

Legal and Regulatory Framework

A. Legal Tradition

The legal system in the Philippines originates from civil law principles, such as the codification of law, established under Spanish rule. This has over time been augmented by common law principles influenced largely by United States law, including the practice to establish precedent rulings by the courts.

B. English Translation

The Government of the Philippines, its policy bodies, and its regulatory authorities officially publish laws (acts and codes), regulations, and notices in English. As such, an English translation does not apply.

C. Legislative Structure

The Philippines feature a multi-tiered legislative structure to govern the financial and capital markets, guided by the Constitution of the Philippines, also known as the 1987 Constitution, as the supreme law:

- [1st tier] The Constitution of the Philippines, 1987
 - [2nd tier] Republic Acts and Presidential Decrees (key legislation for the securities market)
 - [3rd tier] Regulations (rules and manuals, issued by regulators)
 - [4th tier] Memorandum circulars and guidelines (issued by regulators)
 - [5th tier] Self-Regulatory Rules

For easy reference, Table 2.1 illustrates the legislative structure described above by giving significant examples of relevant securities market legislation and regulation for each of the individual tiers.

Key legislation is the summary term for those laws specifically aimed at a particular market, such as the securities market or capital market. These laws establish and govern securities markets or market segments, including the bond market, its institutions, and its participants. These laws are enacted by the Congress of the Philippines, signed by the President, and take effect upon publication in the Official Gazette, which is the official journal of the Government of the Philippines, and/or in two newspapers of general circulation. The Securities Regulation Code, 2000 (SRC), also known officially as Republic Act No. 8799, represents the cornerstone of the key legislation for the Philippine capital market.

Table 2.1: Examples of Securities Market Legislation by Legislative Tier

Legislative Tier	Content or Significant Examples
Constitution of the Philippines	Principles, Rights, and Obligations
Republic Acts and Presidential Decrees (key legislation)	- Securities Regulation Code, 2000 (Republic Act No. 8799) - Investment Houses Law, 1973 (Presidential Decree 129) - New Central Bank Act, 1993 (Republic Act No. 7653) - General Bank Law, 2000 (Republic Act No. 8791)
Regulations (including rules and manuals)	- Rules Governing the Trading of Securities Over-the-Counter, 2006 - Implementation Rules and Regulations of the Securities Regulation Code, 2015 - BSP Manual of Regulations for Banks - BSP Manual of Regulations for Non-Bank Financial Institutions - BSP Manual of Regulations on Foreign Exchange Transactions, as amended
Memorandum circulars and memoranda, including guidelines	BSP Guidelines on the Electronic Submission of the Securities Brokering Transaction Report, 2015
Self-Regulatory Organization Rules	- PDEX Fixed Income Securities Market Rules, as amended - Rules of the Philippine Depository & Trust Corporation - PDEX Trading and Settlement Guidelines for Holders Subject to 25% or 30% Final Withholding Tax for Listed Corporate Securities, 2016

BSP = Bangko Sentral ng Pilipinas, PDEX = Philippine Dealing & Exchange Corporation.
Source: Compiled by ADB consultants for SF1 and based on publicly available information.

Regulations are issued by the authorities charged with the overall supervision and governance of the securities and capital markets, including the Securities and Exchange Commission of the Philippines (SEC) and the Bangko Sentral ng Pilipinas (BSP). For key legislation, the SEC issues Implementing Rules and Regulations (IRR) to help industry participants comply with the relevant laws.

The BSP, on its part, is set to implement a package of initiatives that will boost the trading of local bonds and make it more attractive to raise capital from the local debt market. These include enabling local banks to monetize their idle inventory of securities and engage in legal short selling as part of the new scheme on repurchase (repo) agreements (please see Chapter IV.G for details on repo business). Additionally, the BSP is finalizing guidelines for the overnight index swap system, which will result in more accurate and transparent interest rates for both borrowers and lenders.

The BSP also issues memorandum circulars to govern deposit-taking institutions and their activities, and manuals that govern the major activities related to banking and foreign exchange (FX) transactions. Other official BSP issuances include circular letters on nonregulatory matters addressed to particular entities or categories of institutions, as well as memoranda, which contain guidelines and procedural

requirements, clarifications, explanations, and interpretations of the provisions of laws and of BSP circulars. The SEC issues memorandum circulars with guidelines for market participants and to exercise its function as the corporate regulator.

In the case of the Philippine bond market, self-regulatory organization (SRO) rules refer to the issuance of rules by the Philippine Dealing & Exchange Corporation (PDEX), as the SRO for and market operator of the organized secondary fixed income market. These are rules applicable to its members or to entities that make use of its platform or facilities.

D. Philippine Bond Market Regulatory Structure

The capital market in the Philippines, and in particular the bond market, is governed by the regulations, rules, and guidelines issued, maintained, and enforced by the SEC, BSP, and PDEX. While there is no separate SRO governing all participants of the bond market in the Philippines, the SEC expects more institutions to apply for and become SROs moving forward.

1. Securities and Exchange Commission of the Philippines

The SEC is the principal regulatory body of the primary and secondary debt markets, as well as of the different participants in the Philippine bond market, including the Philippine Dealing Systems Holdings Corporation (PDS Group) as a registered market operator, plus brokers, underwriters, registrars, transfer agents, and accounting firms.

Under Section 5 of the SRC, the SEC shall have, among others, the following powers and functions:

- (a) have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government of the Philippines;
- (b) formulate policies and recommendations on issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;
- (c) approve, reject, suspend, revoke, or require amendments to registration statements, and registration and licensing applications;
- (d) regulate, investigate, or supervise the activities of persons to ensure compliance;
- (e) supervise, monitor, suspend, or take over the activities of exchanges, clearing agencies, and other SROs;
- (f) impose sanctions for the violation of laws and the rules, regulations, and orders issued pursuant thereto;
- (g) prepare, approve, amend, or repeal rules, regulations, and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations, and orders;
- (h) enlist the aid and support of and/or deputize any and all enforcement agencies of the Government of the Philippines, civil or military, as well as any

private institution, corporation, firm, association, or person in the implementation of its powers and functions under this code;

(i) issue cease and desist orders to prevent fraud or injury to the investing public;

(j) punish for contempt of the [SEC], both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(k) compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

(l) issue subpoena duces tecum and summon witnesses to appear in any proceedings of the [SEC], and in appropriate cases, order the examination, search, and seizure of all documents, papers, files, and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;

(m) suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships, or associations, upon any of the grounds provided by law; and

(n) exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the [SEC] to achieve the objectives and purposes of these laws.

The Markets and Securities Regulation Department plays a key role for the supervision and licensing of the activities in the Philippine bond market. Its roles and functions are described on the SEC website as follows:²

- (a) register securities and grant exemption from registration such as but not limited to equity securities, bonds, commercial paper issued by the issuer of registered equities and bonds, real estate investment trusts, and other alternative investment products, and supervise and monitor the compliance by the issuers of such securities with legal and regulatory requirements;
- (b) register and supervise securities markets and market institutions such as exchanges, alternative trading systems, over-the-counter (OTC) markets and other trading markets, SROs, clearing agencies, securities lending agencies, depositories, custodians, central trade reporting systems, registrars of qualified buyers, and other securities-related organizations for their compliance with legal and regulatory requirements;
- (c) supervise intermediaries and market professionals such as brokers, dealers, government securities eligible dealers, government securities brokers, associated persons and salespersons of brokers dealers, transfer agents, investment houses, investment company advisers, mutual fund distributors, compliance officers and certified investment solicitors of investment company advisers or mutual fund distributors, and other securities market participants for their compliance with legal and regulatory requirements;

² See <http://www.sec.gov.ph/about/departments-and-offices/>

- (d) review proposed rules of SROs and other market participants and proposed products and services in the market to ensure their consistency with securities laws, regulations, policies, and global best practices;
- (e) review existing regulatory frameworks of the securities industry, conduct market-related research, and recommend rules and/or reforms;
- (f) establish linkages with national and international organizations (e.g., ASEAN and Asia–Pacific Economic Cooperation) and regulatory agencies with regard to the securities market, including cross-border products, services, and arrangements;
- (g) act as National Numbering Agency for all securities issued in the Philippines; and
- (h) issue show cause orders and assess and impose penalties for noncompliance with rules and regulations implemented by the department.

To fulfill these functions, the department consists of three divisions: (i) Securities Registration Division, (ii) Markets and Intermediaries Division, and (iii) Investment Products and Services Division.

The SEC registers or licenses Capital Market Institutions, including brokers, dealers, investment houses, underwriters, and transfer agents (see also section I in this chapter).

2. Bangko Sentral ng Pilipinas

The BSP is the central bank of the Philippines. It was established on 3 July 1993 pursuant to the provisions of the 1987 Constitution and the New Central Bank Act, 1993. The BSP took over from the Central Bank of the Philippines, which was established on 3 January 1949, as the country's central monetary authority. The BSP enjoys fiscal and administrative autonomy from the Government of the Philippines in the pursuit of its mandated responsibilities. The BSP functions as the banker, financial advisor, and official depository of the Government of the Philippines, including its political subdivisions and instrumentalities, and government-owned or -controlled corporations (GOCCs).

As mandated in its charter, the BSP itself does not issue debt instruments, other than in specific cases defined in the New Central Bank Act, 1993.

The BSP supervises banks and exercises regulatory powers over non-bank financial institutions (NBFIs) that perform quasi-banking functions. It also supervises the registration of foreign investments in the country and monitors the inflow and outflow of capital. In the context of the bond market, the BSP may apply its rules on the issuance of bonds or notes depending on whether the issuer is a resident or nonresident, and whether the bonds or notes are denominated in Philippine pesos or a foreign currency. In addition, if the issuer is a financial institution, other prudential considerations may apply. Some of the applicable rules are further illustrated in the relevant chapters of the Philippines Bond Market Guide.

