

31 May 2017

Philippine Stock Exchange, Inc.  
3/F Philippine Stock Exchange Plaza  
Ayala Triangle, Ayala Avenue  
Makati City

Attention: **MR. JOSE VALERIANO B. ZUÑO III**  
OIC-Head, Disclosure Department  
-----

Philippine Dealing & Exchange Corp.  
37/F Tower 1, The Enterprise Center  
6766 Ayala Avenue, corner Paseo de Roxas, Makati City

Attention: **MS. VINA VANESSA S. SALONGA**  
Head, Issuer Compliance and Disclosure Department  
-----

Dear Sir / Madam:

We are pleased to submit to you China Banking Corporation's revised Corporate Governance Manual in compliance with the requirements of the Securities and Exchange Commission (SEC) under Circular No. 19 Series of 2016 requiring all publicly-listed companies to submit a new Manual on Corporate Governance to the Commission on or before 31 May 2017.

Thank you very much.

Very truly yours,



**ALEXANDER C. ESCUCHA**  
Senior Vice President &  
Corporate Information Officer

18 May 2017

**ATTY. JUSTINA F. CALLANGAN**

Director  
Corporate Governance and Finance Department  
Securities and Exchange Commission  
G/F Secretariat Building  
PICC Complex, Roxas Boulevard  
Pasay City



Dear Atty. Callangan:

We are pleased to submit to you the Bank's revised Corporate Governance Manual. The updating done was for the purpose of aligning Bank policies with the recommendations set forth under SEC Memo No. 19 Series of 2016 re Code of Corporate Governance for Publicly-Listed Companies.

Thank you very much.

Respectfully yours,

  
**ATTY. MARISSA B. ESPINO**  
VP and Chief Compliance Officer

*mea*



**MANUAL ON  
CORPORATE GOVERNANCE**

## TABLE OF CONTENTS

	Page
I Introduction .....	1
II Objective .....	1
III. Corporate Governance Structure .....	2
IV. Composition of the Organization .....	3
A. Board of Directors	
1. Diversity in the Composition of the Board .....	3
1.1 Limits on Membership .....	3
1.2 Definition of Directors .....	4
1.3 Independent Director .....	4
1.3.1 Definition of Independent Director .....	4
1.3.2 Lead Independent Director .....	6
1.3.3 Term Limits for Independent Directors .....	6
1.3.4 Limit on Directorship of Independent Directors and Non-Executive Directors .....	6
1.3.5 Definition of Terms .....	7
1.3.6 Termination/Cessation of Independent Director/s .....	8
1.3.7 Reportorial Requirement .....	8
1.4 Definition of Executive Director .....	8
1.5 Definition of Non-Executive Director .....	9
1.6 Chairman of the Board .....	9
1.7 Chief Executive Officer .....	10
1.8 Nomination and Election of Directors .....	10
1.9 Vacancies in the Board .....	11
2. Powers/Responsibilities, Duties and Functions of the Board of Directors	
2.1 Powers and Authority of the Board of Directors .....	11
2.2 General Responsibility of the Board of Directors .....	11
2.3 Specific Duties and Responsibilities of the Board of Directors...	12

3.	Reportorial Requirements	
3.1	On the Duties and Responsibilities of the Directors.....	27
3.2	Bio-Data of Directors .....	27
3.3	List of Incumbent Directors .....	28
3.4	Certification by an Independent Director .....	28
3.5	Multiple Board Seats/ Interlocking / Concurrent Directorship ...	28
B.	Directors	
1.	Specific Duties and Responsibilities of a Director .....	29
2.	Qualifications of Directors .....	30
3.	Disqualification of Directors .....	31
3.1	Permanently Disqualified .....	31
3.2	Temporarily Disqualified .....	32
C.	Board Meetings and Quorum Requirement	
1.	Place of Board Meetings .....	36
2.	Conduct of Meetings and Attendance .....	36
3.	Definition of Specific Actions by the Board and Its Committees .....	36
D.	Confirmation of the Election / Appointment of Directors .....	37
E.	Board Committees .....	37
1.	Executive Committee .....	37
2.	Audit Committee .....	38
3.	Corporate Governance Committee .....	46
4.	Compensation or Remuneration Committee .....	48
5.	Nominations Committee .....	49
6.	Risk Oversight Committee .....	50
7.	Compliance Committee .....	52
8.	Related Party Transaction Committee .....	53
9.	Deadlock Resolution .....	54
F.	Remuneration of the Members of the Board and Officers .....	56

G.	Corporate Secretary .....	56
H.	Charters .....	56
I.	Officers .....	56
1.	Duties and Responsibilities of Officers on Corporate Governance .....	56
2.	Bio-Data of Officers .....	57
3.	List of Officers .....	57
4.	Disqualification of Officers .....	57
<b>V.</b>	<b>Code of Conduct .....</b>	<b>58</b>
<b>VI.</b>	<b>Compliance System <i>and Internal Control</i></b>	
A.	Internal Control Framework	
1.	Definition of Internal Control .....	59
2.	Components of Internal Control .....	59
3.	Control Activities .....	59
4.	Senior Management's Responsibility over Internal Control .....	59
B.	Compliance Office	
1.	Chief Compliance Officer .....	60
2.	Duties and Responsibilities .....	60
3.	Plan of Compliance .....	61
4.	Work Program .....	62
C.	Audits .....	62
1.	Internal Auditor or Chief Audit Executive .....	62
2.	Internal Audit .....	65
3.	Outsourcing of Internal Audit Activities .....	70
4.	Internal Audit Charter .....	70
5.	Audit of Trust Operations .....	71
6.	External Auditor .....	71
D.	Risk Management Function .....	72
E.	Communication Process .....	74
F.	Training Process .....	74

G.	Reportorial or Disclosure System of Bank Corporate Governance Policies .....	77
H.	Transparency .....	77
1.	Shareholders' Benefit .....	78
2.	Investors' Rights and Protection .....	78
3.	PSE's Revised Disclosure Rules .....	78
3.1	Pre-emptive Right .....	78
3.2	Power of Inspection .....	78
3.3	Right to Information .....	78
3.4	Right to Dividends .....	79
3.5	Appraisal Rights .....	79
4.	Policy on Insider Trading .....	80
4.1	Definition of Insider Trading .....	80
4.2	Definition of Insider .....	80
4.3	Definition of Material Non-Public Information .....	80
4.4	Prohibition against "Tipping"/Communicating Material Non-Public Information .....	80
4.5	Transactions on the Basis of Material, Non-Public Information ...	81
4.6	Penalty for illegal conduct of Insider Trading .....	81
4.7	Dealings of Directors in Bank's Shares .....	81
5.	Alternative Dispute Resolution .....	81
6.	Access to Relevant Information .....	82
7.	Dividend Policy Guidelines .....	82
I.	Monitoring and Assessment .....	83
J.	Group Structure .....	84
K.	Related Party Transactions .....	84
L.	Annual Corporate Governance Report .....	85
M.	Penalties for Non-Compliance with the Manual .....	86
VII	Sustainability, Environment, Social and Non-Financial Information .....	86

## **VIII     Annexes**

- Annex 1       -       2017 Rules Governing the Nomination and Election of Directors
- Annex 2       -       BSP Memo No. 2012-055 re Accredited Corporate Governance Seminar Providers
- Annex 3       -       List of Documentary Requirements for BSP submission on the Election/Appointment of Directors / Officers of Bank
- Annex 4       -       BSP Form (List of the Members of the Board of Directors and Officers)
- Annex 5       -       Course units on Financial Reporting and Audit



## I. INTRODUCTION

This Manual will serve as guide or reference for China Banking Corporation and its subsidiaries in complying with SEC Memo No. 19 Series of 2016 or the *Code of Corporate Governance for Publicly-Listed Companies* (which took effect on 01 January 2017, and with relevant provisions of the Manual of Regulations for Banks (MORB), as amended.

The Board of Directors, Management, officers and staff of China Banking Corporation hereby formally commit ourselves to the principles and best practices contained in this Manual, and acknowledge that the same will continue to guide the attainment of our corporate goals.

## II. OBJECTIVE

This Manual shall formalize and institutionalize the principles of good corporate governance in the entire organization.

The Board of Directors, Management, employees and shareholders believe that good corporate governance is a necessary component of what constitutes sound strategic business management and will therefore undertake greater effort necessary to create more and continuing awareness within the organization as soon as possible.

The Bank adheres to the following basic principles of good governance:

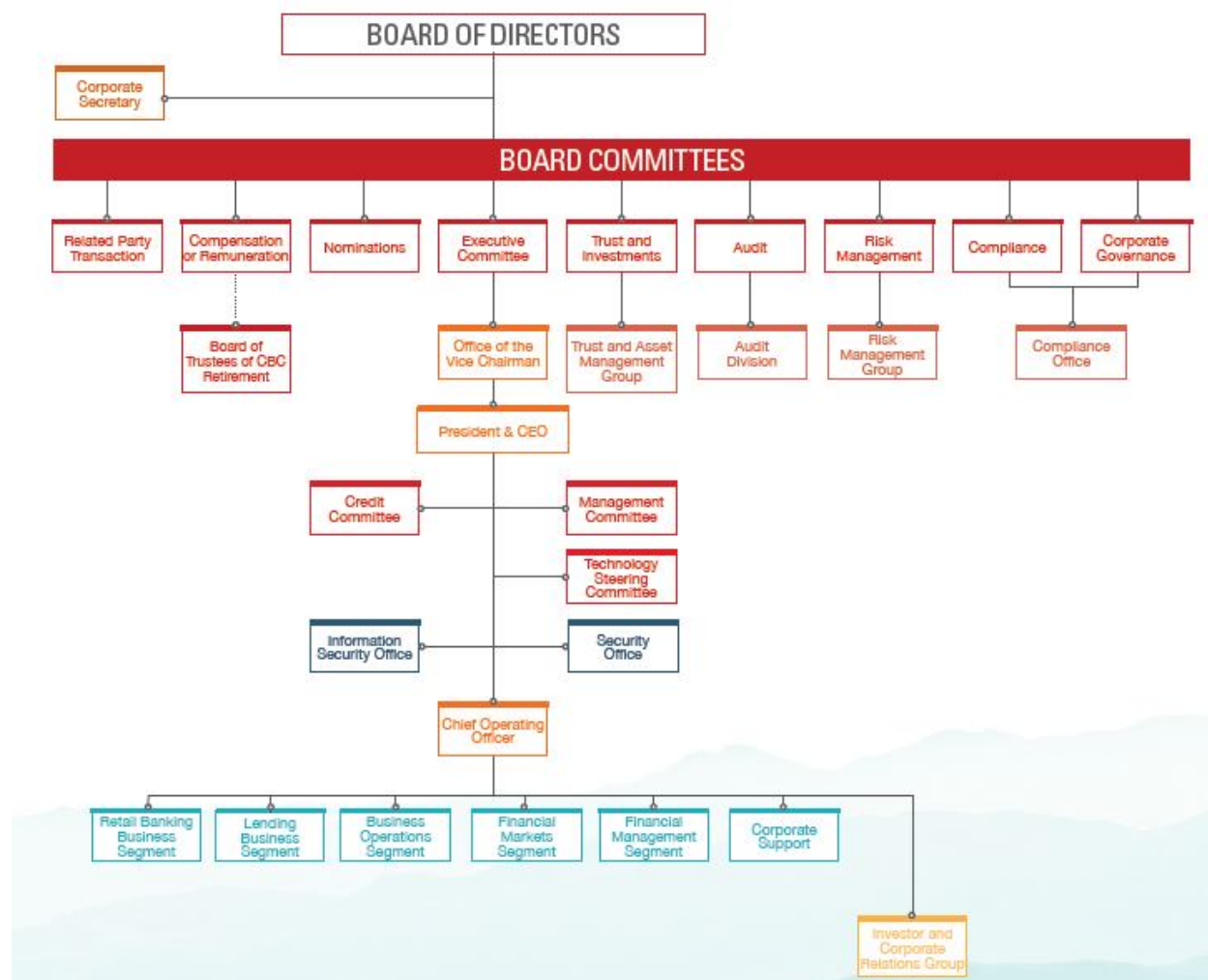
- b. Transparency or the availability of information through expansion of public disclosure requirements.
- c. Accountability involves providing adequate incentives and instilling in the business environment the discipline to act in the best interest of the *Bank*.
- d. Fairness or equity implies that the rights of all concerned parties are protected. Directors should not only promote the interest of the stockholders but also that of other stakeholders such as depositors, investors, borrowers and the banking public in general.
- e. Integrity or Bank's strict adherence to a moral code, reflected in transparent honesty and complete harmony in what one thinks, says and does.

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### III. Corporate Governance Structure

The Board of Directors is at the core of China Bank's corporate governance structure, wherein the board represents our shareholders.



As part of China Bank's adherence to the rule on Transparency in corporate governance, it shall create a Corporate Governance Structure (CGS), showing the Bank's line of accountability as regards corporate governance. The same shall be reviewed and updated periodically, or as the need arises by the Corporate Governance Officer and shall form part of the annual report.

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## IV. COMPOSITION OF THE ORGANIZATION

### A. Board of Directors

#### 1. Diversity in the Composition of the Board <sup>1</sup>

The Board should be composed of directors with a collective working knowledge, experience or expertise that is relevant to the Bank's industry/sector. The Board should always ensure that it has an appropriate mix of competence and expertise and that its members remain qualified for their positions individually and collectively, to enable it to fulfill its roles and responsibilities and respond to the needs of the organization based on the evolving business environment and strategic direction.

To ensure diversity, the Board shall consider age, educational background, business experience in banking or related industry, competence, knowledge, skills and to include ethnicity, culture, skills as the case may be.

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 if not a majority of non-executive directors shall be elected to promote and help secure the objective independence of the board from the views of senior management in judgment of corporate affairs and to substantiate proper checks and balances.<sup>2</sup>

The membership of the Board may be a combination of executive and non-executive directors (which include independent directors) in order that no director or small group of directors can dominate the decision making process.

The non-executive directors should possess such qualifications and stature that would enable them to effectively participate in the deliberations of the Board.

#### 1.1 Limits on Membership

##### 1.1.1 Limit on Numbers.

- a. The Board shall be composed of at least five (5) but not more than fifteen (15) members elected by the stockholders <sup>3</sup> at least three are independent directors or such number as to constitute at least one-third of the members of the Board, whichever is higher.<sup>4</sup>
- b. In case of merger the number of directors may be increased up to the total number of the members of the board of directors of the merging consolidating bank, 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.<sup>5</sup>

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<sup>1</sup> Recommendation 1.1 SEC Memo No. 9 S2016, Code of CG for PLCs

<sup>2</sup> Manual of Regulations for Banks (MORB), Section X141.1b; Recommendation 1.2 SEC Memo No. 16 S2016.

<sup>3</sup> *ibid*, Section X141.1.c

<sup>4</sup> SEC Memo No. 19 S2016, Recommendation No. 5.1

<sup>5</sup> MORB Section X141.b

### 1.1.2 Limitation on nationality of directors

Non-Filipino citizens may become members of the board of directors of the Bank to the extent of the foreign participation in the equity of the Bank. Provided, majority of the directors are residents of the Philippines.<sup>6</sup>

## 1.2 Definition of Directors<sup>7</sup>

Directors shall include:

- 1.2.1 directors who are named as such in the articles of incorporation;
- 1.2.2 directors duly elected in subsequent meetings of the stockholders; and
- 1.2.3 those elected to fill vacancies in the board of directors.

## 1.3 Independent Director<sup>8</sup>

The Bank, in selecting independent directors, must consider the number and types of entities where the candidate is likewise elected as such, 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 independent director shall apply to independent directors of all types of banks.

### 1.3.1 Definition of Independent Director (ID)

Must be an owner of at least one (1) share of stock of the Bank

*“Independent Director”* is defined as a person who, apart from his fees and shareholdings, is independent of management *and the controlling shareholder* and is free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his exercise of independent judgment in carrying out his responsibilities as a director of the Bank, and includes, among others, any person who -

- a. is not or has not been senior officer or employee of the Bank, unless there has been a change in the controlling ownership of the company
- b. is not or has not been in the three years immediately preceding the election, a director of the Bank; a director, officer, employee of the Bank's subsidiaries, associates, affiliates or related companies; or a director, officer, employee of the Bank's substantial shareholders and its related companies.
- c. has not been appointed in the covered company, its subsidiaries, associates, affiliates or related companies as Chairman “Emeritus”, “Ex-Officio” director/officer or members of any advisory board, or otherwise appointed in a capacity to assist the board in the performance of its

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<sup>6</sup> MORB, Section X141.1.d

<sup>7</sup> MORB, Section X141.1 (2014)

<sup>8</sup> Section X141.2.b; Sec 23, The Corporation Code, SEC Memo No. 19 Series of 2016, Corporate Governance Code for Publicly Listed Companies, Recommendation 5.4

duties and responsibilities within three years immediately preceding his election;

- d. is not an owner of more than two (2) percent of the outstanding shares of the Bank, its subsidiaries, associates, affiliates or related companies;
- e. is not a securities broker-dealer of listed companies and registered issuer of securities.

Securities broker-dealer" refers to any person holding any office of trust and responsibility in a broker-dealer firm, which includes, among others, a director, officer, principal stockholder, nominee of the firm to the Exchange, an associated person or sales man, and an unauthorized clerk of the broker or dealer;

- f. 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;
- f. is not a director or officer of the related companies of the institution's majority stockholder;
- g. is not a stockholder with shares of stock sufficient to elect one seat in the board of directors of the institution, any of its related companies, or of its majority corporate shareholders;
- h. Is not a relative, legitimate or common-law of any director, officer or stockholder holding shares of stock sufficient to elect one seat in the board of the bank or any of its related companies. For this purpose, relatives refer to the spouse, parent, child, brother, sister, parent-in-law, son-/daughter-in-law, and brother-/sister-in-law;
- i. 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
- j. Is not retained as professional adviser, auditor, consultant, agent or counsel of the Bank or 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 within three years immediately preceding the date of his election.
- k. 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.
- l. Is not affiliated with any non-profit organization that receives significant funding from the covered company or any of its related companies or substantial shareholders

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Related companies based on the CG Code for PLCs, refer to (a) the covered entity's holding/parent company; (b) its subsidiaries; and (c) subsidiaries of its holding/parent/company.

#### 1.3.2 Lead Independent Director

- a. In case the Chairman is not an independent Director and if the roles of the Chair and the CEO are combined and to avoid the possible abuse of power and authority, and potential conflict of interest, the Board shall appoint among the independent directors a strong "lead director". The lead Independent Director shall have sufficient authority to lead the Board in cases where management has clear conflict of interest.
- b. Functions of the Lead Director
  - i. Serves as an intermediary between the Chairman and the other directors when necessary;
  - ii. Convenes and chairs meeting of the non-executive directors; and
  - iii. Contributes to the performance evaluation of the Chairman, as required.

#### 1.3.3 Term Limits for Independent Directors<sup>9</sup>

- a. IDs can serve for a maximum cumulative term of nine (9) years.
- b. After which, the ID shall be perpetually barred from re-election as such in the Bank. However, he may continue to qualify as a non-ID of the Bank.
- c. In accordance with SEC rules, in case the Bank wants to retain an ID who has served for more than nine (9) years, the Bank is required to provide the Commission with meritorious justifications for the re-election and to seek the shareholders' approval during the annual stockholders' meeting.
- d. It shall be the responsibility of the Corporate Secretary to ensure that the above-mentioned requirements for an independent director are complied with during nomination / election.

#### 1.3.4 Limit on Directorship of Independent Director and Non-Executive Directors

- a. There shall be no limit in the number of covered companies a person may be elected as ID, except in conglomerates where an ID can only be elected up to five (5) listed companies within the conglomerate;<sup>10</sup>
- b. Furthermore, in cases of listed companies, an Independent Director or a Non-Executive Director may hold the same position on a concurrent basis meaning at the same time up to a maximum of five (5) board seats only.

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<sup>9</sup> SEC Memo No. 19 S2016, Recommendation no. 5.3

<sup>10</sup> *ibid*

### 1.3.5 Definition of Terms

The foregoing terms and phrases used in Items “(a) to (f)” of 1.3.1 above 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:
  - i. its parent or holding company;
  - ii. its subsidiary or affiliate; or
  - iii. 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

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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.

#### 1.3.6 Termination /Cessation of Independent Director/s<sup>11</sup>

- a. Independent directorship shall only be terminated or ceased in case the independent director voluntarily resigns as such, his office was terminated for a cause (such as disqualification), and for other reasons based on existing rules and regulations.
- b. Such resignation, disqualification or cessation from independent directorship shall be reported to the Securities and Exchange Commission within five (5) days from such resignation, disqualification or cessation, by the Office of the Corporate Secretary.
- c. The vacancy shall be filled by the vote of at least a majority of the remaining directors, if still constituting a quorum, upon the nomination of the Nomination Committee otherwise, said vacancies shall be filled by the stockholders in a regular or special meeting called for that purpose. An independent director so elected to fill a vacancy shall serve only for the unexpired term of his predecessor in office.

#### 1.3.7 Reportorial Requirement

- a. Please refer to Section A.3 for the reportorial requirements concerning the Independent Director.
- b. The Bank is required to submit to the BSP a re-certification concerning an Independent director's re-election after the two (2) year cooling off period. It shall be submitted along with the other reportorial requirements for directors (e.g. biographical data, duties and responsibilities, etc.) for BSP confirmation.<sup>12</sup>

#### 1.4 Definition of Executive Director<sup>19</sup>

Is a director who has executive responsibility of day-to-day operations of a part or the whole of the organization.

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<sup>11</sup> SEC Memo No. 16, Series of 2002

<sup>12</sup> BSP Memorandum No. 2012-032, 5 July 2012, Item I.5

<sup>19</sup> SEC Memo No. 19 S2016, Code of Corporate Governance for Publicly-Listed Companies



## 1.5 Definition of Non-Executive Director

- a. Is a director who has no executive responsibility and does not perform any work related to the operations of the corporation.<sup>20</sup>
- b. Non-executive members of the board of directors shall refer to those who are not part of the day to day management of banking operations and shall include the independent directors.<sup>21</sup>

## 1.6 Chairman of the Board<sup>22</sup>

### 1.6.1 Separation of Duties of the Chairman and Chief Executive Officer

The roles of the Chairman and CEO should be separate to foster appropriate balance of power, increased accountability and better capacity for independent decision-making by the Board.

To carry out item 1.6.1 above, the roles of the Chairman of the Board and the Chief Executive Officer are segregated, with a clear division of duties and responsibilities.

### 1.6.2 The duties of the Chairman may include, among others the following<sup>23</sup>:

- a. *To provide leadership in the board of directors.* The chairperson of the board shall ensure effective functioning of the board, including maintaining a relationship of trust with board members.<sup>24</sup>
- b. *To Make certain that the meeting agenda focuses on strategic matters, including the overall risk appetite of the corporation, considering the developments in the business and regulatory environments, key governance concerns, and contentious issues that will significantly affect operations;*
- c. *To ensure that the board takes an informed decision.* The chairperson board shall ensure sound decisions making process and he should encourage and promote critical discussion and ensure that dissenting views can be expressed and discussed within the decision-making process.<sup>20</sup>  
  
*In relation to the above, he shall guarantee that Board received accurate, timely, relevant, insightful, concise, and clear information to enable it to make sound decisions;*
- d. *Facilitate discussion on key issues by fostering an environment conducive for constructive debate and leveraging on the skills and expertise of individual directors;*

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<sup>20</sup> SEC Memo No. 19 S2016, Code of Corporate Governance for Publicly-Listed Companies

<sup>21</sup> MORB, Section X141.1.a).b

<sup>22</sup> Code of Corporate Governance for Publicly-listed Companies Recommendation 2.3

<sup>23</sup> *ibid*

<sup>24</sup> MORB, Section X141.3e

<sup>27</sup> Code of CG for Publicly Listed Companies, Recommendation 5.4

- e. *Ensure that the Board sufficiently challenges and inquires on reports submitted and representations made by Management;*
- f. *Assures the availability of proper orientation for first-time directors and continuing training opportunities for all directors;*
- g. *Makes sure that performance of the Board is evaluated at least once a year and discussed/followed up on;*

## 1.7 Chief Executive Officer<sup>27</sup>

### 1.7.1 Duties of the Chief Executive Officer

In accordance with the amended By-laws, the President shall be the Chief Executive Officer of the Bank, and with the following *roles, duties and responsibilities*:

- a. *Determines the corporation's strategic direction and formulates and implements its strategic plan on the direction of the business;*
- b. *Communicates and implements the corporation's vision, mission, values and overall strategy and promotes any organization or stakeholder change in relation to the same;*
- c. *Oversees the operations of the corporation and manages human and financial resources in accordance with the strategic plan;*
- d. *Has a good working knowledge of the corporations industry and market and keeps up-to-date with its core business purpose;*
- e. *Directs, evaluates and guides the work of the key officers of the corporation;*
- f. *Manages the corporation's resources prudently and ensures a proper balance of the same;*
- g. *Provides the Board with timely information and interfaces between the Board and employees;*
- h. *Builds the corporate culture and motivates the employees of the corporation; and*
- i. *Serves the link between internal operations and external stakeholders*

## 1.8 Nomination and Election of Directors

- 1.8.1 The nomination of Directors shall be governed by the policies to be issued by the Office of the Corporate Secretary and shall form part of this manual as an Annex. See Annex 1 for the updated Nomination Rules.
- 2.8.2 The said Rules shall determine the reasonable time within which nomination in writing may be submitted using the prescribed form either to any of the members

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of the Nominations Committee, the Corporate Governance Committee or the Office of the Corporate Secretary.

