



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 710

Series of 2011

Subject: Trust Corporation

Pursuant to Monetary Board Resolution No. 26 dated 6 January 2011, the rules and regulations that shall govern the establishment of, grant of authority to engage in trust, other fiduciary business and investment management activities, and the conduct of trust, other fiduciary and investment management operations by trust corporations are hereby issued as follows:

Section 1. Statement of Policy. It is the policy of the Bangko Sentral ng Pilipinas to promulgate rules and regulations necessary for the proper conduct and development of trust, other fiduciary business and investment management activities. Toward this end, authority to engage in trust, other fiduciary business and investment management activities shall be granted to all qualified trust corporations which meet the requirements provided herewith.

Section 2. Scope of Trust, Other Fiduciary Business and Investment Management Activities. A trust corporation shall be a stock corporation primarily created, and duly authorized by the Monetary Board, to engage only in trust, other fiduciary business and investment management activities, which shall act as trustee or administer any trust or hold property in trust or on deposit for the use and benefit of others, and/or act as financial consultant, investment adviser or portfolio manager. It shall administer the funds or property under its custody with the diligence that a prudent man would exercise in the conduct of an enterprise of a like character with similar aims: Provided, That the trust corporation shall not accept and administer funds or property of any bank and/or quasi-bank, and act as trustee, fiduciary, financial consultant, investment adviser, or portfolio manager of such funds or property. It shall also be known or referred to as a stand-alone trust corporation.

A trust corporation may accept peso and foreign currency denominated accounts: Provided, That in the case of foreign currency denominated accounts, all relevant laws, rules and regulations issued by local regulatory agencies are complied with.

A trust corporation may be a subsidiary or an affiliate of a bank and/or a non-bank financial institution: Provided, That the investing bank and/or non-bank financial institution cannot engage in trust, other fiduciary business and investment management activities both directly through its separate and distinct department or other similar unit in the bank or non-bank financial institution, and indirectly through a subsidiary or affiliate trust corporation: Provided further, That a bank and/or non-bank financial institution may acquire or invest in the equity of not more than two (2) trust corporations: Provided finally, That in the case of an investing bank, the acquisition or investment in the equity of a trust corporation shall be subject to all relevant laws, rules and regulations on equity investment of banks in a financial allied enterprise and the following limitations and restrictions:

1. *In a single enterprise.* The equity investment of a bank in a single trust corporation shall be within the following ratios in relation to the total subscribed capital stock and to the total voting stock of the trust corporation:

INVESTOR/INVESTING BANK					
	UB	KB	TB	RB	Coop Bank
Limit in single trust corporation	100%	49%	40%	40%	40%

Provided: That the equity investment of a UB and a KB in any single trust corporation shall not exceed, at any time, twenty-five percent (25%) of the net worth of the investor/investing bank as defined in Sec. X106 and Subsec. X121.5.

2. *Aggregate limits.* The total amount of investments in equities in all enterprises shall not exceed the following ratios in relation to the net worth of the investor/investing bank:

INVESTOR/INVESTING BANK					
	UB	KB	TB	RB	Coop Bank
Aggregate Limit	50%	35%	25%	25%	25%

Section 3. Organizational Requirements

1. *Articles of incorporation; by-laws.* The articles of incorporation and by-laws of any trust corporation, or any amendment thereto, shall not be registered with the Securities and Exchange Commission (SEC) unless accompanied by a certificate of authority issued by the Monetary Board.
2. *Application for authority to establish.* The incorporators/directors of the proposed trust corporation shall file and submit to the Monetary Board through the appropriate supervising and examining department of the Bangko Sentral ng Pilipinas (BSP) an application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities, which shall be duly signed by all incorporators/directors, together with the following documents:
 - a. Accomplished biographical data of each incorporator, subscriber, proposed director and officer, if applicable;
 - b. Certified Statement of Assets and Liabilities as of a date not earlier than ninety (90) days prior to the filing of the application of each of the incorporator, subscriber, proposed director and officer together with the evidences of asset ownership such as bank certification/statement, savings passbook, certificate of time deposit, bond or stock certificate, transfer certificate of title

and tax declaration. A waiver of rights under Republic Act No. 1405, as amended, shall also be submitted for purposes of verification of the declared assets, pursuant to the provisions of the Anti-Money Laundering Law, as amended;

