
BANGKO SENTRAL NG PILIPINAS (BSP) RULES ON FOREIGN EXCHANGE (FX) TRANSACTIONS¹

I. GENERAL PROVISIONS

1. Are clients required to submit a duly accomplished Application to Purchase FX (ATP) form regardless of the amount of foreign currency to be purchased?

Yes. Under Part One, Chapter I (General Provisions) of the FX Manual, a duly accomplished ATP (Annex A of the FX Manual) shall be submitted to banks, regardless of the amount of foreign currency to be purchased by the client to service eligible underlying FX transactions. The submission may be in hard copy or electronic form.

2. Why is there a need to present/submit supporting documents before foreign currency can be purchased?

Supporting 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. However, residents may purchase FX for non-trade current account and trade² purposes without the need to present supporting documents if said purchase does not exceed USD500,000 (for individuals) and USD1 million (for corporates/other entities) or its equivalent in other foreign currency per client per day, subject to banks' "Know Your Customer" (KYC) policy. FX purchases in excess of these amounts for non-trade current account and trade purposes require the presentation/submission of pertinent documents as provided under Sections 2 and 6 of the FX Manual.

3. Does the BSP allow submission of supporting documents through electronic means?

Yes. Under Part One, Chapter I of the FX Manual, the BSP allows submission of supporting documents through electronic means for: (a) registration of private sector foreign loans/borrowings without public sector guarantee; (b) registration of inward investments; and (c) sale of foreign currency by banks covering various FX transactions, provided that the submitting party shall attest to the: (i) integrity and authenticity of the submitted documents; (ii) transmittal of the supporting documents made via the official channel; and (iii) availability of the hard copy of original/photocopy of documents submitted electronically which shall be retained for a period of five (5) years from the time of submission thereof. These attestations are already embedded in the application for registration and in the ATP.

¹ These pertain to the rules on FX transactions under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended, which may be downloaded from the BSP website using the following links:

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

Forms, Annexes and Appendices: <https://www.bsp.gov.ph/Regulations/MORFXT/MORFXT-faas.zip>

For FX transactions for the duration of the declaration of "community quarantine" by the Office of the President (or as may be extended by the BSP), the FAQs on BSP's Operational Relief Measures for FX Transactions during Quarantine [which covers Circular No. 1080 (dated 27 March 2020), Circular Letter Nos. CL-2020-017 (dated 27 March 2020), CL-2020-020 (dated 7 April 2020), CL-2020-021 (dated 7 April 2020), CL-2020-041 (dated 28 August 2020), and CL-2020-051 (dated 27 October 2020)] shall apply, particularly for items herein that are inconsistent with said FAQs (e.g., item 3). Said FAQs and issuances may be downloaded from the BSP website using the following link: <https://www.bsp.gov.ph/SitePages/Regulations/DownloadSection.aspx>

² Except for FX purchases by residents for settlement of trade obligations under intercompany netting arrangements, which require documentation regardless of amount involved.

For sale of foreign currency by banks, electronic submission of supporting documents applies to all FX transactions covered by the FX Manual, such as resident-to-resident FX transactions, trade and non-trade current account transactions, and foreign loans and investments.

Electronic submission, however, does not apply to the following documents which are required to be presented/submitted in hard copies: (a) BSP-issued documents [e.g., BSP approval, Bangko Sentral Registration Document (BSRD)]; and (b) Computation Sheet for Outward Remittance for BSP-registered foreign direct investments (Annex N of the FX Manual).

4. *Does the BSP require banks to sell foreign currency only to clients who have a deposit account with them?*

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

5. *Is prior BSP approval/clearance required for receipt of incoming FX funds?*

Generally, prior BSP approval/clearance is not required for receipt of incoming FX funds. However, the entry of FX funds shall be subject to banks' KYC policy and other applicable laws, rules and regulations. Moreover, inward remittance of FX intended for foreign loans and investments shall be subject to the rules and regulations governing the underlying loan/investment transaction.

II. RESIDENT-TO-RESIDENT FX TRANSACTIONS

6. *Are banks allowed to sell foreign currency to residents intending to purchase instruments (including bonds/securities) issued by other residents offshore?*

Yes. Banks may sell foreign currency to residents for investment in instruments issued offshore by other residents, subject to documentation (regardless of amounts involved) pursuant to rules governing resident-to-resident FX transactions under Part One, Chapter II of the FX Manual which apply to transactions between residents as in the instant case where the investor and issuer are both residents.

