

AMBIF Bond and Note Issuance Process in the Philippines

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

A. Overview of the Regulatory Process

1. Regulatory Process by Corporate Issuer Type

The regulatory process for the issuance of bonds and notes to professional investors in the Philippines, typically referred to as QB bonds or Exempt Transactions, has been streamlined by the SEC over the past 2 years. No approvals need to be obtained and a Notice of Exempt Transaction no longer needs to be filed with the SEC. However, the SEC reserves the right to request confirmation of the eligibility of an Exempt Transaction at any time (see also section D.1 in this chapter for a potential, if voluntary, additional process).

With respect to the BSP, the applicable rules and regulations on the onshore 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. A specific regulatory process for bank-issued bonds and commercial paper exists (see section B).

In addition, the listing or enrollment of issued bonds and notes on PDEX is possible in order to allow for visibility and continuous disclosure and pricing (please also refer to Chapter I), and it is required for the trading of bonds and notes. A number of specific prescriptions exist in the PDEX Rules, particularly for the enrollment of bank-issued bonds and commercial paper and Restricted Securities. Details are explained in section B.

Table 5 provides an overview of the regulatory process by issuer type and identifies which regulatory authority or market institution is involved. In order to make the issuance process 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 between all such issuer types or prescribe specific approvals.

Table 5: Authorities Involved in the Regulatory Process by Corporate Issuer Type

Type of Corporate Issuer	SEC	BSP	PDEx
Resident issuer^a			
Resident nonfinancial institution issuing PHP-denominated bonds and notes		X ^b	X
Resident financial institution issuing PHP-denominated bonds and notes ^{c, d}		X ^{b, e, f}	X
Resident issuing FCY-denominated debt securities		X ^{b, e, f}	X
Nonresident issuer			
Nonresident nonfinancial institution issuing PHP-denominated bonds and notes	O ^g	X	X ^h
Nonresident financial institution issuing PHP-denominated bonds and notes	O ^g	X	X ^h
Nonresident issuing FCY-denominated debt securities		X	X ^h

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

Notes: "X" indicates approval is required. "O" indicates the potential involvement of said regulatory authority.

^a Prior BSP approval is required for a resident issuance of bonds, notes, and other similar instruments resembling in nature a foreign loan, with public sector involvement either as an issuer or borrower, or a guarantor.

^b A Monetary Board opinion is required for government domestic borrowing, pursuant to Section 123 of Republic Act No. 7653 (as amended).

^c BSP-supervised financial institutions may issue bonds and notes, subject to regulations governing the borrowing of banks and quasi-banks under the provisions of the Manual of Regulations.

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

^e Regulatory approval is only required for the issuance of unsecured subordinated debt instruments that are considered regulatory capital by banks and quasi-banks.

^f Banks and quasi-banks need to submit a notification of the impending issuance, together with supporting documents, which the BSP is required to formally acknowledge before the issuer may proceed with the issuance.

^g Nonresident issuers wishing to use the proceeds from a PHP-denominated bond or an FCY-denominated note may require a policy decision by the SEC.

