
LOAN NUMBER 7130-GU

Loan Agreement

(Financial Sector Adjustment Loan)

between the

REPUBLIC OF GUATEMALA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated *December 13*, 2002

LOAN NUMBER 7130-GU

LOAN AGREEMENT

AGREEMENT, dated *December 13*, 2002, between the REPUBLIC OF GUATEMALA (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received from the Borrower a letter, dated May 20, 2002, describing: (i) its macroeconomic framework; and (ii) the objectives and policies of its financial sector reform program which consists of actions designed to improve the Borrower's banking sector, strengthen banking regulation, supervision and inspection, and modernize the legal framework for the Borrower's financial sector (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program; and requesting assistance from the Bank in support of the Program during the execution thereof; and

(B) on the basis, inter alia, of the foregoing, the Bank has decided in support of the Program to provide such assistance to the Borrower by making the Loan in three tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Fixed-Spread Loans" of the Bank dated September 1, 1999, with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

- (a) Section 2.01, paragraph 41, is modified to read:

" 'Project' means the program, referred to in the Preamble to the Loan Agreement, in support of which the Loan is made.";
- (b) Section 5.01 is modified to read:

"The Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in accordance with the provisions of the Loan Agreement and of these General Conditions.";
- (c) the last sentence of Section 5.03 is deleted;

(d) Section 9.07 (c) is modified to read:

“(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution of the program referred to in the Preamble to the Loan Agreement, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.”; and

(e) Section 9.05 is deleted and Sections 9.06, 9.07 (as modified above), 9.08 and 9.09 are renumbered, respectively, Sections 9.05, 9.06, 9.07 and 9.08.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “BANGUAT” means *Banco de Guatemala*, the Borrower’s Central Bank;

(b) “Bridge Deposit Account” means the deposit account referred to in Section 2.02 (a) of, and elsewhere in, this Agreement;

(c) “FFCB” means *Fondo Fiduciario de Capitalización Bancaria*, a trust fund to be established within, and administered by, BANGUAT pursuant to Section 5.01 (b);

(d) “FFCB” Operating Principles and Procedures” means the operating principles and procedures of FFCB as approved by the Bank;

(e) “First Tranche” means the portion of the Loan not exceeding \$50,000,000 to be released by the Bank on or after the Effective Date;

(f) “FOPA” means *Fondo para la Protección del Ahorro* the Recipient’s Deposit Insurance Fund created by Congressional Decree No.19-2002;

(g) “Floating Tranche A” means the portion of the Loan not exceeding \$50,000,000 to be released by the Bank upon fulfillment of the conditions set forth or referred to in Section 2.02 (d) of this Agreement;

(h) "Floating Tranche B" means the portion of the Loan not exceeding \$50,000,000 to be released by the Bank upon fulfillment of the conditions set forth or referred to in Section 2.02. (e) of this Agreement; and

(i) "SB" means "*Superintendencia de Bancos*" the Borrower's Superintendency of Banks.

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to one hundred fifty million Dollars (\$150,000,000) as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.09 of this Agreement.

Section 2.02. (a) The Borrower shall open, prior to furnishing to the Bank the first request for withdrawal from the Loan Account, and thereafter maintain in its central bank, a deposit account in Dollars on terms and conditions satisfactory to the Bank. Except with respect to the front-end fee referred to in Section 2.04 of this Agreement, all withdrawals from the Loan Account shall be deposited by the Bank into the deposit account. The Borrower shall not allow any other amounts from any source to be deposited in the deposit account.

(b) Subject to the provisions of paragraphs (c) and (d) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in support of the Program.

(c) The Borrower undertakes that the proceeds of the Loan shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Bank shall have determined at any time that any proceeds of the Loan shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Bank: (i) deposit into the deposit account an amount equal to the amount of said payment; or (ii) if the Bank shall so request, refund such amount to the Bank. Amounts refunded to the Bank upon such request shall be credited to the Loan Account for cancellation.

