

**[PITC MEMORANDUM CIRCULAR NO. CT-98.4/01,
April 01, 1998]**

**GUIDELINES ON BANKING OF OFFSET CREDITS UNDER E.O. 120,
S. 1993 AND ITS IMPLEMENTING RULES AND REGULATIONS
(APPLICABLE FOR OFFSET PROJECTS UNDERTAKEN PURSUANT
TO THE PHILIPPINES OFFSET PRIORITIES PLAN)**

I

Introduction

In the interest of facilitating investment projects, technology transfer, training, research and other projects that are deemed vital to the Philippine economy, the banking of offset credits awarded to a foreign supplier (or its designated countertrader), for offset activities undertaken pursuant to the Philippines Offsets Priorities Plan shall be allowed following the guidelines hereinafter outlined and consistent with E.O. 120 S. 1993 and its Implementing Rules and Regulations (IRR). Counterpurchase activities are not eligible for banking of credits.

II

Definition of Terms

2.1 As used herein, the following terms shall mean as follows:

2.1.1 "Bankable or Eligible Offset Credits" means the offset credits referred to in Section 3.1.1. hereof.

2.1.2 "Banking Approval Certificate" means the clearance issued by PITC to a foreign supplier (or countertrader) to proceed with the implementation of the proposed offset project.

2.1.3 "Certificate of Banked (Forward) Credits" means the certification issued by PITC accrediting completed offset project to be applied against future offset obligations with the Philippine Government.

2.1.4 "Forward Credits" means offset credits held by a foreign supplier or its designated countertrader which are accredited by PITC (as the Philippine Government's countertrade crediting office under the IRR) and substantiated by a Certificate/s of Banked Credits issued by PITC to be used/applied, subject to the conditions hereinafter outlined, against future offset obligations with the Philippine Government.

2.1.5 "Offsets Priorities Plan" means the Philippines Offsets Priorities projects as contained in the Armed Forces of the Philippines' Terms of Reference for the Evaluation of Countertrade Proposals (the "AFP-TOR"), as drawn up from the

Investment Priorities Plan (IPP) of the Board of Investment for 1997 and onwards, now made part of the Invitation to Bid (the "ITB") issued by the Bids, Awards and Negotiation Committee of the Armed Forces of the Philippines (the "AFP-BANC") and the Philippine National Police (the "PNP-BANC").

2.1.6 "Offset Credits" means the value claimed by and awarded to a foreign supplier (or its designated countertrader) once said foreign supplier or countertrader discharges/performs the amount of its offset obligation/ commitment under the Philippines Offset Priorities Plan and E.O. 120 s. 1993 and its IRR.

2.2 Unless otherwise modified by or defined in the next preceding paragraph, the terms used in this circular shall have the same meanings attributed to them in E.O. 120 S. 1993, its IRR and pertinent countertrade-related circulars or issuances issued by this office.

III Banking of Offset Credits

3 POLICY GUIDELINES

3.1.1 Subject to the conditions and procedures outlined in this circular, banking of credits or forward credits under E. O. 120 S. 1993 and its IRR shall refer only to the following offset credits:

a. Offset credits awarded to a foreign supplier or its designated countertrader by PITC for offset transactions covered/included under the Philippines Offset Priorities Plan as contained in the AFP-TOR, which credits are in excess of the offset obligation or commitment of said foreign supplier or countertrader with an existing offset obligation/commitment arising from a Supply Contract with the Philippine Government represented either by the Armed Forces of the Philippines or the Philippine National Police; or

b. Offset credits awarded to a foreign supplier or its designated countertrader by PITC for offset transactions covered/included under the Philippines Offset Priorities Plan which credits are awarded in advance of a Supply Contract with the Philippine Government.

hereinafter referred to as "BANKABLE OFFSET CREDITS".

3.1.2 The foreign supplier or countertrader is given only one (1) year from date of issue of the Banking Approval Certificate granted by PITC within which to start implementation of the Offset Project. Failure to implement the said project within the herein period shall automatically nullify the said Certificate and PITC shall be authorized to grant approval to another foreign supplier or countertrader to pursue the same project.

3.1.3 Only the holder of a Certificate of Banked Credits is entitled use/apply said credits against future offset obligations with the Philippine Government under the guidelines herein established.

Example: If a foreign supplier has designated a countertrader to perform the former's offset obligations, and the latter, after performance of the

offsets, has bankable offset credits, only the said countertrader (and not the foreign supplier) may apply/use the bankable offset credits for future offset obligations with the Philippine government since it was the countertrader that actually performed the offset obligation/activity. The foreign supplier is not entitled to avail of such bankable offset credits.

3.1.4 Bankable Offset Credits may be applied/used against future offset obligations with the Philippine government only within **three (3) years** from the date of the Certificate of Banked Offset Credits. Said Certificate shall only be issued after evaluation and approval of the completed offset project/activity.

3.1.5 Except as provided for in Section 3.1.6 hereof, a foreign supplier or its designated countertrader is prohibited from acquiring/obtaining bankable offset credits from a third party whether for valuable consideration or otherwise, for purposes applying said credits against future offset of obligations/commitments of said foreign supplier or its designated countertrader with the Philippine government.

