

FREQUENTLY ASKED QUESTIONS ON PRIVATE SECTOR FOREIGN/FOREIGN CURRENCY LOANS/BORROWINGS^a

I. FOREIGN/FOREIGN CURRENCY LOANS/BORROWINGS

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

Foreign loans refer to all obligations [regardless of currency of denomination (Philippine peso or foreign currency)] owed by Philippine residents to non-residents, including advances from foreign parent companies/head offices, shareholders and affiliates.

Foreign currency loans refer to obligations that are denominated in foreign currency (or currency other than the Philippine peso) owed by Philippine resident: (a) private sector entities to banks operating in the Philippines; and (b) public sector entities to banks operating in the Philippines/National Government/other public sector entities authorized to lend under their respective charters.

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

Yes. 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.

3. *Are there reports required to be submitted to the BSP by borrowers relating to their loans?*

Section 22.8 of the FX Manual requires all foreign loan/borrowing transactions [e.g., availments, debt service payments (including prepayments), cancellations], whether or not said loans are Bangko Sentral ng Pilipinas (BSP)-approved/registered, to be regularly reported to the BSP using the prescribed forms (Annexes E.1, E.2 and E.3^b) within the prescribed period^c until the obligations are fully extinguished.

4. *Can banks sell foreign currency to resident borrowers for settlement of their foreign currency obligations to banks operating in the Philippines without prior BSP approval/registration?*

Yes, banks may sell foreign currency to resident borrowers, provided the foreign currency loans are not publicly-guaranteed, and are duly reported by creditor banks to the BSP prior to FX sale as provided under Sections 22.4 and 24.3.a of the

^a These pertain to the rules on foreign exchange (FX) transactions under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended. The FX Manual may be downloaded from the BSP website using the following links:

FX Manual: <https://www.bsp.gov.ph/Regulations/MOREXT/MOREXT.pdf>

Forms, Annexes and Appendices: <https://www.bsp.gov.ph/SitePages/Regulations/DownloadSection.aspx>

^b Annex E.3 shall be submitted for initial reporting of foreign loans

^c For Annexes E.1 and E.2, within five (5) banking days after the end of reference month, to iod-stmlt-loanreports@bsp.gov.ph

FX Manual. The proof of reporting to BSP by the creditor shall be the acknowledgment letter/email sent by the BSP to the creditor indicating receipt of the required report.

5. *Can foreign currency loans from onshore banks be used to service foreign investments not registered with the BSP?*

Proceeds of foreign currency loans obtained from onshore banks may be used for any legitimate purpose. However, projects/programs/purposes to be funded by the foreign currency loans must also comply with the applicable laws, rules, and regulations, including those under the FX Manual. As such, foreign investments (even if to be serviced using proceeds of foreign currency loans) shall be registered with the BSP pursuant to Chapter II, Part Three of the FX Manual to allow access to FX resources of the banking system to service the repatriation of capital and remittance of related earnings thereon.

6. *Are banks operating in the Philippines allowed to extend loans to non-residents?*

Yes, subject to the following applicable regulations:

- a. If loans are denominated in foreign currency: Onshore banks may extend loans to non-residents without prior BSP approval, subject to regular reporting by the creditor bank to the BSP using Annexes E.4 and E.5 of the FX Manual (as applicable). However, non-residents are not allowed to purchase FX from AABs/AAB forex corps to service said loans pursuant to Section 22.4 of the FX Manual.
- b. If loans are denominated in peso: Onshore banks may extend peso financing to non-residents without prior BSP approval to fund only the specific cases allowed under Section 301 of the Manual of Regulations for Banks (MORB) (e.g., with Overseas Filipino Workers as defined under existing labor laws and regulations as borrowers).

On the other hand, prior BSP approval is required for peso loans to be extended to non-residents for use in projects/programs/purposes that are not covered under Section 301 of MORB. It is further understood that such loans shall be legitimate and not contrary to laws, regulations, public order, public health, public safety, or public policy.

7. *Why does the BSP require submission of foreign borrowings plans (FBP)?*

Resident borrowers intending to obtain medium- and long-term foreign loans/borrowings, including offshore issuances of debt instruments, are required to submit to the BSP-International Operations Department (IOD) their annual FBP not later than end-September of each year for borrowings for the fourth quarter of the current year and the succeeding full year. Proposed onshore issuances by residents of debt instruments that require settlement in foreign currency shall likewise be reported in the FBP. The information obtained from said FBPs are used to determine the possible magnitude of foreign funding requirements of the

economy for the succeeding year and how this may affect the country's external debt sustainability.

