

**APPROVAL AND REGISTRATION OF FOREIGN LOANS AND OTHER RELATED TRANSACTIONS**

**1. *Why do foreign/foreign currency denominated borrowings require approval and registration with the Bangko Sentral ng Pilipinas (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 foreign exchange (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, and subject to such limitations as provided by law; and
- Republic Act 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;
- Republic Act No. 7653 (The New Central Bank Act) dated 10 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 Monetary Board 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 Monetary Board before commencement of actual negotiations, or before issuing a mandate of commitment to foreign funders/arrangers; and
- Part Two, Chapter I of the Manual of Regulations on Foreign Exchange Transactions<sup>1</sup> (FX Manual) issued under Circular No. 645 dated 13 February 2009.

All foreign/foreign currency denominated borrowings of the public sector require prior BSP approval except for short-term foreign currency deposit unit (FCDU) loans listed under Section 24.4 of the FX Manual.

For foreign borrowings of the private sector, prior approval and/or registration by the BSP is required only if the loans:

- are guaranteed by the public sector or covered by foreign exchange guarantees issued by Authorized Agent Banks (AABs); or
- will be serviced with FX to be purchased from AABs and their subsidiary/affiliate forex corporations (AAB-forex corps); or

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<sup>1</sup> The FX Manual replaced Circular No. 1389 dated 13 April 1993, as amended.

- are obtained by private non-bank financial institutions with maturities of more than one year for the purpose of relending.

Such BSP approval shall be obtained prior to commencement of actual negotiations or before issuing a mandate of commitment to foreign funders/arrangers is required prior to signing of loan documents and/or drawdown of loan proceeds.

**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 and form, i.e., cash or in kind) owed by Philippine residents to non-resident entities, including advances from foreign parent companies, shareholders and affiliates and peso-denominated loans from non-residents. Foreign currency denominated loans refer to obligations owed by Philippine residents to FCDUs of banks operating in the Philippines.

**4. *If foreign currency loans are to be obtained from domestic sources, are they 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 (such as FCDU loans) obtained from a resident creditor are considered domestic borrowings. On the other hand, loans obtained from non-resident creditors, even if denominated in pesos (even if repayable in the equivalent foreign currency), are considered foreign loans.

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

Please refer to Section 25 of the FX Manual for the list.

Short-term foreign loans (with original maturities of up to one year) shall finance exclusively the FX requirements<sup>2</sup> of eligible projects, except as may be specifically allowed under the FX Manual. Medium- and long-term foreign loans (with original maturities longer than one year) may finance FX costs as well as peso costs (excluding working capital<sup>3</sup>) 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.

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<sup>2</sup> FX requirements to those payable in foreign currency to non-residents.

<sup>3</sup> 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 one month from date of receipt of all documents/information required to process the application and prepare the appropriate recommendation to the approving authority.

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

Loan proceeds intended to fund local costs (those payable to residents) shall be inwardly-remitted and sold for pesos to the banking system. 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 or non-resident supplier/beneficiary concerned or deposited in a foreign exchange account pending utilization of the funds, subject to the provisions of the FX Manual.

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 Republic Act No. 7653 (The New Central Bank Act) dated 14 June 1993.

**PRIVATE SECTOR FOREIGN LOANS**

**9. Do inter-company loans<sup>4</sup> require BSP approval?**

Private sector inter-company loans generally do not require prior BSP approval provided loan terms are market-oriented, the project/purpose is eligible for foreign financing and there is no guarantee from any government entity or a bank operating in the Philippines. Loans granted by foreign subsidiaries that are not wholly-owned by the parent company must have full guarantee of 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 foreign exchange purchased from AABs and 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 3 months from utilization of loan proceeds.

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

**10. 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 and AAB-forex corps.

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<sup>4</sup> Inter-company loans refer to those granted by foreign parent companies/head offices to their Philippine branches/subsidiaries/affiliates

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

Borrower-firms are required to file with the BSP their application for loan approval prior to signing of loan documents and/or drawdown of loan proceeds. For loan registration, such application should be filed within ten (10) banking days from drawdown date for short-term loans and three (3) months from utilization of loan proceeds for medium and long-term loans using the prescribed forms.

For loan approval:

- Loan proceeds shall be used to finance eligible projects/costs cited in Section 25 of the FX Manual;
- Terms are market oriented and compliant with pertinent laws;
- Submission of duly accomplished application form<sup>5</sup> together with the required supporting documents specified therein (all certified as true copies by an authorized officer of the borrower-firm); and
- Payment of processing fee required under BSP Circular No. 32 dated 19 July 1994.

