SEC Memorandum Circular No.14

Series of 2001

TO : ALL CONCERNED

SUBJECT : GUIDELINES ON THE COMPENSATION AND/OR FEES OF MEMBERS OF MANCOM/ RECEIVERS AND LIQUIDATORS

In line with the policy of the Commission to provide uniform/fair and reasonable compensation or fees for the comparable services rendered by the duly designated members of the Management Committee (MANCOM), rehabilitation receivers and liquidators in corporations or partnerships placed under MANCOM, receivership or liquidation pursuant to Section 6 (d) of the Presidential Decree No, 902-A, the SEC Rules on Corporate Recovery, the Corporation Code of the Philippines, the Securities Regulation Code and other related laws enforced by the Securities and Exchange Commission, the following guidelines are hereby promulgated:

1. DETERMINATION OF THE AMOUNT OF FEES TO BE ALLOWED MANCOM MEMBERS, RECEIVERS AND LIQUIDATORS.

The compensation or fees of the MANCOM, receivers and liquidators shall be determined by the agreement between the parties and the MANCOM members, receiver or liquidator. This compensation/fees shall be of an amount which the corporation is willing and able to pay and the MANCOM members, receiver or liquidator is willing to accept as fee or compensation for the engagement of their/his service.

In case of failure of agreement, the Commission shall determine the fees and/or compensation of MANCOM, receivers and liquidators in accordance with the guidelines set herein.

In the determination of the compensation or fees to be awarded to the MANCOM, the receiver or liquidator, the Commission shall issue an order with proper notice to the interested parties for the conduct of hearing on the subject compensation or fees. The hearing shall be conducted at least five (5) days before the acceptance of the designation to the office by the intended MANCOM members, receiver or liquidator.

2. BASIS FOR THE AWARD OF COMPENSATION OR FEES.

The following shall be considered in the fixing of the subject compensation or fees:

2.1 amount of liabilities settled;

2.2 amount of cash and other assets coming into the possession and control of MANCOM, receiver or liquidator;

2.3 practical benefits derived from the MANCOM, receiver or liquidator's efforts;

2.4 attention, time, labor and skill needed or expended in the discharge of duties measurable in terms of common business standards;

2.5 complications involved, the degree of activity, integrity and dispatch with which the work of the MANCOM, receiver or liquidator are conducted;

2.6 difficulties of conserving and administering the estate and the care and fidelity with those difficulties have been met and surmounted.

3. MANCOM, Receiver or Liquidator's Fees

The MANCOM/ receiver, or liquidator shall be entitled to charge and receive for their services, the fees as per guidelines attached as Appendix "A" to be paid upon final liquidation or implementation of the rehabilitation plan of the corporation or partnership, Should there be two (2) or more MANCOM members, receivers or liquidators, the Commission shall order an equitable distribution of the fees herein provided.

Partial advances on fees shall only be allowed upon prior approval of the Commission. Such partial advances shall be deducted from the fees to which the MANCOM, receiver or liquidator may be entitled upon final liquidation or implementation of the rehabilitation plan of the corporation or partnership. If a MANCOM member, receiver or liquidator's term is terminated before the final settlement of the estate and a successor is appointed, the Commission shall determine the amount of fees payable to such MANCOM member, receiver or liquidator whose services have been terminated.

In any event, the compensation or fees of the MANCOM, receiver or liquidator shall not exceed four per centum (4%) of the liabilities of the corporation or partnership settled. The said amount may be subject to reduction by agreement of the concerned parties to the proceedings subject to the approval of the Commission. In case the advances exceed the amount of fees to which the MANCOM, receiver or liquidator would be entitled, the excess shall be returned by the MANCOM, receiver or liquidator.

4. ALLOWABLE EXPENSES

The MANCOM, receiver or liquidator shall be allowed such expenses as may be necessary for the care, management, settlement and liquidation of the corporation or partnership. The following expenses incurred by the MANCOM, receiver or liquidator are allowable and/ may be subject of reimbursement by the corporation or partnership upon the approval of the Commission:

1. Transportation expenses of out-of-town trips made in the discharge of duties as MANCOM member, receiver or liquidator;

2. Expenses for security services necessary in the preservation of the assets of the corporation;

3. Insurance premiums on insurance of corporate assets;

4. Documentary stamp taxes, transfer taxes and withholding taxes paid in relation to the management, rehabilitation or liquidation of company assets;

5. Cost of publication;

6. Attorney's fees and litigation expenses in the recovery of assets;

7. Notarial fees;

8. Other professional fees for those services necessary for the implementation of the plan;

9. Other actual expenses directly related to the preservation, recovery, disposition and distribution of the assets as may be determined and allowed by the Commission. Actual expenses shall exclude the fixed overhead expenses of the MANCOM, receiver or liquidator including but not limited to salaries and wages of their/his personnel, office rental, utilities bills, office supplies and the like. In case of extraordinary actual expenses, such as additional telephone bills, extra copies or the like, the same must be approved by the Commission.

5. REPORTS AND RELEASE OF FUNDS

The MANCOM, receiver or liquidator shall submit regular progress report on the activities undertaken by him in the discharge of their/his function as such on or before the last day of each month.

The report of the MANCOM, receiver or liquidator shall contain the following:

5.1 just and true accounts of his receipts and payments with proper vouchers verified under oath;

5.2 a statement on whether the amounts paid to the claimants are partial payments or represent a full settlement in which case represents the extinguishment of the liability to such claimant with the necessary quitclaim documents;

5.3 liabilities still to be determined;

5.4 sums remaining in their/his possession;

5.5 proof of notice given to all creditors named in the schedule filed by the debtor or the MANCOM, receiver, or liquidator that said accounts will be heard at a time specified in such notice the hearing of which should be set not less than two nor more than eight weeks from the filing of such accounts or claims.

The MANCOM, receiver or liquidator may file a formal or written request with the Commission for the initial release of funds, if any is available, to commence the operations or effectively discharge the MANCOM/ receiver or liquidator functions. Subsequent releases of funds shall be granted only upon appropriate request for the release of funds together with the required progress report and accounting or liquidation of funds has been filed with the Commission.

The initial release of funds shall take into consideration the value of the assets that came into the possession and control of the MANCOM, receiver or liquidator, the applicable rate in the attached Appendix "A" and the length of time allowed by law for the liquidation and settlement of the corporation or partnership.

6. DENIAL OF COMPENSATION OR FEES.

The MANCOM, receiver or liquidator may be denied his compensation or fees if he forfeits or waives his right to compensation or fee or if the MANCOM or one of its members, the receiver or liquidator is guilty of fraud, negligence, misconduct, want of capacity or lack of appreciation of the obligations of the office, misfeasance or reckless disregard of the performance of his duty.

This Memorandum Circular shall take effect immediately.

October 19, 2001

Mandaluyong City

LILIA R. BAUTISTA
Chairperson