

## PDIC Regulatory Issuance (RI)

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### REGULATORY ISSUANCE NO. 2009-03

**TO:** All Member Banks and the Depositing Public  
**SUBJECT:** Determination of Beneficial Ownership of Legitimate Deposits

Pursuant to its authority to prescribe and issue rules and regulations under Section 2 (d) (1) of Republic Act No. 3591, as amended (PDIC Charter), the PDIC Board of Directors, by virtue of Resolution No. 2009-08-138, dated August 26, 2009 as amended by Resolution No. 2009-09-159, dated September 30, 2009, approved the promulgation of the following rules and regulations implementing Section 4 (g), in relation to Section 21 (f), of the PDIC Charter:

#### I. Statement of Policy

The State, through the PDIC, safeguards the interests of the depositing public by providing insurance protection on all Legitimate Deposits held by bona fide depositors. All Legitimate Deposits in a bank over which a depositor has Beneficial Ownership shall be added together for deposit insurance purposes. (Section 4 (g), PDIC Charter)

#### II. Definition of Terms

**a. Legitimate Deposits** - refers to money or its equivalent received by a bank as deposits in the usual course of business and recorded in the books of the bank as such, and opened in

accordance with established forms and requirements of the Bangko Sentral ng Pilipinas (BSP) and/or the PDIC. (Section 4 (g), PDIC Charter)

**b. Bona Fide Depositor** - refers to a natural or juridical person, or entity who/which is the owner of a deposit as determined by PDIC under this Regulatory Issuance, and whose deposit is recorded in the books of the bank. (Section 4 (g), PDIC Charter)

**c. Beneficial Ownership** - exists when a deposit is maintained in the same right and capacity for a depositor's benefit, whether in his own name or in the name of others. (Section 4 (g), PDIC Charter)

**d. Valid Consideration** - that which gives cause to the transfer or break up of deposits, such as loan, payment for services or goods, or donation.

**e. Deposit Account Records** - pertains to account ledgers, signature cards, certificates of deposits, passbooks, corporate resolutions, orders of competent government body/agency, contracts or similar instruments, copies of which must be in the custody or possession of the bank upon takeover by the PDIC. (PDIC RI No. 2002-03)

**f. Qualified Relative** - means a relative within the second degree of consanguinity or affinity. (PDIC RI No. 2002-03)

### III. Determination of Beneficial Ownership of Legitimate Deposits

1. In determining the depositor entitled to insured deposit payable by the PDIC, the registered owner/holder of a Legitimate Deposit in the books of the issuing bank shall be recognized as the depositor entitled to deposit insurance, except as otherwise provided by this Issuance.

2. Where the records of the bank show that one or several deposit accounts in the name of one or several other persons or entities are maintained in the same right and capacity for the benefit of a depositor, PDIC shall recognize said depositor as the beneficial owner of the account/s entitled to deposit insurance.

3. Where a deposit account/s with an outstanding balance of more than the maximum deposit insurance coverage is/are broken up and transferred to one or more account/s, PDIC shall recognize the transferor as the beneficial owner of the resulting deposit accounts entitled to deposit insurance, unless the transferee/s can prove that:

a. The break-up and transfer of Legitimate Deposit was made under all of the following conditions:

i. The break-up and transfer of Legitimate Deposit to the transferee is for a Valid Consideration;

ii. The details or information for the transfer, which establish the validity of the transfer from the transferor to the transferee, are contained in any of the Deposit Account Records of the bank; and

iii. Copies of documents, which show the details or information for the transfer, such as but not limited to contracts, agreements, board resolutions, orders of the courts or of competent government body/agency, are in the custody or possession of the bank upon takeover by PDIC.

b. He/she is a Qualified Relative of the transferor, in which case PDIC shall recognize the transferee as the beneficial owner of the resulting deposit accounts. Relationship shall be proven by relevant documents such as, but not limited to, birth certificates and marriage certificates.

4. For deposit accounts and deposit transfers made in favor of individuals or of entities, either singly or jointly with individuals, from an account in the name of a juridical entity, such as a corporation, partnership, or association, or an unincorporated entity, the PDIC shall recognize the Beneficial Ownership of the resulting deposit accounts in favor of the transferee/s if the transfer or break up is made with all of the following conditions present:

a. The deposit transfer is for a Valid Consideration;

b. The details or information for the transfer, which establish the validity of the transfer from the transferor to the transferee, are contained in any of the Deposit Account Records of the bank; and

c. Copies of documents, which show the details or information for the transfer, such as but not limited to contracts, agreements, board resolutions, audited financial statements, orders of the courts or of competent government body/agency, are in the custody or possession of the bank upon takeover by PDIC.

#### **IV. Deposit Splitting**

1. In providing insurance protection on all Legitimate Deposits held by bona fide depositors, the payment of deposit insurance resulting from Deposit Splitting, as defined below, shall be subject to the restrictions and conditions imposed by law.

