

**[BSP CIRCULAR NO. 719 SERIES OF 2011, May
06, 2011]**

OFFICE OF THE GOVERNOR

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

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.

I. Coverage

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

- a. Non-banks with quasi-banking license (i.e. Investment houses and Financing companies); and

b. Trust entities.

II. Legal Bases for Placement under Receivership

a. 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:

1. 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;
2. has insufficient realizable assets, as determined by the Bangko Sentral to meet its liabilities; or
3. cannot continue in business without involving probable losses to its depositors or creditors; or
4. 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. * * *"

b. 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 * * *."

c. 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 * * *"

d. 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."

III. Minimum Qualifications of the Receiver

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

- a. Must belong to the private sector;
- b. 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;
- c. 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.
- d. Must pass the "fit and proper" rule of the BSP on bank directors/ officers;
- e. Must be of good moral character, sound judgement and tact in dealing with the transactions of the institution under receivership;
- f. Must not have conflict of interest as defined in these guidelines.
- g. Must not be included in the BSP Watchlist Disqualification Files "A" and "B";
- h. Must be eligible for coverage by a fidelity bond;
- i. 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
- j. 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 via-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.

IV. 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:

- a. 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;