

[BSP CIRCULAR NO. 40, s. 1994, August 27, 1994]

AMENDING CIRCULAR NO. 1389, AS AMENDED

Pursuant to Monetary Board Resolution No. 789 dated August 17, 1994, the pertinent provisions of Circular No. 1389 dated April 13, 1993 (Consolidated Foreign Exchange Rules and Regulations), as amended by Circular No. 1393 dated June 23, 1993, and Bangko Sentral (BSP) Circular Nos. 2, 5, 16 and 31 dated August 25, 1993, September 15, 1993, March 7, 1994 and July 19, 1994, respectively, are hereby amended as follows:

SECTION 1. Section 11 is hereby amended to read as follows:

"Section 11. Documents Against Acceptance (D/A) and Open Account (O/A) Arrangements. — Under a D/A arrangement, the shipping documents are released to the importer by the local bank concerned thru the seller's bank upon the importer's acceptance of the seller's bill of exchange obligating the importer to pay for the shipment at some future date. Under an O/A arrangement, the shipping documents are sent and released by the seller directly to the importer without coursing the documents thru the banks, upon the importer's promise to pay at some future date after shipment.

"1. Registration. — Importations under D/A and O/A arrangements shall be registered with the Bangko Sentral upon availment for monitoring purposes through the submission to the BSP by the importer through its authorized agent bank of the duly accomplished Record of Goods Imported (RGI) and the pertinent import permit (if applicable).

"2. Payments. — Payments sourced from the commercial banking system shall not be effected for unregistered DA/OA imports. Payments prior to maturity date may be made, provided these are for duly registered accounts. Payments after the original maturity date may be allowed without prior Bangko Sentral approval, provided that:

- a. the importer has previously reported to BSP the extension of the maturity period not later than 30 days from scheduled due date; and
- b. the cumulative length of the maturity periods including all extensions, does not in any case exceed one (1) year from date of draft acceptance for D/A and B/L (Bill of Lading) date for O/A.

"3. Mechanics of Registration. — Appendix 3 of this Circular contains the mechanics of reporting and registration of D/A and O/A imports."

SECTION 2. Section 18.2 is hereby amended to read as follows:

"2. *Other Authorized Modes.* — Payments for exports may also be made thru Export Advances without prior approval of the BSP. Export Advances shall refer to all payments/remittances received before shipment, including prepayments and Red Clause Advances.

"Bank draft/telegraphic transfer, buyer's checks, traveller's checks or acceptable foreign currency notes may be used in export advance, but for buyer's checks, the same shall be cleared before shipment."

SECTION 3. Section 23.1 is hereby amended to read as follows:

"1. Loans of the following public sector entities irrespective of maturity, creditor and source of foreign exchange for servicing thereof, except short-term FCDU loans covered by Section 24.4:"

SECTION 4. Section 24 is hereby amended to read as follows:

"*SECTION 24. Loans Not Requiring Prior Central Bank Approval.* — The following loans may be granted without prior approval of the Bangko Sentral:

"1. Loans of the private sector from FCDUs/offshore sources irrespective of maturity, to be serviced using foreign exchange purchased from outside of the banking system.

"2. Short-term (with maturity not exceeding one (1) year) loans of financial institutions, both public and private, for normal interbank transactions, *e.g.*, interbank call loans and general liquidity loans.

"3. Short-term loans of the private sector in the form of export advances from buyers abroad.

"4. Short-term loans of the following private and public sector borrowers from FCDUs:

"a. Commodity and service exporters — provided these loans are used to finance export-related import costs of goods and services, as well as, peso cost requirements.

Service exporters shall refer to Philippine residents engaged or proposing to engage in rendering technical, professional or other services which are paid for in foreign exchange.

Indirect exporters may likewise borrow to fund export-related costs, which may include both foreign exchange, as well as, peso costs. Indirect exporters shall refer to cottage/small and medium industries (producers/manufacturers) that have supply arrangements with direct exporters who are holders of an export letter of credit or a confirmed purchase order/sales contract from a foreign buyer.

"b. Producers/manufactures, including oil companies and public utility concerns — provided, the loans are used to finance import costs of goods and services necessary in the production of goods by the borrower concerned. Producers/manufacturers shall refer to any person or entity who undertakes the processing/conversion of raw materials into marketable form through physical, mechanical, chemical, or other means or by special treatment or a series of actions that results in a change in the nature or state of the products.

Public utility firms shall refer to any business organization which regularly supplies the public with commodities or services such as electricity, gas, water, transportation, telegraph/telephone services and the like.

Proceeds of FCDU loans shall not be eligible for deposit in an FCDU account if to be serviced using foreign exchange purchased from the banking system.

"5. Short-term loans of private exporters/importers from Offshore Banking Units (OBUs) and foreign banks with branches in the Philippines, provided that:

"a. The loans are not covered by a guarantee from a government financial institution/corporation;

"b. The loans shall be exclusively used to finance specific trade transactions, i.e., to liquidate/pay for import obligations and/or in the case of export financing transactions, to fund the borrower's pre-export financing requirements and shall not be refinanced by a medium-/long-term foreign currency loan;

"c. Proceeds of loans intended to pay for foreign exchange requirements shall be paid directly to the supplier/creditor, while amounts intended to fund pre-export peso costs shall be inwardly-remitted and sold to the banking system;

"d. Drawdown and registration requirements under Sec. 27 and 28 hereof shall be complied with;

"e. Any assignment of the loan by the creditor concerned shall be reported to BSP within five (5) days from date of assignment;

"f. Creditor banks shall submit the following reports to BSP: