

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 amended,² 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. *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.

3. *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 following:

- For FX sales not exceeding US\$60,000.00 per application or its equivalent in other foreign currency
 - a. Accomplished application to purchase FX using the prescribed form
- For FX sales exceeding US\$60,000.00 per application or its equivalent in other

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>, <http://www.bsp.gov.ph/downloads/regulations/attachments/2010/c698.pdf>, <http://www.bsp.gov.ph/downloads/regulations/attachments/2011/c742.pdf>, respectively.

foreign currency

- a. Accomplished application to purchase FX using the prescribed form; and
- b. Supporting documents required under existing rules.

Non-bank entities operating as FXDs/MCs may sell FX for non-trade purposes subject to submission of an accomplished application form to purchase FX and submission/presentation of supporting documents listed in Section 2, Item A of BSP Circular No. 652³ for amounts exceeding US\$10,000 or its equivalent. For the sale of FX for all other purposes, FXDs/MCs shall require submission of an accomplished application form to purchase FX and supporting documents listed in Section 2, Items B, C and D of the same Circular, regardless of the amount involved.

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

Non-resident tourists or balikbayans may purchase FX from AABs/AAB-forex corps up to the amount shown to have been sold by them for pesos. They may also reconvert at airports or other ports of exit unspent pesos up to a maximum of US\$5,000 or its equivalent in other foreign currency calculated at prevailing exchange rates, without showing proof/s of previous sale of FX for pesos.

B. FOREIGN MERCHANDISE TRADE TRANSACTIONS (EXPORTS AND IMPORTS)

5. *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.

6. *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 payment, in accordance with existing BSP rules.

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

³ BSP Circular amending Circular No. 471 dated 24 January 2005

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.⁴

8. 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.

9. 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 ₱10,000.00. Prior authorization from the BSP, through the International Operations Department (IOD), is required for the export and import of Philippine currency exceeding ₱10,000.00.

10. 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. Failure to do so shall subject the violator to sanctions, including confiscation of the foreign currency or monetary instruments involved.

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 Bangko Sentral ng Pilipinas (BSP)?

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

⁴ Circular No. 742 dated 21 November 2011

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; and
- 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 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 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 Two, 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, and peso-denominated loans from non-residents. Foreign currency denominated loans refer to obligations owed of Philippine residents in currencies other than the Philippine peso, owed to foreign currency deposit unit (FCDUs) of banks operating in the

Philippines.

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 GFIs;
- 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 foreign exchange 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 requirements⁴ 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 capital⁵) 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.

⁴ FX requirements pertain to those payable in foreign currency to non-residents.

⁵ 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?*

No. Under Circular No. 618 (s. 1978), no foreign loan agreements, deferred payment agreements or any other agreements which give rise to a foreign currency obligation or liability submitted to the Central Bank of the Philippines (now BSP) for approval and/or registration and no promissory notes or guarantees issued in connection therewith, 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, Circular No. 618 prescribes the submission to the BSP of unnotarized loan agreements.

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

A.1 PRIVATE SECTOR FOREIGN LOANS

10. *Do inter-company loans⁶ 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

⁶ Inter-company loans refer to those granted by foreign parent companies/head offices to their Philippine branches/subsidiaries/affiliates.

bank operating in the Philippines. Loans granted by foreign subsidiaries⁷ 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 3 months from utilization of loan proceeds.

Furthermore, 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.

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 covered by FX guarantees issued by AABs; or
- are granted by FCDUs or Expanded FCDUs (EFCDUs) and specifically or directly funded from, or collateralized by offshore loans or deposits; or
- will be serviced with FX to be purchased from AABs/AAB-forex corps; or
- are obtained by private non-bank financial institutions 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 form⁸ for such approval should

⁷ Subsidiaries refer to corporations or firms where 50 percent or more of the outstanding shares of stocks (voting) are owned, whether directly or indirectly, by another firm.

⁸ A softcopy of the application form may be downloaded from the BSP website ([http://www.bsp.gov.ph/downloads/Regulations/Foreign Loans.xls](http://www.bsp.gov.ph/downloads/Regulations/Foreign%20Loans.xls)).

be submitted 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 Two, 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 ten (10) banking days from drawdown date for short-term loans and three (3) months from utilization of loan proceeds for MLT loans;
- Payment of processing fee is required under Appendix 20 of the FX Manual in cases where prior BSP approval is not required; and
- 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 unnotarized 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.

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)⁹ 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?*

⁹ 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.

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 excessive borrowings are incurred which may adversely affect ability to service obligations.

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 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 ₱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.

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 loans for FCDUs of banks 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 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. *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/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/AAB-forex corps.

