



**BANGKO SENTRAL NG PILIPINAS**

**OFFICE OF THE DEPUTY GOVERNOR  
SUPERVISION AND EXAMINATION SECTOR**

**CIRCULAR LETTER NO. CL-2012-084**

**To : All Banks**

**Subject : Industry Reference Practices on Sound Contract to Sell Financing**

The Bangko Sentral ng Pilipinas (BSP) hereby informs all banks of the attached "Industry Reference Practices on Sound Contract to Sell Financing". This document was jointly developed by the Bankers Association of the Philippines, Chamber of Thrift Banks, Rural Bankers Association of the Philippines and the BSP to improve industry practices governing the grant and administration of contract-to-sell financing.

The reference practices set forth over-arching principles in risk recognition and management of CTS financing and general guidelines on the following key areas related to CTS financing:

1. Developer accreditation,
2. Project accreditation,
3. Homebuyer's CTS eligibility,
4. Facility availment, and
5. Documentation and controls.

The industry reference practices should guide banks in their operations. Banks are strongly encouraged to adopt robust practices consistent with their customer risk profile.

The BSP will also be guided by these reference practices in assessing the quality of a bank's CTS lending operations.

For information and guidance.

  
**NESTOR A. ESPENILLA, JR.**  
Deputy Governor

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## **REFERENCE PRACTICES ON SOUND CONTRACT TO SELL (CTS) FINANCING**

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## **I. OVERVIEW**

The CTS Financing Facility involves three (3) parties, namely: (a) the Bank; (b) the real estate developer (Developer); and (c) the homebuyer. It enables the Bank to purchase the receivables of a Developer covered by a CTS and grow its housing loan portfolio. It provides financing to Developers and the Bank thereby captures the growing base of homebuyers who may eventually become borrowers of the Bank.

The responsibilities of each party in a typical CTS Financing Facility in general -

- a) The Bank shall provide for the financing requirements of the Developer by purchasing the latter's receivables from various CTS generated from the project;
- b) The Developer shall ensure that the sold receivables are genuine. It shall comply with its duties to complete the development of the project in accordance with law; and
- c) The homebuyer shall faithfully comply with the terms and conditions of the CTS.

## **II. PRODUCT FEATURES**

It is a credit facility available to Developers. It may be on a "with" or "without" recourse basis. The salient features of this product are as follows:

### **A. CTS ON "WITH RECOURSE" BASIS:**

- 1. Eligible Developers are accredited realty corporations engaged in the sale and development of real properties.
- 2. Eligible for financing are condominium, house and lot packages and lot only packages according to the definition and classification of the Housing and Land Use Regulatory Board (HLURB).
- 3. Interest/discount rate will be the prevailing market rate for real estate loans at the time of purchase of CTS.
- 4. Interest rate of the credit facility can be structured under different re-pricing schemes, i.e., quarterly, semi-annually and/ or annually.
- 5. Term of each availment on the credit facility for In-house financing is up to the remaining term of the CTS.

6. Availment on the facility is subject to the execution of Deed of Assignment and delivery of CTS and corresponding titles or Deed of Undertaking to submit the titles, if titles are not yet available.
7. The Bank may choose to purchase the CTS of homebuyers with lower equity/downpayment, depending on the Bank's evaluation of the Developer.
8. The facility is secured by the Deed of Assignment of Receivables with an Acquisition Clause wherein real rights on the property is vested in the Bank upon the default of the Developer; buy-back guarantee of the Developer on the assigned installment receivables by way of recourse until CTS account is fully paid or until the assigned installment receivable is converted to Real Estate Mortgage Loan. The buy-back guarantee may include the ff:
  - a. Replacement or substitution of another CTS receivable, or
  - b. Buy-back in cash.
9. Repayment will be sourced from collections on assigned installment receivables.
10. The Bank has the option to enroll the assigned receivables for Home Guaranty Corporation (HGC) guaranty.

**B. CTS ON "WITHOUT RECOURSE" BASIS:**

1. Eligible Developers are accredited realty corporations engaged in the sale and development of real properties.
2. Eligible for financing are condominium, house and lot packages and lot only packages according to the definition and classification of HLURB.
3. Interest/discount rate will be the prevailing market rate for real estate loans at the time of purchase of CTS.
4. Term of each availment on the credit facility for in-house financing is up to the remaining term of the CTS.
5. Availment on the facility is subject to the execution of Deed of Assignment and delivery of CTS and corresponding titles or Deed of Undertaking to submit the titles, if titles are not yet available.

