Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

SEC MEMORANDUM CIRCULAR NO. 2
Series of 2012

GUIDELINES ON SECURITIES DEPOSIT OF BRANCH OFFICES OF FOREIGN CORPORATIONS

SECTION 1. POLICY STATEMENT

Pursuant to Section 126 of the Corporation Code of the Philippines, the Commission resolved to adopt this set of guidelines to provide reasonable assurance that **branch offices** of foreign corporations duly licensed to do business in the Philippines shall be able to settle their obligations incurred within the Philippines, and to ensure their compliance with investment requirements.

SECTION 2. COVERAGE AND SCHEDULE OF POSTING

This Circular shall apply to **all branch offices of foreign corporations** duly licensed to do business in the Philippines that are mandated to deposit securities with the Commission in accordance with the following schedule:

a. Within 60 days after the issuance of its SEC license, securities within an actual market value of at least P100,000.00;

b. Additional securities shall be deposited within six months after the end of the fiscal year indicated in the Financial Statements (FS) in the following situations:

   i. If the licensee's gross income within the Philippines for that fiscal year exceeds P5,000,000.00, additional securities with an actual market value equivalent to two percent (2%) of the increase in said gross income; and

   ii. If the actual market value of the securities deposited has decreased by at least ten percent (10%) from the time it was deposited, additional securities with an actual market value that would cover the decrease.

   Thereafter, the Commission shall issue a Certificate of deposit of additional securities.

The following corporations are not required to post securities deposit:

a. foreign banking corporation including offshore banking units;

b. foreign insurance corporation;

c. foreign non-stock corporations including foreign religious corporations;

d. foreign corporations which have established representative offices in the Philippines;

e. regional or area headquarters of multinational companies; and

f. operating regional headquarters of multinational companies.

SECTION 3. DEFINITION OF TERMS

3.1 **Commission** means the Securities and Exchange Commission.

3.2 **Gross Income** as contemplated under Section 126 of the Corporation Code and consistent with the definition of "Revenue" under Paragraph 7 of Philippine Accounting Standard (PAS) 18, shall mean the "*gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants.*" *No deductions shall be allowed from the gross amount of income or revenue,* except those direct cost and expense items that may be allowed by the Commission.

3.3 **Foreign Corporation** refers to licensee-foreign corporation (Philippine Branch) as defined under Section 123 of the Corporation Code of the Philippines.

SECTION 4. ITEMS DEDUCTIBLE FROM THE GROSS INCOME COMPUTATION OF CERTAIN TYPES OF BRANCH OFFICES

4.1 **Sales Returns, Allowances and Discounts**

A contra revenue account that reports (1) merchandise returned by a customer, and (2) the allowances granted to a customer because the seller shipped improper or defective merchandise. These will reduce the seller's accounts receivable and are subtracted from sales (along with sales discounts) to arrive at net sales.

4.2 **Direct Costs and Expenses Incurred with Foreign Entities and Related Parties**

The following direct costs and expenses incurred with foreign entities and related parties are allowable deductions from Gross Income:

a. Cost of sales incurred with foreign suppliers;

b. Direct costs of services attributable to related party transactions outside the Philippines;

c. Direct cost incurred attributable to foreign non-related party supplier;

d. Depreciation and amortization of tangible and intangible assets used directly for its manufacturing operations can be deducted from Gross Income provided the following conditions are met:

i. These expenses form part of the foreign corporation's direct costs or cost of sales;

ii. These expenses relate to assets that were imported or purchased from foreign vendors;

iii. These expenses relate to assets that had been paid in full by the foreign corporation; and

iv. These expenses relate to assets that are not subject to any mortgage, lien, or encumbrance.

e. Other foreign related direct cost and expense items.

4.3 **Documentary Requirements**

The deductions under Sub-Section 4.2 above shall be allowed subject to the submission of branch office' Audited Special or Annual Income Statement showing separately the amounts of direct cost and expenses actually incurred with foreign entities and foreign related parties.

