

# MONETARY AND FISCAL POLICIES AFFECTING FOREIGN INVESTMENTS

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Board of Investments

The new order has brought about changes in both monetary and fiscal policies affecting foreign investments.

These changes cover the broad areas of foreign borrowings, foreign investments, and invisible transactions.

A compilation of these new rules have been prepared by the Board of Investments as a guide to those desiring to do business in the Philippines particularly in BOI joint-venture areas.

The more pertinent fiscal and monetary regulations affecting foreign investments as they affect BOI-registered companies are as follows:

## FOREIGN BORROWINGS

**A. Prior Central Bank Approval Required for New Borrowings:**  
All foreign borrowings (in cash or in kind) contracted after February 21, 1970 shall be subject to prior approval by the Central Bank. Such borrowings shall be governed by regulations promulgated by the Monetary Board.

**B. Minimum Term for Approval:** The following minimum terms for foreign borrowings have been laid down by the Monetary Board:

1. **Interest Rate**
  - a. **For Private Sector Borrowings** - not more than 2 per cent over the prime rate of the lending company.
  - b. **For Government Borrowings Under Republic Act (R.A.) 6142** - not more than those imposed or charged by the International Bank for Reconstruction and Development (IBRD), the Asian Development Bank (ADB), or other reputable international organization or non-governmental national or international lending institutions.
  - c. **For Other Government Borrowings** - borrowings by government agencies, corporations

and instrumentalities under the authority of their respective charters shall, in general, carry an interest rate of not more than 2 per cent over the prime rate of the lending company.

### 2. Minimum Repayment Terms

#### a. For Private Sector Borrowings

\$250,000 or less - 5 years, payable in equal annual installments to commence one year after shipment or draw-down date.

Over \$250,000; \$500,000 - 8 years, payable in equal annual installments.

Over \$500,000 - 12 years, payable in equal annual installments.

Applications exceeding \$500,000 shall be at least 8 years terms inclusive of a 3-year grace period on repayments shall, however, be allowed for export industries.

(1) Minimum repayment terms for Central Bank - certified export oriented industries and industries registered by BOI under the Export Incentives Act:

Amount of Application	Repayment Period
Up to \$50,000	3 years
Over \$50,000-\$150,000	4 years
Over \$150,000 to \$250,000	5 years

(2) Minimum repayment terms for foreign borrowings of BOI-approved pioneer in industries and enterprises engaged primarily in the manufacture/production of export products:

Amount of Application	Repayment Period
Up to \$25,000	3 years
Over \$25,000 to \$100,000	4 years
Over \$100,000 to \$250,000	5 years

b. **For Government Borrowings** - Under R.A. 6142 - 10 years or longer.

c. **For Other Government Borrowings** - shall, in general, adhere to the minimum repayment terms required for private sector borrowings.

**C. Computation of the Grace Period and Maturity Period:** The

grace period is generally determined from the date of shipment in the case of suppliers' credit and the inward remittance date in the case of cash loans. In cases where the date of shipment or inward remittance may fall prior to the Central Bank approval of the foreign credit, then the grace period shall commence from the date of such approval. period of loans shall also be reckoned from the same dates.

### D. Unallowable Foreign Borrowings:

1. Applications to avail of foreign credits shall not be given due course in the following cases:

a. Where the proposed project expands the capacity of overcrowded industries; or

b. Where the accounts of the applicant firm and/or its principal officers and stock holders with government financial institutions are in arrears.

2. Applications for availment of medium

and long-term credits that require the execution of promissory notes with shorter maturity periods which shall be subject to periodic renewals under certain conditions shall not be given due course.

### F. Inward Remittance of Cash Loans - Proceeds of cash loans shall be sold by the recipients to authorized agents (such as commercial banks) of the Central Bank within 3 business days following receipts of the foreign exchange from such cash loans. Such proceeds shall be in currencies prescribed to form part of the international reserve.

### G. Amortization of Loans in Accordance with Loan Contracts - Amortization of foreign loans shall be in accordance with the terms of the

covering loan contracts approved by the Central Bank. The foreign exchange needed to meet such amortizations shall be purchased from authorized agent banks of the Central Bank.

### H. No Voluntary Repayments on Loan Allowed - To ensure that debt-service projections of the Central Bank comply with the requirements of R.A. 6142, pre-payments of foreign borrowings are not generally allowed.

### I. Service Commitment Guarantee and Other Incidental Fees - Such charges are approved on a case-to-case basis provided the amount or rate of the fee or charge is reasonable.