3. Department of Finance—Bureau of the Treasury

The Department of Finance regulates the primary issuance of government securities in the market while the department's Bureau of the Treasury (BTr) monitors daily activities in the government securities market.

The BTr is authorized to carry out the following functions under Executive Order No. 449:

- assist in the formulation of policies on borrowing, investment, and capital market development;
- formulate adequate operations guidelines for fiscal and financial policies;
- assist in the preparation by the government agencies concerned of an annual program for revenue and expenditure targets, borrowing levels, and cash balances of the Government of the Philippines;
- maintain books of accounts of cash transactions;
- manage the cash resources, collect taxes made by the Government of the Philippines, and guarantee forward cover fees due to the Government of the Philippines;
- control and service its public debt, both foreign or domestic;
- issue, service, and redeem government securities for the account of the Government of the Philippines as may be authorized by the President pursuant to law;
- administer the Securities Stabilization Fund by purchase and sale in the open market of government bills and bonds to increase liquidity and stabilize the value of said securities in order to promote private investment in government securities;
- act as principal custodian of financial assets of the Government of the Philippines, its agencies, and instrumentalities;
- bond all accountable public officials and employees pursuant to the provisions of the Public Bonding Law, and issue appropriate guidelines therefore; and
- perform such other related functions as may be assigned to it by competent authorities.

The above responsibilities are in addition to other assigned functions under separate laws, executive orders, and presidential decrees.

In the context of the Philippine bond market, the BTr manages the auction and issuance process of government securities and accredits the Government Securities Eligible Dealers (GSEDs) who can participate in these auctions. The BTr also operates the Registry of Scripless Securities (RoSS) as the sole registry for debt instruments issued onshore by the Government of the Philippines.

4. Philippine Dealing Systems Holdings Corporation and its Subsidiaries

The PDS Group manages an electronic platform for trading, clearing, settlement, depository, registry, and custody of fixed income securities and derivatives. The PDS Group has three operating subsidiaries that comprise the market infrastructure for the bond market in the Philippines:

- (i) PDEX—an entity that operates the electronic trading platforms for securities, providing price discovery and transparency services, conducting self-regulatory functions, and linking to the settlement systems. As the market operator in the fixed income market, it has the capability to manage its liquidity programs for the market—the Securities Lending Transactions Program (PDS SLTP) and the Inter-Professional Repurchase Agreement Market Program (PDS Repo).
- (ii) Philippine Depository & Trust Corporation (PDTC)—an entity that provides central securities depository services for both the equities and fixed income markets, and registry services for the fixed income market. It is likewise engaged in PDEX liquidity programs as Collateral Manager.

(iii) Philippine Securities Settlement Corporation (PSSC)—the company that provides electronic settlement facilities with straight-through-processing and delivery-versus-payment capabilities.

Among the PDS Group entities, PDEX is an SRO that makes and enforces its own rules for its Fixed Income Securities Market (see also section H in this chapter).

E. Regulatory Framework for Debt Securities

In the Philippines, the regulatory framework for the bond market is based on the need to register debt instruments—save for government securities issued by the Government of the Philippines through the BTr—with the SEC prior to their issuance, while making use of possible exemptions such as offers of debt instruments intended only to professional investors, referred to as Qualified Buyers under the SRC (please see Chapter III.M for details on the Qualified Buyers concept). The emphasis in the SRC is on provisions related to investor protection for offers to the public, while allowing avenues for issuance to professional investors who can make their own informed decisions, also pursuant to their licensing for specific capital market activities. The SEC approves applications for registration or accepts the filing of so-called Notices of Exempt Transaction to satisfy these regulatory requirements. In addition, the SEC registers bond market participants, from brokers and dealers to investment houses and transfer agents, to carry out their respective activities.

In turn, PDEX admits these market participants to the organized market for debt securities. In addition, PDEX lists or enrolls issuers of such securities who are bound by initial and continuous disclosure requirements. PDEX makes and enforces its rules, which include rules for listing, related disclosure, and trading, for both debt securities offered to the public and those offered only to Qualified Buyers.

The BSP will apply its rules and regulations on the issuance of bonds or notes in the domestic market depending on (i) residency, as defined under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), and type of issuer; and (ii) currency denomination of the bonds or notes. Nonresident issuers may issue bonds, notes, or similar instruments in the Philippine market subject to prior approval by the BSP.³ The BSP evaluates the transaction on a case-by-case basis, taking into consideration all information provided on such transactions, including justifications stated by the applicant and/or benefits to be derived from the transaction. Issuance by banks of bonds as capital instruments is subject to relevant rules and regulations and requires prior BSP approval.⁴ Quasi-banks desiring to issue bonds or long-term commercial paper shall apply for registration with the SEC and notify the BSP within 3 days of the approval by the SEC of the bond issue.⁵

The SEC updated the IRR for the SRC in 2015 (2015 SRC Rules) to reflect recent market and regulatory developments. Key among the changes were the practical ability for issuers to take advantage of the enhanced shelf-registration process and other measures that implement global and regional best practices in the bond market (for details, see Chapter X).

The processes that are particularly relevant for registration with the SEC, or the exemption of debt securities from such registration requirements, and the necessary applications to and approvals from the BSP and PDEX, are explained in greater detail in the following section.

³ Section 31.3 of the FX Manual.

⁴ Section X119 of the Manual of Regulations for Banks.

⁵ Section 4239Q of the Manual of Regulations for Non-Bank Financial Institutions.

F. Debt Securities Issuance Regulatory Processes

To issue bonds and notes in the Philippines, a number of regulatory processes must be observed, depending on the type of offering and other considerations.

An issuer will have to register debt securities to be offered to the public with the SEC for approval. To issue bonds and notes to professional investors in the Philippines under an Exempt Transaction, a Notice of Exempt Transaction may be filed with the SEC, regardless of the type of issuer. No approvals need to be obtained for such issuances, but the SEC reserves the right to request a confirmation of the eligibility of an Exempt Transaction at any time.

As for the purview of the BSP, the rules applied to the issuance of bonds or notes may vary depending on whether the issuer is a resident or nonresident, and whether the bonds or notes are denominated in Philippine pesos or a foreign currency. In addition, if the issuer is a financial institution, other prudential considerations may apply. Under Section 1 of the BSP FX Manual, a resident shall refer to

- (i) an individual citizen of the Philippines residing therein;
- (ii) an individual who is not a citizen of the Philippines but is permanently residing therein;
- (iii) a corporation or other juridical person organized under the laws of the Philippines; or
- (iv) a branch, subsidiary, affiliate, extension office, or any other unit of corporations or juridical persons organized under the laws of any country and operating in the Philippines, except Offshore Banking Units.

The term nonresident shall refer to an individual, a corporation, or other juridical person not included in the definition of a resident.

In addition, the listing or enrollment of issued bonds and notes on PDEX enables visibility and/or trading, and continuous disclosure and pricing.

1. Regulatory Processes by Issuer Type

Table 2.2 provides an overview of these regulatory processes by issuer type and identifies which regulatory authority or market institution will be involved. In order to make the issuance processes by issuer type more comparable across ASEAN+3 markets, the table features common issuer type distinctions that are evident in regional markets. Not all markets will distinguish all such issuer types or prescribe approvals. Sovereign issuers are typically exempt from corporate issuance approvals but, at the same time, may be subject to different regulatory processes.

Table 2.2: Authorities Involved in Regulatory Processes by Issuer Type

Type of Issuer	SEC (public offers only)	SEC	BSP	PDEx
Resident issuer				
Resident nonfinancial institution	X	O		X ^c
Resident financial institution ^{a, b}			X	
Resident issuing FCY-denominated bonds and notes	X	O	X	
Nonresident issuer				
Nonresident nonfinancial institution	X	O	X	X ^d
Nonresident financial institution			X	
Nonresident issuing FCY-denominated bonds and notes	X	O	X	

BSP = Bangko Sentral ng Pilipinas, FCY = foreign currency, PDEx = Philippine Dealing & Exchange Corporation, SEC = Securities and Exchange Commission.

Notes: O indicates the requirement in principle to file a Notice of Exempt Transaction or Single Submission Form; X indicates approval required.

^a Financial institutions may issue bonds and notes, subject to regulations governing the borrowing of banks under the provisions of the Manual of Regulations for Banks.

^b Resident financial institutions in the Philippines include branches of nonresident financial institutions that fall under the supervision of the BSP.

^c PDEx requires that all necessary approvals from the BSP and SEC are to be obtained prior to a listing or enrollment of bonds or notes.

^d All matters related to nonresidents should abide by the BSP- and SEC-prescribed framework for nonresidents prior to PDEx approval.

Source: ADB consultants for SF1.

Issuance of securities, whether by a financial or nonfinancial institution, is within the jurisdiction of the SEC. The IRR of the SRC exempt from registration the securities issuances of financial institutions that are licensed by the BSP to engage in banking and quasi banking functions. For other transactions, however, such as swaps or repo, the SEC still exercises regulatory power.

2. Regulatory Process Overview

The regulatory process map shown in Figure 2.1 is designed to help with the navigation of the applicable regulatory processes in the Philippines to be applied to a given proposed bond or note issuance. Individual processes are explained in detail in the subsequent sections.

