



Circular No. ⁶⁴⁵
Series of 2009

Subject: Reforms to the Foreign Exchange Regulatory Framework and Issuance of the Consolidated Rules under the New "Manual of Regulations on Foreign Exchange Transactions"

Pursuant to Monetary Board Resolution No. 61 dated 15 January 2009, approving the (1) additional reforms to further liberalize/streamline the foreign exchange regulatory framework; and (2) the issuance of the "Manual of Regulations on Foreign Exchange Transactions" (hereinafter referred to as the "Manual"), to replace Central Bank Circular No. 1389 dated 13 April 1993, as amended, and consolidate all existing rules on foreign exchange transactions, the following regulations are hereby amended as follows:

Section 1. Application of Rules on Sale of Foreign Exchange under the Manual. The application of the rules on the sale of foreign exchange shall hereafter be limited to sales made by authorized agent banks (AABs) and their subsidiary/affiliate forex corporations (AAB-forex corps). Effectively, the sale of foreign exchange by non-bank BSP-supervised entities (NBBSEs) and their subsidiary/affiliate forex corps, including qualified entities operating as foreign exchange dealers/money changers (FXDs/MCs) and remittance agents (RAs) that are not AABs and AAB-forex corps, shall be governed by other applicable BSP regulations, including Circular No. 471 dated 24 January 2005, and shall not be covered under this "Manual". Sections 2, 3, 8, 29, 40 and 44 of the Manual are hereby amended accordingly.

Section 2. Submission of Foreign Borrowings Plan. The following provisions are added to Section 22 of the Manual:

"Resident companies/entities intending to obtain medium- and long-term foreign loans or issue bonds/notes/debt securities offshore shall submit to the BSP-International Department (ID) their annual foreign borrowings plan as follows:

1. Public sector entities, including the National Government – every end-September for borrowings for the following year, regardless of amount; and
2. Private sector entities, with planned aggregate annual borrowings of at least USD10 million, or its equivalent – every end-September for borrowings for the following year.

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

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 ten percent (10%) of the applicable processing fee.”

Section 3. Securing BSP Approval of Foreign Loans by the Private Sector Prior to Signing of Loan Documents and/or Drawdown of Loan Proceeds. The following provisions are added to Section 22 of the Manual:

“The required BSP approval shall be obtained as follows:

i. Public sector loans - before commencement of actual negotiations, or before issuing a mandate of commitment to foreign funders/arrangers.

ii. Private sector loans – prior to signing of loan documents and/or drawdown of loan proceeds.”

The following shall be inserted as the first statement of the last paragraph of Section 23 of the Manual:

“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 4. Lifting of BSP Approval for Private Banks’ Foreign Loans. The prior BSP approval for foreign loans of private banks with maturities longer than one (1) year that are intended for relending is hereby lifted. Section 23 of the Manual is amended accordingly.

Section 5. Formalize Existing Practice of Requiring Prior BSP Approval on Non-Residents’ Issuance of Bonds/Notes or Similar Instruments in the Domestic Market. The following provisions are added as Item 3 under Section 31 of the Manual:

“Non-residents’ issuance of notes/bonds or similar instruments in the domestic market, shall require BSP approval before execution thereof.”

Section 6. Projects/Costs Eligible for Funding with Foreign Borrowing. “Acquisition of non-performing assets/loans (NPAs/NPLs) of banks and other GFIs”, “Acquisition of government assets approved for

privatization", and "Refinancing of existing loans used for eligible projects/costs which are eligible for servicing using foreign exchange sourced from AABs or AAB-forex corps", are hereby added to the list of projects/costs eligible for funding with foreign borrowing under Section 25 of the Manual.

Section 7. Registration of Foreign Loans with the BSP. Borrowers of short-term loans are hereby required to apply for registration with the BSP within ten (10) banking days (previously three [3] banking days) from drawdown date. Borrowers of medium- and long-term loans are hereby required to apply for registration with the BSP within three (3) months upon utilization of loan proceeds. Item 1, Section 28 of the Manual is amended accordingly.

