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TRUST BUSINESS IN THE PHILIPPINES AN OVERVIEW AND THE PERTINENT LAWS AND REGULATIONS AFFECTING THE SAME

INTRODUCTION

Trust Services

If traditional banking services are needed to raise production levels, real income, and ultimately, the peoples' standard of living, there are also non-traditional banking services equally as important. These services grew out of situations where ordinary banking facilities were not the proper instruments to use. These services multiplied as society became more sophisticated, as more people acquired affluence and as institutions opened to meet the challenges of a growing, dynamic society. Thus emerged activities totally outside the realm of banking services but which banks gladly render to the public. The public is then able to receive more services from banks which in turn enhances profitability of the banking system.

The most important of these non-banking services is generally referred to as trust service. This is the popular term for the services of a fiduciary character that banks licensed to engage in trust activities render to individuals, business firms, civic, educational, charitable, religious and other economic organizations.

Banks are not the only institutions that can engage in such activities. Individuals, too, can legally perform any fiduciary functions entrusted to them. Fiduciary services, in fact, were first performed by individuals

until fiduciary corporations, which now dominate the field of trust, were organized.

HISTORICAL DEVELOPMENT

Early Beginning

A number of versions have been written to explain the beginning of the modern-day trust. Some writers trace the modern trust concept to the legislation which the Roman Emperor Augustus enacted concerning *fidei commissum* (property in trust). Others insist on a much earlier origin. A number claim that the concept lies at the very base of civilization itself, considering it fundamental and sacred. They attest to the following historical and biblical truths as precursors of the present-day trust:

1) According to the Old Testament, Jehovah appointed Moses trustee of the people of Israel and gave him instructions to lead them out of bondage;
2) At an early date, the church was appointed trustee of salvation; up to now, the church is still considered as such;
3) For thousands of years, priesthood was the sole trustee of education. To some extent, it still is;
4) In 254 B. C., in Egypt, an influential person named Uah left a formally witnessed will appointing his wife executor of his estate and a friend as the guardian of his son;
5) The will of Sennacherib, an Assyrian Emperor in the 7th century B. C., is another sample of an early will; and
6) In 457 B. C., an association was formed by a group of Japanese to manage the estate of a wealthy nobleman. Sadly, however, the abortive trust company met with instant disaster at the hands of oriental justice. On the theory that such a group could not have a conscience and therefore was unfit for the responsibilities involved, the Mikado ordered the entire group beheaded.

The will of Uah, unearthed in Egypt by William Matthew Flinders Petrie, dates back to about 1805 B. C. It is so curiously modern in form, plainly expressed and properly witnessed that it might almost be granted probate today. A portion of translation of this will reads:

> I Uah, am giving a title to property to my wife Sheftu, the woman of Gesab, who is called Teta, the daughter of Sat Sepdu, of all things given to me

by my brother Ankhoren. She shall give it to any she desires of her children she bears me.. . It is the Deputy Gebu who shall act as guardian of my son. Done in the presence of these witnesses.

According to Sir Henry Maine, "to the Romans belong pre-eminently the credit of inventing the will, the instrument which next to the contract, has exercised the greatest influence in transforming human society." However, the Roman will differed from the modern will in three aspects. It was an oral instrument, irrevocable, and took effect the moment it was declared.

The forerunner of the modern will was the English will. In the eleventh century, history records the existence of a posthumous gift of real property. It was drawn in the manner, "I give the land after my death," thereby retaining the use of the land. There was also the existence of the last work which was a person's death-bed distribution of his chattels. The latter was found in a written codicil which possessed many of the characteristics of the modern will.

By the 13th century, the English will possessed all the essentials of a modern will – it was secret, revocable, and effective at the death of the testator.

Also in England, the principle of executorship came into being as early as the 18th century. A man on his death bed by his "last word" distributed a portion of his chattels. His confessor was the person designated to execute the will of the dying man.

Wills naming executors were in use by the close of the 12th century, as shown by the will of Henry II made in 1182 wherein he named one set of executors for his property in England, another set for his property in Normandy, Maine and Anjou. It was customary at first for the executor to receive the testator's assets in his own right, and not until 1802 did the English courts fully recognize the executor as trustee and not owner of the assets taken ove r by him.