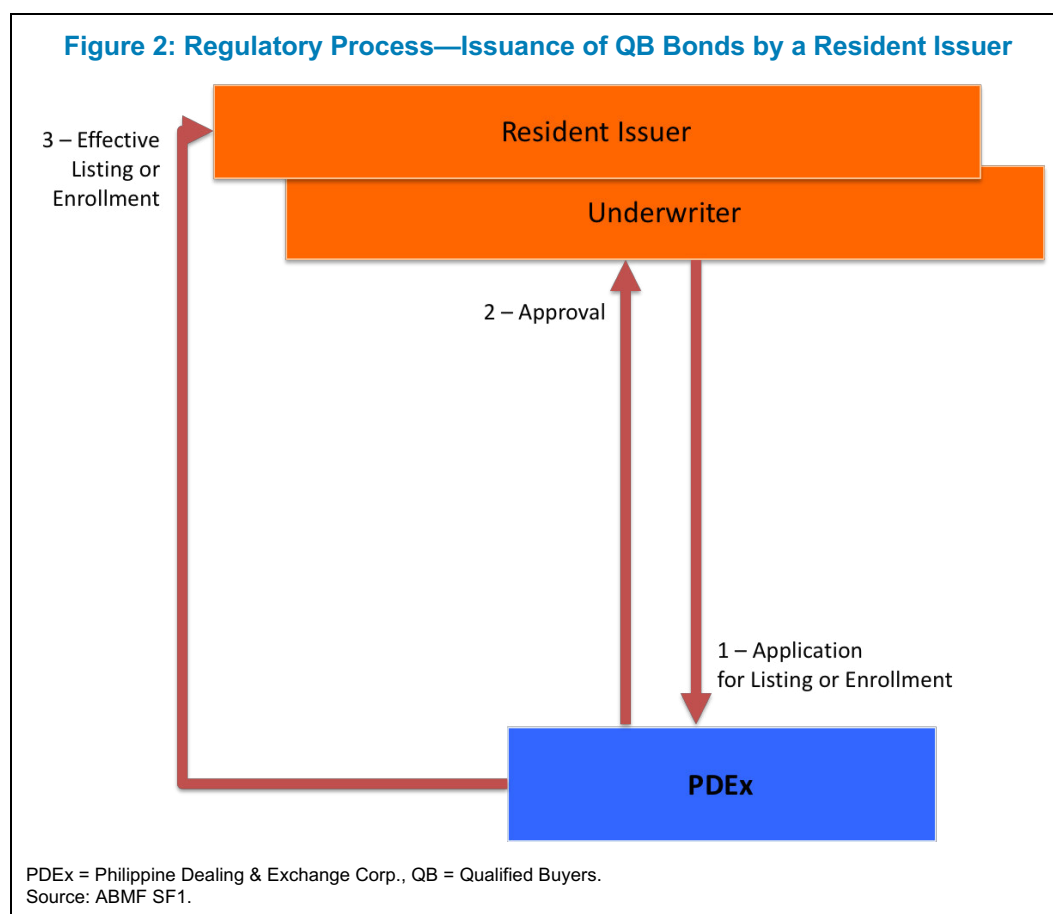
^h All matters related to nonresidents should abide by the BSP- and SEC-prescribed framework for nonresidents prior to PDEx approval.

Sources: ABMF SF1, BSP.

2. Regulatory Process Map—Overview

The regulatory process map shown in Figure 1 is designed to help navigate the applicable regulatory processes in the Philippines that are applied to a proposed bond or note issuance. Individual processes are explained in detail in Section B below.

corporate issuer is presented in Figure 2. For the regulatory process for issuances by resident financial institutions, please refer to section B.2.



The filing of a Notice of Exempt Transaction with the SEC is no longer required when a resident corporate issuer wants to issue bonds or notes to professional investors (QB issuances) in the Philippines.

Since a Notice of Exempt Transaction is no longer required to be 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 Section 10 of the SRC and its related IRR (Rule 6.1), the SEC has the right to challenge such exemptions at any time. The SEC also has the right to demand a certification, if necessary. (For more details, please refer to Section D.)

In all offer documents and related correspondence to Qualified Buyers, including the term sheet of a proposed bond or note issue, an issuer must make explicit reference to Section 10.1 (I) of the SRC and give their commitment that said offer is limited to Qualified Buyers, thereby constituting an Exempt Transaction under the law. Please also see the information on the disclosure statement with regard to selling and transfer restrictions provided in Chapter II.D.

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

The remaining steps to complete the regulatory process are described below.

Step 1—Application for Listing (or Enrollment) on PDEX

The filing of a Notice of Exempt Transaction (formerly SEC Form 10.1) with the SEC is no longer a prerequisite for the application for listing (or enrollment) on PDEX. A corporate issuer or underwriter may now proceed directly to PDEX for the application of listing or enrollment of QB bonds.

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 and Enrollment Rules.⁹ At the same time, trading is not compulsory (e.g., in cases when professional investors buy and hold specific bonds 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 and Enrollment Rules. PDEX Rules also require that the issuer appoint a facility agent or trustee for enrolled debt securities (see Chapter II.H for details).

Both listing and enrollment result in the same trading and 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 or enrollment agreement, together with documents and disclosure items stipulated in the applicable PDEX listing or enrollment checklist.

