



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 1097

Series of 2020

Subject: Guidelines for the Distribution of Unit Investment Trust Funds (UITFs) of Trust Corporations; and Amendments to the Regulations Governing the Establishment of Branches and Marketing Offices of Trust Corporations

The Monetary Board, in its Resolution No. 1081 dated 27 August 2020, approved the guidelines on the distribution of trust products of trust corporations (TC) and the related amendments to the Manual of Regulations for Non-Bank Financial Institutions (MORNBI) T-Regulations on the establishment of branches and marketing offices.

Section 1. Sec. 105-T is hereby amended to align with the licensing requirements under Sec. 111-T, as amended by Circular No. 1031 dated 7 February 2019, and to ensure consistency in the marketing and distribution activities for UITFs of trust corporations.

105-T ESTABLISHMENT OF BRANCHES AND MARKETING OFFICES

A TC shall carry out its trust and other fiduciary business only at the place of business specified in its articles of incorporation. It may establish branch/es or marketing office/s in order to maximize the delivery of its products and services.

A branch shall refer to any permanent office or place of business in the Philippines other than the head office where a TC may perform activities and provide products and services that are within the scope of its authority and licenses. In this respect, a complete set of books and records shall be maintained in each branch.

A marketing office shall refer to any permanent office or place of business of a TC that is annexed to the head office or to a branch. It records its transactions in the books of the head office or the branch to which it is annexed.

Allowable activities of a marketing office. A marketing office may engage only in the following activities:

- a. marketing, defined as the promotion and presentation of the TC's products and services to clients or prospective clients;
- b. client profiling; and
- c. preparation and receipt of documents for the opening and establishment of an account.

In addition, a marketing office may receive client funds and/or the corresponding instructions for subscription to and/or redemption/withdrawal of UITFs: *Provided*, That client funds may only be received once the client account has been created and approved.

Consistent with the expectation for the board and senior management to maintain an effective and efficient internal control framework, the TC shall adopt appropriate control mechanisms to ensure the protection of client funds. At a minimum, the TC shall ensure the segregation of functions of personnel handling funds and personnel handling client instructions. The TC shall likewise adopt policies and procedures for the handling of funds, including, but not limited to, accounting, periodic reconciliation, and reporting.

The board of directors of the TC shall approve the defined range of activities and services that shall be carried out in a marketing office: *Provided*, That the same shall not include the approval and opening of trust/fiduciary accounts: *Provided, further*, That the Management shall ensure that the accounting and reporting of activities and transactions of the marketing office to the head office/branch to which it is annexed is performed at least on a daily basis.

The TC shall likewise ensure that the activities of a marketing office are strictly undertaken in accordance with the Basic Standards set forth in *Appendix Q-49*

Prerequisites for the grant of authority to establish a branch/marketing office. A TC may establish a branch/marketing office: *Provided*, That it meets the prudential criteria under Sec. 111-T.

No TC operating in the Philippines shall establish branches without the prior approval of the Monetary Board.

A TC may establish a marketing office/s upon giving prior notice to the Bangko Sentral. Such notification shall be transmitted to the appropriate supervising department of the Bangko Sentral not later than ten (10) banking days after the TC's Board of Directors has approved the TC's proposal to open a marketing office/s.

Prohibition. xxx

Documentary Requirements. A TC seeking to establish a branch shall submit the following documents to the appropriate supervising department of the Bangko Sentral:

- a. Application letter signed by the President of the TC, which shall indicate the number of branches to be established and the proposed location/s.
- b. Corporate Secretary's Certificate attesting to the approval by the board of directors of the TC of the establishment of a branch/es; and
- c. Certification/Undertaking signed by President that the TC is compliant with the prudential criteria under Sec. 111-T.

A TC seeking to open a marketing office/s shall support its letter of notification to the Bangko Sentral with Items "b" and "c" above: *Provided*, That the Corporate Secretary's Certificate referred to in Item "b" shall pertain to the approval by the board of directors of the establishment of a marketing office/s.