II. PRIVATE SECTOR FOREIGN LOANS/BORROWINGS

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

Prior BSP approval applies to publicly-guaranteed private sector foreign/foreign currency loans/borrowings which gives the borrower the authority to finalize negotiations with the prospective creditor/s and sign the loan documents. On the other hand, BSP registration applies to both publicly-guaranteed and purely private sector foreign loans/borrowings which ultimately allows borrowers to purchase FX from the banking system for loan servicing.

9. *What other foreign loan-related transactions for publicly-guaranteed private sector loans require prior BSP approval?*

Pursuant to Sections 22.2 and 25.1 of the FX Manual, prior BSP approval is required for: (a) change in: borrower/guarantor; purpose; financial terms and conditions of loans/borrowings (e.g., those involving change in: loan amount; interest rate; fees, charges or other costs; frequency of payments/servicing; loan tenor/maturity); and (b) prepayment of publicly-guaranteed private sector loans; (c) payment by the public sector under the guarantee covering publicly-guaranteed private sector loans that are past due^d.

Only Notice to the BSP [which shall be sent within one (1) month from availability of information] is required for the following changes/amendments to publicly-guaranteed private sector loans: (a) creditor or creditor's name (e.g., due to merger; corporate restructuring); (b) availability/closing date; (c) financial ratios; (d) covenants; (e) related hedging instruments; and (f) changes other than those cited in the immediately preceding paragraph.

10. *Will the BSP accept notarized foreign loan agreements submitted for approval and/or registration?*

Circular No. 618 (s. 1978), as amended by Circular No. 909 (s. 2016) effective 22 April 2016, provides that **no public and/or publicly-guaranteed foreign loans, 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.

However, said requirement does not apply to loan agreements covering purely private foreign/foreign currency loans, or those that are obtained by the private sector without guarantee from the public sector, which may be notarized.

^d Those beyond original/amended due date/s duly approved by the BSP

11. *Does the BSP still impose processing fees for applications for loan registrations/notice to BSP/notification of amendment that are filed beyond the applicable periods indicated under Section 24 of the FX Manual?*

No, processing fees are no longer imposed for requests/applications filed beyond the applicable periods under Section 24.2 of the FX Manual. BSP Circular No. 1171 dated 29 March 2023 adopted as a permanent policy, among others, the waiver of processing fees for applications filed beyond the prescriptive periods under BSP Circular No. 1080 (Operational Relief Measures for Foreign Exchange Transactions under the FX Manual). Nevertheless, clients are enjoined to observe the timelines indicated under the FX Manual to allow capture of current, reliable and relevant data/information which are important for policy review/formulation, analysis of trends and developments, and statistical requirements and timely processing of loan-related requests.

III. PRIVATE FOREIGN LOANS/BORROWINGS WITHOUT PUBLIC GUARANTEE

12. *Is registration with the BSP of a private sector foreign loan without public guarantee mandatory?*

No. Registration with the BSP of private sector foreign loans/borrowings without public guarantee is only required if the borrower will purchase FX from the domestic banking system to repay the loan or pay interest and/or other loan-related fees/costs.

Therefore, for cases wherein borrowers have their own FX resources/receipts sufficient to cover their foreign loan-related payments without the need to purchase FX from the local banks, borrowers may opt not to have the loan registered with the BSP; however, same is still subject to: (a) submission of a Notice to BSP using the prescribed form - (Annex E.3 of the FX Manual) together with a copy of signed loan agreement; and (b) regular reporting using the prescribed form as discussed in item 3 above.

13. *What requirements shall be complied with by a private sector borrower once a loan agreement covering a foreign loan/borrowing not involving a public sector guarantee is signed?*

Under Section 24.2 of the FX Manual, the private sector borrower shall submit to the BSP, through the IOD, within one (1) month from date of signing of covering agreement, the Notice to BSP (using the prescribed form, Annex E.3 of the FX Manual) together with a copy of signed covering agreement.

Moreover, pursuant to Section 22.8 of the FX Manual, as amended, the private sector borrower shall regularly submit to the BSP the duly accomplished and signed Annex E.1 [for short-term (ST) loans] and Annex E.2 [for medium-and long-term (MLT) loans] of the FX Manual within the prescribed period until the obligations are fully extinguished.

14. *When should borrowers file their application for loan registration with the BSP?*

As provided under Section 24.2 of the FX Manual, the application for loan registration shall be submitted as follows:

- a. For ST loans – within one (1) month from drawdown date; and
- b. For MLT loans – within six (6) months from utilization of loan proceeds.

15. *Are clients allowed to electronically file applications for registration of private foreign loans and/or supporting documents?*

Yes. Under item 4 of Part One, Chapter I (General Provisions) of the FX Manual, applications for approval/registration, including notice/notification to the BSP may be submitted through electronic means at iod_loans@bsp.gov.ph, copy furnished Ms. Jenna C. Evangelista-Panganiban (jevangelista@bsp.gov.ph).