The SEC and PDEX have confirmed that the SSF may be used as the key disclosure document in the application for listing or enrollment with PDEX since the SSF was reviewed by the SEC and PDEX, and it contains all relevant information required to support the application, as detailed herein. In fact, PDEX will consider the SSF as the standard disclosure document to be submitted for QB bond issuance after several additional information items have been included in the SSF template. The requested changes are presently under consideration by the AMBIF Documentation Recommendation Board.

PDEX has a checklist for the listing or enrollment of Exempt Securities for resident issuers. The authority to issue and compliance with (BSP and SEC) regulatory requirements for such issuances 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. PDEX does not distinguish between nonresident general corporate and nonresident financial institution issuers.

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

⁹ PDEX prescriptions regarding listing and enrollment (PDEX Listing and Enrollment Rules) represent Rule 7 of the PDEX Rules for the Fixed Income Securities Market (as amended). The complete PDEX Rules are available at http://www.pds.com.ph/index.html%3Fpage_id=852.html.

Issuers are requested to submit their applications for listing at least 3 weeks before the targeted listing date.

Step 2—Listing Approval from PDEX

PDEX will review the application for listing (enrollment), the listing (enrollment) agreement, and supplementary information. It 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.

If all documents and disclosure items are in order, PDEX will issue an approval letter to the issuer. PDEX may state specific conditions attached to the approval, if necessary.

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

Step 3—Listing Exercise (Effective Listing)

For the listing of 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 (the term enrollment exercise is not typically used) 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 the trading day, highlighted by the ringing of a ceremonial bell at 9:00 a.m. by the issuer of the debt securities to mark the start of trading of its newly listed debt securities on the trading platform.

2. Issuance Process for Resident Bank and Non-Bank 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.¹⁰

If the issuer is a resident financial institution in the Philippines (a BSP-supervised financial institution), the issuance of bonds or notes, including to professional investors (Qualified Buyers) is principally permitted without explicit approval, subject to the regulations on the borrowing of banks or quasi-banks under the Manual of Regulations. However, the BSP will need to approve such an issuance if the bonds or notes relate to the unsecured subordinated debt of a locally incorporated bank, pursuant to Section 126 of the MORB. This particular process is not further explained in this document.

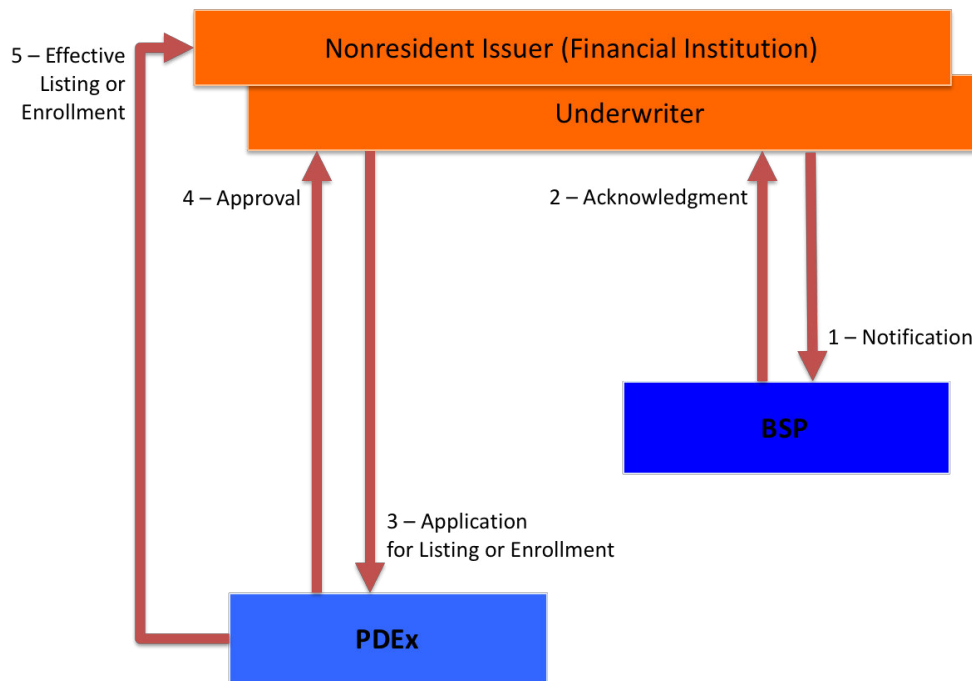
In its Circular No. 1010 (2018), the BSP further clarified the regulatory process for the issuance of bonds and commercial paper by banks and quasi-banks (Figure 3).¹¹ This

¹⁰ SRC Rule 9.1.1 states that the securities issuances of banks and quasi-banks licensed by the BSP are exempt from registration.

