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SUBJECT:

GUIDELINES ON RECEIVERSHIP AND LIQUIDATION PROCEEDINGS OF NON-BANKS WITH QUASI-BANKING FUNCTIONS (NBQBS) AND TRUST ENTITIES

The Monetary Board, in its Resolution No. 589 dated 14 April 2011, approved the attached Guidelines on Receivership (Part I) and Liquidation (Part II) Proceedings of NBQBs and Trust Entities.

This Circular shall take effect fifteen (15) calendar days after the publication in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:

(Sgd.) AMANDO M. TETANGCO, JR.

Governor

6 May 2011

PART I GUIDELINES ON RECEIVERSHIP OF NBQBS/TRUST ENTITIES

Introduction

Receivership is defined as the condition when the Monetary Board (MB) designates a person, known as a "Receiver", to take over an institution enumerated under item I of these guidelines and administer and hold the assets of the institution in trust for its creditors and stockholders.

- Coverage

These Guidelines shall cover institutions which shall refer to any of the following:

- Non-banks with quasi-banking license (i.e. Investment houses and Financing companies); and
- Trust entities.
- Legal Bases for Placement under Receivership
- Section 30, R.A. No. 7653

"Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a * * * quasi-bank:

- is unable to pay its liabilities as they became due in the ordinary course of business: Provided, that this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

- has insufficient realizable assets, as determined by the Bangko Sentral to meet its liabilities; or
- cannot continue in business without involving probable losses to its depositors or creditors; or
- has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution;

"* * * The receiver shall determine as soon as possible, but not later than ninety (90) days from takeover, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its * * * creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board."

"If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution * * *"

"The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership * * *"

"The * * * appointment of a receiver under this Section shall be vested exclusively with the Monetary Board. * * *

- Section 53, R.A. No. 8791

"In case a * * * quasi-bank notifies the Bangko Sentral or publicly announces a bank holiday, or in any manner suspends the payment of its deposit liabilities for more than thirty (30) days, the Monetary Board may summarily and without need for prior hearing close such banking institution and place it under receivership * * *."

- Section 56, R.A. No. 8791, 2nd par.

"Whenever a * * * quasi-bank or trust entity persists in conducting its business in an unsafe or unsound manner, the Monetary Board may, without prejudice to the administrative sanctions provided in Section 37 of the new Central Bank Act, take action under Section 30 of the same Act * * *"

- Section 91, R.A. No. 8791 in relation to Section 66 of R.A. No. 8791 and Section 36 of R.A. No. 7653

Section 91, R.A. No. 8791

"Sanctions and Penalties.—A trust entity or any of its officers and directors found to have willfully violated any pertinent provisions of this Act, shall be subject to the sanctions and penalties provided under Section 66 of this Act as well as Sections 36 and 37 of the New Central Bank Act."

Section 66, R.A. No. 8791

"Penalty for Violation of this Act.— Unless otherwise herein provided, the violation of any of the provisions of this Act shall be subject to Sections 34, 35, 36 and 37 of the New Central Bank Act. If the offender is a director or officer of a bank, quasi-bank or trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by quo warranto proceedings instituted by the Solicitor General."

Section 36, R.A. No. 7653

"Sec. 36. Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions. _ * * * * *

Whenever a * * * quasi-bank persist in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act."

- Minimum Qualifications of the Receiver

The receiver shall possess at all times the following minimum qualifications:

- Must belong to the private sector;
- Must have appropriate knowledge, training and competence in the field of banking and finance, receivership, liquidation, rehabilitation/ corporate recovery, insolvency, or supervision and regulation of financial institutions;
- Must have a minimum of five (5) years work experience in any of the following:

(i)

rehabilitation/corporate recovery, receivership, liquidation, or insolvency involving a business similar in size and complexity as that of the institution under receivership; or

(ii)

banking and finance or supervision and regulation of financial institutions.

- Must pass the "fit and proper" rule of the BSP on bank directors/ officers;
- Must be of good moral character, sound judgement and tact in dealing with the transactions of the institution under receivership;
- Must not have conflict of interest as defined in these guidelines.
- Must not be included in the BSP Watchlist Disqualification Files "A" and "B";
- Must be eligible for coverage by a fidelity bond;
- Must not have been convicted by, or have no pending criminal or administrative case before a court or administrative body for any offense involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. Blg. 22, violation of anti-graft and corrupt practices act and prohibited acts and transactions under Section 7 of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), violation of banking laws, rules and regulations; and
- Must not have been sentenced by a court to serve a maximum term of imprisonment of more than six years, which conviction has become final and executory.

A juridical person may serve as a receiver; Provided, that it must designate as its representative/s natural person/s who possess/ess all of the above qualifications. Such juridical entity and the representative/s are solidarily accountable for all the liabilities of the receiver.

The Receiver shall be appointed by the MB and may be replaced at anytime upon written notice by the MB.

The BSP may maintain a pool of qualified receivers who shall be subjected to the following selection process:

(i)

The Supervision and Examination Sector (SES) shall send invitations citing the minimum requirements for the position, together with a copy of the terms of reference (TOR), to specific persons with reputable track record in handling corporate recoveries, rehabilitation, receivership, liquidation, banking and finance or supervision and regulation of financial institutions.

(ii)

Interested parties shall submit an application for appointment as receiver of an entity, together with the statement that the applicant is agreeable to the TOR prescribed by the BSP. The applicant shall also submit his/ her/its proposed compensation and other fees.