3.8.3 Any shareholder of record, including a minority shareholder, who is entitled to a notice and to vote during the Annual Stockholders' Meeting, is qualified to nominate or be nominated.

4.8.4 The Committees shall pre-screen the qualifications and/or supporting papers and prepare a final list of candidates containing all relevant information about the nominees, and indicate the nominees for independent directors, if any.

## 1.9 Vacancies in the Board

1.9.1 In accordance with the Bank's By-Laws, vacancies in the Board of Directors may be filled by election or appointment made the remaining directors, if still constituting a quorum, or otherwise said vacancy shall be filled by the stockholders in a regular or special meeting called for the purpose.<sup>29</sup>

2.9.2 The person so elected to fill a vacancy shall hold office only for the unexpired term of his predecessor in office. Whether any such vacancy shall or shall not be filled shall be left to the discretion of the Board of Directors.<sup>30</sup>

3.9.3 The Board of directors may use professional search firms or other external sources of candidates when searching for candidates to the board of directors.

## 2. Powers/Responsibilities, Duties and Functions of the Board of Directors

*The members of the Board should act on a fully informed basis, in good faith, with de diligence and care, and in the best interest of the Bank and all shareholders.*<sup>33</sup>

### 2.1 Powers and Authority of the Board of Directors<sup>34</sup>

*Powers of the board of directors.* The corporate powers of China Bank shall be exercised, its business conducted and all its property shall be 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.

### 2.2 General Responsibility of the Board of Directors<sup>35</sup>

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.

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<sup>29</sup> Amended By-Laws, Article IV, Section 3

<sup>30</sup> *ibid*

<sup>33</sup> SEC Memo No. 19 S2016, Recommendation No. 2.1

<sup>34</sup> MORB, Section x141.3 (a)

<sup>35</sup> *ibid*, item (b)

- 2.2.1 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.
- 2.2.2 *The Board should oversee the development of and approve the company's business objectives and strategy, and monitor their implementation, in order to sustain the Bank's long term viability and strength.*<sup>36</sup>

2.3 Specific Duties and Responsibilities of the Board of Directors<sup>39</sup>

- 2.3.1 **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 for measuring performance against plans through regular monitoring and reviews, with corrective action taken as needed.

The board shall likewise ensure that the bank has beneficial influence on the economy by continuously providing services and facilities which will be supportive of the national economy.

- 2.3.2 **To approve and oversee the implementation of policies governing major areas of banking operations.** The board shall approve policies on all major business activities, e.g., investments, loans, asset and liability management, trust, business planning and budgeting. The board shall accordingly define the bank's level of risk tolerance in respect of said activities. A mechanism to ensure compliance with said policies shall also be provided.

The board shall set out matters and authorities reserved to it for decision, which include, among others major capital expenditures, equity investments and divestments. The board shall also establish the limits of the discretionary powers of each officer, committee, sub-committee and such other groups for purposes of lending, investing or any other financial undertaking that exposes the bank to significant risks.

In relation to the above, the powers of the board are set out in Section 1, Article IV of the Bank's By-laws.

- 2.3.3 **To approve and oversee the implementation of risk management policies.** The board of directors shall be responsible for defining the bank's level of risk tolerance and for the approval and oversight of the implementation of policies and procedures relating to the management of risks throughout the institution, including its trust operations.

- a. The risk management policy shall include:

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<sup>36</sup> Recommendation No. 2.2, SEC Memo No. 16 Series of 2016

<sup>39</sup> MORB, as amended, Sec X141.3 (c)

- i. a comprehensive risk management approach;
  - ii. a detailed structure of limits, guidelines and other parameters used to govern risk-taking;
  - iii. a clear delineation of lines of responsibilities for managing risk;
  - iv. an adequate system for measuring risk; and
  - v. effective internal controls and a comprehensive risk-reporting process. The board of directors shall ensure that a robust internal reporting system is in place that shall enable each employee to contribute to the appreciation of bank's overall risk exposures.
- b. The board of directors shall ensure that the risk management function is given adequate resources to enable it to effectively perform its functions. The risk management function shall be afforded with adequate personnel, access to information technology systems and systems development resources, and support and access to internal information.
- c. **Additional Duties and Responsibilities of the Board in relation to the Information Technology Risk Management (ITRM).**<sup>40</sup>
- i. The Board is ultimately responsible for understanding the IT risks confronted by the Bank and ensuring that they are properly managed, which shall include the approval of the design of the IT Risk Management System that suits the Bank's business strategy.  
  
The Board may delegate to an IT steering Committee or its equivalent the IT oversight function to cohesively monitor IT performance and institute appropriate actions to ensure achievement of the desired results.
  - ii. The Board shall approve the IT strategic plan that is aligned with the institution's business strategy that is focused on long term goals covering 3 to 5 five year horizon and should be sufficiently supplemented by tactical IT plan. It should be reviewed and updated regularly for new risks or opportunities to maximize the value of IT to the institution.
  - iii. In order to maintain confidentiality, integrity, and unavailability of computer systems for reliable and timely information, the Bank should have a comprehensive information security program and the Board shall approve the same.
  - iv. The Board should appoint an independent information security officer (ISO) who will be responsible and accountable for the organization-wide IS program.

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<sup>40</sup> Section X177.7 of the MORB, as amended.

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The ISO should report directly to the Board or senior management and have sufficient independence to perform his mandate.

**d. Additional Duties and Responsibilities of the Board with regard to Sound Credit Risk Management Practices<sup>41</sup>**

The Board shall be responsible for the approval and regular review of credit risk strategy and credit policy, as well as the oversight of the implementation of a comprehensive and effective credit risk management system appropriate for the size, complexity and scope of operations of the Bank.

The Board shall ensure that the system provides for adequate policies, procedures and processes to identify, measure, monitor and control all credit risks inherent in the Bank's products and activities, both at the individual and portfolio levels on a consistent and continuing basis and that an independent assessment of a system is periodically performed, the results of which shall be reported to it or to a board-level committee for appropriate action.

With regard to the Credit Risk Management Structure, the Board shall ensure that the key functions are considered; that independence and control oversight functions are effective to avoid or address an potential conflict of interest.

**e. Additional Duties and Responsibilities of the Board with regard to the Operational Risk Management<sup>42</sup>**

Apart from the establishment of a comprehensive and effective operational risk management framework (as part of the enterprise-wide risk management system), the Board shall:

- i. Ensure that it is aware of and understand the nature and complexity of the major operational risks in the Bank's business and operating environment, including risks arising from transaction or relationships with third parties, vendors, suppliers, including outsourced service providers, and clients of the services provided. This should include understanding of both the financial and non-financial impact of operational risk to which the Bank is exposed to;
- ii. Approve the operational risk management framework which shall form part of the Bank's enterprise-wide risk management system and shall cover all business lines and functions of the Bank, including outsourced services and services provided to external parties.

The operational risk management framework should include an enterprise-wide definition of operational risk consistent with the definition of the BSP under Section 2 of Circular No. 900, governance, and reporting structures including the roles and

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<sup>41</sup> BSP Circular No. 855, Series of 2014, page 2, *Establishing an Appropriate Credit Risk Environment*

<sup>42</sup> BSP Circular No. 900, Series of 2015, page 2, *Guidelines on Operational Risk Management*

responsibilities of all personnel, feedback mechanism, as well as standards and tools for operational risk management.

In this regard, the Board shall:

- 1) Define the operational risk management strategy and ensure that it is aligned with the Bank's overall business objectives. Relative to this the board should set and provide clear guidance on the Bank's operational risk appetite (i.e. the level of operational risk the Bank is willing to take and able to manage in pursuit of its business objectives as well as the type of risks that are not acceptable to the board and management), which should consider all material risk exposures as well as the Bank's financial condition and strategic direction.
- 2) Approve appropriate thresholds or limits to ensure that the level of operational risk is maintained within tolerance and at prudent levels and supported by adequate capital. Relative to this, the board shall approve policy on resolving limit breaches which should cover escalation procedures for approving or investigating breaches, approving authorities, and requirements in reporting to the appropriate level of management or the board;
- 3) Ensure that operational risk is appropriately considered in the capital adequacy assessment process;
- 4) Ensure that it receives adequate information on material developments in the operational risk profile of the Bank, including pertinent information on the current and emerging operational risk exposures and vulnerabilities as well as information on the effectiveness of the operational risk management framework.

The board must challenge the quality and comprehensiveness of operational risk information it receives. It should also be satisfied with the reliability of the said information and the monitoring system for operational risk;

- 5) *Ensure that business objectives, risk appetite, the operational risk management framework, and the respective roles and responsibilities of personnel and officers at all levels in terms of implementing the operational risk management framework, are properly disseminated, clearly communicated/discussed, and understood by personnel concerned;*
- 6) *Provide senior management with clear guidance and direction regarding the principles underlying the operational risk management framework. The board shall ensure that senior management appropriately implements policies, processes and procedures, and*

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*provides feedback on the operational risk management process. In this regard, the board shall establish a feedback and reporting system that will allow employees to raise their concerns without fear of negative consequences; and*

- 7) *Ensure that the operational risk management framework is subject to effective and comprehensive independent review, on a periodic basis, by operationally independent, appropriately trained, and competent staff to ensure that it remains commensurate with the Bank's risk profile and continues to be adequate and effective in managing operational risk. The review should take into account the changes in business and operating environment, material changes in systems, business activity or volume of transactions, quality of control environment, effectiveness of risk management or mitigation strategies, loss experience, and the frequency, volume or nature of breaches in limits or any policy.*
- iii. Provide adequate oversight on all outsourcing activities and ensure effective management of risks arising from these activities. In this regard, the board of directors shall approve a framework governing outsourcing activities, which includes a system to evaluate the risk and materiality of all existing and prospective outsourcing engagements and the policies that apply to such arrangements;
- iv. Ensure observance of expectations and requirements prescribed under relevant laws, rules and regulations, industry set standards, and policies on internal control, internal audit, and disclosure;
- v. Promote a culture of high standards of ethical behavior. The board shall adopt a code of ethical behaviors with corresponding disciplinary actions for non-compliance, within should cover, among others, guidance and protocols on conflicts of interest situations, safeguarding of confidential information, and use of sensitive information. The board should likewise institute tools, methodologies, and practices in order to ensure compliance and adherence to the standards by all employees including the senior officers and the board itself. In this regard, employees should be required to acknowledge in writing that they have read, understood, and will observe the code of conduct.
- vi. Ensure that business and risk management activities, including the operational risk management function, are carried out by adequate and qualified staff with the necessary experience, technical capabilities, and competence. Moreover, the board shall ensure that employees and officers all areas of operations have a high degree of integrity.

For this purpose, the board shall approve appropriate hiring and selection policies and processes, adopt a continuing professional

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development program, and institutionalize a framework for continuing assessment of fitness and propriety of employees. These policies, processes and programs should reinforce the conduct and values being promoted in the organization.

Further, the board shall oversee the design and implementation of remuneration policies. It shall ensure that the remuneration policies do not encourage excessive risk-taking or provide incentives to people to perform contrary to the desired risk management values. It shall also ensure that remuneration policies are appropriate and aligned with the Bank's long-term strategic direction and risk appetite, as well as with relevant legal or regulatory requirements.

- vii. Ensure that all units in the organization have adequate resources, including personnel complement, duly supported by appropriate technological systems that is commensurate to the activities being undertaken; and
- viii. Oversee implementation of a sound business continuity management framework. The board should create and promote an organizational culture that places high priority on business continuity. This shall include providing sufficient financial and human resources associated with the Bank's business continuity initiatives.

**f. Additional Duties and Responsibilities of the Board with regard to Sales and Marketing Activities of the Bank<sup>43</sup>**

The Board of Directors of the Bank including senior management shall be liable for the acts performed and representation made by sales and marketing personnel in their official capacity.

Notwithstanding the above, the Board and Senior Management may file necessary cases or action against the erring sales and marketing personnel.

**2.3.4 To oversee selection and performance of senior management.** It is the primary responsibility of the board of directors to appoint competent management team at all times, monitor and assess the performance of the management team based on established performance standards that are consistent with the bank's strategic objectives, and conduct regular review of bank's policies with the management team.

- a. The board of directors shall apply fit and proper standards on key personnel. Integrity, technical expertise and experience in the institution's business, either current or planned, should be the key considerations in the selection process. And because mutual trust and a close working relationship are important, the members of senior management shall uphold the general operating philosophy, vision and core values for the institution. The board of directors shall replace members of senior management, when necessary, and have in place an appropriate plan of succession.

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<sup>43</sup> BSP Circular No. 891, Series of 2015, page 12, Sales and Marketing Guidelines for Financial Products

- b. The board of directors shall regularly monitor the action of senior management and ensure that these are consistent with the policies that it has approved. It shall put in place formal performance standards to be able to effectively assess the performance of senior management. The performance standards shall be consistent with bank's strategic objectives and business plans, taking into account the bank's long-term financial interest.
- c. The board of directors shall regularly meet with senior management to engage in discussions, question and critically review the reports and information provided by the latter. The board of directors shall set the frequency of meeting with senior management taking into account the size, complexity of operations and risk profile of the bank.
- d. The board of directors shall regularly review policies, internal controls and self-assessment functions (e.g., internal audit, risk management and compliance) with senior management to determine areas for improvement as well as to promptly identify and address significant risks and issues. The board of directors shall set the frequency of review taking into account the size, complexity of operations and risk profile of the bank.
- e. The board of directors shall ensure that senior management's expertise and knowledge shall remain relevant given the bank's strategic objectives, complexity of operations and risk profile.

2.3.5 ***To consistently conduct the affairs of the institution with a high degree of integrity.*** Since reputation is a very valuable asset, it is in the institution's best interest that in dealings with the public, it observes a high standard of integrity. The board of directors shall lead in establishing the tone of good governance from the top and in setting corporate values, codes of conduct and other standards of appropriate behavior for itself, the senior management and other employees.

- a. That with regard to related party transactions, the Board shall have the overall responsibility in ensuring that transactions with related parties are handled in a sound and prudent manner, with integrity, and in compliance with applicable laws and regulations to protect the interest of depositors, creditors and other stakeholders.<sup>44</sup>

Towards this, the board of directors shall carry out the following duties and responsibilities:

- i. To observe good governance and approve an overarching policy on the handling of RPTs to ensure that there is effective compliance with existing laws, rules and regulations at all times, that these are conducted on an arm's length basis, and that no stakeholder is unduly disadvantaged. A group-wide RPT policy shall be adopted, encompassing all entities within the banking group, taking into account their size, structure, risk profile and complexity of operations.

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<sup>44</sup> BSP Circular No. 895, series of 2015, Section XI46.2 (a)

- ii. To approve all material RPTs, those that cross the materiality threshold, and write-off material exposures to related parties, and submit the same for confirmation by majority vote of the stockholders in the annual stockholders' meeting. Any renewal or material changes in terms and conditions of RPTs shall also be approved by the board of directors.

It shall be the responsibility of the Office of the Corporate Secretary to comply with the above requirements with regard to the confirmation by majority vote of the stockholders.

All final decisions of the board on material RPTs, including important facts about the nature, terms, conditions, original, outstanding individual and aggregate balances, justification and other details that would allow stockholders to make informed judgment as to the reasonableness of the transaction, must be clearly disclosed during stockholders meetings and duly reflected in the minutes of board and stockholders' meetings.

- iii. To delegate to appropriate management committee the approval of RPTs that are below the materiality threshold, subject to confirmation by the board of directors. This shall, however, exclude DOSRI transactions, which are required to be approved by the board. All decisions under the delegated authority must be properly recorded in the minutes of the committee meetings.
- iv. To establish an effective system to:
- Determine, identify and monitor related parties and RPTs;
  - Continuously review and evaluate existing relationships between and among businesses and counterparties; and
  - Identify, measure, monitor and control risks arising from RPTs.
- v. To maintain adequate capital against risks associated with exposures to related parties. In this regard, material risks arising from RPTs shall be considered in the capital planning process. The prescribed scenario/stress tests under the capital planning process shall also capture RPTs in order to determine whether the FI is well-insulated from any going concern issue of related parties.
- vi. To oversee the integrity, independence, and effectiveness of the policies and procedures for Whistleblowing. The board should ensure that senior management addresses legitimate issues on RPT that are raised. The board should take responsibility for ensuring that staff who raise concerns are protected from detrimental treatment or reprisals.
- vii. To constitute an RPT Committee in addition to the committees prescribed under the MORB and to provide adequate resources to said Committee, including the authority to procure the assistance of independent experts, if necessary, to assess the fairness of RPTs.

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In addition, the board of directors shall:

- b. Articulate clear policies on the handling of any transaction with DOSRI and other related parties ensuring that there is effective compliance with the law and regulations at all times and no stakeholder is unduly disadvantaged. In this regard, the board of directors shall define “related party transaction”, which is expected to cover a wider definition than DOSRI under existing regulations and a broader spectrum of transactions (i.e., not limited to credit exposures), such that relevant transactions that could pose material risk or potential abuse to the bank and its stakeholders are captured.

Policy on Related Party Transaction is discussed under Section VI.J of this Manual.

- c. Articulate acceptable and unacceptable activities, transactions and behaviors that could result or potentially result in conflict of interest, personal gain at the expense of the institution, or unethical conduct.
- d. Articulate policies that will prevent the use of the facilities of the bank in furtherance of criminal and other improper or illegal activities, such as but not limited to financial misreporting, money laundering, fraud, bribery or corruption.
- e. Explicitly discourage the taking of excessive risks as defined by internal policies and establish an employee’s compensation scheme effectively aligned with prudent risk taking. The compensation scheme shall be adjusted for all types of risk and sensitive to the time horizon of risk. Further, the grant of compensation in forms other than cash shall be consistent with the overall risk alignment of the bank. The board of directors shall regularly monitor and review the compensation scheme to ensure that it operates and achieves the objectives as intended.
- f. Ensure that employee pension funds are fully funded or the corresponding liability appropriately recognized in the books of the bank at all times. Further, the board of directors shall ensure that all transactions involving the pension fund are conducted at arm’s length terms.
- g. Allow employees to communicate, with protection from reprisal, legitimate concerns about illegal, unethical or questionable practices directly to the board of directors or to any independent unit. Policies shall likewise be set on how such concerns shall be investigated and addressed, for example, by an internal control function, an objective external party, senior management and/or the board itself.
- h. Articulate policies in communicating corporate values, codes of conduct and other standards in the bank as well as the means to confidentially report concerns or violations to an appropriate body.

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- i. Ensure that senior management established and maintain an adequate, effective and efficient internal control framework commensurate with the size, risk profile and complexity of operations of the bank.<sup>45</sup>

The Board shall also ensure that the internal audit function has an appropriate stature and authority within the bank and is provided with adequate resources to enable it to effectively carry out its assignments with objectivity.

Furthermore, the Board shall on a periodic basis:

- i. conduct discussions with management on the effectiveness of the internal control system;
- ii. review evaluations made by the audit committee on the assessment of effectiveness of internal control made by management, internal auditors and external auditors;
- iii. ensure that management has promptly followed up on recommendations and concerns expressed by auditors and supervisory authorities on internal control weakness; and
- iv. review and approve the remuneration of the head and personnel of the internal audit function. Said remuneration shall be in accordance with the bank's remuneration policies and practices and shall be structured in such a way that these do not create conflicts of interest or compromise independence and objectivity.

The Board shall likewise commission an assessment team outside of the organization to conduct an independent quality assurance review of the internal audit function at least every five (5) years.

- j. Require full disclosure of personal interest that they may have in credit transactions. Directors and officers with personal interest in a transaction shall not participate in any deliberation, approval, or voting on the matter.<sup>46</sup>

2.3.6 ***To define appropriate governance policies and practices for the bank and for its own work and to establish means to ensure that such are followed and periodically reviewed for ongoing improvement.*** The board of directors, through policies and its own practices, shall establish and actively promote, communicate and recognize sound governance principles and practices to reflect a culture of strong governance in the bank as seen by both internal and external stakeholders.

- a. The board of directors shall ensure that the bank's organizational structure facilitates effective decision making and good governance. This includes clear definition and delineation of the lines of responsibility and accountability, especially between the roles of the Chairman of the board of directors and Chief Executive Officer /President.

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<sup>45</sup> BSP Circular No. 871, Series of 2015, page 2, *Management oversight and control culture*.

<sup>46</sup> BSP Circular No. 855, Series of 2014, page 9, *Credits granted to related parties*

Kindly refer to Section IV 1.6 of this Manual for the duties of the Chairman and CEO.

- b. The board of directors shall maintain, and periodically update, organizational rules, by-laws, or other similar documents setting out its organization, rights, responsibilities and key activities.
- c. The board of directors shall structure itself in a way, including in terms of size, frequency of meetings and the use of committees, so as to promote efficiency, critical discussion of issues and thorough review of matters. It shall meet regularly to properly discharge its functions. It shall also ensure that independent views in board meetings shall be given full consideration and all such meetings shall be duly minuted.
- d. The board shall conduct and maintain the affairs of the institution within the scope of its authority as prescribed in its charter and in existing laws, rules and regulations. It shall ensure effective compliance with the latter, which include prudential reporting obligations. Serious weaknesses in adhering to these duties and responsibilities may be considered as unsafe and unsound banking practice. The board shall appoint a compliance officer who shall be responsible for coordinating, monitoring and facilitating compliance with existing laws, rules and regulations. The compliance officer shall be vested with appropriate authority and provided with appropriate support and resources.
- e. The board of directors shall establish a system of checks and balances which applies in the first instance to the board itself. Among the members of the board, an effective system of checks and balances must exist. The system shall also provide a mechanism for effective check and control by the board over the chief executive officer and key managers and by the latter over the line officers of the bank. Checks and balances in the board shall be enhanced by appointing a chairperson who is a non-executive, whenever possible.
- f. The board of directors shall assess at least annually its performance and effectiveness as a body, as well as its various committees, the chief executive officer, the individual directors, and the bank itself, which may be facilitated by the corporate governance committee or external facilitators. The composition of the board shall also be reviewed regularly with the end in view of having a balanced membership. Towards this end, a system and procedure for evaluation shall be adopted which shall include, but not limited to, the setting of benchmark and peer group analysis.

The external facilitator can be any independent third party such as, but not limited to, a consulting firm, academic institution or professional organization.<sup>47</sup>

- g. The board shall ensure that individual members of the board and the shareholders are accurately and timely informed. It shall provide all its members and to the shareholders a comprehensive and understandable assessment of the bank's performance, financial condition and risk

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<sup>47</sup> SEC Memo no. 19 S2016, Recommendation 6.1

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exposures. All members of the board shall have reasonable access to any information about the institution at all times. It shall also provide appropriate information that flows internally and to the public.

**2.3.7 To constitute committees to increase efficiency and allow deeper focus in specific areas.** The board of directors shall create committees, the number and nature of which would depend on the size of the bank and the board, the complexity of operations, long-term strategies and risk tolerance level of the bank.

- a. The board of directors shall approve, review and update at least annually or whenever there are significant changes therein, the respective charters of each committee or other documents that set out its mandate, scope and working procedures.
- b. The board of directors shall appoint members of the committees taking into account the optimal mix of skills and experience to allow the members to fully understand, be critical and objectively evaluate the issues. In order to promote objectivity, the board of directors, shall appoint independent directors and non-executive members of the board to the greatest extent possible while ensuring that such mix will not impair the collective skills, experience, and effectiveness of the committees. Towards this end, an independent director who is a member of any committee that exercised executive or management functions that can potentially impair such director's independence cannot accept membership in committees that perform independent oversight/control functions such as the Audit, Risk Management and Corporate Governance committees, without prior approval of the Monetary Board.<sup>48</sup>
- c. The board of directors shall ensure that each committee shall maintain appropriate records (e.g., minutes of meetings or summary of matters reviewed and decisions taken) of their deliberations and decisions. Such records shall document the committee's fulfillment of its responsibilities and facilitate the assessment of the effective dispense of its functions.
- d. The board of directors shall constitute, at a minimum, the following committees<sup>49</sup>:
  - i. Executive Committee
  - ii. Audit Committee<sup>50</sup>
  - iii. Risk Management committee; and
  - iv. Corporate Governance Committee
  - v. Nomination<sup>51</sup>
  - vi. Compensation or Remuneration
  - vii. Related Party Transaction Committee<sup>52</sup>

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<sup>48</sup> added by Circular No. 757 dated May 8, 2012

<sup>49</sup> By-Laws of the Bank

<sup>50</sup> MORB, Subsection X141.3.c.7(d)(i)

<sup>51</sup> SEC Memo No. 19 S2016, Recommendation 3.3, – the establishment of a Corporate Governance Committee does not preclude companies from establishing separate Remuneration or Nomination Committees, if they deem necessary.

