



# BANGKO SENTRAL NG PILIPINAS

## CIRCULAR NO. 1134 Series of 2021

OFFICE OF THE GOVERNOR

**Subject: Amendments to the Relevant Regulations on Foreign Currency Deposit System - Phase 2**

The Monetary Board, in its Resolution No. 1742 dated 16 December 2021, approved the second phase of amendments to the relevant provisions of the Manual of Regulations on Foreign Exchange Transactions (FX Manual) and the Manual of Regulations for Banks (MORB) governing the Foreign Currency Deposit System aimed at promoting effective risk management in banks by relaxing and streamlining the requirements of foreign currency denominated transactions.

**Section 1.** Section 101 of the MORB, as amended by Circular Nos. 1069 and 1105 dated 27 December 2019 and 02 December 2020, respectively, is hereby amended to read, as follows:

### **101 CLASSIFICATIONS, POWERS AND SCOPE OF AUTHORITIES OF BANKS**

a. xxx

b. *Powers and scope of authorities.* The following are the powers and scope of authorities of banks.

(1) Universal Banks (UBs). A UB shall have the authority to exercise, in addition to the powers and services authorized for a KB as enumerated in Item "b (2)" and those provided by other laws, the following:

xxx

(2) Commercial Banks (KBs). xxx

It may also exercise or perform any or all of the following:

(a) xxx;

xxx;

(g) xxx;

(h) xxx; and

(i) accept foreign currency deposits as provided under Republic Act (R.A.) No. 6426 or known as the Foreign Currency Deposit Act of the Philippines, as amended, and as allowed under existing regulations.

(3) Thrift Banks (TBs). In addition to the powers provided in other laws, a TB may perform any or all of the following services:

(a) xxx

xxx

(h) accept foreign currency deposits as provided under R.A. No. 6426, as amended, and as allowed under existing regulations;

xxx

(6) Islamic Banks (IBs). In addition to the general powers granted to corporations, IBs shall have such powers as shall be necessary to carry out the business of a bank in accordance with Shari'ah principles. IBs may perform the following services:

(a) xxx;

xxx

(d) accept foreign currency deposits as provided under R.A. No. 6426, as amended, and as allowed under existing regulations;

xxx

(7) Digital banks. A digital bank may perform any or all of the following services:

(a) xxx

xxx

(c) accept foreign currency deposits, as provided under R.A. No. 6426, as amended, and as allowed under existing regulations;

xxx

**Section 2.** Section 111 of the MORB, as amended by Circular Nos. 1031, 1086 and 1121 dated 07 February 2019, 06 May 2020 and 8 June 2021, respectively, is hereby amended to read as follows:

#### **111 LICENSING**

xxx

***Type of License of Permissible Activities<sup>1</sup>***. The type of license attached to permissible activities of the Bangko Sentral - supervised financial institutions (BSFIs) shall be as follows:

Type of License	Permissible Activity	Related Sections
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<sup>1</sup> Application filed with the Bangko Sentral xxx

<b>A</b>	Xxx	xxx
	FCDU operation of Rural Bank (RB)/Coop Bank	Part IV Chapter III Section 71 of the FX Manual
<b>B</b>	Xxx	xxx
<b>C</b>	Xxx	xxx
	EFCDU operation of Universal/Commercial Bank (U/KB) and Islamic Bank (IB)	Part IV. Chapter III Section 71 of the FX Manual
	FCDU operation of Thrift Bank (TB) and Digital Bank	

xxx

**Section 3.** Sections 71 and 72 of the FX Manual are hereby amended to read, as follows:

#### **71 QUALIFICATION REQUIREMENTS.**

1. A UB/KB and IB may be authorized to operate an EFCDU while a TB, Digital Bank, and RB/Coop bank may be authorized to operate an FCDU: *Provided*, That the prudential criteria and the pre-qualification requirements for the corresponding license type under Section 111 and Appendix 5 of the MORB, respectively, are met.

2. A bank seeking to operate an FCDU or EFCDU shall submit the following documents to the appropriate supervising department of the BSP:

- a. Application letter for a type A license or notification letter for a type C license, as applicable, signed by the president, or officer of equivalent rank, with justification on how the license is aligned with the bank's business model and strategic direction;
- b. Corporate secretary's certificate on the approval of the board of directors (or equivalent management committee in the case of foreign bank branches) to operate an FCDU or EFCDU; and
- c. Certification signed by the president, or the officer of equivalent rank, and the chief compliance officer certifying that the bank has complied with all the prudential criteria and the pre-qualification requirements for the grant of authority to operate an FCDU or EFCDU.