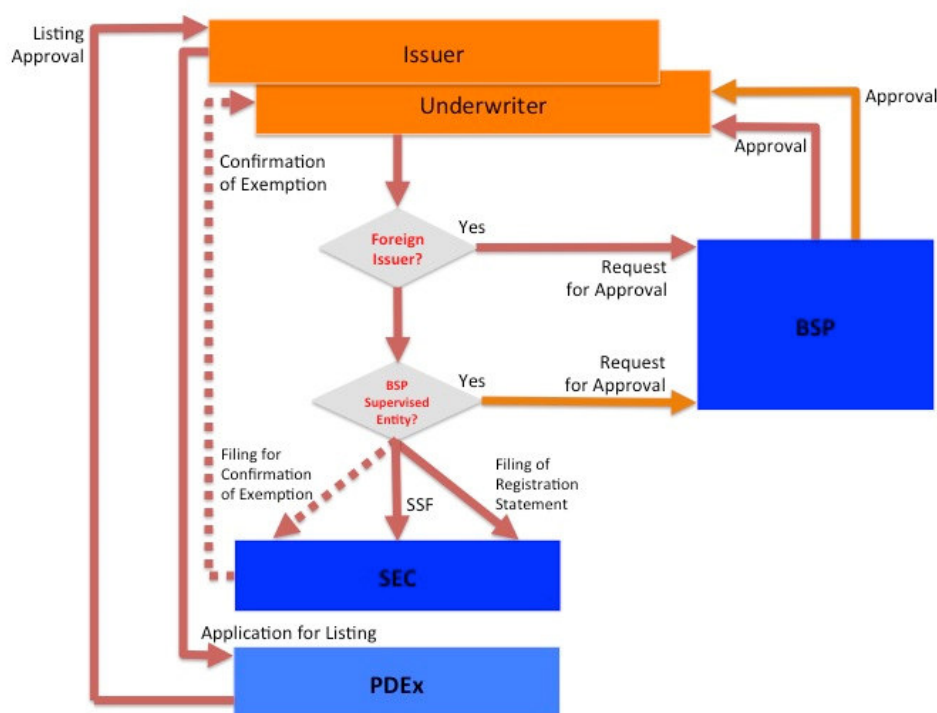
The issuer will need to appoint an underwriter in case of a public offer. There is no requirement on the use of an underwriter for a bond or note offering to Qualified Buyers. However, if an issuer wants to appoint an underwriter, then the underwriter must be licensed by the SEC. At the same time, the issuer is typically represented by an underwriter who will file or submit the necessary application for approval or relevant documentation to the respective regulatory authority and market institution on the issuer's behalf.

Issuers may make use of the shelf-registration concept (under SRC Rule 8.1.2, known officially as Delayed and Continuous Offering and Sale of Securities), which was enhanced by the SEC in terms of features and flexibility as part of the revised 2015 SRC Rules.

The issuance approval process for public offers is distinct from issuances as Exempt Transactions (e.g., those aimed at Qualified Buyers). For details, please see sections 4 and 5 in this chapter, respectively.

Foreign (nonresident) issuers may issue bonds and notes in the Philippines in Philippine pesos or in foreign currencies. In both cases, the approval of the BSP is required and the issuer may submit an application for such approval at the same time as submitting the Registration Statement or a possible Notice of Exempt Transaction to the SEC. The BSP does not distinguish between public offers and those offers under Exempt Transactions. Section 3 below gives further details on the application and approval process involving the BSP.

Figure 2.1: Regulatory Process Map—Debt Securities Issuance in the Philippines



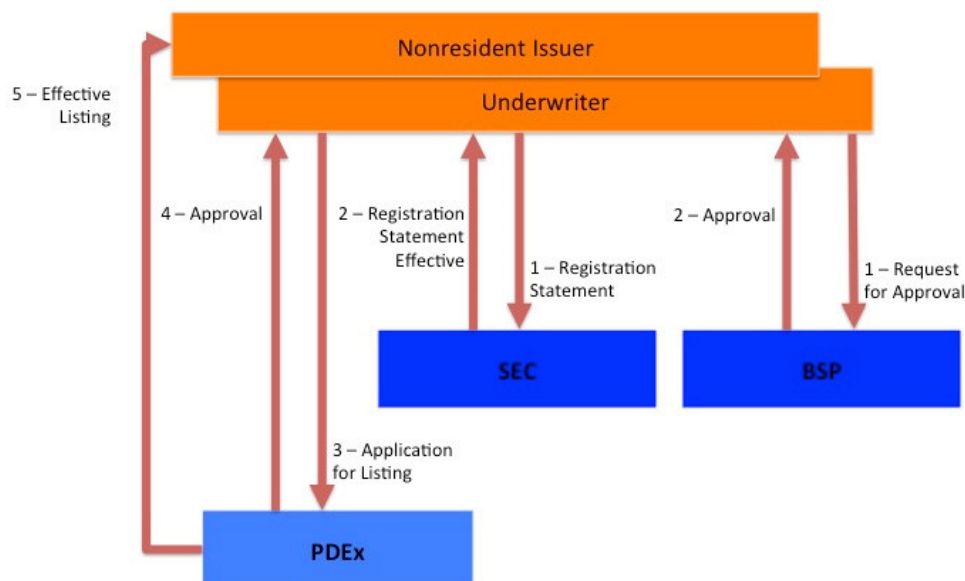
BSP = Bangko Sentral ng Pilipinas, PDEX = Philippine Dealing & Exchange Corporation, SEC = Securities and Exchange Commission, SSF = Single Submission Form.

Note: Application for Listing on PDEX may be made only once the necessary approvals from the BSP and SEC have been obtained

Source: ADB consultants for SF1.

3. Regulatory Process for Nonresident Issuer (other than Financial Institution)

The process of issuing bonds or notes to the public or as an Exempt Transaction, such as to professional investors (Qualified Buyers), involves multiple regulatory authorities if the issuer is a nonresident corporate issuer (Figure 2.2).

Figure 2.2: Regulatory Process Map—Issuance by Nonresident

BSP = Bangko Sentral ng Pilipinas, PDEX = Philippine Dealing & Exchange Corporation, SEC = Securities and Exchange Commission.
Source: ADB consultants for SF1.

The following steps need to be observed when a nonresident issuer wants to issue bonds or notes to the public or under an Exempt Transaction (e.g., to professional investors [Qualified Buyers]) in the Philippines.

As agreed among the regulatory authorities, the filing for approval with the BSP and the submission of the Registration Statement to, or the filing of the Notice of Exempt Transaction or a Single Submission Form (SSF) with, the SEC can be undertaken at the same time. The nonresident issuer will, however, need to obtain the necessary approval from the BSP before proceeding with the issuance.

The listing or enrollment on PDEX completes this regulatory process.

Step 1—(BSP): Filing for Approval with the Bangko Sentral ng Pilipinas

Pursuant to Section 31.3 of the FX Manual, a nonresident's issuance of bonds, notes, or other similar instruments in the domestic market shall require BSP approval before execution thereof. There is no quota or allocation of issuance amounts in Philippine pesos for nonresident issuers.

Prior BSP approval shall also be obtained by the nonresident issuer should it seek to access the domestic banking system in the Philippines (e.g., in the

form of collection of issuance proceeds through underwriters, and activities in the FX or swap market). Annex D.2 of the FX Manual contains the actual application form for approval and data requirements for submission to the BSP.

The nonresident issuer or their underwriter must apply with the BSP International Operations Department (IOD) using the prescribed forms specified in Annex D.2 of the FX Manual and providing other relevant documents as may be required, including a

- i. term sheet;
- ii. process flow;
- iii. flow chart of fund raising process, including parties involved; and
- iv. plan for funding repayments.

The AMBIF SSF may be used to submit relevant issuance documentation and other information to the BSP-IOD in the event of an offer as an Exempt Transaction, such as those aimed at Qualified Buyers (see also Chapters IX and X).⁶ The filing for approval from the BSP is presently conducted by submitting physical forms and documents.

Step 1—(SEC): Submission of Registration Statement to, or Filing of a Notice of Exempt Transaction, with the Securities and Exchange Commission

At the time of the filing for BSP approval, the nonresident issuer or the underwriter of a bond or note will need to submit a Registration Statement to the SEC (in the case of public offer) or may file a Notice of Exempt Transaction with the SEC (in the case of, for example, an offer to professional investors [Qualified Buyers] only).

The submission of a Registration Statement to the SEC and its requirements follow the regulatory process detailed in section 4. In turn, the filing of a Notice of Exempt Transaction with the SEC follows the regulatory process described in section 5.

Step 2—(BSP): Approval from the Bangko Sentral ng Pilipinas

The BSP-IOD will review the application and relevant documents and may, at its discretion, ask for clarification or additional information.

In its review, the BSP will focus on the purpose of the issuance and use of proceeds, and any applicable prohibitions and planned activities in the FX or swap market resulting from the proceeds or funding of interest and redemption payments.

To ensure thorough verification and analysis of the documents and information submitted to the BSP-IOD, requests for foreign loan approvals are processed within a maximum of 30 banking days from the date when all BSP requirements have been submitted or complied with by the applicant.⁷

⁶ AMBIF, which is promoted by ABMF, offers the use of standardized documentation and disclosure information—in the form of the SSF—for the submission of requests for approval, or statutory filings, to the regulatory authorities, as may be required. AMBIF is applicable only to offers of debt securities to professional investors and the use of the SSF is presently only available in Hong Kong, China; Japan; Malaysia; the Philippines; Singapore; and Thailand.

⁷ The issuance of bonds and notes by a nonresident issuer to resident investors may be classified as a foreign loan by the BSP.

In the event of an inquiry from an issuer or underwriter on the status of a review, or the regulatory process and other matters in general, the BSP is committed to respond within 15 business days.

Provided that the documents are in order, the necessary information has been provided, and the review is satisfactory, the BSP-IOD will issue the approval (letter) for the bond or note issuance.

Should the issuance or transaction partake the nature of a foreign loan, a processing fee will be charged pursuant to Appendix 20 of the FX Manual.

Step 2—(SEC): Registration Statement Declared Effective by the Securities and Exchange Commission

SEC approval is only required when an offer is made to the public and a Registration Statement has been filed by the nonresident issuer or its underwriter with the SEC. This approval step is explained in detail in section 4.