- c. Certified photocopies of Income Tax Returns (ITRs) for the last three calendar years of each incorporator, subscriber, proposed director and officer or similar document from the home country in the case of Non-Filipino citizens;
- d. Clearance from the National Bureau of Investigation (NBI) and Bureau of Internal Revenue (BIR) of each of the incorporator, subscriber, proposed director and officer or similar document from the home country in the case of Non-Filipino citizens;
- e. Certification from home country's supervisory authority that the Non-Filipino citizen has no derogatory record;
- f. For corporate subscribers, the following additional documents shall be submitted:
 - Copy of the board resolution authorizing the corporation to invest in such trust corporation and designating the person who will represent the corporation in connection therewith;
 - Copy of the latest articles of incorporation and by-laws;
 - Updated list of directors and principal officers;
 - Current list of major stockholders, indicating the citizenship and the number, amount and percentage of the voting and non-voting share held by them;
 - A copy each of the corporation's audited financial statements for the last two (2) years prior to the filing of the application;
 - A copy of the corporation's annual report to the stockholders for the year immediately preceding the date of filing of the application;
 - Certified photocopies of ITRs and BIR clearance for last two calendar years
 - For foreign corporation, it shall also submit a certification from its home country's supervisory authority that it has no objection to the investment of such company in a trust corporation in the Philippines and that adequate information on such foreign corporation shall be provided to the BSP to the extent allowed under existing laws.
- g. Detailed plan of operation and economic justification for establishing a trust corporation. The plan should describe and analyze the industry and the market area from which the trust corporation expects to draw majority of its trust business and establish a strategy for its ongoing operation. It should also describe how the trust corporation will be organized and controlled internally;

- h. Projected financial statements for the first five years together with assumptions. These should be consistent with its proposed plan of operation and would show sufficient capital to support its strategy and operation;
- i. Detailed plan on how the subscribers would put up the required capitalization for the proposed trust corporation; and
- j. Such other information that the BSP may require.

The application shall be considered filed and submitted on a first-come, first-served basis: *Provided*, That all required documents are complete and properly accomplished: *Provided further*, That in case of banks and non-bank financial institutions that decide to spin-off their trust department to a trust corporation, the documentary requirements under items f and g may not be submitted.

3. *Grounds for disapproval of application.* The Monetary Board may deny the application to organize a trust corporation on the basis of any of the findings that:

- a. The trust corporation is being organized for any purpose other than to engage in the business of a legitimate trust corporation;
- b. The trust corporation's financial program is against the law, BSP rules and regulations, public policy, and public standard; and
- c. There exist other reasons, which the Monetary Board may consider as sufficient ground for such disapproval.

4. *Requirements for the issuance of the certificates of authority to register and to operate.*

- a. Within sixty (60) days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation, the incorporators shall:
 - Submit seven (7) copies of the articles of incorporation, treasurer's sworn statement and by-laws which shall include provisions on the appointment of a president/trust officer or its equivalent position, if any, and other subordinate officers, and a clear definition of their duties and responsibilities; and
 - Deposit with any universal/commercial bank the initial paid-up capital of the proposed trust corporation.
- b. Within thirty (30) days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation, it shall pay a non-refundable license fee of five hundred thousand pesos (P500,000.⁰⁰) to the BSP.

- c. Within thirty (30) days after the articles of incorporation and by-laws had been passed upon by the Office of the General Counsel and Legal Services, and the corresponding certificate of authority to register had been issued, the incorporators shall effect the filing and registration of said documents with the SEC.
- d. Within six (6) months from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities, the incorporators shall secure the certificate of authority to operate the trust, other fiduciary business and investment management activities and submit to the appropriate supervising and examining department of the BSP the following:
- Copy of the articles of incorporation and by-laws including proof of registration with the SEC;
 - Certification of compliance with the conditions of approval duly signed by the incorporators, including the set-up of the basic security deposit mentioned in Section 6 below;
 - Names and positions of individuals designated as chairman and members of the board of directors, president/trust officer and other subordinate officers of the trust corporation with their respective bio-data and statement of duties and responsibilities;
 - Organizational chart which shows the names of departments/units with respective functions and responsibilities and designations of officers/employees including responsibilities of personnel within the said departments/units. The organizational chart should show clear accountability of the management structure and should provide for independent check and balance by the board of directors;
 - Risk Management Manual and Operations Manual embodying the policies, systems, and operating procedures of each department/unit in the organization covering the areas on (a) signing/delegated authorities, (b) procedures/flow of paperwork, and (c) other matters, together with the certification of the President/Trust Officer of the trust corporation that these manuals were prepared and aligned with existing BSP rules and regulations on risk management and trust, other fiduciary and investment management activities and shall be implemented. A trust corporation is expected to have in place, a risk management system that is appropriate to the nature and complexity of the trust corporation's fiduciary activities;

- Excerpts of the minutes of the organizational/director's meetings confirming all organizational and pre-opening transactions relative to activities undertaken by the trust corporation to operate the trust, other fiduciary business and investment management activities (e.g., appointment of officers, and approval of authorized signatories);
- Alphabetical list of all stockholders with the number and percentage of voting stocks owned/held;
- List of natural persons/stockholders certified by the Corporate Secretary, owning voting stocks in the trust corporation and are related to other identified stockholders within the third (3rd) degree of consanguinity or affinity, indicating the combined percentage of voting stocks held by these persons in the particular trust corporation, as well as juridical persons, including corporations that are wholly-owned or a majority of the stock of which is owned by any of such persons, including their wholly- or majority-owned subsidiaries;
- Certification by the President/Trust Officer of the trust corporation that no person who is the spouse or relative within the second (2nd) degree of consanguinity or affinity of any person holding the position of Chairman, President/Trust Officer, Chief Executive Officer, Chief Operating Officer, Executive Vice-President, Senior Vice President or any position of equivalent rank, General Manager, Treasurer, Chief Cashier, or Chief Accountant will be appointed to any of said positions in the trust corporation; and
- Other documents/papers which may be required.

