



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

Circular No. 496
Series of 2005

The Monetary Board, in its Resolution No. 1198 dated 8 September 2005, approved the monetary penalty guidelines for banks/quasi-banks, their directors and/or officers for violations/offenses with sanctions falling under Section 37 of R.A. No. 7653 ("The New Central Bank Act"). The schedule of penalty, categorized based on: (1) the nature of offenses such as minor, less serious, and/or serious, and (2) the assets size of the bank/quasi-bank, shall be as follows:

A. For Serious Offense

Asset Size \ Penalty Range	Up to P200 million	Above P200 million but not exceeding P500 million	Above P500 million but not exceeding P1 Billion	Above P1 Billion but not exceeding P10 Billion	Above P10 Billion but not exceeding P50 Billion	Above P50 Billion
Minimum	P 500	P1,000	P3,000	P 10,000	P18,000	P25,000
Medium	750	1,500	5,000	12,500	20,000	27,500
Maximum	1,000	2,000	7,000	15,000	22,000	30,000

B. For Less Serious Offense

Asset Size \ Penalty Range	Up to P200 million	Above P200 million but not exceeding P500 million	Above P500 million but not exceeding P1 Billion	Above P1 Billion but not exceeding P10 Billion	Above P10 Billion but not exceeding P50 Billion	Above P50 Billion
Minimum	P300	P600	P1,000	P 3,000	P 7,000	P15,000
Medium	350	700	1,250	4,000	8,500	17,500
Maximum	400	800	1,500	5,000	10,000	20,000

C. For Minor Offense

Asset Size \ Penalty Range	Up to P200 million	Above P200 million but not exceeding P500 million	Above P500 million but not exceeding P1 Billion	Above P1 Billion but not exceeding P10 Billion	Above P10 Billion but not exceeding P50 Billion	Above P50 Billion
Minimum	P150	P300	P600	P1,000	P3,000	P 6,000
Medium	200	400	700	1,500	4,000	8,000
Maximum	250	500	800	2,000	5,000	10,000

PANANALAPING MATATAG, BANSANG PANATAG

For purposes of this Circular, the following definition of terms shall mean:

1. **Serious Offense** - This refers to unsafe or unsound banking practice. An unsafe or unsound practice is one in which there has been some conduct, whether act or omission, which is contrary to accepted standards of prudent banking operation and may result to the exposure of the bank and its shareholders to abnormal risk or loss.
 - a) In determining the acts or omissions included under the unsafe or unsound banking practice, an analysis of the impact thereof on the banks/quasi-banks/trust entities' operations and financial condition must be undertaken, including evaluation of capital position, asset condition, management, earnings posture and liquidity position. The following circumstances shall be considered:
 - b) The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the institution;
 - c) The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general;
 - d) The act or omission has caused any undue injury, or has given unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or
 - e) The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, quasi-bank or trust entity, whether or not the director or officer profited or will profit thereby.

Certain acts or omissions as falling under this classification maybe determined based on the guidelines provided under Circular 341 dated 6 August 2002 .

2. **Less Serious Offense** - These include major acts or omissions defined as bank/individual's failure to comply with the requirements of banking laws, rules and regulations, provisions of MOR/Circulars/Memorandum as well as Monetary Board directives/instructions having *material* impact on Bank's solvency, liquidity or profitability and/or those violations classified as major offenses under the Report of Examination, except those classified under unsafe or unsound banking practice.
3. **Minor Offense** - These include acts or omissions which are procedural in nature, can be corrected immediately and do not have material impact on the solvency, liquidity and profitability of the Bank. All other acts or omissions that cannot be classified under the major offenses/violations will be classified under this category.
4. **Minimum** refers to the range of penalties to be imposed if the mitigating factor(s) outweigh the aggravating circumstances.

5. **Medium** refers to the penalty to be imposed in the absence of any mitigating and aggravating circumstances or if the mitigating factor(s) offset the aggravating factor(s).
6. **Maximum** refers to the penalty to be imposed if the aggravating circumstances outweigh the mitigating factor(s).

In determining the amount of penalty, a two-stage assessment shall be conducted as follows:

Step 1: Determine the nature of offense whether it is: (a) Serious; (b) Less Serious; or (c) Minor Offense ; and

Step 2: Determine whether there are aggravating and/or mitigating factors (as listed and defined in Annex A).

Both the aggravating and mitigating factors shall be considered for initial penalty imposition and subsequent requests for reconsideration thereto.

The foregoing monetary penalties shall be without prejudice to the imposition of non-monetary sanctions, if and when deemed applicable by the Monetary Board. Violations of banking laws and Bangko Sentral regulations with specific penal clause are not covered by this Circular.

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

FOR THE MONETARY BOARD:


NESTOR A. ESPENILLA, JR.
Officer-in-Charge

29 September 2005

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- 1/ SFAS/IAS defines **materiality** as any information, which if omitted or misstated, could influence the economic decisions of users taken on the basis of the financial statements. Per Financial Accounting Standard Board (FASB), it is defined as the magnitude of an omission or misstatement of accounting information xxx.

**Aggravating and Mitigating Factors
to be Considered in the Imposition of Penalty**

1. Aggravating Factors:

- a) **Frequency of the commission of specific violation** – This pertains to commission or omission of a specific offense involving either the **same or different transaction**. This will also refer to a violation which may have been corrected in the past but found repeated in another transaction/account in the subsequent examination.

In determining frequency, the number of times of commission or omission of a specific offense during the preceding three (3) - year period shall also be considered.

