



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 957 Series of 2017

Subject: Examination and Records of BSP-Supervised Financial Institutions

The Monetary Board, in its Resolution No. 368 dated 2 March 2017, approved amendments to the relevant provisions of the Manual of Regulations for Banks (MORB) and the Q-Regulations of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the examination and record-keeping of BSP-Supervised Financial Institutions (BSFIs). The regulations herein are set forth pursuant to Sections 25 and 34 of R.A. No. 7653 or the New Central Bank Act and Section 4 of R.A. No. 8791 or the General Banking Law of 2000, which recognizes the authority of the BSP to issue rules of conduct and establish standards of operation for its supervised financial institutions.

Section 1. Section X001 of the MORB and Section 4001Q of the MORNBFI shall be amended to read as follows:

- (a) **“Sec. X001 Examination by the Bangko Sentral.** The term ‘*examination*’ shall refer to an investigation of an institution under the supervisory authority of the Bangko Sentral to determine whether the institution is operating on a safe and sound basis, inquire into its solvency and liquidity, and assess the effectiveness of its compliance function to ascertain that it is conducting business in accordance with laws and regulations.

Regular or periodic examination shall be done once a year, with an interval of twelve (12) months from the last date thereof. Special examination may be conducted earlier, or at a shorter interval, when authorized by the Monetary Board by an affirmative vote of five (5) members.

In the full exercise of the supervisory powers of the Bangko Sentral, examination by the Bangko Sentral of institutions shall be complemented by overseeing thereof. In this regard, the term “*overseeing*” shall refer to a limited investigation of an institution, or any investigation that is limited in scope, conducted to inquire into a particular area/aspect of an institution’s operations, for the purpose of overseeing that laws and regulations are complied with, inquiring into the solvency and liquidity of

the institution, enforcing prompt corrective action, or such other matters requiring immediate investigation: *Provided*, That (i) specific authorizations be issued by the Deputy Governor, Supervision and Examination Sector (SES), and (ii) periodic summary reports on overseeing conducted be submitted to the Monetary Board.

- a. *Scope of examination.* Consistent with a risk-based approach to supervision, the scope of examination may include, but need not be limited to, the following:
- (1) Appraisal of the overall quality of corporate governance;
 - (2) Assessment of the risk management system, which shall include the evaluation of the effectiveness of management oversight and self-assessment functions (e.g., internal audit, risk management and compliance); adequacy of policies, procedures, and limits; effectiveness of risk measurement, monitoring and management information system; and robustness of internal controls;
 - (3) Review of the institution's operations and overall risk profile;
 - (4) Evaluation of financial performance, capital adequacy, asset quality, and liquidity; and
 - (5) Any other activity relevant to the above.
- b. *Conduct of examination.* The conduct of examination shall include, but need not be limited to, the interview of any bank's directors, officers, and personnel; and the verification, review, and evaluation of documents and records, including making copies of the records,[✓] taking possession thereof and keeping them under the custody of the Bangko Sentral after giving proper receipts therefor.

For this purpose, 'records' shall refer to information, whether in its original form or otherwise, including documents, signatures, seals, texts, images, sounds, speeches, or data compiled, recorded or stored, as the case may be: (1) in written form on any material; (2) on film, negative, tape or other medium so as to be capable of being reproduced; or (3) by means of any recording device or process, computer or other electronic device or process; and regardless of whether these information are stored and kept by the BSFI or another entity duly authorized by the BSFI (e.g., technology service provider). Records shall also include audio, photographic, and video evidence of events, acts, or transactions of the BSFI, including all records of communication, oral (e.g., voice recordings) or written (e.g., letters) of officers and employees of the BSFI: *Provided*, That the recording was made in connection with the performance of the official functions of the concerned officers or employees and coursed through BSFI-issued computers, telephones, mobile phones, and similar devices.

§ X001.1 Refusal to permit examination. Any act or omission that impedes, delays or obstructs the duly authorized Bangko Sentral examiner from conducting an examination of a BSFI, including the act of refusing to accept or honor the letter of authority to examine presented by the examiner of the Bangko Sentral, shall be considered as a refusal to permit examination.

The refusal of the BSFI to permit examination shall be reported by the Bangko Sentral examiner to the Head of the appropriate department of the SES, who shall forthwith make a written demand upon the BSFI concerned for such examination. If the BSFI continues to refuse the said examination without any satisfactory explanation thereof, a report on such refusal shall be submitted by the Bangko Sentral examiner concerned to the said Department Head.