III. NON-TRADE CURRENT ACCOUNT TRANSACTIONS

7. *Are foreign currency receipts of residents from non-trade sources required to be inwardly remitted and sold for pesos?*

No. Section 1 of the FX Manual allows FX receipts, acquisitions or earnings of residents from non-trade sources to be used freely for any purpose. Such proceeds may at the option of said residents, be sold for pesos, retained or deposited in foreign currency accounts (whether in the Philippines or abroad).

8. *Is BSP approval required in returning foreign currency-denominated proceeds from a grant/donation provided by a foreign principal?*

No. The FX Manual has no prohibition on the remittance of proceeds from a grant/donation provided by a foreign principal denominated in foreign currency. The transaction, however, has to comply with other applicable laws, rules and regulations, including anti-money laundering rules.

Should there be a need to purchase FX from the banking system for the refund of unused foreign grant by/aid from non-residents, such foreign grant/aid should have been funded by inward remittance of FX that was converted through authorized agent banks (AABs) to allow purchase of FX from AABs/AAB forex corps for such purpose.

IV. PESO DEPOSIT ACCOUNT OF NON-RESIDENTS

9. *Can Overseas Filipinos (OFs) be allowed to open a peso account in the Philippines funded by inward remittance of foreign currency from his salary abroad to pay for expenses in the Philippines and/or as savings? If yes, what supporting documents should be presented? Can these peso funds be converted back to foreign currency?*

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

Should the non-resident decide to convert to foreign currency the funds in the peso deposit account, Section 3.2 of the FX Manual allows banks to sell foreign currency up to the amount equivalent to the balance of the peso deposit account of non-residents. For peso deposits funded by IR of foreign currency, Section 3.2 further requires that such funds must have been used onshore for investments that are registered with the BSP or registering banks, subject to the provisions of Part Three, Chapter II (Inward Investments) of the FX Manual, to allow conversion of such peso deposits to foreign currency; otherwise, prior BSP approval shall be required.

V. FOREIGN MERCHANDISE TRADE TRANSACTIONS (EXPORTS AND IMPORTS)

10. Is import or export 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 clearance/authorization from the BSP, through the Mint and Refinery Operations Department pursuant to Appendix 2 of the FX Manual; 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 pursuant to Section 118 of Republic Act (R.A.) No. 10863 [Customs Modernization and Tariff Act (CMTA)].

The export of gold in any form is likewise allowed except for: (a) gold from small-scale mining, including panned gold, which is required to be sold to the BSP (as provided under Section 21 and Appendix 9 of the FX Manual) pursuant R.A. No. 7076 (People's Small-Scale Mining Act of 1991) dated 27 June 1991; 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 pursuant to Section 118 of R.A. No. 10863 (CMTA).

11. 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 foreign currency to be purchased from banks?

Registration of importations is no longer required. However, the import transactions must be reported by banks to the BSP not later than ten (10) calendar days before the maturity date of said D/A-O/A importation pursuant to Appendix 6 of the FX Manual to be eligible for servicing using FX from the banking system. For payments after the original maturity date of duly reported imports, these are also allowed to be funded with FX from the banking system provided that the extensions and subsequent payments are duly reported. Further, for D/A-O/A import transactions with original maturity or one (1)-time extension of more than 360 days, the importer must also report the transactions to the BSP-IOD using Annex E.2 (including Annex E.3 for initial reporting) of the FX Manual pursuant to Section 24.3.c of the said Manual, to allow servicing using FX resources of the banking system. BSP will issue an acknowledgment letter in this regard that shall be presented/submitted by the importer to the FX selling bank prior to FX sale as required under item II.2.b of Appendix 1.3 of the FX Manual.

12. What are the requirements for cross-border transfer of currencies into or out of the Philippines?

Pursuant to Section 4 of the FX Manual, the rules governing cross-border transfer of local and foreign currencies are as follows:

- a. For cross-border transfer involving Philippine pesos, a person may freely bring into or take out of the Philippines, or electronically transfer, legal tender Philippine currency and other monetary instruments in amounts up to PHP50,000. In excess of the PHP50,000 limit, prior BSP written authorization is required.