<sup>52</sup> BSP Circular No. 895, series of 2015, Section X146.2 (a)7

- 2.3.8 **To effectively utilize the work conducted by the internal audit, risk management and compliance functions and the external auditors.** The board of directors shall recognize and acknowledge the importance of the assessment of the independent, competent and qualified internal and external auditors as well as the risk and compliance officers in ensuring the safety and soundness of the operations of a bank on a going-concern basis and communicate the same through-out the bank. This shall be displayed by undertaking timely and effective actions on issues identified.

Further, non-executive board members shall meet regularly, other than in meetings of the audit committee and risk management committees, in the absence of senior management, with the external auditor and heads of the internal audit, compliance and risk management functions.

- 2.3.9 **In group structures, the board of directors of the parent company banks shall have the overall responsibility for defining an appropriate corporate governance framework that shall contribute to the effective oversight over entities in the group.** Towards this end, the board of directors of the parent company bank shall ensure consistent adoption of corporate governance policies and systems across the group and shall carry-out the following duties and responsibilities:

- a. To define and approve appropriate governance policies, practices and structure that will enable effective oversight of the entire group, taking into account nature and complexity of operations, size and the types of risks to which the bank and its subsidiaries are exposed. The board shall also establish means to ensure that such policies, practices and systems remain appropriate in light of the growth, increased complexity and geographical expansion of the group. Further, it shall ensure that the policies include the commitment from the entities in the group to meet all governance requirements.
- b. To define the level of risk tolerance for the group, which shall be linked to the process of determining adequacy of capital of the group.
- c. To ensure that adequate resources are available for all the entities in the group to effectively implement and meet the governance policies, practices and systems.
- d. To establish a system for monitoring compliance of each entity in the group with all applicable policies, practices and systems.
- e. To define and approve policies and clear strategies for the establishment of new structures.
- f. To understand the roles, the relationships or interactions of each entity in the group with one another and with the parent company bank. The board of directors shall understand the legal and operational implications of the group structure and how the various types of risk exposures affect the group's capital, risk profile and funding under normal and contingent circumstances.
- g. To develop sound and effective systems for generation and sharing of information within the group, management of risks and effective supervision of the group.

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- h. To require the risk management, compliance function and internal audit group to conduct a periodic formal review of the group structure, their controls and activities to assess consistency with the board approved policies, practices and strategies and to require said groups to report the results of their assessment directly to the board.
- i. To disclose to the Bangko Sentral ng Pilipinas all entities in the group (e.g., owned directly or indirectly by the parent company bank and/or its subsidiaries/affiliates including special purpose entities (SPEs), and other entities that the bank exerts control over or those that exert control over the bank, or those that are related to the bank and/or its subsidiaries/affiliates either through common ownership/ directorship/ officership) as well as all significant transactions between entities in the group involving any BSP regulated entity. For this purpose, significant shall refer to transactions that would require board approval based on the bank's internal policies or as provided under existing regulations: *Provided*, That the bank shall continue to submit any report required under existing regulations covering transactions between companies within the group.

2.3.10 To ensure Bank's faithful compliance with all applicable laws, regulations and best business practices.

2.3.11 To establish and maintain an investor relations program that will keep the stockholders informed of important developments in the Bank. The CEO shall exercise oversight responsibility over this program.

2.3.12 To adopt a system of check and balance within the Board. A regular review of the effectiveness of such system should be conducted to ensure the integrity of the decision-making and reporting processes at all times. There should be a continuing review of the Bank's internal control system in order to maintain its adequacy and effectiveness.

2.3.13 Formulate and implement policies and procedures that would ensure the integrity and transparency of related party transactions between and among the corporation and its parent company, joint ventures, subsidiaries, associates, affiliates, major stockholders, officers and directors, including their spouses, children and independent siblings and parents, and of interlocking director relationships by members of the Board.

In compliance with BSP Regulations on loans of DOSRI (Directors, Officers, Stockholders, and their Related Interest), DOSRI transactions are approved by the Board of Directors. A copy of the Transmittal on board approval is submitted to the BSP within twenty (20) banking days from the date of approval.<sup>53</sup>

2.3.14 Establish and maintain an alternative dispute resolution system in the corporation that can amicably settle conflicts or differences between the corporation and its stockholders, and the corporation and third parties, including the regulatory authorities.

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<sup>53</sup> MORB, 2014, Section X334

- 2.3.15 To approve and recommend *for the ratification of* the stockholders, after it has been recommended by the Audit Committee,<sup>54</sup> an external auditor duly accredited by the BSP and/or by the Securities and Exchange Commission who shall undertake an independent audit of the corporation, and shall provide an objective assurance on the manner by which the financial statements shall be prepared and presented to the stockholders.

Note: The BSP also has its own accreditation of external auditors and may provide a list of its duly accredited external auditor.

The responsibilities of the board of directors and management are in no way diminished by the existence of a system for the supervision of FIs by BSP or by a requirement for the FI's financial statements to be audited by an external auditor.<sup>55</sup>

- 2.3.16 To ensure that it is assisted in its duties by appointing a Compliance Officer who should have a rank of Senior Vice President or equivalent position with adequate status and authority in the corporation. The Compliance Office should not be a member of the Board and should annually attend a training on corporate governance.<sup>56</sup>
- 2.3.17 To adopt an effective succession planning program for the *Directors, Management and key officers to ensure growth and a continued increase in the shareholders' value. This may include adopting a policy on the retirement age for directors and key officers as part of the succession and promote dynamism in the corporation.*

**The following are additional responsibilities of the Board in relation to the control, independent oversight and checks and balances systems, including the financial statements in accordance with BSP Memorandum No. M-2014-011 dated 14 March 2014:**<sup>57</sup>

- 2.3.18 Establish adequate governance structures and control processes for areas of exposures that may pose significant risk to an FI such as fair value measurement and financial instruments.

The Board's oversight responsibilities for the FI's use of fair value accounting include:

- a. Reviewing and approving written policies related to fair valuations;
- b. Continuing review of significant valuation model performance for issues escalated for resolution and all significant changes to valuation policies;
- c. Ensuring adequate resources are devoted to the valuation process;
- d. Articulating the FI's tolerance for exposures subject to valuation uncertainty and monitoring compliance with the Board's overall policy settings at an aggregate firm wide level;

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<sup>54</sup> Recommendation 9.1, SEC Memo No. 19 S2016.

<sup>55</sup> BSP Memorandum No. M – 2014-011, 14 March 2014, Section II.1.c,5

<sup>56</sup> SEC Memo No. 19 S2016, Recommendation 1.6

<sup>57</sup> BSP's Expectations for an Effective External Audit Function

- e. Ensuring independence in the valuation process between risk taking and control units;
- f. Ensuring appropriate internal and external audit coverage of fair valuations and related processes and controls;
- g. Ensuring consistent application of accounting standards and disclosures within the applicable accounting framework;
- h. Ensuring the identification of significant differences, if any, between the valuations used for financial reporting purposes and for regulatory purposes.

2.3.19 Ensure appropriate management information systems are established; and

2.3.20 Ensure that the interests of stakeholders are adequately protected.

2.3.21 Ensure that Consumer Protection practices are embedded in the Bank's Operations<sup>58</sup>

- a. The Board and Senior Management are responsible for the development of the Bank's consumer protection strategy and in establishing an effective oversight over the Bank's protection program.
- b. The Board is primarily responsible for the approval and oversight in the implementation of the consumer protection policies.
- c. The Board is responsible for the development and maintenance of a sound Consumer Protection Risk Management System that is integrated into the overall framework for the entire product and service life-cycle.

### 3 Reportorial Requirements

#### 3.1 On the Duties and Responsibilities of the Directors<sup>59</sup>

- 3.1.1 The Office of the Corporate Secretary shall furnish all first time directors of the Bank, upon their election with a copy of the general and specific duties and responsibilities of the board of directors and of a director.
- 3.1.2 The director/s concerned shall acknowledge receipt of the copies of such general and specific duties and responsibilities and shall certify that he/she fully understand the same.
- 3.1.3 The OCS shall submit copies of the acknowledgment receipt to the BSP within ten (10) banking days after date of election.

#### 3.2 Bio-Data of Directors<sup>60</sup>

- 3.2.1 Bio-data of Directors with 2" x 2" ID picture (taken within the last six [6] months) shall also be submitted to the BSP within ten (10) banking days from date of the meeting of the board in which the directors are elected or appointed.

<sup>58</sup> BSP Circular No. 857 (Series of 2014), 1

<sup>59</sup> Section XI41.9 of the MORB

<sup>60</sup> Section XI44 of the MORB, as amended by Circular No. 749 & 757

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### 3.2.2 Updating requirements

- a. The bio-data of directors shall be updated for the following reasons: (i) in case of change of name due to change in civil status; and (ii) in case of requests for prior Monetary Board approval of interlocks.
- b. The bio-data shall be submitted once. For updating purposes, only the pertinent section and pages shall be submitted to the BSP. It shall be the responsibility of OCS to submit the bio-data and revisions thereto within the prescribed deadline to the BSP.

### 3.3 List of Incumbent Directors<sup>61</sup>

- 3.3.1 The OCS shall submit to the BSP a list of the incumbent members of the board of directors and officers after the annual election of the board of directors as provided in the by-laws. However, the preparation of the list of incumbent officers shall be under the responsibility of Human Resources Division.
- 3.3.2 The Bank is required to submit to the BSP a duly notarized list of the incumbent members of the board of directors in the prescribed format, within ten (10) banking days from the annual election of the board of directors.

### 3.4 Certification by an Independent Director

In the case of Independent directors, the bio-data shall be accompanied by a certification under oath from the director concerned that he/she is an independent director as defined under Subsec. X141.1 all the information thereby supplied are true and correct.<sup>62</sup>

### 3.5 Multiple Board Seats/ Interlocking/Concurrent Directorship<sup>63</sup>

- 3.5.1 As a general rule, there shall be no concurrent/interlocking directorship between banks except with prior approval of the BSP. It shall be the responsibility of the OCS to seek BSP's approval in case of concurrent / interlocking directorship.
- 3.5.2 Without need for prior approval of the BSP, concurrent directorship between the bank and one (1) or more of its subsidiary NBFIs (Non-Bank Financial Institution) is allowed.
- 3.5.3 *A director should notify the Board where he/she is an incumbent director before accepting a directorship in another company.*

*In this regard, effective in the May 2017 election, the board as a body shall take note of the existing interlocking directorship positions of each director.*

*Any additional directorship in the future, the same shall be reported by the director concerned to the Board through the Office of the Corporate Secretary prior to acceptance thereof.*

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<sup>61</sup> Section X144 of the MORB, as amended by Circular No. 749

<sup>62</sup> As revised by BSP Circular No. 793 dated April 8, 2013

<sup>63</sup> Sec X145 of the MORB

## B. Directors

### 1. Specific duties and Responsibilities of a Director –

- 1.1 *To remain fit and proper for the position for the duration of his term.* A director is expected to remain fit and proper for the position for the duration of his term. He should possess unquestionable credibility to make decision objectively and resist undue influence. He shall treat board directorship as a profession and shall have a clear understanding of his duties and responsibilities as well as his role in promoting good governance. Hence, he shall maintain his professional integrity and continuously seek to enhance his skills, knowledge and understanding of the activities that the bank is engaged in or intends to pursue as well as the developments in the banking industry including regulatory changes through continuing education or training.
- 1.2 *To conduct fair business transactions with the bank and to ensure that personal interest does not bias board decisions.* Directors should, whenever possible, avoid situations that would give rise to a conflict of interest. If transactions with the institution cannot be avoided, it should be done in the regular course of business and upon terms not less favorable to the institution than those offered to others. The basic principle to be observed is that a director should not use his position to make profit or to acquire benefit or advantage for himself and/or his related interests. He should avoid situations that would compromise his impartiality.
- 1.3 *To act honestly and in good faith, with loyalty and in the best interest of the institution, its stockholders, regardless of the amount of their stockholdings, and other stakeholders such as its depositors, investors, borrowers, other clients and the general public.* A director must always act in good faith, with the care which an ordinarily prudent man would exercise under similar circumstances. While a director should always strive to promote the interest of all stockholders, he should also give due regard to the rights and interests of other stakeholders.
- 1.4 *To devote time and attention necessary to properly discharge their duties and responsibilities.* Directors should devote sufficient time to familiarize themselves with the institution's business. They must be constantly aware of the institution's condition and be knowledgeable enough to contribute meaningfully to the board's work. They must attend and actively participate in board and committee meetings, request and review meeting materials, ask questions, and request explanations. If a person cannot give sufficient time and attention to the affairs of the institution, he should neither accept his nomination nor run for election as member of the board.
- 1.5 *To act judiciously.* Before deciding on any matter brought before the BOD, every director should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.
- 1.6 *To contribute significantly to the decision-making process of the board.* Directors should actively participate and exercise objective independent judgment on corporate affairs requiring the decision or approval of such board.
- 1.7 *To exercise independent judgment.* A director should view each problem/ situation objectively. When a disagreement with others occurs, he should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollarily, he should support plans and ideas that he thinks will be beneficial to the institution.

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- 1.8 *To have a working knowledge of the statutory and regulatory requirements affecting the institution, including the content of its articles of incorporation and by-laws, the requirements of the BSP and where applicable, the requirements of other regulatory agencies.* A director should also keep himself informed of the industry developments and business trends in order to safeguard the institution's competitiveness.
- 1.9 *To observe confidentiality.* Directors must observe the confidentiality of non-public information acquired by reason of their position as directors. They may not disclose said information to any other person without the authority of the board.

## 2. Qualifications of Directors<sup>64</sup>

A director should have the following minimum qualifications:

- 2.1 He shall at least be twenty-five (25) years of age at the time of his election or appointment;
- 2.2 He shall be at least a college graduate or have at least five (5) years experience in business;
- 2.3 He must have attended a special seminar on corporate governance for board of directors conducted or accredited by the BSP: *Provided*, That incumbent directors as well as those elected after 17 September 2001 must attend said seminar on or before 30 June 2003 or within a period of six (6) months from date of election for those elected after 30 June 2003, as the case may be; However, in accordance with BSP Memorandum Circular No. 840 dated 2 July 2014, the following are exempted from attending the said seminar:
  - 2.3.1 Foreign nationals who have attended corporate governance training covering core topics in the BSP-recommended syllabus and certified by the Corporate Secretary as having been made aware of the general responsibility and specific duties and responsibilities of the board of directors and specific duties and responsibilities of a director prescribed under items "b", "c" and "d" of Subsection X141.3;
  - 2.3.2 Filipino citizens with recognized stature, influence and reputation in the banking community and whose business practices stand as testimonies to good corporate governance;
  - 2.3.3 Distinguished Filipino and foreign nationals who served as senior officials in central banks and/or financial regulatory agencies, including former Monetary Board members; or
  - 2.3.4 Former Chief Justice of the Philippine Supreme Court.

In relation to the above, It shall be the responsibility of the Corporate Secretary to ensure that the director concerned has attended the required seminar. Attached as Annex 2 is the list of BSP accredited seminar provider; and
- 2.4 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.

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<sup>64</sup> Subsection X141.2 of the MORB, as amended by Circular No. 749

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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.

### 3. Disqualification of Directors

The following are the grounds for the disqualification of a director:

#### 3.1 *Permanently disqualified*<sup>65</sup>

Directors/officers/employees permanently disqualified by the BSP Monetary Board from holding a director position:

3.1.1 Persons who have been convicted by final judgment of a court for offenses involving dishonesty or breach of trust such as estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. 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)

Note: The disqualification on violation of anti-graft and corrupt practices shall apply to government employees appointed for directorship position.

3.1.2 Persons who have been convicted by final judgment of the court for violation of banking laws, rules and regulations.

3.1.3 Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;

3.1.4 Directors, officers or employees of closed banks who were found to be culpable for such institution's closure as determined by the Monetary Board.

3.1.5 Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of removal from office is imposed, and which finding of the Monetary Board has become final and executory; or

3.1.6 Directors and officers of banks, quasi-banks and trust entities or any person found by the Monetary Board to be unfit for the position of directors or officers because they were found administratively liable by another government agency for violation of banking laws, rules and regulations or any offense/violation involving dishonesty or breach of trust, and which finding of said government agency has become final and executory.

The following are additional disqualifications under SEC Memo No. 19 Series of 2016 :

3.1.7 Any person convicted by final judgment or order by a competent judicial or administrative body of any crime that (a) involves the purchase or sale of securities, as defined in the Securities Regulation Code; (b) arises out of the person's conduct as an underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; (c) arises out of his fiduciary relationship with a bank,

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<sup>65</sup> Section XI43.1 of the MORB

quasi-bank, trust company, investment house or as affiliated person of any of them;

- 3.1.8 Any person who, by reason of misconduct, after hearing, is permanently enjoined by a final judgment or order of the SEC, Bangko Sentral ng Pilipinas (BSP) or any court or administrative body of competent jurisdiction from: (a) acting as underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; (b) acting as director or officer of a bank, quasi-bank, trust company, investment house, or investment company; (c) engaging in or continuing any conduct or practice in any of the capacities mentioned in sub-paragraphs (a) and (b) above, or willfully violating the laws that govern securities and banking activities.

The disqualification shall also apply if (a) such person is the subject of an order of the SEC, BSP or any court or administrative body denying, revoking or suspending any registration, license or permit issued to him under the Corporation Code, Securities Regulation Code or any other law administered by the Commission or BSP; (b) such person has otherwise been restrained to engage in any activity involving securities and banking; or (c) such person is the subject of an effective order or a self-regulatory organization suspending or expelling him from membership, participant or association with a member or participant of the organization.

- 3.1.9 Any person convicted by final judgment or order by a court, or competent administrative body of an offense involving moral turpitude, fraud, embezzlement, theft, estafa, counterfeiting, misappropriation, forger, bribery, false affirmation, perjury or other fraudulent acts;
- 3.1.10 Any person who has been adjudged by final judgment or order of the SEC, BSP, court, or competent administrative body to have willfully violated, or willfully aided, abetted, counseled, induced or procured the violation of any provision of the Corporation Code, Securities Regulation Code or any other law, regulation or order administered by the SEC or BSP;
- 3.1.11 Any person found guilty by final judgment or order of a foreign court or equivalent financial regulatory authority of acts, violations or misconduct similar to any of the acts, violations or misconduct enumerated previously;<sup>66</sup>
- 3.1.12 Conviction by final judgment of an offense punishable by imprisonment for more than six years, or a violation of the Corporation Code committed within five years prior to the date of his election or appointment; and
- 3.1.13 Other grounds as the SEC may provide.

### 3.2 Temporarily Disqualified<sup>67</sup>

Directors/officers/employees disqualified by the BSP Monetary Board from holding a director position for a specific/indefinite period of time. Included are:

- 3.2.1 Persons who refuse to fully disclose the extent of their business interest or any material information to the appropriate supervising and examining

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<sup>66</sup> SEC Memo No. 19 S2016, Recommendation No. 2.6

<sup>67</sup> XI43.1 (b) of the MORB



department when required pursuant to a provision of law or of a circular, memorandum or rule or regulation of the BSP. This disqualification shall be in effect as long as the refusal persists;

3.2.2 Directors who have been absent or who have not participated for whatever reasons in more than fifty percent (50%) of all meetings, both regular and special, of the board of directors during their incumbency, and directors who failed to physically attend for whatever reasons in at least twenty-five percent (25%) of all board meetings in any year, except that when a notarized certification executed by the Corporate Secretary has been submitted attesting that said directors were given the agenda materials prior to the meeting and that their comments/decisions thereon were submitted for deliberation/discussion and were taken up in the actual board meeting, said directors shall be considered present in the board meeting. This disqualification applies only for purpose of the immediately succeeding election;

3.2.3 Persons who are delinquent in the payment of their obligations as defined hereunder.

- a. Delinquency in the payment of obligations means that an obligation of a person with a bank where he/she is a director or officer, or at least two obligations with other banks/financial institution, under different credit lines or loan contracts, are past due pursuant to Sec. X306 of the BSP Manual of Regulations;
- b. Obligations shall include all borrowings from a bank/quasi bank obtained by:
  - i. A director or officer for his own account or as the representative or agent of others or where he/she acts as a guarantor, indorser, or surety for loans from such financial institutions;
  - ii. The spouse or child under the parental authority of the director or officer;
  - iii. Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a director or officer;
  - iv. A partnership of which a director or officer, or his/her spouse is the managing partner or a general partner owning a controlling interest in the partnership; and
  - v. A corporation, association or firm wholly owned or majority of the capital of which is owned by any or a group of persons, mentioned in the foregoing Items (i), (ii) and (iv);

This disqualification shall be in effect as long as the delinquency persists.

3.2.4 Persons who have been convicted by a court for offenses involving dishonesty or breach of trust such as, but not limited to estafa, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery,

Page 33 of 87

China Bank's Revised Corporate Governance Manual

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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), or violation of banking laws, rules and regulations or those sentenced to serve a maximum term of imprisonment of more than six years but whose conviction has not yet become final and executory;

Note: The disqualification on violation of anti-graft and corrupt practices shall apply to government employees appointed for directorship position.

- 3.2.5 Directors and officers of closed banks pending their clearance by the Monetary Board;
- 3.2.6 Directors disqualified for failure to observe/discharge their duties and responsibilities prescribed under existing regulations. This disqualification applies until the lapse of the specific period of disqualification or upon approval by the Monetary Board on recommendation by the appropriate supervising and examining department of such directors' election/reelection;
- 3.2.7 Directors who failed to attend the special seminar for board of directors required under item "c" of Subsec. X141.2 of the Manual of Regulations for Banks (MORB). This disqualification applies until the director concerned had attended such seminar;
- 3.2.8 Persons dismissed/terminated from employment for cause. This disqualification shall be in effect until they have cleared themselves of involvement in the alleged irregularity or upon clearance, on their request, from the Monetary Board after showing good and justifiable reasons, or after the lapse of five (5) years from the time they were officially advised by the appropriate department of SES of their disqualification;
- 3.2.9 Those under preventive suspension;
- 3.2.10 Persons with derogatory records as certified by, or on the official files of, the Judiciary, National Bureau of Investigation, Philippine National Police, quasi-judicial bodies, other government agencies, international police, monetary authorities and similar agencies or authorities of foreign countries for irregularities or violations of any laws, rules and regulations that would adversely affect the integrity of the director/officer or the ability to effectively discharge his duties. This disqualification applies until they have cleared themselves of the alleged irregularities/violations or after a lapse of five (5) years from the time the complaint, which was the basis of the derogatory record, was initiated;
- 3.2.11 Directors and officers of banks, quasi-banks and trust entities found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of removal from office is imposed, and which finding of the Monetary Board is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court;

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- 3.2.12 Directors and officers of banks found by the Monetary Board to be unfit for the position of directors or officers because they were found administratively liable by another government agency for violation of banking laws, rules and regulations or any offense/violation involving dishonesty or breach of trust, and which finding of said government agency is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court;
- 3.2.13 Directors and officers of banks, quasi-banks and trust entities found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of suspension from office or fine is imposed, regardless whether the finding of the Monetary Board is final and executory or pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court. The disqualification shall be in effect during the period of suspension or so long as the fine is not fully paid;
- 3.2.14 Independent director who becomes an officer or employee of the Bank, he/she shall be automatically disqualified from being an independent director.

The following temporary disqualifications are added by the SEC Memo No. 19 Series of 2016:

- 3.2.15 Absence in more than fifty (50) percent of all regular and special meetings of the Board during his incumbency, or any 12-month period during the said incumbency, unless absence is due to illness, death in the immediate family or serious accident. The disqualification shall apply for purposes of the succeeding election;
- 3.2.16 Dismissal or termination for cause as director of any publicly listed company, public company, registered issuer of securities and holder of a secondary license from the Commission. The disqualification should ~~all~~ be in effect until he has cleared himself from any involvement in the cause that gave rise to his dismissal or termination.
- 3.2.17 If the beneficial equity ownership of an independent director in the corporation or its subsidiaries and affiliates exceeds two percent (2%) of its subscribed capital stock. This disqualification from being elected as an independent director is lifted if the limit is later complied with; and
- 3.2.18 If any of the judgments or orders cited in the grounds for permanent disqualification has not yet become final.

