

MALACAÑANG
M a n i l a

PRESIDENTIAL DECREE No. 1034 September 30, 1976

**AUTHORIZING THE ESTABLISHMENT OF AN OFFSHORE BANKING SYSTEM
IN THE PHILIPPINES**

WHEREAS, conditions conducive to the establishment of an offshore banking system, such as political stability, a growing economy and adequate communication facilities, among others, exist in the Philippines;

WHEREAS, it is in the interest of developing countries to have as wide access as possible to the sources of capital funds for economic development;

WHEREAS, an offshore banking system based in the Philippines will be advantageous and beneficial to the country by increasing our links with foreign lenders, facilitating the flow of desired investments into the Philippines, creating employment opportunities and expertise in international finance, and contributing to the national development effort.

WHEREAS, the geographical location, physical and human resources, and other positive factors provide the Philippines with the clear potential to develop as another financial center in Asia;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree and make the following part of the law of the land:

Section 1. *Definition of Terms.* As used in this Decree, unless the context otherwise indicates:

(a) "Offshore Banking" shall refer to the conduct of banking transactions in foreign currencies involving the receipt of funds from external sources and the utilization of such funds as provided in this Decree.

(b) "Offshore Banking Unit" shall mean a branch, subsidiary or affiliate of a foreign banking corporation which is duly authorized by the Central Bank of the Philippines to transact offshore banking business in the Philippines.

(c) "Deposits" shall mean funds in foreign currencies which are accepted and held by an offshore banking unit in the regular course of business, with the obligation to return an equivalent amount to the owner thereof, with or without interest.

(d) "Resident" shall mean

1. an individual citizen of the Philippines residing therein; or

2. an individual who is not a citizen of the Philippines but is permanently residing therein; or

3. a corporation or other juridical person organized under the law of the Philippines.

(e) "Non-resident" shall mean an individual, corporation or other juridical person not included in the above definition of "resident": Provided, however, that branches, subsidiaries, affiliates, extension offices or any other units of corporation or juridical person organized under the laws of any foreign country operating in the Philippines shall be considered residents of the Philippines.

"Branch" shall mean a separately managed department or unit of a foreign corporation.

Section 2. Qualification Requirements. Subject to such regulatory guidelines as the Monetary Board may prescribe, only banks which are organized under any law other than those of the Republic of the Philippines their branches, subsidiaries or affiliates, shall be qualified to operate offshore banking units in the Philippines. However, local branches of foreign banks already authorized to accept foreign currency deposits under the provisions of R.A. No. 6426 may opt to apply for authority to operate an offshore banking unit under the provisions of this Decree: Provided, that, upon their receipt of a corresponding certificate of authority to operate as an offshore banking unit, the license to transact business under the provisions of R.A. No. 6426 shall be deemed automatically withdrawn.

Section 3. Certificate of Authority to Operate. The Monetary Board of the Central Bank of the Philippines is hereby authorized to issue certificates of authority to operate offshore banking units: Provided, however, that, in issuing such certificates, the Monetary Board shall take into consideration the applicant's liquidity and solvency position, networth and resources, management, international banking expertise, contribution to the Philippine economy, and other relevant factors such as participation in equity of local commercial banks and appropriate geographic representation.

The Central Bank of the Philippines is hereby authorized to collect a fee of not less than US\$ 20,000.00 upon issuing any certificate of authority to operate and annually thereafter on the anniversary date of such certificate.

Section 4. Corporate Undertaking. No application to operate as an offshore banking unit under the provisions of this Decree shall be considered unless the applicant shall have first submitted to the Central Bank of the Philippines a sworn undertaking of its head office or parent or holding company, duly supported by an appropriate resolution of its board of directors, that, among other things: (a) it will, on demand, provide the necessary specified currencies to cover liquidity needs that may arise or other shortfall that is offshore banking unit may incur; (b) the operations of its offshore banking unit shall be managed soundly and with prudence; (c) it will train and continually educate a specific number of Filipinos in international banking and foreign exchange trading with a view to reducing the number of expatriates; (d) it will provide and maintain in its offshore banking unit net office funds in the minimum amount of US\$ 1,000,000.00 and (e) it will start operations of its offshore banking unit within 180 days from receipt of its certificate of authority to operate such unit.

Section 5. *Supervision.* The operations and activities of offshore banking units shall be conducted under the supervision of the Central Bank of the Philippines.

Section 6. *Transactions of Offshore Banking Units: Regulations.* Transactions of offshore banking units with non-residents or with other offshore banking units shall be freely allowed: Provided, that the Central Bank of the Philippines may establish such safeguards as may be necessary to prevent circumvention of applicable foreign exchange regulations. Transactions of offshore banking units with resident of the Philippines, including those with local commercial banks and local branches of foreign banks authorized to receive foreign currency deposits under Republic Act No. 6426, shall be subject to applicable law and regulations.

