

420 UNSAFE OR UNSOUND MANNER

Whether a particular activity may be considered as conducting business in an unsafe or unsound manner all relevant facts must be considered. An analysis of the impact thereof on the bank's operations and financial conditions must be undertaken, including evaluation of capital position, asset condition, management, earnings posture and liquidity position.

In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, may be deemed as conducting business in an unsafe or unsound manner, the Monetary Board, upon report of the head of the supervising or examining department based on findings in an examination or a complaint, shall consider any of the following circumstances:

- a. The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the bank;
- b. The act or omission has resulted or may result in material loss or damage or abnormal risk to the bank's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general;
- c. The act or omission has caused any undue injury, or has given unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or
- d. The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, whether or not the director or officer profited or will profit thereby.

The list of activities which may be considered unsafe or unsound is shown in *Appendix 49*.

In line with the statement of principles governing trust and other fiduciary business under Sec. 401, the trustee, fiduciary or investment manager shall desist from the following unsound manner:

- a. Entering in an arrangement whereby the client is at the same time the borrower of his own fund placement, or whereby the trustor or principal is a borrower of other trust, fiduciary or investment management funds belonging to the same family or business group of such trustor or principal;
- b. Granting loans or accommodations to any trust committee member, officer and employee of the trust department except where such loans are obtained by said persons as members of an employee benefit fund of the trustee's own institution;

- c. Borrowing from, or selling trust, other fiduciary and/or investment management assets to, the bank proper to cover portfolio losses and/or to guarantee the return of principal or income;
- d. Granting new loans to any borrower who has a past due and/or classified loan account with the bank proper or the trust department; and
- e. Requiring clients to sign documents in blank.

Sanctions. The Monetary Board may, at its discretion and based on the seriousness and materiality of the acts or omissions, impose any or all of the following sanctions provided under Section 37 of R.A. No. 7653 and Section 56 of R.A. No. 8791, whenever a bank conducts business in an unsafe or unsound manner:

- a. Issue an order requiring the bank to cease and desist from conducting business in an unsafe or unsound manner and may further order that immediate action be taken to correct the conditions resulting from such unsafe or unsound manner;
- b. Fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed P30,000 a day on a per transaction basis taking into consideration the attendant circumstances, such as the gravity of the act or omission and the size of the bank, to be imposed on the bank, their directors and/or responsible officers;
- c. Suspension of interbank clearing privileges/immediate exclusion from clearing;
- d. Suspension of rediscounting privileges or access to Bangko Sentral credit facilities;
- e. Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;
- f. Suspension of responsible directors and/or officers;
- g. Revocation of quasi-banking license; and/or
- h. Receivership and liquidation under Section 30 of R.A. No. 7653.

All other provisions of Sections 30 and 37 of R.A. No. 7653, whenever appropriate, shall also be applicable on the conduct of business in an unsafe or unsound manner.

The imposition the above sanctions is without prejudice to the filing of appropriate criminal charges

against culpable persons as provided in Sections 34, 35 and 36 of R.A. No. 7653