



# AMBIF Bond and Note Issuance Process in the Philippines

This chapter describes the regulatory processes and necessary steps to be observed for the issuance of bonds and notes to Qualified Buyers in the Philippines.

## Overview of Regulatory Processes

### Regulatory Processes by Corporate Issuer Type

To issue bonds and notes to professional investors in the Philippines, typically referred to as QB bonds or Exempt Transactions, a number of regulatory processes need to be observed. A Notice of Exempt Transaction has to be filed with the SEC, regardless of the type of issuer. 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.

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 is required to allow visibility and/or trading, and continuous disclosure and pricing. For more details, please refer to Chapter I.

Table 4 provides an overview of these regulatory processes by corporate issuer type. 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. Sovereign issuers may be subject to different regulatory processes.

### Regulatory Process Map: Overview

The regulatory process map shown in Figure 1 may 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 below.

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, such underwriter must be licensed by the SEC.

At the same time, typically, the issuer is 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.

Table 4: Regulatory Processes by Corporate Issuer Type

Type of Corporate Issuer	SEC	BSP	PDEx
<b>Resident issuer</b>			
Resident nonfinancial institution	O		X
Resident financial institution <sup>a,b</sup>	O	X	X
Resident issuing FCY-denominated bonds and notes	O	X	X
<b>Nonresident issuer</b>			
Nonresident nonfinancial institution	O	X	X <sup>c</sup>
Nonresident financial institution	O	X	X <sup>c</sup>
Nonresident issuing FCY-denominated bonds and notes	O	X	X <sup>c</sup>

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

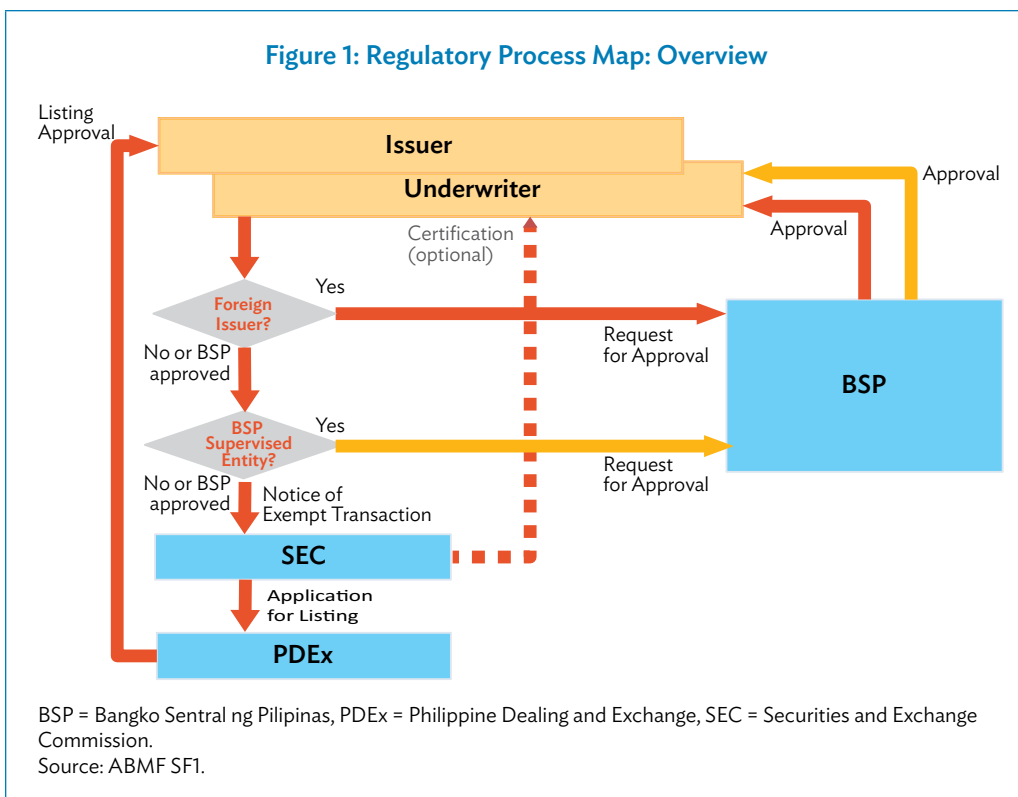
Notes: O indicates the need to file Notice of Exempt Transaction only; X indicates approval required.

