RECENT DEVELOPMENTS

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The Further Liberalization of Foreign Exchange Control Regulations in the Philippines

I. Historical Background

Foreign exchange control in the Philippines began in 1949, the year when the Central Bank of the Philippines (Central Bank) was created. At that time the Central Bank issued regulations requiring the sale by residents of their foreign exchange receipts to authorized agent banks of the Central Bank and restricting the purchase and sale of foreign exchange. Since then the Philippines had been under a regime of comprehensive exchange control, except for a brief period from 1965 to 1968 when restrictions on foreign exchange transactions were lifted.

II. Liberalization of Foreign Exchange Control

At the beginning of 1992, the Central Bank issued a series of circulars aimed at partially liberalizing foreign exchange control on nontrade foreign exchange transactions and foreign trade transactions. On January 3, 1992, the Central Bank undertook the first major step towards the liberalization of foreign exchange control with the issuance of Central Bank Circular No. 1318 (Revised Manual of Rules and Regulations Governing Nontrade Foreign Exchange Transactions), which took effect on January 20, 1992. The thrust of the Circular was to relax

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foreign exchange control regulations on nontrade foreign exchange transactions that were considered almost impossible to enforce or too costly to administer or monitor. One of the major reforms the Circular introduced was to limit the applicability of the "surrender requirement" (that is, the requirement for the sale by residents of their foreign exchange receipts to authorized agent banks of the Central Bank) to receipts of fifteen specified resident firms that regularly earn foreign exchange in the normal course of business, foreign currency remitted to the Philippines to fund foreign investments, and proceeds of foreign borrowings. The Circular also permitted the free exportation of foreign exchange not subject to the surrender requirement as well as the purchase of foreign exchange not subject to the surrender requirement from nonbank sources.

As a complementary measure, the Central Bank allowed commodity exporters unrestricted use of the foreign exchange export receipts that they were allowed to retain (up to 40 percent) in a special foreign currency deposit account (SFCDA) maintained with authorized agent banks of the Central Bank in the Philippines (Central Bank Circular No. 1334). For purposes of parity with commodity exporters, the Central Bank also permitted service exporters to retain up to 40 percent of their foreign exchange receipts in an SFCDA (Central Bank Circular No. 1338).

The Central Bank also issued Central Bank Circular No. 1348 (Revised Manual of Rules and Regulations Governing Foreign Trade Transactions) to liberalize foreign exchange control affecting foreign trade transactions. Among the major reforms introduced by the Circular were the adoption of several modes of payment for import transactions, the removal of the requirement of prior Central Bank approval for certain modes and terms of payment for export transactions, and the lifting of the restriction on the exportation of primary and secondary gold (subject, however, to the requirement that 60 percent of the foreign exchange export receipts be sold for pesos to the Central Bank through any of its authorized agent banks).

III. Further Liberalization of Exchange Control

As part of a package of bold economic reforms to achieve sustainable growth, the Central Bank issued Central Bank Circular No. 1353, which took effect on September 1, 1992, to further liberalize the foreign exchange regulations on nontrade foreign exchange transactions and foreign trade transactions.

As a general rule, under the Circular foreign exchange receipts, acquisitions, or earnings, may now be deposited in foreign currency accounts in the Philippines or abroad. Foreign exchange proceeds of foreign loans and foreign exchange acquired from the divestment of, and as earnings and dividends on, outward investments funded by foreign exchange purchased from authorized agent banks of the Central Bank are, however, required to be sold for pesos to authorized agent banks of the Philippines.

The Circular still provides that the registration of foreign investments with the Central Bank and the sale of the foreign exchange proceeds of such foreign investments to authorized agent banks of the Central Bank are prerequisites to the repatriation of divestment proceeds and the remittance of dividends and earnings on such investments. However, notwithstanding the nonfulfillment of any of these requirements, repatriating divestment proceeds and remitting dividends may still be possible where the foreign exchange to be used in servicing such repatriation and remittance is acquired from nonbank sources.

The Circular lifts the surrender requirement with respect to the foreign exchange export receipts of commodity and service exporters. Thus, exporters may now retain in full their foreign currency export receipts and deposit the same in foreign currency deposit accounts, whether in the Philippines or abroad.

The Circular repeals the previous regulation prohibiting authorized agent banks of the Central Bank from selling foreign exchange to a resident for the purpose of servicing the requirements of a nontrade transaction involving the payment or outward remittance of foreign exchange entered into by a resident without prior Central Bank approval. It would now, therefore, be possible for a resident, without need of prior Central Bank approval, to enter into a nontrade transaction (other than a foreign loan or arrangement partaking of the nature of a foreign loan) involving the payment or outward remittance of foreign exchange and to purchase from authorized agent banks of the Central Bank the foreign exchange needed to service payments under such transaction.

The Circular permits its authorized agent banks to sell foreign exchange, without need of prior Central Bank approval, for the purpose of servicing any payment on any foreign exchange transaction such as (but not limited to) foreign advertising costs, commissions due to foreign agents, transfer of emigrant assets, remittance of salaries of temporary residents, technology transfer payments, royalty fees and payments on copyrights, retainer fees due to foreign professionals, revenues of foreign airlines and shipping companies, and lease payments. However, payments on foreign loans, including payments for schemes or arrangements that partake of the nature of a loan, still require prior approval of the Central Bank.

The Circular allows a resident, without need of prior Central Bank approval, to make investments abroad funded by foreign exchange purchased from authorized agent banks of the Central Bank provided the total amount of foreign exchange so purchased does not exceed U.S. $1 million per year. As discussed earlier, however, the divestment proceeds of such investment as well as the earnings and dividends thereon are required to be remitted to the Philippines and sold for pesos to authorized agent banks of the Central Bank.

The Circular permits the free exportation of gold; however, the law requires gold from small-scale mining to be sold to the Central Bank. The Circular also permits the purchase and sale of gold between residents and allows banks to purchase and sell gold in the international free gold market.

Offshore banking units (OBUs) of foreign banks are allowed to maintain peso deposit accounts with domestic banks to pay the peso equivalent of foreign exchange sold by beneficiaries of export letters of credit negotiated with OBUs. These peso deposit accounts must be funded exclusively by inward remittance of foreign exchange that may be sold by an OBU to the Central Bank for credit to the demand deposit account of the OBU with its designated domestic commercial bank.

The Circular makes foreign currency deposits with foreign currency deposit units (FCDUs) of local banks eligible as collateral for peso loans or for foreign currency loans of residents. It also permits exporters to avail themselves of short-term foreign currency loans from FCDUs without need of prior Central Bank approval.

The Circular allows, without need of prior Central Bank approval, an intercompany open account offset arrangement, whereby an exporter offsets its payables to its parent company or affiliate abroad against its receivables from such parent company or affiliate, as a mode for the payment of exports.