

## 102 BASIC GUIDELINES IN ESTABLISHING DOMESTIC BANKS

A new banking organization must have suitable/fit shareholders, adequate financial strength, a legal structure in line with its operational structure, a management with sufficient expertise and integrity to operate the bank in a sound and prudent manner.

In establishing a new banking organization, the documentary requirements to be submitted to the Bangko Sentral are listed in *Appendix 33*.

The revised rules and regulations governing the organization, membership, establishment, administration, activities, supervision and regulation of cooperative banks are found in *Appendix 34*.

### ***Pre-requisites for the grant of a universal banking authority***

- a. *Compliance with guidelines.* A domestic bank seeking authority to operate as a UB shall submit an application to the appropriate supervising department of the Bangko Sentral. The applicant shall comply with the guidelines for the issuance of a UB authority and shall submit all the documentary requirements enumerated in *Appendix 1*.
- b. *Public offering of bank shares.* A domestic bank applying for a UB authority shall, as a condition to the approval of its application, make a public offering of at least ten percent (10%) of the required minimum capital and this condition must be complied with before it can be granted the license for authority to operate as a UB.

The term *public offering* shall mean the offer to sell equity shares to the public.

*Public* shall refer to all prospective stockholders, excluding the bank's directors, shareholders owning twenty percent (20%) or more of the bank's subscribed capital stock, together with those of their relatives within the fourth degree of consanguinity or affinity, and corporations controlled by or affiliated with them.

A bank whose shares of stock are already listed in the Philippine Stock Exchange (PSE) at the time of filing of its application for UB authority shall be deemed to have complied with the public offering requirement. Likewise, an applicant bank may opt to have its shares listed in the PSE directly instead of passing through the process of public offering. In either case, at least ten percent (10%) of the applicant bank's capital stock should be held by public stockholders before it can be granted the license for authority to operate as a UB.

- c. *Listing of bank shares in the stock exchange.* Domestic banks granted a UB license, existing or

new, must list their shares in the PSE within three (3) years: *Provided*, That in the case of new UBs, the three (3) year period shall be reckoned from the date the license to operate as a UB was granted. In the case of existing UBs which have not listed their shares in the exchange, the three (3) year period lapsed on 27 December 1998.

The guidelines on public offering and listing of bank shares are enumerated in *Appendix 1*.

**Establishment of new domestic banks.** There shall be a moratorium on the establishment of new domestic banks, except as follows: (i) grant of new universal/commercial banking license in connection with the upgrading of an existing thrift bank under Phase 1, and (ii) establishment of new banks in cities or municipalities where there are no existing banking offices, both of which shall comply with the required minimum capitalization under Sec. 121 and other qualification requirements prescribed under existing regulations.

The moratorium on the establishment of new domestic banks shall be fully lifted and locational restrictions shall be fully liberalized under Phase 2 starting 01 January 2018.

**Establishment of microfinance-oriented banks.** A *microfinance-oriented bank* is a bank that provides financial services and caters primarily to the credit needs of the basic or disadvantaged sectors such as farmers, peasants, artisanal fisherfolk, workers in the formal sector and migrant workers, workers in the informal sectors, indigenous peoples and cultural communities, women, differently-abled persons, senior citizens, victims of calamities and disasters, youth and students, children, urban poor and low income households for their microenterprises and small businesses so as to enable them to raise their income levels and improve their living standards. Microfinance loans are granted on the basis of the borrower's cash flow and are typically unsecured.

The guidelines on the establishment of a microfinance-oriented bank are as follows:

- a. Microfinance-oriented banks may be established on a very selective basis, preferably in places not fully served by existing RBs or in areas not fully serviced by microfinance-oriented banks, subject to the following additional criteria (in addition to standard licensing requirements):
  - (1) That the microfinance-oriented bank to be established shall either be a TB or an RB;
  - (2) That the capital of the microfinance-oriented banks to be established should be owned by private persons, multilateral entities or a combination thereof;
  - (3) That the minimum paid-in capital of microfinance-oriented banks shall be the applicable capitalization requirement under Sec. 121 (*Minimum capitalization*);
  - (4) That the organizers must have the capacity to engage in microfinancing, which may be indicated by the following:

- (a) At least twenty percent (20%) of the paid-in capital of the proposed bank must be owned by persons or entities with track record in microfinancing.
- (b) Majority of the members of the board of directors have experience in microfinancing with at least one (1) member having actual banking experience.
- (c) The proposed bank must have as a minimum, an adequate loan tracking system that allows daily monitoring of loan releases, collection and arrearages, and any restructuring and refinancing.

