

## 138 DISQUALIFICATION AND WATCHLISTING OF DIRECTORS AND OFFICERS.

This Section shall also apply to Coop Banks.

**Persons disqualified to become directors.** Without prejudice to specific provisions of law prescribing disqualifications for directors, the following are disqualified from becoming directors:

a. *Permanently disqualified*

Directors/officers/employees permanently disqualified by the Monetary Board from holding a director position:

- (1) Persons who have been convicted by final judgment of a court for offenses involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. Blg. 22, violation of Anti-Graft and Corrupt Practices Act and prohibited acts and transactions under Section 7 of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees);
- (2) Persons who have been convicted by final judgment of a court sentencing them to serve a maximum term of imprisonment of more than six (6) years;
- (3) Persons who have been convicted by final judgment of the court for violation of banking laws, rules and regulations;
- (4) Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;
- (5) Directors, officers or employees of closed banks who were found to be culpable for such institution's closure as determined by the Monetary Board;
- (6) Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of removal from office is imposed, and which finding of the Monetary Board has become final and executory; or
- (7) Directors and officers of banks or any person found by the Monetary Board to be unfit for the position of directors or officers because they were found administratively liable by another government agency for violation of banking laws, rules and regulations or any offense/violation involving dishonesty or breach of trust, and which finding of said government agency has become final and executory.

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### b. *Temporarily disqualified*

Directors/officers/employees disqualified by the Monetary Board from holding a director position for a specific/indefinite period of time. Included are:

- (1) Persons who refuse to fully disclose the extent of their business interest or any material information to the appropriate supervising department of the Bangko Sentral when required pursuant to a provision of law or of a circular, memorandum, rule or regulation of the Bangko Sentral. This disqualification shall be in effect as long as the refusal persists;
- (2) Directors who have been absent or who have not participated for whatever reasons in more than fifty percent (50%) of all meetings, both regular and special, of the board of directors during their incumbency, and directors who failed to physically attend for whatever reasons in at least twenty-five percent (25%) of all board meetings in any year, except that when a notarized certification executed by the corporate secretary has been submitted attesting that said directors were given the agenda materials prior to the meeting and that their comments/decisions thereon were submitted for deliberation/discussion and were taken up in the actual board meeting, said directors shall be considered present in the board meeting. This disqualification applies only for purposes of the immediately succeeding election;
- (3) Persons who are delinquent in the payment of their obligations as defined hereunder:
  - (a) *Delinquency in the payment of obligations means* that an obligation of a person with a bank where he/she is a director or officer, or at least two (2) obligations with other banks/FIs, under different credit lines or loan contracts, are past due pursuant to Sec. 304;
  - (b) *Obligations* shall include all borrowings from a bank obtained by:
    - (i) A director or officer for his own account or as the representative or agent of others or where he/she acts as a guarantor, endorser or surety for loans from such FIs;
    - (ii) The spouse or child under the parental authority of the director or officer;
    - (iii) Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a director or officer;
    - (iv) A partnership of which a director or officer, or his/her spouse is the managing partner or a general partner owning a controlling interest in the partnership; and
    - (v) A corporation, association or firm wholly-owned or majority of the capital of which is owned by any or a group of persons mentioned in the foregoing Items “(i)”, “(ii)” and “(iv)”;

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This disqualification shall be in effect as long as the delinquency persists.

