

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/MONEY CHANGERS

1. *Who can purchase FX from Authorized Agent Banks (AABs)¹, their subsidiary/affiliate forex corporations (AAB-forex corps) in the Philippines, and other non-bank entities operating as FX dealers/money changers (FXDs/MCs)?*

Residents and non-residents may purchase FX from AABs, AAB-forex corps, and other non-bank entities operating as FXDs/MCs subject to specific requirements. The sale of FX by AABs/AAB-forex corps is governed by the Manual of Regulations on Foreign Exchange Transactions (the "FX Manual"), issued under Circular No. 645 dated 13 February 2009, as amended², while the sale by FXDs/MCs is governed by Circular No. 471 dated 24 January 2005, as amended by Circular No. 652 dated 5 May 2009.

2. *Are Thrift Banks (TBs), Rural Banks (RBs) and Cooperative Banks (Coop banks) allowed to buy and sell FX?*

Yes. Circular No. 865 dated 22 December 2014 provides that TBs, RBs and Coop banks may engage in the buying and selling of FX subject to pertinent rules for such transactions.

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

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.

¹ AABs refer to all categories of banks (except offshore banking units) duly licensed by the BSP. It is understood that each category of bank should function within the operational parameters defined by existing laws/regulations for the specific bank category to which they respectively belong.

² The FX Manual replaced Circular No. 1389 dated 13 April 1993, as amended. A copy of the FX Manual and the corresponding amendments thereto may be downloaded at: <http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT.pdf> and http://www.bsp.gov.ph/regulations/reg_MORFXT_amendments.asp, respectively.

4. How much FX can residents buy to cover payments to non-resident beneficiaries for non-trade transactions without need for prior BSP approval?

AABs/AAB-forex corps may sell FX to residents without need for prior BSP approval to cover payments to non-resident beneficiaries for non-trade purposes (other than for foreign/foreign currency loans and investments) subject to the following³:

- For FX sales not exceeding US\$500,000 (for individuals) and US\$1,000,000 (for corporates/other entities) or its equivalent in other foreign currency per client per day
 - a. Accomplished Application to Purchase FX using the prescribed form
- For FX sales exceeding US\$500,000 (for individuals) and US\$1,000,000 (for corporates/other entities) or its equivalent in other foreign currency per client per day
 - a. Accomplished Application to Purchase FX using the prescribed form; and
 - b. Supporting documents required under existing rules⁴.

FX purchases for non-trade current account transactions shall either be:

- a. remitted directly to the intended non-resident beneficiary's account (including payment/treasury centers/hubs of a group of companies) on the date of purchase; or
- b. credited to the resident purchaser's Foreign Currency Deposit Unit (FCDU) account (with the same or another AAB) for eventual remittance by the depository AAB to the non-resident beneficiary (including payment/treasury centers/hubs of a group of companies) for the declared purpose: *Provided*, that if the depository bank is different from the FX selling institution: (i) the FX selling institution shall directly transfer the FX sold to the depository bank of the purchaser; and (ii) the depository bank shall also be the FX remitting AAB.

FX purchased by residents for travel and medical expenses abroad not yet incurred, and sales proceeds of emigrant's domestic assets where the emigrant is still in the country, may be held in cash, or directly remitted to the intended non-resident beneficiary or credited to the resident purchaser's FCDU account in accordance with items (a) and (b) above.

³ Circular No. 925 dated 13 September 2016

⁴ Item A, Part II of Appendix 1 of the FX Manual, as amended.

5. *How much FX can non-resident tourists or balikbayan purchase from AABs/AAB-forex corps?*

Non-resident tourists/balikbayan may purchase FX from AABs and AAB-forex corps to the extent of the amount of FX shown to have been sold for pesos by non-residents. Departing non-resident tourists or balikbayan may reconvert at airports or other ports of exit unspent pesos up to a maximum of US\$10,000 or its equivalent in other foreign currency calculated at prevailing exchange rates, without showing proof/s of previous sale of FX for pesos.

6. *Can Overseas Filipino Workers (OFWs) 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, as amended allows non-residents [including OFWs 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 decides 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 “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)

7. *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.

