

002 SUPERVISORY ENFORCEMENT POLICY

The Policy sets forth guidance on the Bangko Sentral's supervision-by-risk framework. It also puts together in a holistic manner all the enforcement tools available to the Bangko Sentral as contained in various laws and rules and regulations¹ and communicates the deployment thereof in a consistent manner by the Bangko Sentral in the course of performing its supervisory function. It further sets out the guiding principles and objectives behind the deployment of such enforcement actions.

Nothing in this Section shall be construed as superseding enforcement actions previously imposed against Bangko Sentral-supervised FIs (BSFI) pursuant to existing laws, Bangko Sentral rules and regulations.

a. Statement of policy and rationale

The Bangko Sentral is issuing this Supervisory Enforcement Policy to provide guidance on its supervision-by-risk framework. The Bangko Sentral recognizes that risk-taking is integral to a financial institution's business. The existence of risk is not necessarily a reason for concern so long as Management exhibits the ability to effectively manage that level of risk and operates the financial institution (FI) in a safe and sound manner. Thus, when risk is not properly managed, the Bangko Sentral may deploy a wide range of enforcement actions provided under existing laws, Bangko Sentral rules and regulations, taking into consideration the nature and extent of the supervisory issues and concerns and the level of cooperation provided by Management.

The Bangko Sentral adopts a holistic approach to supervision with the objective of guiding FIs under its supervision to mitigate risk and achieve the desired changes.

Bangko Sentral's risk-based supervision, of which enforcement action is a key part, focuses on the safety and soundness of operations of the FIs. This policy sets forth the expectations of the Bangko Sentral when it deploys enforcement action and the consequences when expected actions are not performed within prescribed timelines.

Thus, this over-arching policy is needed – (1) as a collation of various enforcement actions already present in various laws, rules and regulations; (2) for better guidance of the FIs and the bank supervisors; and (3) as a means to broadcast to the banking/financial industry the consequences of failure to address the Bangko Sentral requirements and supervisory expectations.

b. Objectives of the enforcement policy

The Bangko Sentral's Supervisory Enforcement Policy aims to achieve the following two (2) key objectives:

- (1) Achieving the desired change. Effect a change in the overall condition and governance of Bangko Sentral-supervised FIs consistent with the expectations set under relevant laws and regulations; and
- (2) Mitigating risk. Mitigate risks to the FIs and other stakeholders in order to maintain the stability of the financial system.

c. General principles

The Bangko Sentral, in the deployment of enforcement actions, is guided by the following general principles:

- (1) Root cause diagnosis. The enforcement action addresses the underlying cause of the supervisory issues and concerns.
- (2) Consistently matching the severity of enforcement action to the supervisory issue. The deployment of appropriate enforcement action is commensurate with the severity of the supervisory issues and concerns. The severity of the supervisory issues and concerns is assessed in terms of *prevalence*² and *persistence*.
- (3) Successive or simultaneous deployment of enforcement actions. Enforcement actions may be deployed successively or simultaneously taking into account the nature and seriousness of the difficulties encountered by the FIs and the ability and willingness of the FI's Management to address the supervisory issues and concerns.
- (4) Monitorability and follow-through. The Bangko Sentral monitors the FI's progress/compliance with the expected actions to address the supervisory issues, concerns and problems.
- (5) Escalation of enforcement actions. Enforcement actions may be escalated if the desired change is not achieved and the root causes of the FI's issues, concerns and problems are not addressed by the FI within prescribed timelines.

d. Categories of enforcement actions

The three (3) main categories of enforcement action are: (1) corrective actions, (2) sanctions and (3) other supervisory actions. These enforcement actions may be imposed singly or in combination with others.

(1) Corrective actions

Corrective actions are enforcement actions intended to require the FI to address the underlying cause of supervisory issues, concerns and problems. These include the following:

(a) Bangko Sentral directives

Directives are basically orders and instructions communicated by the appropriate supervising department in Bangko Sentral requiring the FI to undertake a specific positive action or refrain from performing a particular activity within a prescribed timeline.

(b) Letter of Commitment (LOC)

The LOC is an enforcement action where the FI's Board of Directors (Board) is required, upon approval and/or confirmation by the MB, to make a written commitment to undertake a specific positive action or refrain from performing a particular activity with a given time period.

The LOC is generally used to arrest emerging supervisory concerns before these develop into serious weaknesses or problems, or to address remaining supervisory issues and concerns.

(2) Sanctions

Sanctions that may be imposed on an FI and/or its directors and officers, as provided under existing laws, Bangko Sentral rules and regulations, are subject to the prior approval and/or confirmation by the MB. Such sanctions include the following:

(a) FIs

- (i) Restrictions on activities and privileges
- (ii) Suspension of authorities, privileges and other activities
- (iii) Divestment and/or unwinding
- (iv) Monetary sanction - penalties/fines against the FI

(b) Directors and officers

- (i) Reprimand
- (ii) Restriction on compensation and benefits

- (iii) Divestment
- (iv) Suspension
- (v) Disqualification
- (vi) Removal
- (vii) Monetary penalties/fines

The foregoing sanctions to individuals are without prejudice to the filing of separate civil or criminal actions against them, when appropriate.

- (3) Other supervisory actions subject to prior MB approval, the Bangko Sentral, when warranted, may deploy other supervisory actions such as:
- (a) Initiation into the PCA Framework;
 - (b) Issuance of a cease and desist order (CDO) against the FI as well as against its directors and officers;
 - (c) Conservatorship; and
 - (d) Placement under receivership.

e. Due Process

An integral part of the deployment of enforcement actions is the observance of due process in all cases.

The FI and/or its directors and officers are afforded fair and reasonable opportunity to explain their side and to submit evidences in support thereof, which are given due consideration in determining the appropriate enforcement action(s) to be imposed.

(Circular Nos. 903 dated 29 February 2016, Circular No. 875 dated 15 April 2015 and 894 dated 07 December 2015)

Footnotes

1. Section 4 of R.A. No. 8791 (General Banking Law of 2000) defines the scope of Bangko Sentral's supervisory powers, which may be grouped into three categories: (i) issuance of rules; (ii) examination and investigation; and (iii) enforcement of Prompt Corrective Action (PCA)
2. Prevalence pertains to the pervasiveness of the supervisory issues, concerns and problems in relation to their impact on the FI's solvency, asset quality, operating performance and liquidity, among others.