



BANGKO SENTRAL NG PILIPINAS

Frequently Asked Questions on Amendments to Relevant Provisions of the Manual of Regulations for Banks Implementing Republic Act No. 10641 under Circular No. 858 dated 21 November 2014

Introduction

I. Rationale

The Law seeks to further liberalize the entry of foreign banks in the country to create a more competitive banking industry and attract more foreign direct investment. It further aims to prepare the banking industry ahead of the ASEAN financial integration.¹

II. Purpose

To implement the provisions of Republic Act (R.A.) No. 10641, the BSP issued Circular No. 858 in accordance with rule-making powers of the Monetary Board of the BSP under Section 13 of R.A. No. 7721, as amended by R.A. 10641.

III. Scope

The Circular shall cover existing foreign banks as well as foreign banks which intend to operate in the Philippines through any one of the following modes of entry:

- a. By acquiring, purchasing or owning up to one hundred (100%) 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 one hundred percent (100%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or
- c. By establishing a branch with full banking authority.

In order to address various concerns related to the Circular, the BSP is posting the following frequently asked questions (FAQs) to guide relevant stakeholders:

I. Background of the Policy

1. Question: *What is the impact of the passage of R.A. No. 10641 on the banking sector in the Philippines?*

Answer: The enactment of R.A. No. 10641, which allows the further entry of foreign banks in the Philippines, contributes to the promotion of a competitive banking

¹ Senate Journal, Session No. 77 dated 23 May 2014, p. 295



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environment. This will pave the way for new opportunities in the form of a wide array of financial products and services as well as fresh funds translating into more loans and investments of the banking system.

The passage of R.A. No. 10641 is, likewise, expected to raise the efficiency level of banks through the adoption of new technology and enhancement of human capital skills, reduced operating costs, and institutionalization of corporate governance structure reforms which will benefit the investing or depositing public.

The entry of foreign banks will prepare the country for Association of Southeast Asian Nations (ASEAN) Economic Integration which is geared towards sustainable economic development.

2. Question: *When was the R.A. No. 10641 signed into law?*

Answer: R.A. No. 10641 was enacted into law on 15 July 2014.

3. Question: *When is the effectivity of R.A. No. 10641 and its implementing rules and regulations?*

Answer: R.A. No. 10641 took effect on 7 August 2014, which is 15 days from the date of publication in the Philippine Star and Manila Bulletin on 23 July 2014. It was also published in the Official Gazette on 1 September 2014.

On the other hand, its implementing rules and regulations (IRR) were issued through BSP Circular No. 858 dated 21 November 2014. Said Circular was published on 2 December and 27 November 2014 in Malaya and Philippine Daily Inquirer, respectively. Circular No. 858 took effect on 17 December 2014.

II. Modes of Entry

1. Question: *What are the different modes of entry of foreign banks into the Philippine Banking System before and under R.A. No. 10641?*

Answer:

Before R.A. No. 10641	Under R.A. No. 10641
Acquisition of up to <u>60%</u> of the voting stocks in a domestic bank	Acquisition of up to <u>100%</u> of the voting stocks in a domestic bank
Investment in up to <u>60%</u> of the voting stocks in new banking subsidiary	Investment in up to <u>100%</u> of the voting stocks in new banking subsidiary
Establishment of a foreign bank branch with full banking authority ²	Establishment of a foreign bank branch with full banking authority

² Limited only for 5 years upon the effectivity of R.A. No. 7721 in 1994



2. Question: *Can foreign banks change their original mode of entry?*

Answer: Yes, R.A. No. 10641 provides that foreign banks which are operating in the Philippines may apply with the BSP to change their original mode of entry. The concerned bank has to submit an acceptable transition plan which shall address how the foreign bank shall implement its change in mode of entry. Further, the conversion shall be treated as new entry; hence, subject to all applicable requirements such as outright compliance with the minimum capital requirement as well as payment of application and license fees.

III. Qualification Requirements

1. Question: *What are the factors to be considered in evaluating applications of foreign banks under Republic Act No. 7721, as amended by R.A. No. 10641?*

Answer: The following factors shall be considered in evaluating an application of a foreign bank to operate in the Philippines, subject to approval by the Monetary Board:

- a. Geographic representation and complementation;
- b. Strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank;
- c. Demonstrated capacity, global reputation for financial innovations and stability in a competitive environment of the applicant bank;
- d. Reciprocity rights enjoyed by Philippine banks in the foreign bank applicant's country; and
- e. Willingness to fully share banking technology.