The word "offense" pertains to a violation that connotes infraction of existing BSP rules and regulations as well as non-compliance with BSP/MB directives.

- b) **Duration of Violations Prior to Notification** – This pertains to the length of time prior to the latest notification on the violation. Violations that have been existing for a long time before it was revealed/discovered in the regular examination or are under evaluation for a long time due to pending requests or correspondences from banks on whether a violation has actually occurred shall be dealt with through this criterion. Violations outstanding for more than one (1) year prior to notification, at the minimum, will qualify as violations outstanding for a long time.

- c) **Continuation of offense or omission after notification** – This pertains to the persistence of an act or offense **after the latest notification on the existence of the violation, either from the appropriate Supervision and Examination Department or from the Monetary Board and/or Deputy Governor, in cases where the violation has been elevated accordingly**. This covers the period after the final notification of the existence of the violation until such time that the violation has been corrected and/or remedied. The corrective action shall be reckoned with from the date of notification.

- d) **Concealment** – This factor pertains to the cover up of a violation. In evaluating this factor, one shall consider the intention of the party(ies) involved and whether pecuniary benefit may accrue accordingly.

Intention precedes concealment. The act of concealing an offense or omission carries with it the intention to defraud regulators. Moreover, the amount of pecuniary benefit, which may or may not accrue from the offense or omission, shall also be considered under this factor.

Concealment may be apparent in cases when bank officers purposely complicates the transaction to make it difficult to uncover or refuse to provide information/documents that would support the violation/offense committed.

Inasmuch as concealment and intention are speculative matters and may be difficult to establish, appropriate support of facts or circumstantial evidence in this factor shall be considered.

e) **Loss or risk of loss to bank** – In assessing this factor, “potential loss” refers to any time at which the bank was in danger of sustaining a loss.

- **Substantial actual loss** – The Bank has been exposed to a significant loss of earnings and capital. The volume of accounts involved in the loss is substantial/significant in relation to the institution's assets and capital. The bank/individual may have substantial/serious violations that could impact the reputation and earnings of the bank.
- **Minimal actual loss or substantial risk of loss** – The Bank has incurred minimal loss or will be exposed to substantial risk of loss of earnings or capital although both do not materially impact financial condition. The volume of accounts involved for minimal loss or substantial risk of loss is reasonable and manageable. While a loss was incurred, the bank could absorb the loss in the normal course of business. Substantial risk of loss includes any potential losses the aggregate of which amounts to at least one percent (1%) of the capital of the bank¹.
- **Minimal risk of loss** – The risk exposure on earnings or capital is minimal. Bank is not vulnerable to significant loss. The volume of accounts involved for potential loss/risk is minimal/negligible. The risk of loss would have little impact on the bank or its financial condition. The risk of loss aggregating to less than one percent (1%) of the capital of the bank will fall under this classification.

f) **Impact to bank/banking industry**– In assessing this factor, it is appropriate to consider any possible negative impact or harm to the bank. (e.g. A violation of law involving insider abuse may result in adverse publicity for the institution, possibly causing a run on deposits and affecting the bank's liquidity.) Resulting effect on the banking industry on the violation/offenses committed by the bank, if any, will also be considered. Sources of data may come from news reports.

- **Substantial impact on bank. No impact on banking industry.**

This may involve reputational risk of the bank as a result of negative publicity generated for example, by involvement of bank's director/officer in activities not acceptable to the regulatory bodies, e.g. pyramiding, investment scams etc. This may also involve insider abuse of authority/power. However, the banking industry is not affected for this isolated case.

¹ Circular 410 dated 29 October 2003 provides that external auditors of banks must report to BSP, among others, any potential losses the aggregate of which amounts to at least one percent (1%) of the capital to enable the BSP to take timely and appropriate remedial action.

- **Moderate impact on banking industry or on public perception of banking industry**

This may involve poor corporate governance and mismanagement of bank that may result to erosion of public confidence leading to bank run in various branches. This may also trigger a bank run in other subsidiaries.

- **Substantial impact on banking industry or on public perception of banking industry**

This is a worst-case scenario. The violations/irregular activities of the bank may totally erode the trust and confidence of the banking public resulting to a nationwide bank run. Pessimistic perception of the banking public on the banking industry is highly observed.

2. Mitigating Factors

- a) **Good Faith** – Good faith is the absence of intention of the erring individual/entity in the commission of a violation.

- **Full Cooperation** - This is determined by the actions of the individual and/or bank towards the regulators after or even before notification of the offense and/or omission. Assistance rendered by the Bank during the investigation and/or examination conducted relative to the cited offense and/or omission may be viewed favorably when computing the amount of penalty to be imposed on the Bank/individual.
- **With positive measures/action undertaken although not corrected immediately** - The bank is willing to remedy/correct the violation but is being restrained of its capacity to take immediate action thus, will undertake a Memorandum of Undertaking/Commitment for a specified period as a sign of good faith. The bank has started to rectify the infraction by instituting reforms in their operations or systems.
- **Voluntary disclosure of offense** - Voluntary disclosure of the bank of the offense committed before it is discovered by BSP examiners in the regular/special examination or in the supervisory work (e.g. submission of reports to the BSP disclosing the violation committed by the bank based on the internal auditor's findings) may be considered as the highest level of mitigation under this factor.

The burden of proof, however, falls on the bank/individual to support its/his/her claim of good faith and may be used as basis to mitigate the amount of penalty that may be imposed.