5. *Commencement of Trust, Other Fiduciary Business and Investment Management Activities.* The trust corporation shall commence operation within one year from date of approval by the Monetary Board of their application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities: *Provided*, That the trust corporation may be granted by the Deputy Governor, Supervision and Examination Sector, a final extension of six (6) months subject to the formal presentation of valid justification and documentary proof that the trust corporation can commence operation within the six (6)-month period. Otherwise, upon recommendation of the Deputy Governor, Supervision and Examination Sector, the Monetary Board shall revoke the authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities.

The trust corporation shall submit a written notice to the appropriate supervising and examining department of the BSP of the actual date of commencement of trust, other fiduciary and investment management operations not later than ten (10) days from such opening.

Section 4. Assets Under Management. Assets under management shall represent all funds, properties and securities, denominated in peso and other foreign currency, which the trust corporation, acting as trustee, fiduciary and agent, shall manage, administer, hold, and/or take custody, for the use and benefit of others. In the performance of its trust, other fiduciary business and investment management activities, the assets under management of the trust corporation shall be kept separate and distinct from the general or other business owned and operated by its parent company, subsidiaries and related interest including all other funds, properties, and assets owned by such trust corporation.

Section 5. Required Capital. Upon incorporation/establishment, a trust corporation shall have a minimum paid-in capital of P300 million. Thereafter, the trust corporation is required to maintain a minimum unimpaired combined capital account of P300 million, or such amounts as may be prescribed by the Monetary Board in the future, for assets under management up to P20 billion.

For assets under management amounting to more than P20 billion, an incremental capital shall be provided and computed as a percentage of the book value of the total volume of assets under management based on the following:

Assets Under Management (AUM)	Incremental Capital Requirement Based on Total Volume of AUM
Above P20.0 billion – P100.0 billion	6 basis points
Above P100.0 billion – P250.0 billion	8 basis points
Above P250.0 billion – P500.0 billion	10 basis points
Above P500.0 billion	12 basis points

The assets under management, for this purpose, shall be computed based on the average of the quarter-end balances of assets under management of the preceding four quarters.

The provision on incremental unimpaired combined capital shall be subject to periodic review.

For purposes of this Section, combined capital accounts shall mean the total capital stock, retained earnings and profit and loss summary, net of (a) valuation reserves on the allowable proprietary assets, and such other capital adjustments as may be required by the BSP, and (b) appraisal surplus or appreciation credit as a result of appreciation or an increase in book value of the assets of the trust corporation.

Whenever the combined capital accounts of the trust corporation are deficient with respect to the preceding paragraphs, the Monetary Board, after considering the report of the appropriate supervisory and examining department of the BSP on the state of solvency of the trust corporation concerned, shall require the trust corporation to institute necessary corrective action(s) to address its capital deficiency which may include the submission of an acceptable capitalization program. Otherwise, the Monetary Board shall require the trust corporation, among others, to maintain net income and limit or prohibit the distribution of dividends to increase its capital accounts, or restrict the acceptance of new trust, other fiduciary and investment management accounts or introduction of new trust products or unit investment trust fund, until such corporation complies with the minimum capital requirement.

Failure of the trust corporation to meet the minimum capital requirement shall be a ground for the imposition of sanctions and suspension/revocation of the authority to engage in trust, other fiduciary business and investment management activities.

Section 6. Basic Security Deposit. Trust corporations, duly authorized by the Monetary Board, shall establish a basic security deposit for the faithful performance of trust and other fiduciary duties and investment management activities equivalent to the required capital under Section 5: *Provided*, That at no time shall the basic security deposit be less than P300 million. The basic security deposit shall be in the form of securities acceptable to the BSP, earmarked in favor of the BSP; *Provided further*, That the trust corporation shall issue an authorization in favor of the BSP to withdraw, dispose and disburse the proceeds thereof to settle any claims arising from the breach of its duties as evidenced by a final and executory court order; *Provided finally*, That the trust corporation shall not withdraw, transfer or replace such earmarked securities without prior written instruction from the BSP.

Section 7. Allowable Proprietary Assets

1. Assets owned by the trust corporation shall be for the purpose of engaging in the business of trust, other fiduciary and investment management activities and maintaining the minimum capital requirement. The allowable proprietary assets shall include eligible government securities deposited with the BSP in compliance with the basic security deposit requirement provided under Section 6 of this Circular and Sections 4405Q/4415Q of the MORNBFi.
2. In the determination of the financial condition of any trust corporation doing business in the Philippines, the allowable proprietary assets shall consist of:

