

[BSP CIRCULAR NO. 518, S. 2006, March 09, 2006]

JOINT VENTURE AGREEMENT OF BANKS WITH REAL ESTATE DEVELOPMENT COMPANIES

Pursuant to Monetary Board Resolution No. 277 dated 2 March 2006, the rules and regulations that shall govern joint venture agreements between banks and real estate development companies are hereby issued as follows:

SECTION 1. Statement of Policy - It is the policy of the Bangko Sentral ng Pilipinas (BSP) to encourage banks to dispose of their real and other properties acquired in settlement of loans and other advances either through foreclosure or "dacion en pago" (ROPAs) as well as other properties acquired as consequence of a merger/consolidation which are no longer necessary for their banking operations. Towards this end, banks are hereby authorized to enter into joint venture agreements with real estate development companies for the development of said properties, subject to the requirements prescribed under this Circular.

For purposes of this Circular, Joint Venture shall refer to a contractual arrangement/undertaking between a bank and a duly registered real estate development company (developer) for the purpose of developing the above-mentioned properties of the bank. The bank contributes said properties to the undertaking while the developer contributes all the development funds, resources, technical expertise, equipment, personnel and all other requirements desired or needed for the implementation and completion of the undertaking including marketing, where applicable. The bank and the developer shall be bound by the contract that establishes joint control of the undertaking. Although the developer may be designated as operator or manager of the undertaking, it does not, however, absolutely control the undertaking but only acts in accordance with the authorities granted to him under the joint venture agreement (JVA).

SECTION 2. Forms of a joint venture. A bank and a developer may undertake a joint venture under the following forms:

1. A jointly-controlled operation/undertaking, which does not involve the establishment of a corporation, partnership or other entity, or a financial structure that is separate from the bank and the developer themselves. Under this form of joint venture, the rights and obligations of the bank and the developer shall be governed primarily by their contract that must clearly specify the following:

- a. authority of the developer to develop/subsidize the property and subsequently, to sell the individual lots under a special power of attorney;

- b. sharing in the sales proceeds of the developed ROPAs or in the developed lots;
- c. sharing in taxes;
- d. sharing in the assets of the joint venture particularly in the developed/subdivided lots should there still be unsold lots at the time of termination of the joint venture; and
- e. name under which the subdivided lots shall be registered pending their sale.

2. A jointly-controlled entity, which involves the establishment of a new juridical entity, preferably a corporation that is separate and distinct from the bank and the developer. A jointly controlled corporation may be established either for the purpose of developing properties of banks for immediate sale or converting them into earning assets such as hotels and shopping malls.

SECTION 3. Requirements and Limitations in a Joint Venture - A bank desiring to enter into a JVA with a developer for the purpose of developing its ROPAs and/other properties acquired as a consequence of merger/consolidation shall comply with the following:

1. The JVA shall be approved by the Board of Directors of the bank.
2. The bank's contribution to the joint venture, in whatever form undertaken, shall be limited to ROPAs and properties acquired as a consequence of the bank's merger/consolidation with another bank/financial institution.
3. The bank shall not recognize income out of its contribution to the joint venture, regardless of the agreed valuation of said properties.
4. The bank shall not provide funds to the joint venture either as a loan or capital contribution.
5. The JVA or contractual arrangement shall clearly stipulate the rights and obligations of the bank and the developer.
6. The bank shall secure prior Monetary Board approval of the JVA.

SECTION 4. Application for authority to enter into Joint Venture Agreement. A bank desiring to enter into a JVA with a developer for the purpose of developing its ROPAs and other properties acquired as a consequence of its merger/consolidation with another bank/financial institution shall secure prior Monetary Board approval of said agreement. For that purpose, the concerned bank shall submit an application for Monetary Board approval to the appropriate supervision and examination department of the Supervision and Examination Sector (SES). The application shall be signed by the bank's President or officer of equivalent rank and shall be accompanied by the following documents/information:

1. The name of the developer;
2. Name of the principal stockholders and officers as well as members of the board of directors of said company;
3. Relationship of the bank with the developer, if any;