8. Where can importers obtain clearance/permits for regulated imports?

Regulated imports are commodities that require clearances/permits relative to the importation. Appendix 2 of the FX Manual provides a list of regulated import commodities and the administering agencies that issue the relevant clearances/permits.

9. How much FX can residents buy to cover payments to non-resident beneficiaries for trade transactions without need for prior BSP approval?

AABs and AAB-forex corps may sell FX to residents for payment of importations, subject to the following:

- For sale not exceeding US\$500,000 (for individuals) and US\$1,000,000 (for corporates/other entities) or its equivalent in other foreign currency per client per day
 - a. Accomplished Application to Purchase FX using the prescribed form
- For sale exceeding US\$500,000 (for individuals) and US\$1,000,000 (for corporates/other entities) or its equivalent in other foreign currency per client per day
 - a. Accomplished Application to Purchase FX using the prescribed form; and
 - b. Supporting documents required under existing rules⁵.
- For sale of FX (regardless of amount) to settle net payables under intercompany netting arrangement [Open Account (O/A)] among non-bank related parties
 - a. Accomplished Application to Purchase FX using the prescribed form; and
 - b. Supporting documents required under existing rules⁶

FX purchased from AABs/AAB-forex corps for payment of importations shall either be:

- a. remitted directly to the intended non-resident beneficiary's account (including payment/treasury centers/hubs of a group of companies) on the date of purchase; or
- b. credited to the resident importer's FCDU (with the same or another AAB) for eventual remittance by the depository AAB to the intended non-resident beneficiary (including payment/treasury centers/hubs of a group of companies) for settlement of import obligation: *Provided*, that if

⁵ Appendices 4 and 7 of the FX Manual, as amended by Circular No. 925 dated 13 September 2016

⁶ Appendix 6.1 of the FX Manual, as amended by Circular No. 925 dated 13 September 2016

the depository bank is different from the FX selling institution: (i) the FX selling institution shall directly transfer the FX purchases to the depository bank of the purchaser; and (ii) the depository bank shall also be the FX remitting AAB.

10. Is registration with the BSP still required for imports under Documents against Acceptance (D/A) and 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 payment, 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 verification⁷.

The guidelines for reporting, payments and extensions of imports under D/A and O/A arrangements are in Appendix 6 of the FX Manual⁸.

AABs and OBUs shall report availments under Schedule 10 of FX Form 1 upon receipt of the documents, 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 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.

11. Can the AABs/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.

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

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

⁷ Circular No. 818 dated 06 November 2013

⁸ Circular No. 874 dated 08 April 2015, as amended by Circular No. 925 dated 13 September 2016.

US\$500,000 (for individuals) and US\$1,000,000 (for corporates/other entities)⁹.

13. 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 payment¹⁰. The application form is in Annex A of the FX Manual, as amended.

Clients may also submit to the FX selling AAB/AAB-forex corp a facsimile copy of the duly accomplished and signed application to purchase FX, subject to the FX selling institution's "Know Your Customer" (KYC) policy and provided that the original application form is subsequently submitted to the FX selling AAB/AAB-forex corp within seven (7) calendar days from purchase of FX.

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

14. Do amendments to Letter of Credit require prior BSP approval?

Amendment to Letters of Credit need not be referred to the BSP for prior approval.

15. Is sale of FX by AABs to pay obligations under intercompany netting arrangements allowed?

Yes. The sale of FX (on spot and forward basis) by AABs/AAB-forex corp to residents to settle net obligations under intercompany netting arrangements pertaining to trade transactions (import and export) is allowed without prior BSP approval, subject to presentation of documentary requirements¹¹.

16. 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 laundering has been filed in court, for which the documents must be kept

⁹ Appendix 7 of the FX Manual, as amended by Circular No. 925 dated 13 September 2016.

¹⁰ 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

¹¹ Circular No. 874 dated 08 April 2015, and Circular No. 925 dated 13 September 2016.

beyond the five (5)-year period until it is confirmed that the case has been finally resolved or terminated by the court.