From the middle of the 13th century, the office of the executor was church office and the executor was a bishop or other churchmen. As an officer of the church,he had no standing in the courts of law with regard to execution of wills. It was only during the reign of Edward I (1272-1307) that the executor became the recognized personal representative of the decedent, that is, the one who took over his personal estate, who could sue but could also be sued, who paid the debts and then distributed whatever remained of the property. With the recognition of the executor, the probate practice came into being in England.

The antiquity of the trusteeship concept is well established by many known cases, of which the foregoing are interesting examples. Of interest to us in our present generation is Christianity in which Jesus Christ is the acknowledged trustee of Christians while Moslems recognize the Prophet Mohammed.

Beginning of Trust in England

Most legal authorities, however, are of the consensus that the modern trust concept had its origin from the word "use". It has even been said that the word "use" goes back to English history, no one knows exactly when, although it appeared in one of the oldest English books, the Domesday Book.

The "use" was developed to serve a number of purposes, the principal ones of which were:

1) To evade the feudal burden on wardship and marriage;
2) To avoid the effects of the laws of escheat for felony;
3) To avoid the harsh laws of forfeiture for treason;
4) To achieve the effect of the modern will since testamentary disposition of land was not permitted by early English laws; and
5) To permit religious organizations, such as the Franciscan Friars, to enjoy the benefits of the ownership of land without violation of their oaths of poverty. An earlier record states a conveyance of land in the City of Oxford in the 13th century for the benefit of the Franciscan Friars.

During the Crusades (1095 to mid-15th century) and the Wars of the Roses (1455 to 1487), the conveyance of property "for the use of" became general. A crusader, upon leaving on an expedition, would convey his land to a friend for the use of his children and wife or sister. It came to a point that a large portion of the land of England was held by many persons for the use of others and for a variety of purposes. In 1535, the Statute of Uses was adopted to do away with this practice. Thus, when A conveyed land to B for the use of C, B was to drop out and C was to become the legal as well as beneficial owner. But this did not cover leaseholds, chattels or a "use upon a use". The fact that the Statute of Uses did not apply to a "use upon a use" may be illustrated as follows:

> A conveyed land to B for the use of C for the use of D. The first "use" was executed causing B to drop out but the second "use" was not executed and C found himself holding the land for the "use" of D. This second "use" came gradually to be called trust.

In 1635, in the case of Sambach vs. Dalton, the "use upon use" was referred to as a trust for the first time in England. On account of this, it was inferred by many writers that the English use of trust is the ancestor of modern trust. As a matter of fact historians assert that at the end of the 15th century, more than one half of the land of England was held in trust. It is safe to say therefore that the principle of trust is one of the most firmly grounded principles of English jurisprudence.

Beginning of Trust in the United States

In the United States, the trusteeship concept made a slow but gradual development. It was only at the turn of the 19th century, in 1818 to be exact, when officially the charter of the first trust institution was created. This was followed in 1896 by the creation of the Trust Company Section (now Trust Division) of the American Banker's Association. The period between 1818 and 1896, a span of 78 years, may be characterized as the period of discovery and exploration in the world of trust business. It was, however, during the first half of the 20th century that the period of development of trust business accelerated on a national scale in the United States. Some "firsts" in the field of trust were: "Trust and Estate" began publication in 1904; the Congress of the United States authorized national banks to enter trust business in 1913; the first textbook on trust was published in 1927. Trust is now one of the biggest businesses in the United States with the volume running up to billions of dollars.

Beginning of Trust in the Philippines

In the Philippines, the concept was unknown as a form of business organization until the Americans came at the start of the twentieth century. Aside from the military and later, the civil government they installed here, the Americans also brought with them the principles of trust business. On October 21, 1916, a group of enterprising Americans, realizing the need for an agency to administer and manage the properties of Americans during their early occupation and rule of the country, founded and established the Philippines Trust Company, the first trust company to be established in the country. With this trust company as the nucleus, other banks followed suit.

While the Philippine Trust Company was the first and the only institution organized to engage solely in the business of trust, it branched out to commercial banking in 1921.

Existing banks performing trust functions were first organized as commercial banks and later, realizing the potentials of trust, also enggaged in this field.

Effective 03 July 1983, no Bank or other Financial Intermediary can perform trust functions unless they have a minimum paid-in capital of ₱100 million. However, a financial intermediary duly authorized to perform and actually engaged in trust operations as of 01 July 1983 shall not be covered by the ₱100 million capital requirement (Circular No. 938, 05 July 1983).