(iii)

The SES shall evaluate the qualifications submitted by the applicants and shall prepare a short list of those qualified. To be included in the short list, candidates must comply strictly with the minimum qualifications.

The BSP-accreditation of the receivers may be renewed every three (3) years. Any person pre-qualified to be included in the pool, may be appointed as Receiver of one (1) or more NBQBs/Trust Entities subject to such conditions as may be imposed by the MB.

The SES, when recommending to the MB the person who shall be appointed as receiver, shall consider, among others, the following:

(i)

Area of expertise of the candidates vis-a-vis the nature of the business of the entity under receivership;

(ii)

Amount of assets of the entity under receivership;

(iii)

Proposed compensation and other fees; and

(iv)

Any information available in the business community and/or in legal/professional organizations regarding the candidate.

- Conflict of Interest

Conflict of interest is a situation wherein a person in a fiduciary position has competing professional or personal interests that can make it difficult to fulfill his/her duties impartially, which may include the following:

- The person is, or was within two (2) years prior to the date the MB placed the institution under receivership a director, officer, employee, consultant/adviser, external counsel/auditor, creditor, debtor, or stockholder of the institution under receivership;
- The persons is presently engaged in a competing line of business as the institution under receivership;
- The person is related by consanguinity or affinity within the fourth civil degree to such creditor, debtor, stockholder, director, officer of the institution under receivership;
- The person has a direct or indirect interest in the institution under receivership or any of its creditors; or
- Other cases analogous to the foregoing or when there is a clear showing of a conflict of interest, as may be determined by the MB.

The applicant-receiver shall disclose whether he/she/it possesses any of the foregoing conflict of interest.

- Powers, Duties and Responsibilities of the Receiver

The receiver has the following principal responsibilities:

- Take charge of the institution's assets and liabilities as provided in the Receivership Procedures attached as Annex A;
- As expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution;
- Determine as soon as possible, but not later than ninety (90) days from takeover, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its clients, creditors and the general public; and
- Evaluate and propose rehabilitation plan that may be submitted and make a recommendation to the MB whether the institution should be rehabilitated or liquidated.
- Upon approval by the MB of the receiver's recommendation for liquidation, the receiver shall proceed with the liquidation without prejudice to the prerogative of the MB to select a liquidator.

The receiver, in the performance of his/her/its duties, shall observe due diligence as required under the circumstances, reasonable skill, sound discretion and good faith.

- Designation of Deputy Receiver/s

The receiver may appoint as many deputies as may be necessary to accomplish the objectives of receivership. The appointed deputies should possess the same qualifications required of a receiver.

- Term of Receivership

Unless otherwise provided by competent court, the receiver shall determine within ninety (90) days from takeover, whether the institution may be rehabilitated or liquidated. The said determination to rehabilitate or liquidate the institution shall be subject to prior approval of the MB. The receivership may be terminated either upon receipt of the order of the MB authorizing the institution to resume its operation or order placing it under

liquidation.

- Remuneration of the Receiver

The Receiver and the Deputy Receivers shall receive remunerations not more than the amount to be fixed by the MB.

All expenses attendant to the receivership, including the above, shall be borne by or chargeable to the institution concerned.

Annex A

RECEIVERSHIP PROCEDURES FOR NON-BANKS WITH QUASI-BANKING FUNCTIONS (NBQBs) AND TRUST ENTITIES

- Pre-Takeover Preparations

In preparation for actual takeover, the receiver designated by the Monetary Board ("MB") shall, as much as practicable, see to it that the following procedures are accomplished:

- Designation of deputy receiver(s) and the formation of a complete receivership team which preferably includes an auditor and a lawyer. The composition of the team shall depend on the size, type of institution and the number of branches;
- Planning, organization, and coordination of the duties and functions of all members of the team and complete briefing of the mechanics and the strategy of the takeover in a conference called for the purpose;
- Drawing-up/formulation of policies, guidelines and strategies to ensure the effective implementation of Monetary Board ("MB") resolutions, BSP Circulars and other applicable laws in relation to the receivership of the institution;
- Arrange security measures for the takeover; and
- Review of the examination papers/ files and other documents pertaining to the institution to be taken over.

- Actual Takeover

During the actual takeover, the following procedures shall be observed:

- Serve the letter of authority from the Deputy Governor of the Supervision and Examination Sector on the takeover addressed to the President/Board of Directors of the institution. The receiver/ deputy receiver shall see to it that the official receiving the said letter of authority indicates his designation, date and time of receipt on the duplicate copies of the letter.

In case the management of the institution refuses to allow the takeover, the receiver/deputy receiver shall immediately report the matter to the nearest office of the Philippine National Police and to the MB for further instructions;

- As soon as the official of the institution receives the letter of authority on takeover, all operations shall be under the direction of the receiver or deputy receiver. The receiver shall suspend all operations except collections of loans and receivables;
- Post a notice in the most conspicuous place in the institution's premises (usually the main door) informing the public of the placement of the institution under receivership;