- a. Investments in eligible government securities defined in Subsections 4405Q.2/ 4415Q.2 of the MORNBFi;
- b. Investments in securities issued by or guaranteed by the Philippine government, or the BSP;
- c. Investments in bank deposits, and highly liquid and investment grade securities, including (1) money market instruments, (2) those issued by central governments and central banks of foreign countries with the highest credit quality given by any two (2) internationally accepted rating agencies, and (3) securities issued by any supranational entity;
- d. Loans and other credit accommodations (1) secured by obligations of the Philippine Government or of the BSP; (2) fully guaranteed by the Philippine Government as to the payment of principal and interest; (3) secured by highly liquid and investment grade securities; (4) to the extent covered by the hold-out on or assignment of, bank deposits held in the Philippines; and (5) which the Monetary Board may from time to time specify as non-risk items;
- e. Real and other properties, including building, furniture and fixtures, safes, equipments, and other fixed assets, utilized/to be utilized by the trust corporation in the conduct of its trust, other fiduciary business and investment management activities: *Provided*, That the total investment in such real estate and improvements thereof, including all other fixed assets, shall not exceed thirty percent (30%) of the combined capital accounts; and
- f. Other assets, not inconsistent with the provisions of paragraphs a to d hereof, which are deemed to be readily realizable and available for the payment of liabilities, losses or claims at values to be determined in accordance with the Financial Reporting Package for Trust Institutions.

For purposes of investing the allowable assets, the trust corporation shall not (a) commingle their proprietary funds/assets with the assets under management, and (b) invest the same in their own unit investment trust fund or other trust products.

Section 8. Borrowings. A trust corporation cannot engage in quasi-banking functions, particularly the borrowing of funds from the public for the purpose of relending the said funds. The trust corporation however retains the right to borrow as is inherent to any duly registered corporate entity.

In case a trust corporation is a subsidiary or affiliate of a bank and/or quasi-bank, the assets under management of the trust corporation shall not form part of the relevant exposures of the parent bank and/or quasi-bank for purposes of calculating the Single Borrower's Limit (SBL) and the ceilings for accommodations to directors, officers, stockholders and their related interests (DOSRI) of the said parent bank and/or quasi-bank.

The purchases by the trust corporation, in behalf of its clients, of securities or instruments issued by its parent bank and/or quasi-bank shall not form part of the relevant exposures of the trust corporation for purposes of calculating the SBL and DOSRI ceilings of the said trust corporation.

Section 9. Incorporators, Directors and Officers

1. The incorporators/subscribers and proposed directors and officers must be persons of integrity and of good credit reputation in the business community. The subscribers must have adequate and legitimate financial capacity to pay for their proposed subscriptions in the trust corporation.
2. The incorporators/subscribers and proposed directors and officers must not have been convicted of any crime involving moral turpitude, and unless otherwise allowed under the provisions of existing laws, are not officers or employees of a government agency, instrumentality, department or office charged with the supervision of, or the granting of credit to trust entities.
3. *Limits on the number of the members of the board of directors.* The number of members of the board of directors of the trust corporation shall not be less than five (5) nor more than fifteen (15), at least two of whom are independent directors, as defined under Subsection 4141Q.1 of the MORNBFI as follows:
 - a. Is not or has not been an officer or employee of the trust corporation, its subsidiaries or affiliates or related interests during the past three (3) years counted from the date of his election;
 - b. Is not a director or officer of the related companies of the trust corporation's majority stockholder;
 - c. Is not a majority stockholder or substantial shareholder of the trust corporation, any of its related companies, or of its majority shareholder;
 - d. 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 trust corporation, or any of its related companies;

- e. Is not acting as a nominee or representative of any director or majority stockholder or substantial shareholder of the trust corporation, or any of its related companies or majority stockholder or substantial shareholder; and
- f. Is free from any business or other relationship with the trust corporation or any of its major stockholders which could materially interfere with the exercise of his judgment, i.e., has not engaged and does not engage in any transaction with the institution, any of its related companies or 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 or influence with the exercise of his judgment.

An independent director of a trust corporation can be elected as an independent director of its: (a) parent or holding company; (b) subsidiary or affiliate; (c) substantial shareholder; or (d) other related companies, or vice-versa; Provided, That he is not a substantial shareholder of any of the said concerned entities.

The biographical data of the independent director shall be accompanied by a certification under oath that the above criteria have been complied with.

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

4. *Qualifications of a director.* A director shall have the following minimum qualifications:
 - a. He shall be at least twenty-five (25) years of age at the time of his election or appointment;
 - b. He shall be at least a college graduate or have at least five (5) years experience in business;
 - c. He must have attended a special seminar on corporate governance for board of directors conducted by an entity duly accredited by the BSP;
 - d. He must be fit and proper for the position of a director of the trust corporation. In determining whether a person is fit and proper for the position of a director, the following matters must be considered:
 - i. integrity/probity;
 - ii. competence;
 - iii. education;
 - iv. diligence; and
 - v. experience/training.

- and
- e. He shall have at least one (1) year of actual experience on trust, other fiduciary business and investment management activities or shall have passed the training program on said business/activities conducted or accredited by the BSP;

The foregoing qualifications for directors shall be in addition to those required or prescribed under R. A. No. 8791, the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and other existing applicable laws and regulations.

