

FREQUENTLY ASKED QUESTIONS ON MEMORANDUM NO. M-2012-034

To facilitate implementation of Memorandum No. M-2012-034 dated 13 July 2012 on the prohibition against non-residents from investing in the Special Deposit Account (SDA) facility of the Bangko Sentral ng Pilipinas (BSP), the following clarifications are hereby issued:

1. *As a branch of a foreign bank, capital is comprised of assigned capital plus “net due to head office” where “net due to head office” is capped at 3 or 4 times of assigned capital. Is the “net due to head office” component of capital considered funds obtained directly or indirectly from non-residents for purposes of compliance with the Memorandum?*

Net Due to Head Office (NDTHO), even if within the allowable limits that may be considered regulatory capital, is considered non-compliant with the Memorandum if they are at such a level more than the expected to support the ordinary business of the bank given its risk profile. However, the unremitted profits component of NDTHO is not considered as funds obtained from non-residents, hence, can be invested in SDA.

2. *Are overseas Filipino workers (OFWs) considered non-residents?*

Land-based OFWs with work contracts of 1 year or more are considered non-residents, while those with work contracts of less than 1 year are considered residents. Sea-based OFWs are considered residents.

3. *For joint accounts where one of the accountholders is a non-resident, will the account be considered non-resident?*

Generally, for joint accounts where 1 of the accountholders is a non-resident, the account will be considered as non-resident.

However, joint accounts involving a non-resident OFW and a resident beneficiary may invest in SDA.

4. *Will a Filipino individual temporarily residing abroad (e.g. a student studying overseas for 1-2 years) be considered a non-resident?*

A Filipino individual who goes abroad for full-time study generally continues to be resident in the Philippines. This treatment is adopted even if his/her degree/course may exceed one year. However, a Filipino student may change to being a resident of the territory in which he/she is studying when he/she develops an intention to continue his/her presence abroad.

5. *If the non-resident invests in a Peso unit investment trust fund (UITF), and the Peso UITF has SDA investments, are we supposed to terminate the UITF placement of the non-resident?*

Non-residents may invest in UITF products with SDA placements so long as such SDA placements are for prudential liquidity requirements of the fund or are in the nature of interim/temporary investments.

6. *Will "Dual Citizenship" be considered for this purpose?*

The issue is residency, not citizenship. Hence, please be guided by the definition of non-residents under Section 1 of the MORFXT.

7. *Does an Alien Certificate of Registration give permanent residence to foreigner?*

The requirement is for a non-Filipino citizen to reside for a year or more in the Philippines. If he/she is residing in the Philippines for a year or more, he is considered a resident.

8. *Does period of residence have to be uninterrupted?*

Under Section 1 of the Manual of Regulations on Foreign Exchange Transactions, the individual should be permanently residing in the Philippines for a year or more to be considered a resident.

9. *Shall we consider the retirees and ambassadors as "non-residents", if the source of funds is the retirement pay and salaries, respectively, which are paid by either GSIS, SSS or Filipino employers?*

National diplomats, peacekeeping and other military personnel, and other civil servants employed abroad in government enclaves, as well as members of their households are considered to be residents of the economic territory of the employing government. Ambassadors and retirees who are employed or were formerly employed by the Philippine government, are thus considered residents.

In the case of retirees of private entities, they may be considered non-residents if they stayed abroad for a year or more. However, if it is clearly established by the Bank that the funds are sourced domestically (e.g. retirement pay), then, these funds may be invested in SDA.

10. *What does indirect sourcing mean?*

It refers to funds ultimately obtained from non-residents which through layering or other schemes are represented to be from a resident source.

11. *The memorandum says that we shall report to the SES all existing placements prohibited by said memorandum. When we report the outstanding SDA by non-residents which will be terminated as they mature, what format do we use?*

Banks and their trust departments are required to report all existing SDA transactions prohibited by the Memorandum as of cut-off date of 18 July 2012. The Banks' Compliance Officers have been provided by the BSP with the reporting template. The inventory of such prohibited transactions shall be submitted to the Central Point of Contact Department I or II not later than 31 July 2012.

The notarized Letter of Undertaking (LOU) shall be submitted to the BSP's Treasury Department not later than 24 July 2012 as a basic requirement for continued access to the SDA facility.

12. *Are deposit placements of non-residents prohibited to be invested in SDA considering that funds are fungible?*

In general, deposits generated by a bank from any source may be invested in SDA as part of normal banking activity. However, management activities of a bank are not covered by the prohibition, provided, the bank does not enter into arrangements or schemes that effectively allow a bank to act as conduit of non-residents to the SDA facility (e.g. offering preferential yields to non-residents higher than the Bank's regular deposit rates).

13. *Aside from the submission of notarized Letter of Undertaking and inventory of all existing SDA transactions not consistent with the Memorandum, what are other expectations from a bank or trust department/entity?*

Banks and trust departments/entities are expected to develop internal policies consistent with the Memorandum which shall be effectively communicated across the organization. The Bank's compliance system should be able to monitor compliance with said policies and internal audit shall conduct independent review to ensure effective implementation of said policy.

The action/operational plan including policy institutionalization, compliance mechanism and audit controls of the bank and its trust department to comply with the terms and conditions for the access to the SDA facility shall be implemented not later than 31 August 2012. The implementation thereof shall be subject to verification by the BSP.