



OFFICE OF THE GOVERNOR

**CIRCULAR NO. 462
Series of 2004**

Pursuant to the Monetary Board Resolution Nos. 1047 and 1747 dated 29 July 2004 and 25 November 2004, respectively, the following rules and regulations that shall govern the qualification and accreditation of private banks and non-bank financial institutions acting as trustee on any mortgage or bond issuance by any municipality, government-owned or controlled corporation, or any body politic, are hereby issued to implement Section 83.1 of Republic Act No. 8791, otherwise known as "The General Banking Law of 2000":

Section 1. Applicability

Private banks/non-bank financial institutions duly accredited by the Bangko Sentral ng Pilipinas may act as trustee on any mortgage or bond issued by any municipality, government-owned or controlled corporation, or any body politic.

Section 2. Application for Accreditation

A private bank/NBFI desiring to act as trustee on any mortgage or bond issued by any municipality, government-owned or controlled corporation, or any body politic shall file an application for accreditation with the appropriate supervising and examining department of SES. The application shall be signed by the president or officer of equivalent rank of the bank/NBFI and shall be accompanied by the following documents:

- a. certified true copy of the resolution of the institution's board of directors authorizing the application
- b. a certification signed by the president or officer of equivalent rank that the institution has complied with all the qualification requirements for accreditation

Section 3. Qualification Requirements

A bank/NBFI applying for accreditation to act as trustee on any mortgage or bond issued by any municipality, government-owned or controlled corporation, or any body politic must comply with the following requirements:

- a. It must be a bank or NBFI under BSP supervision;



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- b. It must have a license to engage in trust and other fiduciary business;
- c. It must have complied with the minimum capital accounts required under existing regulations, as follows:

Universal Banks and Commercial Banks	The amount required under existing regulations or such amount as may be required by the Monetary Board in the future
Branches of Foreign Banks	The amount required under existing regulations
Thrift Banks	P650 million or such amounts as may be required by the Monetary Board in the future
NBFIs	Adjusted capital of at least P300 million or such amounts as may be required by the Monetary Board in the future.

- d. Its risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application.
- e. The articles of incorporation or governing charter of the institution shall include among its powers or purposes, acting as trustee or administering any trust or holding property in trust or on deposit for the use, or in behalf of others
- f. The by-laws of the institution shall include among others, provisions on the following:
 - 1. The organization plan or structure of the department, office or unit which shall conduct the trust and other fiduciary business of the institution;
 - 2. The creation of a trust committee, the appointment of a trust officer and subordinate officers of the trust department; and
 - 3. A clear definition of the duties and responsibilities as well as the line and staff functional relationships of the various units, officers and staff within the organization.

- g. The bank's operation during the preceding calendar year and for the period immediately preceding the date of application has been profitable.
- h. It has not incurred net weekly reserve deficiencies during the eight (8) weeks period immediately preceding the date of application.
- i. It has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management in the last two preceding examinations prior to the date of application, particularly on the following:
 - 1. election of at least two (2) independent directors;
 - 2. attendance by every member of the board of directors in a special seminar for board of directors conducted or accredited by the BSP;
 - 3. the ceilings on credit accommodations to directors, officers, stockholders and related interests (DOSRI);
 - 4. liquidity floor requirements for government deposits;
 - 5. single borrower's loan limit; and
 - 6. investment in bank premises and other fixed assets
- j. It maintains adequate provisions for probable losses commensurate to the quality of its assets portfolio but not lower than the required valuation reserves as determined by the BSP.
- k. It does not have float items outstanding for more than sixty (60) calendar days in the "Due From/To Head Office/Branches/Other Offices" accounts and the "Due from Bangko Sentral" account exceeding one percent (1%) of the total resources as of date of application.
- l. It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system.
- m. It has a CAMELS Composite Rating of at least 3 in the last regular examination with management rating of not lower than 3; and

- n. It is a member of the Philippine Deposit Insurance Corp. (PDIC) in good standing (for banks only).

