

## 135 REMUNERATION AND OTHER INCENTIVES

The board of directors shall approve a remuneration and other incentives policy that is appropriate and consistent with the BSFI's operating and risk culture, long-term business and risk appetite, performance, and control environment. Said policy shall cover all employees and should be designed to encourage good performance that supports the interest of the BSFI and its stakeholders. It shall be aligned with prudent risk-taking and explicitly discourage excessive risk-taking as defined by internal policies. The board of directors or a board-level committee (e.g., corporate governance committee) shall monitor and review the remuneration and other incentives policy including plans, processes and outcomes, at least annually, to ensure that it operates and achieves the objectives as intended.

BSFIs shall consider the following in the design of the remuneration and other incentives policy:

- a. The remuneration and incentives package shall take into account the employee's position, role, responsibilities and activities in the BSFI. It shall also consider the risks that the employee takes on behalf of the BSFI. In this regard, it should be sensitive to prospective risks and risk outcomes that have been realized and considers the overall performance of the BSFI.
- b. Remuneration and incentive pay-out schedule should be sensitive to the time horizon of risk. The policy may include provisions that defer payment until risk outcomes are better known or provisions under which remuneration and incentives may be reduced or reversed if new facts emerge showing that the remuneration and incentives paid was based on erroneous assumptions, such as misreporting or if it is discovered that the employee has failed to comply with internal policies or legal requirements.
- c. Remuneration of employees in risk control functions (i.e., internal audit, compliance, and risk management functions) shall be based on the achievement of their objectives and shall be independent of the business lines which they oversee.

**Profit sharing programs.** Profit sharing programs adopted in favor of directors, officers, and employees shall be reflected in the by-laws of the BSFI, subject to the following guidelines:

- a. The base in any profit sharing program shall be the net income for the year of the bank as shown in its Consolidated Statement of Income and Expenses for the year, net of the following:
  - (1) All cumulative dividends accruing to preferred stock to the extent not covered by earned surplus;
  - (2) Accrued interest receivable credited to income but not yet collected, net of reserves already

set up for uncollected interest on loans;

- (3) Unbooked allowance for credit losses on loans or the amount required to update allowance for credit losses in accordance with the schedule approved by the Monetary Board, as well as all amortizations due on deferred charges;
  - (4) Provisions for current year's taxes;
  - (5) Income tax deferred for the year: *Provided, however,* That in case of reversal of deferred income taxes which were deducted from net income in computing for profit sharing of previous years, the deferred income tax reversed to expense shall be added back to net income to arrive at the base for profit sharing for the year during which the reversal is made; and
  - (6) Accumulated profits not yet received but already recorded by a bank representing its share in profits of its subsidiaries under the equity method of accounting;
- b. The bank may provide in its by-laws for other priorities in the computation of net profits for purposes of profit sharing: *Provided,* That in no case shall profit sharing take precedence over any of the items in the preceding paragraph; and
  - c. Prior approval of the Monetary Board shall be necessary before a bank which has received financial assistance from the Bangko Sentral may implement its profit sharing program. *Financial assistance* shall refer to emergency loans and advances and such other forms of credit accommodations which are intended to provide banks with liquidity in times of need.

**Loans, advances, and other credit accommodations to officers.** BSFIs may grant loans, advances, or any other forms of credit accommodations to their officers as part of a board-approved remuneration and incentive program. The board of directors shall ensure that these credit accommodations are granted for legitimate purposes, such as among others, financing the housing, transportation, and personal needs of the officers. In this regard, the board of directors shall identify specific purposes eligible for said credit accommodations to officers to promote good performance and acceptable risk-taking behavior consistent with the BSFI's operating and risk culture, long-term business and risk appetite, performance, and control environment. BSFIs shall submit the board-approved purposes for the grant of loans, advances, or any other forms of credit accommodations to officers for approval of the Bangko Sentral. The guidelines and contractual provisions implementing said defined purposes, and any subsequent changes thereto, shall on the other hand, be approved by the board of directors or a board-level committee.