### J. Registration of Loan Agreements - The Central Bank shall

require as a condition to the approval of all applications, including those previously approved, the registration of the covering loan and credit agreements within 2 weeks after the date of their execution.

### K. Registration of Availments on Foreign Credits - Availments on foreign loans are required to be registered with the Central Bank.

### L. Preferred Borrowers

In evaluating the desirability of new borrowings, preference shall be given to foreign borrowings of the following:

1. Export-oriented industries, certified as such by the Central Bank, which may be any of the following:



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- a. Firms belonging to industries the major portion of whose output is destined for export — i.e., sectors recognized to be engaged in the actual production for export of indigenous agricultural, forest (except logging), mineral, and marine products;
- b. Firms engaged in the processing or manufacture of finished products, chiefly for exportation, or with an export potential as evidenced by a record of exportation or export contracts, in which at least 70 per cent of total raw materials used consist of indigenous raw materials, provided at least 50 per cent of the total production is destined for export;
- c. Firms engaged in the processing or manufacture of finished products in which the actual or potential net foreign exchange earnings (total foreign exchange earned out of the exportation of the product less total foreign exchange required to produce the finished product and to service the operations of the firm) of each individual firm a year shall not be less than \$20,000.

- 2. Board of Investments (BOI)-approved industries;
- 3. Non-export oriented industries not utilizing domestic credit resources;
- 4. Firms utilizing relatively labor-intensive methods; and
- 5. Firms implementing geographical dispersion (i.e., location outside Metropolitan Manila).

**M. Stand-by L/Cs Covering Foreign Credit Lines of Domestic Entities Other Than Commercial Banks** — The following are the regulations on the treatment and/or servicing of stand-by letters of credit (L/Cs) covering foreign credit lines of domestic entities other than commercial banks.

1. Opening of stand-by letters of credit to cover credit lines shall be considered as new foreign borrowings and shall be subject to prior Central approval.
2. Stand-by letters of credit to cover credit lines which provide for avancements or utilizations to be repayable and/or renewable on periodic basis shorter than the stated maturity periods including stand-by letters of credit providing for yearly confirmation and containing an

acceleration clause, shall not be given due course. Deferred and stand-by letters of credit covering Central Bank-approved loans contracts with fixed amortization schedules, which, under accepted international banking procedures, may be subject to yearly confirmation are not included.

3. Renewal of utilized balances of credit lines covered by stand-by letters of credit opened and to the extent of the amount availed of under the credit line prior to the effectivity of Circular 315 (December 1, 1970) may be given due course in accordance with the original terms and to the extent of the stated maturity of the credit line.
4. Unutilized balances against credit lines covered by stand-by letters of credit open-

ed prior to the effectivity of Circular 315 shall be deemed automatically cancelled and the covering stand-by letter of credit amended accordingly.

**N. Withholding Tax on Interest on Foreign Loans** — Interest payments on foreign loans are subject to a 15 per cent withholding tax.

**O. Financing of Bulk Rice Processing and Storage Facilities** — The following policy guidelines on the financing of bulk rice processing and storage projects were approved by the Monetary Board.

1. No government agency or any financial institution, either government or private, shall negotiate or secure loans or credits for bulk rice processing and storage facilities;
2. Opening of letters of credit or the importation of bulk processing and storage equipment which can be supplied under the IBRD program, or the negotiation or conclusion of purchase contracts, therefore, shall not be given due course; and
3. All requests for financing of bulk rice processing and storage projects and those projects for conventional warehousing and milling with a storage capacity of 40,000 cavans and above shall be referred to the Grain Processing Unit of the DBP for evaluation and possible inclusion under the IBRD program.

proval, negotiate for the procurement of machinery, equipment, raw materials and supplies from abroad through an export-deduction arrangement, provided that:

1. Such items are not available locally;
2. The foreign obligation conforms to existing regulations governing foreign borrowings;
3. The machinery, equipment, raw materials or supplies to be imported shall be for the exclusive use of the applicant for the production, processing or manufacture of the export product;
4. The total amount of the deductions during any given quarter shall not exceed the total amortizations, including interest, falling due during said quarter in accordance with the terms of the pertinent contract approved by the Central Bank plus the value of raw materials and supplies needed for normal operations. All reports of foreign sales covering shipment with deduction features shall be referred to the Export Department, Central Bank for prior approval. The exporter shall also submit regular and periodic reports of his shipments and payments in a form prescribed by the Central Bank.