- Adopt appropriate security measures, such as hiring of private security guards, to prevent removal of records and other properties from the premises of the institution;
- Notify in writing all of the institution's depository banks of the receiver's takeover with instruction not to honor any withdrawal from the institution's deposit accounts without the written approval of the receiver/ deputy receiver;
- Request or secure copies of trial balance, statement of condition and statement of earnings and expenses as of the last working day preceding the actual takeover;
- Open a new deposit account (preferably a current account-savings account combo) with a reputable bank within the vicinity, in the name of the closed institution, with the Receiver as the authorized signatory and custodian. The Receiver may also maintain the existing account of the institution provided that the Receiver shall be the authorized signatory.
- Conduct physical inventory and institute appropriate control and custody of all assets, liabilities, records, books of accounts and accountable forms of the institution;
- Notify in writing the employees of the institution concerning the suspension of their employment contracts. Determine the number of employees to be retained in the receivership operation of the institution, and issue a notice of indefinite leave of absence for those who may not be retained and a confirmation of employment for those to be retained;
- Deposit all checks and other cash items that were inventoried and subsequent collections to the savings account/current account mentioned in item 7 above; and
- Reconcile the inventoried properties/assets with the books/ records and account for missing items. Demand from the responsible/accountable officials the turnover of unaccounted items or written explanation under oath for each of the missing items.

The tasks and the procedures listed above need not be followed in the order they were listed. The entire receivership team is expected to exercise sound discretion in giving priorities to more urgent matters. Moreover, the receiver/deputy receiver may adopt other measures/ appropriate steps he may deem necessary under given circumstances. Finally, he shall endeavor to effect an orderly and seamless takeover and minimize inconvenience to the institution's management and personnel.

Item Nos. (1) to (9) above should be, as much as practicable, undertaken on the first day of takeover.

- Post Takeover

Within fifteen (15) days after the completion of the takeover, the receiver shall submit to the MB, through the Deputy Governor of the Supervision and Examination Sector, a report containing the following information:

- Brief history of the institution;
- Basis of its placement under receivership;
- Comparative balances of its account as reflected in the books as of takeover date against the balances obtained per inventory and turnover from the institution's management to the receiver;
- Inventories mentioned in Item B. 8 above; and
- Such other information that should be brought to the attention of the MB.

- Accounting and Reportorial Requirements

Accounting

Once takeover is in place, the receivership team shall immediately undertake to:

- Adopt an effective accounting system.

a)

Carry in the receiver's books a chart of accounts of the institution, with additional accounts such as Receivership Costs and Fees (for recording of the salaries of the receivership team and those of the institution's employees to be retained, and other authorized expenses incurred by the receiver) and the Receivership Income (which may include rental income, and interest income);

b)

Supervise the closing of the books as of takeover date and transfer the balances of all real accounts from the institution's books to the new set of books opened by the receiver's team; and

c)

Record receiver's transactions involving receipt and disbursement of cash in accordance with generally accepted accounting principles.

- Attend to all requirements of various agencies of the government, such as filing of tax returns and notices or other reportorial requirements of the Department of Labor and Employment, Securities and Exchange Commission and Social Security System/Government Service Insurance System.

Reports

The receiver shall submit a monthly report of the receivership to the MB containing, among others, the following:

a) Statement of Condition;

b) Statement of Earnings and Expenses;

c) Cash receipts and disbursements;

d) Bank Reconciliation Statements;

e) Summary of loan collections;

f) Summary of Assets Acquired; and

g) Status of Legal Cases.

- Administration of the Assets of the Institution

The receivership team or any member thereof, to be assigned by the receiver relative to the administration of the institution's assets shall perform the following tasks/duties:

Cash and Deposits in Banks

- Reconcile the deposit accounts of the institution and prepare/book the necessary adjusting entries.

- Pay the following receivership expenses:

a) Salaries and other allowances of officers and employees, including those of the receivership team;

b) Security and janitorial services;

c) Rental on institution's premises;

d) Telephone, light, water and other utility expenses; and

e) Insurance

Other than the foregoing expenses, no payment shall be made unless it is necessary for the preservation of the institution's assets and the operation of the receiver.

Loans/Receivables and Trading Account Securities

- Evaluate documents of each loan folder and segregate vital documents from the file;

- Prepare inventory of missing documents and demand explanations under oath from accountable/responsible officers of the institution;

- Send demand letters, when due, or notice to borrowers and comakers of various loan accounts;

- Ensure that the real estate taxes on properties mortgaged in favor of the institution are updated by the borrowers;

- Hire legal counsels to enforce collection;

- Initiate collection proceedings; and

- Follow-up on execution of judgments when warranted.

Real and Other Properties Acquired

- Update payment of taxes;

- Collect the fruits and rentals; and

- Perform other acts which are necessary in preserving the properties and making them productive;

- Rehabilitation Proposal

In case a rehabilitation proposal is submitted, the receiver shall undertake to:

- Evaluate the rehabilitation proposal which shall contain, among others, the following:

a)

a capital restoration plan that shall include an initial fresh capital infusion of an amount (to be determined by the Receiver) that will render the institution operational;

b)

a business improvement plan that shall contain set of actions to be taken immediately to bring about an improvement in the entity's operating condition; and

c)

a corporate governance reforms that shall contain actions to be immediately taken to improve composition of the Board of Directors and to enhance the quality of its oversight over the management and operation of the entity.

- Submit report on the rehabilitation proposal, together with his evaluations and recommendation(s), to the MB within ninety days (90) from takeover.

- Termination of Receivership

Unless otherwise provided by competent court, the receiver shall determine within ninety (90) days from takeover, whether the institution may be rehabilitated or liquidated. The said determination to rehabilitate or liquidate the institution shall be subject to prior approval of the MB. The receivership may be terminated either upon receipt' of the order of the MB authorizing the institution to resume its operation or order placing it under liquidation.