#### C. Board Meetings and Quorum Requirement

The director should attend and actively participate in all meetings of the Board, Committees, and Shareholders in person or through tele-/videoconferencing in accordance with the rules and regulations, except when justifiable causes, such as, illness, death in the immediate family and serious accidents, prevent them from doing so.

In Board and Committee meetings, the director should review meeting materials and if called for, ask the necessary questions or seek clarifications and explanations.

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1. Place of Board Meetings

In accordance with the Bank's by-laws, Board Meetings shall be held at the principal office of the Corporation or at such other places as may be determined by the Board of Directors. All such meetings shall, however be held only within the Philippines.

2. Conduct of Meetings and Attendance

2.1 The meetings of the board of directors may be conducted through modern technologies such as, but not limited to, teleconferencing and videoconferencing as long as the director who is taking part in said meetings can actively participate in the deliberations on matters taken up therein: Provided, That every member of the board of directors shall participate in at least fifty percent (50%) and shall physically attend at least twenty five percent (25%) of all board meetings every year: Provided, further, That in the case of a director who is unable to physically attend or participate in board meetings via teleconferencing or videoconferencing, the corporate secretary shall execute a notarized certification attesting that said director was given the agenda materials prior to the meeting and that his/her comments/decisions thereon were submitted for deliberation/discussion and were taken up in the actual board meeting, and that the submission of said certification shall be considered compliance with the required fifty percent (50%) minimum attendance in board meetings.<sup>68</sup>

2.2 An independent director should always be in attendance. Unless otherwise provided in the by-laws, his absence shall not affect the quorum.

2.3 At the end of each fiscal year, the OCS shall execute a Sworn Certification about the directors' record of attendance in Board meetings. It may be submitted through SEC Form 17-C or in a separate filing.

3. Definition of Specific Actions by the Board and its Committees

**Ratify** - When the Board and any of its committees ratifies an action, it means approving an action which originally or initially did not bind the Bank because the person who has acted for the Bank lacked the authority.<sup>69</sup>

Thus an act or agreement that was signed or executed without the confirmation of the Board is not enforceable or valid until it was ratified by the Board.

**Approve** – When an action is approved, it refers to giving a favorable decision on item/s presented to it for decision.

**Noted** – When the Board noted an action presented to it, it means that they have clearly understood the information provided or given them. Moreover, they are also signifying a commitment that whatever action is to be taken or done, they shall implement the same.

**Confirm** – When the board confirms an action made by a board committee or the management committee, it means to strengthen the said act.

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<sup>68</sup> *Sec. X141.1(b)(6) (h) of the MORB*

<sup>69</sup> [www.proeconomics.com/law/company/the\\_meaning\\_of\\_ratification.html](http://www.proeconomics.com/law/company/the_meaning_of_ratification.html) <visited on January 31, 2012>

D. Confirmation of the Election / Appointment of Directors<sup>70</sup>

1. Confirmation Requirement

- 1.1 The election/appointment of directors of the Bank shall be subject to confirmation by the Monetary Board. It shall be the responsibility of the OCS to secure MB confirmation for duly elected directors of the bank.
- 1.2 Election/appointment of directors/officers shall be deemed to have been confirmed by the BSP, if after sixty (60) banking days from its receipt of the required report, no advice against said election/appointment has been received by the Bank.<sup>71</sup>
- 1.3 However, the confirmation of the director is no longer required if the director concerned has been previously confirmed by the Monetary Board (MB). This exemption shall apply to all directors confirmed by the MB starting January 1, 2011.

2. Documentary Requirements for the Confirmation

The documentary requirements for the confirmation of the election of directors are shown in Annex A of Circular No. 758. A copy of the said list is attached here as Annex 3.

3. Effect of non-possession or qualifications or possession of the disqualifications<sup>72</sup>

If after evaluation, the Monetary Board shall find grounds for disqualification, the director so elected/appointed may be removed from office even he/she has assumed the position to which he/she was elected.

E. Board Committees

To aid in complying with the principles of good corporate governance, the Board shall constitute the following Committees:

1. Executive Committee

1.1 Composition of the Committee

- 1.1.1 The Committee shall be composed of such number as may be determined by the Board but not exceeding seven (7) including the Chairman and President<sup>73</sup>

- 1.1.2 The Board of Directors shall have the power at any time to remove and replace the members of, and fill vacancies in, the Executive Committee.

1.2 Duties and Responsibilities

- 1.2.1 The Executive Committee, when the Board of Directors is not in session, shall have and may exercise the powers of the Board of Directors in the

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<sup>70</sup> Section X141.4 of the MORB, as amended by Circular No. 758

<sup>71</sup> added by BSP Circular No. 758

<sup>72</sup> Section X 143.3 of the MORB

<sup>73</sup> Section 1, Art. V of the By-Laws

management of the business and affairs of the Corporation, except with respect to<sup>74</sup>:

- i. approval of any action for which stockholders' approval is also required;
- ii. the filling of vacancies in the Board of Directors;
- iii. the amendment or repeal of the By-Laws or the adoption of new By-Laws;
- iv. the amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- v. a distribution of cash dividend to the stockholders; and
- vi. such other matters as may be specifically excluded or limited by the Board of Directors and/or by laws or regulations.

#### 1.2.2 Charter

The Executive Committee shall have a written charter or terms of reference which clearly sets out the authority and duties of the said committee, as well as the reporting relationship with the Board of Directors. The charter shall be approved by the Board of Directors and reviewed and updated periodically or as needed.

### 2. Audit Committee

The Audit Committee is responsible for overseeing the senior management in establishing and maintaining an adequate, effective and efficient internal control framework. It ensures that systems and processes are designed to provide assurance in areas including reporting, monitoring compliance with laws, regulations and internal policies, efficiency and effectiveness of operations, and safeguarding of assets.<sup>75</sup>

The audit committee provides oversight of the institution's financial reporting and control and internal and external audit functions.

#### 2.1 Composition of the Audit Committee<sup>76</sup>

- 2.1.1 The audit committee shall be composed of at least three (3) appropriately qualified non-executive directors, the majority of whom, including the Chairman, should be independent directors. All of the members of the committee must have relevant background, knowledge, skills, and/or experience in the areas of accounting, auditing and finance. The Chairman of the Committee should not be the chairman of the Board or any other committees.

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<sup>74</sup> Section 2, Art. V of the By-Laws

<sup>75</sup> SEC Memo No. 19 S 2016, Recommendation 3.2, page 17

<sup>76</sup> *ibid*; Manual of Regulations for Banks, § X141.3.c (7) (d) (i)

To the greatest extent possible, the audit committee shall be composed of a sufficient number of independent and non-executive board members.

#### 2.1.2 Restrictions in the Audit Committee Membership

The chief executive officer, chief financial officer and/or treasurer or officers holding equivalent positions, shall not be appointed as members of the audit committee.

2.1.3 The Audit Committee shall have a written charter or terms of reference which clearly sets out the Audit Committee's authority and duties, as well as the reporting relationship with the Board of Directors. The charter shall be approved by the Board of Directors and reviewed and updated periodically.

2.1.4 No member of the audit committee, shall be concurrently designated as a member of the trust committee<sup>77</sup>

### 2.2 Authority of the Audit Committee

The audit committee shall have explicit authority to investigate any matter within its terms of reference, full access to and cooperation by management and full discretion to invite any director or executive officer to attend its meetings, and adequate resources to enable it to effectively discharge its functions. The audit committee shall ensure that a review of the effectiveness of the institution's internal controls, including financial, operational and compliance controls, and risk management, is conducted at least annually.

### 2.3 Duties and Responsibilities

The Audit Committee has the following duties and responsibilities, among others:

#### 2.3.1 On Internal Audit Charter

Recommend the approval of the Internal Audit Charter (IA Charter), which formally defines the role of Internal Audit and the audit plan as well as oversee the implementation of the IA Charter;<sup>78</sup>

#### 2.3.2 On Internal Control

- a. Through the Internal Audit Division, monitor and evaluate the adequacy and effectiveness of the corporation's internal control system, integrity of financial reporting, and security of physical and information assets. Well-designed internal control procedures and processes that will provide a system of checks and balances should be in place in order to (a) safeguard the company's resources and ensure their effective utilization, (b) prevent occurrence of fraud and other irregularities, (c) protect the accuracy and reliability of the company's financial data, and (d) ensure compliance with applicable laws and regulations;<sup>79</sup>

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<sup>77</sup> § X406.2 of the MORB

<sup>78</sup> SEC Memo No. 19 Series of 2016, Recommendation 3.2

<sup>79</sup> *ibid*

- b. It shall monitor and evaluate the adequacy and effectiveness of the internal control system.<sup>80</sup>
- c. Shall ensure that a review of the effectiveness of the institution's internal controls, including financial, operational and compliance controls, and risk management, is conducted at least annually.<sup>81</sup>

### 2.3.3 On Internal Audit Function and Chief Audit Executive

It shall be responsible for the setting up of the internal audit department and for the appointment of the internal auditor as well as the *appointment, dismissal and re-appointment of the independent external auditor*<sup>82</sup> who shall both report directly to the Audit Committee. It shall monitor and evaluate the adequacy and effectiveness of the internal control system.<sup>83</sup>

### 2.3.4 External Auditor

- a. Recommend to the Board the appointment, reappointment, removal and fees of the External Auditor, duly accredited by the Commission, who undertakes an independent audit of the corporation, and provides an objective assurance on the manner by which the financial statements should be prepared and presented to the stockholders;<sup>84</sup>
- b. *The appointment, dismissal and re-appointment of the external auditor shall be based on fair and transparent criteria, such as*<sup>85</sup>:
  - i. *core values, culture and high regard for excellence in audit quality,*
  - ii. *technical competence and expertise of auditing staff,*
  - iii. *independence,*
  - iv. *effectiveness of audit process, and*
  - v. *reliability and relevance of the external auditor's reports*
- c. In cases of appointment or dismissal of external auditors, it is encouraged that the decision be made only by independent, non-executive audit committee members.<sup>86</sup>
- d. Organize an internal audit department, and recommend the appointment of the Chief Audit Executive (CAE), an independent internal auditor and the terms and conditions of its engagement and removal. At least once per year, review the performance of the Chief Audit Executive and concur with the annual compensation and salary adjustment.

<sup>80</sup> MORB, Subsection X141.3. (7)(d) (i)

<sup>81</sup> *ibid*

<sup>82</sup> Section II.1.a Audit Committee of BSP Memo No. M-2014-011

<sup>83</sup> § X141.3.c(9)(a) of the MORB

<sup>84</sup> SEC Memo No. 19 S2016, Recommendation 3.2

<sup>85</sup> Section II.1.a Audit Committee of BSP Memo No. M-2014-011

<sup>86</sup> MORB [Subsection X141.3. (7)(d) (i)]



In relation to the above, report to the Board the annual performance appraisal of the head of the internal audit function and recommend for approval of the Board the annual remuneration of the head of the internal audit function and key internal auditors<sup>87</sup>; and

- b. Establish and identify the reporting line of the Internal Auditor to enable him properly fulfill his duties and responsibilities. For this purpose, he should directly report to the Audit Committee;<sup>88</sup>

### 2.3.5 On Financial Reporting and Financial Statements

- e. Assist the Board in the performance of its oversight responsibility for the financial reporting process, system of internal control, audit process, and monitoring of compliance with applicable laws, rules and regulations.

*In addition to the above, the Audit Committee shall be responsible for overseeing senior management in establishing and maintaining an adequate, effective and efficient internal control framework.*<sup>89</sup>

*It shall ensure that systems and processes are designed to provide assurance in areas including reporting, monitoring compliance with laws, rules and internal policies, efficiency and effectiveness of operations, and safeguarding of assets.*

- b. Review and approve the Interim and annual financial statements before their submission to the Board, with particular focus on the following matters<sup>90</sup>:
  - Any change/s in accounting policies and practices
  - Areas where a significant amount of judgment has been exercised
  - Significant adjustments resulting from the audit
  - Going concern assumptions
  - Compliance with accounting standards
  - Compliance with tax, legal and regulatory requirements
- c. Shall provide oversight over the institutions financial reporting policies, practices and control and internal and external audit functions.<sup>91</sup>

### 2.3.6 On Management's Risk Management Activities

- a. Provide oversight over Management's activities in managing credit, market, liquidity, operational, legal and other risks of the Bank. This function shall include regular receipt from

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<sup>87</sup> BSP Circular No. 871, Series of 2015, page 3, the Audit Committee

<sup>88</sup> SEC Memo No. 19 S2016, recommendation 3.2

<sup>89</sup> BSP Circular No. 871, Series of 2015, page 3, the Audit Committee

<sup>90</sup> SEC Memo No. 19 S2016, Recommendation No. 3.2

<sup>91</sup> MORB [Subsection XI141.3. (7)(d) (i)]

Management of Information on risk exposures and risk management activities; and

- b. Reviews and monitors Management's responsiveness to the Internal Auditor's findings and recommendations.<sup>92</sup>

#### 2.3.7 On Internal Audit Plan

Review and approve the annual internal audit plan including all major changes thereafter, to ensure its conformity with the objectives of the Bank. The plan shall include the audit scope, resources and budget necessary to implement it.

#### 2.3.8 On Compliance

Coordinate, monitor, and facilitate compliance with laws, rules and regulations.<sup>93</sup>

#### 2.3.9 On Whistleblowing<sup>94</sup>

The committee shall establish and maintain mechanisms by which officers and staff, in confidence, raise concerns about possible improprieties or malpractices in matters of financial reporting, internal control, auditing or other issues to persons or entities that have the power to take corrective action. It shall ensure that arrangements are in place for the independent investigation, appropriate follow-up action, and subsequent resolution of complaints.

### 2.4 Responsibilities on Internal and External Audits<sup>95</sup>

- 2.4.1 Perform oversight functions over the corporation's internal and external auditors. It ensures the independence of internal and external auditors, and that both auditors are given unrestricted access to all records, properties and personnel to enable them to perform their respective audit functions.<sup>96</sup>

With regard to access to records, the external auditor is allowed to have read-only access to the BSP Reports of Examination (ROE).<sup>97</sup>

- 2.4.2 Prior to the commencement of audit, discuss with the external auditor the nature, scope and expenses of the audit, and ensure proper coordination if more than one audit firm is involved in the activity to secure proper coverage and minimize duplication of efforts.<sup>98</sup>

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<sup>92</sup> SEC Memo No. 19 S2016, Recommendation 3.2

<sup>93</sup> *ibid*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Institute of Internal Auditors' Model Audit Committee Charter*

<sup>96</sup> SEC Memo No. 19 S2016, Recommendation 3.2

<sup>97</sup> BSP Memo No. M – 2014-011, Section II.3.e

<sup>98</sup> SEC Memo No. 19 S2016, Recommendation 3.2

- 2.4.3 Review the reports submitted by the internal and external auditors by reviewing the disposition of the recommendation in the External Auditor's management letter.<sup>99</sup>
- 2.4.4 It shall receive key audit reports, and ensure that senior management is taking necessary corrective actions in a timely manner to address the weaknesses, non-compliance with policies, laws and regulations and other issues identified by auditors;<sup>100</sup>
- 2.4.5 Evaluate and determine the non-audit work, if any, of the external auditor, and periodically review the non-audit fees paid to the external auditor in relation to the total fees paid to him and to the corporation's overall consultancy expenses. The committee shall disallow any non-audit work that will conflict with his duties as an external auditor or may pose a threat to his independence. The non-audit work, if allowed, should be disclosed in the corporation's annual report and Corporate Governance Report;<sup>101</sup>
- 2.4.6 Review the effectiveness of the internal audit function, including compliance with The Institute of Auditors' International Professional Practices Framework for Internal Auditing consisting of the Definition of Internal Auditing, Code of Ethics and the Standards.

In assessing the effectiveness of the external auditor's work, the Audit Committee should closely coordinate with the external auditor during all phases of the external audit engagement, as follows:

- i. It should discuss and agree to the terms of the engagement letter issued by the external auditor prior to the approval of the engagement.  
  
Where relevant, the engagement letter should reflect changes in circumstances relevant to the external audit
- ii. It should obtain an understanding of the score and audit approach which shall be adopted by the external auditor for purposes of meeting the FI's financial reporting requirements;
- iii. It should ascertain and take steps to address the major areas of concern identified by the external auditor during the course of its audit. These issues may cover significant accounting estimates, valuation methodologies and accounting policies adopted
- iv. It should review management representation letters before these are transmitted to the external auditor to ensure that items in the letter are complete and appropriate;
- v. It should assess the extent of corporation provided by the FI's management during the conduct of the external audit; and

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<sup>99</sup> *ibid*

<sup>100</sup> *MORB, Section 141.3 (7) (d) (i)*

<sup>101</sup> *SEC Memo No. 19 S 2016, Recommendation 3.2*

- vi. It should understand and duly assess the external auditor's opinion regarding the capacity of FI management and the adequacy of accounting/information system to comply with financial and prudential reporting responsibilities.

2.4.7 Meet separately with the Head of internal Audit/external auditors to discuss any matter that the committee or internal/external audit believes should be discussed privately.

2.4.8 Review and confirm the independence of the external auditors by obtaining statements from the auditors on relationship between the auditors and Bank, including non-audit services, and discussing the relationships with the auditors.

2.4.9 *Communication with the External Auditor*<sup>102</sup>

*In order to reinforce the Audit Committee's effectiveness in performing its key role in strengthening corporate governance, the Audit Committee shall maintain effective communication channels with the external auditor through regular and structure dialogues in the course of the external audit.*

*Such communication should focus on the key accounting or auditing issues that, in the external auditor's judgment, give rise to a greater risk of material misstatement of the financial reports, as well as other external audit concerns of the Audit Committee. Internal and external auditors should be allowed and encouraged to attend the meeting of the Audit Committee.*

During regular meetings of the Audit Committee, matters that may be raised include audit findings that would impact on the FI's compliance with regulatory requirements, disclosures and other accounting concerns.

2.5 Additional functions of the Audit Committee<sup>103</sup>

2.5.1 Regularly review and monitor the external auditor's technical competence, independence, objectivity and overall effectiveness of the external audit process.

2.5.2 Determination of Audit Fees<sup>104</sup>

- a. The Audit Committee is required to set the compensation of the external auditor in relation to the scope of its duties.
- b. Reasonableness of the Audit Fees

The external auditor is expected to charge only reasonable audit fees. In determining reasonableness of the fees, the following may be considered:

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<sup>102</sup> BSP Memo No. M-2014-011, Section II.1.a Audit Committee,

<sup>103</sup> *ibid*

<sup>104</sup> BSP Memorandum No. M-2014-01, 14 March 2014, Section II.2.1, 8-9

- i. Expected hours needed to complete the scope of work envisioned in the audit plan;
  - ii. Complexity of the activities and structure of the company;
  - iii. Level of internal audit assistance;
  - iv. Level of fees being charged by other audit firms; and
  - v. Quality of audit service
- 2.5.3 Establish a system that addresses, in a timely and effective manner any findings of fraud or error on the financial statements.
- 2.5.4 Continually engage the external auditor on matters concerning audit quality.
- 2.5.5 If the external auditor resigns or communicates an intention to resign, the Audit Committee should follow up on the reasons/explanations giving rise to such resignation and consider whether it needs to take any action in response to those reasons.
- 2.5.6 To meet with the Board at least every quarter without the presence of the CEO or other management team members and periodically meets with the head of internal audit.<sup>105</sup>
- 2.6 Responsibilities over Internal Audit Outsourcing<sup>106</sup>
  - 2.6.1 The Audit Committee should also approve the terms and conditions for outsourcing internal audit services;<sup>107</sup> and
  - 2.6.2 The Audit Committee shall be responsible for the selection and overseeing the performance of the internal audit service provider.

In particular, the Audit Committee shall be responsible for:

  - a. ensuring the independence of the internal audit service provider;
  - c. reporting to the Board on the status of accomplishments of the outsourced internal audit activities, including significant findings noted during the conduct of the internal audit;
  - d. ensuring that the internal audit service provider comply with sound internal auditing standards such as the Institute of Internal Auditor's International Standards for the Professional Practice of Internal Auditing and other supplemental standards issued by regulatory authorities/government agencies, as well as with relevant code of ethics;
  - e. ensuring that the audit plan is aligned with the overall plan strategy and budget of the bank and is based on robust risk assessment; and

<sup>105</sup> SEC Memo No. 19 S 2016 Recommendation 3.2

<sup>106</sup> BSP Circular No. 871, Series of 2015, page 3, the Audit Committee

<sup>107</sup> SEC Memo No. 19 S 2016, Recommendation 3.2

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- f. ensuring that the internal audit service provider has adequate human resources with sufficient qualifications and skills necessary to accomplish the internal audit activities.

## 2.1 Reporting Responsibilities<sup>108</sup>

- 2.1.1 Provide an open avenue of communication between internal audit, the external auditors, and the board of directors.
- 2.1.2 Report annually to the shareholders, describing the committee's composition, responsibilities and how they were discharged, and any other information required by rule, including approval of non-audit services.
- 2.1.3 Review and assess the adequacy of the committee charter annually, requesting board approval for proposed changes, and ensure appropriate disclosure as may be required by law or regulation.

## 3. Corporate Governance Committee<sup>109</sup>

The corporate governance committee is tasked to assist the board of directors in fulfilling its corporate governance responsibilities.

### 3.1 Composition of the Corporate Governance Committee

The committee shall be composed of at least three (3) members of the board of directors, all of whom shall be independent directors including the chairperson.

### 3.2 Charter

The Corporate Governance Committee shall have a written charter that describes the duties and responsibilities of its members. The charter shall be approved by the Board of Directors and reviewed and updated at least annually.

### 3.3 Duties and Responsibilities

The CG Committee has the following duties and functions:

- 3.3.1 Oversee the implementation of the corporate governance framework and periodically review the said framework to ensure that it remains appropriate in light of material changes to the corporation's size, complexity and business strategy, as well as its business and regulatory environment;<sup>110</sup>
- 3.3.2 Review and evaluate the qualifications of all persons nominated to the Board as well as those nominated to other positions requiring appointment by the Board of Directors.
- 3.3.3 Determine the nomination and election process for the company's directors and has the special duty of defining the general profile of board members that the company may need and ensuring appropriate

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<sup>108</sup> *ibid*

<sup>109</sup> *Sec. X141.3.c(9)(b) of the MORB*

<sup>110</sup> *SEC Memo No. 19 S2016, Recommendation 3.3*

knowledge, competencies and expertise that complement the existing skills of the Board;<sup>111</sup>

- 3.3.4 Ensure the Board of Directors' effectiveness and due observance of corporate governance principles and guidelines.

In this regard, adopt corporate governance policies and ensures that these are reviewed and updated regularly and consistently implemented in form and substance.<sup>112</sup>

- 3.3.5 Oversee the periodic performance evaluation of the Board of Directors and its committees and executive management.

In relation to the above, the Committee shall ensure that the results of the Board evaluation are shared, discussed, and that concrete action plans are developed and implemented to address the identified areas for improvement.<sup>113</sup>

- 3.3.6 Conduct an annual self-evaluation of its performance.

The corporate governance committee may coordinate with the external facilitators in carrying out board assessment, within the frequency approved by the entire board.<sup>114</sup>

- 3.3.7 Decide whether or not a director is able to and has been adequately carrying out his duties as director based on its own assessment or the assessment of external facilitators, bearing in mind the director's contribution and performance (e.g., competence, candor, attendance, preparedness and participation).

- 3.3.8 Adopt internal guidelines that shall address the competing time commitments that are faced when directors serve on multiple boards.

- 3.3.9 Make recommendations to the Board of Directors regarding the continuing education / training program of directors, assignment of task/projects to Board Committees, succession plan for the Board Members and Senior Officers, and their remuneration commensurate with corporate and individual performance.

Towards this, proposes and plans relevant trainings for the members of the Board.<sup>115</sup>

- 3.3.10 Decide the manner by which the Board of Directors' performance shall be evaluated, and propose an objective performance criteria approved by the Board of Directors. Such performance indicators shall address how the Board of Directors has enhanced long-term shareholder's value.

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<sup>111</sup> *ibid*

<sup>112</sup> *ibid*

<sup>113</sup> *ibid*

<sup>114</sup> *MORB, Section XI41.3.c (7)(d)(iii)*

<sup>115</sup> *SEC Memo No. 19 S2016, Recommendation no. 3.3*

#### 4. Compensation or Remuneration Committee<sup>116</sup>

The Committee provides oversight over the remuneration of senior management and other key personnel, ensuring that compensation is consistent with the Bank's culture, strategy and control environment.<sup>117</sup>

##### 4.1 Composition of the Compensation or Remuneration Committee

The Compensation or Remuneration Committee shall be composed of at least three (3) members, the majority of whom shall be an independent director including the chairman.

