

413 TRUST AND OTHER FIDUCIARY BUSINESS

The conduct of trust and other fiduciary business shall be subject to the following regulations.

Minimum documentary requirements. Each trust or fiduciary account shall be covered by a written document establishing such account, as follows:

- a. In the case of accounts created by an order of the court or other competent authority, the written order of said court or authority.
- b. In the case of accounts created by corporations, business firms, organizations or institutions, the voluntary written agreement or indenture entered into by the parties, accompanied by a copy of the board resolution or other evidence authorizing the establishment of, and designating the signatories to, the trust or other fiduciary account.
- c. In the case of accounts created by individuals, the voluntary written agreement or indenture entered into by the parties.

The voluntary written agreement or indenture shall include the following minimum provisions:

- (1) Title or nature of contractual agreement in noticeable print;
- (2) Legal capacities, in noticeable print, of parties sought to be covered;
- (3) Purposes and objectives;
- (4) Funds and/or properties subject of the arrangement;
- (5) Distribution of the funds and/or properties;
- (6) Duties and powers of trustee or fiduciary;
- (7) Liabilities of the trustee or fiduciary;
- (8) Reports to the client;
- (9) Termination of contractual arrangement and, in appropriate cases, provision for successor-trustee or fiduciary;
- (10) The amount or rate of the compensation of trustee or fiduciary;
- (11) A statement in noticeable print to the effect that trust and other fiduciary business are not covered by the PDIC and that losses, if any, shall be for the account of the client; and
- (12) Disclosure requirements for transactions requiring prior authority and/ or specific written investment directive from the client, court of competent jurisdiction or other competent authority.

Lending and investment disposition¹. Assets received in trust or in other fiduciary capacity shall be

administered in accordance with the terms of the instrument creating the trust or other fiduciary relationship.

When a trustee or fiduciary is granted discretionary powers in the investment disposition of trust or other fiduciary funds and unless otherwise specifically enumerated in the agreement or indenture and directed in writing by the client, court of competent jurisdiction or other competent authority, loans and investments of the fund shall be limited to:

- a. Traditional deposit products of UBs and KBs in the Philippines with long-term credit rating of at least AA- or its equivalent by a third party credit assessment agency recognized by the Bangko Sentral;
- b. Evidences of indebtedness of the Republic of the Philippines and of the Bangko Sentral, and any other evidences of indebtedness or obligations where the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or loans against such government securities;
- c. Loans fully guaranteed by the Republic of the Philippines as to the payment of principal and interest;
- d. Tradable securities issued by the government of a foreign country or any supranational entity with long-term credit rating of at least AA- or its equivalent by a third party credit assessment agency recognized by the Bangko Sentral;
- e. Loans fully secured by a hold-out on, assignment or pledge of deposits maintained either with the bank proper or other banks, or of deposit substitutes of the bank, or of mortgage and chattel mortgage bonds issued by the trustee or fiduciary;and
- f. Loans fully secured by real estate or chattels in accordance with Secs. 303, 143 (*Credit granting and loan evaluation/analysis process and underwriting standards*) and 301 (*Additional requirements*).

The specific directives required under this Section shall consist of the following information:

- (1) The transaction to be entered into;
- (2) Name of the issuer or borrower;
- (3) Amount involved; and
- (4) Terms of the security, including collateral, if any.

Trust entities with composite rating of at least “3” under the Revised Trust Rating System in the latest Bangko Sentral examination will not be subject to the investment limitations provided under this

Section.

Transactions requiring prior authority. A trustee or fiduciary shall not undertake any of the following transactions for the account of a client, unless prior to its execution, such transaction has been fully disclosed and specifically authorized in writing by the client, beneficiary, other party-in-interest, court of competent jurisdiction or other competent authority:

- a. Lend, sell, transfer or assign money or property to any of the departments, directors, officers, stockholders or employees of the trustee or fiduciary, or relatives within the first degree of consanguinity or affinity, or the related interest of such directors, officers and stockholders; or to any corporation where the trustee or fiduciary owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity;
- b. Purchase or acquire property or debt instruments from any of the departments, directors, officers, stockholders, or employees of the trustee or fiduciary, or relatives within the first degree of consanguinity or affinity, or the related interest of such directors, officers and stockholders; or from any corporation where the trustee or fiduciary owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity;
- c. Invest in equities of, or in securities underwritten by, the trustee or fiduciary or a corporation in which the trustee or fiduciary owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity; and
- d. Sell, transfer, assign, or lend money or property from one trust or fiduciary account to another trust or fiduciary account except where the investment is in any of those enumerated in Items "a" to "d" of this Section (*Lending and investment disposition*).

