

BANGKO SENTRAL NG PILIPINAS (BSP) RULES ON FOREIGN EXCHANGE TRANSACTIONS

I. CURRENT ACCOUNT

A. SALE OF FOREIGN EXCHANGE (FX) BY BANKS, THEIR SUBSIDIARY/AFFILIATE FOREX CORPORATIONS, AND OTHER NON-BANK ENTITIES OPERATING AS FX DEALERS (FXDs)/MONEY CHANGERS (MCs)

1. *Why is there a need to present supporting documents before FX can be purchased?*

Residents may purchase FX for non-trade current account purposes without need to present supporting documents if purchases do not exceed US\$500,000 (for individuals) and US\$1 million (for corporates/other entities) or its equivalent in other foreign currency per client per day. Purchases in excess of these amounts require the presentation of pertinent documents. Documents evidence the existence of legitimate outstanding FX obligations that may be serviced using FX resources of the banking system in accordance with existing policy.

2. *Does the BSP require Authorized Agent Banks (AABs) to sell FX only to clients who have a deposit account with the particular bank?*

No. The BSP does not impose any requirement that AABs may only sell FX to clients who have a deposit account with them. The BSP only requires FX transactions to be compliant with applicable laws and regulations, including the banks' "Know Your Customer" policy. FX selling banks may adopt internal policies in order to comply with these laws and regulations and are expected to exercise due diligence to ensure compliance therewith.

3. *Can Overseas Filipinos (OFs) be allowed to open a peso account whose funding will be remitted coming from his salary abroad to pay for expenses in the Philippines and/or as saving? What supporting documents should be presented?*

Yes. Section 3.1 of the FX Manual allows non-residents [including OFs residing abroad for more than one (1) year] to open and maintain a peso deposit account with AABs operating in the Philippines provided that the same shall be funded only by any of the cases enumerated under Section 3.1(a) to 3.1(f) thereof [which include inward remittance (IR) of convertible FX as in instant case] and subject to documentation prescribed in Appendix 1.1 of the FX Manual. Peso funds deposited in the account may be used for whatever purpose.

Should the non-resident decide to convert to FX the funds in the peso deposit account, same shall be governed by Section 3.2 of the FX Manual. For instance, Item (a) of aforesaid Section provides that peso deposits funded by IR of FX must have been used onshore as foreign direct investments or invested in eligible portfolio instruments and registered with BSP or custodian banks, subject to the provisions on Part Three, Chapter II (Foreign Investments) of the FX Manual, to allow conversion of such peso deposits to FX; otherwise, prior BSP approval shall be required.

B. FOREIGN MERCHANDISE TRADE TRANSACTIONS (EXPORTS AND IMPORTS)

4. *Are imports or exports of gold allowed?*

The importation of gold in any form is allowed without restriction except for (a) coin blanks, essentially of gold, which requires prior BSP approval; and (b) any article manufactured in whole or in part of gold, the stamps, brand or marks of which do not indicate the actual fineness of gold quality, which is prohibited.

The export of gold in any form is likewise allowed except for gold from small-scale mining, including panned gold, which is required to be sold to the BSP pursuant to Republic Act No. 7076 (People's Small-scale Mining Act of 1991) dated 27 June 1991.

5. *Is registration with the BSP still required for imports under Documents against Acceptance (D/A) and Open Account (O/A) arrangements to be paid with FX to be purchased from AABs?*

Registration of said importations is no longer required but the transactions must be reported to the BSP by AABs prior to sale of FX, in accordance with existing BSP rules.

Furthermore, submission by banks of supporting documents for duly reported importations under D/A and O/A arrangements is no longer required, but banks should maintain records of these transactions for BSP verification¹.

The guidelines for reporting, payments and extensions of imports under D/A and O/A arrangements are in Appendix 6 of the FX Manual².

AABs and OBUs shall report availments under Schedule 10 of FX Form 1 upon receipt of information/documents (as applicable), and payments on the importations under Schedule 11 of FX Form 1. Fines and penalties for late or erroneous submission shall be in accordance with Sections 101 and 103 of the FX Manual.

AABs and AAB-forex corps may sell FX for payments after the original maturity

¹ Circular No. 818 dated 06 November 2013

² Circular No. 874 dated 08 April 2015, as amended by Circular No. 925 dated 13 September 2016

date regardless of frequency of extension, provided that such is duly extended by the foreign supplier and the extension and payment are duly reported under Schedules 10 and 11 of FX Form 1, respectively.

