

## **[ PDIC REGULATORY ISSUANCE NO. 2012-1, January 26, 2012 ]**

### **REVISED RULES ON ADMINISTRATIVE OFFENSES, FINES, AND PROCEDURES IN ADMINISTRATIVE INVESTIGATIONS**

Pursuant to Section 21 (g) of Republic Act No. 3591, as amended (The "PDIC Charter"), the Board of Directors of PDIC, by virtue of Resolution No. 2011-12-259 dated December 9, 2011, approved the promulgation of the revised PDIC Rules on Administrative Offenses, Fines and Procedure in Administrative Investigations.

#### **PART I - Administrative Offenses, Fines, and Consequences**

**Section 1. Definition of Terms.** – For purposes of this Regulatory Issuance, the following terms shall mean:

- a. *Administrative Fine* – refers to the monetary penalty imposed against a bank and/or any of its directors, officers, employees or agents for committing any of the administrative offenses defined in this Regulatory Issuance.
- b. *Deposit Records* – include, but is not limited to, subsidiary ledgers of deposit liabilities, duplicate copies of time certificates of deposits, deposit agreements, signature cards, registers or logbooks used in connection with the issuance of new deposit accounts, individual files maintained by the bank for depositors, if any, computer systems and databases (including system documentation/manuals) pertaining to deposit operations, the deposit liabilities control ledgers which are part of the General Ledger of the bank, deposit/withdrawal slips, debit/credit memos, and other similar bank records relevant to deposit liabilities.
- c. *Directive to Cease and Desist (DCD)* – refers to a directive issued by PDIC prohibiting, among others, a bank and/or its directors, officers, employees or agents from offering, marketing or promoting, or continuing to offer, market or promote deposit accounts/products or transactions, which constitute and/or emanate from an Unsafe and/or Unsound Banking Practice, and representing to the public that the said deposit products or accounts, or transactions, are insured by PDIC.
- d. *False Information/Statement* – refers to untrue, incorrect, inaccurate, erroneous, or misleading information/statement alleged or stated in the documents, reports or supporting schedules/attachments, including those that are forged, altered or tampered.

- e. *Splitting of Deposits* – occurs whenever a deposit account/s with an outstanding balance of more than the statutory maximum amount of insured deposit maintained under the name of a natural or juridical person/s is/are broken down and transferred into two or more accounts in the name/s of natural or juridical person/s or entity/entities who have no beneficial ownership on transferred deposits in their names within one hundred twenty (120) days immediately preceding or during a bank-declared bank holiday, or immediately preceding a closure order issued by the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) for the purpose of availing of the maximum deposit insurance coverage.
- f. *Unsafe and/or Unsound Banking Practices* – refers to the activities, transactions, or omissions as defined under PDIC Regulatory Issuance No. 2011-01 (Unsafe and/or Unsound Banking Practices).
- g. *"Willful Refusal"* – means the unjustified failure or avoidance or delay to perform an obligation imposed upon a bank and/or any of its director(s), officer(s), employee(s) or agents under any order, regulation or directive issued by PDIC.

**Section 2. Administrative Offenses.** – The following acts or omissions shall constitute an Administrative Offense:

- a. Any willful refusal to submit reports to PDIC as required by law, rules, and regulations;
- b. Any unjustified refusal to permit PDIC examination and audit of the deposit records or the affairs of the institution;
- c. Any willful making of a false statement or entry in any bank report or document required by PDIC;
- d. Submission of false material information in connection with or in relation to any financial assistance of PDIC extended to the bank;
- e. Splitting of deposits or creation of fictitious loans or deposit accounts;
- f. Refusal to allow PDIC, its officers, employees and/or agents to take over the affairs, assets, liabilities and administration of a closed bank placed under its receivership or obstructing such action of PDIC;
- g. Refusal to turn over to PDIC, or destroying or tampering, bank records;
- h. Fraudulent disposal, transfer or concealment of any asset, property or liability of the closed bank under receivership of PDIC;
- i. Violation of, or causing any person to violate the exemption from garnishment, levy, attachment or execution provided under the PDIC Charter, and Republic Act No. 7653, otherwise known as the New Central Bank Act;

- j. Any willful failure or refusal to comply with, or violation of any provision of the PDIC Charter, this Regulatory Issuance or any PDIC order, rule or regulation or commission of any other irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Board of Directors of PDIC and/or the BSP.