DOSRIs covered by this Section shall be those considered as such under existing regulations on loans to DOSRI in Part III - D. The procedural and reportorial requirements in said regulations shall also apply.

The disclosure required under this Section shall consist of the following minimum information:

- a. The transactions to be entered into;
- b. Identities of the parties involved in the transactions and their relationships (shall not apply to Item "d" of this Section under *Transactions requiring prior authority*);
- c. Amount involved; and
- d. Collateral security(ies), if any.

The above information shall be made known to clients in a separate instrument or in the very instrument creating the trust or fiduciary relationship.

Ceilings on loans. Loans funded by trust accounts shall be subject to the SBL and DOSRI ceilings imposed on banks under Secs. 362, 344 and 345. For purposes of determining compliance with said ceilings, the total amount of said loans granted by the trust department and the bank to the same person, firm or corporation shall be combined.

Funds awaiting investment or distribution. Funds held by the trustee or fiduciary awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

Other applicable regulations on loans and investments. The loans and investments of trust and other fiduciary accounts shall be subject to pertinent laws, rules and regulations for banks that shall include but need not be limited to the following:

- a. Requirements of Sections 39 and 40 of R.A. No. 8791 (The General Banking Law of 2000);
- b. Criteria for past due accounts; and
- c. Qualitative appraisal of loans, investments and other assets that may require provision for probable losses which shall be booked in accordance with the Financial Reporting Package for Trust Institutions (FRPTI);
- d. Requirements of Sections 3 and 8 of the Securities and Regulation Code (SRC); and
- e. Provisions of Section 44 - Investments by Philippine residents - of the Bangko Sentral Manual of Regulations on Foreign Exchange Transactions (MORFXT), such that the cross-currency investments of peso trust and other fiduciary accounts, including peso unit UITFs, shall be subject to the following conditions:
 - (1) All cash flows of the trustee or fiduciary shall only be in pesos. In case the foreign exchange acquired or received by the trustee or fiduciary as dividends/earnings or divestment proceeds on such investment are intended for reinvestment abroad, the same proceeds are not required to be inwardly remitted and sold for pesos through authorized agent banks: *Provided*, That such proceeds are reinvested abroad within two (2) banking days from receipt of the funds abroad;
 - (2) The trustee or fiduciary shall purchase, invest, reinvest, sell, transfer or dispose foreign

currency-denominated financial instruments, including securities as defined in Section 3 of the SRC, through a distributor or underwriter duly authorized or licensed by the government of the issuer of such instruments, or a counterparty FI (seller or buyer) accredited by the trustee or fiduciary: *Provided, That*, the conduct, documentation, and settlement of any of these transactions shall be outside Philippine jurisdiction;

- (3) The trustee of fiduciary shall record cross-currency investment transactions in the peso regular books at their foreign currency amounts and their local currency equivalent using the Philippine Dealing System peso/US dollar closing rate and the New York US dollar/third currencies closing rate; and
- (4) The trustee or fiduciary shall comply with the reportorial requirements that may be prescribed by the Bangko Sentral, which shall include as a minimum, the foreign currency amount and the local currency equivalent of the total cross currency investments with details on: (a) type of investments; and (b) amount of cash flow converted.

For purposes of this Section, “resident”, as defined under Section 1 of the FX Manual, shall refer to the (a) trustee or fiduciary that administers the assets received in trust or in other fiduciary capacity; or (b) principal that engages the services of the investment manager under an investment management agreement.