28. *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 (Form 2 for MLT loans¹⁰ and ST-2 for short-term loans).

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 for the creation of a loan record. Copies of the forms may be requested from the IOD.

29. *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 offshore) to submit to the BSP-IOD their annual foreign borrowings plan¹¹ 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 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.

¹⁰ May be downloaded from the BSP website at: http://www.bsp.gov.ph/regulations/reg_MORB.asp (under Annex F of the Manual of Regulations on Foreign Exchange Transactions)

¹¹ The foreign borrowings plan form may be downloaded from the BSP website at: http://www.bsp.gov.ph/regulations/reg_others.asp.

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 of the applicable processing fee.

30. *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: (a) purchased from AABs; and/or (b) required to be surrendered for pesos to AABs /AAB-forex corps.

31. *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.

32. *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.

33. *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/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.

34. *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.

35. *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.

36. *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 MLT private sector loans (including bonds and notes) that are not publicly guaranteed and are covered by a BSRD without prior BSP approval, subject to the provisions of Section 29.4 of the FX Manual, as amended.

37. *Is prior approval/registration required for foreign/foreign currency loans whose repayment will be covered by an FX swap?*

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 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 II Chapter I of the FX Manual, this approval must be obtained before signing of loan agreement/drawdown of loan proceeds; registration follows thereafter.

B. FOREIGN INVESTMENTS

B.1 REGISTRATION OF FOREIGN INVESTMENTS

38. *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 dividends/profits accruing thereon will be purchased from AABs/ AAB-forex corps.

39. *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 in FX. The BSRD¹² is one of the prescribed documents to support an application to buy FX from AABs/AAB-forex corps in the Philippines for these purposes.

40. *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) and investments in peso-denominated money market instruments as defined under Sections 34 and 35.3 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.

Inward foreign investments in peso-denominated government securities, PSE-listed securities 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 51 for definition of custodian banks*). As a general rule, inward remittance of FX funding portfolio investments need to be converted to pesos.

41. *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).

¹² The BSRD is the document evidencing registration of a foreign investment and is issued by the BSP through the International Operations Department or by a custodian bank registering the investment on behalf of the BSP.

Second, there must be an evidence of receipt of the funds/assets by the local investee/beneficiary/seller of investment instruments such as a Sworn Certification of 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 money market instruments). *(For the complete registration procedure and documentation requirement, you may refer to the Appendix 10 of the FX Manual)*

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

All applications for registration of foreign direct investments (under Section 34 of the FX Manual) shall be filed with the BSP within five (5) years from the date of inward remittance/actual transfer of assets to the Philippines.

For existing unregistered foreign direct investments that are currently recorded in the investee firm's books and whose foreign exchange funding were inwardly remitted/assets⁵ were transferred more than five (5) years prior to 15 December 2011, the BSP is providing a grace period from 15 December 2011 to 14 December 2012 to register these investments. After said period, the BSP will no longer register such investments.

43. *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.

44. *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?*

Yes. Foreign investments made prior to 15 March 1973 may be serviced using FX purchased from AABs/AAB-forex corps even without the required stock transfer agent's certification, provided that the investments are registered first with the BSP. Application for registration with the BSP of such investments may be filed with the BSP IOD subject to documentation requirements under Appendix 12 of the FX Manual.

⁵ Refers to actual transfer of assets to the Philippines in the case of investment in kind, e.g., imported machineries/equipment

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

The National Economic Research and Business Assistance Center of the Philippines (NERBAC) was established under the NERBAC Law of 1992 (R.A. No. 7470), among others, to provide a one-stop action center which shall facilitate the processing and documentation of all paper requirements necessary for the establishment of a business enterprise established in the country. The NERBAC puts together under one roof, all government agencies in charge of business registration, licensing and permit issuance. The BSP is, however, not covered by the NERBAC Law, but participated in the Memorandum of Agreement (MOA) on Investment Facilitation entered into among 28 government agencies (including the Board of Investments and Securities and Exchange Commission) on 25 April 2007 for the establishment of an Investment Promotion Unit (IPU) Network for investment after care.

B.2 INVESTMENTS BY PHILIPPINE RESIDENTS

46. *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 investment in amounts not exceeding US\$60 million per investor per year, or per fund per year for qualified investors¹³, 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.

Residents may also purchase up to US\$60 million for investment in foreign currency denominated bonds/notes of the Republic of the Philippines (ROP) or other Philippine resident entities and peso-denominated bonds/notes of the Republic of the Philippines or other Philippine resident entities requiring settlement in foreign currencies. Such purchases shall be consolidated with FX purchases for outward investments mentioned in the first paragraph above for purposes of determining compliance with the allowed limit, and supported by documentary requirements.

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.

¹³ 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.