THE TRUST DIVISION: Its Organizational Components

The complexity of the organizational structure of a trust department depends on the number and type of fiduciary services offered, their relative sizes and volume of accounts being handled. Regardless however, of the many possible variations, trust departments have the following common features:

1) Clearly defined marketing, production and investment policies;
2) Competent legal counsel;
3) Skilled administrative and investment personnel; and
4) Efficient and safe operating Accounting System.

Trust Committee

A vital part of management of the Trust Department is the Trust Committee. This committee meets regularly or as often as necessary to consider recommendations to approve actions or matters outside of policy and to discuss and review operational policies. It is the principal duty of this committee to set the direction of the department and to guide its activities within the overall objective of the bank.

Investment Committee

The duties of this committee relate to the administration of the assets of the accounts which include the making and supervision of all investment policies, the review and approval of additions to and deletions from the approved securities list, and the review of specific investment of individual accounts.

Legal Counsel

The Trust Department must have access to good legal counsel. While a Trust Department has a legal staff of its own, experience has shown that outside legal counsel are invaluable in seeking professional opinions for the benefit of clients. Legal competence is achieved because major problems are presented to internal and external legal counsels, whose opinions are consolidated to extend a more effective service to client.

Administration of Trust Business

The nature of trust makes it imperative that competent people serve as administrators. The administrator must not only be competent in business and finance but must also be able to show sympathy and concern when dealing with customers. This personal relationship is one of the most important aspects in account administration. Accounts must be treated in a private and confidential manner. Access to account information must be guarded; it should never be revealed except when required by law.

The administrator must thoroughly understand the terms of the trust agreement, for once accepted, there is a legal commitment to carry out the purposes so stated. A number of duties are involved in carrying out the purposes of the trust. The trustee has a duty of loyalty to the customer and must act in his or her best interest. There must be no questionable dealings where a profit might be gained at the expense of the Trust. All accounts must be treated with the same degree of fairness. The trustee has the duty to keep proper and accurate accounting and to render periodic statements. In the administration of the account, there is a duty to exercise reasonable care and skill, and to be prudent in the actions taken.

TRUST PRODUCT LINES

The traditional trust products and services may be classified as follows: Personal Trust, Corporate Trust and Employee Benefit Services. The first two types of services are determined by the market catered to. Personal Trust, as detailed below, includes the functions of executor and administrator, and trustee for individuals. Corporate Services include acting as transfer agent or registrar for the stock of a corporation or serving as trustee or co-paying agent of a bond issue. Employee Benefit Trusts, on the other hand, are in many respect comparable to the trust service provided for individuals; they, by nature, are offered to corporate customers.

The following outline presents a unified picture of the various services of a Trust Department:

I. Personal Trust Services

A. Settlement of Estates
1. Executor
2. Administrator

B. Administration of Trusts
1. Trustee under will (Testamentary Trust)
2. Trustee under agreement or by declaration
3. Trustee by order of court

C. Administration of Guardianship
1. Guardian of minors
2. Trustee for, guardian of, curator of, conservator of or committee for incompetent.

D. Performance of Agencies
1 Custodian
2. Depository under order of court
3 Escrow Agent
4. Attorney-in-fact
5. Managing Agent
   a. Real Property Administration
   b. Investment Management
   c. Investment Advisory

II. Corporate Trust Services

A. Administrator of Trusts

1. Trustee under Corporate Bond or Note Issue
2. Trustee of Life Insurance taken for the benefit of the business
3. Trustee under business liquidation — Insurance Trust

B. Performance of Agencies

1. Transfer Agent
2. Registrar of Stock
3. Fiscal or Paying Agent
4. Escrow Agent
5. Depository under Voting Trust Agreement

III. Pension Trust Services

A. Administration of Trust
  1. Trustee of employees trust
  2. Trustees for community trust (or foundation)
  3. Trustee for perpetual care trust

B. Performance of Agencies
  1. Agent for endowments
  2. Agent for the management of pension plans

MARKETING DIMENSIONS

Side by side with the legal environment, the following considerations have greatly affected the traditional concept of trust products, to wit:

A. Past industry behaviour through historical data
B. Environmental, cultural and political behaviour.
C. Economic developments.