*Transitory provision.* Existing financing programs for officers that have been approved by the Bangko Sentral prior to 14 September 2017, need not be resubmitted: *Provided*, That BSFIs that shall change any of the provisions of the earlier approved program shall submit for approval of the Bangko Sentral the board-approved purposes for the grant of loans, advances, or any other forms of credit accommodations to officers.

a. *Funding by foreign banks.* In the case of local branches of foreign banks, financial assistance for their officers and employees may be funded, through any of the following means:

(1) Through a local affiliate by special arrangement with the head office abroad in any of the following forms:

- (a) Inward remittance from the head office of the affiliate; or
- (b) Assignment to the affiliate of equivalent amounts of profits otherwise remittable abroad under existing regulations; or
- (c) Direct loans by the foreign bank to the affiliate; or

(2) Through the local branch itself by:

(a) Segregation or transfer of undivided profits normally remitted to the head office abroad equivalent to the loans to officers and employees which shall be lodged under "Other Liabilities-Head Office Accounts". This account shall at all times have a balance equivalent to the outstanding loans to officers/employees financed under this scheme; or

(b) Inward remittance; or

(3) Through the local branch from local sources without earmarking an equivalent amount of undivided profits: *Provided*, That the aggregate ceilings on such loans as provided under existing regulations shall apply.

Loans under Items "(2)(a)" and "(2)(b)" above shall be treated in the branch books as loans granted by its head office. The documentation and collection of such loans shall be handled by the branch for the account of the head office.

Loans financed under Items "(1)" and "(2)" above shall be excluded from the computation of the capital to risk assets ratio.

b. Other conditions/limitations.

- (1) The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.
- (2) The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.
- (3) The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.

Banks providing financial assistance to their officers/employees shall submit a regular report on "availments of financial assistance to officers and employees" to the Bangko Sentral within fifteen (15) banking days after end of reference semester.

The appropriate supervising department of the Bangko Sentral may further require banks to submit such data or information as may be necessary to facilitate verification of such transactions by Bangko Sentral examiners.

**Compensation and other benefits of directors and officers.** To protect the funds of depositors and creditors, the Monetary Board may regulate/restrict the payment by the BSFI of compensation, allowances, fees, bonuses, stock options, profit sharing and fringe benefits to its directors and officers in exceptional cases and when the circumstances warrant, such as, but not limited to the following:

- a. When the bank is under controllership, conservatorship or when it has outstanding emergency loans and advances and such other forms of credit accommodation from the Bangko Sentral which are intended to provide it with liquidity in times of need;
- b. When the institution is found by the Monetary Board to be conducting business in an unsafe or unsound manner;
- c. When it is found by the Monetary Board to be in an unsatisfactory financial condition such as, but not limited to, the following cases:
  - (1) Its capital is impaired;
  - (2) It has suffered continuous losses from operations for the past three (3) years;
  - (3) Its composite CAMEL(S) rating in the latest examination is below "3"; and
  - (4) It is under rehabilitation by the Bangko Sentral/PDIC which rehabilitation may include debt-to-equity conversion, etc.

In the presence of any one (1) or more of the circumstances mentioned above, the Monetary Board may impose the following restrictions in the compensation and other benefits of directors and officers:

- a. In the case of profit sharing, the provision of Sec. 135 (*Profit sharing programs*) shall be observed except that for purposes of this Section, the total amount of unbooked valuation reserves and deferred charges shall be deducted from the net income.
- b. Except for the financial assistance to meet expenses for the medical, maternity, education and other emergency needs of the directors or officers or their immediate family, the other forms of financial assistance may be suspended.
- c. When the total compensation package including salaries, allowances, fees and bonuses of directors and officers are significantly excessive as compared with peer group averages, the Monetary Board may order their reduction to reasonable levels: *Provided*, That even if a bank is in financial trouble, it may nevertheless be allowed to grant relatively higher salary packages in order to attract competent officers and quality staff as part of its rehabilitation program.

The foregoing provisions founded on Section 18 of R.A. No. 8791 shall be deemed part of the benefits and compensation programs of banks.