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REFORMS ON THE FOREIGN EXCHANGE REGULATORY FRAMEWORK

BSP CIRCULAR NO. 698, November 05, 2010

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Pursuant to Monetary Board Resolution No. 1496 dated 28 October 2010, the following provisions of the Manual of Regulations on Foreign Exchange Transactions (FX Manual) issued under Circular No. 645 dated 13 February 2009 are hereby amended as follows:

> "Section 2. Sale of Foreign Exchange to Residents by AABs and AAB-Forex Corps for Non-Trade Current Account Transactions with Non-Residents. AABs and AAB-forex corps may sell foreign exchange to residents to cover payments to non-resident beneficiaries for non-trade current account purposes (e.g. educational expenses, medical expenses, travel expenses and salaries of foreign expatriates), other than those relating to foreign/foreign currency loans and investments, without need for prior BSP approval, subject to the submission/presentation of the following to the foreign exchange selling institution:

1. For sale not exceeding USD60,000 or its equivalent in other foreign currency

- Duly accomplished application to purchase foreign exchange using the prescribed format (Annex A[*]);

2. For sale exceeding USD60,000 or its equivalent in other foreign currency

- Duly accomplished application to purchase foreign exchange using the prescribed format (Annex A), supported by documents prescribed under Item A of Appendix 1 hereof.

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> "Section 3. Sale of Foreign Exchange to Non-Resident Tourists/Balikbayans by AABs and AAB-Forex Corps. AABs and AAB-forex corps may sell foreign exchange to non-resident tourists or balikbayans to the extent of the amount shown to have been sold by them for pesos to said entities. Departing non- resident tourists or balikbayans may reconvert at airports or other ports of exit unspent pesos up to a maximum of USD5,000 or its equivalent in other foreign currency calculated at prevailing exchange rates, without showing proof/s of previous sale of foreign exchange for pesos.

"Section 13. Advance Payment – AABs and AAB-forex corps may sell foreign exchange to importers, up to USD1 million or its equivalent in other foreign currency without prior BSP approval, for partial or full advance payment for importations in accordance with 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[*]). All applications to purchase foreign exchange in excess of USD1 million or its equivalent in other foreign currency to service advance payment for importations shall be filed directly with the BSP-IOD for prior approval."

> "Section 29. Servicing of Loans

> 1. All foreign exchange purchases from AABs or AAB-forex corps for servicing of foreign/foreign currency loans shall be directly remitted to the creditor/ beneficiary concerned on the day of purchase, unless otherwise explicitly allowed by BSP.

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2. Payments for principal, interest, fees and related charges on loans duly registered with the BSP may be remitted through AABs as these fall due without prior BSP approval provided such interest, fees and charges are indicated in the BSP registration document, and upon presentation of documents prescribed under Item B of Appendix 1 hereof.

3. Payments for the following shall, however, be subject to prior BSP approval:

a. Prepayment of public sector/publicly guaranteed private sector loans;
b. All loans that are past due for more than 30 calendar days reckoned as follows:

1. For short-term loans, from the 360th day after availment; and
2. For MLT loans, from original maturity date.

c. Other loan-related fees/charges not authorized by the BSP; and
d. Loans covered by official rescheduling with Paris Club creditors.

4. AABs and AAB-forex corps may sell foreign exchange for prepayments (i.e. payments before original due dates) of MLT private sector loans (including bonds and notes) that are not publicly-guaranteed and are covered by a BSP registration document (BSRD) without prior BSP approval, subject to the following conditions:

a. The borrower shall submit to the BSP-IOD a notice of their intention to prepay at least one (1) month prior to the target prepayment date indicating the following: name of creditor, BSP registration number for the loan, date of prepayment, amount to be prepaid in original currency, and remittance instructions (e.g., account number and recipient bank for the prepayment). After payment, the borrower shall submit to the BSP-IOD, proof/s of the payment made, together with copy of the duly stamped BSRD and its Form 2 report (Report on Foreign Borrowings for the month).

b. The foreign exchange selling AAB/AAB-forex corp shall require the presentation by the borrower of documents prescribed under Item B, Appendix 1 hereof.

c. The foreign exchange purchases shall not exceed USD50 million per day, provided that the total foreign exchange purchases shall not at any case exceed the ampount to be prepaid. The daily limit shall be subject to periodic review to take into consideration prevailing conditions; revised limits shall be duly disseminated by the BSP.

d. Advance foreign exchange purchases shall be deposited in the borrower's FCDU/offshore account pending remittance of the full amount to the creditor at the target prepayment date.

e. The foreign exchange selling institution shall see to it that documents evidencing payment of applicable documentary stamp tax, if any, are presented/available.

f. The foreign exchange sold shall be duly reported by the foreign exchange- selling AAB under FX Form 1 (Consolidated Report on Foreign Exchange Assets and Liabilities) - Schedule 4 following the deadline for submission of FX Form 1.

5. Applications to purchase foreign exchange for servicing of loan-related payments shall be submitted to any AAB or AAB-forex corp using the prescribed form (Annex A) and supported by documents prescribed under item B, Appendix 1 hereof.

6. AABs and AAB-forex corps shall not sell foreign exchange to residents for payment of foreign exchange obligations to residents other than AABs.

7. All loan payments made, irrespective of the source of the foreign exchange used, shall be reported by the borrower concerned to BSP-IOD using the prescribed form (Annex F[*]).”

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"Section 40. Repatriation and Remittance Privileges

1. Inward foreign investments duly registered with the BSP or with a custodian bank duly designated by the foreign investor, shall be entitled to full and immediate repatriation of capital and remittance of dividends, profits and earnings using foreign exchange to be purchased from AABs and AAB-forex corps.