In addition therefore to the traditional trust products, new trust products evolved which are departures from the traditional lines among which are: Common Trust Funds, and Investment Management accounts in response to the stiff competition posed by the banks themselves and within the trust industry.

Product changes will necessarily result because of the interplay of the following factors:

a. Repackaging and improving traditional and non-traditional products with the end in view of making the new products attractive to the trust market;

b. Exploitation of new opportunities for new products with emphasis on marketability of the products coupled with higher profit potentials/ advantages for the bank;

c. Emphasis on products with highest return and marketability;

d. Recognition of the need to take action on non-saleable products and be ready with successor products; and

e. Establishment of a fairly heterogeneous trust market with the assistance of the various groups within the bank.

The volatility of trust products, should however not detract the trustee bank from its ultimate aims, namely:

a. Preservation of the fund's purchasing power;
b. Safety of principal;
c. Growth and stability; and

d. A certain level of liquidity for unforseen continuing withdrawals.

These should be able to satisfy the security-conscious clients, generate a steady and consistent growth in trust assets and income, and inject a more stable liquidity for the institution.

LEGAL FOUNDATION OF TRUST

Commercial banking institutions in the Philippines may engage in trust business with the approval of theMonetary Board (Sec. 57, R. A. 337, as amended by P. D. 71). To a limited extent, rural banks in the Philippines, may, with the approval of the Monetary Board, likewise engage in trust business as trustees of property or estates of small farmers and small merchants (Sec. 11 (E), R. A. 720, as amended by P. D. 122).

A question that nags the minds of would-be trustors, a question which, in fact, needs to be answered by every trustee is: how safe is my property under trust?

Veritably safe in view, among other things, of the following legal constraints:

1. In the conduct of trust business, trust institutions shall be guided by the codified rules and regulations of the Central Bank embodied under the chapter on Trust and Other Fiduciary Functions of the Manual of Operations for Banks and Financial Intermediaries.

2. Section 65 of the General Banking Act provides that a trust company shall carry on deposit with the Central Bank, cash or securities approved by the Monetary Board amounting to P250,00.00 for every P35.5 million of Trust Assets as security for faithful performance of trust duties. This deposit is increased as the volume of assets increases.

3. Section 66 of same act provides for the retention in surplus of an amount equal to 10% of the profits of a trust company until such surplus reaches 20% of its authorized capital stock and no part of the surplus shall at any time be paid out in dividends, but losses accruing in the course of its business may be charged against the surplus.

4. A trust institution must have adequate capital to perform trust business and, as earlier pointed out, must have at least ₱100 million unimpaired capital.

5. The properties of each trust should be kept separate from those of all other trusts and from the properties of the trust institution itself, as mandated under Sec. 61 of the General Banking Act as amended. The above enumeration is not exclusive. As the CB regulations are discussed

later on, the reader will have a more comprehensive idea on how the Central Bank plays its role in protecting the interest of the investing public in trust companies.

The following are the applicable laws and regulations governing trust operations in the Philippnines:

1. Civil Code of the Philippines
   a. Article 1440 to 1457 - General provisions on trust
   b. Article 1968 to 1995 - Voluntary deposits of safekeeping
   c. Article 1868 to 1932 - Agency relationships
2. Rules of Court of the Philippines
   a. Rule 59 - Receivership
   b. Rule 60 - Depository
   c. Rule 73 to 90 - Settlement of estates of deceased persons
   d. Rule 92 to 97 - Guardianship of minors and incompetent persons
3. The General Banking Act (R.A. 337, as amended by P.D. 71).
   a. Section 56 to 67 - Governing trust operations of banking institutions
   b. Section 31 - Lending and investments of thrift banks which shall govern trust lendings and investments.
4. Uniform Guardianship Act (R.A. 390)
5. Other laws applicable to fiduciary relationships
   a. Section 1401 to 1499 - formerly CB Circulars 825 and 824 and other related CB Circulars Part Four Trust and Other Fiduciary Functions — Manual of Operations for Banks and Financial Intermediaries Book 1,)
   b. National Internal Revenue Code - Section 53 - withholding tax at source.

Section 56, 59,60, 210 (Revenue Regulations No. 2)
Section 57 - Taxation of Estate and Trusts.

   c. CB Circular 343 and CB Circular 547 governing Trust Deposits in Foreign Currency.

Having dwelt on the safety of property entrusted to trust institutions viewed in the light of the stringent banking laws and CB regulations constricting trust operations, it is now apropos to delve into some interesting aspects of trust regulations.

