I. Banks and Financial Institutions Supervision

1) Applicable laws and regulation. Provide a list of the main laws and regulations that refer to the supervision and control of banks and financial institutions. Give a brief summary of the substance of each of them.

The most pertinent banking laws in the Philippines are:

a. The New Central Bank Act (Rep. Act No. 7653) (the "BSP Law")

The BSP Law establishes the Bangko Sentral ng Pilipinas (“BSP”), its organizational set-up, responsibilities, corporate authorities, key operational procedures, and special powers over banks. It then defines the key roles of the BSP, namely: (a) as a central monetary authority with the sole power to issue currency and legal tender and to regulate the supply of money and credit in the system; (b) as government banker with the power to represent the national government in all dealings with international financial institutions; and (c) as a central bank with regulatory and supervisory power over all banks and financial institutions exercising quasi-banking functions.


The GBL provides for the regulatory supervision of the BSP over all banks in the Philippines. It likewise provides for the authority of the BSP and the organization, management, and administration of foreign and local banks, quasi-banks, and trust entities, and other types of banks. Under the GBL, banks are classified into commercial banks, universal banks, thrift banks, cooperative banks, Islamic banks, and other classes as may be determined by the Monetary Board, with various powers and requirements for each classification. In addition, the GBL also provides for the rules on deposits, loans and investments, trust operations, placement under conservatorship, and cessation of banking business.

c. Foreign Bank Liberalization Act (Rep. Act No. 7221) (“FBLA”)

The FBLA provides for the different modes of entry by foreign banks into the Philippines. Under this Act, foreign banks which are among the top 150 in the world or the top five in their country of origin are allowed to invest in up to 60% of the voting stock of a Philippine bank or to establish branches with full banking authority, provided they can only opt for one mode of entry, and provided that only 14 foreign banks may establish branches with full banking authority. At
present, entry through the establishment of branches is not available, at least until one of the 14 foreign bank branches gives up its branching license.

d. **Thrift Banks Act (Rep. Act No. 7906)**

The Thrift Banks Act provided for the creation of a new class of bank – the thrift bank – which are savings and mortgage banks, stock savings and loan associations, and private development banks. Under the Thrift Banks Act, thrift banks may exercise similar powers as those of a commercial bank, but with prior approval of the Monetary Board for particular activities, such as: (a) opening of current accounts, (b) engaging in trust, quasi-banking, and money market operations, (c) acting as collection agent for government entities, (d) acting as official depository of national agencies where the thrift bank is located, (e) issuing of mortgage and chattel mortgage certificates, and (f) investing in the equity of allied undertakings. Since 17 March 2005, allowable foreign equity in thrift banks is down to 60% (from 100%) of the voting stock.

e. **Investment Houses Law (Pres. Decree No. 129, as amended)**

Corporations engaged in the underwriting of securities of other corporations are required to be licensed as investment houses under the Investment Houses Law. Investment houses are also allowed to act as financial consultant, investment adviser, portfolio manager, financial agent, and broker. Foreigners are allowed to own up to 60% of the voting stock of an investment house. Universal banks are allowed to perform the functions of an investment house on an in-house basis.

f. **Financing Company Act (Rep. Act No. 7906)**

A corporation primarily engaged in extending credit facilities by direct lending, discounting or factoring commercial papers or accounts receivable, buying and selling evidences of indebtedness, or financial leasing is required to be licensed as a financing company under the Financing Company Act, unless the corporation is a bank, investment house, insurance company, or other financial institution with a secondary license. Foreigners are allowed to own up to 60% of the voting stock of a financing company.

g. **Secrecy of Bank Deposits Act (Rep. Act No. 1405, as amended)**

This law prohibits the examination and inquiry into all bank deposits and investments in government securities with Philippine banks by any person, government official, bureau, or office, and prohibits the disclosure by any bank official or employee to any unauthorized person of any information concerning the said deposits, subject to certain exceptions as discussed in Section 12 below.

h. **Anti-Money Laundering Act (Rep. Act No. 9160, as amended) (“AMLA”)**
The AMLA criminalizes money laundering and identifies the predicate crimes from which money laundering can arise. In order to prevent money laundering, the AMLA created the Anti-Money Laundering Council ("AMLC") and granted it such powers ranging from requiring reports from covered institutions (including banks and other financial institutions), rule-making, prosecution, and actual imposition of sanctions. In addition, the AMLA requires covered institutions to adopt Know-Your-Customer guidelines and to report transactions involving at least PhP500,000 as well as suspicious transactions to the AMLC.


