

124 DIVIDENDS

The following rules and regulations shall govern the declaration of dividends on shares of stock, regardless of feature, as well as interest payments on unsecured subordinated debt which meet the qualification requirements of Additional Tier 1 or Hybrid Tier 1 capital as defined under existing risk-based capital adequacy framework.

Pursuant to Section 57 of R.A. No. 8791, no bank shall declare dividends greater than its accumulated net profits then on hand, deducting therefrom its losses and bad debts. Neither shall the bank declare dividends if, at the time of declaration, it has not complied with the provisions under this Section on Requirements on the declaration of dividends.

Definitions. For purposes of this Section, the following definitions shall apply:

- a. *Bad debts* – shall include any debt on which interest is past due for a period of six (6) months, unless it is well secured and in process of collection.

A loan payable in installments with an automatic acceleration clause shall be considered a bad debt within the contemplation of this Section where installments or amortizations have become past due for a period of six (6) months, unless the loan is well secured and in process of collection. For a loan payable in installment without an acceleration clause, only the installments or amortizations that have become past due for a period of six (6) months and which are not well secured and in the process of collection shall be considered bad debts within the contemplation of this Section.

- b. *Well secured* – A debt shall be considered well secured (or fully secured), if it is covered by collateral in the form of a duly constituted mortgage, pledge, or lien on real or personal properties, including securities, having a loan value sufficient to discharge the debt in full, including accrued interest and other pertinent fees and expenses.
- c. *In process of collection* – A debt due to a bank shall be considered in process of collection when it is the subject of continuing extrajudicial or judicial proceedings aimed towards its full settlement or liquidation or otherwise to place it in current status.

The extrajudicial proceedings, such as the writing of collection or demand letters, must have been initiated by the bank and/or its lawyers before the interest or installments or amortizations on the debt have become past due and unpaid for a period of six (6) months.

The debt shall continue to be considered in process of collection for a period of six (6)

months counted from date of the first collection or demand letter and if, within this period, the debtor fails to make a payment of at least twenty percent (20%) of the outstanding balance of the principal on his account, plus all interest which may have accrued thereon, the same shall automatically be classified as bad debts unless judicial proceedings are instituted.

The debt shall continue to be considered in process of collection during the pendency of the judicial proceedings. When judgment against the debtor has been obtained, the bank must be active in enforcing the judgment for the debt to continue to be considered in process of collection.

Requirements on the declaration of dividends. At the time of declaration, banks shall have complied with the following:

- a. Clearing account with the Bangko Sentral is not overdrawn;
- b. Liquidity floor requirement for government funds;
- c. Minimum capitalization requirement and risk-based capital ratios as provided under applicable and existing capital adequacy framework;
- d. The combined requirement for Capital conservation buffer and the countercyclical capital buffer as defined in *Appendix 59*, for universal and commercial banks (UBs/KBs) and their subsidiary banks and quasi-banks QBs;
- e. Higher loss absorbency requirement, phased-in starting 1 January 2017 with full implementation by 1 January 2019, in accordance with Domestic Systemically Important Banks (DSIBs) Framework as provided under Sec. 128, for UB/KBs and their subsidiary banks and QBs that are identified as DSIBs; and
- f. Has not committed any unsafe or unsound banking as defined under existing regulations and/or major acts or omissions¹ as may be determined by the Bangko Sentral to be ground for suspension of dividend distribution, unless this has been addressed by the bank as confirmed by the Monetary Board or the Deputy Governor of the appropriate sector, as may be applicable, upon recommendation of the appropriate supervising department of the Bangko Sentral.

Banks shall ensure compliance with the minimum capital requirements and risk-based capital ratios even after the dividend distribution.

Net amount available for dividends. The net amount available for dividends shall be the amount of

unrestricted or free retained earnings and undivided profits reported in the Financial Reporting Package (FRP) as of the calendar/fiscal year-end immediately preceding the date of dividend declaration.

The derivation of the amount of dividends from the unrestricted/free retained earnings shall be based on a sound accounting system and loss provisioning processes under existing regulations which takes into account relevant capital adjustments including losses, bad debts and unearned profits or income².

