

H. No. 4403
S. No. 2116

Republic of the Philippines
Congress of the Philippines
Metro Manila
Twelfth Congress
Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-second day of July, two thousand two.

[REPUBLIC ACT NO. 9182]

AN ACT GRANTING TAX EXEMPTIONS AND FEE PRIVILEGES TO SPECIAL PURPOSE VEHICLES WHICH ACQUIRE OR INVEST IN NON-PERFORMING ASSETS, SETTING THE REGULATORY FRAMEWORK THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Article I

General Provisions

SECTION 1. *Title.* — This Act shall be known as "The Special Purpose Vehicle (SPV) Act of 2002".

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State:

(a) to develop and maintain a sound financial sector for the country;

(b) to address the non-performing asset problems of the financial sector;

(c) to encourage private sector investments in non-performing assets;

(d) to eliminate existing barriers in the acquisition of non-performing assets;

(e) to help in the rehabilitation of distressed businesses with the end in view of contributing to economic value added; and

(f) to improve the liquidity of the financial system which can be harnessed to propel economic growth.

SEC. 3. *Definition of Terms.* – For purposes of this Act, the term:

(a) "Approval Certificate" means the certificate of approval or authority issued by the Commission to an application by an SPV to issue Investment Unit Instruments (IUIs), pursuant to the provisions of this Act.

(b) "Approved Plan" means an SPV Plan for which an Approval Certificate has been issued by the Commission.

(c) "BSP" refers to the Bangko Sentral ng Pilipinas.

(d) "Commission" refers to the Securities and Exchange Commission.

(e) "Financial Institutions or FIs" means credit-granting institutions which shall be limited to the following:

(1) the BSP;

(2) a bank as defined under Republic Act No. 8791, also known as "The General Banking Law";

(3) a financing company as defined under Republic Act No. 8556, also known as "The Financing Company Act of 1998";

(4) an investment house as defined in Presidential Decree No. 129, also known as "The Investment Houses Law";

(5) government financial institutions (GFIs), which for purposes of this Act, shall be limited to the Philippine Deposit Insurance Corporation (PDIC), Land Bank of the Philippines (LBP), and Development Bank of the Philippines (DBP);

(6) government-owned-or-controlled-corporations (GOCCs), which for purposes of this Act, shall be limited to the National Home Mortgage Finance Corporation (NHMFC), Home Guaranty Corporation (HGC), Home Development Mutual Fund (HDMF), Social Security System (SSS), Government Service Insurance System (GSIS), Trade and Investment Development Corporation (TIDCORP), Small Business Guarantee and Finance Corporation (SBGFC), Technology and Livelihood Resource Center (TLRC), Livelihood Corporation (LIVECOR), National Development Corporation (NDC), Quedan and Rural Credit Guarantee Corporation (QUEDANCOR), National Housing Authority (NHA), and Armed Forces of the Philippines – Retirement and Separation Benefits System (AFP-RSBS); and

(7) other institutions licensed by the BSP to perform quasi-banking functions.

(f) "Investment Unit Instruments or IUIs" refers to participation certificates, debt instruments or similar instruments issued by the SPV and subscribed by Permitted Investors as provided in Section 11 hereof, pursuant to an Approved Plan: *Provided*, That these shall not include the instruments to be issued by the SPV to the selling FIs as full or partial settlement of the non-performing assets transferred to the said SPV: *Provided*,

further, That such issuances of the SPV shall not be considered as deposit substitutes: *Provided, finally*, That these shall not form part of the capital stock of the SPV.

(g) "Non-Performing Assets or NPAs" consist of the Non-Performing Loans and Real and Other Properties Owned or Acquired by FIs.

(h) "Non-Performing Loans or NPLs" refers to loans and receivables such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including but not limited to, real estate mortgages, chattel mortgages, pledges, and antichresis, whose principal and/or interest have remained unpaid for at least one hundred eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred.

(i) "ROPOAs" refers to real and other properties owned or acquired by an FI in settlement of loans and receivables, including real properties, shares of stocks, and chattels formerly constituting collaterals for secured loans which have been acquired by way of dation in payment (*dacion en pago*) or judicial or extra-judicial foreclosure or execution of judgment.

(j) "SPV" means the Special Purpose Vehicle created pursuant to the provisions of this Act.

(k) "SPV Plan" refers to the plan submitted to and approved by the Commission as pre-requisite to the issuance of an IUI.

