018)

Footnotes

1. With additional special regulatory relief in areas affected by Tropical Depression “Yolanda” as provided under *Appendix 93* (Circular No. 820 dated 06 December 2013)