The BSP typically allows transfer of Philippine currency in excess of PHP50,000 for limited purposes only: (i) testing/calibration of money counting/sorting machines; (ii) numismatics (collection of currency); and (iii) currency awareness.

- b. For cross-border transfer involving foreign currency, a person may freely bring into or take out of the Philippines foreign currency and other bearer monetary instruments (e.g., travelers' checks, other checks, drafts, notes, money orders, bonds) in amounts up to USD10,000 or its equivalent in other foreign currencies. For amounts exceeding the USD10,000 threshold, prior written declaration is required using the foreign currency declaration form. Said form is available at the Bureau of Customs Desk in the arrival/departure areas of international ports in the Philippines or can be downloaded from the BSP website (Annex K of the FX Manual). No fee shall be payable or collected upon submission of said form.

13. *Is BSP authority required for an individual to be able to bring into the Philippines more than PHP50,000 to be used for family holiday?*

For business/leisure trips to the Philippines, a person may bring funds up to PHP50,000 only and the remaining funds in foreign currency. For family declaration, the total threshold will be PHP50,000 multiplied by the number of family members leaving or arriving in the Philippines. The BSP only allows cross-border transfer of local currency in excess of PHP50,000 for limited purposes only, typically for testing/calibration of money counting/sorting machines, numismatics and currency awareness.

VI. FOREIGN/FOREIGN CURRENCY LOANS

14. *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 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, that are denominated in foreign currency (or currency other than the Philippine peso).

15. *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.

16. 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.

17. Are there reports required from 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) and cancellations], whether or not said loans are BSP-approved/registered, to be regularly reported to the BSP using the prescribed forms (Annexes E.1, E.2 and E.3³) within the prescribed period⁴ until the obligations are fully extinguished. Likewise, foreign currency loans of the public sector shall be reported using the aforementioned prescribed forms.

18. 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-IOD their annual FBP not later than end-September of each year for borrowings for the following year. Proposed onshore issuances by residents of debt instruments that require settlement in foreign currency shall likewise be reported in the FBP. 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.

19. What other foreign loan-related transactions for public sector/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); (b) prepayment of public sector/publicly-guaranteed private sector loans; and (c) payment by the public sector: (i) for loans that are past due for more than one (1) month from original due date; and

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

⁴ For Annexes E.1 and E.2, submission is within five (5) banking days after the end of reference month at iod@bsp.gov.ph.

(ii) under the guarantee covering publicly-guaranteed private sector loans that are past due.

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 public sector/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.

20. *Are data on Philippine external debt available to the public?*

Yes. The data on Philippine external debt are available to the public and may be accessed at the Statistics section of the BSP website under the Monetary, External and Financial Statistics>External Account>External Debt⁵ page. The available data are aggregated by maturity category, type of borrower and creditor, currency, and creditor country.

A. PRIVATE SECTOR FOREIGN LOANS

21. *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 loan documents. The BSP registration, which is done after signing of the covering agreements and drawdown (for short-term loans) or utilization of loan proceeds (for medium and long-term loans), will allow the borrower to repay the loan using foreign currency to be purchased from banks.

As provided under Section 24 of the FX Manual, said prior BSP approval is required for publicly-guaranteed private sector foreign/foreign currency loans/borrowings while those without public sector guarantee is subject only to the required submission of notice to the BSP. On the other hand, the BSP registration is required only if the borrower shall purchase FX from the banking system for loan servicing.

22. *What is the requirement for a private sector borrower once a loan agreement without 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.

The borrower shall also send a notification to BSP (Annex E.3) for: (i) change/s in the loan's financial terms and conditions; or (ii) cancellation (whether partial or in full) of the loan/commitment/agreement, within 15 banking days from availability of information/signing

⁵ Available at: <https://www.bsp.gov.ph/SitePages/Statistics/External.aspx?TabId=5>

of the amended or supplemental agreement/effectivity date, as the case may be, for monitoring purposes.

23. 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 short-term loans – within one (1) month from drawdown date; and
- b. For medium- and long-term loans – within six (6) months from last date of utilization of loan proceeds.