Step 3—(Next Step) Onward: Application for Listing or Enrollment with the Philippine Dealing & Exchange Corporation

PDEX has a checklist for the listing or enrollment of exempt securities for resident issuers. The authority to issue and the compliance with regulatory requirements (BSP and SEC) for such issuance would be, among others, that which will be requested from the prospective issuer. For nonresident issuers, the requirements shall rely on and be amended accordingly based on the framework of the Philippine regulators (SEC and BSP) for domestic PHP-denominated issuances of nonresident issuers of securities.

The detailed steps for the listing (or enrollment) of a bond or note on PDEX follow the process outlined in Chapter III.I. Foreign governments and multilateral organizations are also eligible.

4. Regulatory Process for Public Offers

Under Rule 8.1 of the SRC, no securities shall be sold or offered for sale, or distributed by any person or entity within the Philippines unless such securities are duly registered with the SEC. This includes debt securities. The SEC needs to declare the Registration Statement effective before the actual issuance can be undertaken.

Exemptions from the need to file a Registration Statement are allowed under Sections 9 and 10 of the SRC, for Exempt Securities and Exempt Transactions, respectively. Please see section 5 for a description of the regulatory process applicable to such exemptions.

The need to file a Registration Statement and obtain SEC approval in the case of a public offer applies regardless of the domicile of issuer or the currency denomination of such bonds or notes. For a description of the complete regulatory process applicable to nonresident issuers, please see section 3. For the regulatory process for bonds or notes to be issued in a foreign currency, please refer to section 8.

No information relating to an offering of securities to the public shall be disseminated unless a Registration Statement has been filed with the SEC and the written communication proposed to be released contains the required information under SRC Rule 8.3.

The offer of debt securities requires the issuer to appoint an underwriter (SRC Rule 12.1.1) and a trustee to safeguard the interests of the bondholders (see Chapter III.R for details on the trustee). The following steps describe the actions to be taken by the relevant parties in the course of the issuance application and approval process.

Step 1—Filing of Registration Statement with the Securities and Exchange Commission (Application for Issuance Approval)

The issuer or underwriter for debt securities to be offered to the public needs to file a Registration Statement for said debt securities with the SEC. The Registration Statement is to be accompanied by a prospectus.

The form and sequence of the information in the prospectus are to follow the items contained in SEC Form 12-1, which represents the Registration Statement. The prospectus needs to contain the information required by SRC Rule 12.1 and Form 12-1, and shall be prepared in accordance with the requirements of SRC Rule 72.1. The contents of the prospectus will need to be worded in a way that can be understood by an ordinary person. According to SRC Rule 12.2.4, information contained in a prospectus shall not be incorporated by reference.

The Registration Statement shall include a copy of the trust indenture or trust agreement executed between the company and the trustee, as well as a description of the circumstances under which the trustee is required to act on behalf of the bondholders.

In the event that the issuer is planning to issue debt securities under the shelf-registration concept, the securities may be registered for an offering to be made on either a continuous or delayed basis in the future for a period not exceeding 3 years from the effective date of the Registration Statement under which they are being offered and sold. For a shelf-registration, the issuer will need to file a Registration Statement using SEC Form 12-1SR.

Part I of the Form 12-1 contains the items that are required in the prospectus, including the

- (i) risk factors and other information (Item 3),
- (ii) use of proceeds (Item 4),
- (iii) determination of offering price (Item 5),
- (iv) plan of distribution (Item 8),
- (v) description of securities to be registered (Item 9), and
- (vi) information with respect to the registrant (Item 11).

The individual subjects are further detailed in Annex C to the form.⁸ Part II contains items required for the Registration Statement but not required in the prospectus, such as additional information.

The issuer or underwriter will need to file three copies of Form 12-1(SR), each with the necessary supporting documents.

If the (debt) securities contained in the Registration Statement are intended to be listed on PDEX, a copy of the Registration Statement and all other pertinent documents, including any amendments, shall also be filed with PDEX. Two copies of the application for listing shall subsequently be filed with the SEC. For a description of the listing process, please refer to Chapter III.I.

⁸ Form 12-1, Form 12-1SR, and Annex C may be downloaded from the SEC website at <http://www.sec.gov/ph/forms-and-fees/secondary-license/>

Upon filing a Registration Statement, a filing fee of 10 basis points of the issued value of each tranche of securities shall be paid. The filing fees of the subsequent tranches shall be payable within 7 business days prior to commencement of the offer or sale of the securities.

The filing of the Registration Statement is to be announced by the issuer in national newspapers and certain other conditions need to be complied with (SRC Rule 12.5 [b]).

Step 2—Approval from the Securities and Exchange Commission (Registration Statement Effective)

The SEC will declare the Registration Statement effective or rejected within 45 days after the date of its filing, or by such later date to which the issuer has consented, unless the applicant is allowed to amend the Registration Statement. Within this timeframe, the SEC may, at its discretion, ask the issuer or underwriter for additional documents or information. The 45 days represent the SEC's obligation to act within that period under the regulations.

The SEC will review the Registration Statement (Form 12-1), the attached prospectus, and any additional information and documents provided, and may provide feedback as necessary. The SEC will declare the Registration Statement effective if it and the documents submitted are complete and the stipulated requirements have been complied with. At the same time, the SEC may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

The SEC will issue a Permit to Sell (the securities) and an Order of Registration (as evidence of the effective Registration Statement) to the issuer or underwriter, as the case may be, when the Registration Statement has been declared effective.

Step 3—Actual Offer for Sale or Subscription to the Public

Once the SEC has declared the effectivity of the Registration Statement, the issuer and the underwriter (or selling agents) may undertake the actual offer for sale or subscription to the public.

However, the (debt) securities contained in the Registration Statement shall not be offered for sale or sold unless the prospectus, or any information material which has been filed with the Registration Statement and containing the required disclosure information, has been widely disseminated and sufficient copies have been made available to interested parties. SRC Rule 8.1.3.4 defines what constitutes widely distributed.

According to SRC Rule 8.1.1.5, the sale of the (debt) securities contained in the Registration Statement may commence within 10 business days from the date of the effectivity of the Registration Statement, and continue until the end of the offering period or until the sale is terminated by the issuer. In the case of debt securities issuance under a shelf-registration, the issuance of a first tranche of securities is to commence within 10 business days from the date the Registration Statement becomes effective. Securities registered under the shelf-registration rule may be offered anytime and in multiple instances if such an offering is made within 3 years from the effective date of the Registration Statement.

If the sale is not commenced within 10 business days, the Registration Statement shall be cancelled. Likewise, if the remaining registered but unsold securities are to be offered after the completion or termination of the sale, an updated Registration Statement needs to be filed with the SEC prior to said offering or sale.

5. Regulatory Process for Exempt Transactions

This section describes the issuance processes for PHP-denominated bonds and notes as an Exempt Transaction, which refers to issuances that do not require the submission of a Registration Statement to the SEC. Exempt Transactions include private placements under the 19-lender rule (see Chapter III.E) and offers aimed at professional investors, which are also referred to as QB bonds (see Chapter III.N for the definition of Qualified Buyers). Offers of QB bonds and notes represent the wholesale, or professional, bond market in the Philippines. Qualified Buyers are expected to be able to make their own informed investment decisions despite the availability of limited or defined disclosure information. In contrast to the requirements for a public offering, the regulatory processes for QB bond and note issuances are fairly streamlined.

Section 10.3 of the SRC prescribes that in order for an issuer to secure an exemption from the official registration of debt instruments with the SEC (in the case of a public offer), an issuer must file a notice on which exemption under Section 10 is relied upon to qualify as an Exempt Transaction. This process is called Filing of a Notice of Exempt Transaction. A Notice of Exempt Transaction must be filed with the SEC, regardless of the type and nationality of the issuer.

However, as part of its measures to improve the bond market practices, the SEC no longer requires a Notice of Exempt Transaction to be filed, on the assumption that all public offers would require a Registration Statement. Nonresident issuers who have issued or plan to issue bonds under AMBIF, which has been adopted by the SEC, may file the AMBIF SSF instead of a Notice of Exemption.

No approvals need to be obtained but the SEC reserves the right to request a confirmation of the eligibility of an Exempt Transaction at any time. Applicable provisions for Exempt Transactions are contained in Section 10 of the SRC.

With respect to the BSP, the applicable rules and regulations on the issuance of bonds or notes in the domestic market depend on the (i) residency and type of issuer (whether financial or nonfinancial institution), and (ii) denomination of the bonds or notes.

In addition, the listing or enrollment of issued bonds and notes on PDEX enables visibility and/or trading, and continuous disclosure and pricing. For more details on listing or enrolling with PDEX, please refer to Chapter III.I.

There is no requirement on the use of an underwriter for a bond or note offering to Qualified Buyers. However, if an issuer wants to appoint an underwriter, the underwriter must be licensed by the SEC as a Capital Market Institution. At the same time, the issuer is typically represented by an underwriter who will file for exemption or submit applications for any BSP approvals and relevant documentation on the issuer's behalf.

The following steps will need to be observed when a resident issuer wants to issue bonds or notes to professional investors (Qualified Buyers) in the Philippines.

Step 1—Filing of a Notice of Exempt Transaction with the Securities and Exchange Commission (in Principle)

The issuer or underwriter of a bond or note aimed at professional investors (Qualified Buyers) in the Philippines may file a Notice of Exempt Transaction with the SEC (see earlier paragraphs for the latest SEC measures).

If the issuance of a bond or note is considered a repeat issue under a shelf-registration or other bond or note issuance program, a separate Notice of Exempt Transaction would not need to be filed.

If a filing is pursued, the cover letter for the filing of a Notice of Exempt Transaction is SEC Form 10.1. Further details are contained in the 2015 SRC Rules. However, not all fields in Form 10.1 relate to a Notice of Exempt Transaction.