- (4) Persons who have been convicted by a court for offenses involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. Blg. 22, violation of Anti-Graft and Corrupt Practices Act and prohibited acts and transactions under Section 7 of R.A. No. 6713, violation of banking laws, rules and regulations or those sentenced to serve a maximum term of imprisonment of more than six (6) years but whose conviction has not yet become final and executory;
- (5) Directors and officers of closed banks pending their clearance by the Monetary Board;
- (6) Directors disqualified for failure to observe/discharge their duties and responsibilities prescribed under existing regulations. This disqualification applies until the lapse of the specific period of disqualification or upon approval by the Monetary Board on recommendation by the appropriate supervising department of the Bangko Sentral of such directors' election/reelection;
- (7) Directors who failed to attend the special seminar for board of directors required under Item "a(2)" of Sec. 132 (*Qualifications of a director*). This disqualification applies until the director concerned had attended such seminar;
- (8) Persons dismissed/terminated from employment for cause. This disqualification shall be in effect until they have cleared themselves of involvement in the alleged irregularity or upon clearance, on their request, from the Monetary Board after showing good and justifiable reasons, or after the lapse of five (5) years from the time they were officially advised by the appropriate supervising department of the Bangko of their disqualification;
- (9) Those under preventive suspension;
- (10) Persons with derogatory records as certified by, or on the official files of, the judiciary, NBI, Philippine National Police (PNP), quasi-judicial bodies, other government agencies, international police, monetary authorities and similar agencies or authorities of foreign countries for irregularities or violations of any law, rules and regulations that would adversely affect the integrity of the director/officer or the ability to effectively discharge his duties. This disqualification applies until they have cleared themselves of the alleged irregularities/violations or after a lapse of five (5) years from the time the complaint, which was the basis of the derogatory record, was initiated;

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- (11) Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of removal from office is imposed, and which finding of the Monetary Board is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court;
- (12) Directors and officers of banks or any person found by the Monetary Board to be unfit for the position of director or officer because they were found administratively liable by another government agency for violation of banking laws, rules and regulations or an offense/violation involving dishonesty or breach of trust, and which finding of said government agency is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court; and
- (13) Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of suspension from office or fine is imposed, regardless whether the finding of the Monetary Board is final and executory or pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court. The disqualification shall be in effect during the period of suspension or so long as the fine is not fully paid.

### ***Persons disqualified to become officers.***

- a. The disqualifications for directors mentioned under this Section shall likewise apply to officers, except those stated in Items "b(2)" and "b(7)".
- b. The spouses or relatives within the second degree of consanguinity or affinity are prohibited from holding officership positions across the following functional categories within a bank:
  - (1) Decision making and senior management function, e.g., chairman, president, chief executive officer (CEO), chief operating officer (COO), general manager, and chief financial officer (CFO) other than the treasurer or controller;
  - (2) Treasury function, e.g., Treasurer and Vice President - Treasury;
  - (3) Recordkeeping and financial reporting functions, e.g., controller and chief accountant;
  - (4) Safekeeping of assets, e.g., chief cashier;
  - (5) Risk management function, e.g., chief risk officer;
  - (6) Compliance function, e.g., compliance officer; and
  - (7) Internal audit function, e.g., internal auditor.

The spouse or a relative within the second degree of consanguinity or affinity of any person holding the position of manager, cashier, or accountant of a branch or extension office of a bank

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or their respective equivalent positions is disqualified from holding or being appointed to any of said positions in the same branch or branch-lite unit.

- c. Any appointive or elective official<sup>1</sup>, whether full time or part time, except in cases where such service is incident to financial assistance provided by the government or government owned or -controlled corporations (GOCCs) or in cases allowed under existing law.
- d. In the case of Coop Banks, any officer or employee of CDA or any elective public official, except a barangay official.
- e. Except as may otherwise be allowed under Commonwealth Act No. 108, otherwise known as “The Anti-Dummy Law”, as amended, foreigners cannot be officers or employees of banks.

***Effect of non-possession of qualifications or possession of disqualifications.*** A director/officer elected/appointed who does not possess all the qualifications mentioned under Sec. 132 and Sec. 134 and/or has any of the disqualifications mentioned under Sec. 138 shall not be confirmed by the confirming authority under Sec. 137 and shall be removed from office even if he/she has assumed the position to which he/she was elected or appointed pursuant to Section 16 of R.A. No. 8791. A confirmed director/officer or officer not requiring confirmation found to possess any of the disqualifications, enumerated in the abovementioned Section shall be subject to the disqualification procedures provided under this Section.