Operating and accounting methodology. Trust and other fiduciary accounts shall be operated and accounted for in accordance with the following:

- a. The trustee or fiduciary shall administer, hold or manage the fund or property in accordance with the instrument creating the trust or other fiduciary relationship; and
- b. Funds or property of each client shall be accounted separately and distinctly from those of other clients herein referred to as individual account accounting.

Tax-exempt individual trust accounts. The following shall be the features/requirements of individual trust accounts which may be exempted from the twenty percent (20%) final tax under Section 24(B)(1) of R.A. No. 8424 (The Tax Reform Act of 1997):

- a. The trust indenture/agreement shall only be between individuals who are Filipino citizens or resident aliens and banks acting as trustee. The trust indenture/agreement shall be non-negotiable and non-transferable;
- b. The trust indenture/agreement shall indicate that pursuant to Section 24(B)(1) of R.A. No. 8424, interest income of the trust fund derived from investments in interest-bearing instruments (e.g.,

time deposits, government securities, loans and other debt instruments) which are otherwise subject to the twenty percent (20%) final tax shall be exempt from said final tax provided the fund was held by the trustee-bank for at least five (5) years. If said fund was held for a period less than five (5) years, interest income shall be subject to a final tax based on the following schedule -

| <u>Holding Period</u> | <u>Rate of Tax</u> |
|---|--------------------|
| Four (4) years to less than five (5) years | 5% |
| Three (3) years to less than four (4) years | 12% |
| Less than three (3) years | 20% |

Necessarily, the trust indenture/agreement shall clearly indicate the date when the trustee-bank actually received the trust funds which shall serve as basis for determining the holding period of the funds.

- c. A trustee may accept additional funds for inclusion in trust accounts which have been established as tax-exempt under R.A. No. 8424. However, the receipt of additional funds shall be properly documented by indicating that they are part of existing tax-exempt trust accounts and that the interest income of the additional funds derived from investments in interest-bearing instruments shall be exempt from the twenty percent (20%) final tax under the same conditions mentioned in the preceding item. The document shall also indicate the date when the funds were received by the trustee-bank to serve as basis for determining the minimum five (5)- year holding period for tax exemption purposes of the additional funds; and
- d. Tax-exempt individual trust accounts established under this Section shall be subject to the provisions of this Section under item "c" of *Minimum documentary requirements and Lending and investment disposition up to Operating and accounting methodology*.

Personal management trust. The guidelines on personal management trust (PMT) accounts are as follows:

- a. *Minimum criteria.* A PMT account shall meet the following criteria:
- (1) The minimum entry amount and maintaining balance shall be equivalent to at least P100,000: Provided, That PMT with balances of up to P500,000 shall only be invested in deposits and government securities;
 - (2) The agreement shall clearly state the specific purpose(s) for which the account was established which shall be consistent with the general objectives of the PMT which is the preservation of the assets or property for the future use of the beneficiaries and/or to answer

for their current needs;

The distribution clause shall clearly and specifically define the manner and conditions under which the assets (including income thereof) will be distributed. Any distribution/withdrawal of assets (including income thereof) shall be consistent with the purpose of the PMT, strictly in accordance with the distribution clause, and made only to the designated beneficiary/ies. Consequently, the trustee is expected to obtain adequate documentation to ensure the propriety of distribution/withdrawal of assets (including income thereof).

Pre-printed PMT agreements may be allowed for expediency: Provided, That the section for the trust purpose and the distribution clause shall not be pre-printed and shall be filled up only upon signing thereof by the trustor;

- (3) The length of PMT's existence should be consistent with the purpose of the trustor. Any termination for causes that are inconsistent with the purpose/distribution clause shall render the trustor ineligible from opening a new PMT within a period of one year from termination date; and
- (4) Management of the trust assets shall be aligned with the investment objective/s and risk parameters set forth by the trustor.

PMT accounts that do not meet any of the above criteria shall be considered as other fiduciary accounts subject to applicable reserves.

- b. **Marketing.** Officers and personnel of the Bank proper, including branch managers, shall not be allowed to market PMT products and sign pre-printed PMT agreements. However, branch managers/officers may refer clients to the Trust Department and give a short introduction on the PMT product to prospective clients.
- c. **Reserve requirement.** The PMT shall be subject to zero-percent (0%) reserve requirement.