¹¹ BSP Circular No. 1010 (2018) on Additional Requirements for the Issuance of Bonds and Commercial Paper is available at <http://www.bsp.gov.ph/regulations/regulations.asp?type=2&id=4013>.

section references the process prescribed in BSP Circular No. 1010 (2018). The issuance of unsecured subordinated debt by resident financial institutions is not seen as a typical or likely case for the issuance of AMBIF bonds and, hence, is not further explained here.

Figure 3: Regulatory Process—Issuance of QB Bonds by a Resident Financial Institution



BSP = Bangko Sentral ng Pilipinas, PDEx = Philippine Dealing & Exchange Corp.
Source: ABMF SF1.

Banks and quasi-banks wishing to issue bonds or commercial paper are required to fulfill a number of prerequisites that are defined in the MORB and the MORNBF1; these prerequisites include audit and supervision ratings, and the resulting actions.

At the same time, the issuing bank or quasi-bank is prohibited from holding its own debt securities and from acting as a market maker for its own debt securities. This includes wholly- or majority-owned subsidiaries, affiliates, and other entities. The holding of such debt securities by the trust department of a bank or quasi-bank for third parties is permitted.

While the issuer has to appoint a facility agent (also referred to as a “registry bank” in the relevant BSP circular), this facility agent must not be affiliated with the issuer, in order to maintain its independence since the facility agent may perform a role akin to a trustee (see also Chapter II.G).

Step 1—Notification to the BSP

The bank or quasi-bank shall comply with the prequalification requirements under Section 111 or Section 41101Q.2 of the MORB and MORNBF1, respectively. The debt securities are also to be listed or enrolled in an organized market (see step 3).

The issuer will have to submit a notification of the proposed issuance of debt securities to the appropriate supervising department within the Financial Supervision Sector of

the BSP. This notification has to be submitted within 5 banking days from the approval of the issuance by the issuer's board of directors.

The notification letter signed by the president (or officer of equivalent rank) shall contain the following supporting documents:

- i. the funding plan of the bank or quasi-bank for the next 3 years, including its strategic direction and business model;
- ii. a certification from the board secretary of the bank or quasi-bank on the approval of the issuance of said debt securities;
- iii. a certification signed by the president (or officer of equivalent rank) and the chief compliance officer that the bank or quasi-bank has complied with the prudential criteria as provided in Section 246 or Section 4239Q of the MORB and MORNBF, respectively, and the relevant requirements of the SRC and other pertinent rules and regulations of the SEC; and
- iv. a written undertaking to enroll and/or trade the bonds in a market that is organized in accordance with SEC rules and regulations.