(d) No withdrawals shall be made from the Loan Account in respect of the Floating Tranche A unless, the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank:

(i) with the progress achieved by the Borrower in the carrying out of the Program;

- (ii) that the macroeconomic policy framework of the Borrower is satisfactory; and
- (iii) that the actions described in Schedule 3 to this Agreement have been taken in form and substance satisfactory to the Bank.

If, after said exchange of views, the Bank shall have given notice to the Borrower that the applicable conditions referred to in this paragraph have not been fulfilled and, within 90 days after such notice, such conditions continue to be unfulfilled, then the Bank may, by notice to the Borrower, cancel the unwithdrawn amount of the Loan or any part thereof.

(e) No withdrawals shall be made from the Loan Account in respect of the Floating Tranche B unless, the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank:

- (i) with the progress achieved by the Borrower in the carrying out of the Program;
- (ii) that the macroeconomic policy framework of the Borrower is satisfactory; and
- (iii) that the actions described in Schedule 4 to this Agreement have been taken in form and substance satisfactory to the Bank.

If, after said exchange of views, the Bank shall have given notice to the Borrower that the applicable conditions referred to in this paragraph have not been fulfilled and, within 90 days after such notice, such conditions continue to be unfulfilled, then the Bank may, by notice to the Borrower, cancel the unwithdrawn amount of the Loan or any part thereof.

Section 2.03. The Closing Date shall be June 30, 2004 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a fee in an amount equal to \$1,500,000. On or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of said fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge on the principal amount of the Loan not withdrawn from time to time, at a rate equal to: (i) eighty five one-hundredths of one per cent (0.85%) per annum from the date on which such charge commences to accrue in accordance with the provisions of Section 3.02 of the General Conditions to but not including the fourth anniversary of such date; and (ii) seventy five one-hundredths of one per cent (0.75%) per annum thereafter.

Section 2.06. The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, in respect of each Interest Period at the Variable Rate; provided, that upon a Conversion of all or any portion of the principal amount of the Loan, the Borrower shall, during the Conversion Period, pay interest on such amount in accordance with the relevant provisions of Article IV of the General Conditions.

Section 2.07. Interest and commitment shall be payable semiannually on February 15 and August 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

Section 2.09. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Variable Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Variable Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a "Conversion", as defined in Section 2.01(7) of the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.

(c) Without limitation upon the provisions of paragraph (a) of this Section and unless otherwise agreed by the Bank and the Borrower, the interest rate basis applicable to consecutive withdrawals from the Loan Account which in the aggregate is equal to \$50,000,000 shall be converted from the initial Variable Rate to a Fixed Rate for the full maturity of such amount in accordance with the provisions of the General Conditions and of the Conversion Guidelines.

(d) Promptly following the Execution Date for an Interest Rate Cap or Interest Rate Collar in respect of which the Borrower has requested that the premium be paid out of the proceeds of the Loan, the Bank shall, on behalf of the Borrower, withdraw

from the Loan Account and pay to itself the amounts required to pay any premium payable in accordance with Section 4.04(c) of the General Conditions up to the amount allocated from time to time for such purpose in the table in paragraph 1 of Schedule 1 to this Agreement.

ARTICLE III

Particular Covenants

Section 3.01. (a) The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 3 and Schedule 4 to this Agreement.

(b) Prior to each such exchange of views the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Bank on any proposed action to be taken after the disbursement of the Loan which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program including any action specified in Schedule 3 and Schedule 4 to this Agreement.

Section 3.02. Upon the Bank's request, the Borrower shall:

(a) have the deposit account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(b) furnish to the Bank as soon as available, but in any case not later than four months after the date of the Bank's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(c) furnish to the Bank such other information concerning the deposit account and the audit thereof as the Bank shall have reasonably requested.