24. 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. Payment for interest and other loan-related fees/cost may be serviced in full as long as there is outstanding registered loan amount.

25. Can private sector borrowers source foreign currency from banks to fund payments of BSP-registered loans outside of scheduled payment dates indicated in the BSRD, without need for prior BSP approval?

Yes, subject to filing with the BSP of a written notice at least one (1) month prior to target date of purchase of foreign currency for the following private sector loans/borrowings that are not publicly-guaranteed pursuant to Section 25.2 of the FX Manual:

- a. For medium- and long-term loans – Prepayment of BSP registered loans/borrowings (including bonds/notes/other debt instruments); and
- b. For both short-term, and medium- and long-term loans/borrowings that are past due for more than one (1) month from original due dates.

Moreover, private sector borrowers may purchase FX from banks to service BSP-registered foreign loans within one (1) month from original due dates as long as the BSRD is valid. However, FX purchase for prepayment of publicly-guaranteed private sector loans/borrowings require prior BSP approval.

26. *If the prepayment of BSP-registered short-term private sector loans that are not publicly-guaranteed neither requires prior BSP approval nor notification to BSP pursuant to Section 25.2.a of the FX Manual, are there any other BSP requirements?*

Prepayment of BSP-registered short-term 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., Original 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)].

27. *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 FX Manual.

28. *Are applications for registration of foreign/foreign currency loans, with loan agreements signed prior to issuance of Circular No. 1030 allowed without a fee, even if these were filed beyond the prescriptive period?*

Application for registration of foreign loans/borrowings of private sector entities that are not publicly-guaranteed (excluding loans that are subject to prior BSP approval at the time the loan/borrowing was executed), wherein the notice to BSP and/or the application for registration is/are filed beyond the prescriptive period, shall be subject to a PHP20,000 processing fee per loan account pursuant to Appendix 20 of the FX Manual.

29. *Can private sector borrowers apply for registration of their foreign loans/borrowings without public sector guarantee whose loan agreements were signed prior to Circular No. 984 dated 22 December 2017 without BSP approval?*

The IOD currently does not accept applications for registration of unregistered private sector foreign loans/borrowings (without guarantee from the public sector) obtained without the requisite prior BSP approval that are outstanding and booked in the borrower's records as of 22 December 2017. These loans should have been applied for registration during the six (6)-month temporary window (from 15 January to 15 July 2018) under Circular No. 985 dated 22 December 2017.

30. 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.

31. 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 to allow the BSP to: (a) monitor the foreign loan/borrowing transactions; and (b) make projections for statistics and policy development purposes.

B. PUBLIC SECTOR FOREIGN LOANS

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

- a. Approval-In-Principle - which refers to the approval granted by the Monetary Board (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. Finalization and clearance of loan documents; and
- c. Final Approval - which refers to the approval granted by the MB to a loan previously approved-in-principle after its terms have been finalized and found consistent with the terms approved-in-principle, the covering loan agreement signed, and other preconditions for final approval have been complied with. The MB final approval authorizes the borrower to draw on the loan/issue the bonds/notes/securities involved.

33. 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 element⁶ 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

⁶ As provided under R.A. No. 8182, the grant element is “the reduction enjoyed by the borrower whenever the debt service payments which shall include both principal and interest and expressed at their present values discounted at ten percent (10%) are less than the face value of the loan or loan and grant. The grant element of a loan or loan and grant is computed at the ratio of (i) the difference between the face value of the loan or loan and grant and the debt service payments to (ii) the face value of the loan or loan and grant.”

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.

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

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

35. *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.

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

Yes. Under Appendix 20 of the FX Manual, government-owned and controlled corporations (GOCCs) are required to pay a regular processing fee of PHP20,000 to the IAC-RFLD (through the IOD) on all applications for review of loan agreements and related documents. For agreements/documents requested to be reviewed on a rush basis, the applicant shall pay a processing fee of PHP40,000.

37. *What do “negative pledge clause”, “collective action clause (CAC)”, and “break-funding cost” cited in loan agreements mean?*

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

- c. "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.

VII. GUARANTEES AND OTHER SIMILAR ARRANGEMENTS

38. 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 (except those covered under Section 24.3.a) 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 - 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.

