

BSP AMENDS GUIDELINES ON DIGITAL BANKS

On September 14, 2022, the *Bangko Sentral ng Pilipinas* (the Philippine Central Bank or “BSP”) issued [Circular No. 1154](#) (the “New Circular”) to amend the guidelines on digital banks previously set out in [Circular No. 1105](#) dated December 2, 2020 and [Monetary Board Resolution No. 1536](#) dated November 26, 2020. Circular 1154 took effect on October 8, 2022, and clarifies the extent to which prudential banking requirements apply to digital banks, and amends the documentary and licensing requirements on the establishment of digital banks.

Digital Banks

Previously, in issuing Circular 1105, the BSP recognized digital banks as a distinct category of banks and sought to establish an enabling regulatory environment that (a) allows responsible innovation to flourish; (b) promotes cyber resilience; (c) and contributes to advancing the digitalization of the financial industry.

As defined under Section 102 of the Manual of Regulations for Banks (“MORB”), a “digital bank” offers financial products and services that are processed end-to-end through a digital platform and/or electronic channels with no physical branch/sub-branch or branch-lite unit offering financial products and services. The New Circular amends Section 102 of the MORB and clarifies that *only a bank that is granted a digital bank license is allowed to market itself as a digital bank*. Nonetheless, any bank may market itself as a bank offering “digital banking products or services” (or use equivalent terms) if it has secured the requisite BSP license on electronic payment and financial services for those digital banking products or services.

The required minimum capitalization of digital banks, which must be complied with at all times, is still set at PhP1.0 billion.

The New Circular also clarifies that digital banks are subject to the same standards on corporate governance, risk management, compliance, internal control and audit, and reporting governance, among others, that are applicable to other bank categories. Additionally, a digital bank is subject to



all prudential requirements set out by the BSP, including, but not limited to, corporate governance, risk management, particularly on information technology and cyber security, outsourcing, consumer protection and anti-money laundering, and countering terrorist and proliferation financing as provided under existing regulations.

The New Circular amends current guidelines and clarifies that only a licensed digital bank is allowed to market itself as a digital bank. Nonetheless, a bank that is not licensed as a digital bank may still market itself as one offering “digital banking products or services” (or use equivalent terms) if it has secured the requisite BSP license on electronic payment and financial services for those digital banking products or services.

Conversion to a Digital Bank

Under Circular 1105, banks converting to digital banks are given a period of three years from approval of such conversion by the Monetary Board within which to meet the minimum capital requirement and implement any necessary transition plan, which may include divestment or closure of branches, sub-branches, or branch-lite units. Upon receipt of the notice of the Monetary Board’s approval of its application, the bank will no longer be allowed to engage or renew transactions under authorities not associated with those allowed for a digital bank. Within six months from such the date of its receipt of a notice, the converting bank must phase-out all inherent powers and

activities under special authorities not normally associated with a digital bank and submit its amended articles of incorporation and by-laws to the Securities and Exchange Commission (“SEC”).

Notably, the New Circular clarifies that the foregoing transitory provisions (particularly, the three-year capital build up) does not apply to committed capital infusion of new investors arising from the acquisition, purchase/sale, transfer of the converting bank’s shares of stock or similar arrangements. Nonetheless, the minimum required capital must be infused before the BSP issues a Certificate of Authority to Register with the SEC in favor of the converting bank.

It also appears from a footnote to the New Circular that the moratorium on applications for new digital bank licenses (including applications for conversion of an existing bank’s license to a digital bank license) remains effective. The moratorium also covers applications for the establishment of other types of banks that will primarily offer financial products and services that are processed end-to-end through a digital platform and/or electronic channel.

BSP ADOPTS STANDARD LOAN APPLICATION FORMS



What is the BSP’s objective in issuing [Circular No. 1156](#) (the *Guidelines on the Adoption of the Standard Business Loan Application Form or the “Guidelines”*)?

