

[BSP CIRCULAR NO. 749 Series of 2012, February 27, 2012]

**GUIDELINES IN STRENGTHENING CORPORATE GOVERNANCE IN
BSP SUPERVISED FINANCIAL INSTITUTIONS**

SUBJECT **GUIDELINES** **IN** **STRENGTHENING** **CORPORATE**
: **GOVERNANCE** **IN** **BSP** **SUPERVISED** **FINANCIAL**
 INSTITUTIONS

The Monetary Board in its Resolution Nos. 111 and 277 dated 20 January 2012 and 16 February 2012, respectively, approved the following guidelines in strengthening corporate governance in BSP supervised financial institutions.

Policy Statement. It is the trust of the Bangko Sentral ng Pilipinas to continuously strengthen corporate governance in its supervised financial institutions cognizant that this is central in sustaining the resiliency and stability of the financial system. In this light, the BSP is aligning its existing regulations with international best practices that promote good corporate governance such as the Principles for Enhancing Corporate Governance" issued by the Basel Committee on Banking Supervision.

SECTION 1. Qualifications of the board of directors.—Subsections X141.1 and X141.2 of the MORB are hereby amended to read as follows:

a) **"X141.1 Definition/limits.**

a. Definition of directors. Directors shall include:

- (1) directors who are named as such in the articles of incorporation;
- (2) directors duly elected in subsequent meetings of the stockholders or those appointed by virtue of the charter of government-owned banks; and
- (3) those elected to fill vacancies in the board of directors.

- b. *Limits on the number of the members of the board of directors.* Pursuant to Sections 15 and 17 of R.A. No. 8791, there shall be at least five (5), and a maximum of fifteen (15) members of the board of directors of a bank: *Provided*, That in case of a bank/QB/trust entity merger or consolidation, the number of directors may be increased up to the total number of the members of board of directors of the merging or consolidating bank/QB/trust entity as provided for in their respective Articles of Incorporation, but in no case to exceed twenty-one (21). The board shall determine the appropriate number of its members to ensure that the number

thereof is commensurate with the size and complexity of the bank's operations.

To the extent practicable, the members of the board of directors shall be selected from a broad pool of qualified candidates. A sufficient number of qualified non-executive members shall be elected to promote the independence of the board from the views of senior management. For this purpose, non-executive members of the board of directors shall refer to those who are not part of the executive committee or day to day management of banking operations and shall include the independent directors.

- c. *Minimum number of independent directors.* At least twenty percent (20%) but not less than two (2) members of the board of directors shall be independent directors: *Provided*, That any fractional result from applying the required minimum proportion, i.e., 20 percent (20%), shall be rounded-up to the nearest whole number.
- d. *Limitation on nationality of directors.* Non-Filipino citizens may become members of the board of directors of a bank to the extent of the foreign participation in the equity of said bank: *Provided*, That pursuant to Section 23 of the Corporation Code of the Philippines (BP Blg. 68), a majority of the directors must be residents of the Philippines.
- e. *Conduct of board meetings.* The meetings of the board of directors may be conducted through modern technologies such as, but not limited to, teleconferencing and video conferencing as long as the director who is taking part in said meetings can effectively participate in the deliberations on matters taken up therein:

b) **"Subsection X141.2 Qualifications of a director.**

- a. A director shall have the following minimum qualifications:

- (1) He shall be at least twenty-five (25) years of age at the time of his election or appointment;

- (4) He must be fit and proper for the position of a director of the bank. In determining whether a person is fit and proper for the position of a director, the following matters must be considered: integrity/probity, physical/mental fitness, competence, relevant education/financial literacy/training, diligence and knowledge/experience.

The members of the board of directors shall possess the foregoing

qualifications for directors in addition to those required or prescribed under R.A. No. 8791 and other existing applicable laws and regulations."

b. Independent directors-

In selecting independent directors, the number and types of entities where the candidate is likewise elected as such, shall be considered to ensure that he will be able to devote sufficient time to effectively carry-out his duties and responsibilities: *Provided*, That the rules and regulations of the Securities and Exchange Commission (SEC) governing public and listed companies on the maximum number of companies of the conglomerate in which an individual can serve as an independent director shall apply to independent directors of all types of banks.