Qualification and accreditation of private banks acting as trustee on any mortgage or bond issuance by any municipality, government-owned or controlled corporation, or any body politic

- a. **Applicability.** Private banks duly accredited by the Bangko Sentral may act as trustee on any mortgage or bond issued by any municipality, GOCC, or any body politic.
- b. **Application for accreditation.** A private bank desiring to act as trustee on any mortgage or bond

issued by any municipality, GOCC, or any body politic shall file an application for accreditation with the appropriate supervising department of Bangko Sentral. The application shall be signed by the president or officer of equivalent rank of the bank and shall be accompanied by the following documents:

- (1) certified true copy of the resolution of the institution's board of directors authorizing the application;
 - (2) a certification signed by the president or officer of equivalent rank that the institution has complied with all the qualification requirements for accreditation.
- c. *Qualification requirements.* A bank applying for accreditation to act as trustee on any mortgage or bond issued by any municipality, government-owned or controlled corporation, or any body politic must comply with the requirements in *Appendix 6*.
- d. *Independence of the trustee.* A bank is prohibited from acting as trustee of a mortgage or bond issuance if any elective or appointive official of the LGU, GOCC, or body politic which issued said mortgage or bond and/or his related interests own such number of shares of the bank that will allow him or his related interests to elect at least one (1) member of the board of directors of such bank or is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.
- e. *Investment and management of the funds.* A domestic bank designated as trustee of a mortgage or bond issuance may hold and manage, in accordance with the provisions of the trust indenture or agreement, the proceeds of the mortgage or bond issuance and such assets and funds of the issuing municipality, corporation, or body politic as may be required to be delivered to the trustee under the trust indenture/agreement, subject to the following conditions/restrictions:
- (1) Pending the utilization of such funds pursuant to the provisions of the trust indenture/agreement, the same shall only be deposited in any bank, other than the trustee/bank proper, its subsidiary or affiliate authorized to accept deposits from the Government or government entities, or invested in peso-denominated treasury bills acquired/purchased from any securities dealer/entity, other than the trustee or any of its unit/department, its subsidiary or affiliate.
 - (2) Investments of funds constituting or forming part of the sinking fund created as the primary source for the payment of the principal and interests due the mortgage or bonds shall also be limited to deposits in any bank, other than the trustee/bank proper, its subsidiary or affiliate, authorized to accept deposits from the Government or government entities and investments in government securities that are consistent with such purpose which must be acquired/

purchased from any securities dealer/entity, other than the trustee or any of its unit/department, its subsidiary or affiliate.

- f. *Waiver of confidentiality.* A bank designated as trustee of any mortgage or bond issued by any municipality, GOCC, or any body politic shall submit to the appropriate supervising and examining department of SES a waiver of the confidentiality of information under Sections 2 and 3 of R.A. No. 1405, as amended, duly executed by the issuer of the mortgage or bond in favor of the Bangko Sentral.
- g. *Reportorial requirements.* A bank authorized by the Bangko Sentral to act as trustee of the proceeds of mortgage or bond issuance of a municipality, GOCC or controlled corporation, or body politic shall comply with reportorial requirements that may be prescribed by the Bangko Sentral.
- h. *Applicability of the rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities.* The provisions of the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities not inconsistent with the provisions of this Section shall form part of these rules.
- i. *Sanctions.* Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively, of the R.A. No. 7653, violation of any provision of this Section shall be subject to the following sanctions/penalties depending on the gravity of the offense:
- (1) First offense –
 - (a) Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and
 - (b) Reprimand for the directors/officers responsible for the violation.
 - (2) Second offense –
 - (a) Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected;
 - (b) Suspension for ninety (90) days without pay for directors/officers responsible for the violation; and
 - (c) Revocation of the authority to act as trustees on any mortgage or bond issuance by any municipality, GOCCs, or body politic.
 - (3) Subsequent offense –

- (a) Fine of up to P30,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected;
- (b) Suspension or revocation of the trust license; and
- (c) Suspension for one hundred twenty days without pay of the directors/ officers responsible for the violation.