17. Can a person bring in or take out of the country any amount of Philippine currency?

A person may, without prior BSP approval, import or export, or bring in or take out of the country, or electronically transfer, legal tender Philippine notes and coins, checks, money orders or other bills of exchange drawn in pesos against banks operating in the Philippines in amounts not exceeding PHP50,000.00. Prior authorization from the BSP, through the International Operations Department (IOD), is required for the export and import of Philippine currency exceeding PHP50,000.00.¹²

The BSP typically allows transport of Philippine currency into/out of the country in excess of PHP50,000.00 for limited purposes only, such as testing/calibration of money counting/sorting machines to be done offshore, and for numismatics (collectors of currency).

The integration of the International Passengers Service Charge (IPSC) into airline tickets was implemented by the Manila International Airport Authority. The amount of peso refund to outbound passengers exempted¹³ from the payment of IPSC, is not included in the PHP50,000.00 limit.

18. Is there any restriction or limit in the amount of foreign currency that a person may bring in or take out of the Philippines?

There is no restriction or limit on the amount of foreign currency that a person may bring in or take out of the Philippines. However, any person bringing in or taking out of the Philippines foreign currency, as well as other FX-denominated bearer monetary instruments, (whereby title thereto passes to another by endorsement, assignment or delivery), in excess of US\$10,000.00 or its equivalent in other foreign currency must declare such fact in writing and furnish information on the source and purpose of the transport of such currency or monetary instruments using the prescribed Foreign Currency and Other FX-Denominated Bearer Monetary Instruments Declaration Form. The form is available at the Bureau of Customs desk in the arrival/departure areas of all international airports and seaports. A copy of the form may also be downloaded from the FX Manual (Annex K) which is posted at the BSP website¹⁴. Failure to do so shall subject the violator to sanctions, including confiscation of the foreign currency or monetary instruments involved.

¹² Circular No. 922 dated 23 August 2016

¹³ Those passengers exempted under Philippine laws from payment of travel tax, airport tax and other travel related taxes or fees, which include the following:

- a) Philippine Sports Commission and its delegations or representatives to any international sports convention, conference and meeting, and athletes, coaches and other officials to any international competition under Republic Act (R.A.) No. 6847 (The Philippine Sports Commission Act); and
- b) Overseas Filipino Workers (OFWs) under R.A. No. 10022 (Migrant Workers and Overseas Filipinos Act of 1995); Provided that, refund is made prior to departure at airports or other ports of exit.

¹⁴ <http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT-faas.zip>

19. 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 PHP50,000.00 without prior BSP approval. Each person, parent/guardian and child, should not hand carry an amount exceeding PHP50,000.00. 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 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 PHP50,000.00; 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\$10,000.00 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\$10,000.00 or its equivalent in other foreign exchange, the total amount to be transported should be declared in writing using the Foreign Currency and other Foreign Exchange-denominated Bearer Monetary Instruments Declaration Form (which should be available at the BOC 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 REGISTRATION OF FOREIGN LOANS AND OTHER RELATED TRANSACTIONS

1. *Why do foreign/foreign currency-denominated borrowings require approval and 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 registration process for foreign borrowings are the following:

- Section 20, Article VII and Section 21, Article XII of the Philippine Constitution, 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;
- Republic Act (R.A.) No. 4860 (Foreign Borrowings Act) dated 8 September 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 MB to provide 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;
- 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 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-denominated 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 peso¹⁵.

¹⁵ Circular No. 925 dated 13 September 2016

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. *What projects are eligible for financing with foreign loans?*

The following are the types of projects/activities eligible for foreign financing:

- a. Export-oriented projects;
- b. Projects registered with the Board of Investments (BOI);
- c. Priority investment areas under the current Investment Priorities Plan (IPP) prepared by the BOI;
- d. Activities listed in the current Medium Term Public Investment Plan (MTPIP) prepared by the National Economic and Development Authority (NEDA);
- e. Development of industrial estates and economic zones;
- f. Socialized/Low-cost housing projects;
- g. Acquisition of non-performing assets/loans (NPAs/NPLs) of banks and other government financial institutions;
- h. Acquisition of government assets approved for privatization;
- i. Other projects that may be declared priority under the country's socio-economic development plan by the NEDA or by Congress;
- j. Refinancing of existing loans used for eligible projects/costs which are eligible for servicing using FX sourced from AABs or AAB-forex corps; and
- k. Microfinance activities.