6. Can the AABs and/or their subsidiaries/affiliate forex corporations (AAB-forex corps) sell FX for import transactions involving arrangements where the beneficiary should be a payment/treasury center/hub instead of the supplier?

Yes, subject to documentary requirements under Appendix 4 of the FX Manual, including the copy of the covering agreement/similar document for cases where the beneficiary is a payment/treasury center/hub.

7. Can importers purchase FX from AABs/AAB forex corps for advance payment of importations without prior BSP approval?

Yes. Importers may purchase FX from AABs/AAB forex corps for advance payment of importations without prior BSP approval regardless of amount involved, subject to standard documentary requirements if amount involved exceeds US\$500,000 (for individuals) and US\$1 million (for corporates/other entities)³.

8. Is the submission of a duly accomplished Application to Purchase FX to pay for import obligations required for all modes of payment?

Yes. A duly accomplished "Application To Purchase Foreign Exchange" using the prescribed format and supporting documents (as may be applicable) shall be submitted to AABs and/or AAB forex corps to allow the sale of FX to pay for import obligations for all modes of payment⁴. The application form is in Annex A of the FX Manual, as amended. Scanned copy of the original duly accomplished Application to Purchase FX form may also be submitted⁵.

The FX selling AAB/AAB forex corps shall retain the duly accomplished form for record and audit purposes.

9. One of the required documents for the sale of FX by the AABs for settlement of obligations under an intercompany netting arrangement is a notarized undertaking to be executed by the resident net importer indicating, among others, that it will make available through the reporting AAB the supporting documents (e.g., shipping documents) upon request by the BSP. For this purpose, what should be the retention period of such supporting documents by the importer?

Resident importer clients may retain such documents in their files for five (5) years from date of FX purchase except when a case for money

³ Appendix 7 of the FX Manual, as amended by Circular No. 925 dated 13 September 2016

⁴ Circular No. 818 dated 06 November 2013, as clarified under Circular Letter no. CL-2014-039 (3 July 2014), and as amended by Circular No. 925 dated 13 September 2016

⁵ Circular No. 984 dated 22 December 2017.

laundering has been filed in court, for which the documents must be kept beyond the five (5)-year period until it is confirmed that the case has been finally resolved or terminated by the court.

10. *What are the cases where bringing into or out of the country of Philippine currency exceeding the PHP50,000.00 threshold, may be authorized by the BSP?*

The BSP typically allows transport of Philippine currency into/out of the country in excess of PHP50,000 for limited purposes only, such as testing/calibration of money counting/sorting machines to be done offshore, and for numismatics (collectors of currency)/educational purposes.

11. *Will a child traveling with his parents or guardian be allowed to bring out/into the Philippines up to PHP50,000.00 (without BSP approval) and/or US\$10,000.00 or its equivalent in other foreign currency (without declaration)?*

Yes. Each child traveling with his/her parent/guardian may be allowed to bring out of/into the Philippines up to PHP50,000 without prior BSP approval. Each person, parent/guardian and child, should not hand carry an amount exceeding PHP50,000. If any child is not of age/capable to handle currency, then the total amount of pesos allocated for each child shall be hand carried by the parent or guardian but it should be ensured that: (a) the child/children is/are physically present with the parent/guardian upon Customs inspection; (b) the total amount allocated per person, inclusive of the allotment for the child/children, should not average more than PHP50,000; and (c) the amount of allocation per person is fully explained to authorities by the parent/guardian.

On the other hand, each child traveling with his/her parent/guardian may be allowed to bring out of/into the Philippines up to US\$10,000 or its equivalent in other foreign currency without written declaration. It should be noted, however, that if the amount to be hand carried by each person (including children) is in excess of US\$10,000 or its equivalent in other foreign exchange, the total amount to be transported should be declared in writing using the Bureau of Customs' Foreign Currency and Other Foreign Exchange-Denominated Bearer Monetary Instruments Declaration Form (which should be available at the Bureau of Customs desk in international airports/seaports) indicating allocations per person/traveler. In such a case, the child/children must likewise be physically present with the parent/guardian upon Customs inspection.