2. Question: *What other qualification requirements for foreign bank entrants were considered before and under R.A. No. 10641?*

Answer:

Before R.A. No. 10641	Under R.A. No. 10641
The foreign bank must meet the ranking requirement of being among the top 150 in the world or top 5 in the country of origin.	Deleted. In lieu thereof, the foreign bank must be established, reputable and financially sound.
The foreign bank must be widely-owned and publicly-listed in its country of origin, unless the foreign bank applicant is owned by the government of its country of origin.	Still required.
In addition, it should also be listed in the Philippine Stock Exchange (PSE).	Deleted.
The Permanently Assigned Capital (PAC) and 15 percent of "Net due to Head Office/Branches" required to comply with the prescribed capital ratios shall be inwardly remitted and converted to Philippine currency.	For a Foreign Bank Branch (FBB), "Net Due To Head Office/Branches" was excluded from the computation of capital. An FBB's PAC shall be equivalent to the minimum capital requirement for domestic banks of the same category as prescribed under Subsection X111.1 of the Manual of Regulations for Banks, and shall be inwardly remitted and converted into Philippine currency.



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3. **Question:** *Can a foreign bank meet the “publicly listed” requirement even if it is not publicly listed but wholly owned by a listed holding company?*

Answer: A “publicly listed” bank means that the foreign bank applicant is widely-owned and publicly listed in the country of origin. Generally, the “publicly-listed” requirement applies to the foreign bank applicant itself. However, if it is wholly owned by a holding company which is publicly listed, then the listing requirement shall be applied to said parent holding company. The “publicly-listed” requirement, however, is not met by a foreign bank applicant that is owned and controlled by the government of its country of origin.

4. **Question:** *What is the effect of R.A. No. 10641 on the required listing in the Philippine Stock Exchange (PSE) of at least ten percent (10%) of the capital of foreign banks as provided under Circular No. 775, series of 2012?*

Answer: The listing requirement under Circular No. 775, series of 2012, seeks to implement the original provisions of paragraph 3 of Section 3 of R.A. No. 7721, which states that foreign banks entering through acquisition of the voting stock of an existing bank or acquisition of the voting stock of a locally incorporated new banking subsidiary are required to secure the listing in the PSE of their shares of stock. However, R.A. No. 10641 has deleted paragraph 3 of Section 3 of R.A. No. 7721. Thus, the requirement to secure listing of stocks of foreign banks in the PSE no longer applies to foreign banks seeking to enter the Philippines through any of the modes mentioned above.

IV. Documentary Requirements

1. **Question:** *What are the documents required to be submitted by a foreign bank, which intends to operate in the Philippines?*

Answer: The application documents to be submitted by a foreign bank which intends to operate in the Philippines should discuss in meaningful detail the following items:

- a. Contribution of the applicant bank and its Home Country to the Philippine economy in terms of foreign direct investments and trade;
- b. Contribution to the local banking industry, including undertaking to share banking technology;
- c. Business model or corporate strategy that is consistent with the policy objectives of R.A. No. 7721, as amended by R.A. No. 10641 and supportive of the Philippine economic policy;



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- d. Financial Capability which demonstrates that the applicant bank is financially sound and capable of conducting business in the Philippines in a safe and sound manner; and
- e. Ownership structure which describes the applicant bank's ownership and control structure, including whether it is a part of a financial or commercial conglomerate, and discloses related parties, if any, that are operating in the Philippines.

The foreign bank applicant shall also submit a certification from its supervisory authority that covers the following:

- i. It has no objection to the foreign bank's investment;
- ii. It will provide the Bangko Sentral ng Pilipinas with relevant supervisory information, including derogatory information, related to the applicant bank, to the extent allowed under existing laws;
- iii. The foreign bank applicant is compliant with the capital requirements as prescribed by the laws and regulations of its country of origin; and
- iv. Philippine banks may establish subsidiaries and/or branches in the foreign bank applicant's home country, subject to compliance with the host country's rules and regulations governing admission generally applicable to all foreign banks.

Other relevant documents that must be submitted by the foreign bank applicant are as follows:

- a. Head Office Guarantee for the establishment of branches in the Philippines;
- b. Transition Plan for foreign banks opting to change their original mode of entry; and
- c. Divestment Plan for the acquisition of an existing bank by a foreign bank that should cover the disposal of properties foreclosed by the domestic bank but not yet consolidated in its name.

The complete list of documents required to be submitted by foreign banks is in Appendix 2 of the Manual of Regulations for Banks.

2. Question: *Is there any standard format for the certification from the home country supervisor?*

Answer: None. The certification from the home country supervisory authority, however, should indicate at a minimum that -

- a. It has no objection to the foreign bank's investment;



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- b. It will provide the Bangko Sentral ng Pilipinas with relevant supervisory information, including derogatory information, related to the applicant bank, to the extent allowed under existing laws;
- c. The foreign bank applicant is compliant with the capital requirements as prescribed by the laws and regulations of its country of origin; and
- d. Philippine banks may establish subsidiaries and/or branches in the foreign bank applicant's home country, subject to compliance with the host country's rules and regulations governing entry that is generally applicable to all foreign banks.