Short-term foreign loans (with original maturities of up to one year) shall finance exclusively the FX requirements of eligible projects, except as may be specifically allowed under the FX Manual. Medium- and long-term (MLT) foreign loans (with original maturities longer than one year) may finance FX costs as well as peso costs (excluding working capital¹⁶) of eligible projects.

6. *What is the rationale for limiting foreign loans that are approved and/or registered by the BSP to fund only eligible projects listed under Section 25 of the FX Manual?*

This is to ensure that funds are channeled to priority projects in line with the country's development plan.

¹⁶ Includes peso costs/expenses which are administrative in nature, such as: payroll; utilities; taxes

7. *How long does it take for the BSP to process and approve an application for foreign loans?*

Processing time will depend on the complexity of the proposal as well as volume and complexity of applications pending as of the date of receipt of the application. Generally, however, it will take about 30 banking days from date of receipt of all documents/information required to process the application and prepare the appropriate recommendation to the approving authority.

8. *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.

9. *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 system¹⁷. 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 pending utilization of the funds.

For public sector loans/bond/note issues, proceeds are required to be deposited with the BSP, pending utilization of the funds, pursuant to Section 113 of The New Central Bank Act.

¹⁷ Circular No. 925 dated 13 September 2016

A.1 PRIVATE SECTOR FOREIGN LOANS

10. *Do inter-company loans¹⁸ require BSP approval?*

Private sector inter-company loans generally do not require prior BSP approval provided that the loan terms are market-oriented, the project/purpose is eligible for foreign financing and there is no guarantee from any government entity or bank operating in the Philippines. Loans granted by foreign subsidiaries¹⁹ that are not wholly-owned by the foreign parent company must be fully guaranteed by the parent company.

However, these loans should be registered with the BSP after the loans have been drawn and utilized to qualify for servicing using FX to be purchased from AABs/AAB-forex corps. Application for registration of short-term loans shall be filed with BSP within 10 banking days from drawdown date, while for MLT loans, the application should be filed three (3) months from utilization of loan proceeds.

Furthermore, inter-company loans intended to refinance existing loans of the borrower or for relending require prior BSP approval to allow the BSP to evaluate the eligibility of the existing loans/projects to be refinanced.

11. *Do private sector loans covering importation of freely importable commodities under deferred LC or D/A-O/A arrangements with terms of more than one year require BSP approval?*

These loans do not require prior BSP approval provided these are not guaranteed by foreign government/official export credit agencies. However, these loans should be registered with the BSP to qualify for servicing using FX to be purchased from AABs/AAB-forex corps.

12. *What are the basic/general requirements for approval/registration of private sector foreign loans?*

Foreign borrowings of the private sector require prior approval and/or registration by the BSP if the loans:

- are guaranteed by the public sector; or
- will be serviced with FX to be purchased from AABs/AAB-forex corps; or
- are obtained by private non-bank financial institutions (except those obtained by non-bank financial institutions with quasi-banking functions)

¹⁸ Inter-company loans refer to those granted by foreign parent companies/head offices to their Philippine branches/subsidiaries/affiliates.

¹⁹ Subsidiaries refer to corporations or firms more than 50 percent of the outstanding voting stock of which is directly or indirectly owned, by another firm.

with maturities of more than one year for the purpose of relending.

The requirements for loan approval are as follows:

- BSP approval shall be obtained prior to signing of loan documents and/or drawdown of loan proceeds.
- The application form for such approval should be submitted through the Foreign Loan Approval and Registration System (FLAReS)²⁰ together with the required supporting documents specified therein (all certified as true copies by an authorized officer of the borrower-firm) at least 30 banking days before the target signing date of the loan documents and/or initial drawdown date, whichever is earlier;
- Loan proceeds shall be used to finance eligible projects/costs listed in Part Three, Chapter I of the FX Manual;
- Terms are market-oriented and compliant with pertinent laws; and
- Payment of processing fee required under Appendix 20 of the FX Manual.