By virtue of the FCDU Law, banks with a Foreign Currency Deposit Unit ("FCDU") license are authorized to accept foreign currency deposits, to issue certificates to evidence such deposits, to discount said certificates, and to accept deposits as collateral for loans, while banks with an expanded FCDU license are authorized to obtain foreign currency loans from and conduct foreign currency transactions with non-residents, offshore banking units, and other depository banks with expanded FCDU licenses. Interest earnings from such foreign currency deposits are granted absolute tax exemptions. It is also provided that there shall be no restriction on the withdrawal or transfer by the depositor of his deposits, except upon mutual agreement with the bank.

2) Entities/ Authorities in charge of the control and supervision. Purposes, powers and functions of each of them – their organization and structure (i.e. public or private, independency or body of the Government to which they belong, size, etc.)

A banking institution has a primary license (as a corporation) and a secondary license (as a bank or quasi-bank). As a corporation, and especially if its shares are registered and listed in the stock exchange, it is under the general supervision of the Securities and Exchange Commission ("SEC"). As a bank, it is under the supervision of the BSP, which is its primary regulator.

Securities and Exchange Commission (SEC)

The SEC is the specialized government agency that exercises general supervision over corporations and partnerships in general, including registered or publicly-listed corporations. It exercises the powers and functions provided by the Securities Regulation Code of 2000 ("SRC"), the Corporation Code of the Philippines, the Investment Houses Law, the Financing Company Act, Pres. Decree No. 902-A, among others. Among its powers and functions specified in Section 5.1 of the Securities Regulation Code are (a) to regulate, investigate, or supervise the activities of persons to ensure compliance with corporation and securities laws; (b) to supervise, monitor, suspend, or take over the activities of exchanges, clearing agencies, and other self-regulatory organizations; (c) to impose sanctions for violations of laws and the rules, regulations, and orders issued pursuant thereto; and (d) to issue cease and desist orders to prevent fraud or injury to the investing public; and (e) to compel the officers of any registered corporation or association to call meetings of stockholders or members under its supervision.
The primary jurisdiction of the SEC over corporations which do not have secondary licenses that subject them to the primary jurisdiction of the BSP or the Office of the Insurance Commissioner emanates from its authority to enforce and implement the Corporation Code. The Commission has no jurisdiction over corporations created by "special law" which are not registered with it.

**Bangko Sentral ng Pilipinas (BSP)**

The BSP is the specialized government agency that provides policy directions in the areas of money, banking, and credit. It supervises the operations of banks and regulates the operation of finance companies and non-bank financial institutions performing quasi-banking functions and those performing similar functions. The fundamental roles of the BSP are: (a) as central monetary authority; (b) as banker and adviser of the national government, and (c) as the banker of banks.

The BSP acts through the Monetary Board, which is composed of seven members, five of whom are from the private sector and the other two from the government. The BSP Governor, the chief executive of the BSP, acts through three Deputy Governors, one for each of the three sectors of the BSP – the Monetary Stability Sector, the Supervision and Examination Sector, and the Resource Management Sector.

3) Describe briefly the activities under supervision and give a list the different types of licenses available.

Banking is a highly regulated business in the Philippines and the BSP supervises the operations of practically all aspects of the business of banks, non-bank financial institutions performing quasi-banking functions, and other institutions performing similar functions. Specifically, the BSP supervises the following aspects of the business of such entities:

a) Establishment and organization;  
b) Capitalization;  
c) Merger or consolidation;  
d) Capital and other financial ratios;  
e) Entry and operation of foreign banks;  
f) Stocks, stockholders, and dividends;  
g) Directors, officers, and employees;  
h) Corporate governance;  
i) Offices and office days and hours;  
j) Internal controls;  
k) Deposit and borrowing;  
l) Lending;  
m) Investments;  
n) Others aspects falling under the BSP and SEC mandates.
(See Infra, no. 6) for the different types of licenses available)

4) Describe briefly non regulated financial and banking activities.

Since the banking industry is a highly regulated business, virtually all financial and banking activities are regulated by the BSP. The regulation ranges from activities that require prior approval by the Monetary Board or the BSP to those that are merely subject to the regular annual audits by the BSP.

5) Describe briefly non-permitted financial and banking activities and/or government monopolies.

Insurance Business - Banks are not allowed to engage directly in the insurance business.

Mutual Funds – Banks cannot invest in mutual funds, although they can invest in the equity of fund management companies.

Equity Securities – Banks are generally prohibited from trading or brokering in equity securities, including mutual funds.

Single Borrower’s Limit - There are rules governing limits on the amount that a bank may lend to a single borrower,

DOSRI Loans - Loans and/ or accommodations to Directors, Officers, Stockholders (owning at least 2% of the outstanding capital), and their Related Interests (“DOSRI”) are strictly regulated in terms of approval and limits on the amount.