Section 8. BSP Approval of Loan Prepayments. Item 2, Section 29 of the Manual is hereby amended to require prior BSP approval for loan prepayments to be serviced with foreign exchange purchased from AABs or AAB-forex corps, regardless of remaining days to maturity.

Section 9. Delegation to Custodian Banks the Registration of Foreign Investments in Peso-denominated Government Securities and Peso Time Deposits. Sections 35, 36 and 37 of the Manual are hereby amended to also delegate to custodian banks the registration of foreign investments in peso-denominated government securities and peso time deposits with tenor of at least 90 days. To facilitate reporting and submission of supporting documentation to the BSP by custodian banks and avoid violation of Republic Act No. 1405 (Law on Secrecy of Bank Deposits) dated 9 September 1955, as amended, custodian banks shall secure a written permission in the prescribed format (Appendix 10.4 of the Manual) from the foreign investor granting them authority to disclose to the BSP information regarding the registration of their investments in peso-denominated government securities and peso time deposits.

Section 10. Increased Penalties for Late Reporting of Transactions in BSP-Registered Investments. The "Statement of Remittance Report for Registered Foreign Direct Investments" and "Consolidated Daily Foreign Portfolio Investment Registration and Outward Remittance Report" submitted by custodian banks and remitting banks under Section 101 of the Manual are hereby reclassified from Category B to Category A-2 reports. Penalties for violations of reporting requirements are increased as follows:

- ☐ For UBs/KBs : from PHP240 to PHP1,200 per calendar day
- ☐ For TBs : from PHP120 to PHP 600 per calendar day
- ☐ For RBs/Coop Banks : from PHP 60 to PHP 180 per calendar day

Section 11. Discontinue Submission of Report by AABs on Foreign Exchange Sales for Outward Investments. The submission of the report on "Foreign Exchange Sales by AABs for Outward Investments" under Section 44 of the Manual is hereby discontinued.

Section 12. Inward Remittance and Sale for Pesos of Foreign Exchange Representing Proceeds of Withdrawal of and/or Dividends/Earnings from Outward Investments. Proceeds from divestment and dividends/earnings of outward investments by residents funded with foreign exchange purchased from AABs or AAB-forex corps shall be inwardly remitted and sold for pesos through AABs within seven (7) banking days from receipt of the funds abroad. Such proceeds intended to be reinvested abroad may not be inwardly remitted and sold for pesos through an AAB provided that the reinvestment is made within two (2) banking days from receipt of the funds abroad. Accordingly, Section 44 of the Manual is hereby amended.

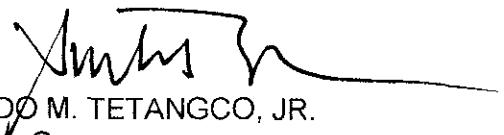
Section 13. OBUs' Peso Deposits with AABs. Offshore banking units (OBUs) are hereby prohibited from depositing in their peso deposit accounts with AABs the peso equivalent of foreign exchange remitted and converted to pesos through them related to inward foreign investments for payment to designated investee firms/beneficiaries in the Philippines. Accordingly, Item 3 of Section 53 of the Manual is hereby amended.

Section 14. Compliance with Anti-Money Laundering Rules. All transactions under this Circular shall comply with existing regulations on anti-money laundering pursuant to the provisions of Republic Act No. 9160 (Anti-Money Laundering Act of 2001) dated 29 September 2001, as amended.

Section 15. Repealing Clause. This Circular supersedes/amends/modifies the provisions of existing circulars, memoranda and/or regulations that are inconsistent herewith.

Section 16. Effectivity. This Circular shall take effect fifteen (15) calendar days after publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD


AMANDO M. TETANGCO, JR.
Governor

13 February 2009