An independent director shall refer to a person who-

- (1) is not or has not been a member of the executive committee of the board of directors, an officer or employee of the bank, its subsidiaries or affiliates or related interests during the past three (3) years counted from the date of his election;
- (2) is not a director or officer of the related companies of the institution's majority stockholder;
- (3) is not a stockholder with shares of stock sufficient to elect one seat in the board of directors of the institution, or in any of its related companies or of its majority corporate shareholders;
- (4) is not a relative within the fourth degree of consanguinity or affinity, legitimate or common-law of any director, officer or a stockholder holding shares of stock sufficient to elect one seat in the board of the bank or any of its related companies;
- (5) is not acting as a nominee or representative of any director or substantial shareholder of the bank, any of its related companies or any of its substantial shareholders; and
- (6) is not retained as professional adviser, consultant, agent or counsel of the institution, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm; is independent of management and free from any business or other relationship, has not engaged and does not engage in any transaction with the institution or with any of its related companies or with any of its substantial shareholders, whether by himself or with other persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arms length and could not materially interfere with or influence the exercise of his judgment.

An independent director of a bank may only serve as such for a total of five (5) consecutive years; *Provided*, That the maximum term and any "cooling off" period prescribed by the SEC for public and listed companies shall apply to all types of banks.

The foregoing terms and phrases used in Items "(1) to (6)" of this Section shall have the following meaning:

- (a) *Parent* is a corporation which has control over another corporation directly or indirectly through one (1) or more intermediaries;
- (b) *Subsidiary* means a corporation more than fifty percent (50%) of the voting stock of which is owned or controlled directly or indirectly, through one (1) or more intermediaries by a bank.
- (c) *Affiliate* is a juridical person that directly or indirectly, through one (1) or more intermediaries, is controlled by, or is under common control with the bank or its affiliates.
- (d) *Related interests* as defined under Sections 12 and 13 of R.A. No. 8791 shall mean individuals related to each other within the fourth degree of consanguinity or affinity, legitimate or common law, and two (2) or more corporations owned or controlled by a single individual or by the same family group or the same group of persons.
- (e) *Control* exists when the parent owns directly or indirectly through subsidiaries more than one-half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. *Control* may also exist even when ownership is one-half or less of the voting power of an enterprise when there is:
 - i. power over more than one-half of the voting rights by virtue of an agreement with other stockholders; or
 - ii. power to govern the financial and operating policies of the enterprise under a statute or an agreement; or
 - iii. power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
 - iv. power to cast the majority votes at meetings of the board of directors or equivalent governing body; or
 - v. any other arrangement similar to any of the above.
- (f) *Related company* means another company which is: (a) its parent or holding company; (b) its subsidiary or affiliate or (c) a corporation where a bank or its majority stockholder own such number of shares that will allow/enable him to elect at least one (1)

member of the board of directors or a partnership where such majority stockholder is a partner.

- (g) *Substantial or major shareholder* shall mean a person, whether natural or juridical, owning such number of shares that will allow him to elect at least one (1) member of the board of directors of a bank or who is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.
- (h) Majority stockholder or majority shareholder means a person, whether natural or juridical, owning more than fifty percent (50%) of the voting stock of a bank.

SEC. 2. Duties and responsibilities of the board of directors.—Subsection X141.3 of the MORB is hereby amended to read as follows:

a) "Subsection **X141.3 Powers/ responsibilities and duties of directors.**

- a. *Powers of the board of directors.* The corporate powers of a bank shall be exercised, its business conducted and all its property controlled and held, by its board of directors. The powers of the board of directors as conferred by law are original and cannot be revoked by the stockholders. The directors hold their office charged with the duty to exercise sound and objective judgment for the best interest of the bank.
- b. *General responsibility of the board of directors.* The position of a bank director is a position of trust. A director assumes certain responsibilities to different constituencies or stakeholders, i.e., the bank itself, its stockholders, its depositors and other creditors, its management and employees, the regulators, deposit insurer and the public at large. These constituencies or stakeholders have the right to expect that the institution is being run in a prudent and sound manner. The board of directors is primarily responsible for approving and overseeing the implementation of the bank's strategic objectives, risk strategy, corporate governance and corporate values. Further, the board of directors is also responsible for monitoring and overseeing the performance of senior management as the latter manages the day to day affairs of the institution.
- c. *Specific duties and responsibilities of the board of directors*
 - (1) To approve and monitor the implementation of strategic objectives.** Consistent with the institution's strategic objectives, business plans shall be established for the bank including its trust operations, and initiatives thereto shall be implemented with clearly defined responsibilities and accountabilities. These shall take into account the bank's long-term financial interests, its level of risk tolerance and its ability to manage risk effectively. The board shall establish a system