Outsourcing of Inherent Banking Functions – In keeping with the requirements under the Bank Secrecy Law, any contract between the bank and a service provider for the latter to supply, or any act whereby the latter supplies, the manpower to service the deposit transactions of the former.

Cross-Selling – Banks are not allowed to use their premises for the sale of financial products of non-affiliates.

II. Banking Activities

6) Different types of banking licenses. Activities permitted under each of them. Activities prohibited.
There are generally two categories of licenses granted by the BSP – banking licenses and those for Non-Bank Financial Institutions. There are likewise different types of licenses available under each of the two categories mentioned. In this regard, a banking license generally authorizes entities to engage in the lending of funds obtained in the form of deposits for the purpose of re-lending or purchasing receivables. Under the General Banking Law (GBL), banks in the Philippines are classified as follows:

a. Commercial Banks – Commercial banks are entitled to carry on the business of commercial banking, by accepting drafts and issuing letters of credit, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling and selling foreign exchange and gold and silver bullion, and by lending money against security, by accepting or creating demand deposits subject to withdrawal by check, by offering negotiable order of withdrawal accounts, by investing in allied undertakings, and by acquiring readily marketable bonds and other debt securities. However, unlike universal banks, commercial banks cannot (i) underwrite securities, (ii) invest in the equity of insurance companies, (iii) hold more than a 40% equity stake in financial allied undertakings other than publicly-listed universal and commercial banks (100%), privately-owned universal and commercial banks (49%), and venture capital companies (60%), nor (iv) hold an equity stake in non-allied enterprises.

b. Universal Banks – Universal banks or expanded commercial banks are granted, in addition to commercial banking powers enumerated in the preceding paragraph, the authority to (i) exercise the powers of investment houses, (ii) invest in up to 100% of the equity of an insurance company, (iii) invest in up to 100% of the equity of most financial allied undertakings, including publicly-listed universal and commercial banks (100%) but excluding privately-owned universal and commercial banks (49%) and venture capital companies (60%), and (iv) invest in non-allied undertakings.

c. Thrift Banks – Thrift banks include savings and mortgage banks, stock savings and loan associations, private development banks. Thrift Banks may exercise similar powers with those of a commercial bank, but with prior approval of the Monetary Board for particular activities, such as: (a) opening of current accounts, (b) engaging in trust, quasi-banking, and money market operations, (c) acting as collection agent for government entities, (d) acting as official depository of national agencies where the thrift bank is located, and (e) issuing mortgage and chattel mortgage certificates. Thrift banks may own up to 100% of the equity of non-financial allied undertakings, and hold a minority equity stake in financial allied undertakings including banks (although they may hold up to 60% of venture capital companies).

d. Rural Banks – Rural banks are mandated to make needed credit available in the rural areas on reasonable terms and which are governed primarily by the Rural Banks Act
(Rep. Act No. 6938). Unlike commercial banks, universal banks, and thrift banks, rural banks are required to be entirely owned by Philippine citizens.

Other licenses:

e. Offshore Banking Units (OBU) – An OBU is basically a foreign bank’s counterpart of a local bank’s Foreign Currency Deposit Unit (FCDU). Unlike the full-fledged branch of a foreign bank, an OBU does not have full banking authority. OBUs are authorized to conduct banking transactions only with other OBUs, FCDUs, and non-residents, and only in foreign currency.

f. Quasi-Banks – Quasi-Banks are entities engaged in the borrowing of funds from the public through the issuance, endorsement, or assignment with recourse or acceptance of deposit substitutes for purposes of re-lending or the purchase of receivables. Universal and commercial banks are automatically granted quasi-banking license.

g. Trust Entity – Entities granted a trust license may validly engage in the trust and fiduciary business, as well as in investment management activities. The trust business of a bank must keep separate from its general business all funds, properties, securities, and books in relation to its trust functions. In order to protect the general public, self-dealing transactions by a trust entity are prohibited, subject to certain exceptions.

7) Procedures to be followed and requirements to be met to obtain each of the different licenses. Formalities to be fulfilled, documentation to be submitted, guaranties requested, time estimation, etc.

Generally, the minimum conditions that a prospective bank must comply with before it may be authorized by the BSP to be organized as a bank are: a) it must be organized as a stock corporation, b) its funds must be obtained from 20 or more persons, and c) that the minimum capital requirements prescribed by the Monetary Board for each category of banks are satisfied (See Sec. 8(b) below for capital requirements). Appendix No. 37 of the Manual of Regulations for Banks sets forth in detail the requirements to be met to obtain each of the different licenses. In connection with the foregoing, it should be noted that the SEC will not approve the articles of incorporation or the application for a primary license without the applicant showing an approval in writing granted by the BSP through the Monetary Board.