### ***Disqualification procedures.***

- a. The board of directors and management of every institution shall be responsible for determining the existence of the ground for disqualification of the institution’s director/officer or employee and for reporting the same to the Bangko Sentral. While the concerned institution may conduct its own investigation and impose appropriate sanction/s as are allowable, this shall be without prejudice to the authority of the Monetary Board to disqualify a director/officer/employee from being elected/appointed as director/officer in any FI under the supervision of the Bangko Sentral. Grounds for disqualification made known to the institution, shall be reported to the appropriate supervising department of the Bangko Sentral within seventy-two (72) hours from knowledge thereof.
- b. On the basis of knowledge and evidence on the existence of any of the grounds for disqualification mentioned in Sec. 138, the director or officer concerned shall be notified in writing either by personal service or through registered mail with registry return receipt card at his/her last known address by the appropriate supervising department of the Bangko Sentral of the existence of the ground for his/her disqualification and shall be allowed to submit within

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fifteen (15) calendar days from receipt of such notice an explanation on why he/she should not be disqualified and included in the watchlisted file, together with the evidence in support of his/her position. The head of said department may allow an extension on meritorious ground.

- c. Upon receipt of the reply explanation of the director/officer concerned, the appropriate supervising department of the Bangko Sentral shall proceed to evaluate the case.

The director/officer concerned shall be afforded the opportunity to defend/clear himself/herself.

- d. If no reply has been received from the director/officer concerned upon the expiration of the period prescribed under Item "b" above, said failure to reply shall be deemed a waiver and the appropriate supervising department of the Bangko Sentral shall proceed to evaluate the case based on available records/evidence.

- e. If the ground for disqualification is delinquency in the payment of obligation, the concerned director or officer shall be given a period of thirty (30) calendar days within which to settle said obligation or, restore it to its current status or, to explain why he/she should not be disqualified and included in the watchlisted file, before the evaluation on his disqualification and watchlisting is elevated to the Monetary Board.

- f. For directors/officers of closed banks, the appropriate supervising department of the Bangko Sentral shall make appropriate recommendation to the Monetary Board clearing said directors/officers when there is no pending case/complaint or evidence against them. When there is evidence that a director/officer has committed irregularity, the appropriate supervising department of the Bangko Sentral shall make recommendation to the Monetary Board that his/her case be referred to the Office of Special Investigation (OSI) for further investigation and that he/she be included in the masterlist of temporarily disqualified persons until the final resolution of his/her case. Directors/officers with pending cases/complaints shall also be included in said masterlist of temporarily disqualified persons upon approval by the Monetary Board until the final resolution of their cases. If the director/officer is cleared from involvement in any irregularity, the appropriate supervising department of the Bangko Sentral shall recommend to the Monetary Board his/her delisting. On the other hand, if the director/officer concerned is found to be responsible for the closure of the institution, the appropriate supervising department of the Bangko Sentral shall recommend to the Monetary Board his/her delisting from the masterlist of temporarily disqualified persons and his/her inclusion in the masterlist of permanently disqualified persons.

- g. If the disqualification is based on dismissal from employment for cause, the appropriate

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supervising department of the Bangko Sentral shall, as much as practicable, endeavor to establish the specific acts or omissions constituting the offense or the ultimate facts which resulted in the dismissal to be able to determine if the disqualification of the director/officer concerned is warranted or not. The evaluation of the case shall be made for the purpose of determining if disqualification would be appropriate and not for the purpose of passing judgment on the findings and decision of the entity concerned. The appropriate supervising department of the Bangko Sentral may decide to recommend to the Monetary Board a penalty lower than disqualification (e.g., reprimand, suspension, etc.) if, in its judgment the act committed or omitted by the director/officer concerned does not warrant disqualification.