#### **72. AUTHORIZED TRANSACTIONS**

1. A TB, Digital Bank, or RB/Coop Bank which is granted authority to operate an FCDU is authorized to engage in the following transactions in any acceptable foreign currency: *Provided*, That, these are allowed under the bank's existing powers and scope of authorities:

- a. Accept deposits and trust accounts xxx
- b. Deposit, regardless of maturity, with foreign banks abroad, OBUs and other FCDUs/EFCDUs;
- c. Invest in readily marketable foreign currency denominated debt instruments subject to the requirements under existing regulations. xxx
- d. Grant short-term foreign currency loans as may be allowed by BSP regulations xxx;
- e. Borrow, subject to existing rules on foreign/foreign currency borrowings, (i) from EFCDUs, foreign banks abroad and OBUs, regardless of maturity; and (ii) from other FCDUs, on short-term maturity;
- f. Engage in foreign currency stand-alone derivatives referencing currency pairs not including the Philippine peso, as specifically allowed under Section 613 of the MORB and other existing regulations;
- g. Engage in securities lending activities as lender *Provided*, That it shall comply with the Securities and Exchange Commission (SEC) regulations on securities lending transactions and/or with the guidelines of the organized market in which the deal is transacted;

The foreign currency denominated debt securities lent or used as collateral by the borrowing bank in securities lending and borrowing transactions shall be considered as eligible asset cover for the 100% cover requirement.

- h. Engage in repurchase agreements involving foreign currency denominated debt securities pursuant to Section 242 of the MORB, subject to the following conditions:
  - 1) The borrowings shall only be from FCDUs/EFCDUs, non-resident financial institutions and OBUs;
  - 2) The maximum term of the repurchase agreements shall be one (1) year;
  - 3) The borrowings shall be booked under "Bills Payable" and included in the computation of the total FCDU/EFCDU liabilities, subject to the mandatory 100 percent asset cover; and
  - 4) The foreign currency-denominated debt securities sold or used as additional collateral in repurchase agreement shall be considered as eligible asset cover for the 100% cover requirement.
- i. Purchase foreign currency denominated debt securities under resale agreements from other banks' FCDU/EFCDU, non-resident financial institutions and OBUs, subject to the following conditions:

- 1) That the maximum term of the resale agreements shall be one (1) year; and
  - 2) That such debt securities purchased under resale agreements shall be classified as Loans and Receivables Arising from Repurchase Agreements/Certificates of Assignment/Participation with Recourse and Securities Lending and Borrowing Transactions.
- j. Issue capital instruments subject to the requirements under existing regulations;
- k. Except RBs/Coop Banks, engage in USD-denominated repurchase agreements (R/P) with the BSP as provided under Section 601 of the MORB.

The Monetary Board may at its discretion impose the sanctions for violations of the provisions on the terms and conditions of the USD-denominated R/P agreement with the BSP under Section 601 of the MORB to a bank and/or its director/s, officer/s, or employees found to be responsible for violation of Item "l(k)" of this Section.

2. A UB/KB which is authorized to operate under the expanded foreign currency deposit system may engage in the following transactions in any acceptable foreign currency:

- a. Accept deposits and trust accounts xxx;
- b. Deposit with foreign banks abroad, OBUs and other FCDUs/EFCDUs;
- c. Invest in foreign currency-denominated debt instruments;
- d. Grant foreign currency loans as may be allowed by the Bangko Sentral;
- e. Borrow from other FCDUs/EFCDUs and from non-residents and OBUs, subject to existing rules on foreign borrowings;
- f. Engage in foreign currency stand-alone derivatives referencing currency pairs not including the Philippine peso, as specifically allowed under Section 613 of the Manual of Regulations for Banks and other existing regulations;
- g. Engage in foreign exchange trading;
- h. On request/instructions of its foreign correspondent bank, it may:
  - 1) issue letters of credit for a non-resident importer in favor of a non-resident exporter;
  - 2) pay, accept, or negotiate drafts/bills of exchange drawn under the letter of credit; and
  - 3) make payment to the order of the non-resident exporter.

*Provided*, That the foreign correspondent bank shall deposit sufficient foreign exchange with the EFCDU issuing the letter of credit to cover all drawings;

- i. Engage in direct purchase of export bills of resident exporters subject to the following conditions:
  - 1) Export transactions covered by usance or sight letters of credit shall be allowed to be purchased by EFCDUs; and
  - 2) Export bills negotiated/purchased by the bank's Regular Banking Unit (RBU) and outstanding in its books shall not be allowed to be purchased by its EFCDUs.
- j. Engage in securities lending activities as lender: *Provided*, That it shall comply with the SEC regulations on securities lending transactions and/or with the guidelines of the organized market in which the deal is transacted;
- k. Engage in repurchase agreements involving foreign currency denominated debt securities pursuant to Section 242 of the MORB and subject to the conditions as enumerated in Item 1.h of this Section, except Item 1.h(2);
- l. Invest in foreign currency denominated structured products issued by banks and special purpose vehicles (SPVs) subject to the provisions in Section 613 of the MORB;
- m. Purchase foreign currency denominated debt securities under resale agreements from other banks' FCDU/EFCDU, non-resident financial institutions and OBUs.

Such debt securities purchased under resale agreements shall be classified as Loans and Receivables Arising from Repurchase Agreements, Certificates of Assignment/Participation with Recourse, and Securities Lending and Borrowing Transactions.