##### 4.2 Charter

The Compensation or Remuneration Committee shall have a written charter or terms of reference which clearly sets out the authority and duties of the said committee, as well as the reporting relationship with the Board of Directors. The charter shall be approved by the Board of Directors and reviewed and updated periodically or as needed.

##### 4.3 Duties and Responsibilities

4.3.1 Establish a formal and transparent procedure to develop a policy for determining the remuneration of directors and officers that is consistent with the Bank's culture and strategy as well as the business environment in which it operates.<sup>118</sup>

4.3.2 Review and approve amount of remuneration, which shall be at a sufficient level to attract and retain directors and all personnel who are needed to manage the Bank successfully.

4.3.3 Develop a form on Full Business Interest Disclosure as part of the pre-employment requirements for all incoming officers, which among others compel all officers to declare under the penalty of perjury all their existing business interests or shareholdings that may directly or indirectly conflict in their performance of duties once hired.

4.3.4 Disallow any director to decide his or her own remuneration.

4.3.5 Provide in the Bank's annual reports, information and proxy statements a clear, concise and understandable disclosure of compensation of its executive officers for the previous fiscal year and the ensuing year.

4.3.6 Review (if any) the existing Human Resources Division or Personnel Handbook, to strengthen provisions on conflict of interest, salaries and benefits policies, promotion and career advancement directives and compliance of personnel concerned with all statutory requirements that must be periodically met in their respective posts.

Or in the absence of such Personnel Handbook, cause the development of such, covering the same parameters of governance stated above.

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<sup>116</sup> Art 3.K(ii)b of the Revised Code of Corporate Governance

<sup>117</sup> *Organizational Minutes of the Board of Directors dated May 7, 2009*

<sup>118</sup> SEC Memo No. 19 S2016, Recommendation No. 3.3



## 5. Nominations Committee

### 5.1 Composition

The Nominations Committee shall be composed of at least three (3) members of the Board of Directors<sup>119</sup>, all of whom shall be independent directors.

### 5.2 Duties and Functions<sup>120</sup>

5.2.1 Its primary task is to review and evaluate the qualifications of all persons nominated to the Board and other appointments that require Board approval<sup>121</sup> including promotions favorably endorsed by the Promotions Review Committee.

That with regard to the nominees to the Board, the Committee is also tasked to identify the quality of the directors nominated aligned with the Bank's strategic directions.

5.2.2 It shall promulgate the guidelines or criteria to govern the conduct of the nomination, and the same shall be properly disclosed in the company's information or proxy statement or such other reports required to be submitted to the SEC.

In relation to the above, determine the nomination and election process for the company's directors and has the special duty of defining the general profile of board members that the company may need and ensuring appropriate knowledge, competences and expertise that complement the existing skills of the Board.<sup>122</sup>

5.2.1 The nomination of director, more particularly of independent director, shall be conducted by the Committee prior to a stockholders' meeting. All nominations or recommendation shall be signed by the nominating stockholders together with the acceptance and conformity of the nominees.

5.2.2 The Committee shall pre-screen the qualifications and prepare a final list of all candidates and put in place screening policies and parameters that meet at least the minimum requirement of SEC Memo No. 16 and BSP Circular No. 296 Series of 2001 to facilitate its task to effectively review the qualifications of the nominees for directors, more specifically for independent director/s.

5.2.3 After the nomination, the Committee shall prepare a Final List of Candidates which shall contain all the information about all the nominees for directors, more particularly for independent directors, as required under Part IV (A) and (C) of Annex "C" of SRC Rule 12, which list shall be made available to the SEC and to all stockholders through the filing and distribution of the Information Statement or Proxy Statement, in accordance with the SRC Rule 17.1 (b) or the SRC or SRC Rule 20,

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<sup>119</sup> Article VI.C, Amended By-laws

<sup>120</sup> Article 6.C.2, Revised By-Laws

<sup>121</sup> *ibid*

<sup>122</sup> SEC Memo No. 19 S2016, Recommendation no. 3.3

respectively, or in such other reports the company is required to submit to the SEC. The name of the person or group of persons who recommended the nomination of the independent director/s shall be identified in such report including any relationship with the nominee.

5.2.4 Only nominees whose names appear on the Final List of Candidates shall be eligible for election as directors, more specifically for Independent Directors. No other nomination shall be entertained after the Final List of Candidates shall have been prepared. No further nomination shall be entertained or allowed on the floor during the actual annual stockholders' meeting, except in the unlikely event that a particular nominee/s make/s a last minute withdrawal of his/their acceptance and conformity, become/s incapacitated or otherwise no longer available for any reason whatsoever.

5.2.5 Assess the effectiveness of the Board's processes and procedures in the election or replacement of directors,

### 5.3 Charter

The Nomination Committee shall have its own charter which shall be reviewed regularly or as the need arises.

## 6. Risk Oversight Committee<sup>123</sup>

The risk management committee shall be responsible for the development and oversight of the risk management program of the Bank and its trust unit.

It shall oversee the system of limits to discretionary authority that the board delegates to management, ensure that the system remains effective, that the limits are observed and that immediate corrective actions are taken whenever limits are breached.

### 6.1 Composition<sup>124</sup>

6.1.1 Risk Management Committee shall be composed of at least three (3) members of the board of directors, the majority of whom should be independent director including the Chairman. The Chairman should not be the Chairman of the Board or of any other committee.

#### 6.1.2 Qualifications of the members of the Risk Management Committee

The members of the Risk Oversight Committee shall possess a range of expertise as well as adequate knowledge of the institution's risk exposures to be able to develop appropriate strategies for preventing losses and minimizing the impact of losses when they occur. *At least one must have relevant thorough knowledge and experience on risk and risk management.*

### 6.2 Charter

The Risk Management Committee shall have a written charter that defines the duties and responsibilities of its members. The charter shall be approved by the

<sup>123</sup> Sec. X141.3.c (9) (c) of the MORB

<sup>124</sup> SEC Memo No. 19 S2016, Recommendation no. 3.4; Subsection X141.3.c(7)(d)(ii), MORB

Board of Directors and reviewed and refined periodically or as needed to incorporate revision in regulations.

6.3 General Responsibilities of the Risk Oversight Committee<sup>125</sup>

6.3.1 It shall oversee the system of limits to discretionary authority that the board delegates to management, ensure that the system remains effective, that the limits are observed and that immediate corrective actions are taken whenever limits are breached.

6.3.2 Require the Chief Risk Officer and the Bank's Risk Management Group to communicate formally and informally any material information relative to the discharge of its function to the Committee.

6.3.3 *Advise the Board on its risk appetite levels and risk tolerance limits;*<sup>126</sup>

6.4 Core Responsibilities of the Risk Management Committee:

6.4.1 Identify and evaluate exposures – the Risk Oversight Committee shall assess the profitability of each risk becoming reality and shall estimate its possible effect and cost. Priority areas of concern are those risks that are most likely to occur and are costly when they happen.

6.4.2 Develop risk management strategies –the Risk Oversight Committee shall develop a formal written risk management program which shall contain and define the following: (a) common language or register of risks, (b) well defined risk management goals, objectives and oversight, (c) uniform strategies for managing and controlling the major risks. (d) designing and implementing risk management strategies, and (e) continuing assessments to improve risk strategies, processes and measures.

6.4.3 Oversee the implementation of the risk management plan – the Risk Oversight Committee shall conduct regular discussions on the Bank's current and residual risk exposure based on regular *risk* management reports, and assesses how the concerned units or offices are *addressing and managing these risks*.

*In view of the above, shall provide oversight over Management's activities in managing credit, market, liquidity, operational, legal and other risk exposures of the Bank. This function includes regularly receiving information on risk exposures and risk management activities from Management; and*

*Report to the Board on a monthly basis, or as deemed necessary, the company's material risk exposures, the actions taken to reduce the risks, and recommends further action or plans, as necessary.*

6.4.4 Review and revise the plan as needed – the Risk Oversight Committee shall oversee and evaluate the risk management plan to ensure its continued relevance, comprehensiveness and effectiveness. It shall revisit strategies, look for emerging or changing material exposures, and

<sup>125</sup> MORB, Section XI41.3.c.(7) (d) (ii); SEC Memo No. 19 S2016, Recommendation no. 3.4.

<sup>126</sup> SEC Memo No. 19 Series of 2016 re Code of Corporate Governance for Publicly-Listed Companies

stay abreast of significant developments that seriously affect the likelihood of harm or loss. It shall report regularly to the Board of Directors, or as *deemed necessary*, the Bank's over-all risk exposure, the actions taken to reduce the risks, and recommends further action or plans as necessary.

6.4.5 *Review the Bank's risk appetite - at least annually the Committee shall review the Bank's risk appetite levels and risk tolerance limits based on changes and developments in the business, the regulatory framework, the external economic and business environment, and when major events occur that are considered to have major impacts on the company;*

6.4.6 The Risk Oversight Committee, shall, where appropriate, have access to external expert advice, particularly in relation to proposed strategic transactions in fulfillment of its duties<sup>127</sup>.

6.4.7 Ensure that the bank's risk management unit and the chief risk officer communicate formally to the risk management committee any material information relative to the discharge of its function.

## 7 Compliance Committee<sup>128</sup>

### 7.1 Composition

Compliance Committee shall be composed of three (3) members of the Board of Directors.

### 7.2 Charter

The Compliance Committee shall have a written charter that defines the duties and responsibilities of its members. The charter shall be approved by the Board of Directors and reviewed and updated at least annually or as necessary.

### 7.3 Duties and Responsibilities

7.3.1 The Committee is tasked to ensure that the management is doing things in accordance with the prescribed rules, policies, procedures, guidelines and the like, and that appropriate corrective actions are being taken when necessary or required.<sup>129</sup>

7.3.2 Receive monthly compliance report from the Chief Compliance Officer of the Bank on the activities his office has undertaken, bank's level of compliance and on various compliance matters that demands immediate attention.

## 8 Related Party Transaction Committee<sup>130</sup>

The Committee shall be responsible for the evaluation on an ongoing basis of the existing relations between and among businesses and counterparties to ensure that all related

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<sup>127</sup> *The BSP has enumerated mergers and acquisition as examples of this transaction.*

<sup>128</sup> *2009-2010 Organizational Meeting, May 7, 2009, p.19*

<sup>129</sup> *2009/2010 Organizational Minutes, May 7, 2009*

<sup>130</sup> *BSP Circular No. 895, Guidelines on Related Party Transactions; SEC Memo No. 19 S2016, Recommendation no. 3.5*

parties are continuously identified RPTs are monitored, and subsequent changes in relationships with counterparties (from non-related to related and vice versa) are captured.

#### 8.1 Composition<sup>131</sup>

The Committee shall be composed of at least three (3) independent, non-executive directors, all of whom shall be independent directors.

In case a member has conflict of interest in a particular RPT, he should refrain from evaluating that particular transaction.

#### 8.2 Duties and Responsibilities

8.2.1 Shall be responsible in ensuring that the RPT policy is reviewed annually or whenever necessary. Any changes therein shall be approved by the Board of Directors through the RPT Committee.

8.2.2 The Committee shall determine the Material Interests or the amount of significant transactions that could pose material risk to the Bank. For this purpose, the amount to be considered as 'Significant' and to be included in the Bangko Sentral ng Pilipinas (BSP) report must be Philippine Peso (PHP) 50 Million (or its foreign currency equivalent) and above.

*The amount may be changed based on the discretion of the Board of Directors.*

##### 8.2.3 Review of Material RPTs

- a. Evaluate on an ongoing basis existing relations between and among businesses and counterparties to ensure that all related parties are continuously identified, RPTs are monitored, and subsequent changes in relationships with counterparties (from non-related to related and vice versa) are captured. Related parties, RPTs, and changes in relationships shall be reflected in the relevant reports to the board and regulators/supervisors.
- b. The Committee shall also be responsible in evaluating or reviewing all material related party transactions as defined in the existing policies of the Bank.
- c. The Committee shall evaluate the terms and conditions of the facility or the transaction, ensuring that it is conducted at arm's length basis, or shall be upon economic terms not less favorable to the Bank than those offered to others and that no business resources of the bank are misappropriated or misapplied, and to determine any potential reputational risk issues that may arise as a result of or in connection with the transaction.
- d. In determining that a transaction is at arm's length or not undertaken on more favorable economic terms for the related party, it shall consider the pricing, commission, interest rates,

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<sup>131</sup> ASEAN Scorecard

fee, tenor, collateral requirement, timing of transactions, economic benefit, etc.

In the evaluation, the Committee shall take into account, among others, the following:

- i. *The related party's relationship to the Bank and interest in the transaction;*
- ii. *The material facts of the proposed RPT, including the proposed aggregate value of such transaction;*
- iii. *The benefits to the bank of the proposed RPT;*
- iv. *The availability of other sources of comparable products or services; and*
- v. *An assessment of whether the proposed RPT is on terms and conditions that are comparable to the terms generally available to an unrelated party under similar circumstances. The price discovery mechanism is in place and exercise due diligence in determining a fair price for RPTS.*

8.2.4 *Ensure that appropriate disclosure is made, and/or information is provided to regulatory agencies regarding the Bank exposures, and policies on conflicts of interest or potential conflicts of interest with the information on the approach to managing material conflicts of interest that are inconsistent with such policies and conflicts that could arise as a result of the Bank's affiliation or transactions with other related parties.*

8.2.5 *Report to the Board of Directors on a regular basis, the status and aggregate exposures to each related party as well as the total amount of exposures to all related parties.*

8.2.6 *Ensure that transactions with related parties, including write-off of exposures, are subject to periodic independent review or audit process.*

8.2.7 *Oversee the implementation of the system for identifying, monitoring, measuring, controlling, and reporting RPTs, including the periodic review of RPT policies and procedures.*

## 9 Deadlock Resolution

In cases where there is deadlock on matters for resolution of the Committee, the same shall be elevated to the Board of Directors for its decision and resolution. For this purpose, the Corporate Secretary shall include in the agenda of the Board of Directors in its next meeting the matters which need to be decided upon or resolved by the Board of Directors in view of the deadlock.<sup>132</sup>

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<sup>132</sup> *Approved by the Board of Directors on 02 December 2015*

F. Remuneration of the Members of the Board and Officers<sup>133</sup>

1. A proportion of executive directors' remuneration, as reviewed by the Compensation and Remuneration Committee, should be structured so as to link reward to corporate and individual performance.
2. The Bank should establish a formal and transparent procedure for developing a policy on executive remuneration and for fixing the remuneration packages of individual directors, if any, and officers. No director should be involved in deciding his/her own remuneration.
3. As required by the Revised Code of Corporate Governance, the annual report, information and proxy statements shall include a clear, concise and understandable disclosure of all fixed and variable compensation that may be paid, directly or indirectly, to its directors and top four (4) management officers during the preceding fiscal year.
4. Directors' Fees
  - 4.1 China Bank directors shall receive a Per Diem of five hundred pesos for attendance at each session of the Board of Directors or of any Committee, or as may be determined from time to time by stockholders owning or representing a majority of the subscribed capital stock at any regular or special meeting.
  - 4.2 In accordance with Article VIII of the Bank's By-Laws, a portion of the net earnings shall be given to the members of the Board of Directors.

G. Corporate Secretary<sup>134</sup>

1. The Corporate Secretary is an officer of the Bank, a Filipino citizen and resident of the Philippines.

The Corporate Secretary is primarily responsible to the corporation and its shareholders and no to the Chairman or President of the Company.
2. Among others, he has the following responsibilities –
  - 2.1 Assist the board and the board committees in the conduct of their meetings, including preparing an annual schedule of Board and committee meetings and the annual board calendar, and assisting the chairs of the Board and its committees to set agenda for those meetings;
  - 2.2 Safe keep and preservation the integrity of the minutes of the meetings of the Board and its committees, as well as other official records of the corporation;
  - 2.3 Keep abreast on relevant laws, rules and regulations, all governance issuances, relevant industry
  - 2.4 Work fairly and objectively with Board, Management, stockholders and other stakeholders;
  - 2.5 Advise on the establishment of board committee and their terms of reference.

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<sup>133</sup> *Ibid*, Article 3.J

<sup>134</sup> *Recommendation no. 1.5, Code of CG for PLCs*

<sup>136</sup> *Subsection X142.3 of the MORB*

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- 2.6 Inform the members of the Board, in accordance with the by-laws, of the agenda of their meetings at least five working days in advance and ensure that the members have before them accurate information that will enable them to arrive at intelligent decision on matters that require their approval;
- 2.7 Attend all Board meetings, except when justifiable causes, such as, illness, death in the immediate family and serious accidents, prevent him from doing so;
- 2.8 Perform required administrative functions;
- 2.9 Oversee the drafting of the by-laws and ensure that they conform with regulatory requirements; and
- 2.10 Perform such other duties and responsibilities as may be provided by the Securities and Exchange Commission.

#### H. Charters

Committee charters and amendments thereto, after they have been approved by the appropriate Committee and confirmed by the Board shall form part of this Manual but may come in a separate document.

#### I. Officers

The selection of Bank Officers shall be in accordance with the qualifications and disqualifications set by the Bank and the prevailing BSP regulations.

##### 1. Duties and Responsibilities of Officers on Corporate Governance<sup>136</sup>

- 1.1 To set the tone of good governance from the top. Bank officers shall promote the good governance practices within the bank by ensuring that policies on governance as approved by the board of directors are consistently adopted across the bank.
- 1.2 To oversee the day-to-day management of the bank. Bank officers shall ensure that bank's activities and operations are consistent with bank's strategic objectives, risk strategy, corporate values and policies as approved by the board of directors. They shall establish a bank-wide management system characterized by
- 1.3 To ensure that duties are effectively delegated to the staff and to establish a management structure that promotes accountability and transparency. Bank officers shall establish measurable standards, initiatives and specific responsibilities and accountabilities for each bank personnel. Bank officers shall oversee the performance of these delegated duties and responsibilities and shall ultimately be responsible to the board of directors for the performance of the bank.
- 1.4 To promote and strengthen checks and balances systems in the bank. Bank offices shall promote sound internal controls and avoid activities that shall compromise the effective discharge of their function. Further, they shall ensure that they give due recognition to the importance of the internal audit, compliance and external audit functions.

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## 2. Bio-Data of Officers

- 2.1 Notarized bio-data of officers, with 2" x 2" ID picture (taken within the last six [6] months) are required to be submitted to the BSP on the basis of the following, within ten (10) banking days from the date of meeting of the board in which the officers are appointed/promoted, in accordance with Appendix 6 of the MORB:
  - 2.1.1 Officers with rank of Senior Vice President and above (or equivalent ranks);
  - 2.1.2 Officers below the rank of SVP requiring a different set of minimum qualifications (e.g. Compliance Officer, Chief Risk Officer and Trust Officer)
  - 2.1.3 Officers whose appointment requires prior Monetary Board approval upon every election/re-election/appointment/promotion in a prescribed form; and
  - 2.1.4 For first time officers with rank of SVP and above (or equivalent ranks) within a particular banking group whose election/appointment required confirmation of the SES or that which requires prior MB approval.
  - 2.1.5 Officers below the rank of SVP are not required to submit their bio-data to the BSP, except for the above given.

## 3. List of Officers<sup>137</sup>

- 3.1. The Bank is required to submit to the Central Point of Contact – BSP a duly notarized list of incumbent officers (president or equivalent rank, down the line, following the prescribed BSP format (See Annex4), within ten (10) banking days from the annual election of the board of directors.
- 3.2. As stated in Section 3.3.1, the responsibility of submission is with the Bank's Office of the Corporate Secretary, however, the list shall be prepared by the Human Resources Division.

## 4. Disqualification of Officers<sup>138</sup>

- 4.1 An officer who is elected or appointed but who does not possess all the qualifications mentioned under Subsections X141.2 and X142.2 of the MORB and/or has any of disqualifications mentioned under Subsections X143.1 and X143.2 shall not be confirmed by the confirming authority of the BSP and shall be removed from office even if he/she assumed the position to which he/she was elected or appointed, in accordance with the established procedures on termination of an employee with a cause.
- 4.2 In cases of officers who have been confirmed already by the confirming authority of the BSP, but was found to possess any of the disqualifications enumerated in the MORB shall be subject to the disqualification procedures.
- 4.3 Except as may be authorized by the Monetary Board or the Governor, spouse of relative within the second degree of consanguinity or affinity of any person

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<sup>137</sup> Section X144 of the MORB, as amended by Circular No. 749

<sup>138</sup> Section X143 of the MORB

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holding the position of Chairman, President, Executive Vice President or any position of equivalent rank, General Manager, Treasurer, Chief Cashier or Chief Accountant is disqualified from holding or being elected or appointed to any of said positions in the same bank/quasi-bank; and the spouse or relative within the second degree of consanguinity or affinity of any person holding the position of Manager, Cashier, or Accountant of a branch or office of a bank/quasi-bank/trust entity is disqualified from holding or being appointed to any of said positions in the same branch or office.

- 4.4 Except as may otherwise be allowed under C.A no. 108, otherwise known as "The Anti-Dummy Law", as amended, foreigners cannot be officers or employees of banks.<sup>139</sup>

## **V. Code of Conduct**

1. The Bank must establish a set of Personnel Policies and Code of Conduct to be strictly observed by all employees of the Bank. It should form part of the Employee Handbook which a copy should be distributed to all employees for their information. Any updates thereto shall also be distributed to all employees and should be duly acknowledged. This Handbook shall be with the employee for the whole duration of his stay in the Bank and must be surrendered upon his resignation / retirement.
2. All officers and employees of the Bank hold a position of trust. In this regard he/she must avoid situations where his / her personal interest may conflict or appear to conflict with the interest of the Bank or its customers. In case of conflict, the interest of the Bank should prevail.<sup>140</sup>

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<sup>139</sup> Subsection X143.2.e of the MORB

<sup>140</sup> Code of Ethics – item 4.7

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## **VI. COMPLIANCE SYSTEM AND INTERNAL CONTROL**

### **A. INTERNAL CONTROL FRAMEWORK<sup>141</sup>**

#### **1. Definition of Internal Control**

Internal control is a process designed and effected by the board of directors, senior management, and all levels of personnel to provide reasonable assurance on the achievement of objectives through efficient and effective operations; reliable, complete and timely financial and management information; and compliance with applicable laws, rules, supervisory requirements, and the organization's policies and procedures.

#### **2. Components of Internal Control**

The Bank's internal control framework shall embody the following:

- 2.1 Management oversight and control culture
- 2.2 Risk recognition and assessment
- 2.3 Control Activities
- 2.4 Information and Communication; and
- 2.5 Monitoring activities and correcting deficiencies

#### **3. Control Activities<sup>142</sup>**

Bank control activities shall form part of the daily activities and all levels of personnel in the Bank. This shall involve establishment of control policies and procedures, and verification that these are being complied with.

Control activities is every business level shall include the following:

- 3.1 Top and functional level reviews;
- 3.2 Checking compliance with exposure limits and follow-up on non-compliance;
- 3.3 A system of approvals and authorizations (to include the approval process for new products and services; and
- 3.4 A system of verification and reconciliation.

#### **4. Senior Management's Responsibility over Internal Control**

- 4.1. Senior management shall be responsible for maintaining, monitoring and evaluating the adequacy and effectiveness of the internal control system on an ongoing basis, and for reporting on the effectiveness of inter controls on a periodic basis.
- 4.2. Management shall develop a process that identifies, measures, monitors and controls risk that are inherent to the operations of the Bank
- 4.3. Maintain an organizational structure that clearly assigns responsibility, authority and reporting relationships;
- 4.4. Ensure that delegated responsibilities are effectively carried out

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<sup>141</sup> BSP Circular No. 871, Series of 2015, page 1, Internal Control Framework

<sup>142</sup> BSP Circular No. 871, subsection X185.3, page 5, Control Activities

- 4.5. Implement internal control policies and ensure that activities are conducted by qualified personnel with the necessary experience and competence.
- 4.6. Ensure that bank personnel undertake continuing professional development and that there is an appropriate balance in the skills and resources of the front office, back office, and control functions.
- 4.7. Management shall promptly inform the internal audit function of the significant changes in the bank's risk management system, policies and processes.

## **B. Compliance Office**

### **1. Chief Compliance Officer**

#### **1.1 Appointment**

- 1.1.1 Banks are required to appoint a full-time CCO to manage the compliance program. Taking into consideration the importance of the compliance function, the CCO shall be a senior officer functionally reporting to the Bank's Board of Directors through the appropriate board-level Committee. Such designation shall require prior approval of the Monetary Board.<sup>143</sup>
- 1.1.2 It shall be the responsibility of the Office of the Corporate Secretary to secure the said BSP approval in the form of a letter request within a reasonable period after the Bank's board approval of the appointment of the CCO.
- 1.1.3 The appointment of the Compliance Officer shall be immediately disclosed to the Securities and Exchange Commission on SEC Form 17-C by the Office of the Corporate Secretary. All correspondence relative to his functions as such shall be addressed to the said Officer.