6. Only CTS that have complied with the equity or downpayment as required under the CTS shall be allowed for assignment on a without recourse basis.
7. The facility is secured by the Deed of Assignment of Receivables with an Acquisition Clause wherein real rights on the property is vested in the Bank upon homebuyer/borrower default. The Bank should have the right to collect directly from the homebuyer.
8. Repayment will be sourced from collections on assigned installment receivables.
9. The Bank has the option to enroll the assigned receivables for HGC guaranty.

### **III. OVERARCHING PRINCIPLES ON RISK RECOGNITION AND MANAGEMENT FOR CTS FINANCING**

In order to address various risks in credit, market, operational and legal/regulatory, the Bank shall ensure the establishment of systems, policies and structures to address said risks, as follows:

1. Credit Risks-
  - a. The lending unit shall establish an accreditation process and set the minimum eligibility requirements for Developers to qualify for the CTS facility. The Bank shall also put in place a credit investigation and appraisal unit that is responsible for gathering adequate credit information and informed appraisal judgment on properties/project for accreditation. This is coupled with a documentation review process by a body created for that purpose. This is to mitigate the risk of non-completion or non-delivery of units.
  - b. For CTS on with recourse basis, the Bank shall reserve the right of recourse to the Developer in the case of default by the homebuyer. This effectively reduces, if not eliminates, the risk of non-payment by the homebuyer. The possibility of intentional default by the Developer is mitigated by the recourse provisions of the agreement which provides for an automatic replacement and/or collection from the Developer.
  - c. The CTS and corresponding titles, or Deed of Undertaking, if titles are not yet available, and other relevant documents such as Tax Declaration and Tax Receipts must be in the possession of the Bank.

2. Market Risks - The facility shall be structured under different re-pricing schemes, i.e., quarterly, semi- annually and/or annually.
3. Operational Risks-
  - a. The Bank shall put in place a manual of procedure on the implementation of the credit facility which shall cover all the steps involved in making a CTS financing/purchase that is in line with the CTS framework developed by the industry.
  - b. The Bank shall regularly review its policies and procedures on CTS financing to ensure that these are up-to-date and reflect changes in business practices, market conditions, the legal and regulatory framework and the Bank's corporate strategy.
  - c. The Bank shall document deviations in its policy guidelines with that of the industry minimum standards and shall provide for explanations/justifications for such deviations.
  - d. Internal audit shall be conducted on CTS accounts with the report of the internal audit department presented to a Board-level Committee. Findings and weaknesses noted on CTS operations shall be immediately acted upon by management.
4. Legal/Regulatory Risks - The Bank's Legal Department shall craft the basic documents that will cover the CTS facility:
  - a. The CTS Facility Agreement – The document which covers among others, the representations of the Bank and the Developer, the underlying covenants, the terms of repayment, instances of default and remedies available to the Bank.
  - b. The Deed of Assignment – The document that will cover for the assignment of credit. The assignment document effectively transfers the rights and remedies available to the assignor/Developer under the various CTS agreement with homebuyers to the assignee/Bank. Availment on the facility shall be subject to the execution of the deed of assignment and delivery of TCT to the Bank. It shall contain an Acquisition Clause which grants the Bank the authority to transfer real rights on the CTS properties in its favor in the event of default.
  - c. The Deed of Undertaking – The document covers for the Developer's commitment to deliver to the Bank within a specified period the corresponding Transfer Certificates of Title (TCTs) or Condominium

Certificates of Title (CCTs) over the units that are subject of the CTS purchased/financed by the Bank and other requirements as may be agreed upon between the Developer and the Bank. This should also include the Developer's commitment to complete the units within a specified period of time.

- d. Right of Recourse - Right of recourse of the Bank to the Developer shall be in effect when a homebuyer defaults in paying a specified number of consecutive monthly amortizations, "Pag-IBIG" fails to refinance and purchase the account from the Bank within the take-out period, the Developer is unable to complete the units and submit documentary requirements or there is an occurrence of any event of default.
  - e. CTS - This shall include an authority by the homebuyer in favor of the Developer to assign the contract to other entities.
  - f. In case the Developer has a Joint Venture (JV), the JV contract should be reviewed for any risk created by such agreement for the Bank and the homebuyer.
5. Concentration Risk - Exposure will also be limited by standards set by the Bank on large exposures and credit risk concentrations.