The Monetary Board of the Central Bank of the Philippines shall promulgate such rules and regulations as may be necessary to carry out and implement the provisions of this Decree.

Section 7. *Tax and Other Incentives.*

(a) The provisions of any law to the contrary notwithstanding, the transactions of offshore banking unit authorized hereunder with non-residents and other offshore banking units shall be subject to a five per cent (5%) tax on the net, income from such transactions which shall be in lieu of all taxes on the said transactions: Provided, however, that transactions of offshore banking units with local commercial banks, including branches of foreign banks that may be authorized by the Central Bank to transact business with offshore banking units, shall likewise be subject to the same tax, except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board, to be subject to the usual income tax payable by banks. Any income of non-residents from transactions with said offshore banking units shall be exempt from any tax.

(b) In the case of transaction with residents (other than other offshore banking units or local commercial banks including local branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with offshore banking units), interest income from loans granted to such residents shall be subject only to a ten per cent (10%) withholding tax as final tax.

(c) Notwithstanding the provision of any law to the contrary, foreign personnel may be assigned by any foreign bank to work in its offshore banking unit in the Philippines. Such foreign personnel, their spouses and unmarried children under twenty-one years of age, shall be issued a multiple entry special visa, valid for a period of one year, to enter the Philippines: Provided, however, that a responsible officer of such foreign bank submits a certificate of the effect that the person who seeks entry in the Philippines is an employee of the said foreign bank and will work exclusively for its offshore banking unit in the Philippines and that he will be paid by the foreign bank in the Philippines compensation in foreign currencies: Provided, further, that in the case of the spouse and unmarried children mentioned herein the certificate shall be to the effect that they are dependents of the foreign personnel working in the offshore banking unit.

The admission and stay of the foreign personnel and their dependents mentioned in the next preceding paragraph shall be co-terminous with the

validity of the multiple entry special visa: Provided, however, that their stay may be extended yearly upon submission to the Commission on Immigration and Deportation of a sworn certification by a responsible officer of the offshore banking unit in the Philippines that such bank's authority to operate as an offshore banking unit is valid and subsisting and that the personnel concerned has been paid in the Philippines, from the date of original admission, the compensation mentioned in the next preceding paragraph, for which that tax due thereon has been withheld and paid to the Bureau of Internal Revenue.

The foreign personnel and their respective spouses and dependents mentioned in this Section shall be exempt from: the Payment of all fees due under the immigration and alien registration laws; securing alien certificates of registration; and obtaining emigration clearance certificates, and all types of clearances required by any government department or agency, except that upon their final departure from the Philippines, the employer of the said foreign personnel shall so advise in writing the Commission on Immigration and Deportation at least five (5) working days prior to such departure, and the finally departing personnel shall be required to submit to the said office a tax clearance from the Bureau of Internal Revenue.

(d) Section 22 of Commonwealth Act No. 466, as amended, is hereby amended to include an additional subsection (d) to read as follows:

"(d) Aliens employed by offshore banking units. There shall be levied, collected and paid for each taxable year upon the gross income received by every alien individual employed by offshore banking units established in the Philippines as salaries, wages, annuities, compensations, remunerations and emoluments from such offshore banking units a tax equal to fifteen per centum of such gross income."

(e) The alien executives of offshore banking units shall enjoy the privileges extended to foreigners coming to settle in the Philippines for the first time as provided for under Section 105(h) of the Tariff and Customs Code, as amended.

(f) The offshore banking units shall be exempt from all forms of local licenses, fees, dues, imposts, or any other local taxes or burdens.

Section 8. *Effect of Certain Laws.* The provisions of Act No. 2566 (Usury Law), Republic Act No. 529, as amended (Uniform Currency Law), and Republic Act No. 3591, as amended (Deposit Insurance Law), shall not apply to transactions and/or deposits in offshore banking units in the Philippines: Provided, however, that the provisions of R.A. No. 1405 (Secrecy of Bank Deposits Law) shall apply to deposits in offshore banking units.

Section 9. *Sanctions for Violations.* Any willful violation by any bank authorized to engage in offshore banking in the Philippines of any of the provisions of this Decree, or its implementing rules and regulations, or other terms and conditions of the authority to engage in offshore banking in the Philippines may be subject to the administrative sanctions provided for in Section 34-A, as well as to other applicable provisions, of Republic Act No. 265, as amended.

Section 10. *Repealing Clause.* Any provisions of existing general or special laws inconsistent with the provisions of this Decree shall be deemed modified, amended or repealed accordingly.

Section 11. *Effectivity.* This Decree shall take effect upon approval.

DONE in the City of Manila, this 30th day of September, in the year of Our Lord, nineteen hundred and seventy-six.