- 5. *Duties and responsibilities of the board of directors.* As a general policy, the board of directors shall be directly responsible for the proper administration and management of the institution's trust, other fiduciary business and investment management activities. It has the ultimate responsibility for understanding the nature and level of risks taken by the trust corporation. It shall recognize its responsibility to provide proper oversight of the risk management process for fiduciary activities, and the official records of the board of directors shall clearly reflect the proper discharge of that responsibility. Funds and properties held in trust or in any fiduciary capacity shall be administered with the skill, care, prudence and diligence necessary under the circumstances then prevailing that a prudent man, acting in like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with similar aims.

Aside from the powers/responsibilities and duties prescribed under Subsections 4141Q.3, and 4406Q.4.a. and 4406Q.4.b of the MORNBF, the responsibilities of the board of directors shall include, but need not be limited, to the following:

- a. It shall establish strategic direction, ethical culture and risk tolerance standards for its fiduciary activities. In carrying out these responsibilities, the board of directors shall approve policies and procedures that set operational standards, and risk principles and limits. These policies shall be consistent with the trust corporation's broader business strategies, capital strength, management expertise and overall willingness to take risk. There should be well-designed monitoring systems that will allow the board of directors to hold related committees and officers accountable for operating within established tolerances;
- b. It shall take steps to clearly understand the various types of risks associated with trust, other fiduciary and investment management services and products offered and administered and to ensure that a reporting system that

identifies and quantifies the risks in terms that are meaningful to the board of directors is developed and implemented;

- c. It shall ensure that resources are devoted to implement a sound risk management system;
- d. It shall ensure that independent risk management function, and compliance program are in place;
- e. It shall establish appropriate organizational structure with delineations of authority, responsibility and accountability through all levels of the organization;
- f. It shall establish an appropriate staffing pattern and adopt operating budgets that shall enable the trust corporation to effectively carry out its functions. It shall likewise ensure that relevant training is continuously provided to the board of directors, president/trust officer, subordinate officers and staff, in the administration and operation, and risk management of all phases of trust, other fiduciary business and investment management activities, as well as assign competent staff for the internal audit, risk management, and compliance functions;
- g. It shall develop and implement adequate policies, procedures and practices relevant to trust, other fiduciary business and investment management activities that translate its objectives and risk tolerances into operating standards and are well understood by concerned personnel and consistent with its intent;
- h. It shall ensure that policies and procedures consistently address the material areas of risks and are periodically reviewed, and modified when necessary, to remain appropriate, sound and responsive to significant changes in the trust corporation's activities;
- i. It shall establish and maintain an effective system of controls, including enforcement of official lines of authority, and appropriate separation of duties;
- j. It shall ensure that all appropriate approvals are obtained and adequate operation procedures and risk control systems are in place;
- k. It shall keep each member of the board informed of the developments on trust, other fiduciary business and investment management activities, includ-

ing pertinent products and services, laws, rules and regulations. Members shall attend relevant training and seminar for this purpose; and

- I. It shall oversee the implementation and maintenance of management information and other systems to identify, measure, monitor and control risks attached to the fiduciary activities of the trust corporation.

For this purpose, the board of directors shall meet periodically on a monthly basis or at least a minimum of nine (9) meetings in a calendar year, keep minutes of its actions, and make periodic reports thereon. Up to twenty-five percent (25%) of the actual meetings of the board of directors for a year may be conducted through modern technologies such as, but not limited to, teleconferencing and videoconferencing, as long as majority of the directors are physically present and the director(s) who is(are) taking part in the said meetings through said modern technologies can actively participate in the deliberations on matters taken up therein.

The board of directors shall designate the president as trust officer of the trust corporation.

6. *Specific duties and responsibilities of a director.*

- (1) *To conduct fair business transactions with the trust corporation and to ensure that personal interest does not bias board decisions.* A director should, whenever possible, avoid situations that would give rise to a conflict of interest. If transactions with the institution cannot be avoided, it should be done in the regular course of business and upon terms not less favorable to the institution than those offered to others. The basic principle to be observed is that a director should not use his position to make profit or to acquire benefit or advantage for himself and/or his related interests. He should avoid situations that would compromise his impartiality.
- (2) *To act honestly and in good faith, with undivided loyalty, utmost care and in the best interest of the trustors, principals and beneficiaries.* A director must always act in good faith, with the care which an ordinarily prudent man would exercise under similar circumstances. A director must administer trust, other fiduciary and investment management affairs by placing interests of trustors, principals and beneficiaries above those of the trust corporation.
- (3) *To devote time and attention necessary to properly discharge his duties and responsibilities.* A director should devote sufficient time to familiarize himself with the institution's business. He must be constantly aware of the institution's condition and be knowledgeable enough to contribute meaningfully to

the board's work. He must attend and actively participate in board and committee meetings, request and review meeting materials, ask questions, and request explanations and be familiar with audits and supervisory communications. If a person cannot give sufficient time and attention to the affairs of the institution, he should neither accept his nomination nor run for election as member of the board.