Predictably, the Central Bank, in the excercise of its role as the supervisory authority over banks and financial intermediaries under Republic Act 265, as amended, wields a very crucial role in the directional thrust of trust rules and regulations. Such influence was made more pronounced with the promulgations of CB Circular 824 dated September 17, 1981 which consolidated new and existing rules on trust operations and covered trust operations of trust companies, banks and investment houses, and CB Circular 825 also dated September 17, 1981 promulgating for the first time in Philippine banking jurisprudence the Regulations on Fund Management. A distinction should be made between a "financial manager" as defined under CB Circular 825 and a "trustee" as defined under Circular 824 because the former is merely an agent or representative of the fund owner thus precluding any transfer of title of funds in the name of the financial manager in contrast with the transfer of title concept in favor of the trustee in a fiduciary capacity under CB Circular 824. For purposes of uniformity, the pertinent provisions of CB Circulars 824 and 825 shall be quoted as it is codified in the CB Manual of Regulations for Financial Intermediaries.

REGULATIONS ON TRUST OPERATIONS

The regulations on trust operations is conveniently divided into four (4) parts to wit:

Part I - General Provisions
Part II - Administration of Trust Funds
Part III - Common Trust Fund
Part IV - Miscellaneous

Among the salient features of the General Provisions are the rigid prerequisites for engaging in trust business which are intended to ensure capability to perform trust functions, thus:

Sec. 1403 "A trust company, bank or investment house before it may engage in trust business shall comply with the following requirements:

a. The applicant is authorized in its articles of incorporation to engage in trust business. The specific duties and responsibilities of the committee or officers entrusted with management and supervision of trust operations shall be provided in the by-laws or in a resolution duly passed by the board of directors.

b. Before transacting trust business, the applicant shall deposit with the Central Bank cash or eligible securities amounting to at least P250,000.00 as security for the faithful performance of trust duties, in accordance with the requirements of Sec. 1404 hereof.

c. In the case of a bank or investment house, the applicant must also show that:

1. It has complied with the minimum capitalization requirements under existing regulations;

2. Its operations during the year immediately preceding the filling of the application have been reasonably profitable;

3. It has not exceeded the ceilings on credit accommodations to directors, officers, stockholders and their related interests for three (3) or more times during the year previous to the filing of application nor at any time while application is being processed;

4. Its net worth has not been deficient for five (5) or more times within a thirty (30) day period during the last six (6) months immediately preceding the date of filing the application nor at any time while the application is being processed. In case of deficiency, the appplication shall not be processed for the next sixty (60) calendar days without prejudice to its revival/ re-submission after said period;

5. Its net worth has not been deficient continuously for a period of thirty (30) days or more during the last twelve (12) months immediately preceding the date of filing the application or at anytime while the application is being processed. In case of deficiency, the application shall not be processed for the next twelve (12) months without prejudice to its revival/re-submission after said period;

6. It has not incurred net deficiencies in reserves against deposit/deposit substitute liabilities for four (4) consecutive weeks preceding the date of filing the application nor at any time while the application is being processed. In case of deficiency, the application shall be processed only after it shall have no net reserve deficiencies for eight (8) consecutive weeks: Provided, That in case the applicant has incurred net deficiencies in reserves for eight (8) consecutives weeks during the last twelve (12) months immediately preceding the date of filing the application, said application shall not be processed for the next twelve (12) months without prejudice to its revival/re-submission after said period; and

7. It has shown substantial compliance with pertinent laws, rules, regulations, policies and instructions of the Central Bank."

Section 1404 requires the deposit of security for the faithful performance of trust duties earlier adverted to. The requirement of additional deposit of 1% of trust accounts representing common trust fund is a new rule intended to provide nominal reserves for arrangements which are called "pseudo" deposit/deposit substitutes.