Section 3.03. The Borrower shall, immediately and automatically after disbursement of the First Tranche of the Loan proceeds, disburse to FOPA funds in local currency equivalent to the respective amount of such disbursement (except that funds in local currency equivalent to the amount disbursed by the Bank to itself pursuant to Section 2.04. of this Agreement need not be so disbursed by the Borrower to FOPA).

Section 3.04 (a) The Borrower shall, immediately and automatically after disbursement of the Floating Tranche A of the Loan proceeds, disburse to FOPA funds in local currency equivalent to half of the amount disbursed under Floating Tranche A.

(b) The Borrower shall, immediately and automatically after disbursement of the Floating Tranche A of the Loan proceeds, disburse to FFCB funds in local currency equivalent to half of the amount disbursed under Floating Tranche A.

Section 3.05 The Borrower shall, immediately and automatically after disbursement of the Floating Tranche B of the Loan proceeds, disburse to FFCB funds in local currency equivalent to the respective amount of such disbursement.

Section 3.06. The Borrower shall cause FFCB:

(a) only to finance transfers in accordance with the provisions of FFCB Operating Principles and Procedures;

(b) to consult with the Bank prior to financing any transaction that would require any exception to FFCB Operating Principles and Procedures (in accordance with the provisions thereof) in order to obtain the Bank's opinion on whether the transaction would undermine the achievement of the objectives of the Program; and

(c) promptly after it makes any loan, to forward to the Bank all such information about the loan and the transaction financed by it as the Bank may reasonably require.

ARTICLE IV

Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

ARTICLE V

Effective Date; Termination

Section 5.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) the macroeconomic policy framework of the Borrower is satisfactory to the Bank; and

(b) the FFCB has been created.

Section 5.02. The date *March 13, 2003* is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VI

Representative of the Borrower; Addresses

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Public Finance
Ministerio de Finanzas Públicas
8ª Avenida y 21 Calle
Zona 1,
Guatemala, Guatemala

Facsimile:

(502) 230-0333

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

Facsimile:

INTBAFRAD
Washington, D.C.

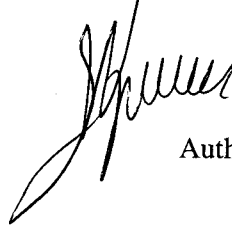
248423 (MCI) or
64145 (MCI)

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, USA., as of the day and year first above written.

REPUBLIC OF GUATEMALA

By



Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By



Regional Vice President
Latin America and the Caribbean

SCHEDULE 1

Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Loan shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another loan or a credit;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Bank by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel

		elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party);

6. expenditures: (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

7. expenditures under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation.

SCHEDULE 2

Amortization Schedule

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by the Bank by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Date</u>	<u>Installment Share</u> <u>(Expressed as a %)</u>
On each February 15 and August 15	
Beginning February 15, 2008 through February 15, 2018	4.55%
On August 15, 2018	4.45%

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by the Bank by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. (a) Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable

on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph 3, if at any time the Bank shall adopt a due date billing system under which invoices are issued on or after the respective Principal Payment Date, the provisions of such sub-paragraph shall no longer apply to any withdrawals made after the adoption of such billing system.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by the Bank by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by the Bank under the Currency Hedge Transaction relating to said Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3