At present, pending the completion of a study, there is an indefinite moratorium on the establishment of new banks, except in cities and municipalities where there are no existing bank offices and except for banks primarily engaged in micro-financing.
The period within which the BSP will issue each of the different licenses will depend on the completeness of the papers required. There is no prescribed period within which a license must be issued.

Appendix 37
BASIC GUIDELINES IN ESTABLISHING BANKS

A. GUIDING PRINCIPLE

The new banking organization must have suitable shareholders, adequate financial strength, a legal structure in line with its operational structure, and a management with sufficient expertise and integrity to operate the bank in a sound and prudent manner. Where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.

B. THE APPLICATION

1. The application for authority to establish a bank shall be accomplished in triplicate. The original copy and duplicate copy shall be submitted to the Office of Supervisory and Policy Development (OSPD) of the BSP. The third copy shall be retained by the organizers.

2. The required papers/documents and other information in support of the application are, as follows:

   a. Agreement to organize a bank.

   b. Accomplished bio-data sheet of each of the incorporators, proposed directors and officers, and subscribers.

   c. Evidence of Filipino citizenship of each of the incorporators, proposed directors and officers, and subscribers if he/she claims to be a Filipino citizen:

      (1) In case of a natural-born Filipino citizen, original or certified true copy of birth certificate from issuing office. In case the birth certificate cannot be produced by reason of destruction or otherwise, an affidavit to that effect by the civil registrar concerned should be submitted accompanied by an affidavit by the incorporator, director, officer or subscriber himself stating, among other things, the date and place of his birth and the names of his parents and their citizenship at the time of the affiant's birth; and joint affidavit of two disinterested/unrelated persons stating, among other things, the date and place of the subject's birth and the names of his parents and their citizenship at the time of the subject’s birth; or
(2) In case of a naturalized citizen of the Philippines, the naturalization certificate, certificate of registration thereof with the civil registrar and other pertinent papers; or

(3) In the absence of the above-mentioned documents, a photocopy of the passport (with original to be presented for verification).

d. Statement of assets and liabilities as of a date not earlier than 90 days prior to the filing of application of each of the subscribers, sworn to by the subscriber himself and duly notarized, or certified by a Certified Public Accountant (CPA), with supporting schedules showing the following information:

(1) In the case of cash in banks: (a) name of depository bank, (b) nature of deposit, and (c) amount of deposit with each bank as of balance sheet date;

(2) In the case of securities: (a) name and address of issuing corporation/entity, (b) number of shares owned as of balance sheet date, (c) par value, (d) date and cost of acquisition, and (e) information as to whether the securities are actively traded in the stock market and, if so, their current market price;

(3) In the case of land: (a) description (agricultural, etc.), (b) area, (c) location, (d) date and cost of acquisition, (e) transfer certificate of title or tax declaration number, (f) amount of encumbrance or lien, if any, (g) assessed value, and (h) current market value (state basis of valuation);

(4) In the case of real estate improvements: (a) description of improvement (residential house, etc.), (b) location, (c) date and cost of acquisition/construction, (d) assessed value, and (e) current market value (state basis of valuation);

(5) In the case of accounts receivable, state the name and address of each debtor and the amount due from each; and

(6) In the case of accounts payable or other liabilities, state the name and address of each creditor and the amount owed to each.

(Evidences of asset ownership such as bank certification/statement, savings passbook, certificate of time deposit, bond or stock certificate, transfer certificate of title, tax declaration, etc. and waiver of rights under Rep. Act No. 1405, as amended, shall be submitted/presented for verification).

e. Statement of income and expense for the last three calendar years of each of the subscribers, sworn to by the subscriber himself and duly notarized, or certified by a CPA.
f. Certified photocopies of Income Tax Returns (ITRs) for the last three calendar years of each of the incorporators, proposed directors and officers, and subscribers.

g. Clearances from the National Bureau of Investigation (NBI) and Bureau of Internal Revenue (BIR) of each of the incorporators, proposed directors and officers, and subscribers.

h. For corporate subscribers:

(1) Copy of the board resolution authorizing the corporation to invest in such bank; and designating the person who will represent the corporation in connection therewith;

(2) Copy of the latest articles of incorporation and by-laws;

(3) List of directors and principal officers;

(4) List of major stockholders, indicating the citizenship and the number, amount and percentage of the voting and non-voting shares held by them;

(5) A copy of the corporation’s audited financial statements for the last two years prior to the filing of application;

(6) A copy of the corporation’s annual report to the stockholders for the year immediately preceding the date of filing of application;