<sup>a</sup> 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.

<sup>b</sup> Resident financial institutions in the Philippines include branches of nonresident financial institutions that fall under the supervision of the BSP.

<sup>c</sup> All matters related to nonresidents should abide by the BSP- and SEC-prescribed framework for nonresidents prior to PDEx approval.

Source: ABMF SF1.



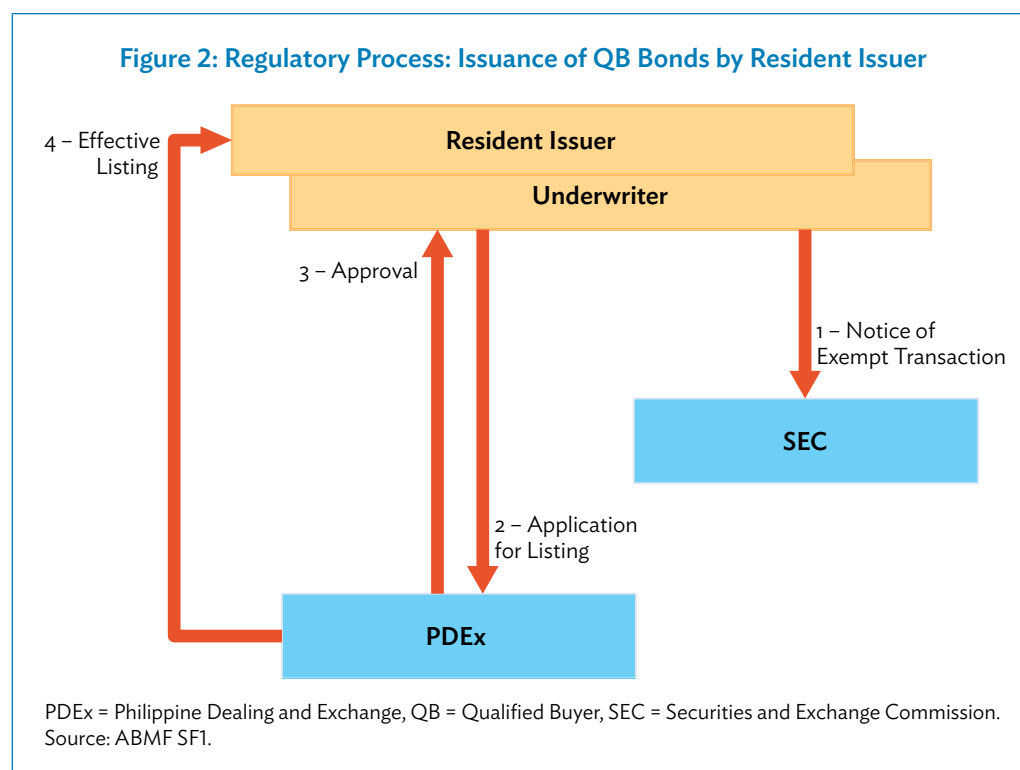
## Issuance Processes in Local Currency

This section describes the issuance processes for PHP-denominated bonds and notes aimed at Qualified Buyers (QB bonds) in the Philippines. In contrast to the requirements for a public offering, the regulatory processes for QB bond issuances are fairly streamlined.

Distinctions are made according to the prescribed issuance processes for individual corporate issuer types in the Philippines. Sovereign issuers are not covered in this section.

### Issuance Process for Resident Issuer (Other Than Financial Institution)

A resident issuer is defined as a corporate legal entity under the laws of the Philippines. The regulatory process for issuance of QB bonds by a resident is presented in Figure 2.



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

#### Step 1: Filing of a Notice of Exempt Transaction with the SEC

The issuer or underwriter of a bond or note aimed at professional investors (Qualified Buyers) in the Philippines will need to file a Notice of Exempt Transaction with the SEC.

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.

The SRC, Section 10.3 prescribes that, in order for an issuer to secure an exemption from the official registration of debt instruments with the SEC (public offer and full disclosure), 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.