Step 2 Onward—Application for Listing (or Enrollment) on PDEX

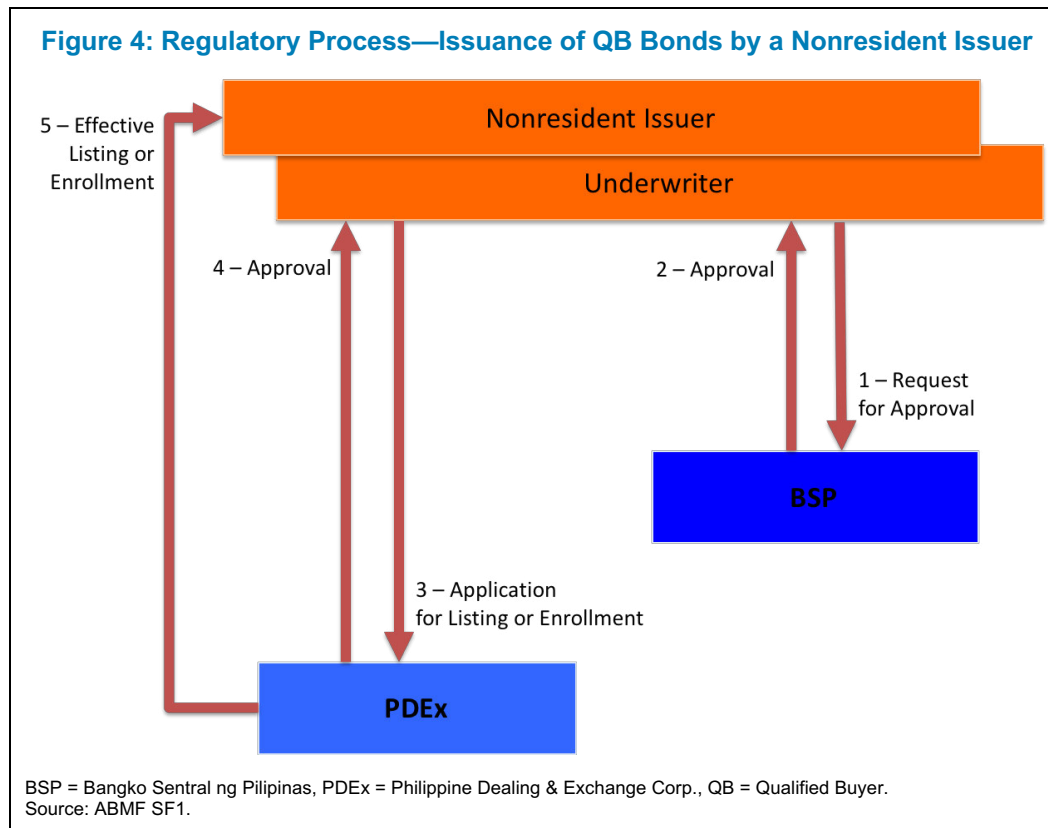
Pursuant to BSP Circular No. 1010 (2018), bank-issued bonds and commercial paper require the listing or enrollment of said debt securities at a market organized according to SEC regulations. PDEX is such a market.

Where BSP approval is necessary, obtaining such approval is a prerequisite for the application for listing (or enrollment) on PDEX. In the event that the bank-issued bonds or commercial paper require a notification of the issuer to BSP (see step 1), an authenticated copy of such notification and the certification that the bank or quasi-bank has complied with the prudential criteria as provided in Section 246 or Section 4239Q of the MORB and MORNBF, respectively, duly received by the BSP, needs to be submitted to PDEX.

The steps for the listing (or enrollment) of a bank-issued bond or commercial paper on PDEX follow the process as described under steps 1, 2, and 3 in section B.1 above.

3. 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.

Nonresident issuers wishing to use the proceeds from a PHP-denominated bond or note may require a policy decision by the SEC.

As agreed among the regulatory authorities, the filing for approval with BSP may be undertaken using the SSF. The nonresident issuer will 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—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 for Foreign Exchange Transactions, a bond or note issuance by a nonresident issuer requires the authorization of the BSP—for actions such as the collection of issuance proceeds through underwriters and for activities in the FX or swap markets—whether or not the nonresident issuer will access the banking system in the Philippines. Annex D.2 of the aforementioned 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 provide 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 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 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, monetary implications of the issuance, any applicable prohibitions, and planned activities in the FX or swap markets resulting from the proceeds or funding of interest and redemption payments.

In the event of an enquiry 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, 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.