3. Question: *Is it necessary for an applicant foreign bank to submit to BSP a letter of intent?*

Answer: A letter of intent is not a requirement. Foreign banks interested to establish presence in the Philippines shall submit to the Office of the Governor, Bangko Sentral ng Pilipinas (BSP), a letter-application to operate in the Philippines indicating the mode of entry together with complete documentary requirements enumerated in Appendix 2 of the Manual of Regulations for Banks.

V. Applicable Fees

1. Question: *What are the applicable fees in establishing presence in the Philippines?*

Answer: After the BSP has acknowledged the submission of complete documents, a foreign bank applicant shall pay a non-refundable application fee of P500,000.

Upon approval by the Monetary Board of the foreign bank's application, it shall pay a license fee of P25.0 million, net of the previously paid P500,000 application fee. The license fee is the same regardless of the bank category applied for.

2. Question: *What are the applicable fees in establishing a branch/sub-branch?*

Answer: In case the newly authorized foreign bank intends to establish additional branch/sub-branch, said bank shall pay the applicable branch processing fee and/or special licensing fee as provided under Subsec. X151.5 of the Manual of Regulations for Banks.

3. Question: *What is the acceptable mode of payment of the filing and license fees?*

Answer: The duly authorized representative of the applicant foreign bank shall pay in person the filing and license fees in peso-denominated checks/drafts issued by local banks at the BSP Cash Department, Ground Floor, Multi-Storey Building, Bangko Sentral ng Pilipinas Head Office, Malate, Manila.



VI. Capital Requirements

1. **Question:** *How much capital is the foreign bank applicant required to infuse?*

Answer: Foreign bank applicants shall comply with the minimum capital applicable to domestic banks of the same category. The BSP's minimum capitalization of banks is tiered based on network size as indicated in the number of branches (including head offices). Per Circular No. 854 dated 29 October 2014, the following is the minimum capital requirement for universal and commercial banks:

Tiers	Minimum Capitalization	
	UBs	KBs
Head office (HO) only	P 3.00 billion	P 2.00 billion
Up to 10 branches	6.00 billion	4.00 billion
11 to 100 branches	15.00 billion	10.00 billion
More than 100 branches	20.00 billion	15.00 billion

The matrix on minimum capital requirement for all banks can be accessed through: www.bsp.gov.ph/downloads/regulations/attachment/2014/C854.pdf

2. **Question:** *When is the foreign bank applicant required to infuse capital?*

Answer: After obtaining Monetary Board approval to establish presence in the Philippines, the foreign bank concerned shall deposit its capital funds with any universal/commercial banks (for applicants of UB, KB & TB licenses). The proof of inward remittance issued by such banks shall be submitted to the Securities and Exchange Commission and to BSP (Office of Supervisory Policy Development).

3. **Question:** *What should be the risk-based capital adequacy ratio (CAR) of a foreign bank branch?*

Answer: All banks, including foreign bank branches, operating in the Philippines must, at all times, comply with the minimum risk based capital ratios of 10% CAR, 6% Common Equity Tier I, and 7.5% Tier I Capital ratios, among other capital requirements.



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4. **Question:** *In view of the deletion by R.A. No. 10641 of the “Net Due To” Head Office/Branch/Agencies Abroad as a component of capital of foreign bank branches, what is now the composition of a foreign bank branch capital for purposes of compliance with minimum capital requirements applicable to domestic banks of the same category?*

Answer: For purposes of compliance with minimum capital regulations, the capital of a foreign bank branch shall refer to the sum of: (i) permanently assigned capital, (ii) undivided profits, and (iii) accumulated net earnings, which is composed of unremitted profits not yet cleared by the Bangko Sentral ng Pilipinas for outward remittance and losses in operations, less capital adjustments as may be required by the Bangko Sentral in accordance with prevailing rules and regulations of general application.

VII. Branching Privileges

1. **Question:** *What are “sub-branches”? Do they have different capital requirements?*

Answer: Sub-branches refer to branches that may be established by foreign bank branches in addition to its main branch.

Application to establish sub-branches shall be processed in the same manner as an application to establish additional branches by domestic banks. The foreign bank branch should comply with the minimum capital requirement corresponding to its network size as prescribed under Subsection X111.1 of the MORB.

