

## [ BSP CIRCULAR NO. 181, October 07, 1998 ]

### GUIDELINES FOR BANKS FAILING TO COMPLY WITH THE MINIMUM CAPITAL REQUIREMENTS

The Monetary Board, in its Resolution No. 1503 dated October 28, 1998, approved the following policy guidelines for banks failing to comply with the minimum capital requirements set forth under existing laws and regulations, as follows:

1. The adoption of the Memorandum of Understanding (pro-forma shown in Annexes "A" to "A-3") between the bank and the Bangko Sentral ng Pilipinas;

2. The implementation of the Prompt Corrective Action Program as detailed below:

**Capital  
Deficiency (under  
existing laws and  
regulations)**

**Prompt Corrective Action**

***Undercapitalized***

Up to 20%

- Require the bank to execute a Memorandum of Understanding (MOU) with the BSP, binding itself, among others, to implement a viable capital restoration plan acceptable to the BSP within 30 days from date of notice.
- Require the intensified monitoring by BSP of bank's financial condition
- BSP to conduct a special examination of the bank.

***Significantly  
Undercapitalized***

Up to 60%

- BSP to call a meeting with bank directors/principal officers to discuss and agree on remedial measures to be taken and the timetable for implementation
- Intensify monitoring by the SES of the bank's financial condition
- BSP to conduct immediately an extensive on-site examination
- Require the bank to execute a Memorandum of Understanding (MOU) with the BSP, binding itself, among others, to implement a viable capital restoration plan acceptable to the BSP within 30 days from date of discussion. Among the options to be considered are:
  - a. disposition of a majority shareholder's interest
  - b. sale of assets
  - c. issuance of additional stocks/capital infusion
  - d. sale of bank to highest bidder subject to terms

set by BSP

e. merger (assisted or unassisted) or consolidation with a stronger bank

- Require the creation of a separate unit in the bank — remedial asset management group which will take care of bank's bad assets and make progress reports to the BSP.

- Appoint an external auditor at the expense of the bank to perform a financial or operational audit under the terms of reference provided by the BSP

- If necessary, appoint a consultant specialist to diagnose the problem and to recommend the appropriate remedial measures (i.e. introduce new profit opportunities, improve internal and accounting controls, etc.) to restore bank's viability

***Critically  
Undercapitalized***

More than 60%

- Place the bank under Prompt Corrective Action Unit since this would require more than normal bank supervision

- BSP to call a meeting with bank's principal shareholders/directors

- BSP to conduct immediately an extensive on-site examination

- BSP to conduct an intensive monitoring of bank's financial condition

- Require the bank to execute a Memorandum of Understanding (MOU) with the BSP, binding itself, among others, to implement a viable capital restoration plan acceptable to the BSP within 30 days from date of meeting. Among the options to be considered are:

- a. disposition of a majority shareholder's interest

- b. sale of assets

- c. issuance of additional stock/capital infusion

- d. sale of bank to highest bidder subject to terms set by BSP

- e. merger (assisted or unassisted) or consolidation with a stronger bank

- Create a BSP Ad Hoc Committee to oversee the implementation of the action plan

- Require the creation of a separate unit in the bank — remedial asset management group to take care of bank's bad assets and make progress reports to the BSP

- Appoint an external auditor at the expense of the bank to perform financial or operational audit under the terms of reference of the BSP

- If bank's condition further deteriorates to the extent that depositors and creditors protection is at stake and its capital base is already deficient by

more than 80%, appoint/assign a resident examiner/comptroller or conservator, if legally feasible, to oversee/take over management of the bank.

- If necessary, appoint a consultant specialist to diagnose the problem and to recommend the appropriate remedial measures (i.e. introduce new profit opportunities, improve internal and accounting controls, etc.) to restore bank's viability

This Circular shall take effect immediately.

Adopted: 14 Nov. 1998

(SGD.) GABRIEL C. SINGSON  
*Governor*

*Annex "A"*

#### MEMORANDUM OF UNDERSTANDING

\_\_\_\_\_ (Name of Bank) \_\_\_\_\_, and the Bangko Sentral ng Pilipinas (BSP) wish to protect the interest of the depositors, creditors, shareholders and the public in general and toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable banking laws, rules and regulations.

In consideration of the above premise, the BSP, through its authorized deputies, and the Bank, by and through its duly elected Board of Directors (Board), do hereby agree that the Bank shall at all times operate in compliance with the articles of this Memorandum of Understanding.

#### ACTION PLAN

Within thirty (30) days, the Board shall adopt and implement a capital restoration plan detailing the Board's perception of what needs to be done to improve the Bank's capital position, specifying how the Board will implement the plan and setting forth a timetable for the implementation of the plan.

Upon completion of the plan, the Bank shall submit the plan to the appropriate supervising and examining department of the BSP for review. The Board shall establish appropriate procedures for the implementation of the plan.

In the event the BSP recommends changes to the action plan, the Board shall immediately incorporate those changes into the plan.

The plan shall be implemented pursuant to the time frames set forth within the plan unless events dictate modifications to the plan are required. Where the Board considers modifications appropriate, those modifications shall be submitted to BSP for approval.

*Annex "A-1"*