#### **IV. GENERAL POLICIES**

##### **A. DEVELOPER ACCREDITATION**

- 1. A Developer that is engaged in the business of development and sale of real properties shall be accredited by the Bank as a requirement for the granting of a CTS Financing Facility.
- 2. Accreditation of Developer for purchase of CTS Receivables shall be approved by the appropriate credit authority as authorized by the Bank's Board of Directors.
- 3. To be accredited, a Developer or its' parent shall have the following qualifications:
  - a. It must be an entity which carries the requisite licenses/ authorities necessary for the conduct of real estate development.
  - b. It must have the financial and technical capability to guarantee the continuity, completion and delivery of its projects.

- c. Credit Standing - The Developer and its principal owners must not have any adverse record with banks, other creditors, supplier and contractors, HLURB, HGC, Home Development Mutual Fund, and "Pag-IBIG".
- d. Financial Condition/Profitability - The Developer must exhibit profitable operations and sound financial condition.

**B. PROJECT ACCREDITATION**

- 1. The receivables of the Developer shall emanate from projects accredited by the Bank.
- 2. The project shall be accredited based on the following criteria:
  - a. The project is owned by the Developer. Should the project be covered by a JV Agreement with another party, the Developer should be vested full authority to act for and in behalf of the JV partner for all transactions related to real estate development, marketing and sale of units, signing of documents directly and indirectly related to the sale, financing and mortgage of property, etc.
  - b. The project is substantially finished and strategically located for accessibility:
    - i. Substantially finished shall mean 70% completion for land development on specific phase where assigned CTS emanated and top-off stage for vertical/condominium developments; and
    - ii. The project should be in an area with all the necessary utilities in place such as access to public transport, complete electrical, communication and water facilities.
- 3. All regulatory permits/licenses shall be obtained for the implementation of the project, to wit:
  - a. Local government clearance
  - b. Land Registration Authority (LRA) approval of subdivision plan



- c. License to sell issued by HLURB.

**C. ELIGIBILITY OF HOMEBUYER'S CTS**

In order to qualify for a CTS financing, the homebuyer of the property under the CTS, shall comply with the following:

1. CTS ON "WITH RECOURSE" BASIS:

- a. The homebuyer must have complied with an equity or downpayment of at least 10% of the total contract price. Total contract price may include but need not be limited to the selling price and other miscellaneous charges necessary to effect the CTS. The Bank though may choose to purchase the CTS of homebuyers with lower equity/downpayment, depending on the Bank's evaluation of the Developer.
- b. The maximum purchase value shall be the lower of the following:
  - i. Outstanding balance of the accounts at the time of the purchase (net of downpayment); or
  - ii. The approved purchase value per CTS of the Bank.
- c. The homebuyer shall not be more than 65 years old at the time of CTS maturity and must be insurable.
- d. The homebuyer shall have a satisfactory payment experience (i.e. without any incidence of past due) for six (6) months with the Developer.
- e. The homebuyer shall be properly identified and the data written in the homebuyer's information sheet is verified through reliable sources.

2. CTS ON "WITHOUT RECOURSE" BASIS:

- a. The homebuyer must have complied with an equity or downpayment of at least 10% of the total contract price. Total contract price may include but need not be limited to the selling price and other miscellaneous charges necessary to effect the CTS.

- b. The maximum purchase value shall be the lower of the following:
  - i. Outstanding balance of the accounts at the time of the purchase (net of downpayment); or
  - ii. 80% of the Total Contract Price or up to 90% if covered by a HGC guarantee.
- c. The homebuyer shall not be more than 65 years old at time of CTS maturity and must be insurable.
- d. The homebuyer shall have a satisfactory payment experience (i.e. without any incidence of past due) for 12 months with the Developer.
- e. The homebuyer shall be properly identified and the data written in the homebuyer's information sheet is verified through reliable sources.
- f. A CTS homebuyer shall be identified and reported on transactions covered by the rules and regulations on anti-money laundering customer identification (Rule 9.1.c of the RIRR of R.A. 9160-AMLA, as amended) particularly if the Bank receives payments directly from the homebuyer and the receivables are purchased on a "without recourse" basis.