The issuer or its underwriter would need to file five copies of SEC Form 10.1 with the SEC, one of which would need to be manually signed by a duly authorized person who, in case of a juridical person, shall be the president or equivalent in the jurisdiction of a nonresident issuer.

No fee is applicable for the filing of a Notice of Exempt Transaction to the SEC (please refer to Chapter VI for further information).

In the case of an issuance under AMBIF, the SEC has confirmed that the SSF may be used for the filing of the Notice of Exempt Transaction with the SEC, since the SSF was reviewed by the SEC and contains all relevant information required for the Filing of a Notice of Exempt Transaction, as detailed above. However, in line with the SEC measures to improve bond market practices, the filing of an SSF remains optional.

The SEC will not issue a confirmation of a Notice of Exempt Transaction, an SSF, or an approval letter unless a certification is specifically requested by the issuer (see section 9 for details). Instead, the issuer and/or underwriter may proceed with the bond or note issuance or offer for sale to Qualified Buyers following a cooling-off period of 2 business days.

Step 2—Offer of an Exempt Transaction

A cooling-off period of 2 business days from the filing of a Notice of Exempt Transaction, if so practiced, will need to be observed before the issuer or its agent(s) may offer the bonds or notes for sale and commence to procure the listing of the bonds or notes simultaneously.

6. Obligations after Approval and after Issuance

Postissuance obligations to the SEC apply mostly to the offers of debt securities to the public, and are detailed below. The reporting obligations to the BSP apply regardless of the type of issuance, in cases of the issuer being a BSP-regulated entity, or if a nonresident issuer or nonresident investors are part of the transaction.

a. Public Offers

The issuer or their underwriter will need to file a written notification of completion or termination of the offering with the SEC within 3 business days from the completion or termination of the offer of the securities. The SEC does not

specify a specific format for the notice, but any report must contain the actual amount of securities sold and a breakdown of securities taken up by individual and institutional buyers.

b. Exempt Transactions

The SEC does not require any filing or reporting once an offer under an Exempt Transaction, such as an offer to Qualified Buyers, is completed with the issuance of the bond or note. However, a domestic issuer is expected to report in its annual report that an offer to Qualified Buyers was made during the reporting period. In addition, underwriters are also expected to include in their quarterly reports all securities underwritten, whether the offer made was as an Exempt Transaction or not.

At the same time, if an offer is made as an Exempt Transaction, the issuer has the burden of proof that the resulting bond or note issuance qualifies as an Exempt Transaction under Section 10 of the SRC throughout the lifecycle of the bond or note. Under Section 10 of the SRC and its related IRR (6.1), the SEC has the right to challenge such an exemption at any time. The SEC also has the right to demand a certification, if necessary.

To further ensure compliance with the exemption claimed by an issuer under Section 10.1 of the SRC, the SEC looks to the underwriter—licensed by the SEC—to observe the applicable provisions and selling and transfer restrictions under the law.

If the event that specific postissuance reporting provisions to investors or other parties have been agreed between parties involved in the issuance, such obligations would need to be observed according to agreements reached.

Should an offer to Qualified Buyers or Exempt Transaction be listed or enrolled on PDEX, the reporting requirements after listing or enrollment follow the prescriptions in the PDEX Rules (Rule 7, Listing and Enrollment). For relevant details, please see section G on disclosure requirements and Chapter III.I for the provisions relating to listing and enrollment with PDEX.

c. Reporting Obligations to the Bangko Sentral ng Pilipinas

The BSP requires submission of mandated reporting from institutions under its supervision. Reports specifically under the purview of the IOD involve data on FX transactions and are listed under Part Six of the FX Manual.⁹ These reporting requirements include, among others, the Consolidated Report on FX Assets and Liabilities, Foreign Trade Transactions, and Foreign Currency Loans and Related Transactions.

The following are the reporting requirements for cross-border deals involving the purchase and sale of bonds issued by residents regardless of denomination:

- Resident companies and/or entities intending to obtain medium- and long-term foreign loans or issue bonds, notes, or other debt securities offshore shall submit to the BSP, through the IOD, their Annual Foreign Borrowings Plan using the prescribed form (Annex D.3 of the FX Manual). The timetable and any changes to the submitted plan shall be communicated to the BSP-IOD within 2 weeks upon the availability of information for monitoring and programming purposes (Section 22.2 of the FX Manual).

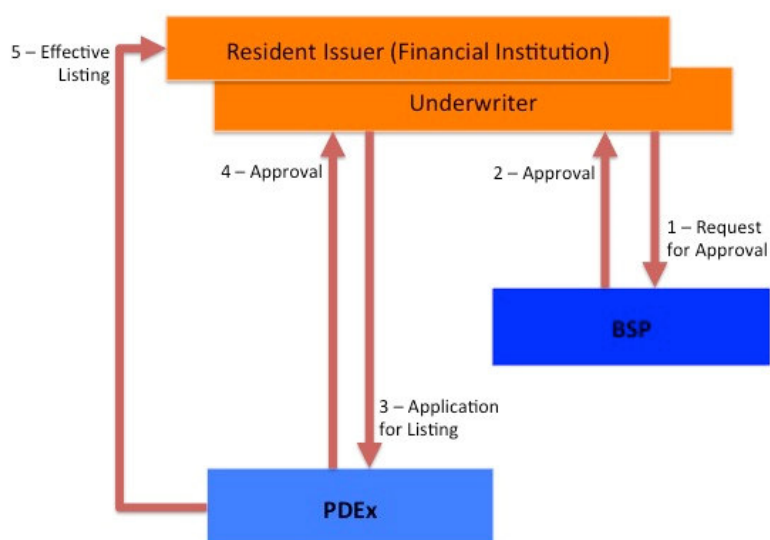
⁹ The FX Manual may be downloaded from the BSP website at <http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT.pdf>

- All foreign borrowings—regardless of maturity, creditor, source of FX funds, and whether or not they are approved or registered by the BSP (in the case of private sector loans)—are required to be reported monthly to the BSP- IOD using the prescribed forms (Annexes E.1, E.2, E.3, and E.4 of the FX Manual) within the required deadline until the obligations are fully extinguished (Section 22.4 of the FX Manual).
- The BSP also requires that a report shall be made as well on the disposition of bonds and/or notes proceeds under the Monthly Report on Disposition of Bonds and/or Notes Proceeds within 3 banking days from the end of each reference month until the bond and/or note proceeds are fully utilized and the obligation is fully paid.

7. Issuance Process for a Domestic Financial Institution

While the SEC is the principal regulatory authority for the securities market, Section 9.1(e) of the SRC exempts debt securities issued by banks from the need to file a Registration Statement with the SEC.

Figure 2.3: Regulatory Process Map—Issuance by Resident Financial Institution



BSP = Bangko Sentral ng Pilipinas, PDEx = Philippine Dealing & Exchange Corporation.
Source: ADB consultants for SF1.

BSP-supervised financial institutions (BSFIs) are allowed to issue bonds or notes without prior BSP approval except in cases when said bonds or notes are issued as capital instruments. The BSP approval process for issuance of bonds as capital instruments is described below and in Figure 2.3.

Step 1—Filing for Approval with the Bangko Sentral ng Pilipinas

BSFIs shall submit to the appropriate supervising department of the BSP a request for approval of the intended bond issuance, together with all necessary documents and information specified in the relevant Manual of Regulations for Banks (MORB) provisions.

Step 2—Approval from the Bangko Sentral ng Pilipinas

The appropriate supervising department under the BSP Supervision and Examination Sector shall evaluate the application and may, at its discretion, ask for clarification or additional information from the BSFI. The said department shall also evaluate the compliance of the parties chosen by the BSFI to act as underwriter or arranger, registry, selling agent, market maker, and public trustee with the BSP-prescribed qualification requirements.¹⁰ If in order, the appropriate supervising department shall elevate the application to the Monetary Board for approval. The BSFI shall be notified of the Monetary Board's decision.

There is no fee charged for this BSP approval process.

Step 3—(Next Step) Onward: Application for Listing or Enrollment with the Philippine Dealing & Exchange Corporation

PDEX has a checklist for the listing or enrollment of exempt securities for resident issuers. The authority to issue and compliance with (BSP) regulatory requirements for such issuance would be, among others, that which will be requested from the prospective issuer.

The steps for the listing or enrollment of a bond or note with PDEX follow the process as described in Chapter III.I.

Long-term negotiable certificates of time deposit issued by banks are required to be listed on an organized market, pursuant to BSP regulation.

8. Regulatory Process for Foreign-Currency-Denominated Debt Instruments

The issuance of bonds and notes in currencies other than Philippine pesos is possible in the Philippines; for example, a number of USD-denominated bonds and notes have been issued by the Government of the Philippines. Foreign currency bonds and notes require prior approval by the BSP.

The following steps will need to be observed when a resident issuer wants to issue bonds or notes in a foreign currency in the Philippines.

¹⁰ Subsection X119.4(c) of the MORB emphasizes that "the issuing bank shall be held accountable for ensuring the continuous compliance by its chosen participant [financial institutions] with the qualification requirements prescribed by the Bangko Sentral [ng Pilipinas]. As such, the issuing bank shall make a careful and diligent evaluation of the parties whom it shall engage to act as underwriter [or] arranger, unsecured subordinated debt registry, selling agent, market maker, and public trustee of its [unsecured subordinated debt registries]."

Step 1—Filing for Approval with the Bangko Sentral ng Pilipinas

Please refer to the regulatory process under section 2, Issuance Process for Nonresident Issuer (other than Financial Institution). The governing BSP department is the IOD.

Step 2—Approval from the Bangko Sentral ng Pilipinas

Please refer to the regulatory process under section 2, Issuance Process for Nonresident Issuer (other than Financial Institution). The review and issuance of the approval is handled by the BSP-IOD.