**Section 3. Administrative Fines.** – In the absence of any specific fine imposed by PDIC for any of the acts or omissions specified under Section 2, the following Administrative Fines shall be imposed on any bank and/or any of its director(s), officer(s), employee(s) or agent(s):

- a. For offenses mentioned in section 2 (a), (b), (c), (d), (f), (g), (i) and (j), a fine as may be determined by the PDIC Board of Directors but in no case to exceed P300,000.00 for each banking day of violation;
- b. For offenses mentioned in section 2 (e), a fine as may be determined by the PDIC Board of Directors but in no case to exceed 100% of the total amount split or fictitious loan created;
- c. For offenses mentioned in section 2 (h), a fine as may be determined by the PDIC Board of Directors but in no case to exceed the fair market value of the asset disposed, transferred or concealed or the amount of liability concealed;

*Provided, that, the Administrative Fine imposed on a bank or any of its director(s), officer(s), employee(s) or agent(s) shall in no case exceed three times the amount of the damages or costs caused by the fraudulent, irregular and/or anomalous transactions for each day that the violation subsists, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and size of the bank.*

The damage or cost mentioned in the immediately preceding paragraph shall include financial benefit or gain to the bank or any of its director(s), officer(s), employee(s) or agent(s) as a result of the fraudulent, irregular, and/or anomalous transaction committed.

Should the director(s), officer(s), employee(s) or agent(s) of the bank derive any financial gain as a result of the fraudulent, irregular, and/or anomalous transaction, an additional fine equivalent to the amount of such financial benefit or gain shall be imposed.

**Section 4. Exclusion From Deposit Insurance as a Consequence of Deposit – Related Unsafe and/or Unsound Banking Practices.** – Deposit accounts or transactions or transactions that constitute and/or emanate from an Unsafe and/or Unsound Banking Practice under Section 2 (j) of this Regulatory Issuance shall be excluded from deposit insurance coverage pursuant to PDIC Regulatory Issuance No. 2011-02 (*Rules and Regulations Governing Deposit Accounts of Transactions Excluded from the Coverage of Deposit Insurance*).

## **PART II – General Principles in Administrative Investigations**

**Section 5. Applicability.** – These rules shall apply to administrative investigations conducted against any operating or closed bank and/or any of its director(s), officer(s), employee(s) or agent(s) charged with violation of any of the administrative offenses enumerated in Section 2 hereof.

**Section 6. Nature of Proceedings.** – Subject to the requirements of due process, the administrative investigation contemplated herein shall be conducted in a summary manner without strictly adhering to the technical rules of procedure and evidence applicable to judicial proceedings, which shall only be supplementary.

**Section 7. Confidentiality.** – The administrative investigation conducted under this Regulatory Issuance shall be confidential in nature except when disclosure thereof is required under any provision of law or this Regulatory Issuance.

### **PART III – Rules of Procedure in Administrative Investigations**

#### **Section 8. Report or Information. –**

- a. *Where referred.* All reports or information from depositors, departments of the PDIC, other government agencies, and the general public alleging a possible violation of Section 2 of this Regulatory Issuance shall be filed with the Office of the General Counsel (OGC) of the PDIC. The report or information must be in writing, stating the facts alleged to constitute the acts, transactions, or omissions complained of and the name of the bank and/or the name of the director, officer, employee or agent of the bank involved.
- b. *Preliminary Evaluation.* – Upon receipt of the report or information, the OGC may, on its own, conduct a preliminary evaluation or refer the same to the Investigation Department for the conduct of a preliminary evaluation. After such preliminary evaluation, the following acts may be taken:
  1. The institution of administrative charge/s against the bank concerned and/or its director(s), officer(s), employee(s) or agent(s), subject to the authorization of the proper approving authority;
  2. The conduct of a fact-finding investigation in accordance with the procedures under PDIC Regulatory Issuance No. 2005-02 (Rules on Fact-Finding Investigation of Fraud, Irregularities and Anomalies Committed in Banks);
  3. The referral of the report or information to the appropriate PDIC department or government agency;
  4. Advise the source of the report or information to submit additional documents to support the same within thirty (30) calendar days from receipt of notice, if the report or information, on its face, is insufficient in substance.

**Section 9. Administrative Charges.** – Administrative charge/s resulting from the