Sanctions. A bank that wilfully refuses to permit examination shall pay a fine of ₱30,000 per day from the day of the refusal and for as long as such refusal lasts, without prejudice to the sanctions under Section 34 of R.A. No. 7653.

The fine shall be imposed starting on the day following the receipt by the concerned Head of Department in the SES of the report from the Bangko Sentral examiner that the bank continues to refuse to permit examination notwithstanding the written demand made by the Department Head.

Aside from the fine mentioned above, the bank and/or its concerned directors and/or officers may be subject to non-monetary sanctions provided under Section 37 of Republic Act No. 7653 (The New Central Bank Act) and Sec. X009.”

- (b) **“Sec. 4001Q Examination by the Bangko Sentral.** The Bangko Sentral shall have supervision over, and conduct periodic or special examinations of Quasi-Banks (QBs), including their subsidiaries and affiliates in allied activities.

The head and examiners of the appropriate department of the Supervision and Examination Sector (SES) are authorized to administer oaths to any director, officer, or employee of QBs, including their subsidiaries and affiliates engaged in allied activities, and to compel the presentation of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true condition of the institution as well as the books and records of persons and entities relative to or in connection with the operations, activities or transactions of the institution under examination, subject to the provision of existing laws protecting or safeguarding the secrecy or confidentiality of

investments of private persons, natural or juridical, in debt instruments issued by the Government.

The term *'examination'* shall refer to an investigation of an institution under the supervisory authority of the Bangko Sentral to determine whether the institution is operating on a safe and sound basis, inquire into its solvency and liquidity, and assess the effectiveness of its compliance function to ascertain that it is conducting business in accordance with laws and regulations.

Regular or periodic examination shall be done once a year, with an interval of twelve (12) months from the last date thereof. Special examination may be conducted earlier, or at a shorter interval, when authorized by the Monetary Board by an affirmative vote of five (5) members.

In the full exercise of the supervisory powers of the Bangko Sentral, examination by the Bangko Sentral of institutions shall be complemented by overseeing thereof. In this regard, the term *'overseeing'* shall refer to a limited investigation of an institution, or any investigation that is limited in scope, conducted to inquire into a particular area/aspect of an institution's operations, for the purpose of overseeing that laws and regulations are complied with, inquiring into the solvency and liquidity of the institution, enforcing prompt corrective action, or such other matters requiring immediate investigation: *Provided, That* (i) specific authorizations be issued by the Deputy Governor, Supervision and Examination Sector (SES), and (ii) periodic summary reports on overseeing conducted be submitted to the Monetary Board.

- a. *Scope of examination.* Consistent with a risk-based approach to supervision, the scope of examination may include, but need not be limited to, the following:
- (1) Appraisal of the overall quality of corporate governance;
 - (2) Assessment of the risk management system, which shall include the evaluation of the effectiveness of management oversight and self-assessment functions (e.g., internal audit, risk management and compliance); adequacy of policies, procedures, and limits; effectiveness of risk measurement, monitoring and management information system; and robustness of internal controls;
 - (3) Review of the institution's operations and overall risk profile;
 - (4) Evaluation of financial performance, capital adequacy, asset quality, and liquidity; and
 - (5) Any other activity relevant to the above.

- b. *Conduct of examination.* The conduct of examination shall include, but need not be limited to, the interview of any quasi-bank's directors, officers, and personnel; and the verification, review, and evaluation of documents and records, including making copies of the records, taking possession thereof and keeping them under the custody of the Bangko Sentral after giving proper receipts therefor.

For this purpose, 'records' shall refer to information, whether in its original form or otherwise, including documents, signatures, seals, texts, images, sounds, speeches, or data compiled, recorded or stored, as the case may be: (1) in written form on any material; (2) on film, negative, tape or other medium so as to be capable of being reproduced; or (3) by means of any recording device or process, computer or other electronic device or process; and regardless of whether these information are stored and kept by the BSFI or another entity duly authorized by the BSFI (e.g., technology service provider). Records shall also include audio, photographic, and video evidence of events, acts, or transactions of the BSFI, including all records of communication, oral (e.g., voice recordings) or written (e.g., letters) of officers and employees of the BSFI: *Provided, That:* the recording was made in connection with the performance of the official functions of the concerned officers or employees and coursed through BSFI-issued computers, telephones, mobile phones, and similar devices.