Step 3—Filing of Registration Statement or Notice of Exempt Transaction with the Securities and Exchange Commission

The filing of a Registration Statement (for public offers) or the in-principle filing of a Notice of Exempt Transaction (e.g., for offers to Qualified Buyers) with the SEC follows the regulatory process described in sections 4 and 5, respectively.

Step 4—(Next Step) Onward: Application for Listing or Enrollment with the Philippine Dealing & Exchange Corporation

The steps for the listing (or enrollment) of a bond or note on PDEX follow the process, which is detailed in Chapter III.I. The PDS Group is currently only able to clear and settle USD-denominated bonds.

The regulatory process for nonresident issuers issuing bonds or notes in a foreign currency is principally the same as for resident issuers, since all relevant regulatory authorities and PDEX (as the market institution and listing place) are already involved. For more details, please refer to section 2, Issuance Process for Nonresident Issuer (other than Financial Institution).

9. Possible Additional Process: Confirmation of Qualified Buyer Bond Eligibility by the Securities and Exchange Commission

As referenced in section 5 of this chapter, the confirmation of QB bond eligibility is a potential additional regulatory process specific to the Philippines and to the issuance of bonds or notes to Qualified Buyers under the Exempt Transactions provided for in Section 10.1 of the SRC.

Although in principle this potential process would be a direct continuation of the Filing of a Notice of Exempt Transaction described above, it should be seen as a distinctly separate step in the overall regulatory process for the issuance of bonds or notes since it is an optional regulatory process and carries a significant fee. In addition, the distinction was made clearer by the SEC no longer requiring the filing of a Notice of Exempt Transaction itself (see section 5).

The function of the confirmation process is to confirm to the issuer or underwriter, as well as potential Qualified Buyers, intermediaries, and the market at large, the eligibility of the bonds or notes as an Exempt Transaction under Section 10 of the SRC, and the reduced obligations on the issuer and underwriter in terms of initial and continuous disclosure. In such cases, the issuer and/or underwriter no longer carry the burden of proof to stakeholders that the QB bond or note qualifies as such.

The process of confirmation by the SEC carries a fee, as stipulated in Section 10.3 of the SRC, which is presently calculated as “...one-tenth of 1% of the maximum

aggregate price or issued value of the securities.”¹¹ This formula could amount to a substantial expense for the issuer. However, the recent Financial Sector Neutrality Act may result in the fee being converted to a flat amount. The SEC is now looking at applying the provisions in this act for its purposes.

The decision to obtain a confirmation of the QB bond status lies with the issuer and/or underwriter, and is not mandatory for enrollment on PDEX. The individual regulatory processes for QB bond issuance have been described in the earlier sections, according to issuer type and other considerations.

At the same time, the SEC may challenge a claimed exemption at any time, and may also insist on a confirmation of said exemption, if necessary.

Step 1—Request for Confirmation of Eligibility of Qualified Buyer Bond by the Securities and Exchange Commission

Any resident or nonresident issuer, regardless of issuer type, may opt to request a confirmation of the eligibility of a bond or note issued as a QB bond or as an Exempt Transaction.

The issuer or underwriter will need to file SEC Form 10.1 (Confirmation of Exempt Transaction) with the SEC, indicating the claimed exemption, as well as request for the confirmation of the stated exemption.

The SEC charges a fee for a request of confirmation, equivalent to 10 basis points on the face value of the bond or note.

Step 2—Securities and Exchange Commission Provides Confirmation of Eligibility for a Qualified Buyer Bond

The SEC reviews the request for Confirmation of Exempt Transaction and any relevant documents and may, at its discretion, ask for clarification or additional information.

Provided that the request for the Confirmation of Exempt Transaction and supporting documents are in order, the necessary information has been provided, and the review is satisfactory, the SEC will issue a Confirmation of Exemption for the bond or note issuance to the issuer and/or underwriter.

G. Continuous Disclosure Requirements in the Philippine Bond Market

Disclosure requirements for public offers are prescribed in the SRC as part of the prospectus requirements. The SRC and the 2015 SRC IRR also provide for specific information disclosure as part of Exempt Transactions (e.g., offers to Qualified Buyers).

Continuous disclosure—for both public offers and offers to Qualified Buyers—is ensured through the obligations of the issuer to observe the 2015 SRC IRR and the disclosure requirements of PDEX.

¹¹ Securities and Exchange Commission. Securities Regulation Code. www.sec.gov.ph/laws/srcode.html

1. Public Offers

For public offers of debt securities in the Philippines, the prospectus is the key disclosure document. The prospectus requirements follow Rule 12-1 of the SRC, including Annex C, and contain all necessary information for the investing public to make an informed decision on the investment.

After the SEC declares effective the Registration Statement, and with it the submitted prospectus, some of the key information in the prospectus is required to be updated on a periodic basis. Updates on key information in the Registration Statement are made through SEC Form 17-C (Current Report), SEC Form 17-Q (Quarterly Report), and SEC Form 17-A (Annual Report), which are filed with the SEC as part of corporate reporting requirements. This includes the filing of financial statements to the SEC and also applies for issuances under shelf-registration. Securities registered under this rule may be offered anytime and in multiple instances as long as such is made within 3 years from the effective date of the Registration Statement. However, the issuance of succeeding tranches will require an updated prospectus.

As part of the revised 2015 SRC Rules, the SEC promulgated the use of financial statements that can remain valid for 180 days as part of the disclosure information in a prospectus in line with the typical practice in other ASEAN markets. The submission of financial statements is part of the reporting requirements of companies registered with the SEC.

At the same time, Rule 12.2.4 of the SRC prohibits any information being incorporated into the prospectus by reference. As such, material changes to the circumstances or business of the issuer will need to be made available to investors via an updated offer document.

In the event that an issuer is a company with securities issued and listed on PDEX or the Philippine Stock Exchange, the issuer is already subject to the rules for the disclosure of financial and other material information under the Listing Requirements of PDEX or similarly applicable listing and disclosure requirements of the Philippine Stock Exchange or other exchanges.

2. Exempt Transactions (Private Placements)

A typical instance of a private placement is the issuance of bonds or notes to professional investors under exemptions or concessions from full disclosure or defined regulatory processes. These issuances, which also take into account the 19-lender rule, are called Exempt Transactions, pursuant to the provisions of Rule 10 of the SRC.

Bonds or notes issued as Exempt Transactions, including those offers aimed at Qualified Buyers, which are referred to in the market as QB bonds, typically fulfill the traditional expectations of the private placement concept in which the target group is professional investors and the issuance is subject to exemption from full disclosure under applicable regulations and, in the case of the Philippines, registration with the SEC. Hence, the issuance of QB bonds can be considered a private placement. The previous definition for private placement in regulations and market practice is no longer in use in the Philippines.¹² While the term private placement is not mentioned in the 2015 SRC IRR, the term continues to be used in market practice.

¹² Originally, the term "private placement" was only used in regulations and market practice in case of an issuance to a maximum number of 19 investors, regardless whether professional or not, owing to specific concessions existing for distributions to no more than this number of investors in the relevant tax regulations. Subsequently, market practice adopted the term "corporate notes" for such private placements. The Bureau of Internal Revenue ruled in 2012 that issues with 19 investors or fewer are subject to a 20%

For more information on private placement as an issuing method for bonds or notes in the Philippines, and the criteria for exemption from full disclosure, please refer to Chapter III.E.

Information and disclosure requirements for Exempt Transactions, including QB bonds, are defined in line with expectations from market participants on private placements. The IRR related to Section 10.1(k) of the SRC (Subsection 4.d) prescribe the Restrictions for Exempt Transactions, such as QB bonds, and require that the following information be provided to potential investors:

- (i) the exact name of the issuer and its predecessor, if any;
- (ii) address of its principal executive offices;
- (iii) place of incorporation;
- (iv) exact title and class of the security;
- (v) par or stated value of the security;
- (vi) number of shares or total amount of securities outstanding at the end of the issuer's most recent fiscal year;
- (vii) name and address of the transfer agent;
- (viii) nature of the issuer's business;
- (ix) nature of products or services offered;
- (x) nature and extent of the issuer's facilities;
- (xi) name of the chief executive officers and members of the board of directors;
- (xii) issuer's most recent balance sheet and profit and loss and retained earnings statement for each of the preceding 2 fiscal years, or such shorter period as the issuer (including its predecessor) has been in existence;
- (xiii) whether the person offering or selling the securities is affiliated, directly or indirectly, with the issuer;
- (xiv) whether the offering is being made directly or indirectly on behalf of the issuer, or any director, officer, or person who owns directly or indirectly more than 10% of the outstanding shares of any equity security of the issuer and, if so, the name of such person; and
- (xv) information required under paragraph 1 of the relevant IRR.

In cases where the issuer is a reporting company under Section 17 of the SRC, a copy of its most recent annual report (SEC Form 17-A) may be used to provide any of the required information. In contrast to public offers, the incorporation by reference of financial and other information into the offer document to Qualified Buyers is permitted.

In addition to the offer document—such as an information memorandum, offering memorandum, or term sheet, as well as related correspondence to Qualified Buyers—an issuer must make explicit reference to Section 10.1 (L) of the SRC and give their commitment that said offer is limited to Qualified Buyers, thereby constituting an Exempt Transaction under the law. The IRR related to Section 10.1 (1.c) of the SRC prescribe the following statement in boldface and prominent type:

The securities being offered or sold have not been registered with the [SEC] under the [SRC], any future offer or sale thereof is subject to registration requirements under the [SRC] unless such offer or sale qualifies as an Exempt Transaction.

3. Disclosure for Securities Listed on the Philippine Dealing & Exchange Corporation

The issuer of debt securities listed or enrolled on PDEX needs to disclose all material information, which may affect the price or value of issue or the decision to buy, sell, or hold the admitted security during the tenor of the debt securities. The obligations include the submission of periodic reports such as the annual report, quarterly report, and audited financial statements, as the case may be.