- (4) *To act judiciously.* Before deciding on any matter brought before the board of directors, every director should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.
- (5) *To exercise independent judgment.* A director should view each problem/situation objectively. When a disagreement with others occurs, he should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollarily, he should support plans and ideas that he thinks will be beneficial to the trustors, principals, beneficiaries, and the institution.
- (6) *To be generally informed of both the trust corporation's business environment and legal and regulatory framework controlling its activities.* A director should have a working knowledge of the statutory and regulatory requirements affecting the institution, including the content of its articles of incorporation and by-laws, the requirements of the BSP and where applicable, the requirements of other regulatory agencies and must exercise care to see that these are not violated. He should also keep himself informed of the industry developments and business trends in order to safeguard the institution's competitiveness.
- (7) *To observe confidentiality.* A director must observe the confidentiality of non-public information acquired by reason of his position as director. He may not disclose said information to any other person without the authority of the board.

Every member of the board shall participate in at least seventy-five percent (75%) of all board meetings every year: *Provided That* in the case of a director who is unable to physically attend or participate in board meetings via teleconferencing or video-conferencing, the Corporate Secretary shall execute a notarized certification attesting that said director was given the agenda materials prior to the meeting and that his/her comments/ decisions thereon were submitted for deliberation/discussion and were taken up in the actual board meeting and that the submission of said certification shall be considered compliance with the required seventy-five percent (75%) minimum attendance in board meetings.

7. ***Constitution of prescribed committees.*** In addition to the audit, corporate governance and risk management committees prescribed to be constituted under Subsection 4141Q.3.c.(9) of the MORNBF, the board of directors shall constitute a committee which shall be primarily responsible for the proper administration of the trust corporation's allowable proprietary assets and liabilities.
8. ***Definition and qualifications of an officer.*** Officers shall include the President/Trust Officer, Chief Executive Officer, Chief Operating Officer, Senior Vice President, Vice-President, General Manager, Treasurer, Secretary, and others mentioned as officers of the trust corporation, or those whose duties as such are defined in the by-laws, or are generally known to be the officers of the trust corporation (or any of its branches and offices other than the head office) either through announcement, representation, publication or any kind of communication made by the trust corporation: *Provided*, That a person holding the position of Chairman or Vice Chairman of the Board or another position in the board shall not be considered as an officer unless the duties of his position in the board include functions of management such as those ordinarily performed by regular officers.

An officer shall have the following minimum qualifications:

- a. He shall be at least twenty-one (21) years of age;
- b. He shall be at least a college graduate, and
- c. He must be fit and proper for the position he is being proposed/appointed to. In determining whether a person is fit and proper for a particular position, the following matters must be considered:
 - i. integrity/probity;
 - ii. competence;
 - iii. education;
 - iv. diligence; and
 - v. experience/training

Provided, That the president/trust officer who shall be appointed shall also have the following:

- i. At least five (5) years of actual experience in trust, other fiduciary and investment management operations; or
- ii. At least five (5) years of actual experience as officer of a bank, non-bank financial institution or related field; and passed the training program in trust, other fiduciary and investment management operations acceptable to the BSP.

Provided further, that officers of the trust corporation with position of Senior Vice President and up, except for the president/trust officer, shall at least possess the requirement in (ii) as provided above.

The foregoing qualifications for officers shall be in addition to those required or prescribed under R. A. No. 8791, the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and other existing applicable laws and regulations.

9. *Appointment and responsibilities of a president/trust officer.* As maybe provided in the by-laws or delegated and decided by the board of directors, the president/trust officer shall have general supervision and direction of the business affairs of the trust corporation, particularly those relevant to trust, other fiduciary and investment management matters under the following areas:

- (a) The administration of trust, other fiduciary and investment management accounts;
- (b) The implementation of policies and instructions of the board of directors;
- (c) The submission of reports on matters which require the attention of the board of directors;
- (d) The maintenance of adequate books, records and files for each trust, other fiduciary and investment management account; and
- (e) The maintenance of necessary controls and measures to protect assets under his custody and held in trust, other fiduciary and investment management capacity.

The appointment/designation of the president/trust officer shall require prior approval of the Monetary Board. The bio-data of the proposed president/trust officer shall be submitted to the appropriate supervising and examining department.

10. *Appointment of a compliance officer, and a risk officer.* The trust corporation shall appoint a compliance officer, and a risk officer who are both independent from the backroom and front office trust operations and shall independently report to the board of directors or to their respective designated board level committees. The provisions relevant to the performance and appointment/designation of the compliance officer as provided under Subsection 4191Q.2 of the MORNBF I shall apply.
11. *Prohibitions to become officer.* No appointive or elective public official, whether full-time or part-time, shall at the same time serve as officer of the trust corporation.
12. *Approval/Confirmation of the election/appointment of directors and officers.* The appointment/election of the Board of Directors, Chief Executive Officer, Chief Oper-

ating Officer, Senior Vice Presidents or equivalent rank shall be subject to the confirmation of the Monetary Board.

If the Monetary Board finds grounds for disqualification, the director/officer so elected/appointed may be removed from office even if he/she has assumed the position to which he/she was elected.

13. *Disqualification of directors and officers.* Grounds for disqualification of directors and officers as enumerated under Subsections 4143Q.1 and 4143Q.2, respectively, of the MORNBFBI shall also include the following:

- a. Non-possession of experience and training qualifications;
- b. Negligence in the performance of the duties and responsibilities stipulated in the contract creating the trust, other fiduciary and investment management account and which directly or indirectly caused material loss/impairment of the managed trust, othe fiduciary and investment management assets;
- c. Entering into an arrangement or scheme which will compromise or prejudice the interest, rights and privileges of the trustor, principal and/or beneficiaries; and
- d. Other grounds as may be approved by the Monetary Board.