Upon termination of the receivership, receiver shall -

- Submit a report to the MB containing the following:

a)

MB resolution placing the institution under receivership;

b)

Summary of the total cash realized and disbursed by the receiver;

c)

Comparative balance sheet statements as of takeover date and as of termination date of the receivership;

d)

Other information which should be brought to the attention of the MB;

e)

Recommendation for the discharge of the receivership team from the receivership duties.

- Prepare an inventory of assets, liabilities and records to be turned over to the new management (if the entity is to be rehabilitated) or to the liquidator (if the entity is to be liquidated).

PART II GUIDELINES ON LIQUIDATION PROCEEDINGS OF NBQBs/TRUST ENTITIES

- Introduction

Liquidation is the process by which all the assets of an NBQB/Trust Entity are converted into liquid assets (cash) in order to pay for all the claims of creditors of the NBQBs, and the remaining balance, if any, is to be distributed to the stockholders of the corporation. A liquidation proceeding is a proceeding in rem so that all other interested persons whether known to the parties or not may be bound by such proceeding.[1]

- Legal Bases for Liquidation Proceedings

Section 30 of Republic Act No. 7653, otherwise known as the New Central Bank Act

Proceedings in Receivership and Liquidation. —

"* * * * *

"If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

"i

file ex parte with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted * * *. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

"ii

convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of the credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution."

Section 56. R.A. No. 8791

* * * * *

Whenever a * * * quasi-bank or trust entity persists in conducting its business in an unsafe or unsound manner, the Monetary Board may, without prejudice to the administrative sanctions provided in Section 37 of the new Central Bank Act, take action under Section 30 of the same Act. * * * * *

Section 91. R.A. No. 8791 in relation to Section 66 of R.A. No. 8791 and Section 36 of R.A. No. 7653

Section 91, R. A. No. 8791

"Sanctions and Penalties—A trust entity or any of its officers and directors found to have willfully violated any pertinent provisions of this Act, shall be subject to the sanctions and penalties provided under Section 66 of this Act as well as Sections 36 and 37 of the New Central Bank Act.

Section 66, R.A. No. 8791

Penalty for Violation of this Act.— Unless otherwise herein provided, the violation of any of the provisions of this Act shall be subject to Sections 34, 35, 36, and 37 of the New Central Bank Act. If the offender is a director or officer of a bank, quasi-bank or trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by quo warranto proceedings instituted by the Solicitor General.

Section 36, R.A. No. 7653

Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions.—
"*** **"

Whenever a * * * quasi-bank persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act."

- Selection of Liquidator

3.1. Minimum Qualifications of the Liquidator

The liquidator shall possess at all times the following minimum qualifications:

- Must belong to the private sector;
- Must have appropriate knowledge, training and competence in the field of banking and finance, receivership, liquidation, rehabilitation/corporate recovery, insolvency, or supervision and regulation of financial institutions;
- Must have minimum of five (5) years work experience in any of the following:
 - rehabilitation/corporate recovery, receivership, liquidation, or insolvency involving a business similar in size and complexity as that of the institution under liquidation; or
 - banking and finance or supervision and regulation of financial institutions.
- Must pass the "fit and proper" rule of the BSP on bank directors/officers;
- Must be of good moral character, sound judgment and tact in dealing with the transactions of the institution under liquidation;
- Must not have conflict of interest as defined in these guidelines;

- Must not be included in the BSP Watchlist Disqualification Files "A" and "B";
- Must be eligible for coverage by a fidelity bond;
- Must not have been convicted by, or have no pending criminal or administrative case before a court or administrative body for any offense involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. Blg. 22, violation of anti-graft and corrupt practices act and prohibited acts and transactions under Section 7 of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), violation of banking laws, rules and regulations; and
- Must not have been sentenced by a court to serve a maximum term of imprisonment of more than six years, which conviction has become final and executory.

A juridical person may serve as a liquidator; Provided, that it must designate as its representative/s natural person/s who possess/ess all of the above qualifications. Such juridical entity and the representative/s are solidarily accountable for all the liabilities of the liquidator.

The BSP may create a pool of pre-qualified liquidators, whose inclusion in the pool is subject to renewal every three (3) years. Any person pre-qualified to be included in the pool, may be appointed as Liquidator of one (1) or more NBQBs/Trust Entities subject to such conditions as may be imposed by the MB.

The Liquidator shall be appointed by the MB and may be replaced at anytime upon written notice by the MB.

3.2. Conflict of Interest

Conflict of interest is a situation wherein a person in a fiduciary position has competing professional or personal interests that can make it difficult to fulfill his/ her duties impartially, which may include the following:

- The person is, or was within two (2) years prior to the date the MB placed the NBQB/Trust Entity under liquidation, a director, officer, employee, consultant/adviser, external counsel/auditor, creditor, debtor, or stockholder of the said NBQB, or any of its subsidiaries, affiliates or related interests;
- The person is presently engaged in a competing line of business as the NBQB/Trust Entity under liquidation;
- The person is related by consanguinity or affinity within the fourth civil degree to such creditor, debtor, stockholder, director, officer, consultant/ adviser, or external counsel/ auditor of the NBQB/Trust Entity under liquidation;
- The person has a direct or indirect interest in the NBQB/ Trust Entity under liquidation; or any of its creditors; or
- Other cases analogous to the foregoing or where there is a clear showing of conflict of interest, as may be determined by the MB.