H. Self-Regulatory Organizations in the Philippine Bond Market

In the Philippines, an SRO is an organized exchange, registered clearing agency, or any organization or association registered as an SRO under Section 39 of the SRC to enforce compliance with relevant provisions of the code and its rules and regulations. It is mandated to make and enforce its own rules, which have been approved by the SEC, its members, and/or its participants. It is an organization that enforces fair, ethical, and efficient practices in the securities and commodity futures industries, including securities and commodity exchanges. PDEX is an SEC-registered SRO for the Philippine bond market.

1. Philippine Dealing & Exchange Corporation

PDEX was incorporated in 2003 to provide the trading infrastructure for the fixed income market. As an SEC-registered exchange and an OTC market operator, PDEX operates the organized secondary market for the trading of fixed income securities, which includes both government and corporate securities.

PDEX, as an SRO, has been given authority by the SEC under the IRR of the SRC to make and enforce its own rules; monitor and enforce compliance with securities laws and regulations; and enforce fair, ethical, and efficient practices in the securities market with the primary objective of investor protection. It enables the maintenance of a level playing field among players in the market to assure investors of fairness and safety in the marketplace.

Under Section 39 of the SRC, the SEC granted PDEX the license to act as an SRO for the inter-dealer, inter-professional, and public markets. As an SRO, PDEX has promulgated the PDEX Rules to govern all transactions conducted on the PDEX trading platform for fixed income securities.

In July 2006, the SEC formally recognized PDEX as an SRO in the inter-dealer market. In the same year, the SEC issued Memorandum Circular No. 14 on Rules Governing the OTC Markets (OTC Rules), which included government securities. The OTC Rules directed that “no broker or dealer shall participate in an OTC market unless said broker or dealer is a member of an SRO that has been registered with the [SEC] for the purpose of regulating and supervising the activities of the broker or dealer in an OTC market.”

In November 2007, the SEC expanded the SRO registration of PDEX to cover the inter-professional market. In January 2008, PDEX was granted SRO status for the OTC market, which resulted in the coverage of all government securities trading activities.

More information on PDEX and its organized bond market can be found in other sections in Chapters II, III, and IV in the Philippines Bond Market Guide that deal with the listing, trading, and reporting of debt securities.

I. Rules Related to Market Participant Registration, Licensing, and Trading Participants

Licensing in the context of the Philippine bond market takes on more than one meaning. In addition, the licensing or registration of market participants in the Philippine bond market depends on the nature of the participants and the activities they undertake, as explained in the following sections.

Being the corporate regulator, the SEC initially licenses a company to conduct its business upon its corporate registration. This is also referred to as the primary license and applies to all institutions active in the Philippines, including banks.

1. Registration and Licensing of Bond Market Participants

As the regulatory authority for the Philippine capital market, the SEC registers participants in the bond market who are buying and selling securities, engage in market-making activities, or act as transfer agents. In addition, the SEC also specifically licenses the underwriting of securities. This is referred to as a secondary license—the primary license being the company registration—in domestic market terms. Individuals acting on behalf of these Capital Market Institutions are also required to be registered or licensed, and are collectively referred to as Capital Market Professionals. The provisions for registration and licensing of institutions and individuals, respectively, are contained in Chapter VIII of the SRC (Regulation of Securities Market Professionals). The SEC maintains a list of institutions and individuals on its website.¹³

At the same time, the BSP grants license for authority to engage in banking and quasi-banking functions as provided under Section 6 of the General Bank Law. This is also referred to as a secondary license. While the license allows BSFIs to participate in the bond market, additional BSP accreditation and/or SEC authorization (registration or licensing) is required for certain capital market activities including but not limited to securities registry, securities custodianship, central securities depository, and becoming a GSED.

2. Admission as Trading Participants

In turn, PDEX admits capital market intermediaries as Trading Participants to its Fixed Income Securities Market. According to the PDEX Rules, as amended, a Trading Participant shall be any person that has been qualified to trade on the PDEX trading system. There are three types of Trading Participants:

- i. Dealing Participants who may be market-making participants as defined in the PDEX Rules;
- ii. Qualified Investor Participants who may opt not to be members of the SRO, and hence are not bound by the PDEX Rules but rather by the pertinent agreements; and
- iii. Brokering Participants.

At the time of the compilation of this Bond Market Guide, PDEX had admitted 41 Fixed Income Dealer Members, 32 Fixed Income Broker Members and an additional 4 Broker Members that were accredited as Voice Brokers, and 3 Qualified Investor Participants.

¹³ <http://www.sec.gov.ph/public-information-2/registered-firms-individuals-and-statistics/registered-firms-and-individuals/>

Trading Participants may be admitted to the PDEX markets under the applicable PDEX Rules listed below:

Rule 1.3-1.d: All Trading Participants should, in cases where the applicant is a member of another [SRO] and/or duly accredited broker–dealer association, have a certificate from such other SRO and/or broker–dealer association certifying its good standing thereat and absence of derogatory record for 3 years immediately prior to the application for admission.

Rule 1.7.b: A Trading Participant shall appoint an Associated Person if the Trading Participant is a Trading Participant of another SRO and the Associated Person is an officer even with respect to such other SRO; they must be in good standing at such other SRO.

J. Philippine Dealing & Exchange Corporation Rules Related to Bond Listing, Disclosure, and Trading

PDEX has issued a comprehensive set of rules for the listing, related disclosure, and trading of bonds and notes on its market. The PDEX Rules are divided into main rules that serve as chapters and each has a number of specific individual prescriptions.

The PDEX Rules govern Trading Participants and their trading activities. Trading conventions are referenced only and are separately agreed among Trading Participants and PDEX. Rule 5 is dedicated to investor protection, including in the event of the failure of a Trading Participant. The listing and enrollment of debt instruments and the related initial and continuous disclosure is prescribed in Rule 7 and its provisions, which contain admission criteria for issuers and eligible securities. Provisions on compliance, market surveillance, and disciplinary measures are contained in Rule 15. PDEX Rules likewise contain provisions on how transactions conducted on the trading platform proceed to settlement.

PDEX has also issued distinct rules for the repo and securities lending programs, officially known as the PDEX Inter-Professional Repurchase Agreement Market Program Rules and Securities Lending Transactions Program Rules, respectively. These rules are available from the PDS Group website.¹⁴

In addition to the PDEX Rules, the PDS Group has also issued the PDTC Rules, which govern the depository services provided for debt securities.

K. Market Entry Requirements (Nonresidents)

1. Nonresident Issuers

Pursuant to Section 31.3 of the FX Manual, a nonresident's issuance of bonds, notes, or other similar instruments in the domestic market shall require BSP approval before execution thereof. There is no quota or allocation of issuance amounts in Philippine pesos for nonresident issuers.

Prior BSP approval shall also be obtained by the nonresident issuer should it seek to access the domestic banking system in the Philippines (e.g., in the form of collection of issuance proceeds through underwriters, and activities in the FX or swap market). Annex D.2 of the FX Manual contains the actual application form for approval and data requirements for submission to the BSP.

¹⁴ See http://www.pds.com.ph/index.html%3Fpage_id=852.html

The SEC does not differentiate between resident and nonresident issuers. Nonresident issuers wishing to use the proceeds from a PHP-denominated bond or note aimed at Qualified Buyers in a foreign currency may require a policy decision by the SEC prior to filing a Notice of Exempt Transaction (see also section F in this chapter).

Nonresident issuers may list or enroll their debt instruments aimed at Qualified Buyers on PDEX, depending on the SEC framework. For more details on PDEX and the regulatory processes of the BSP and SEC, please refer to the relevant sections in this chapter.

2. Foreign Investors

There are no restrictions on nonresident investors purchasing bonds, money market instruments, or other portfolio investments. There is no investor registration concept.

Nonresidents who want to invest in the domestic bond market must make their transactions via inward FX remittances converted into Philippine pesos through a local bank, an existing peso account, or from funds held in a resident foreign currency account converted into pesos.

To ensure that repatriation of the invested amounts and related income may be done without delay, the inward FX remittance should be registered with the BSP in the form of a Bangko Sentral Registration Document. Typically, the custodian or the bank handling the inward remittance will process the Bangko Sentral Registration Document on behalf of the investor and retain the document for future use.

L. Market Exit Requirements (Nonresidents)

1. Nonresident Issuers

Regulatory approval and registration (see also section M.2) are required if the foreign exchange needed to service the repatriation or outward remittance of dividends, profits, and earnings is sourced from domestic authorized agent banks (AABs) and AAB-foreign exchange corporations (AAB-forex corps).

2. Foreign Investors

Section 40 of the FX Manual prescribes that inward foreign investments duly registered with the BSP, or with a custodian bank duly designated by the foreign investor, shall be entitled to full and immediate repatriation of capital and remittance of dividends, profits, and earnings using FX to be purchased from AABs and AAB-forex corps.

Moreover, FX may be purchased from AABs and AAB-forex corps for outward remittance in an amount equivalent to the peso sales or divestments proceeds (including dividends, profits, or earnings thereon) of BSP-registered foreign investments in accordance with the procedures outlined in Appendix 11 of the FX Manual and supported by the documents prescribed under Items C.1 and C.2 of Appendix 1 thereof.

M. Regulations and Limitations Relevant for Nonresidents

Nonresidents are principally free to invest in the Philippine bond market but need to be aware of a number of relevant investment, currency, and FX provisions. More information may be found on the BSP website and at *AsianBondsOnline*.¹⁵

1. Investment

In general, there are no restrictions on foreigners purchasing bonds, money-market instruments, or other portfolio investments. Nonresidents seeking to invest in the local bond market are required to finance their transactions through inward FX remittances or from withdrawals against their foreign currency accounts. They must effect transactions through an authorized securities dealer or broker licensed by the SEC. Transactions can be initiated either locally or abroad.