The BSP wishes to promote broad and convenient access to high quality financial services by mandating the adoption of a standard business loan application form (“SBLAF”) to facilitate transparency, ease of understanding, efficiency in loan applications and processing. The SBLAF is designed to make the loan application process streamlined and borrower-friendly for its target users, *i.e.*, micro, small, and medium enterprises (MSMEs). MSMEs are generally defined by the BSP as enterprises engaged in any business activity within the major sectors of the economy, *i.e.*, industry, trade, services, the operation of tourism-related establishments, and agribusiness, and whose total assets are less than PhP100 million (see Section 332 of the BSP’s Manual of Regulations for a more specific definition of MSMEs).

What is the SBLAF?

The SBLAF refers to the templates prescribed by the BSP for loan applications. These applications serve as the primary application screening tools to be accomplished by the borrower.

The SBLAF templates have two components: (i) the borrower information sheet; and (ii) the list of supporting documents. Copies of the SBLAF templates currently applicable may be accessed through this [link](#).

Which entities and transactions are covered by the Guidelines?

The Guidelines apply to all BSP-supervised financial institutions (BSFIs) that offer business loans to applicant-borrowers (each such BSFI, a “covered entity”):

- a. banks and their subsidiary/affiliate financing and leasing companies;
- b. Government Non-Bank Financial Institutions; and
- c. Financing/leasing companies with Quasi-Banking license that are not subsidiaries of banks.

Additionally, the Guidelines provide that the SBLAF templates should be used for loan applications that meet the following conditions (each such application, a “covered loan application”):

- a. the applicant-borrower must be a sole proprietorship (or natural person), partnership, cooperative, or corporation that is classified as an MSME or start-up proposing to do business;
- b. the purpose of the loan should be the financing of business operations and capital expenditures. Credit accommodations for non-business or personal purposes such as education, hospitalization, emergency, travel, household and other personal consumption needs are not covered by the guidelines; and
- c. the loan may be either be secured or unsecured.

May covered entities amend the SBLAF templates, or use other forms when processing covered loan applications?

The Guidelines prohibit covered entities from using forms other than the SBLAF templates in processing covered loan applications (regardless of whether the application in question is a new loan application, an additional loan application, or an application for the renewal or restructuring of existing loans). Covered entities are also prohibited from modifying the templates.

The SBLAF templates can be made available in printed form and/or electronic form, as applicable. The electronic forms must contain the same data fields which shall be in the same presentation order to the extent practicable; consent statements; and list of supporting documents as in the printed forms.

May e-signatures be used on the electronic forms?

Yes, e-signatures may be used to authenticate or provide consent in the electronic forms (subject to compliance with the E-Commerce Act and other applicable rules).

May covered entities request additional information and supporting documents?

Yes, on a case-to-case basis, covered entities may request additional information and supporting documents commensurate to the borrower's risk profile, consistent with sound credit risk management practices and customer due diligence measures.

What are the other obligations of covered entities under the Guidelines?

They must electronically submit quarterly and annual reports to the Department of Supervisory Analytics of the BSP.

A covered entity that submits erroneous and/or delayed reports, or which fails to timely submit required reports, may be penalized with a fine ranging from PhP300-PhP600 per report. Moreover, the BSP may deploy enforcement actions and impose sanctions on the BSFI and its directors, officers and/or employees concerned to ensure compliance with the Guidelines.

FAQs: RULES ON SUSTAINABLE FINANCE



What is Sustainable Finance?

[BSP Circular No. 1085](#) defines “sustainable finance” as any form of financial product or service which integrates environmental, social and governance (“ESG”) criteria into business decisions that supports economic growth and provides lasting benefit for both clients and society while reducing pressures on the environment. This also covers green finance which is designed to facilitate the flow of funds towards green economic activities and climate change mitigation and adaptation projects.

What is an E&S Risk?

BSP Circular No. 1085 defines “E&S risk” as potential financial, legal, and/or reputational negative effect of environmental and social issues on the bank. E&S issues may include climate risk (both physical and transition risks), environmental pollution, hazards to human health, safety and security, and threats to community, biodiversity, and cultural heritage, among others. These risks are inherent and can directly or indirectly affect banks. [BSP Memorandum No. M-2022-042](#) (*Guidance on the Implementation of the Environmental and Social Risk Management (ESRM) System*; September 29, 2022) shows a number of reports and studies that describe how E&S risks translate into financial risks.

What is an ESRM system?

