

## **[ BSP CIRCULAR NO. 742 SERIES OF 2011, November 21, 2011 ]**

### **AMENDMENTS TO FOREIGN EXCHANGE REGULATIONS**

SUBJECT : AMENDMENTS TO FOREIGN EXCHANGE REGULATIONS

Pursuant to Monetary Board Resolution No. 1681 dated 10 November 2011, the following provisions of the Manual of Regulations on Foreign Exchange Transactions issued under Circular No. 645 dated 13 February 2009, as amended are revised as follows:

**"Section 6. General Policy.** As a general rule, all kinds of merchandise imports are allowed. However, the importation of certain commodities are regulated or prohibited for reasons of public health and safety, national security, international commitments, and development/rationalization of local industry.

Foreign exchange purchased from AABs/ AAB-forex corps to service importations shall be directly remitted to the non-resident beneficiary on the date of purchase. However, foreign exchange purchases may be credited to FCDU deposit accounts of the importer pending remittance to the non-resident beneficiary: *Provided*, That the importer shall execute a waiver of the requirements of Republic Act No. 6426 (Foreign Currency Deposit Act) dated 4 April 1974, as amended, on the secrecy of foreign currency deposits upon purchase of foreign exchange to enable the BSP to validate the authenticity of the credits and eventual remittance of the funds."

#### **"Section 9. Letter of Credit (L/C)**

1. All L/Cs must be opened on or before the date of shipment and only one L/C should be opened for each import transaction. For purposes of opening an L/C, importers shall submit to the AAB the documents listed in Appendix 5. Amendments of L/C need not be referred to the BSP for prior approval. L/Cs shall be negotiated in accordance with the terms and conditions set forth in the L/C and shall be governed by the Uniform Customs and Practices on Documentary Credits.

2. Deferred L/Cs shall be governed by the pertinent provisions of Part Two, Chapter 1 hereof (Loans and Guarantees). For this purpose, deferred L/Cs refer to those with payment terms of more than one year reckoned from initial shipment date.

**"Section 13. Advance Payment.** AABs and AAB-forex corps may sell foreign exchange to importers without prior BSP approval for advance payment for importations subject to the guidelines under Appendix 7 hereof, including documents prescribed thereunder. The foreign exchange

selling/remitting AAB shall report these transactions to the BSP-International Operations Department (IOD) using the prescribed forms (Annexes B and C)."

**"Section 22. General Policy.** The BSP shall regulate foreign/ foreign currency loans to ensure that principal and interest owed to creditors can be serviced in an orderly manner and with due regard to the economy's overall debt servicing capacity. All public and public by-guaranteed private sector obligations from foreign creditors, OBUs and Foreign Currency Deposit Units (FCDUs)/ Expanded Foreign Currency Deposit Units (EFCDUs) of banks shall be referred to the BSP for prior approval, unless otherwise indicated herein. Other private sector loans from these creditors and other financing schemes/arrangements shall require prior approval and/or registration by the BSP if these will ultimately involve foreign exchange to be purchased from AABs or AAB-forex corps.

1. The required BSP approval shall be obtained as follows:

- a. For public sector loans- Applications for loan approval shall be filed with the BSP using the prescribed form (Annex D.1) together with all the required supporting documents/information, before commencement of actual negotiations, or before issuing a mandate of commitment to foreign funders/arrangers.
- b. For private sector loans- Applications for loan approval shall be filed with the BSP using the prescribed form (Annex D.2) together with all the required supporting documents/information, at least 30 banking days before the target signing date of the loan documents and/or initial drawdown date, whichever is earlier.

Private sector loans submitted for BSP approval shall be assessed a processing fee indicated under Appendix 20 hereof.

2. Resident companies/entities intending to obtain medium- and long term foreign loans or issue bonds/notes/debt securities offshore shall submit to the BSP-IOD their annual foreign borrowings plan as follows:

- a. Public sector entities, including the National Government- every end-September for borrowings for the following year, regardless of amount; and
- b. Private sector entities, with planned aggregate annual borrowings of at least USD 10 million, or its equivalent- every end- September for borrowing for the following year.

The timetable and any changes on the submitted foreign borrowings plan shall be communicated to the BSP-IOD within two (2) weeks upon availability of information for monitoring and programming purposes.

3. Private sector loans that are submitted to the BSP for approval or registration that were not included under a foreign borrowings plan as required in Item 2 of this Section shall be assessed an additional fee equivalent to ten percent (10%) of the applicable processing fee for BSP

approval/registration, as indicated under Appendix 20 hereof.

4. For statistical purposes, all foreign loans obtained by private sector entities, whether or not these are BSP-approved/registered, shall be regularly reported to the BSP-IOD, using the prescribed forms (Annexes E.1 and E.2) within the required deadline until the obligations are fully extinguished.

5. AABs shall not extend peso financing to non-residents unless explicitly allowed under existing BSP rules."

**"Section 23. Loans Requiring Prior BSP Approval,** Prior BSP approval shall be required for the following loans:

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Applications submitted to the BSP with signed loan documents and/or loan proceeds already drawn shall no longer be eligible for BSP approval and registration."

**"Section 24. Loans Not Requiring Prior BSP Approval.** The following loans may be granted without prior approval of the BSP:

9. Loans of resident private sector borrowers from FCDUs/EFCDUs/offshore sources that are not publicly-guaranteed to finance infrastructure projects included in the Government's list of Public Private Partnership (PPP) projects. The exemption of these loans from prior BSP approval shall be valid up to three (3) years reckoned front the effectivity of this Circular."

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**"Section 25. Project/Costs. Eligible for Foreign Financing**

1. Loans submitted for prior BSP approval shall finance the following types of projects/activities:

- a. Export-oriented projects;
- b. Projects registered with the BOI;
- c. Priority investment areas under the current Investment Priorities Plan (IPP);
- d. Activities listed in the current Medium-Term Public Investment Program (MTPIP);
- 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 National Economic and Development Authority 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.

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#### **"Section 28. Registration of Loans.**

1. Loans shall be registered with the BSP to be eligible for servicing using foreign exchange purchased from AABs or AAB-forex corps. Applications for registration of private sector loans shall be filed by the borrower with the BSP within ten (10) banking days from drawdown date for short-term loans and three (3) months from utilization of loan proceeds for medium and long-term loans using the prescribed forms (Annex D.2). Private sector loans that do not require prior BSP approval but are submitted to the BSP for registration shall be charged a processing fee indicated in Appendix 20 hereof. Public sector loans extended final approval by the Monetary Board are deemed registered. \* \* \*

**"Section 34. Inward Foreign Direct Investments.** Inward foreign direct investments may be in cash or in kind. For registration purposes, foreign exchange funding for the cash investments must be inwardly remitted but need not be converted to pesos. \* \* \*

**"Section 35. Inward Foreign Portfolio Investments.** Inward foreign portfolio investments shall include following:

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For registration purposes, the foreign exchange funding for the portfolio investments must be inwardly remitted and converted to pesos."