(7) Certified photocopies of ITRs for the last two calendar years; and

(8) BIR clearance.

i. For foreign bank subscribers:

(1) A copy of the board resolution authorizing the bank to invest in a bank in the Philippines, and designating the person who will represent the bank in connection therewith;

(2) Historical background of the bank, as follows:
   (a) Date and place of incorporation;
   (b) List of domestic branches, agencies, other offices, subsidiaries and affiliates and their line of business (if different from banking) in the home country;
   (c) List of foreign branches, agencies, other offices, subsidiaries and affiliates, and their location and line of business (if different from banking);
   (d) Range of banking services offered; and
(e) Financial and commercial relationship with the Philippine government, local banks, business entities and residents, past or present;

(3) A copy each of the bank’s latest amended articles of incorporation and bylaws;

(4) List of the bank’s directors and their citizenships;

(5) List of principal officers of the bank’s head office;

(6) List of major stockholders, indicating the citizenship and the number, amount and percentage of the voting and non-voting shares held by them;

(7) A copy of the bank’s audited financial statements for the last two years prior to the filing of application;

(8) A copy of the bank’s annual report to the stockholders for the year immediately preceding the date of filing of application; and

(9) A certification from the bank’s home country supervisory authority that the bank’s home country supervisory authority has no objection to the bank’s investment in a bank in the Philippines, and that adequate information on the bank and its subsidiaries will be provided to the BSP to the extent allowed under existing laws.

j. Detailed plan of operation and economic justification for establishing the bank. (The plan of operation should describe and analyze the market area from which the bank expects to draw the majority of its business and establish a strategy for the bank’s ongoing operations. It should also describe how the bank will be organized and controlled internally. The economic justification for establishing the bank should provide information on the economic profile of the region, e.g., population, agricultural/industrial/service projects to be financed).

k. Projected monthly financial statements for the first 12 months of operations, together with assumptions. (The financial projections should be consistent and realistic in relation to the bank’s proposed strategic plan, and should show sufficient capital to support the bank’s strategy, especially in the light of start-up costs and possible operational losses in the early stages.)

l. Proposal by each of the subscribers on how they will raise the amount to pay for their proposed paid-up capitalization in the bank.

3. The application shall be considered filed on a first-come, first-served basis: Provided, that all the required documents are complete and properly accomplished.
4. Pursuant to Section 26 of Rep. Act No. 7653, approval of application shall be subject, among others, to the waiver of secrecy of deposits under Sec. X338.

5. Prescribed application form, together with other forms, is available at the OSPD.

D. INCORPORATORS/SUBSCRIBERS, DIRECTORS AND OFFICERS

1. The incorporators/subscribers and proposed directors and officers must be persons of integrity and of good credit standing in the business community. The subscribers must have adequate financial strength to pay for their proposed subscriptions in the bank.

2. The incorporators/subscribers and proposed directors and officers must not have been convicted of any crime involving moral turpitude, and unless otherwise allowed under the provisions of existing laws are not officers or employees of a government agency, instrumentality, department, or office charged with the supervision of, or the granting of loans to, banks.

3. A bank may be organized with not less than five nor more than 15 incorporators. In case there are more than 15 persons initially interested in organizing and investing in the proposed bank, the excess may be listed among the original subscribers in the Articles of Incorporation.

4. The number of members of the board of directors of the bank shall not be less than five nor more than 15 and shall always be in odd numbers.

5. At least two-thirds of the members of the board of directors of any commercial bank shall be Filipino citizens; at least a majority of the members of the board of directors of any thrift bank shall be Filipino citizens; and all members of the board of directors of a rural bank shall be Filipino citizens.

6. No appointive or elective public official, whether full-time or part-time shall at the same time serve as officer of a commercial bank or a thrift bank except in cases where such service is incident to financial assistance provided by the government or a government-owned or -controlled corporation to the bank.

7. The proposed directors and officers of the bank shall be subject to qualifications and other requirements under Sections X141, X142 and X143.

a. Qualifications of a director. A director shall have the minimum qualifications prescribed in Subsec. X141.2. In addition, for thrift banks and rural banks, at least one of the members of the Board of Directors must, in addition to the minimum qualifications, have at least one year experience in banking and/or finance: Provided, That this requirement may be waived if the thrift bank or rural bank is to be established in a municipality or city where there is no existing bank.
b. Qualifications of an officer. An officer shall have the minimum qualifications prescribed in Subsec. X142.2. In addition, for commercial banks, the president must, in addition to the minimum qualifications, have at least two years experience in banking and/or finance. For thrift banks and rural banks, any one of the president, chief operating officer, or general manager must, in addition to the minimum qualifications, have at least two years experience in banking and/or finance.

c. Disqualifications of a director. The disqualifications prescribed under Subsec. X143.1 shall apply.

d. Disqualifications of an officer. The disqualifications prescribed under Subsec. X143.2 shall apply.