**C. Inward Remittance Required** — All export proceeds including the deductible amounts, should first be inward-remitted. (In cases where the shipment from which the deduction is to be made is proximate to the scheduled amortization of an approved obligation to which said deduction is to be applied, specific exception may be allowed on a case-to-case basis).

**D. Allowable Rates of Deduction** — In the procurement of machinery as replacement for fully depreciated equipment, the rate of deduction shall not exceed 15 per cent of the FOB value of each export shipment.

For the procurement of machinery, equipment, raw materials and supplies for a new project, the rate of deduction shall not exceed 50 per cent of the FOB value of each export shipment from the new project. For the procurement of machinery, equipment, raw materials

**P. Debt-Equity Ratio Requirement** — Generally, firms availing of foreign credit shall maintain a debt-equity ratio of at least 75:25 for the duration of the credit.

**Q. Rate of Exchange Applicable to Loan Repayments** — Repayments of principal and interest on foreign loans approved by the Central Bank shall be serviced at the rate of exchange prevailing at the time of the remittance of such repayments.

**Export deduction privilege**

**A. Who May Avail of the Privilege** — Only export-oriented industries may avail of the export deduction privilege to cover repayment of new foreign borrowings.

**B. Requirements for the Grant of the Privilege** — Export-oriented industries may subject to Central Bank ap-

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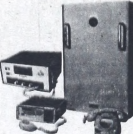
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and supplies for a new project, the rate of deduction shall not exceed 50 per cent of the FOB value of each export shipment from the new project expression.

The phrases "shall not exceed 50 per cent" or "shall not exceed 15 per cent of export shipments" constitute the maximum ceilings of deductible amounts from any shipment, and such amounts should be further delimited by the total amortization falling due within one year of the foreign loan to which such deductions are applicable.

FOREIGN INVESTMENTS

A. Prior Central Bank Approval Required - No new inward foreign investments (in cash or in kind) made after February 21, 1970 shall be made without prior Central Bank approval. Such investments shall be subject to regulations promulgated by the Monetary Board.

B. Preferred Investment Areas - In evaluating the desirability of new investments, preference shall be given to:

- 1. Export-oriented industries;
2. BOI-approved industries;
3. Non-export oriented industries not utilizing domestic credit resources;
4. Firms using relatively labor-intensive methods;
5. Firms implementing geographic dispersion (i.e., location outside Metropolitan Manila).

C. Prohibited Fields of Investments - Applications for new foreign investments in fields certified by the BOI to have excess capacity shall not be given due course.

Application for new foreign investments in fields certified by the BOI to have excess capacity shall not be given due course.

D. Investments in Firms Engaged in Oil Exploration and Drilling - Philippine firms engaged in oil exploration and oil drilling shall raise all the foreign exchange resources needed to meet the foreign exchange costs of their projects through sale of the firms' shares of stock a broad and/or through other means of participation of foreign partners and

associates in the venture. Clearance from CB-MEDIAD is necessary for all applications for purchase of forex and/or L/C openings.

E. Investments in Firms Engaged in Oil Refining - Any new foreign exchange application to be acted upon for the first time needs prior clearance of the Oil Industry Commission.

F. Investments in Philippine Domestic Securities - Philippine domestic securities refer to shares of stock of domestic corporations listed in duly authorized Philippine stock exchanges as well as bond issue of the National Government also listed in such exchange. Such investments, in foreign currency, may be made by non-residents through inward remittance and by depositors under the Philippine Currency Deposits System by withdrawal from the foreign currency account.

G. Central Bank Valuation of Investment Prior to Registration - As a matter of policy, foreign investments in the form of capital equipment and supplies with a value of more than \$100,000 shall, upon arrival of the capital equipment and supplies, and prior to the registration of the foreign investments, be subject to valuation by Central Bank-designated experts, at the expense of the applicant concerned.

H. Rate of Exchange on Remittance of Profits, Dividends and Repatriation of Investments - Transfer or remittance of profits and dividends abroad by non-residents on their investments in the Philippines and repatriation of such foreign investments shall be serviced at the rate of exchange prevailing at the time of remittance.

Investments repatriation

Application for the registration and repatriation of foreign investments shall be considered in accordance with the following guidelines:

- A. Foreign investments existing as of March 15, 1973 and duly registered with the Central Bank of the Philippines -
1. Investments in CB-certified export oriented industries may be repatriated in full or in annual installments to the extent of the applicant's

share in net foreign exchange earnings of the firm for the preceding year. By "net foreign exchange earnings" is meant the total foreign exchange earnings from export of the product less total foreign exchange required to finance production of export sales, operation and servicing of the applicant's firm prorated to his share in the total investment.