(5) In addition to the requirements for the establishment of banks in *Appendix 33*, the application for authority to establish a microfinance-oriented bank must be accompanied by the following documents:

- (a) A vision and mission statement with clear expression of the commitment to reach low-income clients.
- (b) A written manual of operations, which shall include the administrative and credit program systems and procedures.

The Manual must be consistent with the core principles, characteristics and features of microfinance indicated in Sec. 314.

(6) At least fifty percent (50%) of the bank's gross loan portfolio shall at all times consist of microfinance loans as defined in Sec. 314.

- b. The requirement that the president, chief operating officer or general manager of a TB or RB must have at least two (2) year experience in banking and/or finance may be substituted with microfinance experience in cases of officers of a microfinance organization applying for authority to establish, or convert into a TB or RB: *Provided*, That the officer concerned is a college graduate.
- c. Subject to the standard branching requirements under Sec. 105 and minimum capital requirements under Sec. 121 (*Minimum capitalization*), microfinance-oriented banks may apply for establishment of a branch after one (1) year of profitable operations.
- d. Existing non-bank microfinance organizations applying for authority to establish, or convert into a microfinance-oriented TB or RB may also be allowed to convert their existing branches/offices into branches of the bank proposed to be established by simultaneously applying for authority for the purpose.

However, the standard requirements for the establishment of branches and the minimum

capitalization requirement, have to be complied with. Moreover, there must be a proof that the area is not fully served by any existing RB.

**Conditions for the grant of authority to convert into a lower category**

- a. That the bank must have complied with the minimum capital requirement and other laws/regulations applicable to the lower bank category into which it is converting. For this purpose, the term “*capital*” shall be as defined under Sec. 121;
- b. That the bank immediately upon receipt of notice of approval of conversion shall not engage in nor renew transactions under authorities not associated with those allowed for the lower bank category into which it is converting and within six (6) months from date of receipt of notice of approval of its application for conversion, the bank shall phase-out all inherent powers and activities under special authorities not normally associated to the lower bank category into which it is converting: *Provided*, That a TB (previously authorized by the Monetary Board to accept demand deposits) may be allowed to retain such authority when converting into an RB but may clear checks only through a correspondent bank and shall not be allowed to participate directly in the Philippine Clearing House Corporation (PCHC) and the Bangko Sentral check clearing operations: *Provided, further*, That for failure to comply with these requirements, the following monetary and non-monetary penalties shall be imposed reckoned from the set deadline until the bank has fully complied with the said requirements.

(1) *Monetary penalties*

From UB to KB	P30,000/day
From KB to TB	P15,000/day
From TB to RB	
Within Metro Manila	P5,000/day
Outside Metro Manila	P500/day

(2) *Non-monetary penalties*

- (a) Suspension of branching privileges;
- (b) Suspension of declaration of cash dividends;
- (c) Restriction on lending to affiliates;
- (d) Denial of access to Bangko Sentral rediscounting facilities;
- (e) Suspension of authority to accept or handle government deposits;
- (f) Suspension of authority to engage in derivatives activities (for a UB converting into a KB);
- and
- (g) Suspension of authority to invest in allied undertakings.

- c. That a bank which has not corrected as of date of application the major findings/violations noted

in its latest examination shall submit upon application a Memorandum of Understanding that it shall correct the same within a period of six (6) months from date of receipt of notice of approval of its application, otherwise, the same monetary and non-monetary penalties mentioned in Item “b” above shall be imposed;

- d. That the bank shall submit the pertinent amended Articles of Incorporation and By-Laws duly registered with the SEC within six (6) months from date of receipt of notice of approval of its application;
- e. That the bank shall fully disclose its new status in its signage, financial statements and stationeries; and
- f. That the bank shall start operation in the lower category into which it is converting after approval by the SEC of the bank’s amended Articles of Incorporation and By-Laws, its compliance with all the conditions of approval of the conversion and the issuance by the Bangko Sentral of a certificate of authority to operate.