The requirements for loan registration are as follows:

- BSP application for loan registration shall be filed within 10 banking days from drawdown date for short-term loans and three (3) months from utilization of loan proceeds for MLT loans;
- The duly-accomplished application form together with the required supporting documents specified therein (all certified as true copies by an authorized officer of the borrower-firm) including copies of the covering loan documents and proof of utilization of loan proceeds, which should be in accordance with the approved purposes under the FX Manual, must be submitted; and
- For cases where prior BSP approval is not required and a processing fee is payable pursuant to Appendix 20 of the FX Manual, the application for registration should be submitted through the Foreign Loan Approval and Registration System (FLAReS) together with the required supporting documents specified therein (all certified as true copies by an authorized officer of the borrower-firm).

²⁰ Registration procedures for FLAReS can be downloaded from the BSP website at <http://www.bsp.gov.ph/downloads/Publications/FAQs/FLAReS.pdf> (primer) <http://www.bsp.gov.ph/downloads/Regulations/FLAReSUAR.doc> (User Account Registration Form)

13. *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 full 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)²¹ will be issued by the IOD upon the applicant's submission of the prescribed application form and supporting documents which should show compliance with the terms and conditions of the BSP approval of the loan/existing policy (for those loans not subject to prior BSP approval).

14. *What is the basis for requiring a 75/25 long-term debt-to-equity ratio?*

The 75/25 long-term debt-to-equity ratio is a prudential limit on private sector non-bank borrowers which aims to prevent an over-leveraged position considering that excessive borrowings may adversely affect borrowers' ability to service obligations.

Section 22.7 of the FX Manual requires private sector non-bank borrowers who obtain loans that are subject to prior BSP approval and/or registration to maintain a long-term debt-to-equity ratio of 75/25 or better for the entire duration of their foreign/foreign currency loans.

15. *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 (notation) 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 pro-rated on the basis of utilizations duly noted/found eligible for registration by the BSP. Payment of any unauthorized balance shall be funded with FX from sources other than AABs/AAB-forex corps.

A.2 PUBLIC SECTOR FOREIGN LOANS

16. *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

²¹ A document issued only after full disbursement of the loan and review of the utilization of the loan proceeds. The BSRD authorizes the borrower to buy FX from AAB/AAB-forex corps for servicing of the registered obligation on scheduled due dates.

Coordination Committee guidance/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.

17. *What are the stages in the evaluation of public sector foreign loans?*

The evaluation 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.

18. *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.

19. *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 and all related documents for foreign credits obtained or guaranteed by the Government and, if necessary, negotiate with representatives and counsels of the lenders.

20. *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.

21. *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 PHP20,000.00 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.

22. *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.

23. *What is the purpose of the “collective action clause” or “CAC” in the credit agreements of public sector borrowers?*

“CACs” would allow the borrower to restructure its debt payments under its international 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.

24. *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.

25. Do public sector loans require BSP approval and/or registration?

All foreign/foreign currency-denominated borrowings of the public sector require prior BSP approval, except for short-term foreign currency loans from banks operating in the Philippines listed under Section 24.4 of the FX Manual. Such BSP approval shall be obtained prior to: (a) commencement of actual negotiations; or (b) issuing a mandate of commitment to foreign funders/arrangers or signing of loan documents and/or drawdown of loan proceeds.

Public sector loans extended final approval by the MB are deemed registered; however, purchase of FX from AABs/AAB-forex corps for non-bank public sector loans that have been extended final approval by the BSP requires prior specific BSP authority.

26. 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, 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 GOCCs which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

A.3 OTHER MATTERS

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

Under Section 22.4 of the FX Manual, all foreign borrowings, regardless of maturity, creditor, source of FX funds, and whether or not approved/registered by the BSP (in the case of private sector loans), are required to be reported monthly to the BSP, through the IOD, using the prescribed forms (ST-2 for short-term loans and Form 2 for MLT loans²²).