16. *What are the documentary requirements to be submitted to the BSP for registration of a private sector foreign loan that is not publicly-guaranteed?*

To facilitate processing of the registration application, the client/borrower shall submit the following documentary requirements to the BSP-IOD:

- a) Covering Letter;
- b) Copy of the signed covering/loan agreement;
- c) Duly accomplished Annex E.3 of the FX Manual;
- d) Duly accomplished Annex D.2.B of the FX Manual;
- e) For first time applicants, a copy of the firm's Certificate of Incorporation issued by the Securities and Exchange Commission.

17. *Can a borrower purchase foreign currency from banks to pay the principal and interest falling due on outstanding loans?*

Yes, provided that the foreign loan is registered with the BSP. The borrower may purchase foreign currency from local banks to service principal up to the registered loan amount; while payment for interest and other loan-related fees/cost may be serviced in full as long as there is an outstanding registered loan amount.

18. *Can borrowers purchase FX from banks for the payment of fees (excluding interest) related to purely private sector foreign loans prior to registration thereof with the BSP?*

As a general rule, purely private sector foreign loans/borrowings must be registered with the BSP to be eligible for servicing using FX resources of the banking system. However, for certain loan-related fees (e.g., upfront fees) which must be settled immediately pending loan registration, the BSP allows purchase of FX from banks provided that the borrower has secured a specific BSP letter-authority covering such settlement.

For such purpose, the borrower shall submit to the BSP the following: (i) request for BSP authority to purchase FX; (ii) duly accomplished Annex E.3 of the FX Manual; and (iii) copy of the signed covering agreement(s)/document(s), as provided under Section 24.2.a of the FX Manual.

The borrower shall present/submit the specific BSP letter-authority to the FX selling institution, together with the billing statement from creditor or equivalent document, as required under item II.2.c of Appendix 1.3 of the FX Manual, to allow purchase of FX from banks for payment of fees prior to loan registration.

19. *Can private sector borrowers source foreign currency from banks to fund payments of BSP-registered loans outside of scheduled payment dates indicated in the issued Bangko Sentral Registration Document (BSRD), without need for prior BSP approval?*

Prior BSP approval is required to purchase FX for prepayment of publicly-guaranteed private sector loans/borrowings.

For purely private sector loans, the purchase of FX for the following shall only require submission to the BSP of a written notice at least one (1) month prior to target date of purchase of foreign currency pursuant to Section 25.2 of the FX Manual:

- a) For MLT loans – Prepayment of BSP-registered loans/borrowings (including bonds/notes/other debt instruments); and
- b) For both ST, and MLT loans/borrowings that are past due for more than one (1) month from original due dates indicated in the BSRD.

Moreover, private sector borrowers may purchase FX from banks to service BSP-registered foreign loans within one (1) month after original due dates as long as the BSRD is valid.

20. *Are there any BSP requirements for the prepayment of BSP-registered ST private sector loans that are not publicly-guaranteed considering that these do not require prior BSP approval and notification to BSP pursuant to Section 25.2.a of the FX Manual?*

Prepayment of BSP-registered ST private sector loans without public sector guarantee does not require prior BSP approval or notification to BSP, but is subject to the following:

- a) Submission of the minimum documentary requirements to the FX selling institution [i.e., BSRD (BSP registration letter including attachments)] under Item II.1.b of Appendix 1.3 of the FX Manual; and
- b) Reporting by borrower of loan payments made under Form ST-2 [Report on Short-Term Foreign Borrowings (Annex E.1 of the FX Manual)].

21. *Are there additional requirements to be submitted to BSP for amendment/s to the loan's financial terms and conditions?*

Yes. Borrowers are required to notify the BSP for any change/s in the loan's financial terms and conditions; or cancellation (whether partial or in full) of the loan/commitment/agreement.

The following documents shall be submitted by the borrower within one (1) month from availability of information/signing of the amended or supplemental agreement/effectivity date:

- a) Covering Letter;
- b) Copy of the signed covering amended/supplemental agreement;
- c) Duly accomplished Annex E.3 of the FX Manual; and
- d) For loans already/previously issued with a BSRD, a duly accomplished Annex E.1 (for ST loans) or Annex E.2 (for MLT loans) of the FX Manual for the latest reference month, together with the BSRD duly annotated by the FX-selling/remitting bank to reflect any payments/repayments made under the loan.