II. CAPITAL ACCOUNTS

A. APPROVAL AND/OR REGISTRATION OF FOREIGN LOANS/BORROWINGS AND OTHER RELATED TRANSACTIONS

1. *Why do foreign/foreign currency borrowings require approval and/or registration with the BSP?*

The approval/registration process helps control the size of the country's

obligations and keep debt service burden at manageable levels, channel loan proceeds to priority purposes/projects supportive of the country's development objectives and promote optimum utilization of the country's FX resources.

2. *What are the legal bases for such requirement?*

The legal bases for the BSP approval and/or registration process for foreign borrowings are the following:

- Section 20, Article VII of the 1987 Constitution of the Republic of the Philippines, pertaining to the authority of the President to incur and guarantee foreign loans on behalf of the Republic of the Philippines with prior concurrence of the Monetary Board (MB), and subject to such limitations as provided by law;
- Section 21, Article XII of the 1978 Constitution of the Republic of the Philippines states that foreign loans may be incurred in accordance with the law and the regulation of the monetary authority;
- Republic Act (R.A.) No. 4860 (Foreign Borrowings Act) dated 8 August 1966, as amended authorizing the President to obtain, on behalf of the Republic of the Philippines, foreign loans and credits, among others;
- R.A. No. 7653 (The New Central Bank Act) dated 14 June 1993 which provides, among others, that the BSP shall maintain international reserves adequate to meet any foreseeable net demands on the BSP for foreign currencies. The law also mandates the Government to secure MB written opinion on the monetary implications of a proposed credit operation of the government including its political subdivisions and instrumentalities before undertaking said credit operation abroad;
- Letter of Instructions No. 158 dated 21 January 1974, as clarified by Administrative Order No. 99 dated 28 November 1993, which requires all foreign borrowing proposals of the government, government agencies and financial institutions, instrumentalities, political subdivisions to be submitted for approval-in-principle by the MB before commencement of actual negotiations, or before issuing a mandate of commitment to foreign funders/arrangers; and
- Part Three, Chapter I of the FX Manual issued under Circular No. 645 dated 13 February 2009, as amended.

3. *What is the difference between a foreign loan and a foreign currency loan?*

Foreign loans refer to all obligations, regardless of currency of denomination, owed by Philippine residents to non-resident entities, including advances from foreign parent companies/head offices, shareholders and affiliates, as well as peso-denominated loans from non-residents. Foreign currency loans refer to obligations owed by Philippine residents to banks operating in the Philippines

that are denominated in currencies other than the Philippine peso⁶.

4. *If foreign currency loans are to be obtained from domestic sources, are these considered domestic borrowings?*

Yes. In line with international standards, the classification of a loan into foreign or domestic is determined by the residency of the creditor and not by the currency in which it is denominated. Hence, foreign currency-denominated loans obtained from domestic sources are considered domestic borrowings. On the other hand, loans obtained from non-resident creditors, even if denominated in pesos, are considered foreign loans.

5. *May foreign loan agreements submitted to BSP for approval and/or registration be notarized?*

Under Circular No. 618 (s. 1978) as amended by Circular No. 909 (s. 2016) effective 22 April 2016, no public and/or publicly-guaranteed foreign loan, deferred payment or any other agreements which give rise to a foreign/foreign currency obligation or liability of the public sector (whether primarily or subsidiarily), including promissory notes or guarantees issued in connection therewith, submitted to the BSP for approval and/or registration under the provisions of pertinent laws, circulars, rules and regulations shall be approved and/or registered if these are notarized or are otherwise evidenced by a public instrument. Under Article 2244 of the New Civil Code of the Philippines, duly notarized instruments are given preference over those not so constituted in the event of liquidation. Thus, to comply with the “pari passu” representations and negative pledge covenants in loan agreements of Philippine borrowers, particularly of the public sector, Circular No. 618, as amended, prescribes the submission to the BSP of unnotarized loan agreements.

The foregoing requirement does not apply for purely private foreign/foreign currency loans, or those that are obtained by the private sector without guarantee from the public sector.

6. *Are foreign loan proceeds required to be inwardly-remitted and sold for pesos?*

Loan proceeds intended to fund local costs (those payable to residents) should be inwardly-remitted and may either be paid directly to the intended beneficiary or sold for pesos to the banking system⁷. Amounts intended to finance FX costs (those payable to non-residents) need not be inwardly-remitted, but may either be paid directly to the offshore/non-resident supplier/beneficiary concerned or deposited in an FX account (whether onshore or offshore) pending utilization of the funds.