Furthermore, a summary of the financial terms and conditions of private sector loans/bond issuances without BSP approval/registration must be provided using the prescribed format (Annexes E.3 and E.4 of the FX Manual) for the creation of a loan record.

²² May be downloaded from the BSP website at: <http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT-faas.zip> (under Annexes E.1, E.2, E.3 and E.4 of the FX Manual)

28. Why does BSP require submission of foreign borrowings plans? Who are required to submit these and when?

The BSP requires resident companies/entities intending to obtain medium- and long-term foreign loans (including issuance of bonds/notes/debt securities onshore or offshore) to submit to the BSP-IOD their annual foreign borrowings plan²³ for monitoring and programming purposes as follows:

- Public sector entities, including the National Government – every end-September for borrowings for the following year, regardless of amount; and
- Private sector entities, with planned aggregate annual borrowings of at least US\$10 million, or its equivalent – every end-September for borrowings for the following year.

The timetable and any changes in the submitted foreign borrowings plan shall be communicated to the BSP-IOD within two (2) weeks upon availability of information for monitoring and programming purposes.

Private sector loans that are submitted to the BSP for approval or registration that were not included under a foreign borrowings plan as required shall be assessed an additional 10 percent of the applicable processing fee.

29. Is BSP approval required for amendments to the financial terms and conditions of BSP-approved loans?

Any change in the financial terms and conditions of BSP-approved loans shall be subject to BSP approval before signing of the covering agreement/effectivity of the changes made.

30. What is the period within which the borrower can finalize the loan terms and contract the covering loan agreements/contracts?

In general, the borrower must finalize and contract the covering loan agreements/contracts within a prescriptive period of 90 calendar days after receipt of written notice of BSP approval of the loan. Otherwise, the approval shall be deemed cancelled, unless a request for extension has been received by the BSP prior to the expiry of the prescriptive period. Requests for extension of the period are evaluated based on the merits of the case.

²³ The foreign borrowings plan form may be downloaded from the BSP website at: http://www.bsp.gov.ph/regulations/reg_others.asp.

31. What guarantees are subject to BSP approval/registration?

The following guarantees require prior BSP approval:

- Guarantees for account of the public sector as well as those to be issued by GOCCs in favor of non-residents;
- Guarantees issued by foreign banks and financial institutions to secure obligations of residents partaking the nature of a foreign loan which require prior BSP approval pursuant to Sec. 23 of the FX Manual; and
- Other guarantees/similar arrangements which give rise to actual foreign obligations.

Guarantees for the account of the private sector to be issued by: (a) local banks, financial institutions (FIs) including government financial institutions that are not foreign currency/foreign loan-related; and (b) foreign banks, FIs and other foreign entities to secure peso/foreign currency loans of residents from banks operating in the Philippines, need not be individually applied for BSP registration but must be reported by banks to the BSP to be considered as registered.

32. 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.

33. Can a company convert its peso receipts into FX on a regular basis, i.e., buy FX from AABs/AAB-forex corps on monthly, quarterly, etc. basis and deposit such FX purchased in an offshore account as required by the creditors?

No, because these are tantamount to an advance purchase of FX and payment of the obligation, which are not allowed under existing policy. Payment of loans out of FX to be purchased from the banking system not earlier than two (2) days prior to original due dates is allowed for BSP-registered accounts in amounts indicated in the BSP registration document.

34. 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?

Private sector borrowers can purchase FX from AABs/AAB-forex corps to fund past-due payments provided the period of delay does not exceed 30 calendar days from the original due dates indicated in the BSRDs; otherwise, prior

specific authority must be sought from the BSP. With regard to prepayments, AABs/AAB-forex corps may sell FX to private sector borrowers for prepayments of BSP-registered private sector loans (both short-term and medium-and long-term, including bonds and notes) that are not publicly guaranteed and are covered by a BSRD without prior BSP approval, subject to the provisions of Sections 29.4 of the FX Manual, as amended. AAB/AAB-forex corps may likewise sell FX without prior BSP approval for prepayment of the following loans that are not publicly-guaranteed: (i) foreign/foreign currency loans of non-bank FIs with quasi-banking functions; (ii) foreign currency loans of the private sector, subject to Section 29.5 of the FX Manual, as amended²⁶.