#### **1.2 Qualifications<sup>144</sup>**

- 1.2.1 The Chief Compliance Officer's qualifications shall be subject to the applicable provisions of the MORB, particularly considering fit and proper criteria such as integrity/probity, competence, education, diligence and experience/training.
- 1.2.2 The CCO shall have commensurate skills and expertise to provide appropriate guidance and direction to the bank on the development, implementation and maintenance of the compliance program.

### **2. Duties and Responsibilities**

Other than those mentioned in the Compliance Charter, he shall perform the following duties<sup>145</sup> :

- 2.1 Ensure proper on boarding of new directors (i.e. orientation on the company's business, charter, articles of incorporation and by-laws, among others;

<sup>143</sup> Subsection X180.4 of the MORB

<sup>144</sup> Subsection X180.4.b of the MORB

<sup>145</sup> Recommendation no. 1.5, Code of CG for PLCs

- 2.2 Monitor, review, evaluate and ensure the compliance by the Bank, its officers and directors with the relevant laws, the Code of CG for PLCs, rules and regulations and all governance issuances of regulatory agencies;
  - 2.3 Reports the matter to the Board if violations are found and recommends the imposition of appropriate disciplinary action;
  - 2.4 Ensures the integrity and accuracy all documentary submissions to regulators;
  - 2.5 Appear before the Commission when summoned in relation to compliance with the Code of CG for PLCs; and
  - 2.6 Collaborates with other departments to properly address compliance issues, which may be subject to investigation;
  - 2.7 Identifies possible areas of compliance issues and works towards the resolution of the same;
  - 2.8 Ensures the attendance of board members and key officers to relevant trainings;
  - 2.9 Perform such other duties and responsibilities as may be provided by the SEC; and
  - 2.10 In accordance with Section X180.4 of the MORB, as amended by Circular No. 747, the CCO shall also perform the following duties:
    - 2.10.1 Act as the lead senior officer for purposes of administering the compliance program and interacting with the BSP on compliance-related issues.
    - 2.10.2 Oversee the design of the appropriate compliance system, promote its effective implementation and address breaches that may arise.
    - 2.10.3 Ensure the integrity and accuracy of all documentary submission to the BSP.
3. Plan of Compliance
- 3.1 Board of Directors
    - 3.1.1 Compliance with the principles of good corporate governance shall start with the Board of Directors.
    - 3.1.2 It shall be the Board's responsibility to foster the long-term success of the Bank and secure its sustained competitiveness in a manner consistent with its fiduciary responsibility, which it shall exercise in the best interest of the Bank, its shareholders and other stakeholders. The Board shall conduct itself with utmost honesty and integrity in the discharge of its duties, functions and responsibilities.

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#### 4. Work Program

##### 4.1 Program Objectives

4.1.1 This section is added herein just for clarity of purpose.

4.1.2 This work program is not distinct from the Bank's Compliance Work Program, but it shall serve as an extension of the former and shall be implemented in accordance and in conjunction with the duly approved Compliance System.

4.1.3 This shall aide the Bank monitor compliance with the applicable laws, rules and regulations specifically those affecting corporate governance.

##### 4.2 Work Plan

###### 4.2.1 Identification of applicable laws, rules and regulations

- a. It shall be the general responsibility of the corporate governance officer of the Bank to identify basic laws, rules and regulations, standards and best practices concerning corporate governance.
- b. A list of the basic and specific laws shall be maintained by the corporate governance officer to serve as his/her guide in monitoring compliance.

###### 4.2.2 Risk Levels

The risk levels as identified in the Compliance Manual shall be adopted in the risk classification of laws, rules and regulations affecting corporate governance, that shall be based on:

Impact – the potential loss as well as the potential effect on shareholder value and reputation;

Likelihood – the frequency with which the event is likely to occur or the probability

This however, does not prohibit the corporate governance officer from adding relevant criteria in determining risk levels.

###### 4.2.3 Compliance Testing

As required in the Bank's Compliance System, the Corporate Governance Officer shall conduct a periodic compliance testing with applicable laws, rules and regulations.

#### C. Audits

##### 1. Internal Auditor or the Chief Audit Executive (CAE)

###### 1.1 Appointment, Reappointment and Removal of the CAE

1.1.1 The head of the internal audit function shall be appointed/re-appointed or replaced with prior approval of the Board.

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- 1.1.2 In cases when the CAE will be replaced, the bank shall report the same and the corresponding reason for replacement to the appropriate supervising department of the BSP within five (5) days from the time it has been approved by the board of directors.

## 1.2 Duties and Responsibilities of the CAE<sup>146</sup>

- 1.2.1 To review, at least annually, the internal audit charter and present it to the senior management and the Audit Committee for approval.<sup>147</sup>
- 1.2.2 To demonstrate appropriate leadership and have the necessary skills to fulfill his responsibilities for maintaining the unit's independence and objectivity.
- 1.2.3 To be accountable to the board of directors or audit committee on all matters related to the performance of its mandate as provided in the internal audit charter. The CAE shall submit a report the audit committee or board on the status of accomplishment of the internal audit unit, including findings noted during the conduct of internal audit as well as status of compliance of concerned departments or units.
- 1.2.4 To ensure that the internal audit function complies with sound internal auditing standards such as the Institute of Internal Auditors' International Standards on Professional Practice of Internal Auditing and *other* supplemental standards issued by regulatory authorities/government agencies, as well as with relevant code of ethics.
- 1.2.5 To develop a risk-based-audit plan, including policies and procedures based on robust risk assessment to determine the priorities of the internal audit activity, consistent with the organization's goals, including inputs from the board of directors, audit committee and senior management and ensure that such plan is comprehensive and adequately covers regulatory matters. The CAE shall also ensure that the audit plan, including any revisions thereto, shall be approved by the audit committee.<sup>148</sup>
- 1.2.6 To ensure that the internal audit function has adequate human resources with sufficient qualifications and skills necessary to accomplish its mandate. In this regard, the CAE shall periodically assess and monitor the skill-set of the internal audit function and ensure that there is an adequate development program for the internal audit staff that shall enable them to meet the growing technical complexity of banking operations.

Moreover, to communicate internal audit activity's plan, resource requirements and impact of resource limitations, as well as significant interim changes, to senior management and the Audit Committee for review and approval.

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<sup>146</sup> *BSP Circular No. 871 series of 2015, page 11, Duties and responsibilities of the head of internal audit function or the Chief Audit Executive.*

<sup>147</sup> *SEC Memo No. 19 S2016, Recommendation no. 12.3*

<sup>148</sup> *revisions were introduced by SEC Memo No. 19 S2016, Recommendation no. 12.3*

- 1.2.7 To spearhead the performance of the internal audit activity to ensure it adds value to the organization
- 1.2.8 To report periodically to the Audit Committee on the internal audit activity's performance relative to its plan;<sup>149</sup>
- 1.2.9 To present the findings and reformations to the Audit Committee and give advice to senior management and the Board on how to improve internal processes.<sup>150</sup>
- 1.2.10 In addition to those mentioned in the Job Description of the CAE, he/she is the highest person in the Bank responsible for internal audit activities or to perform the audit function.
- 1.3 Independence of the Internal Auditor<sup>151</sup>
  - 1.3.1 The by-laws/Internal Audit Charter shall provide for the position of internal auditor together with the authority, accountability, duties and responsibilities, scope and objectives of internal auditing. It shall be the responsibility of the OCS to ensure that this is complied with.
  - 1.3.2 The Chief Audit Executive shall report directly to the board of directors or to an audit committee composed of directors who do not hold executive positions in the bank.
  - 1.3.3 The internal auditor shall not install nor develop procedures, prepare records or engage in other activities which he normally reviews or appraises.
- 1.4 Qualification Standards of an Internal Auditor<sup>152</sup>

The head of the internal audit function must have an unassailable integrity, relevant education/ experience/training, and has an understanding of the risk exposures of the bank, as well as competence to audit all areas of its operations.

He must also possess the following qualifications:

  - 1.4.1 The head of the internal audit function or the Chief Audit Executive of a universal bank must be a Certified Public Accountant (CPA) or a Certified Internal Auditor (CIA);
  - 1.4.2 He must have at least five (5) years experience in the regular audit (internal or external) of a UB or KB as auditor-in-charge, senior auditor or audit manager; and
  - 1.4.3 He must possess the knowledge, skills, and other competencies to examine all areas in which the institution operates. Professional competence as well as continuing training and education shall be required to face up to the increasing complexity and diversity of the institution's operations.

<sup>149</sup> SEC Memo No. 19 S2016, Recommendation No. 12.3

<sup>150</sup> *ibid*

<sup>151</sup> § X185.9 of the MORB

<sup>152</sup> BSP Circular 871, Series of 2015, page 10, Qualification of the Head of the Internal Audit Function



## 1.5 Qualification to Audit TBs, subsidiaries and affiliates

A qualified CAE of a UB shall be qualified to audit TBs, RB, Coop Banks, QBs, trust entities, NSSLAs, subsidiaries and affiliates engaged in allied activities, and other financial institutions under BSP supervision.

## 1.6 Code of Ethics and Internal Auditing Standards<sup>153</sup>

The internal auditor should conform with the Code of Professional Ethics for CPAs and ensure compliance with sound internal auditing standards, such as the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* (e-mail: standards@theiia.org; Web: <http://www.theiia.org>.) and other supplemental standards issued by regulatory authorities/government agencies. The Standards address independence and objectivity, professional proficiency, scope of work, performance of audit work, management of internal audit, quality assurance reviews, communication and monitoring of results.

## 1.7 The bank's internal auditor shall include among his functions, the conduct of periodic audits of the trust department or investment management department at least once every twelve (12) months. The board of directors, in a resolution entered in its minutes, may also require the internal auditor to adopt a suitable continuous audit system to supplement and/or to replace the periodic audit. In any case, the audit shall ascertain whether the institution's trust and other fiduciary business and investment management activities have been administered in accordance with laws, BSP rules and regulations, and sound trust or fiduciary principles.<sup>154</sup>

## 2. Internal Audit

Internal audit is an independent, objective assurance and consulting function established to examine, evaluate and improve the effectiveness of internal control, risk management and governance systems and processes of an organization, which helps management and the board of directors in protecting the bank and its reputation.<sup>155</sup>

In addition, Internal audit helps the Bank in monitoring and guide the implementation of policies and to accomplish the Bank's objective by brining a systematic, disciplined approach.<sup>156</sup>

The internal audit function shall both assess and complement operational management, risk management, compliance and other control functions. In this respect, internal audit shall be conducted in frequencies commensurate with the assesses levels of risk in specific banking areas.

## 2.1 Permanency of Internal Audit Function<sup>157</sup>

The Bank shall have a permanent internal audit function. In case of China Bank's group structure where it is the parent bank with BSP-supervised subsidiaries and

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<sup>153</sup> § X186.4, *ibid*

<sup>154</sup> *MORB, Sec. X426.1*

<sup>155</sup> *BSP Circular No. 871, Series of 2015, page 8, Internal Audit Function*

<sup>156</sup> *SEC Memo No. 19 S2016, Recommendation 12.2*

<sup>157</sup> *BSP Circular No. 871, Series of 2015, page 8, Internal Audit Function, Permanency of internal audit function.*

affiliates, in accordance with the BSP rule may establish an internal audit in each of the BSP-supervised institution or centrally by the parent bank.

## 2.2 Functions of Internal Audit<sup>158</sup>

Among others, internal audit shall have the following functions:

- 2.2.1 Provide an independent risk-based assurance service to the Board, Audit Committee and Management, focusing on reviewing the effectiveness of the governance and control processes in:
  - e. Promoting the right values and ethics,
  - f. Ensuring effective performance management and accounting in the organization,
  - g. Communicating risk and control information, and
  - h. Coordinating the activities and information among the Board, external and internal auditors, and Management.
- 2.2.2 Perform regular and special audit as contained in the annual audit plan and/or based on the Bank's risk assessments;
- 2.2.3 Perform consulting and advisory services related to governance and control as appropriate for the Bank;
- 2.2.4 Perform compliance audit of relevant laws, rules and regulations, contractual obligations and other commitments, which could have a significant impact on the Bank;
- 2.2.5 Review, audit and assess the efficiency and effectiveness of the internal control system of all areas of the Bank;
- 2.2.6 Evaluate operations or programs to ascertain whether results are consistent with established objectives and goals, and whether the operations or programs are being carried;
- 2.2.7 Evaluate specific operations at the request of the Board or Management, as appropriate; and
- 2.2.8 Monitor and evaluate governance process.

## 2.3 Internal Audit Function in Group Structures<sup>159</sup>

- 2.3.1 In case each of the BSP-supervised institutions belonging to the CBC has their own internal audit function, the said IA shall be accountable to the its own Board of Directors and shall likewise report to the Chief Audit Executive of the parent bank or China Bank within a reasonable period and frequency prescribed by the Board of the China Bank.
- 2.3.2 In case the Parent Bank's Internal Audit shall cover the internal audit activities of the subsidiaries or affiliate BSP-supervised financial

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<sup>158</sup> SEC Memo no. 19 S2016, Recommendation no. 12.2

<sup>159</sup> *ibid*, Internal Audit function in group structure

institution, the Board of China Bank shall ensure that the score of the internal audit activities is adequate considering the size, risk profile and complexity of operations of the subsidiary or affiliate concerned.

- 2.3.3 In accordance with BSP rules, the establishment of internal audit function centrally by the parent bank is group structures shall not fall under the outsourcing framework. In this respect, the CAE shall define the internal audit strategies, methodology, score and quality assurance measures for the entire group.

The above shall be done in consultation and coordination with the respective board of directors of the subsidiary or affiliate BSP-supervised financial institution.

The Board and Directors of the subsidiary or affiliate BSP-supervised financial institution shall remain ultimately responsible for the performance of the internal audit activities.

## 2.4 Professional competence and ethics of the internal audit<sup>160</sup>

- 2.4.1 The internal audit function shall be comprised of professional and competent individuals who collectively have the knowledge and experience necessary in the conduct of an effective internal audit on all areas of bank's operations. The skill set of the internal audit staff shall be complemented with appropriate audit methodologies and tools as well as sufficient knowledge of auditing techniques in the conduct of audit activities.

- 2.4.2 All internal audit personnel shall act with integrity in carrying out their duties and responsibilities. They should respect the confidentiality of information acquired in the course of the performance of their duties and should not use it for personal gain or malicious actions.

- 2.4.3 IA personnel shall avoid conflicts of interest. Internally-recruited internal auditors shall not engage in auditing activities for which they have had previous responsibility before a one-year "cooling off" period has elapsed.

- 2.4.4 The IA personnel shall adhere at all times to the Bank's Code of Ethics as well as to an established code of ethics for internal auditors such as that of the Institute of Internal Auditors.

## 2.5 Independence and Objectivity of the Internal Audit Function<sup>161</sup>

- 2.5.1 The function of Internal Audit must be independent of the activities audited and from day-to-day internal control process. It must be free to report audit results, findings, opinions, appraisals and other information through clear reporting line to the board of directors or audit committee. It shall have authority to directly access and communicate with any officer or employee, to examine any activity or entity of the Bank, as well as to access any records, files or data whenever relevant to the exercise of its assignment.

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<sup>160</sup> BSP Circular No. 871 Series of 2015, page 12

<sup>161</sup> *ibid*

- 2.5.2 If independence or objectivity of internal audit function is impaired, in fact or appearance, the details of the impairment must be disclosed to the audit committee. Impairment to organizational independence and individual objectivity may include, but is not limited to, personnel conflict of interest, scope limitations, restrictions on access to records, personnel and properties, and resource limitations, such as funding.
- 2.5.3 The internal audit function shall inform senior management of the results of its audits and assessment. Senior management may consult the internal auditor on matters related to risks and internal controls without tainting the latter's independence. Provided, That: the internal auditor shall not be involved in the development or implementation of policies and procedures, preparation of reports or execution of activities that fall within the scope of his review.
- 2.5.4 Staff of the internal audit shall be periodically rotated, whenever practicable, and without jeopardizing competence and expertise to avoid unwarranted effects of continuously performing similar tasks or routine jobs that may effect the internal auditor's judgment and objectivity.
- 2.5.5 The Audit Committee or senior management should take all necessary measures to provide the appropriate resources and staffing that would enable internal audit to achieve its objectives.
- 2.6 The scope and particulars of a system of effective organizational and procedural controls shall be based on the following factors: the nature and complexity of business and the business culture; the volume, size and complexity of transactions; the degree of risk; the degree of centralization and delegation of authority; the extent and effectiveness of information technology; and the extent of regulatory compliance.
- 2.7 The scope of internal audit function<sup>162</sup> :  
  
All processes, systems, units and activities, including outsourced services shall fall within the overall scope of the internal audit function.  
  
The scope of internal audit shall cover, among others, the following:
  - 2.7.1 Evaluation of adequacy, efficiency and effectiveness of internal control, risk management and governance system in the context of current and potential future risk;
  - 2.7.2 Review of the reliability, effectiveness and integrity of management and financial information systems, including the electronic information system and electronic banking services;
  - 2.7.3 Review of the systems and procedures of safeguarding the bank's physical and information assets;
  - 2.7.4 Review of compliance of trading activities with relevant laws, rules and regulations.

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<sup>162</sup> BSP Circular No. 871, Series of 2015, page 13

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- 2.7.5 Review of the compliance system and the implementation of established policies and procedures.
- 2.7.6 Review of areas of interest to regulators such as, among others monitoring of compliance with relevant laws, rules and regulations, including but not limited to the assessment of the adequacy of capital and provisions, liquidity level; regulatory and internal reporting.
- 2.8 Establish a follow-up process to monitor and ensure that engagement recommendations and management actions have been effectively implemented or that senior management has been apprised of and has accepted the risks of not taking action. The status reports shall summarize unresolved findings/exceptions, recommendations, corrective actions, officers responsible and implementation dates.
- 2.9 The internal auditors shall have free and full access to all functions company's records/files, accounts, properties, and personnel relevant to the internal audit activity with strict accountability for confidentiality and safeguarding of information obtained.
- 2.10 The Chief Audit Executive shall render to the Audit Committee and senior management an annual report on the internal audit division's activities, purpose, authority, responsibility, and performance relative to audit plans and strategies approved by the Audit Committee.
- 2.11 Internal Auditors must exhibit the highest level of professional objectivity in gathering, evaluation, and communicating information about the activity or process being examined. Internal auditors must make a balanced assessment of all the relevant circumstances and not be unduly influenced by their own interests or by others in forming judgments.
- 2.12 The Chief Audit Executive shall coordinate with other control and monitoring Units (e.g. risk Management Group, Compliance Unit, Legal Division, Human Resources Division, Information Security Office) on activities and issues that are considered important and pose potential risks to the Bank.
- 2.13 The Chief Audit Executive shall establish a quality assurance program which assures the effectiveness and efficiency of the internal auditing activities and identifies opportunities for improvement. Furthermore, he/she shall communicate the status of internal audit activity's quality assurance and improvement program, including results of ongoing internal assessments and external assessments conducted at least every five years.
- 2.14 Internal Auditors should evaluate significant new or changing Bank's operations, functions, processes, services and systems coincident with their development, implementation and expansion to ensure adequacy and effectiveness of security and control.
- 2.15 Internal Audit should assist the Bank in the investigation and evaluation of significant suspected fraudulent activities within the organization and notify management and the Audit Committee of the results.
- 2.16 Internal Auditors should consider the scope of work of the external auditors/service providers and regulators, as appropriate, for the purpose of providing optimal audit coverage to the Bank at a reasonable cost.

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- 2.17 Internal Audit should report significant risk exposures, control and governance issues, and other matters needed or requested by the Board through the Audit Committee.
- 2.18 Internal Audit should maintain professional workforce which collectively have sufficient knowledge, skills, experience, and professional qualifications/certifications to meet the requirements of regulations and its Charter.

### **3 Outsourcing of Internal Audit Activities<sup>163</sup>**

The Bank may outsource internal audit activities except for areas covered by existing statutes on deposit secrecy. Outsourcing of internal audit activities shall however, be done on a limited basis to have access to certain areas of expertise that are not available to the internal audit function or to address resource constraints. Provided, That: the internal audit activity shall not be outsourced to the bank's own external auditor/audit firm not to internal audit service provider that was previously engaged by the bank in the same area intended to be covered by the internal audit activity that will be outsourced, without a one-year "cooling off" period. Provided, further, That: the head of the bank's internal audit function shall ensure that the knowledge or inputs from the outsourced experts shall be assimilated into the bank to the greatest extent possible.

### **4 Internal Audit Charter**

The Bank shall have an internal audit charter approved by the Board. The said Charter shall be periodically reviewed by the CAE and any changes thereto shall be approved by the Board.

The charter shall establish, among others the following:

- 4.1 Purpose, stature and authority, and responsibilities of the Internal audit function as well as its relations with other control functions in the bank. The charter shall recognize the authority of the internal audit function, to initiate direct communication with any bank personnel; to examine any activity or entity; and to access any records, files, data and physical properties of the bank, in performing its duties and responsibilities;
- 4.2 Standards of independence, objectivity, professional competence and due professional care, and professional ethics;
- 4.3 Guidelines or criteria for outsourcing internal audit activities to external experts
- 4.4 Guidelines for consulting or advisory service that may be provided by the Internal audit function.
- 4.5 Responsibilities and accountabilities of the CAE.
- 4.6 Requirement to comply with sound internal auditing standards such as the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing and other supplemental standards issued by regulatory authorities/government agencies, as well as with relevant code of ethics; and

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<sup>163</sup> BSP Circular No. 871, Series of 2015, page 9

4.7 Guidelines for coordination with the external auditor and supervisory authority.

## **5 Audit of Trust Operations<sup>164</sup>**

The Bank's internal auditor shall include among his functions the conduct of annual audit of the trust department or investment management department.

However, the Board of Directors, through a resolution duly minuted, may require the internal auditor to adopt a suitable continuous audit system to supplement and/or replace the performance of the annual audit. The audit may be conducted in intervals commensurate with the assess levels of risk in trust and investment management operations; Provided: That such intervals shall be supported and reassessed regularly to ensure appropriateness given the current risk and volume of the trust and investment management operations.

In any case the audit shall ascertain whether the institution's trust and other fiduciary business and investment management activities have been administered in accordance with laws, BSP rules and regulations, and sound trust or fiduciary principles.

## **6 External Auditor<sup>165</sup>**

### **6.1 Appointment of the External Auditor**

6.1.1 An external auditor shall enable an environment of good corporate governance as reflected in the financial records and reports of the company, an external auditor shall be selected and appointed by the stockholders upon recommendation of the Audit Committee.

6.1.2 The Bank in selecting, appointing, re-appointing or dismissing its External Auditor including fees of the external auditor should be recommended by the Audit Committee, approved by the Board and ratified by the shareholders. The External Auditor appointed should be part of the SEC and/or BSP list of accredited External Auditors.

### **6.2 Non-Audit Work and Conflict of Interest**

6.2.1 The external auditor of the Bank shall not at the same time provide internal audit services. The Bank shall ensure that other non-audit work to be given to the external auditor shall not be in conflict with the functions of the external auditor, or does not pose a threat to his independence.

6.2.2 The Bank shall disclose the nature of the non-audit services performed by its external auditor in the Annual Report.

### **6.3 Cessation of Service of the External Auditor**

If the external auditor resigns, is dismissed or ceases to perform his services, the reason/s for and the date of effectivity of such action shall be reported in the Bank's annual and current reports. The report shall include a discussion of any disagreement between him and the corporation on accounting principles or practices, financial disclosures or audit procedures which the former auditor and

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<sup>164</sup> BSP Circular No. 871, Series of 2015, page 14

<sup>165</sup> SEC Memo No. 19 S2016, Recommendation no. 9.1

the bank failed to resolve satisfactorily. A preliminary copy of the said report shall be given by the Bank to the external auditor before its submission.

6.4 Views of the External Auditor on the Annual Report and other disclosures

If an external auditor believes that the statements made in the Bank's annual report, information statement or any report filed with the Commission or any regulatory body during the period of his engagement is incorrect or incomplete, he shall give his comments or views on the matter in the said reports.

6.5 Rotation of the External Auditor

The Bank's external auditor shall be rotated or the signing partner shall be changed every five (5) years or earlier.

**D. Risk Management Function**<sup>166</sup>

1. General Responsibilities of the Risk Management Group

The risk management function is generally responsible for:

- 1.1 Defining a risk management strategy;
- 1.2 Identifying and analyzing key risks exposure and assessing and measuring the extent of risk exposure of the bank and its trust operations, to include risk exposures on economic, environmental, social and governance factors and the achievement of the Bank strategic objective;
- 1.3 Monitoring the risk exposure and determining the corresponding capital requirement in accordance with the Basel capital adequacy framework and based on the bank's internal capital adequacy assessment on an on-going basis;
- 1.4 Evaluating, categorizing, monitoring and assessing decisions to accept particular risks whether these are consistent with board approved policies and parameters on risk tolerance and the effectiveness of the corresponding risk mitigation measure.  
  