Proceeds of foreign/foreign currency loans/borrowings (including those from

⁶ Circular No. 925 dated 13 September 2016

⁷ Circular No. 925 dated 13 September 2016

issuances of bonds/notes/other debt instruments) of the National Government, its political subdivisions and instrumentalities, and GOCCs shall be deposited with the BSP pending actual utilization, pursuant to Section 113 of Republic Act (R.A.) No. 7653 (The New Central Bank Act) dated 14 June 1993.

A.1 PRIVATE SECTOR FOREIGN LOANS

7. *Which loans/borrowings require BSP approval and/or registration?*

Prior BSP approval is required for publicly-guaranteed private sector foreign/foreign currency loans/borrowings, including issuances of: (i) FX-denominated bonds/notes/other debt instruments, whether issued onshore or offshore; and (ii) peso-denominated bonds/notes/other debt instruments issued offshore, whether to be settled in foreign or local currency.

Prior BSP approval is no longer required for purely private sector loan (i.e., those without guarantee from the public sector). These loans will be subject to registration if FX will be purchased from AABs/AAB forex corps.

8. *What is the difference between BSP approval and registration of a private sector loan?*

The BSP approval gives the borrower the authority to finalize negotiations with the prospective creditor/s and sign the covering documents. The BSP registration, which is done after signing of the covering agreements and utilization of loan proceeds, will allow the borrower to repay the loan using FX to be purchased from AABs/AAB-forex corps. The Bangko Sentral Registration Document (BSRD)⁸ will be issued by the IOD upon the applicant's submission of the prescribed application form and supporting documents.

9. *Can the borrower/s purchase FX from AABs/AAB forex corps to pay the principal and interest falling due on loans which are not yet fully utilized?*

For loans not yet fully utilized, partial registration may be applied for with the BSP. Servicing of such loans using FX to be purchased from AABs/AAB forex corps shall be evaluated and shall be based on utilizations duly registered by the BSP.

A.2 PUBLIC SECTOR FOREIGN LOANS

10. *What is the difference between a project loan and a program loan of the National Government?*

Project loans refer to foreign loans which are used to finance specific projects of public sector borrowers. Compliance with the NEDA Board/Investment

⁸ A document issued authorizing the borrower to buy FX from AAB/AAB-forex corps for servicing of the registered obligation on scheduled due dates.

Coordination Committee guidelines/rules and regulations is a pre-requisite for MB approval of the proposed project loan.

Program loans refer to foreign loans which are used by the National Government on an unrestricted basis for general development purposes or for the development needs of the specific sector that is the focus of the program loan. Development Budget Coordination Committee approval is a pre-requisite for MB approval of the proposed program loan.

11. *What are the stages in the approval of public sector foreign loans?*

The approval process involves: (a) approval-in-principle: refers to the approval granted by the MB to the indicative financial terms and purpose of the loan. Prior to commencement of actual negotiations or issuance of a mandate of commitment to foreign funders/arrangers, the borrower is required to secure the BSP approval-in-principle of its proposed foreign loan; (b) review of loan documents: involves the negotiation and review, finalization and clearance of loan documents; and (c) final approval: refers to the approval granted by the MB to a loan previously approved-in-principle after its terms have been finalized, the covering loan agreement signed, and other preconditions for final approval have been complied with. This authorizes the borrower to draw on the loan/issue the bonds/notes/securities involved.

12. *What is an Official Development Assistance (ODA)?*

Pursuant to R.A. No. 8182 (ODA Law), ODA refers to a loan or a loan and grant facility which contains a grant element of at least 25 percent. In addition, the loan/loan and grant should also meet the following criteria pursuant to Section 2 of the ODA Law: (a) it must be administered with the objective of promoting sustainable social and economic development and welfare of the Philippines; (b) it must be contracted with governments of foreign countries with whom the Philippines has diplomatic, trade relations or bilateral agreements or which are members of the United Nations, their agencies and international or multilateral lending institutions; and (c) there are no available comparable financial instruments in the capital market.

13. *What is the Inter-agency Committee for Review of Foreign Loan Documents (IAC-RFLD)?*

The IAC-RFLD, composed of representatives from the BSP, Department of Finance, Department of Justice and the borrowing entity, is primarily tasked to review foreign loan and guarantee agreements (if any) and all related loan documents for foreign credits obtained or guaranteed by the Government.

