

[BSP CIRCULAR NO. 645, S. OF 2009, February 13, 2009]

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 (N PAs/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.