- n. Issue capital instruments subject to the requirements under existing regulations;
- o. Engage in USD-denominated repurchase agreements (R/P) with the Bangko Sentral as provided under Section 601 of the MORB.

The Monetary Board may at its discretion impose any or all of the sanctions for violations of the provisions on the terms and conditions of the USD-denominated R/P agreement with the BSP under Section 601 of the MORB to a bank and/or its director/s, officer/s, or employees found to be responsible for violation of Item "2(o)" of this Section.

3. The foreign currency funds of the bank's FCDU/EFCDU may be lent to the bank's RBU: *Provided*, That no interest shall be charged on the lending: *Provided, further*, That the loan shall be for a period of one (1) year or less, in the case of FCDU. EFCDU, however, will be allowed to lend to RBU in tenors that are more than one (1) year. Balance of FCDU/EFCDU loan to RBU shall be settled on gross basis by way of actual transfer of foreign currency assets from the RBU books to the FCDU/EFCDU books: *Provided*, That no gain or loss shall be recorded on the transfer of foreign currency assets from RBU to FCDU/EFCDU to facilitate settlement of FCDU/EFCDU loans to RBU.

The lending from FCDU/EFCDU to RBU shall be booked as "Loans to RBU by FCDU/EFCDU" in the FCDU/EFCDU books and "Loans by RBU from FCDU/EFCDU" in the RBU books. The "Loans to RBU by FCDU/EFCDU" account balance shall qualify as eligible asset cover for FCDU/EFCDU liabilities.

**Section 4.** Sections 73, 82 and 84 of the FX Manual are hereby amended to read, as follows:

**73 FOREIGN CURRENCY COVER REQUIREMENTS AND RISK MANAGEMENT ON FOREIGN CURRENCY TRANSACTIONS AND POSITIONS.**

Depository banks under the foreign currency deposit and expanded foreign currency deposit systems shall maintain at all times a 100% cover for their foreign currency liabilities, xxx

1. For banks authorized to operate an FCDU:

a. xxx;

xxx;

j. Accounts receivable, including those arising from sale of financial assets under the trade date accounting pending actual settlement/delivery of the underlying securities (Accounts payable arising from the purchase of financial assets under the trade date accounting pending actual settlement/receipt of the underlying securities shall require corresponding asset cover);

k. Loans to RBU: *Provided*, That the conditions under Section 72 are complied with;

l. xxx;

m. Such other assets as may be determined by the Monetary Board as eligible asset cover.

2. For banks authorized to operate an EFCDU – The foregoing accounts, regardless of maturity, and in the case of investment in foreign currency denominated debt instruments, regardless of maturity and marketability, shall be considered as eligible asset cover.

In addition, the following shall also be considered as eligible asset cover:

a. Loans and Receivables granted by EFCDU: *Provided*, That all applicable banking rules and regulations are complied with including single borrower's limit as provided in Section 362 of the MORB;

b. Outstanding Export Bills Purchased in the EFCDU books xxx.

xxx

3. The 100% asset cover shall be unencumbered, except as otherwise provided in second paragraph of Item f of Section 73.1.

xxx

4. A bank should have a risk management framework commensurate with the size, nature, complexity and risk profile of its foreign currency denominated positions and foreign exchange (FX) activities. This framework should cover all material risks from foreign currency denominated transactions including market risk, liquidity risk and operational risk, among others, in accordance with the existing risk management standards in the MORB. A bank should have strong governance arrangements that ensure the material risks are properly identified, measured, monitored and controlled and are integrated to the over-all risk management process.

5. The Due from Other Banks – Non-resident (DFOB-Non-Resident) account representing cover for foreign currency liabilities of FCDU/EFCDU shall be kept separate and distinct from the DFOB – Non Resident account for the regular banking unit (RBU).

## **82. TAXES**

The foreign currency denominated transactions shall be subject to tax treatment pursuant to the provisions of the National Internal Revenue Code, as amended and its Implementing Rules and Regulations.

## **84. ACCOUNTING**

AABs shall maintain a separate accounting - for FCDU/EFCDU transactions covered by these rules that will enable preparation of the FCDU/EFCDU Balance Sheet and Income Statement, as well as reports for risk management and tax purposes.

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**Section 5.** Appendices 13 and 14 of the FX Manual on the "Guidelines on the Availment of US Dollar-Denominated Repurchase Agreement Facility with the BSP and "Sworn Certificate of FCDU/EFCDU Lending to RBU", respectively are hereby deleted.

**Section 6.** The following transitory provision shall be incorporated as a footnote in Section 71 of the FX Manual.

Banks with existing E/FCDU license may continue to operate the same license provided that it complies with the standard pre-qualification and prudential requirements under Section 111 (*Prudential Criteria*) of the MORB, as amended, on a continuing basis. Such banks shall have the option to apply for a new license following the foregoing provisions.

**Section 7.** This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:

 Digitally signed by  
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**BENJAMIN E. DIOKNO**  
Governor

28 December 2021