



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

Circular No. 391
Series of 2003

Pursuant to Monetary Board Resolution No. 769 dated June 5, 2003, Subsecs. X141.1, X141.4, X143.3, X143.4, X143.5 and X143.6 of the Manual of Regulations for Banks and Subsecs. 4141Q.1, 4141Q.4, 4143Q.3, 4143Q.4, 4143Q.5 and 4143Q.6 of the Manual of Regulations for Non-bank Financial Institutions are hereby renumbered and/or amended as follows:

Section 1. Subsec. X141.1 and Subsec. 4141Q.1 **Limits on the number of the members of the board of directors** are hereby amended further to read as follows:

Pursuant to Sections 15 and 17 of the General Banking Law of 2000 (R.A. No. 8791), there shall be at least five (5), and a maximum of fifteen (15) members of the board of directors of a bank/quasi-bank/trust entity two (2) of whom shall be independent directors: *Provided*, That in case of a bank/quasi-bank/ trust entity merger or consolidation, the number of directors may be increased up to twenty-one (21).

An independent director shall mean a person who –

1. Is not or has not been an officer or employee of the bank/quasi-bank/trust entity, its subsidiaries or affiliates or related interests during the past three (3) years counted from the date of his election;
2. Is not a director or officer of the related companies of the institution's majority stockholder;
3. Is not a majority stockholder of the institution, any of its related companies, or of its majority shareholders;
4. Is not a relative within the fourth degree of consanguinity or affinity, legitimate or common-law of any director, officer or majority shareholder of the bank/quasi-bank/trust entity or any of its related companies;

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5. Is not acting as a nominee or representative of any director or substantial shareholder of the bank/quasi-bank/trust entity, any of its related companies or any of its substantial shareholders; and
6. Is not retained as professional adviser, consultant, agent or counsel of the institution, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm; is independent of management and free from any business or other relationship, has not engaged and does not engage in any transaction with the institution or with any of its related companies or with any of its substantial shareholders, whether by himself or with other persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arms length and could not materially interfere with or influence the exercise of his judgment.

The foregoing terms and phrases used in Items 1 to 6 of Section 1 shall have the following meaning:

1. **Parent** is a corporation who has control over another corporation directly or indirectly through one or more intermediaries.
2. **Subsidiary** means a corporation more than fifty percent (50%) of the voting stock of which is owned or controlled directly or indirectly through one or more intermediaries by a bank/quasi-bank/trust entity.
3. **Affiliate** is a juridical person that directly or indirectly, through one or more intermediaries, is controlled by, or is under common control with the bank/quasi-bank/trust entity or its affiliates.
4. **Related interests** as defined under Sections 12 and 13 of R. A. No. 8791 (GBL 2000) shall mean individuals related to each other within the fourth degree of consanguinity or affinity, legitimate or common law, and two or more corporations owned or controlled by a single individual or by the same family group or the same group of persons.

5. **Control** exists when the parent owns directly or indirectly through subsidiaries more than one half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. Control may also exist even when ownership is one half or less of the voting power of an enterprise when there is:
 - a) power over more than one half of the voting rights by virtue of an agreement with other stockholders; or
 - b) power to govern the financial and operating policies of the enterprise under a statute or an agreement; or
 - c) power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
 - d) power to cast the majority votes at meetings of the board of directors or equivalent governing body; or
 - e) any other arrangement similar to any of the above.
6. **Related company** means another company which is: (a) its parent or holding company; (b) its subsidiary or affiliate; or (c) a corporation where a bank/quasi-bank/trust entity or its majority stockholder own such number of shares that will allow/enable him to elect at least one (1) member of the board of directors or a partnership where such majority stockholder is a partner.
7. **Substantial or major shareholder** shall mean a person, whether natural or juridical, owning such number of shares that will allow him to elect at least one (1) member of the board of directors of a bank/quasi-bank/trust entity or who is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.
8. **Majority stockholder or Majority shareholder** means a person, whether natural or juridical, owning more than fifty percent (50%) of the voting stock of a bank/quasi-bank/trust entity.

Non-Filipino citizens may become members of the board of directors of a bank/quasi-bank/trust entity to the extent of the foreign participation in the equity of said bank/quasi-bank/trust entity: Provided, That pursuant to Section 23 of the Corporation Code of the Philippines (BP Blg. 68), a majority of the directors must be residents of the Philippines.

The meetings of the board of directors may be conducted through modern technologies such as, but not limited to teleconferencing and video-conferencing as long as the director who is taking part in said meetings can actively participate in the deliberations on matters taken up therein: Provided, That every member of the board shall participate in at least fifty percent (50%) and shall physically attend at least twenty-five percent (25%) of all board meetings every year.