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Enforcement actions. Consistent with Sec. 002-T, the Bangko Sentral reserves the right to deploy any of its supervisory tools to promote adherence to the requirements set forth in the foregoing rules and bring about timely corrective actions and compliance with Bangko Sentral directives. For this purpose, the Bangko Sentral may limit the activities and services offered by a branch/marketing office or revoke the franchise and close any branch/marketing office. If any part of the certification submitted by the TC, as required in this Section, is found to be false, the Bangko Sentral may also suspend the privilege of such TC to establish and/or open approved branches/marketing offices and/or relocate branches/marketing offices and impose sanctions on the certifying officers concerned, without prejudice to the sanctions under Section 35 of R.A. No.7653, as amended.

Section 2. Sec. 110-T is hereby amended to provide the guidelines for the distribution of UITFs.

110-T DISTRIBUTION OF TRUST PRODUCTS

The trust products of a TC shall only be distributed by the TC itself, except for UITFs, which may be distributed as provided under this Section. The TC shall adopt a distribution arrangement that is consistent with its strategic plan of operation. Such arrangement shall be conducted in a manner that is not prohibited by laws, rules and regulations.

Regardless of the arrangements that the TC chooses to adopt, the TC should be able to demonstrate that the arrangement is properly managed. The arrangement should be properly documented and the related documentation shall be made available to the Bangko Sentral.

Third-party Distributors of UITFs. A TC may engage the following third parties to distribute its UITFs:

- a. individual agents; and
- b. institutional agents.

The distribution of UITFs through a bank shall be governed by the provisions on cross-selling under Sec. 113 of the MORB.

The use of a service provider, such as an electronic platform, to offer UITFs shall not be considered as a distribution arrangement. It shall be subject to the outsourcing framework provided under Sec. 112-T.

- a. **Qualification Requirements.** The TC shall exercise prudence in the selection of third-party distributors. It shall ensure that a distributor meets the qualification requirements set out in this Section and that the distributor complies with such requirements on a continuing basis.

- (1) Individual agent. An individual agent must meet the qualifications for UITF marketing personnel as prescribed under Sec. 109-T.
 - (2) Institutional agent. An institutional agent must be duly registered as a corporation with the SEC and actively operating. It must have the necessary authority from the appropriate regulatory agency to distribute financial products, must be in good financial standing, and must have the appropriate structure and adequate facilities to engage in the distribution of UITFs. All personnel of institutional agents involved in the distribution of UITFs must likewise meet the requirements prescribed under Sec. 109-T.
- b. *Authority to engage third-party UITF distributors.* The engagement of a third-party distributor by a TC is considered a Type "C" activity under Sec. 111-T.

A TC may engage a third-party distributor subject to notification to the Bangko Sentral and compliance with the prudential criteria prescribed under Sec. 111-T. For this purpose, the TC shall submit the following documents to the appropriate supervising department of the Bangko Sentral not later than ten (10) banking days after the TC's board of directors has approved the TC's proposal to distribute UITFs through a third-party:

- (1) Notification letter signed by the president of the TC stating the intended mode of distribution;
 - (2) Corporate Secretary's certificate on the approval of the board of directors of the engagement of third-party distributors; and
 - (3) Certification signed by the president that the TC complies with the prudential criteria under Sec. 111-T, as well as pertinent laws, rules and regulations.
- c. *Scope of activities and functions.* A distributor shall only perform activities allowed for a marketing office of a TC as provided under Sec. 105-T (*Allowable activities of a marketing office*).
- d. *Agreement.* The distribution activity shall be covered by a formal agreement between the TC and the third-party distributor. At a minimum, the following shall be set out in the agreement:
- (1) Complete description of the activities to be performed;
 - (2) Distribution fee arrangement;
 - (3) Any restriction or prohibition regarding the performance by the distributor of its functions;
 - (4) Responsibility and accountability of the distributor for errors, omissions or fraud, and any fine or penalty related thereto;
 - (5) Delineation of responsibilities on the handling of customer complaints pertaining to, at a minimum, the products covered under the agreement (i.e., the UITFs) and the services performed by the distributor, and on the establishment of a redress mechanism;
 - (6) Ownership of, and access to, the relevant documents maintained by the

distributor;