The foregoing grounds for disqualification for directors shall be in addition to those prescribed under the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and other existing applicable laws and regulations.

14. *Watchlisting of directors and officers.* The watchlisting of directors and officers, as defined under Subsection 4143Q.5 of the MORNBFBI shall apply.
15. *Interlocking directorship.* Interlocking directorship between a trust corporation and another financial institution shall be allowed except with investment houses.
16. *Interlocking directorship and officership, and interlocking officership.* No interlocking directorship and officership, and interlocking officership and secondments, shall be allowed between trust corporations and between a trust corporation and any financial institution except, with prior approval of the Monetary Board, on concurrent officership position in the same capacity which do not involve management functions such as internal auditor, corporate secretary, assistant corporate secretary, and security officer, within a group. For this purpose, *secondment* shall refer to the transfer/detachment of a person from his regular organization for temporary assignment elsewhere where the seconded employee remains the employee of the home employer although his salaries and other remuneration may be borne by the host organization.

Section 10. Annual Supervision Fee. Trust corporations shall pay to the BSP an annual supervision fee of $\frac{1}{32}$ of 1% of the average monthly balance of assets under management. The average monthly balance shall refer to the sum of the twelve month-end balances of the preceding calendar year divided by a factor of twelve. Said annual supervision fee shall be paid by the trust corporations on or before end-February of every year; *Provided*, That the annual supervision fee on the first year of operations shall be equal to the $\frac{1}{32}$ of 1% of the initial paid-up capital. Non-payment of the supervisory fee within the prescribed period shall subject the concerned trust corporation to the sanctions prescribed under Sections 34, 35, 36 and 37 of R.A. No. 7653.

Section 11. Revocation of Trust License. The Monetary Board, after considering the report of the appropriate supervisory and examining department of the BSP, may revoke the trust corporation's authority to engage in trust, other fiduciary business and investment management activities in accordance with Section 37 of R. A. No. 7653 (The New Central Bank Act). Upon revocation of the trust, other fiduciary and investment management license, the trust corporation shall be required to wind down and liquidate its trust, other fiduciary business and investment management activities, and distribute the proceeds thereof to its clients. It shall be unlawful for any such trust corporation to thereafter perform or engage in trust, other fiduciary business and investment management activities.

The BSP shall take the necessary action to protect the rights and interest of all clients whose assets, properties and funds are held in trust or under the management, administration, or custody of the trust corporation. In the event that the BSP finds it detrimental for the clients of the trust corporation, i.e., trustor/principal/beneficiary, to proceed with the liquidation of the assets under management, it may appoint a temporary successor-trustee(s) to take over the management and administration of the trust corporation's trust, other fiduciary and investment management accounts, until the trustor/principal/beneficiary has appointed his/her own successor-trustee. The revocation of the trust, other fiduciary and investment management license does not absolve the trust corporation, the members of the board of directors, and officers, from any administrative and monetary sanctions as well as applicable civil and criminal charges that may be imposed under the New Central Bank Act or other applicable laws, rules and regulations.

In case of a trust corporation which license has been revoked by the Monetary Board, any director or officer thereof who refuses to turn over the corporation's records and assets under management to the appointed successor-trustee(s), or who tampers with the corporation's records, or who appropriates for himself for another party or destroys or causes the misappropriation and destruction of the trust corporation's assets under management, or who receives or permits or causes to be received in said corporation any part or

all of the assets under management, or who pays out or permits or causes to be transferred any part thereof, shall be subject to the penal provisions of the New Central Bank Act.

Section 12. Sanctions. Pursuant to Section 91 of R. A. No. 8791, the Monetary Board may impose sanctions and monetary penalty for any violation of the provisions of this Circular, the Q Regulations of the MORNBFi addressed also to trust entities, and of the regulations implementing the Truth in Lending Act in Sec. 4309Q of the MORNBFi. This is without prejudice to the imposition of other sanctions as the Monetary Board may consider warranted that may include the suspension or revocation of a trust corporation's authority to engage in trust, other fiduciary business and investment management activities and such other sanctions as may be provided by law. If the offender is a director or officer of the trust corporation, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by quo warranto proceedings instituted by the solicitor general.

The guidelines for the imposition of monetary penalty shown in *Appendix A* shall govern the imposition of monetary penalty for violations/offenses with administrative sanctions falling under Section 37 of R. A. No. 7653 on trust corporations, their directors and/or officers.

Section 13. Applicability of the Manual of Regulations for Non-Bank Financial Institutions. Specific guidelines peculiar to the operation of the trust, other fiduciary business and investment management activities of a trust corporation which include, among others, requirement for security deposit, lending and investment operations, management of the assets owned and held by the trust corporation and the fiduciary funds, reporting and record keeping, will be covered by a subsequent issuance. Until such time, the provisions of Part 4 of the Q-Regulations of the MORNBFi which are not inconsistent with the provisions of this Circular shall apply.