Reporting and verification. Declaration of dividends shall be reported by the bank concerned to the appropriate supervising department of the Bangko Sentral within ten (10) business days after date of declaration in the following manner:

- a. Submission of a duly notarized certification (*Appendix 120*) signed by the President, or an officer of equivalent rank, and the Chief Compliance Officer stating that the bank has complied with the requirements on the declaration of dividends provided under this Section on Requirements on the declaration of dividends, and, in the case of rural banks and cooperative banks, Sec. 124-C (*Limitations/amount available for dividends declared by rural banks and cooperative banks*), as well as other existing applicable laws; and
- b. Submission of the Report on Dividends Declared listed under *Appendix 7*, which shall be considered a Category A-1 report.

However, banks with major supervisory concerns such as those initiated under PCA or with specific MB directive to suspend/refrain/restrict dividend declaration, shall be subject to prior Bangko Sentral verification by the appropriate supervising department of the Bangko Sentral. Pending verification of abovementioned reports, no announcement or communication on the declaration of dividends nor shall any payment be made thereon until receipt of Bangko Sentral advice thereof.

Recording of dividends. The liability for dividends declared shall be taken up in the bank's books upon its declaration.

However, for dividend declarations that are subject to prior Bangko Sentral verification, the liability for dividends declared shall be taken up in the bank's books upon receipt of Bangko Sentral advice thereof. A memorandum entry may be made to record the dividend declaration on the date of approval by the board of directors.

For full disclosure purposes, the dividends declared shall be disclosed in the financial statements either as a footnote in the statement of changes in equity or in the notes to the financial statements.

For dividends declared that is still subject to prior Bangko Sentral verification, disclosure by means of a footnote should include a statement to the effect that the dividend declaration is subject to review by the Bangko Sentral.

Issuance of fractional shares. Whenever the declaration of stock dividend results in the issuance of fractional shares, banks may observe the following guidelines:

- a. The amount corresponding to the fraction should be given in the form of cash dividend; and
- b. The certificate of stock issued should be in whole numbers, and the fractional shares shall be issued in the form of scrip certificates. In no case shall the certificate of stock be issued including such fractional share. The scrip certificate is temporary in nature and should be redeemed in cash when the bank is in a position to do so, or stockholders holding such scrip certificates may negotiate with other stockholders for the purchase or sale of such shares to convert them into full shares, subject to the limitations on stockholdings as provided by law.

Supervisory enforcement actions. Consistent with Sec. 002, the Bangko Sentral may deploy enforcement actions to promote adherence with the rules and regulations governing dividend declaration and bring about timely corrective actions. The Bangko Sentral may issue directives to suspend/refrain/restrict from performing a particular activity or impose sanctions to limit the level of or suspend any business activity that has adverse effects on the safety or soundness of the bank, among others. Sanctions may likewise be imposed on a bank and/or its directors, officers and/or employees.

The imposition of sanctions shall be without prejudice to the imposition of administrative sanctions under Section 37 of R.A. No. 7653 including declaring as unsafe or unsound (as defined under Section 56 of R.A. No. 8791) the inappropriate dividend declarations, and/or to the filing of appropriate criminal charges against culpable persons as provided under Section 35 of R.A. No. 7653 for the willful making of a false/misleading statement.

Further, banks subsequently found to have violated the provisions on dividend declaration or have falsely certified/submitted misleading statements shall be reverted to the prior Bangko Sentral verification wherein the bank can only make an announcement or communication on the declaration of dividends or payment of dividends thereon³ upon receipt of Bangko Sentral advice thereof.

(Circular Nos. 1024 dated 06 December 2018 and 888 dated 09 October 2015)

Footnotes

1. Major acts or omissions is defined as bank individual failure to comply with the requirements of banking laws, rules and regulations as well as Monetary Board directives having material impact on bank capital, solvency, liquidity or profitability, and/or those violations classified as major offenses under the Report of

Examination, except those classified under unsafe or unsound banking.

2. Unearned profits or income refers to unrealized items which are considered not available for dividend declaration such as accumulated share/equity in net income of its subsidiaries, associates or joint venture accounted for under the equity method, recognized deferred tax asset, foreign exchange profit arising from revaluation of foreign exchange denominated accounts and others.
3. Subject banks whose shares are listed with any domestic stock exchange may declare dividends and give immediate notice of such declaration to the SEC and the stock exchanges, in compliance with pertinent rules of the SEC: *Provided*, That no record date is fixed for such dividend pending verification of the report on such declaration by the appropriate supervising department of the Bangko Sentral.