3.3. Selection Process

- The Supervision and Examination Sector (SES) shall such invitations, together with a copy of the terms of reference (TOR), to specific persons with reputable track record in handling corporate recoveries, rehabilitation, receivership and liquidation citing the minimum requirements for the position.
- Interested parties shall submit an application for appointment as liquidator of an entity, together with the statement that the applicant is agreeable to the TOR prescribed by the BSP. The applicant shall also submit his/its proposed compensation and other fees.

- The SES shall evaluate the qualifications submitted by the applicants and shall prepare a short list of those qualified. To be included in the short list, candidates must comply strictly with the minimum qualifications.

SES, when recommending to the MB the person who shall be appointed as liquidator, shall consider, among others, the following:

- Area of expertise of the candidates vis-a-vis the nature of the business of the NBQB/Trust Entity under liquidation;

- Amount of assets of the NBQB under liquidation;

- Proposed compensation and other fees; and

- Any information available in the business community and/or in legal/professional organizations regarding the candidate.

SES shall recommend to the Monetary Board the person/ partnership/ firm who/which shall be appointed as liquidator.

- 4. Terms of Reference of the BSP-Appointed Liquidator

4.1 Functions, Responsibilities and Authorities of the Liquidator

- Master Liquidation Plan

Implement the Master Liquidation Plan for NBQBs/Trust Entities (Annex A).

- Liquidation Process

The BSP-designated liquidator of the NBQB/Trust Entity shall:

- Within sixty (60) days upon receipt of the Monetary Board placing the NBQB/Trust Entity under liquidation, file ex parte a Petition for Assistance in the Liquidation of the NBQB/Trust Entity with the proper Regional Trial Court pursuant to the Master Liquidation Plan;

- Represent and act for and in behalf of the closed NBQB/Trust Entity;

- Gather and take-charge of all the assets which shall include the NBQB/Trust Entity license, records, documents and affairs of the NBQB/Trust Entity, and administer the same for the benefit of its creditors;

- Collect loans and other claims of the NBQB/Trust Entity, and for this purpose, modify, compromise or restructure the terms and conditions of such loans or claims as may be deemed advantageous to the interest of the creditors and claimants of the closed NBQB/ Trust Entity;

- Convert the assets to money or dispose of the same to creditors and other parties for the purpose of paying debts of the NBQB/ Trust Entity in accordance with the preference of credits provided under the Civil Code;

- Settle the affairs of the NBQB/ Trust Entity within a reasonable time preferably within three (3) to five (5) years;

- Provide for his own organizational support and for other resource back-up facilities to accomplish the liquidation plan, including hiring of counsel;

- Bring suits to enforce liabilities of the directors, officers, employees, agents of the closed NBQB/Trust Entity and other entities related or connected to the closed NBQB/ Trust Entity or to collect, recover and preserve all assets, including assets over which the NBQB/ Trust Entity has equitable interest;
- Incur, disburse, charge and be paid from the funds of the NBQB/ Trust Entity, liquidator's fees, salaries/compensation of support personnel and such other necessary expenses incurred in the discharge of the liquidation functions subject to approval by the liquidation Court; and
- Perform such other functions necessary in the liquidation of the NBQB/Trust Entity.
- Safeguards for preserving the Assets of an Entity during the Liquidation Process.

The liquidator, in the performance of his/her/its duties, shall observe due diligence as required under the circumstances, reasonable skill sound discretion and good faith. Immediately after his takeover, the liquidator shall take appropriate steps to manage, administer and preserve the assets of the NBQB/ Trust Entity in order to conserve and/or maximize the value of assets, including assets in the possession or administration of third persons or those previously given as collaterals by the NBQB/Trust Entity to its creditors. Accordingly, the liquidator shall undertake the following steps:

- All properties included in the inventory of assets and/or under the custody of the liquidator that are reasonably deemed to have inherent risk, shall be adequately insured;
- The liquidator shall use all legal means to control the assets, collect all receivables, bring suit to collect claims and resist all unlawful claims against the assets of the entity;
- Investible funds shall be limited to readily marketable government securities;
- The liquidator shall convert the assets into money with convenient speed as may be practicable and at maximum recovery obtainable under the circumstances;
- The liquidator and his staff shall be prohibited from purchasing properties of the NBQB/Trust Entity subject of liquidation;
- The liquidator shall limit administrative expenses to what is necessary and reasonable;
- Third parties hired to perform certain activities shall possess the education, experience, training and competence necessary for the job;
- The liquidator shall maintain appropriate records which may be made available to parties as provided in Section 4.6 below; and
- The liquidator shall be required to post a surety bond in an amount not less than 10% of the book value of the total assets of the institution as of takeover. Said surety bond shall be renewable every year and the amount of which shall be at least 10% of the realizable assets of the preceding quarter.
- Submission of Status Report

The liquidator shall submit a semestral status report to the MB, or as often as may be required by the MB.

The liquidator shall also submit a status report to the Liquidation Court if so required by the Liquidation Court.

4.2 Compensation and/or Fees of Liquidator

The Liquidator and the Deputy Liquidators shall receive compensations not more than the amount to be fixed by the MB.

All expenses attendant to the liquidation, including the above, shall be borne by or chargeable to the institution concerned.