2. Cross-Border Portfolio Investment

BSP regulations covering the inward foreign portfolio investments in the following instruments are found in Sections 32–43 of the FX Manual:

- (a) PHP-denominated securities issued onshore by the Government of the Philippines and other public sector entities;
- (b) securities of resident and nonresident enterprises listed at the Philippine Stock Exchange;
- (c) peso time deposits with an [AAB] with a maturity of at least 90 days; and
- (d) other PHP-denominated debt instruments issued onshore by private resident firms (such as bonds or notes, bills payables, or nonparticipatory preferred shares) [that are] not covered by Section 23 (Loans Requiring Prior BSP Approval) of the FX Manual.

These investments may be registered with the BSP through the IOD (item d) or with custodian banks in the Philippines (items a–c) to allow capital repatriation and remittance of profits, dividends, and earnings to be funded with FX purchased from AABs or AAB-forex corps. For this purpose, the procedures and documentary requirements for the registration of these investments are detailed in Appendix 10 of the FX Manual. Such minimum requirements include the original Certificate of Inward Remittance of Foreign Exchange, which contains information on the inward remittance of FX and/or its conversion to pesos through an AAB. A Bangko Sentral Registration Document shall be issued by the BSP evidencing registration of such investments.

However, the registration of inward investments with BSP is optional; that is, the investment need not be registered if FX will be not sourced from AABs or AAB-forex corps to fund repatriation of capital or remittance of earnings.

For purposes of opening an account with a broker or dealer, nonresident investors are required to disclose their true and full identity by accomplishing a Customer Account Information Form (or its equivalent) and specimen signature cards, and by submitting valid identification cards in accordance with the know-your-customer, or Customer Identification Program, of the broker or dealer in compliance with the requirements of the SRC and the Anti-Money Laundering Act, as amended.

Nonresidents may purchase and sell bonds on PDEX through their intermediaries and are free to repatriate their investment proceeds and income generated from the investments, subject to the prevailing FX provisions mentioned below.

¹⁵ See https://asianbondsonline.adb.org/philippines/structure/rules/investment_management.php

3. Currency and Foreign Exchange

The BSP-IOD implements and monitors rules and regulations on FX transactions and investments.

Nonresidents may purchase FX, or use FX to purchase Philippine pesos, from AABs, AAB-forex corps, and other non-bank entities operating as FX dealers or money changers, subject to specific requirements. The sale of FX is governed by the FX Manual, as amended, issued under Circular No. 645 dated 13 February 2009.¹⁶

Further practical information on FX rules is contained in the Frequently Asked Questions on BSP Rules on Foreign Exchange Transactions, which may be obtained from the BSP website.¹⁷

In addition to settlement for bonds and notes issued in Philippine pesos, the PDS Group is able to settle bonds and notes denominated in US dollars that are registered in the Philippines and listed on PDEX, as the Philippines features a domestic US dollar clearing and settlement system.

4. Import and Export of Currencies

Local currency. Previously, for amounts above PHP10,000, prior authorization was required from the BSP to import or export, bring into or take out of the country, or electronically transfer legal tender Philippine peso notes and coins, checks, money orders, or other bills of exchange drawn against banks operating in the country. Effective 15 September 2016, the BSP increased the amount of legal tender Philippine currency that may be brought into or out of the country from PHP10,000 to PHP50,000 to provide greater convenience to travelers to and from the Philippines.¹⁸

Foreign currency. There are no limits or restrictions on the amount of foreign currency or other foreign-currency-denominated bearer monetary instruments (e.g., traveler's checks) that may be brought into or out of the Philippines. However, for amounts exceeding USD10,000 or its equivalent, submission of a duly completed Foreign Currency and Other Foreign Exchange-Denominated Bearer Monetary Instruments Declaration Form (Annex K of the FX Manual) is required. The form is available at the Bureau of Customs desk at all international airports and seaports.

5. Bank Accounts in Domestic and Foreign Currency

Residents may open and maintain bank accounts in a foreign currency. Effective 15 September 2016, the BSP lifted the prohibition on the sale of FX by banks and their forex corporations for resident-to-resident transactions, including investments in foreign-currency-denominated investment instruments issued onshore by residents (except foreign currency bank deposits).

Nonresidents may open and operate accounts in Philippine pesos and foreign currencies with authorized banks in the Philippines, in line with prevailing bank operational requirements.

All peso deposit accounts of nonresidents, including foreign banks, opened and maintained with AABs operating in the Philippines shall be funded only by the following allowable sources listed under Section 3.1 of the FX Manual:

¹⁶ Copies of the FX Manual and its corresponding amendments, respectively, may be downloaded at <http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT.pdf> and http://www.bsp.gov.ph/regulations/reg_MORFXT_amendments.asp

¹⁷ See <http://www.bsp.gov.ph/downloads/Publications/FAQs/faqfxreg.pdf>

¹⁸ As revised under BSP Circular 922 dated 23 August 2016.

- (a) inward remittances of convertible FX;
- (b) peso income of nonresidents from, or peso sales proceeds of, properties in the Philippines allowed to be owned by nonresidents under existing laws;
- (c) onshore peso receipts of nonresidents from residents for services rendered by the former to the latter, for which the resident would have been entitled to buy FX from AABs and AAB-forex corps for remittance to the nonresident service provider;
- (d) peso receipts of expatriates working in the Philippines with contracts of less than 1 year representing salary, allowances, or other benefits;
- (e) onshore peso funds of foreign students enrolled for at least one semester in the Philippines, and nonresident Filipinos; and
- (f) peso proceeds from the onshore sale by nonresident issuers of their Philippine Stock Exchange-listed equity securities.

Depository AABs may sell FX of up to USD60,000 per day for the balance of peso deposit accounts of nonresidents that are funded by items (b)–(e) without the need for prior BSP approval, subject to the submission of a duly completed application to purchase FX (Annex A of the FX Manual).

6. Borrowing and Lending

There are no restrictions on domestic borrowing by foreign companies. In line with international standards for classifying loans, domestic borrowings include foreign currency loans obtained from domestic sources.

The BSP regulates foreign currency loans to ensure that principal and interest owed to creditors can be serviced in an orderly manner and with due regard to the economy's overall debt serving capacity.

Section 24 of the FX Manual indicates that loans of nonresidents from Foreign Currency Deposit Units and Expanded Foreign Currency Deposit Units, irrespective of maturity, do not require prior BSP approval unless such loans will be serviced using FX purchased from the AABs and/or AAB-forex corps in the country.

On the other hand, nonresident issuance of notes, bonds, or similar instruments in the domestic market shall require BSP approval before execution thereof, as prescribed under Section 31.3 of the FX Manual.

N. Regulations on Credit Rating Agencies

This section covers the regulations and requirements applicable to credit rating agencies (CRAs) operating in the Philippines and their business. For the actual credit rating requirements in the Philippine market and the application of such credit ratings in the issuance of bonds and notes, please refer to Chapter III.O.

In its Memorandum Circular No. 7 released in March 2014, the SEC announced the Guidelines on the Accreditation, Operations, and Reporting of Credit Rating Agencies, which govern the two domestic CRAs, Philippine Rating Services (PhilRatings) and Credit Rating and Investors Services Philippines (CRISP), in addition to the acceptance of international CRAs.

The relevant guidelines contain eligibility criteria for CRAs and detail the accreditation process, including the application procedure, as well as operating requirements

including rating definitions.¹⁹ With regard to the latter, the guidelines make reference to ADB's Handbook on International Best Practices in Credit Rating issued in December 2008. The handbook considered, among others, the International Organization of Securities Commissions' Statement of Principles Regarding the Activities of Credit Rating Agencies, which include principles on quality and the integrity of the rating process, independence and conflicts of interest, transparency and timeliness of rating disclosure, and confidential information.

The BSP recognizes and derecognizes domestic CRAs for bank supervisory purposes, in particular with regard to the risk-based capital adequacy ratio. Section X931 of the MORB provides the regulations governing the recognition and derecognition of domestic CRAs for bank supervisory purposes.

1. Philippine Rating Service Corporation

PhilRatings is the only domestic CRA in the Philippines recognized by the BSP and accredited by the SEC. The rating agency is also an affiliate of Standard and Poor's.

PhilRatings started providing credit rating services in 1985. It is 70%-owned by Motan Corporation and 30%-owned by CIBI Foundation, Inc. It was initially part of a company known as the Credit Bureau, Inc., which was established by the SEC, and the Financial Executives Institute of the Philippines in 1982 to serve as a third-party source of business and credit information. The credit rating function in the Philippines started in 1985 when Credit Information Bureau, Inc. began rating commercial paper as a requirement for registration with the SEC. BSP recognizes PhilRatings as a domestic CRA for bank supervisory purposes. PhilRatings was also accredited by the SEC as a CRA after compliance with the requirements under SRC Rule 12.1, subject to faithful compliance with the reporting and other requirements of said rule, applicable laws, circulars, rules, regulations, and further orders of the SEC. PhilRatings is a BSP-recognized domestic external credit assessment institution that can rate domestic debt issuances in relation to BSP's implementing guidelines of Basel II. A basic profile of PhilRatings can be found on its website.²⁰

2. Credit Rating and Investors Services Philippines

CRISP, a domestic CRA in the Philippines, was launched and received its accreditation as a CRA from the SEC in 2008. CRISP evaluates the creditworthiness of corporate entities who issue debt instruments that are offered to the public. Further information on CRISP is available from its website.²¹

¹⁹ See <http://www.sec.gov.ph/wp-content/uploads/2015/11/sec-memo-no.-7-s2014.pdf>

²⁰ See <http://www.philratings.com>

²¹ See <http://www.crisp.com.ph>