Section 1405 distinguishes true trusts from non-trust agreements as follows:

"An agreement or instrument containing any or all of the following features shall not be construed as an agreement constituting a trust relationship:

a. Where the risk or responsibility is exclusively with the trustee in case of loss in the investment of the trust funds when such loss is not due to the failure of the trustee to exercise the skill, care, prudence and diligence required by law;

b. Where there is a fixed rate of interest or return or there is a guarantee of income, although indeterminable, in favor of the trustor or beneficiary: Provided, however, That trust arrangements where funds are disposed of in fixed-income generating investments or debt instruments shall not be considered non-trust agreements when the agreement categorically states that the fixed rate of interest or return thereon is neither assured nor guaranteed by the trustee but is for the account and risk of the trustor or beneficiary;

c. Where the duties of the trustee are merely advisory or recommendatory or are purely ministerial in nature; and

d. Where there is a preponderance of purpose or of intent that the agreement or instrument creates a relationship other than that of trustor-trustee relationship, as determined by the Governor or Monetary Board upon the findings and recommendations of the appropriate supervising and examining department of the Central Bank."

Part II embodies the basic principles on trust operations; pinpoints responsibility for the proper administration of trust; and stipulates deterrents against self-dealing transactions and conflict of interest situations. Among the more important provisions are found in the following sections:

Section 1407 is a new provision holding the board of directors generally responsible for the formulation of policies governing all aspects of trust operation, particularly the investment, reinvestment and disposition of trust funds.

Section 1408 - The qualifications of trust officers under existing regulation (Circular No. 843) are provided in this section to ensure that only officers qualified under CB rules and possessing sufficient technical expertise in trust business shall be allowed to supervise trust operations.

Section 1409 - To prevent conflict of interest, this section stipulates a new provision on the non-involvement of trust officers and members of the trust committee in the other operations of the trustee-institutions. This section is also aimed at preventing the use of material information that will influence investment decisions.

Section 1410 - Rules on prohibited transactions of a trustee as provided in Circular No. 354 were expanded in this section to include, among others, the requirement on previous written authority from trustor in specific transactions with trustee's DOSRI. (directors, officers, stockholders, and related interests) This section seeks to prevent self-dealing transactions which constitute breach of trust.

Section 1411 - Trust loans under this section are made subject to the same ceilings applicable to bank loans, including the single borrower loan limit, (SBL) the quantitative ceilings under Section 83 of R.A. No. 337, as amended, and Circulars No. 739, 740, 741 and 742 when granted to DOSRI of banks and investment houses. Except with the addition of the rules on investment houses, these rules are re-statements of the ceilings and other requirements on loans from trust funds found in Circular No. 734, as amended.

Section 1412 is a mix of old and new rules which ensure the proper disposition of trust funds by providing that administration of funds is in accordance with the terms of the governing instrument and that investment of trust accounts disposable under trustee's discretionary powers shall be limited to those enumerated in the section based on the old provisions governing loans and investments of saving and mortgage banks, or as prescribed by the Monetary Board.

With respect to trust funds of the Government and its instrumentalities, existing provisions of Circular No. 800 were added in this section to prohibit acceptance under a "Bearer", "Numbered Account" or other similar arrangements, to prevent another Ramawil fiasco. Investment of government trust funds under discretionary powers of trustee was limited to those enumerated in this section.

Section 1413 states the cardinal principle of separation of trust accounts; separation of trust business from the other businesses of trustee; and provides for separate books and records. The section is based on an existing regulation (Circular No. 742) and statutory requirements (sections 57 and 61 of R.A. No. 337, as amended).

Section 1414 is a new provision on fees and commissions and allows reasonable charges on the basis of cost of services rendered and responsibilities assumed.

Section 1415 on restriction of surplus arising from trust operations, is a reproduction of Section 66 of the General Banking Act and is intended to provide further protection to trustors.

Section 1416 is a new rule and requires reports to be submitted to trustor to apprise the appropriate party of the significant developments in the administration of trust funds.

The operation of common trust fund (CTF) is being regulated for the first time under Part III, and among the significant rules are the following:

Section 1417 seeks to ensure that investments in CTF may be made only in accordance with the trust instrument or upon amendment thereof with the prior consent of the parties. Investments in CTF in the case of guardianships, conservatorships or court trusts shall be made only upon prior court approval.

Section 1418 requires the establishment of a Plan which shall make provisions for the manner in which the fund shall be operated; investment powers of the trustee; apportionment of income, profit and losses; and terms governing admission/withdrawal of participation; auditing of accounts, etc. The Central Bank shall be furnished a copy of the Plan thirty (30) business days prior to its implementation to enable the appropriate supervising department to review the plan before actual implementation.

Section 1419 - This section states the basic principle of exclusive management and control by trustee of the CTF. The trustee is, however, prohibited from negotiating or assigning the trustor's beneficial interest in the CTF.