39. What information is required to be disclosed under the "domestic accountee/foreign beneficiary" column under Part A of the Report on Guarantees (Annex G of the FX Manual)?

The resident debtor/obligor (domestic accountee) and non-resident creditor/obligee (foreign beneficiary) of the underlying obligation that is the subject of the guarantee shall be indicated in the "domestic accountee/foreign beneficiary" column under Part A.

VIII. INVESTMENTS

A. INWARD FOREIGN INVESTMENTS

40. Is the registration of foreign investments with the BSP mandatory?

No. Under Section 32 of the FX Manual, the registration of inward investments (i.e., those made by non-residents) with the BSP or registering banks (on behalf of the BSP) is optional. It is required only if the foreign currency needed to fund the repatriation of capital and the remittance of earnings thereon will be purchased from banks. The BSP (or the registering banks, on behalf of BSP) will issue a BSRD evidencing the registration of inward investment.

41. Can an investee firm apply for the registration of a foreign investment even if the non-resident investor has already applied for such?

No. Only one (1) application for registration per investment is allowed. The investor, or his authorized representative (usually the investee or a third party) shall file the request for registration.

42. What are the documents required to support application for registration of inward investments either with the BSP or registering banks?

Applications for registration of inward investments [either with the BSP (using Annex W of the FX Manual) or registering banks] shall be supported by: (a) proof of funding [e.g., Certificate of Inward Remittance (CIR) of FX]; and (b) proof of the actual investment made by the non-resident investor as prescribed under Appendix 10.C of the FX Manual.

43. In the application for registration of foreign investments (Annex W of the FX Manual), should all foreign shareholdings be indicated under the capital structure of the investee firm or only the shares held by the non-resident investor being applied for registration?

Yes. All the foreign shareholdings should be indicated in the application for registration of foreign investments (Annex W) to be submitted to the BSP (including details/information⁷ on nominees of investors), aside from the shares held by non-resident investor being requested for registration, to allow us to capture data on foreign investments.

44. Are there prescriptive periods for the filing of applications for registration of investments under Section 36.1 of the FX Manual?

Yes. Under Section 36.1 of the FX Manual, applications for registration of inward investments shall be filed with the BSP within the one (1) year prescriptive period reckoned from dates indicated in item I.A.2 of Appendix 10.A of the FX Manual. Applications filed within the prescriptive period shall be free of charge, while those filed beyond the prescriptive period shall be assessed a graduated processing fee indicated in Appendix 20 of the FX Manual as follows:

| Date of Filing | Registration Fee |
|---|---|
| 1 st year of filing beyond the prescriptive period | PHP10,000 for every BSRD issued |
| 2 nd year of filing beyond the prescriptive period and onwards | Additional fee of PHP10,000 for each year for every BSRD issued |

In case the end of the prescriptive period falls on a non-working day, IOD may receive applications until the next working day. The reckoning dates for applications for registration are detailed in Appendix 10.A of the FX Manual.

⁷ Names and number of shares held on behalf of the investor

45. *When is the deadline for filing of applications for registration of foreign direct investments (FDIs) in condominium units? What documents must be submitted?*

Applications for registration (Annex W of the FX Manual) of FDIs in condominiums should be filed with the BSP within one (1) year from the date of: (i) actual funding of (e.g., remittance of FX), or payment for, the investment; or (ii) effectivity of the Deed of Transfer/Assignment/Sale or any other covering agreement/equivalent document relative to the investment. The applications shall be supported by proof of funding (e.g., CIR of FX) and actual investments made (e.g., contract to sell with acknowledgment receipts/proof of payment for the property). Applications filed beyond the prescriptive period shall be assessed a processing fee indicated in Appendix 20 of the FX Manual.

46. *When can an FX sale transaction be classified as “constructive remittance of FX”, hence, eligible for registration of foreign direct investment?*

Under Item 1 of Appendix 10.C of the FX Manual, constructive remittance of FX refers to FX funding that is credited to the offshore account of resident investee/intended beneficiary/onshore bank without actual inward remittance of FX but the investment is accordingly booked onshore in the records of the investee firm.