14. *Are all loan documents covering public sector foreign loans required to be reviewed and cleared by the IAC-RFLD?*

No. The IAC-RFLD does not review agreements covering loans from the International Bank for Reconstruction and Development, the Asian

Development Bank and other ODA loan creditors with standard loan agreements. Instead of an IAC-RFLD clearance, a copy of the agreed minutes of negotiations between the Philippine negotiating panel and lenders concerned is submitted as one of the requirements for final MB approval of the loan.

15. *Is there a fee to be paid for the IAC-RFLD review and clearance?*

Yes. Pursuant to MB Resolution No. 1436 dated 8 October 1999, government owned and controlled corporations (GOCCs) are required to pay a regular processing fee of PHP20,000 to the IAC-RFLD through the IOD on all applications for review of loan agreements and related documents and double processing fee for agreements/documents requested to be reviewed on a rush basis.

16. *What are the implications of the “negative pledge clause” in the credit agreement of public sector borrowers?*

The purpose of the “negative pledge clause” is to ensure that a borrower’s assets will remain unencumbered and available to satisfy the claims of all general unsecured creditors should the borrower get into financial difficulties. The basic rationale of the clause is that whenever an asset of a borrower is pledged in favor of only one creditor or some of the creditors, the position of the borrower’s unsecured lenders may be prejudiced.

17. *What is the purpose of the “collective action clause” or “CACs” in the credit agreements/bond issuances of public sector borrowers?*

“CACs” would allow the borrower to restructure its debt payments for bonds during financial difficulties by permitting a specified supermajority to bind all bondholders within the same issue to the financial terms of restructuring. Such clauses are designed to facilitate communication and coordination between an issuer and its bondholders and make it easier for the parties to recontract, and to make it more difficult for a minority of holdout investors to slow down or disrupt the debt restructuring process.

18. *What is “break-funding cost”?*

Break-funding cost refers to the amount that sufficiently compensates a lender for all losses or costs that the lender reasonably determines in accordance with market standards to be attributable to terminating, liquidating, obtaining or re-establishing any deposit, related trading position or funding arrangement entered into by it as a result of the borrower’s voluntary prepayment of a loan whether partially or in full.

19. *Is the MB mandated to report to Congress actions taken on foreign loan applications of public sector borrowers?*

Yes. Under Section 20, Article VII of the 1987 Constitution of the Republic of the Philippines, the MB shall, within 30 days from the end of every quarter of

the calendar year, submit to Congress a complete report of its decision on applications for loans to be contracted or guaranteed by the Government or Government-Owned and Controlled Corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

A.3 OTHER MATTERS

20. *Are there reports required from borrowers relating to their loans?*

Section 22.8 of the FX Manual requires all foreign loans/borrowings (including those in the form of bonds/notes/other debt instruments), whether BSP-approved/registered or not, to be regularly be reported to the BSP, using the prescribed forms (Annexes E.1, E.2 and E.3⁹) within the prescribed deadline until the obligations are fully extinguished.

21. *Why does BSP require submission of foreign borrowings plans (FBP)¹⁰? Who are required to submit these and when?*

The BSP requires all resident entities (public and private sectors) intending to obtain MLT foreign loans, including offshore issuances of debt instruments, to submit to the BSP-IOD their annual FBP using the prescribed form (Annex D.3) every end-September for borrowings for the following year. Proposed onshore issuances by residents of debt instruments that require settlement in foreign currency shall likewise be reported in the FBP.

Any changes to the submitted plans shall be communicated in writing to the BSP-IOD within two (2) weeks from availability of information for monitoring purposes.

The BSP-IOD conducts a yearly survey of FBP to get an indication of the magnitude and timing of the economy's foreign financing requirements for the succeeding year, as well as the intended beneficiary sectors/projects/activities. This will help monitor the level, nature and profile of the proposed new foreign borrowings for various purposes, including policy formulation, projections, and planning for capital flows and statistics.

22. *Is BSP approval required for amendments to foreign loans/borrowings of the public sector and the private sector with public sector guarantee?*

For foreign loans/borrowings of the: (a) public sector that have been granted approval-in-principle or final approval, and (b) private sector with public sector guarantee that have been granted approval or registered with the BSP, changes in borrower/guarantor; purpose; financial terms and conditions (e.g., those involving change in: loan amount; interest rate; fees, charges or other costs; frequency of payments/servicing; and loan tenor/maturity) shall be required to obtain MB approval prior to the signing of the covering agreement/effectivity of the change. For changes that may not have monetary/financial implications, the

⁹ Annex E.3 shall be submitted for initial reporting of foreign loans obtained without prior BSP approval registration.