35. *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)?*

Section 28 of the FX Manual provides that loans must be registered with 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 prior approval is required for the loan under Part Three, Chapter I of the FX Manual, this approval must be obtained before signing of loan agreement/drawdown of loan proceeds; registration follows thereafter. If the borrowings are not subject to prior BSP approval/registration, the AAB counterparty for the swap contract shall report to the BSP-IOD details of the swap and the loans to be funded²⁴.

Same requirement is reiterated under Item D.2 of Appendix 18 of the FX Manual.

B. FOREIGN INVESTMENTS

B.1 REGISTRATION OF FOREIGN INVESTMENTS

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

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.

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

BSP registration will authorize the foreign investor or his duly authorized representative to purchase FX from AABs/AAB-forex corps to repatriate capital and/or remit dividends/profits/earnings accruing on BSP-registered investments

²⁴ Ibid.

in FX. The BSRD²⁵ is one of the prescribed documents to support an application to buy FX from AABs/AAB-forex corps in the Philippines for these purposes.

38. What categories of foreign investments are required to be registered directly with the BSP, and what may be registered with the investor's designated custodian bank on behalf of the BSP?

Inward foreign direct investments (FDIs, including investments in condominium units) and investments in peso-denominated debt instruments issued onshore by private resident firms (not covered by Section 23) as defined under Sections 34 and 35.4 of the FX Manual shall be registered directly with the BSP. Inward remittances of FX funding the FDIs need not be converted to pesos to qualify for BSP registration, except for investments in foreign bank branches' permanently assigned capital where such inward remittance of FX must be converted to pesos at the exchange rate prevailing at the time of remittance²⁶.

Inward foreign investments in peso-denominated securities issued onshore by the National Government and other public sector entities; PSE-listed equity securities issued by both residents and non-residents; and peso time deposits (with maturities of at least 90 days) shall be registered with the investor's designated custodian bank on behalf of the BSP (*see item 41 for definition of custodian banks*). Inward remittances of FX funding portfolio investments need to be converted to pesos.

39. What are the basic requirements for BSP registration of foreign investments?

First, as a general rule, there must be an inward remittance of FX as evidenced by a duly accomplished Certificate of Inward Remittance of FX (for cash investments), or, proof of transfer of assets to the investee/beneficiary firm in the Philippines (for investments in kind).

Second, there must be evidence of receipt of the funds/assets by the local investee/beneficiary/or the local seller/issuer of the investment instruments, such as a Sworn Certification on such receipt and issuance of shares in consideration thereof (for investment in stock corporations); stockbroker's purchase invoice or subscription agreement (for PSE-listed shares); accredited dealer's Confirmation of Sale (for government securities); Certificate of Time Deposit (for peso time deposits with tenor of 90 days or longer); and contract/certificate of investment (for peso-denominated debt instruments). (*For the complete registration procedure and documentation requirement, you may refer to Appendix 10 of the FX Manual.*)

²⁵ 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.

²⁶ Circular No. 937 dated 27 December 2016

All applications for registration of FDIs that are to be filed directly with the BSP, through the IOD, shall be supported by a duly accomplished application form (Annex W of the FX Manual).

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

All 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. Applications for registration of FDIs which have not yet been filed with the BSP-IOD after the expiration of the prescriptive period for filling of such applications, may be filed with the BSP-IOD from 1 September 2016 up to 1 September 2017, subject to compliance with the requirements under the FX Manual and payment of a fixed processing fee of PHP10,000.00 per BSRD to be issued.²⁷ After said grace period, the one-year prescriptive for registration of FDIs shall apply.

41. *What is a custodian bank?*

A custodian bank may be a universal/commercial bank or an offshore banking unit (OBU) appointed by the foreign investor to register his investments and to hold shares for and on his behalf, and to represent him in all the necessary actions in connection with his investment.