Actions Referred to in Section 2.02 (d) of this Agreement

1. Enactment of regulations (*reglamentos*) of BANGUAT's organic law (*Ley Organica del Banco de Guatemala*, dated June 2, 2002), which regulations should address the following topics: (i) governance of BANGUAT; and (ii) reserve requirement rules.
2. Capitalization of BANGUAT has been completed through the issuing of bonds to settle past fiscal losses.
3. Enactment of new regulations (*reglamentos*) to strengthen the financial payments system, which regulations shall include a clear definition of BANGUAT's responsibilities, risk management rules, and enhanced efficiency.
4. Enactment of regulations (*reglamentos*) of the Borrower's banking law (*Ley de Bancos y Grupos Financieros*, dated June 2, 2002), which regulations should comprehensively cover the following topics: (i) entry rules; (ii) minimum risk management arrangements and governance principles to be adopted by banks; (iii) capital adequacy, loan classification and provisioning, and remaining prudential rules; (iv) accounting norms, including consolidation rules following international standards; (v) exit mechanisms including the procedures related to FOPA; and (vi) sanction rules.
5. Evidence that FOPA: (i) is fully operational and premiums are being paid by banks; and (ii) has adequate funding to reimburse depositors of banks under liquidation.
6. Enactment of regulations (*reglamentos*) of the Borrower's banking supervision law (*Ley de Supervision Financiera*, dated June 2, 2002), which regulations should address the following topics: (i) minimum requirements for external audits; and (ii) SB labor relations framework.
7. Evidence that the SB action plan, agreed with the Bank, for the application of the Borrower's new financial legal framework has met the following benchmarks: (i) risk management committees are in place for all of the banks of the Borrower's system; and (ii) risk management manuals have been adopted by all the banks of the Borrower's banking system, and further verified by SB.
8. Satisfactory progress has been made in carrying SB's program of *in situ* supervisions of the Borrower's national banks.
9. Evidence that supervision procedures and related necessary tools to implement the Borrower's money laundering law (*Ley Contra el Lavado de Dinero u Otros Activos*, dated December 17, 2001) are being applied.

10. The Borrower has taken irrevocable actions to initiate either merger, full regularization, full capitalization or liquidation of two selected undercapitalized banks of the Borrower's banking system, as agreed with the Bank.

11. Evidence that FFCB is fully operational, its Operating Principles and Procedures have been made effective, and a coordination unit for its operation has been created and is adequately staffed.

SCHEDULE 4

Actions Referred to in Section 2.02 (e) of this Agreement

1. Evidence that the mechanism described in BANGUAT's organic law for the transfer of BANGUAT's annual deficits and surpluses has been included in the Borrower's proposed national budget for the year 2004.
2. The following new financial legislation has been submitted to the Borrower's Congress for approval: (i) non-banking financial intermediaries law; (ii) insurance law; and (iii) secured transaction law.
3. Evidence that a new credit information system within SB has been created, is fully operational, and its statutory rules governing its operation, as agreed with the Bank, are in place.
4. Evidence that the SB action plan agreed with the Bank for the application of the Borrower's new financial legal framework has met the following benchmarks: (i) all banks are complying with the risk-based capital; (ii) all banks have been supervised (on- and off-site) in accordance with the provisions of the new financial legal framework; (iii) sanctions are being applied to banks which are not complying with the provisions of the new financial legal framework; (iv) at least seven (7) financial groups have been rated by SB and have had at least one complete inspection applying consolidated supervision principles; (v) at least seven (7) off-shore banks (as defined in the Borrower's banking law dated, June 2, 2002) have been rated by SB or have stopped operating in the Borrower's territory or have been summoned for illegal operation; (vi) an accounting manual for bank operations adopting the international accounting standards has been approved by the Borrower's monetary board; (vii) all banks and finance companies in the system have adopted and are utilizing the new accounting norms; and (viii) a register for external auditors is operating within SB.
5. Satisfactory progress has been made in carrying out a comprehensive examination of the Borrower's banking sector on a consolidated basis, including off-shore entities, in accordance with the new Banking law.
6. Evidence that FFCB has completed bank resolution transactions (liquidations, mergers/acquisitions and recapitalizations) requiring additional capital in an amount of at least \$25 million, including stake holder contributions.
7. Evidence that FFCB continues to operate in accordance with its Operating Principles and Procedures.
8. Evidence that annual financial audits reviewing FFCB operations are being carried out.

9. Evidence that the Borrower is taking measures to contribute additional funds to FFCB to cover eventual shortfalls in funds (as determined by BANGUAT with SB's assistance) to carry out the Bank resolution transactions.