Compliance with the foregoing as well as with other requirements under existing regulations shall be maintained up to the time the trust license is granted. A bank that fails in this respect shall be required to show compliance for another test period of the same duration.

Section 4. Independence of the Trustee

A bank/NBFI is prohibited from acting as trustee of a mortgage or bond issuance if any elective or appointive official of the LGU, government-owned or controlled corporation, or body politic which issued said mortgage or bond and/or his related interests own such number of shares of the bank/NBFI that will allow him or his related interests to elect at least one (1) member of the board of directors of such bank/NBFI or is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.

Section 5. Investment and Management of the Funds

A domestic bank/NBFI designated as Trustee of a mortgage or bond issuance may hold and manage, in accordance with the provisions of the Trust Indenture or Agreement, the proceeds of the mortgage or bond issuance and such assets and funds of the issuing municipality, corporation, or body politic as may be required to be delivered to the Trustee under the Trust Indenture/Agreement, subject to the following conditions/restrictions:

- a. Pending the utilization of such funds pursuant to the provisions of the Trust Indenture/Agreement, the same shall only be deposited in any bank, other than the trustee/bank proper, its subsidiary or affiliate authorized to accept deposits from the Government or government entities, or invested in peso-denominated treasury bills acquired/purchased from any securities dealer/entity, other than the trustee or any of its unit/department, its subsidiary or affiliate.
- b. Investments of funds constituting or forming part of the sinking fund created as the primary source for the payment of the principal and interests due the mortgage or bonds shall also be limited to deposits in any bank, other than the trustee/bank proper, its subsidiary or affiliate, authorized to accept deposits from the Government or government entities and investments in government securities that are consistent with such purpose which must be acquired/purchased from any securities

dealer/entity, other than the trustee or any of its unit/department, its subsidiary or affiliate.

Section 6. Waiver of Confidentiality

A bank/NBFI designated as trustee of any mortgage or bond issued by any municipality, government-owned or controlled corporation, or any body politic shall submit to the appropriate supervising and examining department of SES a waiver of the confidentiality of information under Sections 2 and 3 of R.A. No. 1405, as amended, duly executed by the issuer of the mortgage or bond in favor of the BSP.

Section 7. Reportorial Requirements

A bank/NBFI authorized by the BSP to act as trustee of the proceeds of mortgage or bond issuance of a municipality, government-owned or controlled corporation, or body politic shall comply with reportorial requirements that may be prescribed by the BSP.

Section 8. Applicability of the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities

The provisions of the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities not inconsistent with the provisions of this Circular shall form part of these Rules.

Section 9. Sanctions

Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively, of the R.A. No. 7653 (The New Central Bank Act), violation of any provision of this Circular shall be subject to the following sanctions/penalties depending on the gravity of the offense:

First Offense –

- a. Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
- b. Reprimand for the directors/officers responsible for the violation.

Second Offense –

- a. Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected;
- b. Suspension for ninety (90) days without pay for directors/officers responsible for the violation; and
- c. Revocation of the authority to act as trustees on any mortgage or bond issuance by any municipality, government-owned or controlled corporations, or body politic.

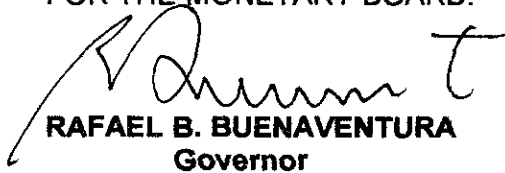
Subsequent Offense –

- a. Fine of up to P30,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected;
- b. Suspension or revocation of the trust license;
- c. Suspension for one hundred twenty (120) days without pay of the directors/officers responsible for the violation.

Section 10. Effectivity

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

FOR THE MONETARY BOARD:


RAFAEL B. BUENAVENTURA
Governor

14 December 2004