22. *Are private sector resident banks and non-bank financial institutions with quasi-banking functions (NBQBs) required to secure prior BSP approval/registration for their foreign/foreign currency loans?*

No. Private sector resident banks and NBQBs obtaining foreign/foreign currency loans/borrowings that are not publicly-guaranteed are not required to secure prior BSP approval and registration, but shall comply with: (a) Sections 22.7 and 22.8, and Appendices 1 and 1.3 (as may be applicable) of the FX Manual; and (b) pertinent provisions of the Manual of Regulations for Banks/Manual of Regulations for Non-Bank Financial Institutions; and (c) other applicable laws, rules and regulations.

23. *Why is there a need to provide the indicative maturity date of the loan when the loan applied for is payable when able?*

The borrower needs to provide the indicative maturity date of loans that are payable when able using Annex E.3 of the FX Manual to allow the BSP to: (a) monitor the foreign loan/borrowing transactions; and (b) make projections for statistics and policy development purposes.

The borrower shall also report to the BSP-IOD using Annex E.3 of the FX Manual the latest indicative/projected loan due date/s in the event of non-payment on the initial projected due date/s.

24. *Can private sector borrowers apply for loan registration of their foreign loan that is not publicly-guaranteed, which is intended to refinance a foreign loan that has not yet been registered with the BSP?*

Yes, private sector borrowers may apply for registration of their purely private sector loan even if the foreign loan to be refinanced has not yet been registered with the BSP, subject to submission of a duly accomplished Loan/Borrowing Profile (Annex E.3) and Application for Registration of Private Sector Foreign/Foreign Currency Loans/Borrowings (Annex D.2.B) of the FX Manual together with a copy of the signed covering agreement(s)/document(s) of the refinancing loan being applied for registration. In addition, a duly accomplished Annex E.3 and copy of the signed covering agreement(s)/document(s) of the foreign loan to be refinanced should be submitted.

25. *When must AABs annotate the BSRD?*

The bank must annotate Parts III and IV of Annex A of the BSRD whenever a payment, remittance, or FX sale is made through the banking system. Specifically, Part III should be filled out by the FX remitting bank on the remittance date of payment, regardless of whether there was an FX sale transaction or not. On the other hand, Part IV should be accomplished by the FX selling bank or the counterparty bank (in case there is a hedging transaction) on the date of purchase or delivery of FX.

26. *Does the AAB need to annotate Annex A of the BSRD if the client paid/serviced its foreign borrowing with its own funds (i.e., FX was not bought from AABs) from a foreign currency deposit unit (FCDU) account?*

Yes, if the remittance was made through the banking system. In this case, the FX remitting bank is required to annotate Part III, Annex A of the BSRD on the date of remittance of payment.

27. *The AAB has already annotated Part III, Annex A of the BSRD; does it also need to annotate Part IV?*

Part IV must also be annotated if the bank sold FX to a client for foreign loan-related payments or if it delivered FX under a derivative contract for a foreign borrowing. Note that in the latter case, the counterparty bank must annotate sections of Part IV depending on when the obligation was hedged. Particularly, the bank must annotate the “deal date” if the obligation was hedged after the registration of the foreign loan (in which case the BSRD is already available). On the other hand, the annotation needs to be done on the date of FX purchase or delivery if the obligation was hedged before registration.

IV. GUARANTEES

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

Guarantees for account of the public sector or similar arrangements (other than those covered by Section 30.3 of the FX Manual) that may give rise to actual foreign obligations of the public sector to non-residents, as well as those to be issued by GOCCs (excluding public sector banks and NBQBs) in favor of non-residents, shall require prior BSP approval.

Guarantees that are related to foreign/foreign currency loans/borrowings under Sections 23 and 24 of the FX Manual (except those covered under Section 24.3.a of said Manual) must already form part of the loan terms submitted (for approval/registration)/reported to BSP (as applicable).

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

29. *When should applications for registration of guarantees under Section 30.4 of the FX Manual (i.e., guarantees or similar arrangements which may give rise to actual foreign obligations of residents to non-residents that do not fall under Sections 30.1 to 30.3 of the FX Manual) be filed?*

Applications for registration of guarantees and similar arrangements under Section 30.4 of the FX Manual shall be made within six (6) months from date of signing of the covering agreement but not later than 15 banking days from target date of purchase of FX **regardless whether drawdown/s under the guaranteed obligation has been made or not**. The guarantee may be registered in full with the BSP even prior to drawdown, subject to submission of the relevant documents covering the guarantee (including the covering obligation agreement).

Same shall subsequently be reported regularly to the BSP by the resident obligee using the prescribed form (Annex H of the FX Manual) until the contingent obligations are fully extinguished.

* Inquiries and other concerns regarding subject FAQs may be sent to:

The Head of the Department or
The Private Sector Debt Management Group (PVSDMG)
International Operations Department
3rd Floor, 5-Storey Building
Bangko Sentral ng Pilipinas
1004 Manila
Email address: iod_loans@bsp.gov.ph