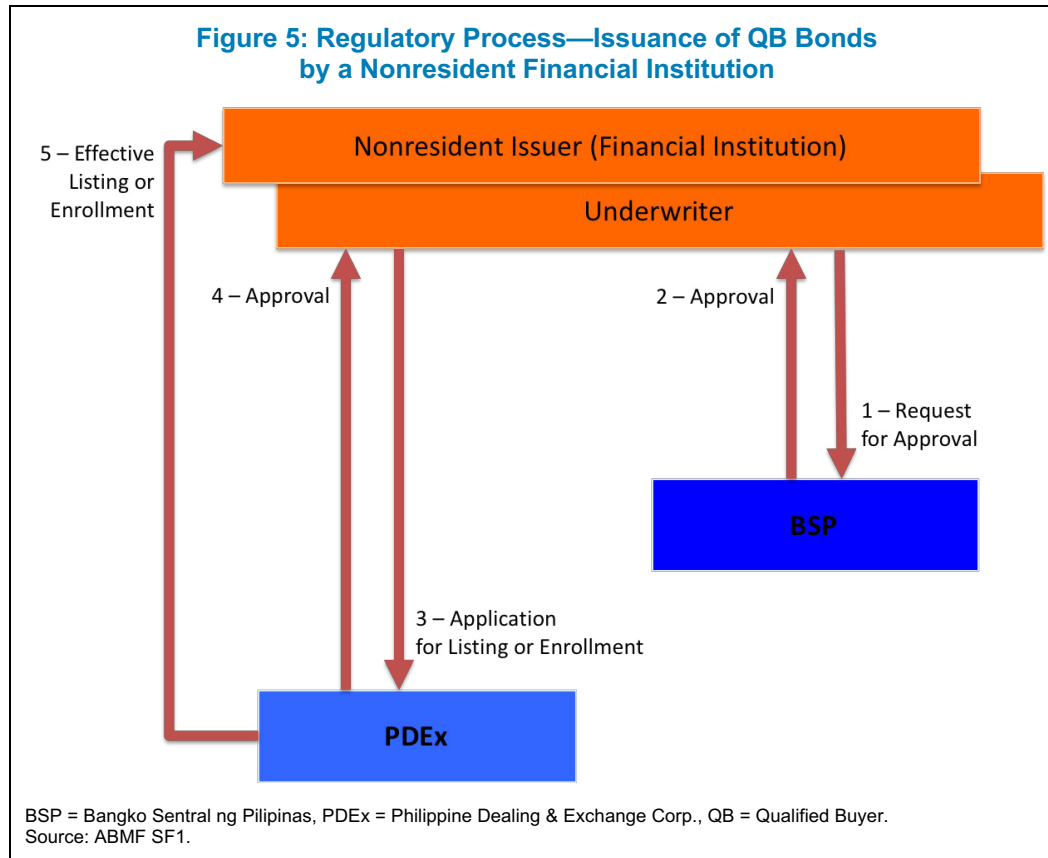
Step 3 (Next Step) Onward—Application for Listing (or Enrollment) on PDEX

PDEX has a checklist for the listing or enrollment of Exempt Securities for resident issuers. The authority to issue and the compliance with (BSP and SEC) regulatory requirements for such an issuance is, 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 section B.1. There is no distinction made between resident and nonresident issuer types at PDEX. Foreign governments and multilateral organizations are also eligible.

4. Issuance Process for Nonresident Financial Institution

The process for the issuance of bonds or notes to professional investors (Qualified Buyers) by nonresident financial institutions is much the same as for other nonresident issuers described in section B.3 (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 using the SSF for the submission of relevant issuance information. Since approval from the SEC is not required, the nonresident issuer must await BSP approval before proceeding with the intended issuance.

While there is no longer a requirement to file a Notice of Exempt Transaction with the SEC, 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 Philippine financial market.

Step 1—Filing for Approval with the BSP

In principle, the same regulatory process described in section B.3 applies; at the same time, the 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.

Step 2—Approval from the BSP

Please refer to the regulatory process described in section B.3.

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

The SEC and PDEX have confirmed that the SSF may be used as the key disclosure document in the application for listing or enrollment with PDEX since the SSF was reviewed by the SEC and PDEX, and it contains all relevant information required to support the application.

PDEX has a checklist for the listing or enrollment of Exempt Securities for resident issuers. The authority to issue and the compliance with (BSP and SEC) 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 on PDEX follow the process as described under steps 1, 2, and 3 in section B.1. PDEX does not distinguish between nonresident general corporate and nonresident financial institution issuers. Foreign governments and multilateral organizations are also eligible.

C. Issuance Process for Bonds Denominated in Foreign Currency

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 Government of the Philippines.