3.1.6 A holder of Certificate of Banked Credits (whether a foreign supplier or its designated countertrader) is prohibited from assigning or transferring said credits to another firm or entity, whether for valuable consideration or otherwise, for purposes of allowing the assignee/transferee to apply/use said credits against any offset obligation with the Philippine government EXCEPT when the assignee or transferee is a *wholly or majority-owned subsidiary or parent company* of the holder of the Certificate of Banked Offset Credits. Such transfer or assignment, however, shall be subject to. the following conditions:

- a. The said credits must be used by said assignee/transferee within the three (3) year period stated in Section 3.1.4 above; and
- b. The said credits can only be applied against the said assignee's/transferee's offset obligations with the Philippine government only if the importing government agency/office concerned approves such application; and
- c. The said credits **can not** be further transferred or assigned by said assignee/transferee, whether for valuable consideration or otherwise, to another firm or entity for any reason; and
- d. The transfer or assignment is subject to the final approval/acceptance of PITC who will effect the transfer.

Transfer or assignment of bankable offset credits not authorized under the aforesaid conditions shall have no legal or binding effect on the Philippine government.

3.1.7 The foreign supplier or countertrader shall be given three (3) years from date of Banking Approval Certificate to complete implementation of the proposed offset project. A grace period of two (2) years may be granted on a case-to-case basis subject to PITC approval/assessment of the offset project.

3.1.8 In the event the foreign supplier or countertrader fails to complete the offset project within the periods given in 3.1.7, the Banking Approval Certificate previously granted shall be revoked and no offset credit shall accrue to the foreign supplier or countertrader.

3.1.9 If the foreign supplier or countertrader fails to win a Supply Contract with any Philippine government agency or office within the validity period of the banked offset credit, as established in 3.1.4 above, there shall be no obligation to refund the fees paid in connection with the banking of offset credits and no obligation whatsoever shall accrue to PITC or the Philippine government relative to the credits banked under these guidelines.

3.2 **BANKING PROCEDURES**

3.2.1 Application for Offset Project Eligibility:

For an offset project to qualify as eligible for banking under this circular, the foreign supplier or countertrader shall secure pre-approval to proceed with the said offset project and earn bankable offset credits and submit the following documents/requirements to PITC:

- a. **Letter of Intent/application** to bank **EXCESS** offset credits (arising from an existing offset obligation where an excess credit is expected) or **FORWARD** credits (for an offset project to be undertaken in anticipation of a supply contract with the Philippine government).
- b. **Offset Project Proposal** detailing the offset activity to be undertaken, with a **Project Feasibility Study** to include a description of project concept, benefits to be derived from the project, project management team, profit distribution, resources required, technical data and other information relevant to the project that will enable PITC to assess the viability and acceptability of the proposed project.
- c. **Company Profile** of foreign supplier or countertrader, detailing, among others, ownership structure and subsidiaries/affiliates, financial statement for the last 3 years, major business/projects, highlighting previous offset projects accomplished in the Philippines and in other countries.
- d. Payment of PITC processing fees, of US DOLLARS: ONE THOUSAND (\$1000.00) per application.

3.2.2 Review and Approval of Offset Project Proposal

PITC shall review and, if acceptable, approve the proposed offset project submitted by the foreign supplier or countertrader (for implementation) within at least thirty (30) days from date of submission of complete data/documents enumerated under 3.2.1 above. Said period may be extended depending on the complexities of the project and the feedback process hereinafter outlined. The review/approval process shall entail the following:

- a. Assessment as to whether the proposed offset project is listed /included in the Offset Priorities Plan as defined in Section 2.1 above.
- b. Consultations with the government office or agency where the foreign supplier or countertrader expects to win a supply contract and where the offset credit is initially expected to be applied.

c. Review/assessment of viability of the proposed offset project in consultations with the Board of Investments (BOI), National Economic and Development Authority (NEDA) and related industry sectors. For technology transfer, training, or research and development projects, the endorsement of the pertinent government office/agency (supervising the industry involved) attesting to the need/acceptability of the project shall likewise be secured.

d. Securing the approval/endorsement of the procuring government agency/office accepting the proposed offset project and allowing the banking of offset credits resulting from the said project.

e. Preparation and release of the Banking Approval Certificate by PITC officially authorizing the foreign supplier or countertrader to implement the approved offset project.

3.2.3 Requirements for Implementation and Monitoring of Approved Offset Projects:

a) Investment Projects: The foreign supplier or countertrader shall submit/comply with the following:

a.1 Submit to PITC a Business Plan and Timetable to develop/operationalize the Offset Project within 90 days from receipt of the Banking Approval Certificate.

a.2 Should the investment project entail a joint venture with a Philippine firm, the foreign supplier/countertrader has six (6) months from submission of the said Business Plan to identify, negotiate and finalize the terms of the Joint Venture Agreement with the Philippine joint venture partner. The list of prospective partners shall be furnished PITC who shall conduct its own assessment of the proposed partners. In this regard, the foreign supplier may, if it so desires, request the assistance of PITC to package the joint venture, subject to payment of appropriate service fees. PITC shall act as witness to the Joint Venture Agreement who shall likewise be furnished a copy of the JVA.

a.3 If the investment project will not entail the formation of a Joint Venture with a Philippine partner, but merely an investment in an existing firm/project, the foreign supplier has six (6) months from submission of the Business Plan to submit the nature/details of said firm/project and the extent of investment therein.

a.4 The foreign supplier/countertrader has ninety (90) days from date of signing of the Joint Venture Agreement (for joint ventures) or Investment Agreement (for non-joint ventures) to register the business venture with the Securities and Exchange Commission and the Board of Investments, furnishing PITC with copies of the pertinent Certificates of Registration within five (5) days from release thereof.

a.5 The foreign supplier shall submit a report of the remittance of its equity investments in the new joint venture or business venture within sixty (60) days from release of Certificates of Registration with the SEC