§ 4001Q.1 *Refusal to permit examination.* Any act or omission that impedes, delays or obstructs the duly authorized Bangko Sentral examiner from conducting an examination of a BSFI, including the act of refusing to accept or honor the letter of authority to examine presented by the examiner of the Bangko Sentral, shall be considered as a refusal to permit examination.

The refusal of the BSFI to permit examination shall be reported by the Bangko Sentral examiner to the head of the appropriate department of the SES, who shall forthwith make a written demand upon the BSFI concerned for such examination. If the BSFI continues to refuse the said examination without any satisfactory explanation thereof, a report on such refusal shall be submitted by the Bangko Sentral examiner concerned to the said department head.

Sanctions. A BSFI that wilfully refuses to permit examination shall pay a fine of ₱30,000 per day from the day of the refusal and for as long as such refusal lasts, without prejudice to the sanctions under Section 34 of R.A. No. 7653.

The fine shall be imposed starting on the day following the receipt by the concerned Head of Department in the SES of the report from the Bangko Sentral examiner that the BSFI continues to refuse to permit examination notwithstanding the written demand made by the Department Head.

Aside from the fine mentioned above, the BSFI and/or its concerned directors and/or officers may be subject to non-monetary sanctions provided under Section 37 of Republic Act No. 7653 (The New Central Bank Act) and Sec. 4009Q.”

Section 2. Subsection X192.2 of the MORB and Subsection 4192Q.2 of the MORNBFI shall be amended to read as follows:

(a) “**§ X192.2** (2008 – X162.2) *Sanctions in case of willful delay in the submission of reports.* For willful delay in the submission of reports specific sanctions shall be imposed in accordance with the following rules:

a. *Definitions.* For purposes of this Subsection, the following definitions shall apply.

(1) *Report* shall refer to any report or statement required to be submitted by a bank to the Bangko Sentral.

(2) *Willful delay in the submission of reports* shall refer to the failure of any bank to submit on time the report defined in Item “a(1)” above. Failure to submit a report on time due to fortuitous events, such as fire and other natural calamities, and public disorders including strike or lockout affecting a bank as defined in the Labor Code, or of a national emergency affecting operations of banks, shall not be considered as willful delay¹.

b. *Fines for willful delay in the submission of reports.*

xxx

c. *Manner of payment or collection of fines.* Subsec. X902.1 shall be observed in the collection of fines from banks.

d. *Other penalties.* xxx

e. *Appeal to the Monetary Board.* Xxx

¹, See Appendix 89 on Regulatory Relief for Banks Affected by Calamities”

(b) “§ 4192Q.2 (2008 - 4162Q.3) *Sanctions in case of willful delay in the submission of reports.*

a. *Definition of terms.* For purposes of this Subsection, the following definitions shall apply:

(1) *Report* shall refer to any report or statement required of a QB to be submitted to the Bangko Sentral periodically or within a specified period.

(2) *Willful delay in the submission of reports* shall refer to the failure of a QB to submit a report on time. Failure to submit a report on time due to fortuitous events, such as fire and other natural calamities and public disorders, including strike or lockout affecting a QB as defined in the Labor Code or national emergency affecting operations of QBs, shall not be considered as willful delay¹.

b. *Fines for willful delay in submission of reports.* xxx

c. *Manner of payment or collection of fines* – The regulations embodied in Sec. 4902Q shall be observed in the collection of fines from QBs.

d. *Other penalties* – xxx

e. *Appeal to the Monetary Board* – xxx

¹ See Appendix Q-67 on Regulatory Relief for NBQBs Affected by Calamities”

Section 3. Sections X191 of the MORB and 4191Q if the MORNBFI shall be amended to read as follows:

(a) “**Sec. X191 (2008 – X161) Records.** Banks shall have a true and accurate account, record or statement of their daily transactions. For this purpose, the definition of records under Sec. X001 shall apply. The making of any false entry or the willful omission of entries relevant to any transaction is a ground for the imposition of administrative sanctions under Section 37 of R.A. No. 7653 and the disqualification from office of any director or officer responsible therefor under Section 9-A of R.A. No. 337, as amended. This is without prejudice to their criminal liability under Sections 35 and 36 of R.A. No. 7653 and/or the applicable provisions of the Revised Penal Code.

