[BSP CIRCULAR NO. 51, s. 1994, October 14, 1994]

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 7721

Pursuant to Section 13 of Republic Act No. 7721, otherwise known as "An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines", the Monetary Board, in its Resolution No. 1018 dated October 14, 1994, approved the following implementing rules and regulations:

SECTION 1. Policy Objectives - The liberalization of the entry of foreign banks into the Philippines is designed to achieve the following objectives:

a. To attract foreign investments. Foreign banks can be an instrument for developing awareness of the Philippines as a potential investment area and facilitating access to new markets;

b. To enhance efficiency of the domestic financial system through increased competition, wider variety of financial services to Philippine enterprises, incremental financial intermediation activities and the adoption of new technologies and processes; and

c. To make the Philippine banking system more globally competitive.

The pursuit of the foregoing objectives is, however, subject to the overriding policy of the State that the financial system shall remain effectively controlled by Filipinos.

SECTION 2. Modes of Entry for Foreign Banks - With prior approval of the Monetary Board, foreign banks may operate in the Philippines through any one of the following modes:

a. By acquiring, purchasing or owning up to sixty percent (60%) of the voting stock of an existing domestic bank (including banks under receivership or liquidation, provided no final court liquidation order has been issued);

b. By investing in up to sixty percent (60%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or

c. By establishing branches with full banking authority.

SECTION 3. Qualification Requirements -

a. **Investment in an Existing Domestic Bank.** — A foreign bank seeking to acquire, purchase or own up to sixty percent (60%) of the voting stock of an existing domestic bank needs only to meet the selection criteria prescribed under the first paragraph of Sec. 3 of R.A. No. 7721 and Sec. 4 of this Circular.

b. **Establishment of Subsidiary or Branch.** — Any foreign bank seeking to establish a new banking subsidiary or to establish branches with full banking authority, in addition to satisfying the criteria prescribed under the first paragraph of Sec. 3 of R.A. No. 7721 and Sec. 4 of this Circular, must —

i. be widely-owned and publicly-listed (listed in any stock exchange authorized by the government of the country of origin), unless more than fifty percent (50%) of the capital stock of said foreign bank applicant is owned by the government of its country of origin. The bank is considered as widely-owned if it has at least fifty (50) stockholders without any stockholder owning more than fifteen percent (15%) of its capital stock: Provided, That if the bank is owned/controlled by a holding company, this requirement shall apply to the holding company; and

ii. as of the date of application, be among the top one hundred fifty (150) banks in the world or the top five (5) banks in its country of origin.

Determination of the top one hundred fifty (150) banks in the world may be based on lists prepared and published by reputable organizations/publications.

The determination of the top five (5) banks in the country of origin shall be based on information supplied by the bank supervisory authorities in such country of origin as to the ranking of banks based on net worth. However the Monetary Board may also use total assets as a criterion, provided that the same shall be based on on-book accounts only and on the consolidated balance sheet of the head office and all branches, excluding subsidiaries and affiliates.

In addition to the foregoing requirements, the foreign bank applicant must be in compliance with capital requirements as prescribed by the laws and regulations of its country of origin.

SECTION 4. Guidelines for Selection - The following factors shall be considered in selecting the foreign banks which will be allowed to invest in majority of the voting stock of an existing domestic bank or to establish a subsidiary or branch in the Philippines:

a. **Geographic representation and complementation.** — Representation from the different parts of the world and/or the international financial centers shall be ensured.

b. **Strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank.** — Consideration shall be given to the countries of origin of applicant foreign banks —

i. with substantial financial assistance to, and loans and investments, past and present, in the Philippines; and

ii. with which the Philippines has significant volume of trade specially to those with which the country has substantial net exports.

c. **Relationship between the applicant bank and the Philippines.** — Consideration shall be given to the capability of the foreign bank to promote trade with, and to bring foreign investments into, the Philippines. Long standing financial and commercial relationship with, and assistance extended to, the Philippines, shall likewise be taken into account.

d. **Demonstrated capacity, global reputation for financial innovations and stability in a competitive environment of the applicant.** — Demonstrated capacity and stability may be indicated by the fact that the applicant ranks among the top one hundred fifty (150) in the world or top five (5) in its country of origin. Global reputation may be measured by international presence, e.g., number of branches with full banking authority outside of its country of origin.

e. **Reciprocity rights enjoyed by Philippine banks in the applicant's country.** — Philippine banks shall enjoy reciprocity rights in the applicant's country.

Reciprocity shall be deemed to exist when the Philippine banks can qualify to do banking business in the applicant bank's country in accordance with requirements of general application set in the applicant's country.

f. **Willingness to fully share technology.** — The applicant bank shall submit an undertaking to this effect together with its application.