The cover letter for the Filing of a Notice of Exempt Transaction is SEC Form 10.1. Further details are contained in the IRR of the SRC, the latest version of which came into effect in February 2015. Since Form 10.1 is a physical format, a copy is attached in Appendix 1 of the AMBIF Implementation Guidelines for the Philippines for easy reference. However, not all fields in Form 10.1 relate to a Notice of Exempt Transaction.

The issuer or its underwriter needs to file five copies of SEC Form 10.1 with the SEC, one of which needs 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.

There is a fee charged for the Filing of a Notice of Exempt Transaction to the SEC.

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

If a Notice of Exempt Transaction is filed with the SEC, the issuer has the burden of proof that the bond or note issuance qualifies as an Exempt Transaction under Section 10 of the SRC throughout the lifecycle of the bond or note. Under SRC Section 10 and its related IRR (6.1.), the SEC has the right to challenge such 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.

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.

The SEC will not issue a confirmation of the Notice of Exempt Transaction or an approval letter unless a certification is specifically requested by the issuer. 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: Application for Listing (or Enrollment) on PDEX

Filing a Notice of Exempt Transaction with the SEC (Step 1) is a prerequisite for the application for listing (or enrollment).

For a bond or note to be eligible to be traded in the Philippines, even in the OTC market, the issuer or underwriter of a bond or note aimed at professional investors (Qualified Buyers) will need to list or enroll the bond or note on PDEX. The practice of listing or enrollment is

stipulated in the OTC rules by the SEC and regulated in the PDEX Listing Rules. (For more details, please refer to Chapter I.) At the same time, trading is not compulsory (e.g., in cases when professional investors buy and hold only specific bond or notes).

A bond or note aimed at professional investors (Qualified Buyers) will need to be enrolled on PDEX. Enrollment is done by a sponsor, either the issuer or a trading participant. The sponsor is compelled to comply with the obligations to continuously disclose material information as may be specified in applicable SEC rules and regulations and the PDEX Listing Rules.

Both listing and enrollment result in the same downstream clearing and settlement processes and practices in the Philippines.

PDEX prescribes that an issuer or trading participant (for enrollment) needs to send to PDEX the application for listing or enrollment as well as the duly executed listing agreement, together with documents and disclosure items stipulated in the applicable PDEX listing checklist.

PDEX may, at any time, request for additional information or disclosure items from the issuer.

A fee is payable with the application; the PDEX schedule of fees for admitting securities applies to both listing and enrollment.

### Step 3: Approval from PDEX

Upon a complete submission of the documentary requirements, and assuming that there are no identified issues, PDEX has a target time frame of responding to the application for listing (enrollment) within 5 business days. The actual review process commences when an issuer or listing applicant starts the submission of the documentary requirements. For resident issuers, this process typically begins as early as 3 weeks before a targeted listing date.

If all documents and disclosure items are in order, and the applicable (listing) fees have been paid, PDEX will issue an approval letter to the issuer. PDEX may state specific conditions attached to the approval, if necessary.