2. Splitting of deposits occurs whenever a deposit account/s with an outstanding balance of more than the statutory maximum amount of insured deposit maintained under the name of a natural or juridical person/s is/are broken down and transferred into two or more accounts in the name/s of natural or juridical person/s or entity/entities who have no Beneficial Ownership on transferred deposits in their names within one hundred twenty (120) days immediately preceding or during a bank-declared bank holiday, or immediately preceding a closure order issued by the Monetary Board of the Bangko Sentral ng Pilipinas for the purpose of availing of the maximum deposit insurance coverage.

**3. Elements.** The elements of Deposit Splitting are as follows:

- a. Existence of source account/s in a bank with a balance or aggregate balance of more than the MDIC;
- b. There is a break up and transfer of said account/s into two or more existing or new accounts in the name of another person/s or entity/entities;
- c. The transferee/s have no Beneficial Ownership over the transferred funds; and
- d. Transfer occurred within 120 days immediately preceding or during a bank-declared bank holiday, or immediately preceding bank closure.

4. The PDIC shall deem that there exists Deposit Splitting for the purpose of availing of the maximum deposit insurance coverage when all of these elements are present.

5. The bank, its directors, officers, employees, or agents are prohibited from and shall not in any way participate or aid in, or otherwise abet Deposit Splitting activities as herein defined, nor shall they promote or encourage the commission of Deposit Splitting among the bank's depositors. The approval by a bank officer or employee of a transaction resulting to Deposit Splitting shall be prima facie evidence of participation in Deposit Splitting activities.

#### **V. Consolidation of Deposit Accounts**

Upon the determination by the PDIC of Beneficial Ownership or Deposit Splitting, the outstanding Legitimate Deposit/s in the closed bank, which is maintained for the benefit of the beneficial owner/transferor, although in the name of another person/s or entities, shall be subject to consolidation with the other Legitimate Deposits of the beneficial owner/transferor in said closed bank for deposit insurance purposes. (Section 4 (g), PDIC Charter)

#### **VI. Duties of the Bank**

1. The bank shall within thirty (30) days from date of effectivity of this Regulatory Issuance:

- a. Inform all its depositors of these rules by posting a copy of this Regulatory Issuance at the bank premises in the form and substance as in Annex "A" hereof; and
- b. Issue a bank circular setting forth the bank's internal guidelines to ensure its officers and employees' compliance with these rules and for proper dissemination to all depositors.

2. The bank shall likewise maintain a complete, accurate, and updated record of all deposit accounts and transactions in accordance with the requirements under PDIC Regulatory Issuance No. 2006-01 (Record-Keeping of Bank Deposits).

#### **VII. Penalties**

Non-compliance with or violation of the provisions of this Regulatory Issuance on Deposit Splitting shall subject the bank and its responsible directors, officers, employees, or agents to the imposition of the penalty of prison mayor or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Two million pesos (P2,000,000.00) or both, at the discretion of the court, as provided for under Section 21 (f) of the PDIC Charter.

The foregoing is without prejudice to the imposition of administrative fines against the bank and its responsible directors, officers, employees, or agents by the PDIC Board of Directors, pursuant to Section 21 (g) of the PDIC Charter, as implemented by RI 2005-03, to wit:

1. For violations of the policy and regulations on Deposit Splitting, a fine as may be determined by the Board of Directors of PDIC but in no case to exceed 100% of the total amount split.
2. For violation of the other provisions of this Regulatory Issuance, a fine as may be determined by the Board of Directors of PDIC but in no case to exceed P300,000.00 for each banking day of violation.

#### **VIII. Miscellaneous Provisions**

1. The PDIC reserves the right to order the withdrawal, recall or discontinuance of any bank information campaign or advertisements inconsistent with or in contravention of the policies, rules and regulations of this Regulatory Issuance.
2. The filing of a criminal or administrative case against a director or officer of the bank for any violation of the provisions of this Regulatory Issuance shall be a ground for the PDIC to recommend to the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) the disqualification of said person from becoming a director or officer of any other banking institution.
3. Sections of this Regulatory Issuance shall be deemed severable, and should any section, subsection, paragraph, sentence, or phrase of this Issuance be declared by a court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, such decision shall not affect the validity of the Issuance as a whole, or any part thereof, other than the part so declared to be invalid, unenforceable, or unconstitutional.
4. This Regulatory Issuance repeals PDIC Regulatory Issuance No. 2002-03. In the same manner, all resolutions, rules, regulations or circulars of the PDIC or parts thereof, which are inconsistent with any provision of this Regulatory Issuance, are hereby deemed repealed or modified accordingly.

#### **IX. Effectivity**

This Regulatory Issuance shall take effect fifteen (15) days after publication in the Official Gazette or in any newspaper of general circulation.

For strict compliance.

**(Sgd.) JOSE C. NOGRALES**

**President**