SECTION 5. Capital Requirements -

a. **For Locally Incorporated Subsidiaries.** — The minimum capital required for locally incorporated subsidiaries of foreign banks shall be the same as that prescribed by the Monetary Board for domestic banks of the same category.

b. **For Foreign Bank Branches with Full Banking Authority.** — A foreign bank authorized to establish branches with full banking authority in the Philippines shall inwardly remit and convert into Philippine currency, as permanently assigned capital, the U.S. Dollar equivalent of Two Hundred Ten Million Pesos (P210,000,000.00) at the exchange rate prevailing on June 5, 1994 (the date of effectivity of R.A. No. 7721), i.e., P26.979 to US$1.00. The foreign bank shall thereby be entitled to establish three (3) branches in locations of its choice.

The same foreign bank may open three (3) additional branches in locations designated by the Monetary Board by inwardly remitting and converting into Philippine currency, as additional permanently assigned capital the U.S. Dollar equivalent of Thirty-Five Million Pesos (P35,000,000.00) for every additional branch, computed at the same exchange rate of P26.979 to US$1.00. The Monetary Board, in determining the location of the next three (3) branches established pursuant to the provisions of R.A. No. 7721, shall consider, among others, development requirements of a region and the contribution a bank branch may make to regional development, expansion of basic financial services and enhanced access to credit by small and medium-scale enterprises.

The total number of branches for each new foreign bank entrant shall not exceed six (6).

c. **For Foreign Banks with Existing Branches in the Philippines**

i. A foreign bank with existing branch or branches in the Philippines upon the effectivity of R.A. No. 7721 shall comply with the required permanently assigned capital by inwardly remitting and converting into Philippine currency the U.S. Dollar equivalent of Two Hundred Ten Million Pesos (P210,000,000.00), computed at the same exchange rate of P26.979 to

US$1.00, within a period of one and one-half (1-1/2) years from the said effectivity date. The said foreign bank may establish up to six (6) branches in addition to its branch or branches existing as of the effectivity date of R.A. No. 7721, the first three (3) additional branches in locations of its choice, and the next three (3) additional branches in locations designated by the Monetary Board: Provided, That upon establishing any additional branch, the bank shall comply immediately with the permanently assigned capital mentioned in the next preceding paragraph: Provided, further, That the said permanently assigned capital shall be the capital for the bank's first three (3) additional branches, including its existing branch or branches, and for each branch established in addition thereto, the U.S. Dollar equivalent of Thirty-Five Million Pesos (P35,000,000.00) computed at the same exchange rate of P26.979 to US$1.00, shall be inwardly remitted and converted into Philippine currency. If the permanently assigned capital of the existing branch/es of said foreign bank that has been converted to Philippine currency is sufficient to cover the abovementioned amount of assigned capital required for the additional branches, no additional assigned capital shall be required; otherwise, the foreign bank shall comply immediately with the capital requirements under the above paragraphs.

ii. Foreign banks with existing branches in the Philippines on the effectivity date of R.A. No. 7721 shall have a period of one and one-half (1-1/2) years from said effectivity date within which to comply with the ratio between the assigned capital and the "net due to head office, branches, subsidiaries (more than fifty percent [50%] owned by the foreign bank) and offices outside the Philippines" 1 prescribed in Section 7 of this Circular: Provided, That upon establishing any additional branch pursuant to the provisions of this Circular, the bank shall comply immediately with the aforesaid ratio.

d. **Capital of Foreign Bank Branch Authorized to Operate as Expanded Commercial Bank.** — The capital of a Philippine branch of a foreign bank which is authorized to operate as an expanded commercial bank may consist of its permanently assigned capital plus the "net due to" account: Provided, That at no time shall the aggregate of said accounts fall below P1.5 billion or such other amount as may be prescribed by the Monetary Board: Provided, further, That the ratio between the assigned capital and the "net due to" account shall be in accordance with the prescribed ratio under Section 7 of this Circular.

e. **Applicable Exchange Rate**. — It is understood that the exchange rate of P26.979 to US$1.00 mentioned hereinabove is applicable only to the minimum capital requirements provided in subparagraphs (b) and (c) of this Section. For other purposes, the exchange rate prevailing at the time of remittance shall be applicable.

SECTION 6. Composition of Capital Accounts Required for Compliance with Capital Ratios -

a. Foreign bank branches shall comply with the same capital ratios applicable to domestic banks of the same category.

b. For purposes of meeting the prescribed capital ratios of Philippine branches of foreign banks, the term "capital" shall include permanently assigned capital which shall be inwardly remitted and converted to Philippine currency and "net due to" up to an amount prescribed under Section 7 hereof. Should there be any "net due