This shall include developing a risk mitigation plan for the most important risks to the Bank, as defined by the risk management strategy;
- 1.5 Establishing a risk register with clearly defined, prioritized and residual risks;
- 1.6 Communicating and reporting significant risk exposures, including strategic, compliance, operations, financial and reputation risks, control issues and risk mitigation plan on a regular basis to senior management, Risk Oversight Committee and to the board of directors of the results of assessment and monitoring.

Risk management personnel shall process sufficient experience and qualifications, including knowledge on the banking business, the development in the market, industry and product lines, as well as mastery of risk disciplines.

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<sup>166</sup> MORB, Section XI174 (added by Circular No. 749); SEC Memo No. 19 S2016, Recommendation no. 12.4



They shall have the ability and willingness to challenge business lines regarding all aspects of risk arising from the bank's activities; and

- 1.7 Monitoring and evaluating the effectiveness of the Bank's risk management processes.

## 2. Chief Risk Officer

### 2.1 Appointment

2.1.1 The Bank shall appoint a chief risk officer (CRO), or any equivalent position, who shall be independent from executive functions and business line responsibilities operations and revenue-generating functions.

2.1.2 The CRO shall be appointed with prior approval of the board of directors.

### 2.2 Independence by the Chief Risk Officer

The independence of the CRO shall be displayed in practice at all times as such, albeit the CRO may report to the president or Senior Management, shall have direct access to the board of directors and the risk management committee without any impediment. In this regard, the board of directors shall confirm the performance ratings given by the President or Senior Management to the CRO.

### 2.3 Status and Authority of the CRO

2.3.1 The CRO shall have sufficient stature, authority and seniority within the bank. This will be assessed based on the ability of the CRO to influence decisions that affect the bank's exposure to risk.

2.3.2 The CRO shall have the ability, without compromising his independence, to engage in discussions with the board of directors, chief executive officer and other senior management on key risk issues and to access such information as he deems necessary to form his or her judgment. The CRO shall meet with the board of directors/risk management committee on a regular basis and such meetings shall be duly minuted and adequately documented.

### 2.4 Replacement of the CRO

2.4.1 The CRO shall be replaced with prior approval of the board of directors. In case, when the CRO will be replaced, the bank shall report the same to the SES of the Bangko Sentral ng Pilipinas within five (5) days from the time it has been approved by the board of directors.

2.4.2 The reporting of the CRO's replacement shall be handled by the Office of the Corporate Secretary.

### 2.5 Functions of the CRO <sup>167</sup>

The CRO has the following functions:

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<sup>167</sup> SEC Memo No. 19 S2016, Recommendation no. 12.5

- 2.5.1 To supervise the Enterprise Risk Management (ERM) process and spearheads the development, implementation, maintenance and continuous improvement of ERM processes and documentation;
- 2.5.2 To communicate the top risks and the status of implementation of risk management strategies and action plans to the Risk Oversight Committee'
- 2.5.3 To collaborate with the CEO in updating and making recommendation to the Risk Oversight Committee;
- 2.5.4 To suggest ERM policies and related guidance, as may be needed; and
- 2.5.5 To provide insights on the following:
  - a. Risk management processes are performing as intended;
  - b. Risk measures reported are continuously reviewed by risk owners for effectiveness; and
  - c. Established risk policies and procedures are being complied with.

There should be a clear communication between the Risk Oversight Committee and the CRO.

#### **E. Communication Process**

- 1. This Manual shall be available for inspection by any stockholder of the Bank at reasonable hours on business days.
- 2. All directors, executives, division and department heads are tasked to ensure the thorough dissemination of this Manual to all employees and related third parties, and to likewise enjoin compliance in the process. They must read this Manual and understand the rules herein discussed.
- 3. An adequate number of printed copies of this Manual must be reproduced under the supervision of Compliance Office, with a minimum of at least one (1) hard copy of the Manual per department or Soft copy of this manual shall be posted on the Public Folder of the Lotus Notes (data base of the e-mail facility of the Bank) for easy reference.

#### **F. Training Process**

##### **1. Orientation Program**

- 1.1 The Bank shall allocate funds for the purpose of conducting an orientation program or workshop to operationalize this Manual.
- 1.3 A new director shall, within a period of six (6) months from the date of his election,<sup>168</sup> shall be required to attend a special seminar on corporate governance which shall be conducted by a BSP accredited private or government institute.

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<sup>168</sup> MORB § X141.2.c

- 1.4 The required/mandated SEC topics for the new director's first training are enumerated in item 2.2 below.

## **2. Continuing Education Program for the Directors and Key Officers<sup>169</sup>**

- 2.1 At least annually, as part of the continuing education program for the directors, they are required to attend a program on corporate governance conducted by a training provider duly accredited by the Securities and Exchange Commission.

- 2.2 Moreover, in accordance with SEC Memo No. 13 Series of 2014 (attached as Annex 5 ), the Basic Course Outline of the Training Provided, should include among others, the following:

### **2.2.1 Basic Course**

- a. Framework for Financial Statement Reporting
- b. Principal Financial Statements and Their Uses
- c. What Decision-Makers Need to Know About the Principal Financial Statements (e.g. Statement of Comprehensive Income, Balance Sheet, Cash Flow Statement, Statement of Change in Equity)
- d. What Board of Directors and Management Need to Know About Accounting Principles
- e. Income Statement, Balance Sheet & Statement of Cash Flows
- f. Financial Statement Analysis
- g. What to Spot in Financial Statements
- h. Issue Spotting
- i. What should Be Included in Performance Dashboards
- j. Pointers to Ensure that Recording, Processing & Reporting Data Do Not Result in Material Misstatement of Financial Statements
- k. Pointers to Avoid material Weaknesses in Internal Controls
- l. Financial Policies for Fraud Prevention that Decision-Makers Should Have
- m. What Decision-Makers Need to Know About the External Auditor's Opinion
- n. Understanding Basic Concepts in Making Business Decisions
- o. What Decision-Makers Can Get From Reading Financial Statements

### **2.2.2 Advance Course**

Which will cover among others, provisions of the Philippine Financial Reporting Standard Standards that are relevant to the company's specific industry.

## **2.3 Mandated Topics<sup>170</sup>**

All the mandated topics are required to be discussed during the first training of each director or key officers

Subsequently, follow-up trainings may focus in more detail on any of the mandated topics appropriate to the needs of the directors or officers.

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<sup>169</sup> see footnote 88

<sup>170</sup> SEC Memo Circular No. 2 (Series of 2015), item IV, 3

- i. Revised Code of Corporate Governance
- ii. ASEAN Corporate Governance Scorecard and SEC Annual Corporate Governance Report
- iii. Board Responsibilities
- iv. Illegal activities of corporations/directors/officers
- v. Insider Trading
- vi. Protection of minority shareholders
- vii. Short Swing Transactions
- viii. Liabilities of Directors
- ix. Confidentiality
- x. Conflict of Interest
- xi. Related Party Transaction
- xii. Case Studies
- xiii. Financial Reporting and Audit

2.4 In relation to items 2.1 & 2.2 above, it shall be the responsibility of the Compliance Office to ensure that only accredited SEC training providers are engaged by the Bank to conduct the required annual training.

2.5 Submission of the Training Certificates

Within ten (10) days from the training date, the Bank through its Corporate Secretary shall submit to the Commission the Training Certificates.

The External Training Provider is required to release the Certificates of Attendance within three (3) days from the conclusion of the training.<sup>171</sup>

### 3. Seminars through Videoconference<sup>172</sup>

3.1 Directors and Key Officers who are unable to physically attend a scheduled CG training may participate through videoconference subject to the following conditions:

3.1.3 The accredited training provider or the company conducting the in-house training shall advise the Commission if there are directors or key officers who will participate through videoconference at least two (2) weeks before the scheduled training.

3.1.4 The accredited training provider shall assume the following responsibilities:

- a. To safeguard the integrity of the training/seminar via videoconferencing;
- b. To record and properly document the training seminar;
- c. To store for safekeeping the recording; and
- d. To forward to the Commission a copy of the recording

3.1.5 The Commission shall have the option to observe and monitor the conduct of the said training program.

<sup>171</sup> SEC Memorandum Circular No. 2, Series of 2015,2

<sup>172</sup> *ibid*, 4

## **G. Reportorial or Disclosure System of Bank's Corporate Governance Policies**

1. The reports or disclosures required under this Manual shall be prepared and submitted to Philippine Stock Exchange (PSE), Securities and Exchange Commission (SEC) and the Bangko Sentral ng Pilipinas, as the case may be in accordance with existing regulations, by the responsible committee or officer or through the Bank's Compliance Officer.
2. All material information, i.e., anything that could potentially affect share price and volume shall be publicly disclosed. Such information shall include earnings results, acquisition or disposal of assets, off balance sheet transactions, board changes, related party transactions, shareholdings of directors, direct and indirect remuneration of members of the Board and Management, and changes to ownership.
3. Other information that shall always be disclosed includes remuneration (including stock options) of all directors and senior management, corporate strategy, and off balance sheet transactions.
4. All disclosed information shall be released via the approved stock exchange procedure for company announcements as well as through the annual report.
5. The Board shall commit at all times to fully disclose material information dealings. It shall cause the filing of all required information through the appropriate Exchange mechanisms for listed companies and submission to the Commission for the interest of its stockholders and other stakeholders.
6. The Bank, as an Issuer of listed stocks, is prohibited to communicate material non-public information about the Issuer to any person, unless the Issuer is ready to simultaneously disclose the material non-public information to the Securities and Exchange Commission. This rule does not apply if the disclosure is made to:
  - 6.1 A person who is bound by duty to maintain trust and confidence to the Issuer such as but not limited to its auditors, legal counsels, investment bankers, financial advisers; and
  - 6.2 A person who agrees in writing to maintain in strict confidence the disclosed material information and will not take advantage of it for his personal gain.
  - 6.3 The Issuer shall establish and implement internal control that will ensure that its officers, staff and any other person who is privy to the material non-public information shall comply with the requirement of this rule.
7. The Bank shall observe disclosure on the acquisition or disposal of significant assets, among others, the rationale, effect on operations and approval at board meetings with independent directors present to establish transparency. In this regard, should the Bank be the offeree, the Board shall appoint an independent party to evaluate the fairness of the transaction price on the acquisition or disposal of assets.

## **H. Transparency**

The Board should be transparent and fair in the conduct of the annual and special stockholders meetings of the Bank. The stockholders shall be encouraged to personally attend such meetings. In case they cannot come, the OCS should apprise them of their right to appoint a proxy.

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## **1. SHAREHOLDER'S BENEFIT**

The Bank recognizes that the most cogent proof of good corporate governance is that which is visible to the eyes of its investors. Therefore the following provisions are issued for the guidance of all internal and external parties concerned, as governance covenant between the Bank and all its investors:

## **2. Investors' Rights and Protection**

2.1 Rights of Investors/Minority Interests. The Board shall be committed to respect the following rights of the stockholders:

2.1.1 Voting Right

2.1.2 Shareholders shall have the right to elect, remove and replace directors and vote on certain corporate acts in accordance with the Corporation Code.

2.1.3 Cumulative voting shall be used in the election of directors.

2.1.4 A director shall not be removed without cause if it will deny minority shareholders representation in the Board.

## **3. PSE's Revised Disclosure Rules**

3.1 Pre-emptive Right

All stockholders shall have preemptive rights, unless the same is denied in the articles of incorporation or an amendment thereto. They shall have the right to subscribe to the capital stock of the Bank. The articles of incorporation shall lay down the specific rights and powers of shareholders with respect to the particular shares they hold, all of which shall be protected by law so long as they shall not be in conflict with the Corporation Code.

3.2 Power of Inspection

All shareholders shall be allowed to inspect corporate books and records including minutes of Board meetings and stock registries in accordance with the Corporation Code and shall be furnished with annual reports, including financial statements, without cost or restrictions.

3.3 Right to Information

3.3.1 The shareholders shall be provided, upon request, with periodic reports which disclose personal and professional information about the directors and officers and certain other matters such as their holdings of the Bank's shares, dealings with the Bank, relationships among directors and key officers, and the aggregate compensation of directors and officers.

3.3.2 The minority shareholders shall be granted the right to propose the holding of a meeting, and the right to propose items in the agenda of the meeting, provided the items are for legitimate business purposes.

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- 3.3.3 The minority shareholders shall have access to any and all information relating to matters for which the management is accountable for and to those relating to matters for which the management shall include such information and, if not included, then the minority shareholders shall be allowed to propose to include such matters in the agenda of stockholders' meeting, being within the definition of "legitimate purposes".

3.4 Right to Dividends

- 3.4.1 Shareholders shall have the right to receive dividends subject to the discretion of the Board.
- 3.4.2 The Bank shall be compelled to declare dividends when its retained earnings shall be in excess of 100% of its paid-in capital stock, except: a) when justified by definite corporate expansion projects or programs approved by the Board; or b) when the Bank is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without its consent, and such consent has not been secured; or c) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the Bank, such as when there is a need for special reserve for probable contingencies.

3.5 Appraisal Right

- 3.5.1 The shareholders' shall have appraisal right or the right to dissent and demand payment of the fair value of their shares in the manner provided for under Section 82 of the Corporation Code of the Philippines, under any of the following circumstances:
- a. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
  - b. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the Corporation Code; and
  - c. In case of merger or consolidation.
  - d. It shall be the duty of the directors to promote shareholder rights, remove impediments to the exercise of shareholders' rights and allow possibilities to seek redress for violation of their rights. They shall encourage the exercise of shareholders' voting rights and the solution of collective action problems through appropriate mechanisms. They shall be instrumental in removing excessive costs and other administrative or practical impediments to shareholders participating in meetings and/or voting in person. The directors shall pave the way for the electronic filing and distribution of shareholder information necessary to make informed decisions subject to legal constraints.

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## 4. Policy on Insider Trading

### 4.1 Definition of Insider trading

**Insider Trading** is defined as the buying or selling of a security by someone who has access to material, nonpublic information about the security.<sup>173</sup>

The term can be both legal and illegal conduct. The legal version is when corporate insiders (see section 4.2 below for the definition of insider), like directors, officers, and employees buy and sell stock of their own companies and reports the same to the exchange in compliance with existing regulations<sup>174</sup>, such as those under Section 27 – Insider's Duty to Disclose When Trading of the Securities Regulation Code (SRC).

The illegal conduct is the buying and selling of security in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about the security. Insider trading violations may also include "tipping" such information, securities trading by the person "tipped," and securities trading by those who misappropriate such information.<sup>175</sup>

### 4.2 Definition of Insider<sup>176</sup>

"Insider" means: (a) the- issuer; (b) a director or officer (or person performing similar functions) of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) a person who learns such information by a communication from any of the foregoing insiders.

### 4.3 Definition of Material non-public information<sup>177</sup>

An information is "material non-public" if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.

### 4.4 Prohibition against "Tipping" / communicating material nonpublic information

It shall be unlawful for any insider to communicate material nonpublic information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information knows or has reason to believe that such

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<sup>173</sup> <http://www.investopedia.com/terms/i/insidertrading.asp#axzz20mMms2Ao> <visited on July 16, 2012>

<sup>174</sup> <http://www.sec.gov/answers/insider.htm> <visited on July 17, 2012>

<sup>175</sup> *ibid*

<sup>176</sup> *Securities Regulation Code, Section 3.8 – Definition of Terms*

<sup>177</sup> *Securities Regulation Code, Section 27.2*



person will likely buy or sell a security of the issuer while in possession of such information.<sup>178</sup>

#### 4.5 Transactions on the Basis of Material, Non-Public Information

If a person shall become aware of a potential tender offer before the tender offer has been publicly announced, such person shall not buy or sell, directly or indirectly, the securities of the target company until the tender offer shall have been publicly announced. Such buying or selling shall constitute insider trading under Section 27.4 of the Code.<sup>179</sup>

#### 4.6 Penalty for illegal conduct of insider trading

The Bank, its Board and Senior Management does not tolerate illegal insider trading conduct. This policy is clearly stated in Table 6.7 – Conflict of Interest, Code of Ethics, which we quote:

VIOLATIONS	PENALTIES		
	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3rd Offense
Engaging, directly or indirectly, in financial transactions as a result of , or primarily relying upon, “insider information”	Written Reprimand / Suspension	Suspension / Dismissal	Dismissal

#### 4.7 Dealings of Directors in Bank's Shares

In compliance with best practices, dealings of the directors in the Bank's shares shall be disclosed, within three (3) business days after the transaction.

### 5. ALTERNATIVE DISPUTE RESOLUTION SYSTEM

#### 5.1 Stockholders

The Bank constantly adheres to the applicable laws, rules and regulations geared towards the recognition and protection of the rights of the stockholders. The Bank has not encountered any major conflict with its stockholders for the last three (3) years. However, minor differences, mostly related to submission of documents, were resolved through active listening, affirming the feelings of stockholder, providing and explaining the reason for the Bank requirements, evaluating suggestions, referral of concerns to appropriate persons such as the transfer agent, and providing feedback and/or following up on the outstanding documents, issues and concerns.

#### 5.2 Third Parties

As the plaintiff or defendant in cases where the Bank is a party involved in the suit, the Bank participates in the mediation proceedings as part of the court mandated pre-trial proceedings, during the judicial dispute resolution and the formal pre-trial proceedings, wherein parties enter into stipulations and admissions.

<sup>178</sup> Securities Regulation Code, Section 27.3

<sup>179</sup> Securities Regulation Code, 2015 IRR, Rule 19 – Tender Officers

The Bank also participates in alternative dispute resolution when the same is provided under the contract of which the Bank is a party thereto.

The Bank refers to the provisions in the signed contracts to resolve discrepancies, disputes, undelivered requirements, erroneous output, etc.; conflicts are likewise amicably resolved via discussions and negotiations with third parties and related-service providers; ties are severed in cases when the overall interest of the Bank are at negatively at stake.

### 5.3 Regulatory Authorities

The Bank appears, for purposes of alternative dispute resolution before the different regulatory agencies such as, the BSP, PHHC, SEC, IC, ROD and other administrative agencies e.g. agrarian officers participate in the process for the speedy, inexpensive and just resolution of disputes.

## 6. ACCESS TO RELEVANT INFORMATION<sup>180</sup>

The Bank strongly believes that disclosure of relevant information about the Bank to its shareholders and other stakeholders is crucial for them to make an informed decision. In this regard, the Bank has an existing website [www.chinabank.ph](http://www.chinabank.ph) where relevant information about the Bank is disclosed. The Bank also maintains a micro-website on Corporate Governance for the easy, convenient and focused disclosures of governance policies and practices.

The website is the Bank's channel for the comprehensive and cost-efficient communication with its stakeholders and other interested users.

The CG micro-site includes media and analysts' briefings to ensure the timely and accurate dissemination of public, material, and relevant information.

## 7. Dividend Policy and Guidelines<sup>181</sup>

China Banking Corporation, as a matter of policy, will declare cash dividends at a payout ratio of at least thirty percent of the Net income of the prior year, subject to the conditions and limitations set forth in this policy statement.

The Bank's Dividend Policy is an integral component of its Capital Management Policy and Process rather than a stand-alone process. Its fundamental and overriding philosophy is sustainability.

Dividend pay-outs are reviewed annually. These are referenced against the Bank's Capital Management Process. Based on the Capital Management Process, dividend pay-outs are calibrated based on the prior year's earnings while taking consideration dividend yields, future earnings streams and future business opportunities.

In declaring dividend pay-outs, China Banking Corporation uses a combination of cash or stock dividends as follows:

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<sup>180</sup> SEC Memo No. 19 S2016, Principle 11

<sup>181</sup> The Bank's enhanced Dividend Policy was approved by the Board of Directors on 01 July 2015

1. The dividend is increased in response to the Bank's achieving a higher level of sustainable earnings.
2. Dividends may be increased for a specific year to plow back to shareholders a commensurate share of unusually high earnings for a given year.

China Banking Corporation capital management philosophy and process, and consequently its Dividend Policy which comprises an integral component of this undertaking, is driven by the following primary objectives:

1. Ensuring compliance with externally imposed regulatory capital requirements.
2. Maintaining strong credit ratings.
3. Maintaining healthy capital ratios to support its business and maximize shareholder value.

China Banking Corporation manages its capital structure and makes adjustments to it in the light of:

1. Changes in economic conditions.
2. The risk characteristics of its activities.
3. The assessment of prospective business requirements or directions.

Management of and adjustments to the capital structure are accomplished through the following principal means:

1. Adjustments of dividend pay-outs to shareholders
2. Adjustments in form of dividend pay-outs (cash vs. stock)
3. The issuance or conversely reduction of capital securities.

Capital Management broadly follows the process outlined below:

1. An assessment of regulatory capital and capital adequacy measures.
2. Determination of the optimal capital structure based on an a risk-based capital planning approach that considers:
  - a. Planned levels and risk appetite for business activity with a focus on the implication of these plans on the resulting credit, market and operational risk exposure.
  - b. An analysis of the implications of macroeconomic activity or industry developments and probability of a corresponding improvement or deterioration in the bank's risk exposures.
  - c. Provision of a capital buffer to mitigate against an unforeseen deterioration in the bank's asset portfolio quality, or an increase in business risk, or business opportunities that arise over the course of its business activities.
  - d. Desired capital mix, leverage, and target return on equity.
  - e. Accretive or dilutive effects of incremental capital build up programs.
  - f. Developments or opportunities in the capital markets or regulatory environment that have a direct relation to the Bank's ability to build up or reduce its capital levels.

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- g. Sustainability of internally generated capital and consequently sustainability of dividend payouts.

## **I. Monitoring and Assessment**

1. Each Committee shall report regularly to the Board of Directors.
2. The Compliance Officer shall establish an evaluation or self-rating system to determine and measure the performance of the Board and Management in compliance with this Manual. Any violation thereof shall subject the responsible officer or employee to the penalty provided under Section M of this Manual.
3. The establishment of such evaluation system, including the features thereof, shall be disclosed in the Bank's annual report (SEC Form 17-A) or in such form of report that is applicable to the Bank. The adoption of such performance evaluation system must be covered by a Board approval.
4. This Manual shall be subject to annual review unless the same frequency is amended by the Board.
5. All business processes and practices being performed within any department or business unit of the Bank that are not consistent with any portion of this Manual shall be revoked, following due process and proper investigation, or shall be required to comply with the requirements under this Manual.

## **J. Group Structure<sup>182</sup>**

1. Preparation of the Group Structure
  - 1.1 The Bank shall develop a group structure or conglomerate map showing all entities in the group where the Bank belongs either as parent, subsidiary or affiliate. It shall be the responsibility of Compliance Office to prepare the required group structure.
  - 1.2 The group structure or conglomerate map is also a requirement of the SEC under SEC Bulletin No. 1 Series of 2012. Thus, the same shall also be disclosed in the Bank's Annual Report as required.
2. Reporting of the Group Structure

The group structure shall be updated annually and submitted to the Central Point of Contact of the BSP by the Corporate Governance Officer, within thirty (30) calendar days after end of every calendar year.

## **K. Related Party Transactions (RPTs)**

### **1. Policy**

- 1.1 The Bank recognizes that Related Party Transactions (RPTs) may give rise to a conflict of interest. In this regard, The Bank, through its Board of Directors (BOD) shall ensure that transactions with Related Parties are reviewed to make sure that such are conducted at arm's length or shall be upon terms not less favorable

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<sup>182</sup> BSP Circular No. 749, Section 6.a) (1)

to the Bank than those offered to others and that corporate or business resources of the Bank are not misappropriated or misapplied.

- 1.2 The BOD has deemed it proper for the Related Party Transaction (RPT) Committee to review and ensure that RPTs are duly ratified by the Stockholders during the Annual Stockholders' Meeting.<sup>183</sup>
- 1.3 Related Party shall cover the Bank's subsidiaries, affiliates and any party (including their subsidiaries, affiliates and special purpose entities) that the bank exerts direct/indirect control over or that exerts direct/indirect control over the Bank; the Bank's directors; officers; stockholders and related interests (DOSRI), and their close family members as well as corresponding persons in affiliated companies.<sup>184</sup>
- 1.4 Significant transactions shall refer to dealings that could pose material risk to the bank. As an internal definition, the amount that is considered by the Bank as significant is 50 Million Pesos (or its foreign currency equivalent) and above, per single transaction.  
  
The amount may be changed subject to the approval of the Bank's Board of Directors.
- 1.5 Related Parties shall be treated like ordinary counterparties/client of the Bank. There shall be no special rates and prices to be offered or granted to such parties.
- 1.6 Any director of the Bank who has an interest in the transaction shall not participate in the deliberation and shall abstain in the approval of the related party transaction.