Trust fund of pre-need companies. The following rules and regulations shall govern the acceptance, management and administration of the trust funds of pre-need companies by banks and other entities authorized to perform trust and other fiduciary functions.

- a. *Administration of trust fund.* In line with the policy of providing greater protection to pre-need plan holders, prudential measures are hereby laid out in the administration of trust funds of preneed companies. The trust fund, inclusive of earnings, shall be administered and managed by the trustee with the skill, care, prudence and diligence necessary under the circumstances then prevailing that a prudent man, acting in the same capacity and familiar with such matters, would exercise in the conduct of an enterprise of a like character and similar aims.

The trustee shall have exclusive management and control over the trust fund and the right at any time to sell, convert, invest, change, transfer or otherwise dispose of the assets comprising the funds.

- b. *Trustee.* No trust entity shall act as a trustee or administer or hold a trust fund established by a pre-need company, which is a subsidiary or affiliate, as defined under existing Bangko Sentral regulations, of such trust entity. Trust entities currently holding or administering trust funds of an affiliate pre-need company may continue to act as trustee of such funds after the transition period provided under Item "g" only upon prior approval of the Monetary Board on the basis of a clear showing that no potential conflict of interest will arise. An absence of any exception or finding on conflicts of interest during an examination of the trust entity shall be deemed as prima facie evidence that no potential conflict of interest will arise.
- c. *Investment of the trust fund.* Unless otherwise allowed under existing laws or regulations issued by the agency having jurisdiction and supervision over pre-need companies, or with prior written approval by said agency, loans and investments of the trust funds shall be limited to:
 - (1) Evidences of indebtedness of the Republic of the Philippines and of the Bangko Sentral, and any other evidences of indebtedness or obligations wherein the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or loans against such government securities;

- (2) Commercial papers duly registered with the SEC with a credit rating of one (1) for short term and “AAA” for long-term or their equivalent;
 - (3) Loans fully guaranteed by the Republic of the Philippines, as to the payment of principal and interest;
 - (4) Loans fully secured by a hold-out on, assignment or pledge of deposits maintained either with the bank proper or other banks, and/or of deposit substitutes or of mortgage and chattel mortgage bonds issued by the trustee/fiduciary or by other banks;
 - (5) Loans fully secured by real estate in accordance with Section 37 and subject to the requirements of Sections 39 and 40 of R.A. No. 8791 and their implementing regulations; and
 - (6) Loans fully secured by unconditional payment guarantees (such as standby letters of credit and letter of indemnity) issued by banks/multilateral financial institutions.
- d. *Transactions with DOSRI.* The trustee shall not, for the account of the trustor or the beneficiary of the trust, purchase or acquire property from, or sell, transfer, assign or lend money or property to, or purchase debt instruments of, any of the departments, directors, officers, stockholders, employees, subsidiaries and affiliates of the trustee and/or the trustor, and relatives within the first degree of consanguinity or affinity, or the related interests, of such directors, officers and stockholders, without prejudice to any rule that may be issued by the agency having jurisdiction and supervision over such preneed company allowing such transaction with the prior written approval of such agency. Such written approval shall clearly specify the amount of the loan and/or investment including the name of the concerned director, officer, stockholder and their related interests.
- e. *Applicability of the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities (Trust Rules).* The provisions of the Trust Rules consistent with the provisions of this Section shall supplementarily apply to trust funds of pre-need companies.
- f. *Penalties and sanctions.* Any violation of the provisions of this Section on (*Trust fund of pre-need companies*) shall be a ground for prohibiting the concerned entity from accepting, managing and administering trust funds of pre-need companies without prejudice to the imposition of the applicable sanctions prescribed or allowed under the Trust Rules.

(Circular Nos. 966 dated 11 July 2017, 961 dated 02 June 2017, M-2016-016 dated 18 November 2016, 920 dated 18 August 2016, and 913 dated 02 June 2016)

Footnotes

1. Trust entities shall be given six (6) months from 01 August 2017 to make appropriate changes in their policies, processes, and procedures in order to comply with the above requirements. Example: "Fixed income securities" does not really mean a guarantee of fixed earnings on the investor's participation; "Risk-free" government securities which may be sovereign "risk-free" but not interest rate "risk-free"