Section 1420 - As a measure to prevent self-dealing, this section prohibits trustee from having any interest in the CTF other than that in its capacity as trustee.

Section 1421 - This section sets a limit of the aggregate amount of investments which can be made in stocks, bonds and other obligations of a single person or entity.

Part IV contains the provisions on reports to be submitted to the Central Bank; annual operations/management and financial audit; and sanctions for violation of the Circular.

REGULATIONS ON FUND MANAGEMENT

The rules on fund management have been patterned after the regulations on trust operations.

Section 1421 - The term "financial manager" is defined to distinguish a financial manager from a trustee since the financial manager is merely an agent or representative of the fund owner.

Section 1422 delineates the responsibilities of the board of directors or its duly designated committee or officer. The prudent man's rule from the pertinent section of Chapter VII of the General Banking Act, as amended, was lifted and included in the section, thus, "The funds shall be administered with the skill, care, prudence and diligence necessary under the circumstance then prevailing that a prudent man, acting in like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with similar aims."

Section 1423 - The fund gathering activities in a fund or portfolio management contracts of banks and NBQBs are clearly distinguished from borrowing via deposit substitutes or loans and trust agreements, by providing for minimum features which should be embodied in the contract as follows:

a. There shall be no stipulation whereby legal title to the money or property for management is transferred to the financial manager while beneficial title is retained by the client or reserved for a third party beneficiary.

b. The contract shall be clear that the financial manager acts only in a representative capacity and therefore his acts are designed to be those of his client.

c. The contract shall not stipulate fixed interest.

d. Any arrangement based on "income expectation" or like terms, shall be clarified by including a clause that said "income expectation" or like terms is not a guaranty of return or income, nor does it entitle the client to a fixed interest or return on the money invested; and

e. There shall be a stipulation that in case of withdrawals and/or termination of contract, agreement, etc., before the agreed period, the client shall be entitled to such income as the money invested may have earned, less commission, if any.

Section 1424 enumerates the eligible investments for financial managers, and provides for rules to prevent self-dealing and conflict of interest transactions.

Section 1425 - Unlike in trust transactions, financial managers are not allowed under this provision to commingle the funds of two or more accounts for the purpose of investing in money market.

Section 1426 - The basic rule of maintaining trust operations independent of the other businesses of trustee is restated by providing that fund management operations shall be independent of the other businesses of the financial manager. The financial manager is further required to render periodic reports to the owner (s) of the funds/accounts to apprise the fund owners of significant developments in the administration of the account.

Section 1427 contains provisions on fees and commissions of financial managers based on services rendered.

Section 1428 provides for the deposit of cash or eligible securities for the faithful performance of fund management duties at the same rate per volume required for the performance of trust duties. This requirement was provided in lieu of the original prerequisites for engaging in fund management operations.

The writer hopes that this article will succeed in informing the readers of the true concept of a trust company and the built-in safeguards for public protection entailed in its operation.

By Stephen Cu-Unjieng

COMPARING THE PRESIDENTIAL IMMUNITY FROM SUIT UNDER THE 1935 AND 1973 CONSTITUTIONS, AND THE 1981 AMENDMENTS

The concept and nature of Presidential Immunity from Suit in Philippine Constitutional law has been quite varied. It was not stated in any particular provision of the 1935 constitution, but merely presumed. The immunity was limited to the President's tenure and to his person. In the 1973 Constitution, the provision on Immunity followed the concept applied under the '35 Constitution. However, the scope and breadth of Presidential Immunity as provided for in the 1981 amendments is wider and more comprehensive.

The rationale for Presidential Immunity from Suit is based on the nature of the Executive branch of government. As stated in "Watson on the Constitution (pp. 1022-25)":

> One man constitutes all there is of that, and upon him the Constitution has placed many great and important duties, and these duties are constant. He does not sit in authority at stated intervals like Congress and the courts. There is no recess in the discharge of his official duties. Anything which impairs his usefulness in the discharge of the duties, however slight, to that extent impairs the operation of government. [1]

Presidential immunity under the '35 Constitution was limited to the President and did not benefit his subordinates. This placed a check on presidential abuse of power as "the President acts through agents and subordinates, who can be brought within the jurisdiction of the courts".[2] Furthermore, although "Hardship or injustice might result from the re-