¹⁰ The FBP form (Annex D.3) may be downloaded from the BSP website at: http://www.bsp.gov.ph/regulations/reg_others.asp.

borrower shall submit a notice to BSP within 30 days from availability of information.

23. *What guarantees are subject to BSP approval/registration?*¹¹

Guarantees for account of the public sector or similar arrangements (other than those covered by Section 30.3 of the FX Manual) that may give rise to actual foreign obligations of the public sector to [non-residents](#), as well as those to be issued by government-owned and controlled corporations (excluding public sector banks and non-bank financial institutions with quasi-banking functions) in favor of [non-residents](#), shall require prior BSP approval.

Guarantees or similar arrangements which may give rise to actual foreign obligations to [non-residents](#) and not falling under Sections 30.1 – 30.3 of the FX Manual shall require BSP registration to allow servicing of the resulting foreign obligation using FX resources of [AABs/AAB forex corps](#).

24. *Can the BSP grant financing to local firms and/or provide a guarantee for obligations?*

The BSP is not authorized under its charter to grant loans or provide any form of guarantee.

25. *Can private sector borrowers source FX from AABs/AAB forex corps to fund payments of BSP-registered loans outside of scheduled payment dates indicated in the BSRD?*¹²

The BSP shall be notified in writing at least one (1) month prior to target payment date for the following [except for prepayment of BSP-registered [short-term](#) private sector loans/borrowings (including bonds/notes/ other debt instruments) that are not publicly-guaranteed]:

- a. Prepayment of BSP-registered loans/borrowings of the [private sector](#) that are not publicly-guaranteed; and
- b. Payments related to loans/borrowings that are past due for more than 30 calendar days from original due dates.

26. *Is prior approval/registration required for foreign/foreign currency loans whose repayment will be covered by an FX swap or a cross currency swap (CCS)?*

Loans must be registered (for those requiring registration) with, or reported (for those requiring mere reporting) to, the BSP to be eligible for servicing using FX resources of AABs/AAB forex corps. Thus, loans covered by FX swaps (where the first leg is an FX purchase and the second leg is an FX sale)/CCS must be registered with the BSP to allow delivery of FX under the swap contract. If the borrowings are not subject to prior BSP approval/registration, the AAB

¹¹ Circular No. 984 dated 22 December 2017

¹² Circular No. 984 dated 22 December 2017

counterparty for the swap contract shall report to the BSP-IOD details of the swap and the loans to be funded¹³.

B. FOREIGN INVESTMENTS

B.1 REGISTRATION OF FOREIGN INVESTMENTS

27. *Is the registration of foreign investments with the BSP mandatory?*

No. The registration of foreign investments (i.e., those made by non-residents) with the BSP or with investor's designated custodian bank on behalf of the BSP is optional. It is required only if the FX needed to fund the repatriation of capital and the remittance of earnings thereon will be purchased from AABs/AAB forex corps.

28. *What is the benefit of such BSP registration to investors?*

The BSRD¹⁴ for investments entitles the foreign investor or his duly authorized representative to purchase FX from AABs/AAB forex corps for purposes of capital repatriation or remittance of dividends/profits/earnings accruing on registered foreign investments.

29. *Is there a prescriptive period for the filing of applications for registration of FDIs with the BSP?*

Applications for registration of FDIs (under Section 34 of the FX Manual) shall be filed with the BSP within one (1) year from the date of inward remittance/actual transfer of assets to the Philippines (the prescriptive period). For the prescriptive period for other cases, please refer to Section 36 of the FX Manual. There is no prescriptive period, however, for inward foreign portfolio investments listed under Section 35 of the FX Manual.

30. *Under Section 43 of the FX Manual, foreign investments certified by stock transfer agents to have been made prior to 15 March 1973 may be serviced using FX purchased from AABs/AAB forex corps without prior BSP approval. In the absence of a stock transfer agent that will certify thereto, may foreign investments made prior to 15 March 1973 still be serviced using FX purchased from AABs/AAB forex corps?*

The Stock Transfer Agents (STA's) certification is a basic requirement for repatriation of investments made prior to 15 March 1973 in PSE-listed securities using FX purchased from AABs/AAB forex corps without prior BSP approval. On the other hand, FDIs made prior to 15 March 1973 may be serviced using FX purchased from AABs/AAB forex corps even without the required STA's

¹³ Ibid.