***Conversion of microfinance-oriented thrift banks/rural banks***

- a. Microfinance-oriented TBs and RBs are allowed to convert to regular TBs and RBs: *Provided*, That they have complied with all the requirements for a regular TB/RB license and subject to the submission of the following:
  - (1) Certification signed by the president or officer of equivalent rank stating that the allocation of at least fifty percent (50%) of the gross loan portfolio to microfinance is no longer feasible due to changes in market condition. The certification shall be supported by:
    - (a) a market study citing, among others, changes in demographic, social, and economic factors; and
    - (b) strategic plan and business strategy contemplating the conversion to a regular bank; and
  - (2) Certified true copy of the resolution of the bank’s stockholders and board of directors authorizing the conversion of the microfinance-oriented bank into a regular bank. The bank must also change its business name to reflect its reclassification to a regular bank.
- b. Microfinance-oriented branches may convert into regular branches subject to the submission of the following:
  - (1) Certification signed by the president or officer of equivalent rank that:

## 102 BASIC GUIDELINES IN ESTABLISHING DOMESTIC BANKS

- (a) At least seventy percent (70%) of deposits generated by the branch shall be lent out to microfinance borrowers; and
  - (b) The allocation of at least fifty percent (50%) of the gross loan portfolio is no longer feasible due to changes in market condition in the locality where it is located. The certification shall be supported by a market study citing, among others, changes in demographic, social, and economic factors; and
- (2) Certified true copy of the resolution of the bank's board of directors authorizing the conversion of the microfinance-oriented branch into a regular branch.

**Application and license fees for new domestic banks.** Applications for new domestic banking licenses, except for applications to establish a bank with head office located in cities or municipalities where there are no existing banking offices as well as to merge and acquire a distressed bank, shall be subject to both application and license fees below:

Bank Category	Application Fee	License Fee
	(in Million Pesos)	
Universal Banks	0.500	25.000
Commercial Banks	0.400	20.000
Thrift Banks		
-Head Office in National Capital Region (NCR)	0.100	5.000
-Head Office in All Other Areas Outside NCR	0.040	2.000
Rural and Cooperative Banks		
-Head Office in NCR	0.010	0.500
-Head Office in All Other Areas Outside NCR (All Cities up to 3rd class municipalities)	0.004	0.200
-Head Office in All Other Areas Outside NCR (4th class to 6th class municipalities)	0.002	0.100

The application fee shall be non-refundable and shall be paid upon filing of the written application to establish a bank. The license fee, net of the application fee, shall be paid after the Monetary Board has approved said application.

The aforementioned fees shall also apply to existing domestic and foreign banks <sup>1</sup> that are upgrading to the next higher bank category.

**Certificate of authority to register** <sup>2</sup>. The SEC shall not register the articles of incorporation and by-laws of any bank, or any amendment thereto, unless accompanied by a certificate of authority issued by the Bangko Sentral, under its seal. The certificate shall not be issued unless the Monetary Board is satisfied from the evidence submitted that:

- a. All requirements of existing laws and regulations to engage in the business for which the applicant is proposed to be incorporated have been complied with;
- b. The public interest and economic conditions, both general and local, justify the authorization; and
- c. The amount of capital, the financing, organization, direction and administration, as well as the integrity and responsibility of the organizers and administrators reasonably assure the safety of deposits and the public interest.

**Business name** <sup>3</sup>

- a. *UBs/KBs*. Only a bank that is granted universal/commercial banking authority may represent itself to the public as such in connection with its business name.
- b. *TBs*. TBs may be allowed to adopt and use any name: *Provided*, That the words *A Thrift Bank, A Savings Bank, A Private Development Bank or A Stock Savings and Loan Association*, as the case may be, are affixed after its business name.
- c. *RBs/Coop Banks*. RBs/Coop Banks may adopt a corporate name or use a business name/style with the word Rural or Coop, as the case may be. Said banks may also adopt a name without such words: *Provided*, That the identifying phrase, *A Cooperative Bank or A Rural Bank*, as the case may be, is affixed after its business name: *Provided, further*, That where the name of the bank is shown on letterheads, billboards and other advertising materials, the size of the letters of such phrase shall be at least one-half ( $\frac{1}{2}$ ) the size of the business name.