- (7) The protection of confidentiality of all data and information related to the distribution activity, the liability/ies of the TC and the distributor, and the actions that the TC may take against the distributor for breach of confidentiality or any form of disclosure of confidential information;
 - (8) Amendment, pre-termination and cancellation of the agreement; and
 - (9) An undertaking to comply with the requirements under this Section.
- e. *On-boarding process and maintenance of client information and records.* The on-boarding of clients through third-party distributors and the maintenance of client information and records shall be in accordance with the Basic Standards provided in *Appendix Q-49*. In addition, the following requirements shall apply:
- (1) Individual agent – The individual agent shall conduct the client suitability assessment (CSA) process on behalf of the TC. The TC shall maintain and be responsible for the information gathered by the individual agent through the CSA and any related documents. The individual agent may likewise conduct the customer identification and verification process, including the gathering of the minimum information and performing face-to-face contact on behalf of the TC, subject to the rules on outsourcing under existing anti-money laundering and combating the financing of terrorism (AML/CFT) laws, rules and regulations: *Provided*, That the ultimate responsibility for knowing the customer still lies with the TC.
 - (2) Institutional agent – The institutional agent may adopt its own CSA process or that of the TC. The TC shall maintain and be responsible for the information gathered by the institutional agent through the CSA and any related documents.

A TC may rely on the institutional agent for the conduct of customer identification and verification, subject to the requirements provided under existing laws and regulations on AML/CFT: *Provided*, That the ultimate responsibility for knowing the customer still lies with the TC.

- (3) General provisions – The TC shall adopt control mechanisms to ensure that the distributors observe the requirements under relevant laws, rules and regulations, including those governing securities activities, confidentiality of information, as well as the relevant requirements under the Basic Standards provided in *Appendix Q-49*, and the regulations on Financial Consumer Protection set out in Part Ten of the MORB.

The TC shall be responsible for the practices and activities of its distributors with respect to its UITFs. In cases where clients are prejudiced due to errors, omissions and fraud by the distributor, the TC shall provide the appropriate remedies or remuneration to clients as may be allowed under existing laws or regulations, without prejudice to the TC's right of recourse to the distributor regardless of the type of arrangement.

The TC shall ensure that the distributor/s adequately discloses to the public that he/it is authorized by the TC to distribute its UITF/s. Such disclosure shall remain in effect as long as the arrangement between the TC and the distributor remains active.

In addition to the requirements under this Section, the TC that enters into distribution arrangement shall be subject to the provisions on governance and the conduct of due diligence and periodic monitoring under Sec. 112-T and Sec. 147-Q, as applicable.

Enforcement actions. Consistent with Sec. 002-T, the Bangko Sentral reserves the right to deploy its range of supervisory tools and enforcement actions to promote adherence with the requirements set out in this Section and bring about timely corrective actions. In this respect, the Bangko Sentral may issue directives to improve the management of the distribution activity or impose sanctions to limit the level of or suspend any distribution activity. Sanctions may likewise be imposed on the TC and/or its directors, officers and/or employees.

Section 3. The provisions of Sec.112-T are hereby amended as follows:

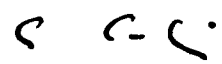
112-T MANAGEMENT CONTRACTS AND OUTSOURCING OF THE FUNCTIONS

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Duties and Responsibilities of TCs and their Directors/Officers in All Case of Outsourcing of Other Functions. The trust corporation shall ensure that outsourcing of activities will not compromise confidentiality or access to (client) sensitive information. Moreover, no trust corporation shall outsource inherent trust functions such as the administration and management of assets, strategic decision-making activities, and activities of similar import. The rules on outsourcing of services as shown under Sec. 112 of the MORB and *Appendix Q-36*, in so far as applicable, shall apply.”

Section 4. Effectivity. This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


BENJAMIN E. DIOKNO
Governor

21 September 2020