¹⁴ The BSRD is the document evidencing registration of a foreign investment and is issued by the BSP, through IOD, or by a custodian bank registering the investment on behalf of the BSP.

certification, provided that the investments are duly registered with the BSP. Application for BSP registration of such investments may be filed with the BSP-IOD subject to the documentation requirements under Appendix 12 of the FX Manual.

31. *Can a foreign investor outward remit the FX equivalent of their excess peso funds arising from unused portion of FX inwardly remitted and converted to pesos for the purpose of making investments in the Philippines?*

Yes. Section 40.3 of the FX Manual allows banks which registered foreign portfolio investments (FPIs) to sell for outward remittance the equivalent FX of: (a) excess pesos funded with inward remittance of FX; plus (b) interest earned on the excess pesos, provided: (a) the investor shall comply with the prescribed documents under Item C.3 of Appendix 1; and (b) 50 percent of the FX inwardly remitted must have funded duly registered investments in the Philippines.

The provision is applicable to FPIs [item nos. 1 – 3 of Section 35¹⁵ of the FX Manual] that have been registered by custodian banks. For foreign investments registered by the BSP, prior approval must be obtained for the remittance of the excess peso funds.

32. *Is there a one-stop action center for foreign investments?*

The BOI's Business One-Stop Shop Action Center (BOSSAC) facilitates the processing and documentation of all requirements necessary for the establishment of a business enterprise established in the country. The BOSSAC puts together, under one roof, all government agencies in charge of business registration, licensing and permit issuance.

The BOI also coordinates an inter-agency Investment Promotion Unit (IPU) network for investment after care. The BSP is a member of the IPU.

33. *Can an investment by a non-resident in equity shares of another non-resident that are listed at the PSE be registered to allow servicing of these investments using banking system resources?*

Yes, said investments may be registered with custodian banks subject to documentary requirements provided under Appendix 10 of the FX Manual.

34. *Can non-resident issuers of PSE-listed equity securities buy from AABs/AAB-forex corps the FX equivalent of peso proceeds from the onshore sale of such shares?*

Non-resident issuers or their authorized representative may purchase from their depository AAB (where the peso account is maintained) the equivalent FX of

¹⁵ "Section 35. Inward Foreign Portfolio Investments. Inward foreign investments shall refer to the following instruments:

1. Peso-denominated securities issued onshore by the National Government and other public sector entities;
2. Securities of resident enterprises listed at the Philippine Stock Exchange (PSE); and
3. Peso time deposits with AAB with a maturity of at least ninety (90) days. xxx".

the amount deposited in their peso account, provided that these are funded by peso proceeds from the onshore sale of their PSE-listed equity securities. For this purpose, the original BSP letter-authority to purchase FX and duly accomplished application to purchase FX using the prescribed format must be submitted to the FX selling/depository AAB. Non-resident issuers or their authorized representative shall submit to the BSP, through IOD, the request to purchase FX from their depository AAB, supported by documents listed under item no. 7 of Appendix 1.1 of the FX Manual.

35. *Is the “Authority to Disclose Information” under Appendix 10.4 of the FX Manual required to be submitted by non-residents for every registration of investment with custodian banks?*

The “Authority to Disclose Information” (ATD) is only required to be submitted once by the non-resident investor (or his authorized representative) who intends to register his investment with a custodian bank. The registration allows the foreign investor to use the FX resources of the banking system for outward remittance of capital and earnings on the registered investment. Execution of the ATD signals the authority given by the investor for the custodian bank to disclose to the BSP information that may be required by the BSP relative to any and all investments that the non-resident investor may have in the custody of the particular bank. The required authorization will cover the following:

- a. peso-denominated government securities;
- b. PSE-listed securities of residents and non-residents;
- c. peso time deposits with tenor of at least 90 days;
- d. non-resident investments in equities issued by non-residents previously listed in an international exchange and subsequently uplifted/transferred to PSE; and
- e. non-resident investments in PSE-listed equity securities issued by non-residents.