### Step 4: Effective Listing (Listing Exercise)

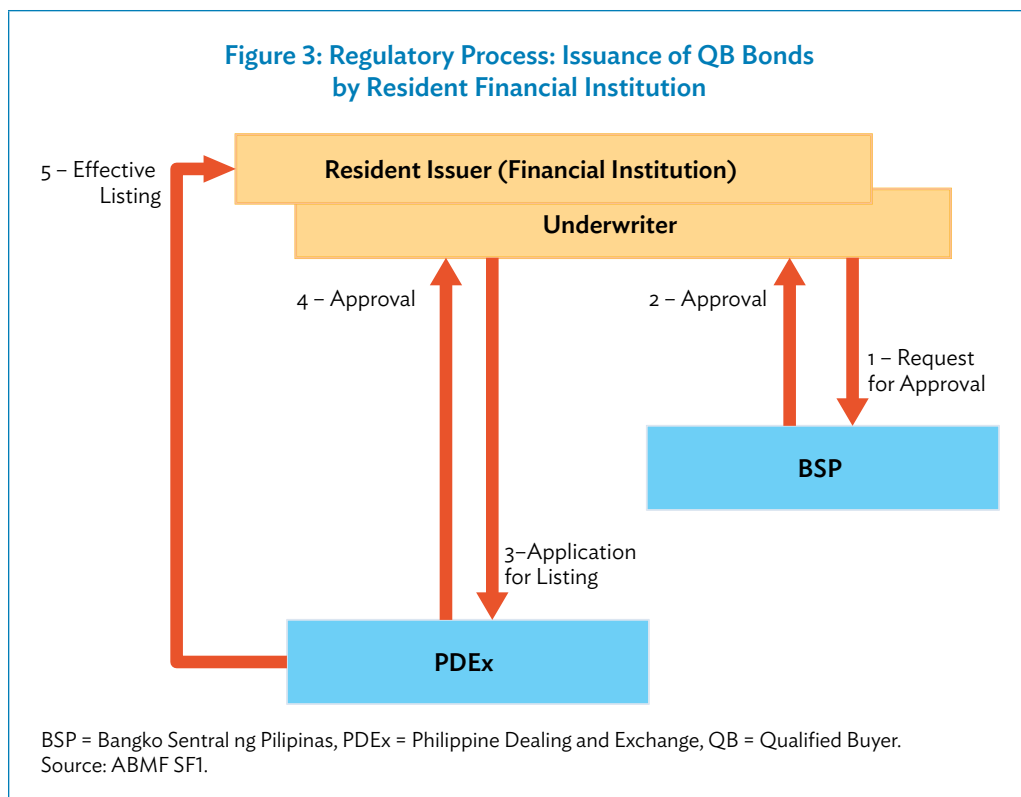
For the listing of the debt securities to take effect, PDEX has a target time frame of 3 business days after an approval is issued, on the assumption that no concerns have been identified and the required securities' details are complete and in order. PDEX Listing Rule 7.6.6 stipulates that PDEX shall announce the admission of new debt securities to its trading participants and the SEC, and publish the announcement on its website. A listing exercise shall likewise be held to formally and publicly announce the admission for secondary trading on the PDEX Trading Platform and to commence the trading of such debt securities.

The listing exercise is a brief ceremony held prior to the start of trading, highlighted by the ringing of a ceremonial bell at 9 a.m. (the start of the trading day) by the issuer of the debt securities, to mark the start of trading of its newly listed debt securities on the trading platform.

### Issuance Process for Resident Financial Institution

While the SEC is the principal regulatory authority for the securities market, the SRC, Section 9.1. (e) exempts debt securities issued by banks from the need to file a registration statement (or a Notice of Exempt Transaction from such registration statement) with the SEC.

If the issuer is a resident financial institution in the Philippines (a BSP-supervised entity), the issuance of bonds or notes, including to professional investors (Qualified Buyers) is permitted without approval (Figure 3). However, the BSP will need to approve such an issuance if the bonds or notes relate to Tier 2 capital, pursuant to MORB Section 39.2.2, regardless whether the issuer is a domestic institution or the branch of a nonresident institution. The BSP approval process for such cases is detailed below.



**Step 1: Filing for Approval with the BSP**

The issuer will have to file for approval with the Supervision and Examination Sector of the BSP, and include all necessary information and documents, as specified in the MORB provisions.

**Step 2: Approval from the BSP**

The BSP Financial Supervision Department will review the application and applicable documents and may, at its discretion, ask for clarification or additional information.

Provided that documents are in order, the necessary information has been provided, and the review is satisfactory, the BSP Financial Supervision Department will issue the approval (letter) for the bond or note issuance within 3 days from receipt of a complete application.

There is no fee charged for this BSP approval process.

**Step 3 Onward: Application for Listing (or Enrollment) on PDEx**

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) 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 on PDEx follow the process as described under Steps 2, 3, and 4 in Issuance Process for Resident Issuer (Other Than Financial Institution).