Under BSP Circular No. 1085, the Environmental and Social Risk Management (“ESRM”) system refers to policies, procedures, and tools to identify, assess, monitor, and mitigate exposures to E&S risks.

What minimum supervisory expectations did the BSP set for the development of an ESRM System?

As set out in its Memorandum No. M-2022-042, the BSP expects that banks’ ESRM systems should comply with the following:

- a. The Board of Directors and Senior Management shall institutionalize and oversee the adoption and implementation of sustainability principles, including those covering E&S risk areas, in the corporate governance and risk management frameworks as well as in the strategic objectives and operations of the bank.

A bank’s ESRM system should define its level of E&S risk appetite. The scope and complexity of the ESRM system shall be commensurate with the level of E&S risk associated with the bank’s portfolio.

- b. The system should provide clear guidance in assessing E&S risks in the bank’s operations, products and services, transaction, activities, and operating environment. The ESRM system shall also identify which sectors or activities have elevated or emerging E&S risks or are considered to have harmful effects to the environment or society.
- c. The system should provide the tools for monitoring E&S risks as well as the compliance of the bank and its counterparties with sustainability-related standards, laws and regulations. Provide tools for assessing identified E&S risks and for considering the same in the aggregate exposures of the bank.
- d. The system should identify the measures that are to be taken in case of breaches in limits or thresholds or non-compliance with sustainability-related standards, laws and regulations.
- e. E&S risks should be integrated in stress testing exercises covering both short-term and long-term horizons. The results of the stress testing shall feed into banks’ capital and liquidity planning and management exercises as well as in the business continuity and disaster recovery plans.
- f. The system should identify the unit or personnel responsible for overseeing the management of E&S risks. The bank may establish a new unit to perform such function or integrate the same in the functions of existing risk management units. The ESRMS shall set out the duties and responsibilities of all personnel in the organization in managing E&S risks.

What are the additional obligations of banks and non-bank financial institutions performing quasi-banking functions with respect to building a sustainable finance framework?

Under [BSP Circular No. 1149](#), series of 2022 (*Guidelines on the Integration of the Sustainability Principles of Investment Activities of Banks*; August 23, 2022), these additional obligations are:

- a. The ESRM System must be articulated in a separate document solely relating to the management of E&S risk or embedded in existing documents related to the management of specific risk areas (e.g., credit risk management system).
- b. Banks are required to consider E&S risks in defining their credit risk appetite.

- c. Banks must take into account their sustainability objectives and risk appetite in their investment activities and ensure that such investments do not contribute to sectors considered to have harmful effects upon the environment or society.

What are the additional obligations of banks with respect to ensuring sustainability in investment activities?

Under BSP Circular No. 1149, these additional obligations are:

- a. Risk Management Framework – A bank shall have systems to manage risks arising from its investment activities.
 - i. Board and Senior Management Oversight
 - The board of directors must (i) approve portfolio objectives, overall investment strategies, general investment policies, and limits that are consistent with the bank’s financial condition and risk tolerance, and (ii) oversee the integration of sustainability principles and objectives in the bank’s investment activities and monitor the progress in attaining such objectives through the relevant committee it designated pursuant to Section 153 of the Manual of Regulations for Banks.
 - The senior management must develop portfolio objectives that set out the acceptable instruments, expected business returns, desired asset allocation and diversification parameters, and other elements of sound investment management.
 - ii. Policies, Procedures, and Limits – A bank shall institute policies, procedures and limits that provide a framework for managing investment activities, which shall be consistent with its sustainability objectives.
 - Policies and procedures should clearly articulate guidelines for the acquisition and accounting of investments.
 - Policies should promote the development of a comprehensive understanding of the risks associated with investments prior to acquisition and on an ongoing basis.
 - Policies and procedures should provide the bank’s approach for implementing the sustainability objectives of investment strategies.
 - The limits for investment activities shall be consistent with the bank’s institution-wide risk limits.
 - The limit structure should reflect the amount of exposure that the bank is willing to accept, taking into consideration the impact of such exposure to earnings and capital in both normal and stressed conditions.
 - iii. Risk Measurement, Monitoring and Management Information Systems – A bank shall ensure that it possesses the capability to measure and monitor the risks associated with its investments prior to acquisition and periodically thereafter.
 - iv. Internal Controls and Audit – A bank shall ensure the integrity of investment valuations, risk

measurement methodologies, and controls that address model risk.