36. *Is the submission by the investor (or his duly authorized representative) of a duly accomplished application form to purchase FX required for capital repatriation and remittance of dividends/earnings accruing on BSP registered foreign investments if FX is to be purchased from AABs and/or AAB forex corps?*

A duly accomplished “Application To Purchase Foreign Exchange¹⁶” (Annex A of the FX Manual) using the prescribed format and supporting documents (as may be applicable) shall be submitted to AABs and/or AAB forex corps to allow the sale of FX for capital repatriation and remittance of dividends/earnings accruing on BSP registered investments.

Nevertheless, the foreign investor/client or his duly authorized representative may initially submit the duly accomplished application form to purchase FX via facsimile transmission to the FX selling AAB/AAB forex corps, provided that the FX selling institution shall: (a) ensure that the original copy of the application

¹⁶ Scanned copy of the original duly accomplished application form may also be submitted pursuant to Circular No. 984 dated 22 December 2017.

form is submitted to the FX selling institution within seven (7) calendar days from the sale of FX; and (b) retain such original document for record and audit purposes.

B.2 INVESTMENTS BY PHILIPPINE RESIDENTS

37. *What does intercompany loan under Section 44.2.c (Investments by Philippine Residents – Outward investments by residents) of the FX Manual contemplate?*

Intercompany loans contemplated in Section 44.2.c of the FX Manual are those granted by resident parent companies/subsidiaries to their non-resident parent companies/ subsidiaries; loans to offshore affiliate companies of residents are not included.

38. *Do offshore foreign currency-denominated mutual funds under Item b of Section 44.2 of the FX Manual include exchange traded funds (ETFs)?*

Yes. Except for the fact that mutual funds are bought and sold directly by an investment company, in contrast to ETFs which are funds that are traded at an exchange (just like other listed investments, e.g., stocks), both instruments are of the same nature in valuing shares of the fund. The BSP provided an advisory on the same through BSP Circular-Letter No. 069 dated 5 November 2015.

III. OTHERS

1. *What rules govern FX swap transactions, specifically those involving FX purchase at the first leg and FX sale at the second leg with foreign/foreign currency loans and/or inward foreign investment, and transactions between residents as underlying transactions?*

The first leg of the swap will be subject to the bank's KYC policy and existing regulations on anti-money laundering. The second leg of the swap will be subject to the swap contract between the counterparties. However, for swaps covering foreign/foreign currency loans and inward investments, and transactions between residents, the minimum documentary requirements for the sale of FX under Appendix 1 of the Manual shall also apply, and thus, must be presented to the bank counterparty prior to delivery of FX by the bank to its client at any time under the forward leg of the swap.

Swap contracts of this type intended to fund peso loans to be extended by non-residents in favor of residents shall require prior BSP approval. For borrowings not subject to prior BSP approval/registration, the AAB counterparty for the swap contract shall report to the BSP, through the International Operations Department, details of the swap and the loans to be funded showing, among others, the borrowers' names, amounts of the loans.

For this purpose, the swap contract covering foreign loans and inward investments¹⁷ must include a statement that: "There shall be no delivery of FX at any time under the swap contract unless the foreign loans/inward investments are duly registered with the BSP custodian bank."¹⁸

2. *What rules govern cross currency swaps (CCS)?*

Cross currency swap is defined as an arrangement in which two parties exchange a series of cash flows in one (1) currency for a series of cash flows in another currency at a specified exchange and interest rates and at agreed intervals over an agreed period. The rules on FX swaps under item D, Appendix 18 of the FX Manual, also apply to CCS.¹⁹

3. *Are Thrift Banks (TBs) allowed to engage in FX forwards?*

Yes. Circular No. 864 dated 22 December 2014 provides that TBs with existing authority to issue foreign letters of credit and pay/accept/negotiate/import/export/drafts/bills of exchange may apply for a Type 2 authority to operate as a dealer of deliverable FX forwards to service trade-related hedging requirements of clients under certain conditions.

4. *To whom shall other inquiries on FX regulations be addressed?*

Inquiries and other concerns may be sent to:
The Office of the Senior Director or
The International Policy Development Staff
International Operations Department
3rd Floor, 5-Storey Building
Bangko Sentral ng Pilipinas
1004 Manila
E-mail: iod-ipds@bsp.gov.ph

¹⁷ For this purpose, foreign loans and inward investments refer to only to those requiring prior BSP approval and/or registration, as may be applicable.

¹⁸ Circular No. 818 dated 6 November 2013, as amended by Circular No. 925 dated 13 September 2016

¹⁹ Op. cit.