**D. FACILITY AVAILMENT**

- 1. The availment shall be approved by the appropriate authority of the Bank as authorized by its Board of Directors.
- 2. The credit exposure of the Developer/homebuyer shall be limited by the standards set by the Bank and existing laws, rules and regulations on credit such as credit risk management, loans to directors, officers, stockholders and related interests and Single Borrower's Limit (SBL).
- 3. For CTS without recourse, the assessment of credit worthiness of the homebuyer shall be based on the Bank's own due diligence and credit investigation and should not depend on the Developer's own credit assessment.
- 4. Availment shall be subject to the availability of funds, delivery of original copy of CTS, and TCTs or CCTs, as the case may be, and other

documentation requirements that the legal department may impose to protect the interest of the Bank.

5. In case the individual titles are not yet issued by the Register of Deeds, availment shall be allowed upon submission of the following:

a. A Deed of Undertaking of the Developer to submit the title to the Bank within a specified period:

- i. For horizontal developments - within one (1) year from date of CTS purchase;
- ii. For vertical developments – within one (1) year from date of building or project completion.

Any extension on the above should require proper justification and approval.

b. Certified True Copy of the Approved Subdivision Plan by the HLURB; and

c. Certified True Copy of the Mother Title.

The Bank shall conduct an independent verification and submit a report on the existence and authenticity of the TCTs/CCTs and documents in letters “b” and “c” above.

6. The Bank shall undertake all measures to ensure that CTS accounts are not fictitious.

7. Manner of releases:

a. For house and lot packages with uncompleted units, initial release shall be 50% of the CTS purchase value and the balance to be released after completion of the house and acceptance by the homebuyer.

b. For condominium projects, releases may be allowed upon top-off stage.

c. For lot only projects, upon 70% completion of land development on specific phase where CTS receivables are purchased/assigned provided further that basic utilities such as power and access to potable water are already in place/available.

8. The availment shall be booked in the name of the Developer to monitor its aggregate exposure while an individual ledger for each homebuyer shall be maintained to monitor the payments of each homebuyer. However, for CTS Without Recourse, the availments shall be booked in the name of each homebuyer.

**E. DOCUMENTATION AND CONTROLS**

1. All pertinent forms and documents shall be reviewed and approved by the Bank's Legal Counsel, Compliance Officer and the Lending Unit. The basic documents shall be as follows:
  - a. CTS - This agreement is between the homebuyer and the Developer which should grant the Developer the authority to assign its rights on the CTS to other entities.
  - b. Deed of Assignment - The Deed of Assignment shall cover for the assignment of credit. The assignment document effectively transfers the rights and remedies available to the assignor/Developer under the various CTS agreements with homebuyers to the assignee/Bank and contains an Acquisition Clause in the event of default on the part of the Developer. The clause shall vest upon the Bank all rights and interest of the Developer on the real property upon the occurrence of any event of default.
  - c. Deed of Undertaking - The Deed of Undertaking covers the Developer's commitment to deliver to the Bank within a period of one (1) year from specified timelines the corresponding TCTs/CCTs over the units that are subject of the CTS purchased/financed by the Bank.
  - d. CTS Facility Agreement- The general agreement governs the relationship of the Bank and the Developer in regard to the financing facility.
2. A Bank shall ensure that its' claim on the underlying receivables is well documented and legally enforceable.
3. A Bank should ensure that all documents evidencing the assignment of receivables under CTS are complete and on file.

4. Regular monitoring and/ or periodic examination of Developer's books shall be performed using appropriate and valid sampling techniques including:
  - a. Report on the status of the completion of the project,
  - b. Status of homebuyers' payments against actual collections by the Bank on randomly selected CTS accounts, and
  - c. Updating of documents/reports for outstanding CTS accounts.
5. Adequate appraisal documentation shall be maintained for underlying collaterals that is comprehensive and plausible. Property appraisals should be made in accordance with generally accepted property valuation standards.
6. Claim of real rights on the properties covered by the Deed of Assignment shall be annotated when individually subdivided TCTs/CCTs are already available.
7. For CTS without recourse, homebuyers shall be notified of the assignment.
8. It is ideal for a Bank to directly collect from homebuyers however; it may choose to appoint a Developer as collecting agent on the condition that adequate controls are put in place over the collection arrangement.