For loan registration:

- Prior BSP approval of the loan, if such is required (Please see item 2 for categories of private sector loans requiring BSP approval);
- Unnotarized copies of the covering loan documents; and
- Proofs of utilization of loan proceeds which should be in accordance with the approved purposes under Section 25 of the FX Manual.

**12. 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 and AAB forex corps. The BSP registration document (BSRD) will be issued by the International Operations Department 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).

**13. 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 borrowers during the life of the loan to prevent an over-leveraged position where they incur excessive borrowing that may adversely affect ability to service obligations.

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<sup>5</sup> A soft copy of the application form may be downloaded from the BSP website (<http://www.bsp.gov.ph/downloads/Regulations/ForeignLoans.xls>)

**PUBLIC SECTOR FOREIGN LOANS**

**14. *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 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.

**15. *What are the basic requirements for approval of public sector foreign loans?***

Public sector borrowers are required to file with the BSP their application for loan approval prior to commencement of actual negotiations or issuance of a mandate of commitment to foreign funders/arrangers. Terms of the loans to be obtained by the National Government and other public sector entities shall be in accordance with the provisions of pertinent laws/regulations governing public sector borrowings.

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

Pursuant to R.A. 8182 (ODA Law), an 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. The interest rate on the loan shall in no case exceed 7 percent per annum.

**17. *What is the Inter-agency Committee for Review of Foreign Loan Documents (IACRFLD)?***

The IAC-RFLD is composed of representatives from the Bangko Sentral ng Pilipinas, Department of Finance, Department of Justice and the borrowing entity, and primarily tasked to review foreign loan and guarantee agreements and all related documents for foreign credits obtained or guaranteed by the Government and as necessary, to negotiate with representatives and counsels of the lenders.

**18. *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.

**19. 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, GOCCs are required to pay a regular processing fee of ₱20,000.00 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.

**20. 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.

**21. 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.

**22. 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.

**23. Do public sector loans require BSP registration?**

Public sector loans extended final approval by the Monetary Board are deemed registered, however, purchase of FX from AABs and AAB forex corps for public sector loans that have been extended final approval by the BSP require prior specific BSP authority.

**OTHER MATTERS**

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

While the repeal of the Uniform Currency Law authorizes Philippine residents to denominate transactions in currencies other than the Philippine peso, existing policies on FX transactions prohibit resident-to-resident FX transactions from being funded with FX to be purchased from AABs and AAB-forex corps. Foreign loan proceeds, used for

payments to residents (other than banks) in foreign currency are not eligible for registration and repayment with FX from AABs and AAB-forex corps.

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

Pursuant to BSP Circular No. 32 dated 19 July 1994, all foreign borrowings, regardless of maturity, creditor, source of FX funds, and whether or not approved/registered by the BSP, are required to be reported monthly to the BSP, through the International Operations Department, using prescribed forms (Form 2 for medium and long-term loans and ST-2 for short-term loans). Borrowers are required to submit the said report, whether or not there are transactions for the current reporting period.

**26. Why does BSP require submission of foreign borrowing 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 offshore) to submit to the BSP-International Operations Department (BSP-IOD) their annual foreign borrowings plan 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 USD10 million, or its equivalent – every end-September for borrowings for the following year.

The timetable and any changes on 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 ten percent (10%) of the applicable processing fee.

**27. May a resident non-bank extend a foreign currency loan to a non-resident? If so, does the loan have to be approved by the BSP?**

A resident non-bank may, without prior BSP approval, extend a loan to a non-resident provided that funding for the loan is not purchased from AABs and AAB-forex corps required to be sold to AABs for pesos. Prepayments on such loans are likewise not eligible to be sourced from AABs/AAB-forex corps.

**28. 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 government-owned and controlled corporations 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 Bangko

Central 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/FCDU loans of residents from resident bank creditors, need not be individually applied for BSP registration but must be reported by banks to the BSP to be considered as registered.

**29. *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.

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

Automatic conversion of peso receipts into FX and deposit of FX in an offshore account for loan payments is tantamount to an advance payment of the funded obligation, which is not allowed under existing policy. Payment of loans out of FX purchased from the banking system is allowed for BSP-registered accounts only in amounts and for dates indicated in the BSP registration document. BSP-registered loans that will be paid outside of scheduled payment dates cannot be paid with FX sourced from AABs and AAB-forex corps without specific BSP authority.