

[BSP CIRCULAR NO. 170, August 05, 1998]

SECRECY OF BANK DEPOSIT WAIVED

Pursuant to Monetary Board Resolution Nos. 832 and 1098 dated June 10, 1998, respectively, the following clarifications and illustrations are hereby issued relative to Section 26 of Republic Act No. 7653:

1. All banks and their directors, officers or stockholders shall continue to comply with Section 26 of Republic Act No. 7653, which provides, thus:

"SECTION 26. ***Bank Deposits and Investments.*** — Any director, officer or stockholder who, together with his related interest, contracts a loan or any form of financial accommodation from: (1) his bank; or (2) from a bank (a) which is subsidiary of a bank holding company of which both his bank and lending bank are subsidiaries or (b) in which a controlling proportion of the shares is owned by the same interest that owns a controlling proportion of the shares of his bank, in excess of five percent (5%) of the capital and surplus of the bank, or in the maximum amount permitted by law, whichever is lower, shall be required by the lending bank to waive the secrecy of his deposits of whatever nature in all banks in the Philippines. Any information obtained from an examination of his deposits shall be held strictly confidential and may be used by the examiners only in connection with their supervisory and examination responsibility or by the *Bangko Sentral* in an appropriate legal action it has initiated involving the deposit account."

2. The following elements must concur for above quoted Section 26, Republic Act No. 7653 to apply:

- a. The borrower is a director, officer or any stockholder of a bank;
- b. He contracts a loan or any form of financial accommodation;
- c. The loan or financial accommodation is from (1) his bank or (2) a bank that is a subsidiary of a bank holding company of which both his bank and the lending bank are subsidiaries, or (3) a bank in which a controlling proportion of the shares is owned by the same interest that owns a controlling proportion of the shares of his bank; and
- d. The loan or financial accommodation of the director, officer or stockholder, singly or with that of his related interest, is in excess of 5% of the capital and surplus of the lending bank or in the maximum amount permitted by law, whichever is lower.

3. In paragraph 2(a) above, the director, officer or any stockholder should

himself be the borrower or recipient of the loan or financial accommodation. Thus, if the borrower is the related interest but not the director, officer or stockholder himself, the director, officer or stockholder is not required to waive the secrecy of his bank deposits. The function of the phrase "who, together with his related interest" in above quoted Section 26 is to determine whether the loan(s) or financial accommodation(s) exceeds the aggregate ceiling prescribed therein.

Moreover, the term "stockholder" means one as defined in Section 83 of Republic Act No. 337, as amended, and its implementing rules in Part III of the Manual of Regulations for Banks and Other Financial Intermediaries, owning two percent (2%) of more of the subscribed capital stock of the bank.

4. For purposes of Section 26 of Republic Act No. 7653, the term "related interest" shall include the following:

1. Spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of a director, officer or stockholder of the bank;

2. Partnership of which a director, officer, or stockholder or his spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, is a general partner;

3. Co-owner with the director, officer, stockholder or his spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of the property or interest or right mortgaged, pledged or assigned to secure the loans or credit accommodations, except when the mortgage, pledge or assignment covers only said co-owner's undivided interest;

4. Corporation, association, or firm of which a director or officer of the bank, or his spouse is also director or officer of such corporation, association or firm, except (a) where the securities of such corporation, association or firm are listed and traded in the big board or commercial and industrial board of domestic stock exchanges and less than fifty percent (50%) of the voting stock thereof is owned by any one person or by persons related to each other within the third degree of consanguinity or affinity; or (b) where the director, officer or stockholder of the lending bank sits as a representative of the bank in the board of directors of such corporation: *Provided*, That the bank representative shall not have any equity interest in the borrower corporation except for the minimum shares required by law, rules and regulations, or by the by-laws of the corporation: *Provided, further*, That the borrowing corporation under (a) or (b) is not among those mentioned in items (5) and (6) hereof.

5. Corporation, association or firm of which any or a group of directors, officers, stockholders of the lending bank and/or their spouses or relatives within the first degree of consanguinity or affinity, or relative by legal adoption, hold/own more than twenty percent (20%) of the subscribed capital of such corporation, or of the equity of such association or firm;

6. Corporation, association or firm wholly or majority-owned or controlled by any related entity or a group of related entities mentioned in items (2), (4) and (5) hereof.