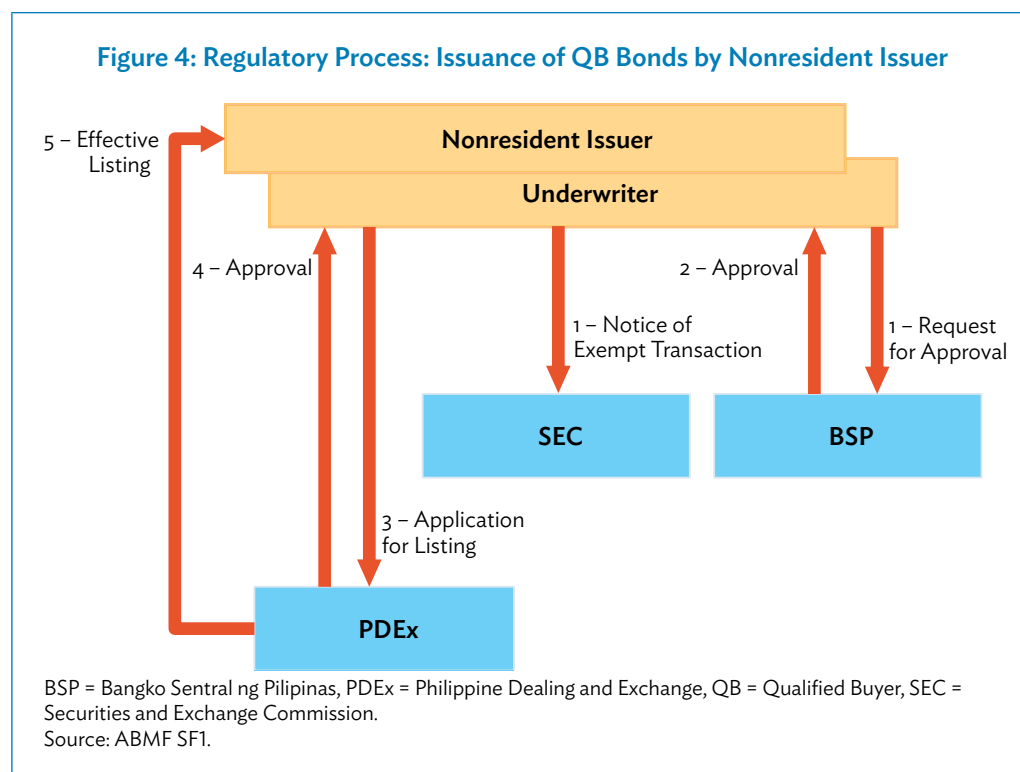
Subordinated debt issued by banks is required to be listed on PDEx in order to obtain regular pricing for said instruments.

**Issuance Process for Nonresident Issuer (Other Than Financial Institution)**

The process of issuing bonds or notes to professional investors (Qualified Buyers) involves multiple regulatory authorities if the issuer is a nonresident corporate issuer (Figure 4). The regulatory process for nonresident sovereign issuers may differ, and is not explained here.

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

As agreed among the regulatory authorities, the filing for approval with BSP and the filing of the Notice of Exempt Transaction with the SEC may be undertaken at the same time using



the SSF. The nonresident issuer will, however, need to obtain the necessary approval from BSP before proceeding with the issuance.

The listing or enrollment on PDEX completes this regulatory process.

#### Step 1 (BSP): Filing for Approval with the BSP

A nonresident issuer must obtain prior approval from the BSP before issuing bonds or notes in the Philippines. There is no quota or allocation of issuance amounts in Philippine pesos for nonresident issuers.

According to Section 31.3 of the BSP Manual of Regulations on Foreign Exchange Transactions, a bond or note issuance by a nonresident issuer requires the authorization of the BSP for the nonresident issuer 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 foreign exchange or swap market). Annex D.2 of the manual contains the actual form and data requirements for submission to the BSP.

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

1. term sheet;
2. process flow;
3. flow chart of fund raising process, including parties involved; and
4. plan for funding repayments.

The SSF may be used to submit relevant issuance documentation and other information to the BSP. The filing for approval from the BSP is presently conducted by submitting physical forms and documents.

#### Step 1 (SEC): Filing of a Notice of Exempt Transaction with the SEC

At the same time of the filing for BSP approval, the nonresident issuer or their underwriter of a bond or note aimed at professional investors (Qualified Buyers) in the Philippines will need to file a Notice of Exempt Transaction with the SEC.

The Filing of a Notice of Exempt Transaction with the SEC follows the regulatory process described above.

If the issuance of a bond or note is considered to be 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.

Nonresident issuers wishing to use the proceeds from a PHP-denominated bond or a note in foreign currency may require a policy decision by the SEC prior to filing a Notice of Exempt Transaction.