1. Issuance Process for Resident Issuer Issuing FCY-Denominated Bonds and Notes

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

Step 1—Filing for Approval with the BSP

A resident issuer of bonds, notes, or other similar instruments resembling in nature a foreign loan with public sector involvement, either as a borrower or guarantor, must obtain prior approval from the BSP before issuance. Please refer to the approval process in the regulatory process description in section B.3. The governing BSP department is the International Operations Department.

While resident nonfinancial institutions are not required to obtain BSP approval prior to issuance of FCY-denominated bonds and notes, documentation (for bonds and notes not resembling in nature a foreign loan) or registration (for bonds and notes resembling in nature a foreign loan) is required if the FX needed to service redemption and coupon payments to nonresident investors will be sourced from the Philippine banking system.

If the issuer is a resident financial institution in the Philippines (a BSP-supervised financial institution), the issuance of bond or notes, including to professional investors (Qualified Buyers) is permitted without approval, subject to stipulations on the borrowing of banks and quasi-banks under the Manual of Regulations. However, the BSP will need to approve such an issuance if the bonds or notes relate to unsecured subordinated debt that shall be counted as the regulatory capital of a locally incorporated bank or quasi-bank, pursuant to Sections 126 or Subsection 4116Q.2 of the MORB or MORNBF, respectively. Please refer to the regulatory process in section B.2 for more details.

Step 2—Approval from the BSP

Please refer to the regulatory process in section B.3 for more details. The review and issuance of the approval is handled by the BSP's International Operations Department. Please also see section B.2 for the regulatory process related to the issuance of unsecured subordinated debt by banks, which is handled by the BSP's Financial Supervision Sector.

Step 3 (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 1, 2, and 3 in section B.1. PDEX, and its settlement and depository agent PDTC, are only able to clear and settle USD-denominated bonds at present.

2. Issuance Process for Nonresident Issuer Issuing FCY-Denominated Bonds and Notes

The regulatory process for nonresident issuers issuing FCY-denominated bonds or notes is principally the same as for nonresident issuers issuing PHP-denominated bonds or notes, given that all relevant regulatory authorities and PDEX (as the market institution) are already involved. For more details, please refer to section B.3.

D. Issuance Process Specific to the Philippines

1. Optional Certification of QB Bond Eligibility from the SEC

This process should be seen as a distinctly separate step in the overall regulatory process for the issuance of bonds or notes since (i) it is an optional regulatory process and (ii) it carries a significant fee.

Filing a Notice of Exempt Transaction is no longer required under the IRR of the SRC, effective 9 November 2015. However, nothing precludes an issuer from requesting a Confirmation of Exempt Transaction from the SEC, which had previously been available under the former IRR.

The function of the certification process is to confirm—to the issuer and underwriter, 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 proving to stakeholders that the QB bond or note qualifies as such.

The process of certification by the SEC carries a fee, stipulated in Section 10.3 of the SRC, presently calculated as "...one-tenth (1/10) of one percent (1%) of the maximum aggregate price or issued value of the securities".¹² This formula could amount to a substantial expense for the issuer.

The decision to obtain a certification of 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.

¹² Securities and Exchange Commission. Securities Regulation Code. www.sec.gov.ph/laws/srcode.html.

However, the SEC may challenge a claimed exemption at any time and insist on a certification of said exemption, if necessary.

Step 1—Request for Certification of Eligibility of a QB Bond or an Exempt Transaction 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 an Exempt Transaction.

The issuer or underwriter will need to file Form 10.1 (Confirmation of Exempt Transaction) with the SEC, indicating on the form the claimed exemption as well as a request for the certification of the stated exemption. A recent sample of SEC Form 10.1 is provided for reference in Appendix 3.¹³

The issuer or its underwriter needs to file five copies of 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 officer of equivalent rank) in the jurisdiction of a nonresident issuer.

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

Step 2—The SEC Provides Certification of Eligibility of a QB Bond or an Exempt Transaction

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

Provided that the Confirmation 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.

¹³ SEC Form 10.1 was amended from the original Notice of Exempt Transaction to its current purpose, Confirmation of Exempt Transaction, effective 9 November 2015. The change of purpose reflects the commitment of the SEC to support a streamlined issuance process for debt securities aimed at Qualified Buyers or other Exempt Transactions.