47. *What are the BSP requirements for the issuance of a CIR of FX?*

A CIR of FX may only be issued if there was actual flow of FX to the Philippines. The BSP-prescribed format and guidelines/instructions for filling out a CIR can be found in Appendix 10.1 of the FX Manual.

48. *Should the CIR to be issued by a bank be in the current version (Version 3)?*

The CIR to be issued by a bank should be in the latest version of the BSP-prescribed format under Appendix 10.1 of the FX Manual (i.e., Version 3, updated as of 8 March 2019 unless subsequently revised by the BSP).

49. *In filling out the CIR of FX form, is the bank required to indicate the conversion details of the inward remittance from FX to PHP?*

Yes. If there is actual conversion of the inward remittance of FX to PHP, the conversion details of the same should be indicated in the CIR of FX to be issued by the converting bank (which may be the same as the receiving bank or another bank) in the BSP-prescribed format (Appendix 10.1 of the FX Manual). In addition, the US Dollar equivalent of the FX amount should be accordingly indicated in the CIR.

50. *Is BSP authorization required for the replacement of a lost or erroneous CIR a bank issued?*

No. However, the CIR issued as replacement of a lost or erroneous CIR shall indicate that the former shall cancel and supersede the latter as provided under Appendix 10.1 of the FX Manual.

51. *Would a lost CIR issued in 2017 (Version 2) be replaced with a current version? If the non-resident investor has a photocopy of the lost Version 2 CIR, can this be considered as an alternative document to the current CIR and therefore, a replacement CIR is no longer needed?*

If a CIR issued in 2017 has been lost, the replacement CIR to be issued by a bank should be in its current version with a note that said CIR supersedes and replaces the lost CIR. However, if the non-resident investor has a photocopy of said lost CIR, such can be used as a proof of funding in connection with the investor's application for registration of its foreign investment.

52. *What is the BSP-prescribed format for the CIR number issued by an AAB?*

Pursuant to Appendix 10.1 of the FX Manual, as amended, the CIR number format should be CCYY-NNNNN-BBBBBBBBBBBB wherein CCYY is for the year the CIR is issued, NNNNNN for the series number of the CIR and BB-BBBB-BB-BBB for the 11-digit enterprise-wide bank code [which consists of two (2) digit bank kind, four (4) digit bank identity, two (2) digit bank type and three (3) digit branch number⁸].

53. *Is the "Authority to Disclose Information" under Appendix 10.4 of the FX Manual required to be submitted by non-residents for every registration of investment with registering banks listed under Section 37 of the FX Manual?*

The "Authority to Disclose Information" (ATD) is only required to be submitted once by the non-resident investor (or his authorized representative) who intends to register his investment with a particular registering bank. However, should the non-resident investor decide to: (a) register future investments; or (b) transfer the registration of existing investments, with a different registering bank, the investor has to submit another ATD to cover all investments registered with the new registering bank.

54. *In case the non-resident investor only desires to reinvest divestment proceeds from his registered investment to another domestic corporation without the intent of repatriating any capital or remitting the earnings from such new investment, should the new investment be registered with the BSP or registering AABs?*

The new investment need not be registered with the BSP or registering AABs if the non-resident investor does not intend to purchase FX from the banking system for the repatriation of capital and/or remittance of related earnings in pesos accruing thereon.

⁸ As clarified under Circular Letter No. CL-2020-055 dated 16 November 2020

- 55. *If the client intends to register subsequent investments that were funded by divestment sales proceeds, what will be the reckoning date for the filing of application for registration of the reinvestment? Will it be reckoned from the date of reinvestment or from the date of actual repatriation of capital or remittance of earnings (such as dividends) from the new investment?***

Appendix 10.A of the FX Manual provides that the reckoning date for the reinvestment of peso divestment/sales proceeds or related earnings from onshore investment is the date of: (i) actual divestment/sales proceeds; or (ii) effectivity of covering dividend declaration/equivalent document (e.g., dividend declaration); or (iii) payment for the investment.

- 56. *Are non-resident investors allowed to purchase FX for their additional paid-in capital (APIC)?***

APIC is the excess amount paid by an investor over and above the par value of a stock. Creation of APIC has no corresponding increase in foreign ownership. Premium on par value of shares upon sale of capital stock is already eligible for servicing using FX resources of AABs/AAB forex corps once the mother shares are already registered with the BSP. Thus, the mother shares shall be registered with the BSP to allow full and immediate repatriation of capital and remittance of related earnings thereon, including the premium on par value, using the FX resources of AABs/AAB forex corps.