Subject to prior approval of the Bangko Sentral, a TB, RB or Coop Bank may apply to be exempted from the general requirements under Items “b” and “c” above: *Provided*, that the applicant TB, RB or Coop Bank shows compliance with the following conditions:

- (1) The new business name of the bank must reasonably describe the business activities that the bank is engaged in.

- (2) The business name should not mislead, misrepresent or give a false impression to the public with respect to the banking category of a bank, the location/s and clientele it serves, as well as the products and services that the applicant bank is authorized to offer to the public.
- (3) The applicant bank shall not use a business name that is identical, deceptive or confusingly similar with existing corporate names, in accordance with existing applicable laws, rules and regulations governing the use of corporate names pursuant to the provisions of the Corporation Code of the Philippines.
- (4) The applicant bank must meet the minimum capitalization requirements applicable at the time of filing of its application to change its business name.
- (5) The applicant bank must not have any major supervisory concern/s that threaten its solvency or liquidity, as determined by the appropriate supervising department/s of the Bangko Sentral.
- (6) Other conditions which the Bangko Sentral may deem necessary or as may be warranted by the attendant circumstances in order to protect the public interest.

The application of a TB, RB or Coop Bank for exemption from the general requirements on the use of name under Items “b” and “c” above shall be supported by the following:

- (1) Application letter signed by the president or officer of equivalent rank indicating the justification for the request;
- (2) Notarized secretary’s certificate on the resolution of the bank’s board of directors authorizing the request for exemption;
- (3) Certification signed by the president or the officer of equivalent rank that the bank has complied with all the conditions for the said application; and
- (4) Such other documents as may be required by the Bangko Sentral.

**Bank advertisements.** The following rules and regulations shall govern bank advertisements.

- a. No bank shall publish, issue or distribute in any form, any advertisement that shall degrade, deprecate or otherwise prejudice other banking and financial institutions.
- b. No bank shall publish, issue or distribute in any form of advertisement (in newspapers, magazines, television, radio, billboards, brochures, prospectuses, or any other medium) or allow itself to be used/mentioned in any form of advertisement unless such advertisement is in pursuance of its business or investment.



- c. No bank shall place or cause to be placed any advertisement tending to mislead a depositor into believing that he will get more in benefits than what the bank is legally authorized to give. No bank advertisement shall contain any false claim or exaggerated representation as to its liquidity, solvency, resources, deposits and banking services.
- d. No bank advertisement shall give the impression that the bank is engaged in a business other than banking.
- e. Banks shall inform their depositors and other clients by advertisement or publication of the termination of benefits previously advertised or publicized.
- f. Banks shall discontinue any advertisement whenever the same is deemed unethical/unwarranted or violative of the provisions of these regulations. The client banks and/or their advertising agencies shall incorporate in their contract/agreement for time and space with media the condition that such contract/agreement for time and space can be cancelled/terminated immediately whenever the client bank is directed by the Bangko Sentral to desist or discontinue a particular advertisement in question.
- g. Responsibility for compliance with the above rules and regulations rests with the bank officers and/or directors who caused the approval or placement of such advertisement.

*(Circular Nos. 932 dated 16 December 2016, 929 dated 28 October 2016, 902 dated 15 February 2016 and 872 dated 13 March 2015)*

#### Footnotes

1. This excludes foreign banks established after the effectivity of R.A. No. 10641 (An Act Allowing the Full Entry of Foreign Banks in the Philippines, Amending the Purpose of R.A. No. 7721).
2. See SEC Circular No. 3 dated 16 February 2006.
3. See SEC Circular Nos. 5 dated 17 July 2008 and 14 October 2000, and DTI Administrative Order No. 1008 effective 10 October 2010.