E. REQUIREMENTS FOR THE ISSUANCE OF AUTHORITY TO OPERATE

1. Within 60 days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish the bank, the organizers shall:
   a. Submit the articles of incorporation, treasurer’s sworn statement and by-laws in seven copies; and
   b. Deposit with any commercial bank (for commercial banks and thrift banks) and any bank (for rural banks) the initial paid-up capital of the proposed bank.

2. Within 30 days after the articles of incorporation and by-laws had been passed upon by the Office of the General Counsel and the corresponding certificates of authority to register had been issued, the organizers shall effect the filing and registration of said documents with the SEC.

3. Within six months (for commercial banks and thrift banks) and eight months (for rural banks) from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish the bank, the organizers shall:
   a. Complete the construction and furnishing of the bank building, which shall be equipped with vault and appropriate security devices such as lighting system, time delay device, tamper-resistant locks, alarm system, etc., and provided with furniture, fixtures, equipment and bank forms;
   b. Effect and complete the recruitment and hiring of officers and employees of the bank;
   c. Submit the following documentary requirements at least 30 days before the scheduled start of operations:
      (1) Proof of registration of articles of incorporation and by-laws;
(2) Certification of compliance with the conditions of approval duly signed by the incorporators;

(3) List of principal and junior officers and their respective designations and salaries;

(4) Bio-data sheet, evidence of citizenship and NBI and BIR clearances of each of the officers (who have not had the previous approval of the Monetary Board/Governor) which are needed for the evaluation of their qualifications as officers;

(5) Chart of organization (The chart should show the names of departments/units/offices with their respective functions and responsibilities, and the designations of positions in each department/unit/office with their respective duties and responsibilities. The internal organization should provide for a management structure with clear accountability, a board of directors with ability to provide independent check on management, and independent audit and compliance functions, and should follow the “four eyes” principle, e.g., segregation of various functions, cross-checking, dual control of assets, double signatures, etc.);

(6) Manual of operations embodying the policies and operating procedures of each department/unit/office, covering such areas as signing/delegated authorities, etc. (for commercial banks and thrift banks);

(7) Plantilla showing the positions with corresponding salaries, the total of which should more or less conform with the amount of salaries shown in the submitted projected statement of earnings and expenses;

(8) Two sets of specimens of principal bank accounting and other forms;

(9) Bond policy on officers and custodial employees;

(10) Insurance policy on bank properties required to be insured;

(11) Blueprint of floor layout of bank premises;

(12) Contract of lease on bank’s premises, if the same are to be leased;

(13) Excerpts of the minutes of the organizational meetings confirming all organizational and pre-opening transactions relative to activities undertaken to prepare the bank to operate (such as appointment of officers, contract of lease, etc.);
(14) An alphabetical list of stockholders with the number and percentage of voting stocks owned by them;

(15) A separate list containing the names of persons who own voting stocks in banks and who are related to each other within the third degree of consanguinity or affinity, with proper indication of the combined percentage of voting stocks held by them in the particular bank, as well as corporations which are wholly-owned or a majority of the stock of which is owned by any of such persons, including their wholly- or majority-owned subsidiaries;

(16) Certification by the President that no person who is the spouse or relative within the second degree of consanguinity or affinity of any person holding the position of Chairman, President, Executive Vice-President or any position of equivalent rank, General Manager, Treasurer, Chief Cashier or Chief Accountant will be appointed to any of said positions in the bank;

(17) Appointment of an officer of the proposed bank who shall have undergone orientation on the reportorial requirements with the Department of Thrift Banks and Non-Banks Financial Institutions, and a certification by the Manager that he is fully aware of said reportorial requirements and the respective deadlines for submission to the BSP (for thrift banks); and

(18) Other documents/papers which may be required.

d. File with OSPD a request for ocular inspection of the bank premises at least 30 days before the scheduled start of operation.

F. INAUGURATION/OPENING OF THE BANK FOR BUSINESS AFTER THE CERTIFICATE OF AUTHORITY TO OPERATE HAS BEEN ISSUED

G. REQUIREMENTS WITHIN 30 DAYS AFTER FIRST DAY OF OPERATIONS

1. Inform the BSP of the first day of operation and the banking hours and days; and

2. Submit a statement of condition as of the first day of operation.

H. REVOCATION OF AUTHORITY TO ESTABLISH A BANK

The authority to establish a bank shall be automatically revoked if the bank is not organized and opened for business within six months (for commercial banks and thrift banks) and eight months (for rural banks) after receipt by the organizers of the notice of approval by the Monetary Board/Governor of their application. Extension may be granted upon presentation of justifiable
reason for failure to open the bank within the prescribed period, and proof that the bank can be opened within the extension period.