B. OUTWARD INVESTMENTS BY PHILIPPINE RESIDENTS

- 57. *Does the rule on outward investments by residents under Sections 43 and 44 of the FX Manual apply even if the issuer of the offshore instruments is a resident?***

No. BSP regulations on outward investments by residents under Sections 43-44 apply only if the issuer is a non-resident. If the issuer is a resident, AABs may still sell FX under the rules on resident-to-resident FX transactions under Part One, Chapter II of the FX Manual if the issuance was made offshore.

- 58. *What are considered outward investments by residents that may be funded using foreign currency to be purchased from banks?***

Under Section 44 of the FX Manual, outward investments by residents that may be funded using foreign currency to be purchased from banks are those investments by residents in any of the following instruments: (a) issued/created offshore by non-residents (except foreign currency deposit accounts offshore); and (b) issued/created onshore by non-residents requiring settlement in foreign currency, provided these are not contrary to applicable Philippine laws, rules and regulations.

IX. FX FORWARDS AND SWAPS

59. *What rules govern FX swaps involving trade, non-trade current accounts, resident-to-resident transactions, foreign loans and foreign investments?*

The following rules under Appendices 18.1 and 18.2 of the FX Manual shall apply to FX swaps involving trade, non-trade current accounts, resident-to-resident transactions, foreign loans and foreign investments:

- If the swap involves FX sale by AABs the first leg, and FX purchase by AABs in the second leg, the first leg of the swap shall be subject to the following:
 1. For FX swap transactions involving trade and non-trade current account transactions, documentary requirements under Appendices 1 and 4 of the FX Manual shall be presented/submitted to banks only if the amounts (per underlying transaction) involved exceed USD500,000 (for individuals) and USD1 million (for corporates/other entities).
 2. For FX swap transactions involving resident to resident FX transactions, foreign loans, inward investments, and trade transactions pertaining to net payables under an intercompany netting arrangement, documentary requirements under Appendices 1, 1.3, 1.4, and 6.1 of the FX Manual, respectively, shall be presented/submitted regardless of amounts involved.
- If the swap involves FX purchase by AABs in the first leg and FX sale by AABs in the second leg, 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 without the need for customer's submission of a duly accomplished ATP. However, for swaps covering FX transactions between residents, foreign/foreign currency loans and inward investments, the minimum documentary requirements for the sale of foreign currency under Appendices 1, 1.3 and 1.4 of the FX Manual, as applicable, shall also be presented/submitted to the bank counterparty prior to delivery of foreign currency by the bank to its client at any time under the forward leg of the swap (Appendix 18.2).

The bank counterparty for the swap contract shall notify the BSP of the details of the swap and the loans to be funded showing, among others, the borrower's profile, terms of the loan and swap (e.g., amount, tenor), and other pertinent information.

For this purpose, the swap contract covering foreign/foreign currency loans/ borrowings and inward investments⁹ must include a statement that: "There shall be no delivery of foreign currency at any time under the swap contract unless the foreign/foreign currency loans/borrowings/inward investments are duly registered/reported with the BSP, as applicable."

⁹ For this purpose, foreign loans and inward investments refer to only to those requiring prior BSP approval and/or registration, as may be applicable.

60. *When will the documentary requirements for FX forwards and swaps be submitted to bank counterparty?*

For FX forward and swap transactions involving trade, non-trade current account and resident-to-resident FX transactions, the documents shall be presented/submitted on or before deal date to banks pursuant to Appendix 18.1 of the FX Manual.

For FX forward and swap transactions involving loans/borrowings, guarantees and investments, the documents shall be presented/submitted on or before settlement date to banks pursuant to Appendix 18.2 of the FX Manual.

* Inquiries and other concerns regarding FX regulations may be sent to:

The Office of the Senior Director or
The Policy Studies and Information Systems Group (PSISG)
International Operations Department
3rd Floor, 5-Storey Building
Bangko Sentral ng Pilipinas
1004 Manila
Email address: iod-ipds@bsp.gov.ph