Section 2. Subsecs. X143.3 and 4143Q.3 **Disqualification procedures** are hereby renumbered as Subsecs. X143.4 and 4143Q.4 and amended to read as follows:

1. Upon establishment of any of the grounds for disqualification mentioned in Subsecs. X143.1/4143Q.1 and X143.2/4143Q.2, the office of the disqualified director or officer shall immediately become vacant, except in the case of delinquency in the payment of obligations wherein the director or officer concerned shall be given a grace period of thirty (30) days after such ground for disqualification has been established.
2. All cases of disqualification shall be immediately reported to the Board of Directors of the institution concerned. If the ground for disqualification is delinquency in the payment of obligations, the report shall be made at the expiry of the thirty-day grace period mentioned in Item "1" above.

The board of directors shall act on the report not later than the following board meeting. Within seventy-two (72) hours thereafter, the corporate secretary shall report to the Governor of the BSP through the appropriate supervising and examining department the name of the director or officer involved, the ground for his disqualification and the action taken by the board.

3. All cases of disqualification shall be elevated to the Monetary Board for approval. Upon approval by the Monetary Board, the concerned director/officer or employee shall be informed by the appropriate SES department through registered mail with registry return receipt card, at his/her last known address of his/her disqualification from being elected/appointed as director/officer in any financial institution under the supervision of the Bangko Sentral ng Pilipinas and of his inclusion in the master list of watchlisted persons so disqualified

4. The director/officer concerned shall, however, be afforded an opportunity to defend/clear himself in a hearing before the Monetary Board or any committee created for the purpose chaired by any Monetary Board member for those directors/officers who are subject to confirmation by the Monetary Board or a Committee chaired by any member of the SES Committee mentioned in Subsecs. X141.4 and 4141Q.4 hereof for those directors/officers who are not subject to confirmation by the Monetary Board, upon his/her request. In such hearing, the concerned director/officer shall be allowed to present evidence/witnesses in his/her favor.
5. If the director/officer were cleared in such hearing or when the ground for disqualification ceases to exist, he/she would be eligible to become director or officer of any bank, quasi-bank or trust entity upon prior approval by the Monetary Board. It shall be the responsibility of the concerned supervising and examining department of the BSP to elevate to the Monetary Board the lifting of the disqualification of the concerned director/officer and his/her delisting from the master list of watchlisted persons.

Section 3. Subsecs. X143.4 and 4143Q.4 Effect of non-possession of qualification or possession of disqualifications are hereby renumbered as Subsecs. X143.3 and 4143Q.3 and amended to read as follows:

Directors/officers elected or appointed without possessing the qualifications mentioned under Subsecs. X141.2 and X142.2 of the Manual of Regulations for Banks and Subsec. 4141Q.2 and the last paragraph of Sec. 4142Q of the Manual of Regulations for Non-Bank Financial Institutions shall not be confirmed by the confirming authority provided under Subsecs. X141.4 and 4141Q.4 and may be removed from office even if he/she has assumed the position to which he/she was elected or appointed. Directors/officers possessing any of the disqualifications as enumerated herein shall be subject to the disqualification procedures provided under Subsecs. X143.4 and 4143Q.4 hereof.

Section 4. Subsecs. X143.5 and 4143Q.5 Confirmation of the election/appointments of directors and officers are hereby renumbered as Subsecs. X141.4 and 4141Q.4 and amended to read as follows:

The election/appointment of directors and officers of banks/quasi-banks shall be subject to confirmation by the:

Confirming Authority	Position Level
a. Monetary Board	Directors, Senior Vice President and above of universal banks and commercial banks, as well as Directors, President, Chief Executive Officer, Chief Operating Officer or equivalent rank of thrift banks, Islamic banks, rural banks, cooperative banks, quasi-banks and trust entities with total assets of at least ₱ 1 billion.
b. A Committee to be composed of: • The Deputy Governor - SES • Managing Directors of SE I and II • Directors of the concerned supervising and examining department of SES	Directors, Senior Vice President and above or equivalent rank of thrift banks, Islamic banks, rural banks, cooperative banks, quasi-banks and trust entities whose election/appointment is not subject to confirmation by the Monetary Board.

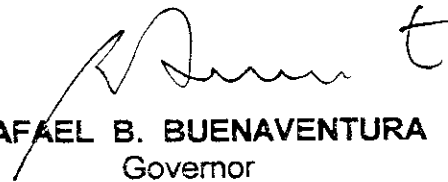
The election/appointment of all incumbent directors and officers of all types of banks and quasi-banks as of September 17, 2001 not previously approved/confirmed by the Monetary Board shall be submitted to the BSP through the appropriate supervising and examining departments for confirmation.

Section 5. Subsecs. X143.6 and 4143Q.6 **Watchlisting** are hereby renumbered as Subsecs. X143.5 and 4143Q.5.

Section 6. Subsec. 4143Q.7 of the Manual of Regulations for Non-Bank Financial Institutions is hereby renumbered as Subsec. 4143Q.6.

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

FOR THE MONETARY BOARD:



RAFAEL B. BUENAVENTURA
Governor

JULY 15, 2003