#### Step 2: Approval from the BSP

The BSP International Operations Department 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, any applicable prohibitions, and planned activities in the foreign exchange or swap market resulting from the proceeds or funding of interest and redemption payments. The BSP is also reviewing whether the issuance complies with the rules and regulations of other regulatory agencies.

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

There is no fee charged for this BSP approval process.

### Step 3 (Next Step) Onward: Application for Listing (or Enrollment) on PDEX

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 steps for the listing (or enrollment) of a bond or note on PDEX follow the process as described under Steps 2, 3, and 4 in Issuance Process for Resident Issuer (Other Than Financial Institution). There is no distinction made between resident and nonresident issuer types at PDEX. Foreign governments and multilateral organizations are also eligible.

### Issuance Process for Nonresident Financial Institution

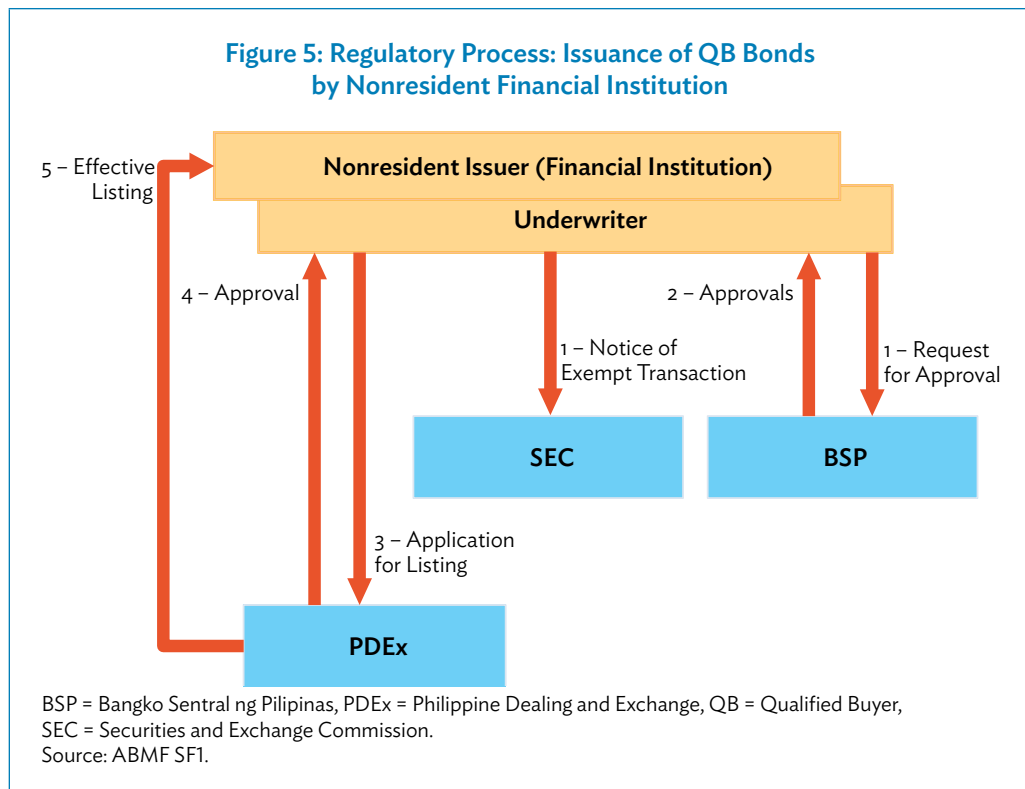
The process of issuance of bonds or notes to professional investors (Qualified Buyers) for nonresident financial institutions is much the same as for other nonresident issuers described above. However, part of the process of approval for a nonresident financial institution are the added requirements of the BSP's Financial Supervision Department under the BSP's remit of governance of the activities of banks and other financial institutions in the Philippines (Figure 5).

The steps described below need to be observed when a nonresident financial institution wants to issue bonds or notes to professional investors (Qualified Buyers) in the Philippines.

Again, the nonresident financial institution may file the request for approval with the BSP and the Notice of Exempt Transaction with the SEC at the same time. The SSF may be used for the submission of relevant issuance information in both cases. Since approval from the SEC is not required, the nonresident issuer will have to await BSP approval before proceeding with the intended issuance.