2. **Question:** *Can an existing foreign bank branch that entered the Philippines prior to R.A. 10641 be allowed to open five (5) sub-branches in addition to the six (6) branches previously allowed under Section 4 of R.A. No. 7721?*

Answer: No. A foreign bank branch may open only up to five (5) sub-branches, excluding the Main Branch established in the Philippines.



VIII. Limitations Related to Foreign Bank Operations in the Philippines

- 1. Question: *What are the limitations on the entry of foreign banks into the Philippine Banking System before and under R.A. No. 10641?***

Answer: A foreign bank interested to operate in the Philippines shall be limited to only 1 mode of entry, as follows:

- a. By acquiring, purchasing or owning up to 100 percent of the voting stock of an existing bank;
- b. By investing in up to 100 percent 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.

Following is the summary of the limitations on the entry of foreign banks into the Philippine Banking System before and under R.A. No. 10641:

Before R.A. No. 10641	Under R.A. No. 10641
<u>Mode of entry</u> - A foreign bank may only avail itself of only 1 mode of entry.	The same limitation still apply.
<u>Period of entry of foreign banks</u> - Foreign bank branch: 5 years from effectivity of RA No. 7721 in 1994	There is no limitation on the period of entry of foreign banks.
<u>Number of entrants</u> - 10 foreign bank branches under R.A. No. 7721	There is no limitation on the number of foreign bank entrants via Mode 3.
<u>Location of branches</u> - Foreign bank branches may open 3 branches in locations of its choice and the next 3 branches in locations designated by the Monetary Board	Foreign bank branches may establish five (5) sub-branches in any location of their choice.

- 2. Question: *Section 3 of R.A. No. 7721 as amended by Section 2 of R.A. No. 10641 suggests that foreign banks cannot own or hold more than forty percent (40%) of the “resources” of the entire banking system in the Philippines. How is the term “resources” defined? How can the BSP preserve the domestic banks’ aggregate share?***

Answer: While the entry of foreign banks has been fully liberalized, the law instituted a safeguard to preserve the aggregate share of domestic banks. Specifically, Section 3 of R.A. No. 7721, as amended by R.A. No. 10641 requires that the control of at least sixty percent (60%) of the resources or assets of the entire banking system shall be held by domestic banks which are majority-owned by Filipinos. The term “resources” refer to assets based on the balances reflected in the Financial Reporting Package submitted to the Bangko Sentral.



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To preserve the domestic banks' control, the Monetary Board is authorized by law to adopt such measures as may be necessary which may include (i) suspension of entry of additional foreign bank subsidiaries and branches, (ii) suspension of license upgrade or conversion to subsidiary of existing foreign bank branches, and (iii) other measures consistent with laws.

3. Question: *Does a foreign bank have the right to participate in foreclosure proceedings?*

Answer: Yes. Foreign banks which are authorized to operate in the Philippines shall be allowed to bid and take part in foreclosure sales of real property mortgage to them.

4. Question: *After foreclosure of real estate properties, can a foreign bank transfer title over the real properties to its name?*

Answer: No. The title of the foreclosed real property in the form of land cannot be transferred to a foreign bank because of the constitutional limitation on ownership over lands to Philippine nationals only. Under Section 9 of R.A. No. 7721, as amended by R.A. No. 10641, foreign banks are only permitted to take possession of the mortgaged property and in no event shall title to the mortgaged property be transferred to such foreign bank, except in condominium units where the mortgagee-bank has the right to own as provided under existing laws.

5. Question: *After foreclosure proceedings, is it necessary for a foreign bank to transfer the real property to a qualified Philippine national?*

Answer: Yes. Section 9 of R.A. No. 7721, as amended by R.A. No. 10641, provides that a foreign bank which fails to transfer foreclosed real property to a qualified Philippine national within five (5) years from actual possession shall be subject to a penalty of one-half (1/2) of one percent (1%) per annum of the price at which the property was foreclosed until it is able to transfer the property to a qualified Philippine national.

IX. Investment of a Philippine Corporation in the Voting Stock of a Domestic Bank

1. Question: *In view of the deletion by R.A. No. 10641 of the allowable investment of a Philippine corporation in up to 60% of the voting stock of one domestic bank or new banking subsidiary, can a Philippine non-bank corporation still acquire, purchase or own up a certain percentage of the voting stock of a domestic bank?*

Answer: Pursuant to Section 11 of R.A. No. 8791, domestic non-bank corporations may own or control up to 40% of the voting stock of a domestic bank.



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X. Commencement of Operations

1. Question: *When can the foreign bank applicant commence its operations?*

Answer: After receipt of the proof of inward remittance, the OSPD shall cause the issuance of a Certificate of Authority (COA) to Operate. It is only upon receipt of the COA to operate that the foreign bank can commence its banking operations.