2. Foreign exchange may be purchased from AABs and AAB-forex corps for outward remittance in an amount equivalent to the peso sales/divestments proceeds (including dividends, profits or earnings thereon) of BSP-registered foreign investments in accordance with the procedures outlined in Appendix 11[*] and supported by the documents prescribed under Items C.1 and C.2 of Appendic 1 hereof.

3. Registering banks for foreign investments may sell for outward remittance the equivalent foreign exchange of excess pesos funded with inward remittance of foreign exchange but not to exceed the amount of foreign exchange brought in less the amount actually used for BSP-registered investments made in the country, subject to the following conditions:

a. the investor shall comply with the prescribed documents under Item C. 3 of Appendix 1 hereof;

b. such excess pesos should not have been utilized to fund any investment; and

c. the remittance of the equivalent foreign exchange shall be reported to the BSP- IOD by the remitting AAB within two (2) banking days from the date of outward remittance, with copies of the prescribed supporting documents.

The foreign exchange purchases may be made by the resident agent on behalf of the non-resident investor for direct remittance to the non-resident beneficiary on the day of purchase."

"Section 44. Investments by Philippine Residents

1. Outward Investments.

a. Residents may undertake outward investments only if:

i. the investments are funded by withdrawals from the resident investor's FCDU accounts; or
ii. the funds to be invested are not among those required to be sold to AABs for pesos under existing BSP rules; or
iii. the funds to be invested are purchased from AABs or AAB-forex corps but in amounts not exceeding USD60 million or its equivalent in other foreign currency per investor per year, or per fund per year for qualified investors (QIs.)

Application to purchase foreign exchange for outward investments (Annex A) shall be supported by documents prescribed under Item C.4 of Appendix 1 hereof.

b. Outward investments by residents (excluding AABs) funded with foreign exchange purchased from AABs or AAB-forex corps in excess of the USD 60 million limit per investor per year shall require prior approval by the BSP: Provided, that the purchase of foreign exchange for outward investments by managed or trusteed accounts (other than pooled funds) shall be considered as part of the foreign exchange purchases by the principal or trustor of such accounts for determining compliance with the limits. Outward investments of banks shall be subject to existing prudential regulations of the BSP.

c. QIs may apply with the BSP for a higher annual outward investment limit. For purposes of this section, QIs shall be limited to the following: insurance and pre-need companies; collective/pooled funds, whether in a corporate or contractual structure, such as mutual funds, unit investment trust funds and variable insurance; public or private pension or retirement or provident funds and such other entities and funds as the BSP may determine as

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QIs on the basis of such factors as financial sophistication, size and regularity of financial transactions, net worth and size of assets being managed. The application of collective/pooled funds and pension, retirement and provident funds for a higher annual outward investment limit may be effected through its governing board or through its trustee.

> 2. Investments in bonds/notes issued by residents offshore. Residents may purchase foreign exchange from AABs or AAB-forex corps without prior BSP approval for investments in the following: (a) foreign currency-denominated bonds/notes of the Republic of the Philippines or other Philippine resident entities; and (b) peso-denominated bonds/notes of the Republic of the Philippines or other Philippine resident entities requiring settlement in foreign currency, Provided, That: such purchases shall be consolidated with foreign exchange purchases for outward investments under item 1.b hereof for purposes of determining compliance with the allowed limit, and supported by documents prescribed under Item c. 5 of Appedix 1 hereof.
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> 3. Foreign exchange acquired or received by residents as dividends/earnings or divestment proceeds from investments made under Item 1 and 2 hereof funded by foreign exchange purchased from AABs or AAB-forex corps shall be inwardly remitted and sold for pesos through AABs within 30 days from receipt of the funds. For this purpose, an affidavit of undertaking shall be executed by the resident investor using the prescribed format (Annex K[*]) to be submitted to the foreign exchange selling-AAB/ AAB-forex corporation, together with other documents prescribed under Items C.4 and C.5 of Appendix 1 hereof for the purchse of foreign exchange. The said proceeds, if intended for reinvestment in instruments covered by items 1 and 2 hereof, need not be inwardly remitted and sold for pesos through AAB's : Provided, That such proceeds are reinvested within 30 banking days from receipt of the funds."

The following Appendices to and Annexes of the FX Manual have likewise been revised accordingly:

1. Annex A: Application to Purchase Foreign Exchange (Attachment 1 hereof);

2. Appendix 1: Minimum Documentary Requirements for the Sale of Foreign Exchange for Non-Trade Purposes (Attachment 2 hereof)

3. Appendix 7: Guidelines for the Sale of Foreign Exchange to Importers by AABs and AAB-Forex Corps for Advance Payment of Imports (Attachment 3 hereof);

4. Annex B. Monthly Report on Sale/Remittance of Foreign Exchange for Advance Payment of Imports (Attachment 4 hereof);

5. Annex C: Monthly Repport on Purchase of Foreign Exchange from Refund of Advance Payment of Importations (Attachment 5 hereof);

6. Annex F: Monthly Report on Foreign Borrowings – Form 2 (Attachment 6 hereof)

7. Annex K: Affidavit of Undertaking to Inwardly Remit Divestment Proceeds of Outward Investments by Residents (Attachment 7 hereof)

8. Monthly Report on Foreign Exchange Sales by AABs for Investments Enumerated under Section 44 of the FX Manual (Attachment 8 hereof)

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

Effectivity – This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

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FOR THE MONETARY BOARD:

(SGD.) AMANDO M. TETANGCO, JR.
Governor

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[*]Text Available at Office of the National Administrative Register, U.P. Law Complex, Diliman, Quezon City.

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