4.3 Termination of Liquidation Proceedings

The Liquidation proceeding shall be deemed closed and terminated upon finality of the order of the Liquidation Court approving the termination of the liquidation proceeding and discharging the Liquidator from any and all liabilities arising from or in connection with the Liquidation of the closed NBQB/Trust Entity.

4.3.1 Disposition of Remaining Non-Cash Assets

In case the NBQB/Trust Entity has remaining non-cash assets, the Liquidator shall recommend to the Court the final disposition of such assets.

4.4. Final Liquidation Report

At the end of the liquidation proceedings, the Liquidator shall submit a final report to the Monetary Board and the Liquidation Court. The Liquidator shall recommend to the Court the issuance of an order terminating the liquidation proceedings.

4.5. Extension or Replacement of Liquidator

In case the Liquidator fails to terminate the Liquidation proceedings within his term, the Liquidator shall submit a status report and may request for extension of his term or replacement, subject to BSP approval. The Liquidator shall manifest to the court such approval for the information of creditors and other stakeholders.

Upon the termination of the liquidation proceedings, the Liquidator shall pursue action in accordance with the preceding Subsection.

4.6. Records of the Liquidation Proceedings

The liquidator shall maintain records of the liquidation proceedings which may be made available to parties duly authorized by him or the Liquidation Court.

After the termination of the liquidation proceedings, the liquidator shall turn over all records to a custodian duly appointed by the Court.

- Term of Liquidator

The Liquidator shall serve for a term of five (5) years unless sooner terminated, revoked or extended by the MB.

- Proceedings in Case of Voluntary Liquidation

6.1 Grounds

An NBQB/Trust Entity may elect voluntary dissolution under the Corporation Code by any of the following methods:

- by two-thirds (2/3) vote of the stockholders and majority vote of the board of directors, where no creditors are prejudiced;
- judgment of the Securities and Exchange Commission after hearing the petition for voluntary dissolution, where creditors are prejudiced; or
- amending the articles of incorporation to shorten the corporate term, provided all creditors are assured of payment of their claims.

The liquidation of an NBQB/Trust Entity which is voluntarily dissolved may be undertaken by the NBQB/ Trust Entity itself through its Board of Directors, or by a Trustee appointed by the NBQB/Trust Entity. If the liquidation cannot be carried out by the Board of Directors or by a Trustee, a Liquidator may be appointed by the Monetary Board. However, in both of the foregoing cases, the following conditions shall apply:

-

No voluntary dissolution shall be undertaken by an NBQB/Trust Entity without written notice to the Monetary Board;

-

The notice shall be accompanied by a surrender of license and request for approval of a liquidation plan which lays down the procedures to be adopted in the liquidation of the NBQB/Trust Entity;

-

The liquidation plan shall be implemented by the Board of Directors/Trustee/Liquidator only upon its approval by the Monetary Board;

-

Within five (5) days from receipt of notice of approval by the Monetary Board of the NBQB/ Trust Entity's Liquidation Plan, the Board of Directors shall cause the posting in three (3) public places and publication of the NBQB/Trust Entity's voluntary dissolution once in a newspaper of general circulation; and

-

The liquidation shall be terminated within a reasonable time, preferably within five (5) years or sooner.

6.2 Liquidation Process

The liquidation plan shall, at a minimum, include the following:

- Inventory/Appraisal of Assets and Liabilities. A schedule/inventory and status/appraisal reports of assets and liabilities of the NBQB/ Trust Entity.

- Notice to Creditors. Notice of the voluntary dissolution to be sent by the Board of Directors/Trustee/ Liquidator by registered mail to all creditors of the NBQB/Trust Entity advising them to file their claims within a set deadline. Publication of the same notice shall be made in a newspaper of general circulation at least once a week for two (2) consecutive weeks, within thirty (30) days from approval by the Monetary Board of the voluntary dissolution.

- Conversion of Assets into Money. Projected timetable to convert assets and manner of conversion, e.g., thru public auction or negotiated sale.

- Project of Distribution of Assets and Liquidating Dividends.

- Final Notice to Claimants/ Creditors. Undertaking of the Board of Directors/Trustee/ Liquidator to advise, within thirty (30) days from conversion into money of all or substantially all of the assets of the NBQB/Trust Entity, by registered mail and by publication in a newspaper of general circulation at least once a month for three (3) consecutive months, that claimants/creditors have thirty (30) days from last publication within which to claim check payments.

- Final Liquidation Report. Submission by the Board of Directors/Trustee/Liquidator, within thirty (30) days from the deadline given in the final notice to claimants/creditors, of a final liquidation report to the Stockholders, copy furnished the Securities and Exchange Commission and the Monetary Board. The final report shall include, among others, a list of the remaining non-cash assets of and claims against, the NBQB/Trust Entity, if any.

[1] Chua v. NLRC, 1990

ANNEX A

MASTER LIQUIDATION PLAN FOR NBQBS/TRUST ENTITIES

- Preparation of Schedules of Assets and Liabilities

After the turn-over of the affairs of the insolvent NBQB/Trust Entity is completed, the Liquidator shall prepare the schedules of all the assets and liabilities of the entity accompanied by the following basic information:

- Statement of condition as of date of order of liquidation

- Exceptions/variances noted in the takeover

- Work program pursuant to the master liquidator plan

- Inventory of Assets

The following procedures/guidelines shall be observed by the Liquidator in preparing the inventory of assets:

2.1

The inventory shall contain all known assets of the NBQB together with their book value and market value based on the latest available appraisal report.