4.4 **Other Requirements**

4.4.1 The solvency ratio of the foreign corporation-Philippine Branch should indicate that it has sufficient assets to cover its obligations which include accrued expenses and payables arising from cost of sales or services entered into with Philippine residents and Government of the Republic of the Philippines. Therefore, if the branch of licensee foreign company is not solvent and not in sound financial condition, the Commission shall not allow the deductions of the items under Sub-Section 4.2 above; and

4.4.2 The Property and Equipment should consist of large, permanent, and non-mobile items. The buildings, equipment, and facilities that make up these assets may be deemed as immovable property, as they are attached to the ground.

SECTION 5. MODIFIED FORMULA FOR BRANCH OFFICES OF FOREIGN AIRLINE COMPANIES

5.1 In the case of branch offices of foreign airline companies, a modified formula in the computation of their security deposits shall be adopted given their cross border operations, as follows:

Revenue Allocated to Philippine Operations = Total Direct Operating Cost & Expenses Incurred in the Philippines / Direct Operating Cost Incurred for the Entire Philippine Operations

= Rate Derived Above x Gross Revenue in Philippine Operations

Amount of Security Deposit = Revenue Allocated to Philippine Operations x 2%

5.2 In order to adopt the foregoing formula, the branch office should submit the following:

5.2.1 A branch office' **Audited Special or Annual Income Statement** showing separately the amounts of direct cost and expenses actually incurred in the Philippines and direct cost incurred for the entire Philippine operations;

5.2.2 A notarized certification of the company on the extent of its operation in the Philippines; and

5.2.3 The solvency ratio of the **branch office of foreign airline company** should indicate that it has **sufficient assets** to cover its obligations which include accrued expenses and payables arising from cost of sales or services entered into with Philippine residents and Government of the Republic of the Philippines. Therefore, if the branch office of foreign airline company is not solvent and not in sound financial condition, the Commission shall not allow the adoption of a modified formula under Sub-Section 5.1 above.

SECTION 6. TYPES OF ACCEPTABLE SECURITIES

The following securities or any combination of these kinds of securities are acceptable as deposit to the Commission under Section 126 of the Corporation Code:

6.1 **Government Debt Instruments** - Bonds or any Evidence of Indebtedness of the Government of the Philippines, its political subdivisions and instrumentalities, or of government-owned or controlled corporations and entities; and

6.2 **Equity Instruments**

1. Shares of stock in "registered enterprises" under the Omnibus Investments Code of 1987 (Executive Order No. 226);

2. Shares of stock in domestic corporations registered in the stock exchange;

3. Shares of stock in domestic insurance corporations under the supervision and regulation of the Office of the Insurance Commissioner; and

4. Shares of stock in banks licensed by the Bangko Sentral ng Pilipinas (BSP).

Cash, money market placement, time deposits and bank guaranty or standby letter of credit and similar instruments other than those falling in the foregoing enumeration shall not be acceptable as securities deposit.

SECTION 7. PROCEDURES IN THE ACCEPTANCE OF DEPOSIT

The following procedures shall be observed in the submission and acceptance of securities deposit:

a. A written application to deposit securities mandated by law shall be filed with the Commission, signed under oath by the resident agent or a duly authorized representative of the licensee-foreign corporation;

b. A monitoring fee equivalent to one-tenth of one percent (1/10 of 1%) of amount of securities deposit but not lower than Five Thousand Pesos (P5,000.00) but not exceeding Fifty Thousand Pesos (P50,000.00) per year shall be charged by the Commission upon filing of said application to cover payment of space in the vault within the Commission's secured premises at the Financial Management Department – Treasury Division;

c. The Commission shall determine whether or not the securities deposited are acceptable, and its actual market value is at least P100,000.00;

d. The securities submitted to the Commission shall be indorsed in blank;

e. The Commission shall issue a Certificate of Acceptance of Deposit containing an inventory of such securities; and

f. The branch office shall ensure that securities accepted remain unimpaired during the period that the foreign corporation engages/transacts business in the Philippines.