## 2. **Significant Transaction Report**<sup>185</sup>

- 2.1 The Bank is required to submit significant transaction report between entities in the group involving any-BSP regulated entity, within twenty (20) calendar days after end of the reference quarter.
- 2.2 All other policies or operating manual on Significant Transactions or Related Party Transactions, which shall be a supplement to this Manual. In case of conflict in policies, the latest approved policy shall prevail.

## L. **Annual Corporate Governance Report (ACGR)**

1. In accordance with SEC Memo No. 5, Series of 2013, starting June 30, 2013 and every five (5) years thereafter, the Bank is required to submit three (3) copies of the fully accomplished ACGR (standard format provided for by the SEC and shall be made available in the Compliance Public Folder) to the Securities and Exchange Commission (SEC).

On the second (2<sup>nd</sup>) to fourth (4) year, only changes or updates shall be required to be indicated or submitted.

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<sup>183</sup> *Related Party Transaction Committee Charter*

<sup>184</sup> *BSP Circular No. 895, Guidelines on Related Party Transactions*

<sup>185</sup> *ibid*

2. It shall be the responsibility of the Corporate Governance Department of the Compliance Office to ensure compliance herewith, in coordination with the various units of the Bank for the replies.
3. Penalty for Non-Submission
 

P 20,000.00	-	Basic penalty for the late filing of the Report
P 2,000.00	-	To be imposed monthly for continuous failure to comply until the report is filed.

#### **M. Penalties for Non-Compliance with the Manual**

1. Strictly observe and implement the provisions of this Manual, the following penalties shall be imposed, after notice and hearing, on the Bank's directors, officers, staff, subsidiaries and affiliates and their respective directors, officers and staff in case of violation of any of the provision of this Manual:
  - 1.1 In case of **first violation**, the subject person shall be reprimanded.
  - 1.2 Suspension from office shall be imposed in case of **second violation**. The duration of the suspension shall depend on the gravity of the violation.
  - 1.3 **For third violation**, the maximum penalty of removal from office shall be imposed.
2. The commission of a third violation of this Manual by any member of the Board of the Bank or its subsidiaries and affiliates shall be a sufficient cause for removal from directorship.
3. The Compliance Officer shall be responsible for determining violation/s through notice and hearing and shall recommend to the Chairman of the Board the imposable penalty for such violation, for further review and approval of the Board.

### **VII SUSTAINABILITY, ENVIRONMENT, SOCIAL AND NON-FINANCIAL INFORMATION**

China Bank believes that the best barometer for success is the fulfillment of its responsibilities not just to its shareholders, but to its customers, employees, communities, and the environment as well.

Bank's disclosure of its economic, environment, social and governance (EESG) policies and practices in the Annual Report is its testimony on adherence to sustainability best practices.

For purposes of enhancing transparency, the Bank shall include in its Annual Report non-financial information, such as EESG as its way of responding to the sustainability challenges to shareholders and other stakeholders.

The Revised Manual was approved by the Board on 02 March 2016<sup>186</sup>

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<sup>186</sup> Succeeding revisions on the Manual were approved by the Board in March, April and May 2017.

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Signature Page

*(In compliance with SEC Memo no. 8 Series of 2017)*

(Original signed)

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**HANS T. SY**  
Chairman of the Board

(Original signed)

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**ATTY. MARISSA B. ESPINO**  
VP & Chief Compliance Officer

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## 2017 RULES GOVERNING THE NOMINATION AND ELECTION OF DIRECTORS

Sec. 1. **Period.** All nominations for Directors and Independent Directors shall be submitted to the Nominations Committee and/or Corporate Governance Committee through any of their Members or to the Corporate Secretary of the Bank on or before **21 February 2017**.

Sec. 2. **Form and Content.** All nominations shall be in writing duly signed by the nominating stockholders or their duly authorized (in writing) representatives, with the written acceptance and conformity of their nominee. The nomination must indicate whether the nominee is intended to be independent director and shall contain the nominee's age, educational attainment, and full disclosure of work and/or business experience and/or affiliations. The attached Nomination Form may be used for convenience.

Sec. 3. **Qualifications.** The Directors and Independent Directors shall be elected from among the Bank's stockholders. All nominees for Directors and Independent Directors must possess the minimum requirements/qualifications and none of the disqualifications prescribed by the Bangko Sentral ng Pilipinas, Securities and Exchange Commission, and other regulatory agencies/offices of listed banks, which include Sec. 23 and Sec. 27 of The Corporation Code (B.P. Blg. 68), Sec. 15 of The General Banking Law (R.A. No. 8791), Sec. 38 of the Securities Regulation Code, Rule 38 of the Implementing Rules and Regulations of the Securities Regulation Code, Sec. X141 of the Manual of Regulations for Banks, and relevant circulars or memoranda. Age, educational background, industry and other criteria to ensure diversity to achieve optimal composition of the Board will also be considered.

Sec. 4. **List of Candidates.** The Committees shall pre-screen the qualifications of the nominees on the basis of the nominations and/or supporting papers and prepare a final list of candidates containing all relevant information about the nominees, and indicate the nominees for independent directors, if any. In the unlikely event that no one among the stockholders who made the nominations indicated any particular nominee as nominee for independent director, the Committees shall endorse by majority vote of their members the nominees for

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independent directors who meet the guidelines/criteria set by the regulatory agencies/offices of listed banks.

Sec. 5. **Nomination of the Committees.** If there are not enough numbers of nominees for directors and/or independent directors, the Nominations and/or Corporate Governance Committees, jointly or separately, as may be agreed upon among themselves, may by majority vote, nominate such number of nominees for the said position/s and include them in the final list to be submitted at the stockholders' meeting.

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## NOMINATION FORM

PLEASE CHECK PROPER BOX:

☐ - Nominee for  
Independent Director <sup>b</sup>
☐ - Not nominee for  
Independent Director

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**NAME OF NOMINEE <sup>a</sup>**
**CITIZENSHIP :** \_\_\_\_\_ **AGE <sup>c</sup> :** \_\_\_\_\_ **DATE OF BIRTH :** \_\_\_\_\_  
(MM/DD/YYYY)

**PLACE OF BIRTH :** \_\_\_\_\_ **NAME OF SPOUSE :** \_\_\_\_\_

**RESIDENTIAL ADDRESS :** \_\_\_\_\_ **TEL. NO. :** \_\_\_\_\_ **CELL. NO. :** \_\_\_\_\_

**OFFICE ADDRESS :** \_\_\_\_\_ **TEL. NO. :** \_\_\_\_\_

**EDUCATIONAL BACKGROUND/ATTAINMENT <sup>d</sup>:** (Please attach separate sheet, if necessary)

**FULL DISCLOSURE OF WORK AND/OR BUSINESS EXPERIENCE:** (Please attach separate sheet, if necessary)

**DIRECTORSHIP/POSITION IN OTHER CORPORATIONS/ASSOCIATIONS:** (Please attach separate sheet, if necessary)

PSE-LISTED COMPANIES :

OTHER COMPANIES :

**STOCKHOLDINGS/SECURITY OWNERSHIP:**

DIRECT :

INDIRECT:

**CONVICTION, IF ANY, OF AN OFFENSE, JUDICIAL OR ADMINISTRATIVE, OR JUDICIAL DECLARATION OF BEING INSOLVENT, SPENDTHRIFT OR INCAPACITATED TO CONTRACT. IF APPLICABLE, PLEASE STATE:**
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**Annex 1**

PARTICULARS & NATURE OF OFFENSE	COURT/BODY	DATE COMPLAINT/ INFORMATION WAS FILED
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

**CONFORMITY & ACCEPTANCE:**

<hr/>	<hr/>
SIGNATURE	SIGNATURE
<hr/>	<hr/>
PRINTED NAME OF NOMINEE	PRINTED NAME OF NOMINATOR-STOCKHOLDER OR AUTHORIZED REPRESENTATIVE *
<hr/>	<hr/>
DATE SUBMITTED	RELATION TO NOMINEE

**NOTE:** Please see reverse side to be signed and certified by nominee for Independent Director

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## CERTIFICATION

(Nominee for Independent Director)

As a nominee for Independent Director of China Banking Corporation, I hereby certify that I have all the qualifications and none of the disqualifications as provided for in SEC Memorandum Circular No. 16, Series of 2002, Section 38 of the Securities Regulation Code, and its Amended Implementing Rules and Regulations; Section X141 of the Manual of Regulations for Banks; and those required/implicit under The General Banking Law (R.A. No. 8791).

IN WITNESS WHEREOF, I have hereunto signed this certification in \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Signature of Nominee

Republic of the Philippines )  
City of \_\_\_\_\_ ) s.s.

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2017 in \_\_\_\_\_, affiant exhibiting to me his/her \_\_\_\_\_ issued on \_\_\_\_\_ in \_\_\_\_\_.

Notary Public

Doc No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2017.

- a - must be an owner of at least one (1) share of stock of the Bank (Sec. 23, The Corporation Code).
- b - *"Independent Director"* is defined by SEC Memorandum Circulars Nos. 19 (Series of 2016) or the Code of Corporate Governance for Publicly Listed Companies (COCG for PLCs), 16 (Series of 2002); Sec. 38 of The Securities Regulation Code (SRC), and its Amended Implementing Rules and Regulations (AIRR); Sec. 15 of The General Banking Law; and Section X141 of the Manual of Regulations for Banks (MORB), as a person who, apart from his fees and shareholdings, is independent of management and the controlling shareholder and is free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his exercise of independent judgment in carrying out his responsibilities as a director of the Bank; and includes, among others, any person who:
  - i. is not, or has not been a senior officer or employee of the Bank unless there has been a change in the controlling ownership of the company (Recommendation 5.2, COCG for PLCs);
  - ii. is not or has not been an officer or employee of the Bank, its subsidiaries, associates or affiliates or related interests in the three (3) years immediately preceding his election (Subsection X141.2, MORB; Recommendation 5.2, COCG for PLCs), and is not a director or officer of the related companies of the Bank's majority shareholders or holding shares of stock sufficient to elect one (1) seat in the Board of Directors of the Bank or its majority shareholders (Subsection X141.2, MORB);
  - iii. has not been appointed in the Bank, its subsidiaries, associates, affiliates or related companies as Chairman "Emeritus," "Ex-Officio" Directors/Officers or Members of any Advisory Board, or otherwise appointed in a capacity to assist the Board in the performance of its duties and responsibilities within three (3) years immediately preceding his election (Recommendation 5.2, COCG for PLCs);
  - iv. does not own more than two percent (2%) of the shares of the Bank and/or its related companies or any of its substantial shareholders (Rule 38.2, AIRR of the SRC);
  - v. is not a relative (spouse, parent, child, brother, sister, parent-in-law, son-/daughter-in-law, and brother-/sister-in-law), legitimate or common-law, of any director, officer, or stockholder holding shares of stock sufficient to elect one (1) seat in the Board of the Bank or any of its related companies (Subsection X141.2, MORB);
  - vi. is not acting as a nominee or representative of any director or substantial shareholder of the Bank, or any of its related companies or any of its substantial shareholders, pursuant to a Deed of Trust or under any contract or arrangement (Subsection X141.1.b(5), MORB; Rule 38.2, AIRR of the SRC);

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- vii. has not been employed in any executive capacity by the Bank, any of its related companies and/or any of its substantial shareholders within the last two (2) years (Rule 38.2, AIRR of the SRC);
  - viii. is not retained as professional adviser, consultant, agent or counsel by the Bank, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm (Subsection X141.2, MORB);
  - ix. has not been engaged and does not engage in any transaction with the Bank and/or with any of its related companies and/or with any of its substantial shareholders, whether by himself and/or with other persons or through a firm of which he is a partner and/or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arm's length and could not materially interfere with or influence the exercise of his judgment (Subsection X141.2, MORB);
  - x. is not or has not been convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years, or a violation of the Securities Regulation Code, committed within five (5) years prior to the date of his election (Rule 38.3, AIRR of the SRC);
  - xi. as non-executive director, should not concurrently serve as director to more than five (5) publicly listed companies (Recommendation 4.2, COCG for PLCs);
  - xii. is not affiliated with any non-profit organization that receives significant funding from the Bank or any of its related companies or substantial shareholders (Recommendation 5.2, COCG for PLCs);
  - xiii. is not employed as an executive officer of another company where any of the covered company's executives serve as directors (Recommendation 5.2, COCG for PLCs); and,
  - xiv. possesses competencies relevant to the job and sufficiency of time to fully carry out responsibilities (Subsection 141.2, MORB).
- c - nominee must be at least twenty-five (25) years old at the time of election/appointment (Sec. X141.2 (a) (1), MORB).
  - d - nominee must be at least a college graduate or have five (5) years of experience in business (Sec. X141.2 (a) (2), MORB; SEC Memorandum Circular No.16, Series of 2002). Other minimum qualifications are listed in Sec. X141.2.(a), MORB.
  - e - nominator must attach a copy of pertinent Board or Partnership Resolution if a corporation or partnership stockholder is making the nomination, or a Special Power of Attorney if an individual stockholder is making the nomination through representative.
  - f - nominee for independent director must certify under oath that he complies with all the qualifications required of an independent director and does not possess any of the disqualifications therefor under the foregoing enumeration (Sec. X144 (c), MORB).

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## List of Accredited Seminar Providers on Corporate Governance



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE DEPUTY GOVERNOR  
SUPERVISION AND EXAMINATION SECTOR

MEMORANDUM NO. M-2012-055

**To :** ALL BANKS/QUASI-BANKS

**Subject :** Accredited Corporate Governance Seminar Providers

Please be advised that the Basic Course on Corporate Governance offered by the following accredited training providers have been re-accredited as these have complied with the revised course syllabus prescribed under Memorandum No. M-2012-026 issued on 4 June 2012:

- Training Provider : Institute of Corporate Directors  
Address : 14/F Trident Tower  
312 Sen. Gil Puyat Avenue, Makati City  
Telephone No. : (632) 8841494  
Telefax No. : (632) 8841493  
Contact Person : Mr. Rex C. Drilon II, President and CEO  
Email : manges@icdcenter.org
  
- Training Provider : Rural Bankers Research and Development Foundation, Inc.  
Address : 2/F RBAP Building  
A. Soriano Jr. Ave., cor. Arzobispo St.,  
Intramuros, Manila  
Telephone Nos. : (632) 5272972/ (632) 5272969  
Telefax No. : (632) 5272980  
Contact Person : Mr. Ian Eric S. Pama, Chairman  
Email : training@rbap.org

For your information and guidance.

  
NESTOR A. ESPENILLO, JR.  
Deputy Governor

21 November 2012

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## List of Documentary Requirements for BSP submission on the Election/Appointment of Directors / Officers of Bank

Annex A

Documentary Requirements to be Submitted to BSP for the Election/Appointment of Directors/Officers of Banks, QBs, NBFIs with Trust Authority and Trust Corporations<sup>1/</sup>

Requiring BSP Confirmation <sup>2/</sup>		Not Requiring BSP Confirmation nor Monetary Board Approval		Requiring Monetary Board Approval
Directors	Officers with rank of SVP and above (or equivalent ranks)	Officers below the rank of SVP requiring a different set of minimum qualifications <sup>3/</sup>	All other officers below the rank of SVP <sup>4/</sup>	Compliance Officer and Trust Officer
<ul style="list-style-type: none"> <li>Letter-request for BSP confirmation signed by authorized officer<sup>5/</sup> with an affirmative statement that the institution has conducted a fit and proper test on the director/s concerned</li> </ul>	<ul style="list-style-type: none"> <li>Letter-request for BSP confirmation signed by authorized officer<sup>6/</sup> with an affirmative statement that the institution has conducted a fit and proper test on the officer/s concerned</li> </ul>			<ul style="list-style-type: none"> <li>Letter-request for BSP approval signed by authorized officer<sup>7/</sup> with an affirmative statement that the institution has conducted a fit and proper test on the officer concerned</li> </ul>
<ul style="list-style-type: none"> <li>Secretary's Certificate attesting to the resolution of the stockholders or board of directors approving the election</li> </ul>	<ul style="list-style-type: none"> <li>Secretary's Certificate attesting to the resolution of the board of directors approving the appointment<sup>8/</sup></li> </ul>			<ul style="list-style-type: none"> <li>Secretary's Certificate attesting to the resolution of the board of directors approving the appointment<sup>9/</sup></li> </ul>
<ul style="list-style-type: none"> <li>Bio-data with a photograph (2" x 2") taken within the last 6 months</li> </ul>	<ul style="list-style-type: none"> <li>Bio-data with a photograph (2" x 2") taken within the last 6 months</li> </ul>	<ul style="list-style-type: none"> <li>Bio-data with a photograph (2" x 2") taken within the last 6 months</li> </ul>		<ul style="list-style-type: none"> <li>Bio-data with a photograph (2" x 2") taken within the last 6 months</li> </ul>
<ul style="list-style-type: none"> <li>Certification under oath of the director concerned that he/she possesses all the qualifications and none of the disqualifications to become a director</li> </ul>	<ul style="list-style-type: none"> <li>Certification under oath of the officer concerned that he/she possesses all the qualifications and none of the disqualifications to become an officer</li> </ul>			<ul style="list-style-type: none"> <li>Certification under oath of the officer concerned that he/she possesses all the qualifications and none of the disqualifications to become an officer</li> </ul>
<ul style="list-style-type: none"> <li>For first-time directors in a particular bank/QB/NBFI with trust authority/trust corporation/banking group as defined in Subsec. X141.4/4141Q.4 of the MORB/MORNBFI:               <ol style="list-style-type: none"> <li>Copy of certificate of attendance in Corporate Governance seminar</li> <li>Certification under oath that the director has received copies of the general responsibility and specific duties and responsibilities of the board of directors and of a director</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>For first-time officers to be subject to BSP confirmation in a particular bank/QB/NBFI with trust authority/trust corporation/banking group as defined in Subsec. X141.4/4141Q.4 of the MORB/MORNBFI:</li> </ul>			

Page 1 of 2

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Requiring BSP Confirmation <sup>3/</sup>		Not Requiring BSP Confirmation nor Monetary Board Approval		Requiring Monetary Board Approval
Directors	Officers with rank of SVP and above	Officers below the rank of SVP requiring a different set of minimum qualifications <sup>4/</sup>	All other officers below the rank of SVP <sup>4/</sup>	Compliance Officer and Trust Officer
and that he/she fully understands and accepts the same  c. Duly accomplished and notarized authorization form for querying the BSP watchlist file from the director concerned	a. Duly accomplished and notarized authorization form for querying the BSP watchlist file from the officer concerned			<ul style="list-style-type: none"> <li>Duly accomplished and notarized authorization form for querying the BSP watchlist file from the officer concerned</li> </ul>
<ul style="list-style-type: none"> <li>For independent directors, certification under oath that he/she is an independent director as defined in BSP regulations</li> </ul>				
<ul style="list-style-type: none"> <li>For re-elected directors, Secretary's Certificate on the attendance by the director concerned to the board meetings held for the last 12 months covering the term of service, indicating percentage of attendance to board meetings</li> </ul>				
	<ul style="list-style-type: none"> <li>Brief description of his/her duties and responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>Brief description of his/her duties and responsibilities</li> </ul>		<ul style="list-style-type: none"> <li>Brief description of his/her duties and responsibilities</li> </ul>
	<ul style="list-style-type: none"> <li>Alien Employment Permit issued by the Department of Labor and Employment for foreigners appointed as officers</li> </ul>			<ul style="list-style-type: none"> <li>Alien Employment Permit issued by the Department of Labor and Employment for foreigners appointed as officers</li> </ul>

1/ To be submitted within ten (10) banking/business days from date of election/re-election/appointment/promotion to the appropriate department of the SES. For interlocks requiring Monetary Board approval, the following shall be submitted: (a) Letter-request for Monetary Board approval with justification; and (b) Bio-data.

2/ Including those exempted from the required BSP confirmation as provided in Subsec. XI41.4/4141Q.4 of the MORB/MORNBFI and Item 12 of Section 9 of Circular No. 710 dated 19 January 2011 for trust corporations.

3/ E.g., Internal Auditor, Security Officer, Head/In-Charge of E/FCDU Operations, and Head/In-Charge of Import and Export Financing Operations (for TBs).

4/ No documentary requirements to be submitted to the BSP

5/ Authorized signatory is the President of the institution, except for appointment of President, in which case the authorized signatory shall be the Chairman of the Corporate Governance Committee or of the Board of Directors, as may be applicable. For those exempted from the required BSP confirmation as provided in Subsec. XI41.4/4141Q.4 of the MORB/MORNBFI and Item 12 of Section 9 of Circular No. 710, submit letter-notice to the BSP, in lieu of letter-request for BSP confirmation, signed by the aforementioned authorized officer with an affirmative statement that the institution has conducted a fit and proper test on the director/officer concerned.

6/ In case of foreign bank branches, consularized letter of appointment of the officer concerned from the Head Office and/or Regional Office

7/ In case of foreign bank branches, letter of appointment from the Country Head

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## BSP Form (List of the Members of the Board of Directors and Officers)

Annex B

DEADLINE : 10 banking/business days from the annual election of the board of directors/trustees

SUBMISSION : Original copy to the appropriate department of the SES

(Name of Bank/QB/NBFI with Trust Authority/Trust Corporation/NBFI/NSSLA)

## List of the Members of the Board of Directors and Officers

As of \_\_\_\_\_

Name	Position	Department (if applicable)
Directors:		
Officers with rank of senior vice president and above (or equivalent ranks):		
Officers below the rank of senior vice president:		

REPUBLIC OF THE PHILIPPINES)

\_\_\_\_\_ ) S.S.

I solemnly swear that all matters set forth in this report are true and correct, to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Authorized Signatory)

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, affiant exhibiting to me his/her (valid identification document) No. \_\_\_\_\_ issued at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Until December 31, 20\_\_\_\_

PTR No. \_\_\_\_\_

Place \_\_\_\_\_

Doc. No. \_\_\_\_\_

Page No. \_\_\_\_\_

Book No. \_\_\_\_\_

Series of \_\_\_\_\_

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Republic of the Philippines  
**SECURITIES AND EXCHANGE COMMISSION**  
 SEC Building, EDSA, Greenhills, Mandaluyong City, Metro Manila

**CORPORATE GOVERNANCE & FINANCE DEPARTMENT**

**SEC MEMORANDUM CIRCULAR NO. 13**  
**Series of 2014**

**TO : ALL ACCREDITED CORPORATE GOVERNANCE  
 TRAINING PROVIDERS**

**SUBJECT : COURSE UNITS ON FINANCIAL REPORTING AND AUDIT**

Rule 68 (I) (B) (i) of the Securities Regulation Code provides that financial statements filed with the Commission are primarily the responsibility of the management of the reporting company and accordingly, the fairness of the representations made therein is an implicit and integral part of the management's responsibility. The Board of Directors, in discharging its responsibilities, reviews and approves the financial statements before these are submitted to the stockholders.

In delineating the role of management and the internal auditors, Rule 68 (I) (B) (vii) further provides, in part, that the independent auditor's duty is to conduct an independent examination of the company's financial statements and supporting documents pursuant to the prescribed auditing standards and practices.

In line with the Revised Code of Corporate Governance mandating the management of corporations to formulate, under the supervision of the Audit Committee, the rules and procedures on financial reporting and internal control, all SEC accredited corporate governance training providers are directed to include, in their prescribed curriculum, the following units on financial reporting:

- I. The Basic Course which includes the following, among others:
  1. Framework for Financial Statement Reporting
  2. Principal Financial Statements and Their Uses
  3. What Decision-Makers Need to Know About the Principal Financial Statements (e.g. Statement of Comprehensive Income, Balance Sheet, Cash Flow Statement, Statement of Change in Equity)
  4. What Board Directors and Management Need to Know About Accounting Principles
  5. Income Statement, Balance Sheet & Statement of Cash Flows

China Bank's Revised Corporate Governance Manual

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6. Financial Statement Analysis
  7. What to Spot in Financial Statements
  8. Issue Spotting
  9. What Should Be Included in Performance Dashboards
  10. Pointers to Ensure that Recording, Processing & Reporting Data Do Not Result in Material Misstatement of Financial Statements
  11. Pointers to Avoid Material Weaknesses in Internal Controls
  12. Financial Policies for Fraud Prevention that Decision-Makers Should Have
  13. What Decision-Makers Need to Know About the External Auditor's Opinion
  14. Understanding Basic Concepts in Making Business Decisions
  15. What Decision-Makers Can Get From Reading Financial Statements
- II. The Advance Course which covers, among others, provisions of the Philippine Financial Reporting Standard provisions that are relevant to the company's specific industry.

This circular shall take effect immediately.

Signed this 23rd day of June 2014, Mandaluyong City, Philippines.

For the Commission:

  
**TERESITA J. HERBOSA**  
Chairperson

China Bank's Revised Corporate Governance Manual

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