2.2

Supplemental reports shall be submitted for additional assets discovered, if any, and the Liquidator shall take possession thereof.

2.3

The schedules/reports shall be the basis for the conversion/disposition of the assets.

- Conversion of Receivables/Loans, Securities, and Other Receivables into Money

The following procedures/guidelines shall be observed by the Liquidator in converting the NBQB's/Trust Entity's assets to money:

3.1.

In case the Liquidator engages the services of private collection agencies to collect all or particular receivables of the entity, such shall be covered by an agreement in writing.

3.2.

In case the Liquidator shall undertake the collection of the loan receivables:

3.2.1.

At least three (3) demand letters shall be sent to borrowers whose accounts are not subject to pending cases in courts, furnishing a copy of said letters to respective comakers or guarantors, by registered mail with return card or by courier;

3.2.2.

The Liquidator shall cause the appraisal of collaterals to determine their existence and valuation, where necessary.

3.2.3.

Settlement proposals which require at least 20% payment of the total obligation and the balance (with interest) payable in equal amortizations within a one-year period may be allowed, provided, any deviation from the aforementioned arrangement shall require approval of the Liquidation Court.

3.2.4.

For borrowers who ignore demand letters or who fail to settle their accounts in accordance with the agreed payment arrangement, or whose demand letters are returned by the Post Office or by courier, the following courses of action shall be taken:

3.2.4.a.

Secured loans - Immediate foreclosure of the mortgaged property shall be instituted.

3.2.4.b.

Unsecured loans - Liquidator shall pursue appropriate legal action.

3.2.5.

Foreclosure of mortgages may be done either extra-judicially or judicially. The amount of bid shall be the current appraisal value of the property or the total obligation consisting of principal, interest, penalties and other charges, including attorney's fees, other foreclosure and collection expenses incurred, whichever is lower. In case the bid price in foreclosure sale is not sufficient to cover the total loan obligation, the necessary legal remedies shall be instituted against the borrower-mortgagor, with the assistance of the counsel engaged by the Liquidator, to recover the deficiency.

3.2.6.

The Liquidator is authorized to disburse funds for foreclosure expenses, including legal fees, to be charged against the NBQB/Trust Entity.

3.2.7.

Booked receivables found to be non-existent and/or uncollectible shall be written-off subject to prior approval of the Liquidation Court.

- Conversion of Personal and Real Estate Properties

The conversion into money of the personal properties and real estate properties and their improvements shall be made as follows:

4.1.

These items shall be sold by means of public sealed bidding or on negotiated basis; provided that negotiated sale shall only be resorted to in the event of failure of public sealed bidding.

Negotiated sale shall be governed by Annex A-1.1. Sample form for negotiated offer to purchase is attached as

Annex A-1.

4.2.

Publication of the sale by means of sealed bidding shall be made by the Liquidator once in a national newspaper of general circulation in the Philippines.

4.3.

In case of properties situated outside National Capital Region, the invitation to bid shall also be published once in a local newspaper of general circulation in the province or city where the property is situated at least fifteen (15) days before the scheduled sale. If there is no newspaper of general circulation in the locality where the property is situated, the invitation to bid shall be posted conspicuously in the city or municipal hall and in other public places, like public market, at least fifteen (15) days before the scheduled sale.

4.4.

In the case of personal property, the publication of sale in a newspaper may be dispensed with if the value of the property to be sold is insignificant relative to the cost of publication. Instead, notices of sale of these properties shall be posted in government offices and other public places at least fifteen (15) days before the scheduled sale.

4.5.

In case of sale through sealed bidding, sample invitation to bid is attached as Annex A-2.

4.6.

The minimum selling price of real and personal properties of the NBQB shall be determined taking into consideration the appraised value based on the appraisal report made not more than two (2) years prior to date of disposition.

4.7.

The Liquidator may reduce the minimum bid/selling price by not more than 10%, in case of properties that cannot be sold at the stipulated minimum bid/selling price.

4.8.

The Liquidator shall recommend to the Court the write-off of assets which are ascertained to be worthless.

4.9.

In case of sale thru sealed bidding of personal and/or real properties, the Liquidator may use the sample bid forms and conditions of bid as shown in Annexes A-3 and A-4, respectively. In the case of partnerships/corporations, the bid form shall be accompanied by an authority/resolution that shall indicate the designated person who shall make a bid and bind the partnership/corporation.

In any case, the higher price obtainable should govern the sale of the assets of the NBQB/Trust Entity.

4.10.

Prospective bidders are allowed to examine the documents covering the real estate properties and their improvements and to inspect the property and improvements at their, site, if desired.

4.11.

The condition of the bid with respect to the real estate properties and improvements shall form part of the conditions for the sale of such assets.

4.12.

All bids shall be in Philippine currency and shall be written in words and in figures. In case of conflict between words and figures, the words shall prevail.

4.13.

Bid proposals together with the minimum 20% of the bid tender in cash or manager's check shall be submitted to the Liquidator in sealed envelopes. Sample invitation to Bid is shown in Annex A-2.

Bidders, of real property shall be those qualified to own real property under existing laws.

4.14.

The Deed of Sales shall be made and executed after the winning bidder pays the entire bid price of the property.

4.15.

The winning bidder of the real estate property shall be responsible for instituting eviction proceedings against any former owner or present occupant or possessor, if any.