SECTION 8. SUBSTITUTION OF SECURITIES

Upon proper application, the Commission may allow the licensee-foreign corporation to substitute other securities for those already on deposit as long as the licensee is solvent. Upon compliance with the requirements on the acceptance of deposits, the Commission shall issue a Certificate of Substitution of Securities Deposit.

SECTION 9. RELEASE OF SECURITIES

Upon proper application by the foreign corporation, the Commission may release part of the securities deposited by the licensee under the following circumstances:

9.1 If there is more than 10% decrease in gross income of the licensee-foreign corporation; or

9.2 If the actual market value of the total securities deposit has increased by more than 10% of the actual market value of the securities at the time they were deposited.

The Commission shall issue a Certificate of Partial Release of Securities.

However, the current balance of the security deposit should be maintained in the following circumstances:

9.3 If gross income is equal to allowable deductions under Section 4; or

9.4 If the gross income after allowable deductions under Section 4 would result to a negative amount.

SECTION 10. INTERESTS OR DIVIDENDS

During the period of time that the securities are on deposit with the Securities and Exchange Commission, the branch office of the licensed foreign corporation (Philippine Branch) shall be entitled to collect the interest or dividends on the said securities.

SECTION 11. RETURN OF SECURITIES

Whenever a foreign corporation decides to withdraw from business in the Philippines, the Commission may return the securities deposited by such foreign corporation, subject to the following conditions:

11.1 A written application must be made therefore and signed under oath by its resident agent or by a duly authorized representative upon payment of a fee; and

11.2 It has ceased to do business in the Philippines by submitting a resolution of the Board of Directors of the foreign corporation to effect that they desire to withdraw the license to do business in the Philippines and that said company has no liabilities to the Government of the Republic of the Philippines, to the public or private corporations, Philippine residents and or citizens.

The Commission shall thereafter issue a Certificate of Return of Deposit.

SECTION 12. FINES AND PENALTIES FOR NON-COMPLIANCE

12.1 Failure to post the required amount of security deposit within the prescribed period shall subject a foreign corporation to a daily penalty of equivalent to 1/100 of 1% of the amount of security deposit which should have been additionally posted until the requirement is fully complied.

12.2 A license granted to a foreign corporation shall be suspended or revoked for failure to post securities deposit despite notice and hearing.

12.3 The fines and surcharge for late deposit of securities shall be as follows:

	Initial Securities Deposit	**Additional Securities Deposit**
1st violation	Basic fine of P10,000.00; and surcharge of P500.00 per month of delay	Basic fine of P7,000.00; and surcharge of P500.00 per month of delay
2nd violation	Basic fine of P10,000.00; and surcharge of P1,000.00 per month of delay	Basic fine of P7,000.00; and surcharge of P1,000.00 per month of delay
3rd violation	Basic fine of P10,000.00; and surcharge of P1,500.00 per month of delay	Basic fine of P7,000.00; and surcharge of P1,500.00 per month of delay

A fraction of a month shall be considered as one month for purposes of computation of the surcharge.

12.4 The above-mentioned penalties shall be without prejudice to the filing of criminal charges against the persons responsible for the violation, as provided for in Section 144 of the Corporation Code of the Philippines, which states that:

> "Section 144. Violations of the Code. - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation."

SECTION 13. REPEALING CLAUSE

This Circular supersedes the "Guidelines for the Investment Requirement of Foreign Corporation under Section 126 of the Corporation Code of the Philippines" dated April 27, 1982. All other related rules and/or regulations of the Commission, which are not consistent herewith are hereby repealed or amended accordingly.

SECTION 14. EFFECTIVITY CLAUSE

This Circular shall take effect on 30 May 2012.

Signed this 7th day of May 2012, Mandaluyong City, Philippines.

FOR THE COMMISSION:

TERESITA J. HERBOSA
Chairperson