### Step 1 (BSP): Filing for Approval with the BSP

In principle, the same regulatory process described under Issuance Process for Nonresident Issuer (Other Than Financial Institution) applies; at the same time, BSP may apply additional



prudence in the review of this filing for approval, in particular with regard to the proposed use of proceeds raised from the bond or note issue.

As an additional input into the regulatory process for nonresident financial institutions, the BSP Financial Supervision Department may have specific requirements of the issuer.

#### Step 1 (SEC): Filing of a Notice of Exempt Transaction with the SEC

Like all issuers intending to issue bonds or notes aimed at professional investors (Qualified Buyers) in the Philippines, a nonresident financial institution or their underwriter will need to file a Notice of Exempt Transaction with the SEC. The process principally follows the regulatory process described above. At the same time, the SEC would typically want to receive specific information from the nonresident financial institution on the use of proceeds, in particular if the proceeds are intended for on-lending in the financial market in the Philippines.

#### Step 2: Approval from the BSP

Please refer to the regulatory process described under Issuance Process for Nonresident Issuer (Other Than Financial Institution). The BSP Financial Supervision Department coordinates with other departments to satisfy its requirements and state its approval before the BSP advises the issuer accordingly.

### Step 3 (Next Step) Onward: Application for Listing (or Enrollment) on PDEX

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 steps for the listing (or enrollment) of a bond or note on PDEX follow the process as described under Steps 2, 3, and 4 in Issuance Process for Resident Issuer (Other Than Financial Institution). PDEX does not distinguish between nonresident general corporate and nonresident financial institution issuers. Foreign governments and multilateral organizations are also eligible.

## Issuance Process for FCY Bonds

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 previously been issued by the Philippine government. FCY bonds and notes require prior approval by the BSP.

### Issuance Process for Resident Issuing FCY Bonds and Notes

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

#### Step 1: Filing for Approval with the BSP

Please refer to regulatory process under Issuance Process for Nonresident Issuer (Other Than Financial Institution). The governing BSP department is the International Operations Department.

#### Step 2: Approval from the BSP

Please refer to the regulatory process under Issuance Process for Nonresident Issuer (Other Than Financial Institution). The review and issuance of the approval is handled by the BSP International Operations Department.

#### Step 3: Filing of a Notice of Exempt Transaction to the SEC

The Filing of a Notice of Exempt Transaction to the SEC follows the regulatory process described above.

### Step 4 (Next Step) Onward: Application for Listing (or Enrollment) on PDEX

The steps for the listing (or enrollment) of a bond or note on PDEX follow the process as described under Steps 2, 3, and 4 in Issuance Process for Resident Issuer (Other Than Financial Institution). PDEX, and its settlement and depository agent PDTC, are able to clear and settle USD-denominated bonds only at this point.

## Issuance Process for Nonresident Issuing FCY Bonds and Notes

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

## Issuance Process Specific to the Philippines

### Possible Additional Process: Certification of QB Bond Eligibility by the SEC

Although in principle this potential process would be a direct continuation of the Filing of 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 it carries a significant fee.

The function of the certification process is to confirm to the issuer and underwriter, and potential Qualified Buyers, intermediaries, and the market at large, the eligibility of the bonds or notes as an Exempt Transaction under the SEC, Section 10, 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 certification by the SEC carries a fee, stipulated in the SRC, Section 10.3, presently calculated as "...one-tenth (1/10) of one percent (1%) of the maximum aggregate price or issued value of the securities."<sup>3</sup> 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, as is common in most other ASEAN+3 markets. The SEC is now looking at applying the provisions in this act for its purposes.

The decision to obtain a certification of the QB bond status lies with the issuer and/or underwriter, and is not mandatory for an enrollment for listing and trading on PDEX. The individual regulatory processes for QB bond issuance have been described in Sections B and C, 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 certification of said exemption, if necessary.

### Step 1: Request for Certification of Eligibility of QB Bond by the SEC

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

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

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

<sup>3</sup> Securities and Exchange Commission. Securities Regulation Code. [www.sec.gov.ph/laws/srcode.html](http://www.sec.gov.ph/laws/srcode.html)

### Step 2: The SEC Provides Certification of Eligibility of QB Bond

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

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