Section 14. Effectivity. This Circular shall take effect fifteen (15) days following its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


AMANDO M. TETANGCO, JR.
Governor

19 January 2011

**THE GUIDELINES FOR THE IMPOSITION OF MONETARY PENALTY FOR
VIOLATIONS/OFFENSES WITH SANCTIONS FALLING UNDER
SECTION 37 OF R. A. NO. 7653 ON TRUST CORPORATIONS,
DIRECTORS AND/OR OFFICERS**

The schedule of penalty, categorized based on: (1) the nature of offenses such as minor, less serious, and/or serious, and (2) the size of the assets under management of the trust corporation, shall be as follows:

A. For Serious Offense

Assets Under Management Size	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
Penalty Range						
Minimum	P 500	P 1, 000	P 3, 000	P 10, 000	P 18, 000	P 25, 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

Assets Under Management Size	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
Penalty Range						
Minimum	P 300	P 600	P 1, 000	P 3, 000	P 7, 000	P 15, 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

Assets Under Management Size	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
Penalty Range						
Minimum	P 150	P 300	P 600	P 1, 000	P 3, 000	P 6,000
Medium	200	400	700	1, 500	4, 000	8, 000
Maximum	250	500	800	2, 000	5, 000	10, 000

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

1. **Serious Offense** - This refers to unsafe or unsound practice. An unsafe or unsound practice is one (1) in which there has been some conduct, whether act or omission, which is contrary to accepted standards of prudent fiduciary activities, and trust business/operation, and may result to the exposure of the trust corporation and its shareholders to abnormal risk or loss.

In determining the acts or omissions included under the unsafe or unsound practice, an analysis of the impact thereof on the trust corporations' 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:

- (a) 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;
- (b) The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's creditors, investors, trust/other fiduciary/investment management clients, stockholders, or to the Bangko Sentral or to the public in general;
- (c) The act or omission has caused any undue injury, or has given unwarranted benefits, advantage or preference to the trust corporation 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
- (d) The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the trust corporation, 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 Appendix Q-24 of the MORNBFI.

2. **Less Serious Offense** - These include major acts or omissions defined as trust corporation/individual's failure to comply with the requirements of banking laws, rules and regulations, provisions of Manual of Regulations(MOR)/Circulars/Memorandum as well as Monetary Board directives/instructions having *material*¹ impact on trust corporation'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 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 trust corporation. 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.

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.

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 Regulation.

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 trust corporations 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 trust corporation 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 trust corporation – In assessing this factor, “potential loss” refers to any time at which the trust corporation was in danger of sustaining a loss.

- *Substantial actual loss* – The trust corporation 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 trust corporation/individual may have substantial/serious violations that could impact the reputation and earnings of the trust corporation.
- *Minimal actual loss or substantial risk of loss* – The trust corporation 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 trust corporation 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 trust corporation*¹.
- *Minimal risk of loss* – The risk exposure on earnings or capital is minimal. Trust corporation 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 trust corporation or its financial condition. The risk of loss aggregating to less than one percent (1%) of the capital of the trust corporation will fall under this classification.

(f) Impact to trust/asset or investment management industry– In assessing this factor, it is appropriate to consider any possible negative impact or harm to the trust corporation. (e.g., A violation of law involving insider abuse may result in adverse publicity for the institution, possibly causing a sudden mass redemption/withdrawal of trust investments or termination of trust, other fiduciary or investment management accounts and affecting the trust corporation’s trust business). Resulting effect on the trust/asset or

¹ Cir. 410 dated 29 October 2003 provides that external auditors of trust entities 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.

investment management industry on the violation/offenses committed by the trust corporation, if any, will also be considered. Sources of data may come from news reports.

- *Substantial impact on trust corporation. No impact on trust/asset or investment management industry.* This may involve reputational risk of the trust corporation as a result of negative publicity generated for example, by involvement of trust corporation's director/officer in activities not acceptable to the regulatory bodies. This may also involve insider abuse of authority/power. However, the trust/asset or investment management industry is not affected for this isolated case.
- *Moderate impact on trust/asset or investment management industry or on public perception of trust/asset or investment management industry.* This may involve poor corporate governance and mismanagement of trust corporation that may result to erosion of public confidence.
- *Substantial impact on trust/asset or investment management industry or on public perception of trust/asset or investment management industry.* This is a worst-case scenario. The violations/irregular activities of the trust corporation may totally erode the trust and confidence of the investing public resulting to a nationwide mass redemption/withdrawal of trust investments or termination of trust, other fiduciary or investment management accounts. Pessimistic perception of the investing public on the trust/asset or investment management 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 trust corporation towards the regulators after or even before notification of the offense and/or omission. Assistance rendered by the trust corporation 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 trust corporation/individual.
- *With positive measures/action undertaken although not corrected immediately.* The trust corporation 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 trust corporation has started to rectify the infraction by instituting reforms in their operations or systems.

- *Voluntary disclosure of offense* - Voluntary disclosure of the trust corporation 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 trust corporation 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 trust corporation/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.