- b. Risks of Investment Activities – The management of risks arising from a bank’s investment activities shall be integrated into the bank’s overall risk management system. As to credit risk, (i) a bank’s investment policies and objectives shall be consistent with its overall credit risk strategy; (ii) a bank shall not acquire an investment without conducting an independent assessment of the creditworthiness of the issuer; and (iii) a bank may consider certain factors as part of its credit risk due diligence review, such as material E&S risks.

What are the additional obligations of banks with respect to issuing bonds and commercial papers?

Under BSP Circular No. 1149, in the case of issuance of green, social, or sustainability bonds, including other sustainable bonds falling within their acceptable definition, the issuing bank shall (i) comply with the pertinent guidelines of the Securities and Exchange Commission as well as the disclosure requirements in Section 153 of the Manual of Regulations for Banks, and (ii) not engage in greenwashing (i.e., the deceptive marketing used to persuade the public that an organization’s products, aims, and policies are environmentally friendly.)

SEC ISSUES RULES TO IMPLEMENT BSP CEILINGS ON INTEREST RATES AND OTHER FEES



Last March 1, 2022, the Securities and Exchange Commission (“SEC”) issued its [Memorandum Circular No. 3](#) to implement the ceilings previously imposed by the *Bangko Sentral ng Pilipinas* (the Philippine Central Bank or “BSP”) via [BSP Circular No. 1133](#), series of 2021 on interest rates and other fees imposed by financing companies, lending companies, and their online lending platforms.

1. Which institutions are covered by the ceilings on interest rates and other fees?

The policy covers financing companies, lending companies, and their “online lending platforms.” In general terms, “financing companies” extend credit facilities to consumers and the industrial, commercial or agricultural enterprises, whereas “lending companies” are engaged in granting loans from their own capital funds (or from funds sourced from not more than 19 persons). (For more detailed definitions, see the [Financing Company Act](#) and [Lending Company Regulation Act](#)). In turn, “online

lending platforms” refer to mobile lending applications, websites, and other financial technology-enabled programs or systems through which financing companies’ and lending companies’ services and products are made available.

Notably, banks are **not** covered by the interest rate and fee ceilings.

2. Which loans are covered by the ceilings on interest rates and other fees?

The prescribed ceilings on interest rates and other fees intend to cover short term, small value, and high-cost consumer credit that target primarily the low-income borrowers. The ceilings apply to unsecured, general-purpose loans, whether obtained through online or traditional/offline distribution channels, offered by lending companies, financing companies, and their online lending platforms, that do not exceed the amount of PhP10,000 and loan tenor of up to four months that are entered into, restructured, or renewed beginning March 3, 2022.

3. What are the applicable ceilings on interest rates and other fees for specific loans offered by lending companies, financing companies, and their online lending platforms?

The following are the applicable ceilings on interest rates and other fees imposed for the covered loans:

- a. A nominal interest rate ceiling equivalent to 6 percent per month (~0.2 percent per day).

- b. An effective interest rate ceiling equivalent to 15 percent per month (~0.5 percent per day), which shall include the nominal interest rate along with all other applicable fees and charges (i.e., processing fees, service fees, notarial fees, handling fees and verification fees, among others), but excluding fees and penalties for late payment or non-payment.
- c. A cap on penalties for late payment or non-payment at 5 percent per month on outstanding scheduled amount due.
- d. A total cost cap of 100 percent of total amount borrowed (applying to all interest, other fees and charges, and penalties) regardless of time the loan has been outstanding.

4. What are the reportorial requirements for the covered institutions?

All financing companies and lending companies, whether or not offering loans covered by the ceiling, are required to submit (1) an Impact Evaluation Report, on or before January 15 each year beginning 2023; and (2) a Business Plan, on or before May 5, 2022, indicating the company’s loan products and services as well as the applicable pricing parameters. The Business Plan supersedes the initial Business Plan or Plan of Operation in the Company Information Sheet submitted prior to the issuance of the Certificate of Authority of the lending company/financing company.

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This bulletin contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

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