

## 412 ORGANIZATION AND MANAGEMENT

**Organization.** A bank authorized to engage in trust and other fiduciary business shall, pursuant to Sec. 411, include in its by-laws, provisions on the organization plan or structure of the department, office or unit which shall conduct such business. The by-laws shall also include provisions on the creation of a trust committee, the appointment of a trust officer and other subordinate officers and a clear definition of their duties and responsibilities as well as their line and staff functional relationships within the organization which shall be in accordance with the following guidelines.

- a. Trust and other fiduciary business of a bank shall be carried out through a trust department which shall be organizationally, operationally, administratively and functionally separate and distinct from the other departments and/or businesses of the institution.

A bank which is also engaged in investment management activities, shall conduct the same only through its trust department and the responsibilities of the board of directors, trust committee and trust officer shall be construed to include the proper administration and management of investment management activities.

No bank shall undertake any of the trust and other fiduciary business and, whenever applicable, investment management activities outside the direct control, authority and management of the trust department or through any department or office which is involved in the other businesses of the bank, such as the Treasury, Funds Management or any similar department, otherwise, any such business shall be considered part of the bank's real liabilities.

The bank proper and the trust department may share the following activities: (1) electronic data processing; (2) credit investigation; (3) collateral appraisal; and (4) messengerial, janitorial and security services.

- b. The trust department, trust officer and other subordinate officers of the trust department shall only be directly responsible to the bank's trust committee which shall, in turn, be only directly responsible to the bank's board of directors.

No director, officer or employee taking part in the management of trust and other fiduciary accounts shall perform duties in other departments or the audit committee of the bank and vice versa. However, branch managers duly authorized by the board of directors may, for or on behalf of the trust officer, sign predrawn trust instruments such as UITFs.

- c. The organization structure and definition of duties and responsibilities of the trust committee, officers and employees of the trust department shall reflect adherence to the minimum internal

control standards prescribed by the Bangko Sentral.

- d. Provisions shall be made by the bank to have legal assistance readily available in the review of proposed and/or existing trust and fiduciary agreements and documents and in the handling of legal and tax matters related thereto.

**Composition of trust committee.** The Trust Committee shall be composed of at least five (5) members including the (1) president or any senior officer of the bank; and (2) the trust officer. The remaining committee members, including the chairperson, may be any of the following: (1) non-executive directors<sup>1</sup> or independent directors<sup>2</sup> who are both not part of the audit committee; or (2) those considered as qualified *“independent professionals”*: *Provided*, That the Philippine branch of a foreign bank may appoint its resident manager or chief executive officer in lieu of the president while the positions allotted for members of the board may be filled up by the area manager and/or officers/representatives from the Head Office, or affiliates or subsidiaries of the head office who are not involved in audit-related activities: *Provided, further*, That in case of more than five (5) trust committee membership, majority shall be composed of qualified non-executive members.

A qualified *“independent professional”* shall refer to a person who –

- a. is not a director/officer/employee of the bank during the last twelve (12) months counted from the date of committee membership;
- b. is not a relative within the fourth degree of consanguinity or affinity, legitimate or common-law of any executive director or those involved in the day to day management of institution’s operations or officer of the bank; and
- c. is not engaged or does not engage in any transactions with the bank whether by himself or with other persons or through a firm of which he is a partner, other than transactions which are conducted at arm’s length and could not materially interfere with or influence the exercise of his judgment.

An independent professional may be appointed as a Trust Committee member of other banks that belong to the same financial conglomerate.

For purposes of this Section, the definition of officer under Sec. 131 shall apply.

**Qualifications of committee members, officers and staff.** The bank’s trust department shall be staffed by persons of competence, integrity and honesty. Directors, committee members and officers charged with the administration of trust and other fiduciary activities shall, in addition to meeting the

qualification standards prescribed for directors and officers of banks or for qualified “*independent professionals*”, possess the necessary technical expertise and relevant experience in such business which may be indicated by any of the following:

- a. at least one (1) year of actual experience in trust, other fiduciary business, or investment management activities;
- b. at least three (3) years of professional experience in relevant field such as banking, finance, economics, law, and risk management;
- c. completion of at least ninety (90) training hours on trust, other fiduciary business, or investment management activities acceptable to the Bangko Sentral; or
- d. completion of a relevant global or local professional certification program.