2. Investments in BOI-registered enterprises -

a. Investments in BOI-registered enterprises engaged in production of import-substitute and/or export-items, but not qualified as CB-certified export-oriented industries, may be repatriated in accordance with any of the following alternatives, whichever is less on annual basis:
\* to the extent of

the total net foreign-exchange earnings starting one (1) year after liquidation of investment; or
\* in 3 equal annual installments starting one (1) year after liquidation of investment.

b. Investments in BOI-registered enterprises not engaged in production of import substitute items, may be repatriated in four (4) equal annual installments starting one (1) year after liquidation of investments.

3. Investments in other industries (e.g., industries not falling under Nos. 1 and 2 above)

a. Investments in industries which did not utilize domestic credit resources may be repatriated on the same basis as BOI-registered industries not engaged in produc-

tion of import-substituting items (No. 25 above)

b. Investments in all other industries may be repatriated in accordance with the following schedules:

\$250,000 or less - (5) equal annual installments after liquidation of the investments

Over \$250,000 to \$500,000 - Seven (7) equal annual installments after liquidation of the investments

Over \$500,000 - Nine (9) equal annual installments after liquidation of the investments.
4. During the interim period between the sale of the investments and actual repatriation, the proceeds of cash sale may, while awaiting the scheduled repatriation, be invested by the foreign investors in the following:

a. Foreign currency deposits under Central Bank Circular 343;

b. Government securities; and/or
c. Shares of stocks in BOI-registered or CB-certified export-oriented industries.

B. Foreign cash investments made after March 15, 1973 -

1. Foreign cash investments made in (a) CB-certified export oriented industries, or in (b) BOI-registered enterprises and in (c) Central Bank-approved Philippine securities listed in the local stock exchanges shall be registered with the Central Bank through the commercial bank in which the inward remittance of the cash investment was effected. The request for registration shall be made in a form prescribed for the purpose and shall be coured

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through any local bank through which the foreign cash investments were inwardly remitted or deposited either under Central Bank Circular Nos. 304 or 342 or through ordinary commercial channels.

2. Upon verification of compliance with the qualifying requirements in No. 11-1 above, the foreign cash investment above may be swapped without forward cover for pesos with the Central Bank by the local bank concerned for a minimum period of three (3) months and a maximum of three (3) years, subject to renewal at the option of the foreign investors.

3. Repatriation of the foreign cash investments referred to herein less losses, if any, may be made at any time by the foreign investors, subject to the terms and conditions of the swap arrangement between the handling bank and the Central Bank.

4. Foreign cash investments in other industries, e.g., in industries outside of those that are CB-certified export oriented or are BOI-registered, and in non-listed Philippine securities, and foreign investments made in kind instead of cash, in any industry, shall continue

to be governed by existing Central Bank regulations.

**C. Repatriation of Foreign Investment Capital of Oil Companies** — Any application for repatriation of capital for oil companies need prior clearance of the Oil Industry Commission.

**Remittance of Profits and Dividends or Investments as of March 15, 1973 and those made Thereafter**

The transfer or remittance of profits and dividends abroad by non-residents corresponding to the non-resident's share in the net profits on foreign investments realized, after taxes, during the year for which the remittance of the earnings is being made, shall be subject to the following rules:

1. Remittances of profits before the end of the fiscal/calendar year are not allowed. In other words, no interim profits are allowed to be remitted.
2. Remittances of profits and dividends accruing to non-residents out of net profits realized beginning January 1, 1973 shall, net of taxes, be allowed in full at the prevailing exchange rate.
3. Remittances of unremittable profits/dividends on account of the 25 per cent

limitation shall with prior Central Bank clearance be allowed after withholding tax, provided, however, that such remittances shall not be financed by domestic borrowings.

Domestic borrowings shall be limited to borrowings from any banking, financial or credit institution. The schedule of remittance must be drawn up in conformity with the following minimum remittance periods:

Aggregate Amount Per Firm	Minimum Remittance Period
100,000 and less	2 months
Over \$100,000 to \$250,000	4 months
Over \$250,000 to \$500,000	6 months
Over \$500,000 to \$750,000	8 months
Over \$750,000 to \$1,000,000	10 months
Over \$1,000,000 to \$1,500,000	12 months
Over \$1,500,000	16 months
	20 months
	24 months

4. Capital gains, profits and dividends, net of taxes, if any, realized by foreign investments made in Central Bank-approved Philippine securities listed in the local stock exchange shall be remittable in full at the prevailing rate of exchange.

