

415 INVESTMENT MANAGEMENT ACTIVITIES

The conduct of investment management activities shall be subject to the following regulations.

Minimum documentary requirements. An investment management account shall be covered by a written document establishing such account, as follows:

- a. 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 investment management account.
- b. In the case of accounts created by individuals, the voluntary written agreement or indenture entered into by the parties.

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

- (1) Pre-numbered contractual agreement form;
- (2) Title or nature of contractual agreement in noticeable print;
- (3) Legal capacities, in noticeable print, of parties sought to be covered;
- (4) Purposes and objectives;
- (5) The initial amount of funds and/or value of securities subject of the arrangement delivered to the investment manager;
- (6) Statement in underlined noticeable print that:
 - (a) The agreement is an agency and not a trust agreement. As such, the client shall at all times retain legal title to funds and properties subject of the arrangement;
 - (b) The arrangement does not guaranty a yield, return or income by the investment manager. As such, past performance of the account is not a guaranty of future performance and the income of investments can fall as well as rise depending on prevailing market conditions; and
 - (c) The investment management agreement is not covered by the PDIC and that losses, if any, shall be for the account of the client;
- (7) Duties and powers of the investment manager;
- (8) Liabilities of the investment manager;
- (9) Reports to the client;
- (10) The amount or rate of the compensation of the investment manager;
- (11) Terms and conditions governing withdrawals from the account;

- (12) Termination of contractual arrangement; and
- (13) Disclosure requirements for transactions requiring prior authority and/ or specific written investment directives from the client.

A sample investment management agreement which conforms to the foregoing requirements is shown as *Appendix 21*.

Minimum size of each investment management account. No investment management account shall be accepted or maintained for an amount less than P1.0 million. An investment management account reduced to less than P1.0 million due to investment losses shall be exempt from this requirement.

Commingling of funds. Two (2) or more individual investment management accounts shall not be commingled except for the purpose of investing in government securities or in duly registered commercial papers: *Provided*, That the participation of each of the aforementioned accounts in the commingled account shall not be less than P1.0 million: *Provided*, further, That such commingling has been duly disclosed and specifically agreed in writing by the clients.

Lending and investment disposition. Assets received in investment management capacity shall be administered in accordance with the terms of the instrument creating the investment management relationship.

When an investment manager is granted discretionary powers in the investment disposition of investment management funds and unless otherwise specifically enumerated in the agreement or indenture and directed in writing by the client, loans and investments of the fund shall be limited to:

- a. Traditional deposit products of UBs/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 investment manager; and
- f. Loans fully secured by real estate or chattels in accordance with Sec. 303 and Secs. 143 (*Credit classification and provisioning*) and 301 (*Additional requirements*).

The specific directives required under this Section (*Lending and investment disposition*) shall consist of the following information:

- a. The transaction to be entered into;
- b. Name of the issuer or borrower;
- c. Amount involved; and
- d. 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 (*Lending and investment disposition*).

Transactions requiring prior authority. An investment manager 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:

- a. Lend, sell, transfer or assign money or property to any of the departments, directors, officers, stockholders, or employees of the investment manager, or relatives within the first degree of consanguinity or affinity, or the related interests of such directors, officers and stockholders; or to any corporation where the investment manager 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 investment manager, or relatives within the first degree of consanguinity or affinity, or the related interests of such directors, officers and stockholders; or from any corporation where the investment manager 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 investment manager or a corporation in which the investment manager 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, fiduciary or investment management account to another trust, fiduciary or IMA except where the investment is in any of those enumerated in Items “a” to “d” of lending and investment disposition under lending and investment disposition under this Section.

Directors, officers, stockholders, and their related interests covered by this Section shall be those considered as such under existing regulations on loans to DOSRI in Part III-D.

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

- a. The transaction to be entered into;
- b. Identities of the parties involved in the transaction 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 investment management relationship.

Title to securities and other properties. Securities such as promissory notes, shares of stocks, bonds and other properties of the portfolio shall be issued or registered in the name of the principal or of the investment manager: Provided, That in case of the latter, the instrument shall indicate that the investment manager is acting in a representative capacity and that the principal’s name is disclosed thereat.

Ceilings on loans. Loans funded by IMAs shall be subject to the DOSRI ceilings imposed on banks and IHs under Secs. 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 proper to the same person, firm or corporation shall be combined.

Other applicable regulations on loans and investments. The loans and investments of IMAs 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;
- c. Qualitative appraisal of loans, investments and other assets that may require provision for

probable losses which shall be booked in accordance with the FRPTI;

d. Requirements of Sections 3 and 8 of the SRC; and

e. Provisions of Section 44 – Investments by Philippine Residents – of the FX Manual, such that the cross-currency investments of peso IMAs, shall be subject to the following conditions:

- (1) All cash flows of the investment manager shall only be in pesos. In case the foreign exchange acquired or received by the principal 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 banking days from receipt of the funds abroad;
- (2) The investment manager 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 financial institution (seller or buyer) authorized in writing by the principal and/or accredited by the investment manager: Provided, That, the conduct, documentation, and settlement of any of these transactions shall be outside Philippine jurisdiction;
- (3) The investment manager 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 investment manager 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 (*Other applicable regulations on loans and investments*), “resident”, as defined under Section 1 of the FX Manual, shall refer to the principal that engages the services of the investment manager under an investment management agreement.

Operating and accounting methodology. IMAs shall be operated and accounted for in accordance with the following:

- a. The investment manager shall administer, hold, or manage the fund or property in accordance with the instrument creating the investment management 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 investment management accounts. The following shall be the features/requirements of IMAs of individuals 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 investment management agreement shall only be between individuals who are Filipino citizens or resident aliens and investment manager-banks. The agreement shall be non-negotiable and non-transferable;
- b. The minimum amount of investment for an IMA shall be P1.0 million;
- c. The investment management agreement shall indicate that pursuant to Section 24(B)(1) of R.A. No. 8424, interest income of the investment management funds 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 funds are held under investment management by the investment manager for at least five (5) years. If said funds are held by the investment manager for a period less than five (5) years, interest income shall be subject to a final tax which shall be deducted and withheld from the proceeds of the IMA 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 investment management agreement shall clearly indicate the date when the investment manager actually received the funds which shall serve as basis for determining the holding period of the funds;

- d. The investment management agreement shall indicate that pursuant to Section 24(B)(1) of R.A. No. 8424, interest income of the investment management funds 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 funds are held under investment management by the investment manager for at least five (5) years. If said funds are held by the investment manager for a period less than five (5) years, interest income shall be subject to a final tax which shall be deducted and withheld from the proceeds of the IMA based on the following schedule-
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- e. Tax-exempt individual IMAs established under this Section shall be subject to the provisions of this Section under item “b” of *Minimum documentary requirements and Minimum size of each investment management account up to Other applicable regulations on loans and investments.*