A Trust Committee member should be familiar with Philippine laws, rules and regulations on trust business, as well as uphold at all times ethical and good governance standards.

The trust officer who shall be appointed shall possess any of the following:

- a. 1 at least five (5) years of actual experience in trust operations;
- b. at least three (3) years of actual experience in trust operations and must have:
  - (1) completed at least ninety (90) training hours in trust, other fiduciary business, or investment management activities acceptable to the Bangko Sentral; or
  - (2) completed a relevant global or local professional certification program; or
- c. at least five (5) years of actual experience as an officer of a bank and must have:
  - (1) completed at least ninety (90) training hours in trust, other fiduciary business, or investment management activities acceptable to the Bangko Sentral; or
  - (2) completed a relevant global or local professional certification program.

For the purpose of this Section, actual experience refers to exposures in trust operations either as officer of a trust entity or member of trust committee.

#### ***Responsibilities of administration***

- a. Board of directors

The responsibilities of the board of directors in relation to trust activities of a bank shall be those set forth under Sec. 132. The board of directors shall ensure an appropriate degree of

independence between the activities of the bank proper and its trust department.

b. Trust Committee

The trust committee is a special committee which reports directly to the board of directors and is primarily responsible for overseeing the fiduciary activities of the bank. In discharging its function, it shall:

- (1) ensure that fiduciary activities are conducted in accordance with applicable laws, rules and regulations, and prudent practices;
- (2) ensure that policies and procedures that translate the board's objectives and risk tolerance into prudent operating standards are in place and continue to be relevant, comprehensive and effective;
- (3) oversee the implementation of the risk management framework and ensure that internal controls are in place relative to the fiduciary activities;
- (4) adopt an appropriate organizational structure/staffing pattern and operating budgets that shall enable the trust department to effectively carry out its functions;
- (5) oversee and evaluate performance of the trust officer;
- (6) conduct regular meetings at least once every quarter, or more frequently as necessary, depending on the size and complexity of the fiduciary business; and
- (7) report regularly to the board of directors on matters arising from fiduciary activities.

c. Trust Officer

The management of day-to-day fiduciary activities shall be vested in the trust officer. In this regard, the trust officer shall:

- (1) ensure adherence to the basic standards in the administration of trust, other fiduciary and investment management accounts pursuant to *Appendix 86*;
- (2) develop and implement relevant policies and procedures on fiduciary activities;
- (3) observe sound risk management practices and maintain necessary controls to protect assets under custody and held in trust or other fiduciary capacity;
- (4) carry out investment and other fiduciary activities in accordance with agreements with clients and parameters set by the trust committee as approved by the board of directors;
- (5) report regularly to the trust committee on business performance and other matters requiring its attention;
- (6) maintain adequate books, records and files for each trust or other fiduciary account and provide timely and regular disclosure to clients on the status of their accounts; and
- (7) submit periodic reports to regulatory agencies on the conduct of the trust operations.

**Confirmation of the appointment/designation of trust officer and independent professional.** An independent professional and trust officer must be fit and proper to discharge their respective functions. In determining whether a person is fit and proper for the position, regard shall be given to the following: Integrity/probity, physical/mental fitness, competence, relevant education/ financial literacy/training, diligence and knowledge/experience.

The appointment or designation of independent professional and trust officer shall be subject to confirmation by the supervising department committee of the Bangko Sentral. The bio-data of the proposed independent professional and trust officer shall be submitted to the Bangko Sentral, in a prescribed form indicated in *Appendix 7*, within seven (7) banking days from approval of the board of directors or its functional oversight equivalent which shall include the country head in case of foreign banks. Moreover, the independent professional shall certify that he/she possesses the qualifications as herein prescribed and that all the information thereby supplied are true and correct.

If after evaluation, the Monetary Board shall find grounds for disqualification, the concerned bank shall be informed thereof and the independent professional and trust officer so appointed or delegated shall be removed from office even if he/she has assumed the position to which he/she was appointed or delegated.

*(Circular Nos. 969 dated 22 August 2017)*

#### Footnotes

1. As defined under Sec. 131
2. As defined under Sec. 131