Records shall be retained for a period of at least five (5) years, unless they are otherwise required by law or other regulations, or as directed by the Bangko Sentral to be retained for a longer period. RBs and Coop banks shall follow the guidelines on the retention and disposal of records

in *Appendix 50*. However, records which are the subject of, or are pertinent to, an issue that has been raised during a Bangko Sentral examination shall be preserved until such time that the issue has been fully resolved with finality by the Bangko Sentral.

- (b) "**Sec. 4191Q (2008 - 4161Q) Records.** QBs shall have a true and accurate account, record or statement of their daily transactions. For this purpose, the definition of records under Sec. 4002Q shall apply. The making of any false entry or the willful omission of entries relevant to any transaction is a ground for the imposition of administrative sanctions under Section 37 of R.A. No. 7653, without prejudice to the criminal liability of the director or officer responsible therefor under Sections 35 and 36 of R.A. No. 7653 and/or the applicable provisions of the Revised Penal Code. Records shall be up-to-date and shall contain sufficient detail so that an audit trail is established.

Records shall be retained for a period of at least five (5) years, unless they are otherwise required by law or other regulations, or as directed by the Bangko Sentral to be retained for a longer period. However, records which are the subject of, or are pertinent to, an issue that has been raised during a Bangko Sentral examination shall be preserved until such time that the issue has been fully resolved with finality by the Bangko Sentral."

Section 4. Subsections X602.1 of the MORB and 4602Q.1 of the MORNBF are hereby amended to read as follows:

"§ X602.1/4602Q.1 *Treasury operations.*¹ A BSFI's treasury activities may be a significant source of operational risk,² apart from giving rise to market, liquidity and credit risks.³ Losses to the institution may arise from the failure to meet professional obligations to clients, faulty product design, unethical business practices, and the failure to execute transactional processes. The institution must likewise be cognizant of the increased exposure to reputational risk in the presence of such factors.

xxx

The BSFI shall:

a) xxx

b) xxx

c) xxx

d) xxx

e) xxx

f) xxx

g) xxx

h) xxx

i) xxx

j) xxx

k) Uphold accountability in its treasury activities by retaining reliable, accurate, and complete records of transactions. In accordance with Sec. X001/4002Q, deals or transactions that are consummated orally or in written form should be coured through official recorded media. It shall be the responsibility of the BSFI to ensure that other parties to the transaction are aware that a record of the same is being made and shall be deemed part of the formal documentation of the BSFI's transactions. Moreover, it shall also be the responsibility of the BSFI to inform its counterparties that the records of such transactions may be disclosed to regulators. To ensure effective compliance with these requirements, the official telephone lines used by the BSFI to consummate deals or transactions should have an automatic voice-prompted announcement at the start of the conversation/transaction between the BSFI and its counterparties stating that: (1) said conversation/transaction will be recorded; and (2) the recording and/or contents thereof may be disclosed to regulators. The recordings of the conversations and any other records of the exchanges pertaining to the said deals or transactions should be placed under the custody of an independent unit and stored in a manner that is practicable to retrieve.

The failure of an institution covered by these guidelines to consistently observe the same may be considered by the Bangko Sentral as conducting business in an unsafe or unsound manner, subject to applicable provisions of laws and regulations.

Supervisory enforcement actions. xxx.

¹ This subsection should be read in conjunction with existing regulations on Operational Risk Management.


² *Operational risk* refers to the risk of loss resulting from inadequate or failed internal processes, people and systems; or from external events. This definition includes legal and compliance risks.

³ BSFIs should refer to Sec. X175/4175Q for the Guidelines on Market Risk Management, Sec. X176/4176Q for the Guidelines on Liquidity Risk Management and Sec. X178/4178Q for the Guidelines on Sound Credit Risk Management Practices.”

Section 5. The reference to Subsection X192.2b(1)b in Subsection X190.1 of the MORB shall be amended to refer to Subsection X192.2a(1)b. The reference to Subsection 3191.9 in Appendix 50 of the MORB shall be amended to refer to Section X191. Subsection X3191.9 of the MORB and Item e of Subsection 4002Q of the MORNBFIs shall be deleted.

Section 6. This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


NESTOR A. ESPENILLA, JR.
Officer-in-Charge

17 April 2017