42. *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 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.

²⁷ Circular No. 918 dated 2 August 2016

43. 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 35²⁸ 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.

44. 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.

45. 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.

46. 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 the amount deposited in their peso account, provided that these are funded by peso proceeds from the onshore sale of their PSE-listed equity

²⁸ "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".

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.

47. *Is the new “Authority to Disclose Information” under Circular No. 838 dated 26 June 2014 required to be submitted by non-residents for every registration of investment with custodian banks?*

The new “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;
- 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.

48. *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 Exchange” (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 corp, provided that the FX selling institution shall: (a) ensure that the original copy of the application 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

49. *How much FX can a Philippine resident purchase from AABs/AAB-forex corps for investments?*

A Philippine resident may purchase FX from such entities for outward investments in amounts not exceeding US\$60 million per investor per year, or per fund per year for qualified investors²⁹, without prior BSP approval, subject to existing conditions under the FX Manual and submission of supporting documents as prescribed therein. However, outward investments by residents exceeding US\$60 million per investor per year, or per fund per year, that are intended to be funded with FX purchased from AABs/AAB-forex corps, shall require prior BSP approval. Qualified investors, as defined in the FX Manual, may apply for a higher annual outward investment limit.

Outward investments refer to the following: (a) debt and equity securities issued offshore by non-residents, including depositary receipts; (b) offshore foreign currency-denominated mutual funds and UITFs; (c) foreign currency-denominated intercompany loans to offshore parent companies/subsidiaries of residents with an original tenor of at least one (1) year; (d) investments in real property abroad, including condominium units; and (e) foreign currency-denominated investment instruments issued onshore by non-residents³⁰.

Other investments by residents which will require settlement in foreign currency in favor of another resident shall be governed by the rules on resident to resident transactions under Part I, Chapter II of the FX Manual, as amended³¹.

Divestment proceeds and dividends/earnings from aforesaid investments that were funded with FX purchased from AABs or AAB-forex corps need not be inwardly remitted.

FX purchases for investments by residents shall be:

- a. remitted directly to the account of the intended beneficiary (e.g., non-resident investee firm, fund manager, broker/dealer, and/or non-resident parent company/subsidiary); or

²⁹ Qualified investors are limited to the following: insurance and pre-need companies; collective/pooled funds, whether in a corporate or contractual structure, such as mutual funds, unit investment trust funds and variable insurance; public or private pension or retirement or provident funds and such other entities and funds as the BSP may determine as qualified investors on the basis of such factors as financial sophistication, size and regularity of financial transactions, net worth and size of assets being managed.

³⁰ Circular No. 925 dated 13 September 2016

³¹ Ibid.

- b. credited to the resident investor's FCDU account (with the same or another AAB) for eventual remittance by the depository AAB to the intended beneficiary for funding of investment: *Provided*, that if the depository bank is different from the FX selling institution: (i) the FX selling institution shall directly transfer the FX purchases to the depository bank of the purchaser; and (ii) the depository bank shall also be the FX remitting AAB.

50. 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, as amended, 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.

51. 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. Is payment in foreign currency allowed for resident-to-resident FX transactions?

Under Part One, Chapter II of the FX Manual, AABs/AAB-forex corps may sell FX to non-bank residents for their FX transactions³² with other residents subject to submission to the FX-selling institution of a duly accomplished "Application to Purchase FX" (Annex A of the FX Manual) and supported by the documentary requirements listed under Appendix 1 of the FX Manual.³³

2. 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,

³² FX transactions refer to trade and non-trade transactions (including loans and investments) requiring settlement in foreign currency.

³³ Circular No. 925 dated 13 September 2016

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 investments³⁴ 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."³⁵

3. 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 including item D, Appendix 18 of the FX Manual, also apply to CCS.³⁶

4. Are 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.

³⁴ For this purpose, foreign loans and inward investments refer to only to those requiring prior BSP approval and/or registration, as may be applicable.

³⁵ Circular No. 818 dated 6 November 2013, as amended by Circular No. 925 dated 13 September 2016

³⁶ Op. cit.