**A. Remittance for existing obligations registered with CB prior to November 26, 1969** — Resident companies which have existing foreign obligations registered with CB prior to November 26, 1969 may remit interest abroad.

**B. Remittance for existing obligation not registered with CB prior**

to November 26, 1969 — Approval and registration with CB is necessary.

**INVISIBLE TRANSACTIONS**

**A. What Constitutes Invisible** — The term refers to forex transactions, arrangements or business arrangements or business operations which are generally non-trade in nature. Non-trade arrangements involve or require rendition of services by private resident persons, firms, associations or corporations with private non-resident person, firms associations or corporations situated abroad.

**B. Mode of Payment** — Payment may be in pesos or any foreign currency acceptable to Central Bank.

**C. Reports to CB required on forex earnings, acquisition or receipts** — The following resident persons, firms, or corporations shall render a quarterly report to the foreign Exchange Department of the CB not later than 15 days after the end of each calendar quarter on forex earnings, acquisition or receipts sold to authorized agent banks:

1. Agents or branch offices of foreign shipping and airline companies;
2. Shipbuilders, ship-repairers, or ship chandlers providing

supplies to a rendering services to foreign owned or operated vessels.

3. Shipping or airline firms, agencies or persons, providing or supplying crew members to foreign owned or operated vessels or aircrafts;
4. Indentors, commission agents, or Philippine representatives of foreign firms;
5. Insurance companies or insurance agencies engaged in foreign insurance and reinsurance business, or engaged in insurance business abroad through overseas branch offices or agencies;
6. Construction firms, engineering firms, architectural firms, and labor contractors undertaking jobs at U.S. military, naval or air bases, or other United States establishments in the Philippines, or undertaking jobs abroad.
7. Oil companies engaged in selling aviation gasoline bunker oil and/or other oil products to aircrafts of foreign airline companies or vessels of foreign shipping companies;
8. Recipients of foreign exchange representing payment of royalties, firm, television, and other rentals;
9. Receipts of foreign exchange from non-

residents pursuant to other contracts of services.

**A. Remittance by Oil Companies** — Prior clearance is needed from the Oil Industry Commission.

**B. Royalties and Rentals on Patents, Trade and Copyrights** — Remittance of royalties or rentals on patents, trademarks and copyrights may be allowed net of the withholding tax up to 50 per cent of the royalties or rentals incurred during the year for which the remittance is being made, provided, that no royalty remittance should exceed 5 per cent of the wholesale price of the commodity which is manufactured locally under a royalty contract.

**C. Technical Service Fee** — Remittance of technical service fees are allowed to the extent provided for in the technical service agreement.

**D. Remittances of Film Earnings & Rentals** — Remittance of the producers' shares of earnings made or movie films and rentals on television films imported without exchange payments may be allowed up to 50 per cent of the producers' shares of earnings or of TV film rentals during the year for which the remittance is being made.



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**INDEX TO ADVERTISERS**

Makati Leasing .....	OBC	Rustan Investment .....	15
GM Torana .....	IFC	Walling Industrial .....	22
Olashar Oil .....	IFC	Manaway Vinyl .....	20
	PAGE	Manuel Nieto .....	23
Datsa Motor .....	5	Monergon Industries .....	17
Chrysler .....	7	Ranlie Textiles .....	17
General Electric .....	9	Phil Carpet .....	17
PFCE .....	10	Synthetic Textile .....	18
Abbott Laboratories .....	6	Nisho-Iwai .....	17
RCBC .....	6	Francisco Motor .....	28
Philippine Petroleum .....	27	PICOP .....	15
Imperial Textile .....	21	Process Operations .....	25
Mons. Cristina Chemicals .....	28	Mitsubishi .....	26
POCP .....	13	Eastern Textiles .....	11
AG & P .....	25	UPFC .....	22
Radiowest .....	22	Consolidated Foods Corp. .....	28
Engineering Equipment .....	22	Phil. Agriculture .....	34
Alibi Goppo .....	24	GAMI .....	11
Ganbacor .....	14	Chemical Industries .....	31
Apex Mining .....	18	Lazcano Mining .....	28
Riverside Marketing .....	30	Sta. Clara Lumber .....	34
Elsdale & Co. .....	20	Ganatum .....	9
Kasten International .....	11	Metalux .....	9
Industrial Technologists .....	15	Atkins Kraft .....	9
Delasco Brothers .....	14		

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