4.16.

Real and personal properties that cannot be sold shall be subject to such disposition as may be determined by the Liquidator and with the approval of the Liquidation Court.

- Processing of Claims Against the Insolvent NBQB/Trust Entity

Processing of claims against the NBQB/ Trust Entity shall only start after submission to the Monetary Board of the inventory of assets and liabilities.

The Liquidator shall observe the following procedures/guidelines in the processing of claims:

5.1.

Posting in the premises of closed NBQB and publication of a "Notice to Creditors" in a newspaper of general circulation once a week for two (2) consecutive weeks advising all creditors to file their claims against the entity. (See Annex A-5 for sample of Notice to Creditors.)

5.2.

Distribution of claim forms for creditors to accomplish. (See Sample Claim Form in Annex A-6)

The claimant shall accomplish Claim Form as shown in Annex A-6. In the case of partnerships/ corporations, the claim form shall be accompanied by an authority/ resolution that shall indicate the designated person who shall make a claim and bind the partnership/ corporation. Claims received shall be stamped "Received", dated and numbered consecutively and recorded in the registry of claims. A copy of the claim received shall be given to the claimant.

5.3.

Verification of claims received against the records and books of accounts of the NBQB to ascertain authenticity, determine whether claimants have outstanding liabilities to the NBQB/Trust Entity and whether settlement of the claims shall be in full or pro-rata depending on whether the claim is preferred or ordinary.

5.4.

Preparation of an adjustment and verification sheet for each claim. (See Annex A-7)

5.5.

Preparation of a Liquidation Certificate (sample is shown in Annex A-8) embodying the conclusive findings arrived at on the adjustment/verification sheet. The order shall be served on the claimant by registered mail with return card/ personal service.

- Payment of Claims

6.1.

The net proceeds of the sale may be paid to creditors of the NBQB, taking into consideration the rules on preference of credits. A proposal to this effect shall be submitted to the Liquidation Court, copy furnished the Monetary Board.

6.2.

Prepare and submit to the Court for approval a Project of Distribution, in case of 6.1, or Final Distribution (Sample in Annex.A-9) as the case may be, which must show, among others, the following:

-

Cash

-

Assets to be realized

-

Cost of liquidation/recoveries, including reasonable expenses and fees of the Liquidator

-

List of credits/claims to be paid in accordance with the provisions on preference of credits under Articles 2241 to 2246 of the Civil Code.

A copy of the Project of Distribution submitted to the Liquidation Court shall be provided to the Monetary Board for information with the following recommendations:

1.

That an authority be secured from the liquidation court, through engaged counsel of Liquidator, on the disposition of the remaining cash/ unclaimed checks;

2.

That the report be approved and the court issue an order terminating liquidation proceedings and discharging the Liquidator from his duties; and

3.

That in case the NBQB/Trust Entity has remaining non-cash assets, the Liquidator shall seek the Court's approval to turn over said assets to a trustee appointed by the court for proper disposition in accordance with law.

6.3.

Individual notices to the claimants as well as Claim for Payment forms shall be sent by way of registered mail. (Samples are shown in Annexes, A-10 and A-11)

6.4.

Distribute the check payment to claimants in accordance with the Project of Distribution approved by the Court.

a.

Claims shall be paid in check. Claimants shall execute an affidavit proving their right to be paid and an indemnity undertaking (Sample is shown in Annex A-12) to save the Liquidator from any claim or loss that might be caused by reason of such payment.

b.

Remaining assets shall be distributed in accordance with law.

6.5.

A final report on liquidation shall be submitted by the Liquidator to the Liquidation Court for approval, showing among others, the following:

a.

Summary of the total cash realized and paid out by the Liquidator to approved claimants;

b.

Statement of remaining cash/ unclaimed checks; and

The Liquidator shall also submit a copy of the final report to the Monetary Board for information. Likewise, the Liquidator shall inform the MB of the action taken by the Court on the final report.

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX A-1.1 "NEGOTIATED SALE RULES AND PROCEDURES (Attachment to Negotiated Offer to Purchase Form)" : 108 OG No. 2, 180-184 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-1" NEGOTIATED OFFER TO PURCHASE FORM : 108 OG No. 2, 185 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-2" INVITATION TO BID : 108 OG No. 2, 186 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-3" BID FORM : 108 OG No. 2, 187 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-4" CONDITION OF THE BID : 108 OG No. 2, 188-191 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-5" NOTICE TO ALL CREDITOR OF NAME OF NBQB/TRUST ENTITY : 108 OG No. 2, 191 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-6" NAME OF NBQB/TRUST ENTITY : 108 OG No. 2, 192 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-7" ADJUSTMENT AND VERIFICATION SHEET : 108 OG No. 2, 193 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-8" OFFICE OF THE LIQUIDATOR : 108 OG No. 2, 194-195 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-9" PARTIAL/FINAL PROJECT OF DISTRIBUTION : 108 OG No. 2, 196 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-10" OFFICE OF THE LIQUIDATOR : 108 OG No. 2, 196 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-11" OFFICE OF THE LIQUIDATOR CLAIM FOR PAYMENT (In Triplicate) : 108 OG No. 2, 198-199 (January 9, 2012)

See BSP CIRCULAR NO. 719 SERIES OF 2011 ANNEX "A-11" INDEMNITY UNDERTAKING : 108 OG No. 2, 200 (January 9, 2012)

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