8) Legal structure admitted/requested for each of the different licenses.

   a) Different types of legal structures that may be used, i.e. corporations, limited liability partnership, branches, subsidiaries, etc.

   Under Philippine law, local banks must be organized as corporations. On the other hand, foreign banks are allowed to open branches as a single mode of entry, provided there are no more than 14 such foreign banks with branches.

   b) Capital requirements and own fund rules.

   Depending on which type of banking license is obtained, different capital levels are required. The minimum capital requirements of banks are as follows:

   a) Universal Bank – PhP5.4 billion
   b) Commercial Bank – PhP2.8 billion
   c) Branch – Permanently assigned capital of PhP210 million (with a maximum “net due to” of four times the permanently assigned capital, with a requirement of PhP35 million per additional branch
   d) Thrift Bank – PhP650 million for those with head office within Metro Manila and with authority to undertake quasi-banking operations; PhP400 million if without quasi-banking operations; PhP64 million for those with head office outside Metro Manila
   e) Investment House – PhP300 million; provided, that underwriting commitments cannot exceed 20 times the house’s net worth
   f) Financing Company – PhP10 million if located in Metro Manila; PhP5 million if located in first class cities; PhP2.5 million if located in second class cities and first class municipalities; PhP1.0 million if located in third class cities and second class municipalities; and PhP0.5 million if located in fourth class cities and third class municipalities and below.

   These amounts are the minimum paid-in capitalization required. The outstanding capital stock of the bank may be higher than its paid-in capital, provided, at least 25% of the total authorized capital stock are subscribed and at least 25% of such subscription shall be paid-up.

   c) Transfer of control and ownership regime. Is it regulated?

   Since banking is a highly regulated business, transactions affecting shares of stock of banks and limits on stockholdings are prescribed. There are limits on stockholdings in a single bank by individuals, family, corporate or business groups. In addition, the Manual
of Regulations for Banks requires prior approval by the Monetary Board for transfers that will result in ownership or control of more than 20% of the voting stock of a bank by any person, or which will enable such a person to elect, or be elected as, a director of such bank, or for transfers which will affect a change in the majority ownership or control of the voting stock of the bank from one group to another.

Ownership Ceilings

Similarly, business groups or those with common interests who own more than 40% of the voting stock of any commercial or universal bank may not acquire more than 40% of the voting stock in any other commercial or universal bank. Similar rules are applicable to thrift banks and rural banks.

Acquisition of Interest in Philippine Banks

Banking is a nationalized activity, which means that the foreign ownership in banks is limited to a certain percentage of the outstanding and/or voting capital stock.

Foreign individuals and non-bank corporations may own up to 40% of the voting stock of a universal bank or commercial bank, or up to 60% of the voting stock of a thrift bank (after the window was closed on 17 March 2005).

Foreign banks which are among the top 150 in the world or the top 5 in their country of origin are allowed to invest in up to 60% of the voting stock of a Philippine bank or to establish branches with full banking authority, provided they can only opt for one mode of entry, and provided that only 14 foreign banks may establish branches. At present, entry through the establishment of branches is not available, at least until one of the 14 foreign bank branches gives up its branching license.

d) Personal requirements and restrictions that may apply in each case for directors, officers, shareholders, etc.

The Manual of Regulations for Banks provides for the minimum qualifications of a director, who should be at least 25 years old, a college graduate or with at least five years experience in the business, must have attended an accredited seminar prescribed by the BSP, and, generally, must be fit and proper for the position of a director of the bank. In determining whether a person is fit and proper for the position, his integrity, competence, education, diligence, and experience are considered by the Monetary Board, which is the body that confirms the appointment and election of bank directors.

The Manual of Regulations requirements for officers are similar to those of a director, except that the floor age is 21 years. However, trust officers must have at least two years of actual experience in trust or fund management or other related fields. In addition,
officers of universal banks, commercial banks, and thrift banks are subject to Monetary Board confirmation, while those of rural banks must obtain prior approval. Like members of the board of directors of a bank, officers are required to submit their bio-data and to make updates as needed.

Directors and officers of banks are permanently disqualified if convicted by final judgment for offenses involving dishonesty, if found guilty of violation of banking laws, if declared insolvent, spendthrift, or incapacitated to contract, or if they are determined by the Monetary Board to have been responsible for the closure of a bank. The Manual of Regulations also provides for grounds for temporary disqualification for lesser offenses.