- h. All other cases of disqualification, whether permanent or temporary shall be elevated to the Monetary Board for approval and shall be subject to the procedures provided in Items "a", "b", "c" and "d" above.
- i. Upon approval by the Monetary Board, the concerned director/officer shall be informed by the appropriate supervising department of the Bangko Sentral in writing either by personal service or through registered mail with registry return receipt card, at his/her last known address of his/her disqualification from being elected/appointed as director/officer in any FI under the supervision of Bangko Sentral and/or of his/her inclusion in the masterlist of watchlisted persons so disqualified.
- j. The board of directors of the concerned institution shall be immediately informed of cases of disqualification approved by the Monetary Board and shall be directed to act thereon not later than the following board meeting. Within seventy-two (72) hours thereafter, the corporate secretary shall report to the Governor of the Bangko Sentral through the appropriate supervising department of the Bangko Sentral the action taken by the board on the director/officer involved.
- k. Persons who are elected or appointed as director or officer in any of the BSP-supervised institutions for the first time but are subject to any of the grounds for disqualification provided for under Sec. 138, shall be afforded the procedural due process prescribed above.
- l. Whenever a director/officer is cleared in the process mentioned under Item "c" above or, when the ground for disqualification ceases to exist, he/she would be eligible to become director or officer of any bank, QB, trust entity or any institution under the supervision of the Bangko Sentral only upon prior approval by the Monetary Board. It shall be the responsibility of the appropriate supervising department of the Bangko Sentral to elevate to the Monetary Board the lifting of the disqualification of the concerned director/officer and his/her delisting from the masterlist of watchlisted persons.

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**Watchlisting.** To provide the Bangko Sentral with a central information file to be used as reference in passing upon and reviewing the qualifications of persons elected or appointed as director or officer of a bank, QB or trust entity, the Bangko Sentral shall maintain a watchlist of persons disqualified to be a director or officer of such entities under its supervision under the following procedures:

a. *Watchlist categories.* Watchlisting shall be categorized as follows:

- (1) Disqualification File "A" (Permanent) – Directors/officers/employees permanently disqualified by the Monetary Board from holding a director/officer position.
- (2) Disqualification File "B" (Temporary) – Directors/officers/employees temporarily disqualified by the Monetary Board from holding a director/officer position

b. *Inclusion of directors/officers/employees in the watchlist.* Directors/officers/employees disqualified under this Section shall be included in the watchlist disqualification files "A" or "B".

c. *Confidentiality.* Watchlist files shall be for internal use only of the Bangko Sentral and may not be accessed or queried upon by outside parties including banks, QBs NBFIs with trust authority and trust corporations except with the authority of the person concerned (without prejudice to the authority of the Governor and the Monetary Board to authorize release of the information) and with the approval of the appropriate supervising Department Head or Subsector Head or the Deputy Governor or the Governor or the Monetary Board.

The Bangko Sentral will disclose information on the persons included in its watchlist files only upon submission of a duly notarized authorization from the concerned person and approval of such request by the appropriate supervising Department Head or Subsector Head or the Deputy Governor, or the Governor or the Monetary Board. The prescribed authorization form to be submitted to the appropriate supervising department of the Bangko Sentral is in *Appendix 80*.

Banks can gain access to said information in the said watchlist for the sole purpose of screening their nominees/applicants for directors/officers and/or confirming their elected directors and appointed officers. Banks must obtain the said authorization on an individual basis.

d. *Delisting.* All delistings shall be approved by the Monetary Board upon recommendation of the appropriate supervising department of the Bangko Sentral except in cases of persons known to be dead where delisting shall be automatic upon proof of death and need not be elevated to the Monetary Board. Delisting may be approved by the Monetary Board in the following cases:

- (1) Watchlist – Disqualification File "B" (Temporary) –



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- (a) After the lapse of the specific period of disqualification;
- (b) When the conviction by the court for crimes involving dishonesty, breach of trust and/or violation of banking law becomes final and executory, in which case the director/officer/employee is relisted to Watchlist - Disqualification File "A" (Permanent); and
- (c) Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, Bangko Sentral, bank, QB, trust entity or such other agency/body where the concerned individual had derogatory record.

Directors/officers/employees delisted from the Watchlist - Disqualification File "B" other than those upgraded to Watchlist - Disqualification File "A" shall be eligible for re-employment with any bank, QB or trust entity.

*(Circular Nos. 987 dated 28 December 2017, and 969 dated 22 August 2017)*

### Footnotes

1. In the case of RB, appointive and elective public officials currently holding officership positions shall continue holding such position until the end of their current terms effective 13 September 2013.