In order to safeguard against the exercise by the same person or group of persons of undue influence over similar financial institutions that could have an adverse effect on competition or which could result in conflict of interest, the Manual of Regulations provides for limitations and prohibitions on interlocking directorships, officerships, and directorships and officerships.

As previously mentioned, business groups or those with common interests who own more than 40% of the voting stock of any commercial or universal bank may not acquire more than 40% of the voting stock in any other commercial or universal bank. Similar rules are applicable to thrift banks and rural banks.

e) Special requirements and restrictions for foreigners either individuals or legal entities (including short description of WTO/GATS commitments and exemptions).

There are no special requirements and restrictions for foreigners under the WTO and GATT.

9) Is there Deposit Insurance? Is it mandatory or based on self-regulations? Provide a brief explanation of how it operates.

The Philippine Deposit Insurance Act (Rep. Act No. 3591, as amended) (the “PDIC Act”) created a government-owned entity, the Philippine Deposit Insurance Corporation (“PDIC”), which shall insure the deposit liabilities of all banks for up to PhP250,000. Such insurance is intended to protect depositors from situations that prevent banks from paying out deposits. The deposit insurance, which is mandatory, is funded from assessments on member-banks, which assessments are determined by the Board of Directors of the PDIC, but not to exceed one fifth of one percent of deposit liabilities per annum.

10) Interest rate. Is it regulated? Should the answer be affirmative, explain briefly its regulatory framework.
There is no ceiling on interest rates after the Usury Law (Act No. 2566) was repealed. However, the BSP regulates interest rates indirectly, primarily through the imposition of reserve requirements and other measures within its powers that affect interest rates.

11) Sanctions (civil. Administrative, or criminal) for violations of the legal and regulatory dispositions.

Sections 36 and 37 of the BSP Law provide for various sanctions for violations of its provisions and those of other banking laws, rules, and regulations. Section 36 punishes the persons responsible with fines ranging from PhP50,000 to PhP200,000, and/or imprisonment of not less than two years nor more than ten years. In addition to the personal liability of responsible persons under Section 37, the succeeding provision imposes fines of not more than PhP30,000 per day on the bank itself, and/or its directors and officers, aside from other operational sanctions on the banks, which sanctions range from limitation of certain privileges, up to revocation of license.

III. Bank Secrecy Laws

12) Is clients’ information protected? Are there any restrictions for its use?

The Bank Secrecy Law and related laws prohibit the examination and inquiry into all deposits and investments in government securities with Philippine banks by any person, government official, bureau, or office, and prohibits the disclosure by any bank official or employee to any unauthorized person of any information concerning the said deposits, except (a) where the depositor has given written permission of the depositor, (b) cases of impeachment, (c) cases where a competent court otherwise orders the disclosure in cases of bribery or dereliction of duty of public officials, or cases where the money deposited or invested is the subject matter of litigation, (d) in cases of unexplained wealth of public officials, (e) upon order of the Commissioner of Internal Revenue in respect of the bank deposits of a decedent, or for compromise of tax liabilities of a taxpayer, (f) upon order of the court in cases filed by the Ombudsman, (g) in cases of unclaimed balances, (h) upon order of the court, if the Anti-Money Laundering Council is related to certain unlawful activities, and (i) in the course of periodic examination by the BSP. It should be noted that in the foregoing enumeration, there is need for prior authorization either from the depositor, the court, or some other responsible public officer. However, if the Anti-Money Laundering Council determines that a particular deposit or investment is related to kidnap for ransom, dangerous drugs, violations of Rep. Act No. 6235, hijacking, arson, and murder, there is no more need for a court order.

Unlike ordinary bank deposits and investments in government securities in Philippine banks, foreign currency deposits enjoy greater confidentiality, which is protected except upon written permission of the depositor, if the Anti-Money Laundering Council determines that a particular deposit or investment is related to kidnap for ransom, dangerous drugs, violations of Rep. Act No.
6235, hijacking, arson, and murder, upon order of the court if the AMLC determines that a deposit is related to a money laundering offense, and under periodic examination by the BSP.

13) Should answer to number 12) be affirmative, please describe the legal framework, i.e. scope, limitation, exceptions.

See discussion in number 12).

14) Sanctions (civil, administrative, or criminal) for violations.

Violation of the Secrecy of Bank Deposits Law will subject the offender to a fine of not more than PhP20,000 and/or to imprisonment of not more than five years, in the discretion of the court.

Under the Anti-Money Laundering Act, the act of money laundering is punished with imprisonment of seven to fourteen years and a fine of not less than PhP3 million up to twice the amount of the value involved in the offense. Failure to make reports is punished with imprisonment from six months to four years and/or a fine ranging from PhP100,000 to PhP500,000.