(l) "True Sale" refers to a sale wherein the selling FI transfers or sells its NPAs without recourse for cash or property to an SPV with the following results:

(1) The transferor relinquishes effective control over the transferred NPAs; and

(2) The transferred NPAs are legally isolated and put beyond the reach of the transferor and its creditors:

Provided, That the transferring FI shall not have direct or indirect management of the transferee SPV: *Provided, further*, That the selling FI does not possess a claim of beneficial ownership of more than five percent (5%) in the transferee SPV.

Article II

SPECIAL PURPOSE VEHICLE

SEC. 4. *Special Purpose Vehicle*. – An SPV shall be organized as a stock corporation in accordance with *Batas Pambansa Blg. 68*, otherwise known as "The Corporation Code of the Philippines" and the rules promulgated by the Commission for purposes of registering the SPV: *Provided*, That if the SPV will acquire land, at least sixty percent (60%) of its outstanding capital stock shall be owned by Philippine nationals pursuant to Republic Act No. 7042, as amended, otherwise known as "The Foreign Investments Act".

SEC. 5. *Powers of an SPV*. – An SPV shall have the following powers:

- (a) to invest in, or acquire NPAs of FIs;
- (b) to engage third parties to manage, operate, collect and dispose of NPAs acquired from an FI;
- (c) to rent, lease, hire, pledge, mortgage, transfer, sell, exchange, usufruct, secure, securitize, collect rents and profits, and other similar acts concerning its NPAs acquired from an FI;
- (d) in case of NPLs, to restructure debt, condone debt and undertake other restructuring related activities. In restructuring debt, the SPV may reduce the principal, interest, interest rates, and the period for calculating the interest, extend the time for debt repayment or relax the conditions for debt repayment, agree to the conversion of the borrower's debt to equity in the borrower's business, agree to a transfer of assets or claims from the borrower to repay the debt or dispose of some of the borrower's property or claims to third persons;

(e) to take, transfer shares or buy shares issued by the borrower for the purpose of business reorganization or rehabilitation of the borrower, subject to the provisions of the Corporation Code in respect of the rights of the shareholders of the borrower company, and apply any other measures or restructuring techniques with the approval of the Commission;

(f) to enter into dation in payment (*dacion en pago*) arrangements, foreclose judicially or extra-judicially and other forms of debt settlement involving NPLs;

(g) to spend funds to renovate, improve, complete or alter its NPAs acquired from an FI;

(h) to issue equity or participation certificates or other forms of IUIs for the purpose of acquiring, managing, improving and disposing of its NPAs acquired from an FI;

(i) to borrow money and issue other instruments of indebtedness for the purpose of paying operational and administrative costs;

(j) to guarantee credit, accept or intervene for honor the bills of borrowers;

(k) to advance funds to borrowers where required by an acquired asset or any debt restructuring agreement pursuant thereto, or under any court order or rehabilitation plan; and

(l) to entrust to third parties asset servicing company, the collection and receipt of the debt payments for debts under debt restructuring or business reorganization, management and disposition of assets of the SPV in accordance with the rules, procedures and conditions prescribed by the Commission or by the courts. Except in the case of ROPOAs whose redemption periods have already expired, the SPV shall notify the borrower and all persons holding prior encumbrances upon the properties or a part thereof or are actually holding the same adversely to the borrower within fifteen (15) days from the date of the appointment of the said collection agent.

SEC. 6. *Period for Filing of Applications.* – Applications for the establishment and registration of an SPV shall be filed with the Commission not beyond eighteen (18) months from the date of approval of the Implementing Rules and Regulations (IRR) by the Congressional Oversight Committee (COC) created in Section 23 hereof.

SEC. 7. *Authorized, Subscribed and Paid-Up Capital of the SPV.* – An SPV shall have a minimum authorized capital stock of Five hundred million pesos (P500,000,000.00), with a minimum subscribed capital stock of One hundred twenty five million pesos (P125,000,000.00), and a minimum paid-up capital of Thirty-one million two hundred fifty thousand pesos (P31,250,000.00).

SEC. 8. *Submission of SPV Plan.* – After the establishment of an SPV pursuant to Section 4 hereof, an SPV Plan shall be submitted to the Commission for approval which shall include the following:

- (a) investment policies of the SPV;
- (b) contribution plan including the amounts and draft of subscription documents;
- (c) features of the IUIs including the specific amounts issued and/or to be issued;
- (d) rights of the holders of the IUIs;
- (e) draft agreements for the appointment of trustees and agents with respect to the IUIs and the NPLs acquired from an FI;
- (f) name of the external auditor of the SPV;
- (g) roles and responsibilities of the trustees, advisors, loan servicers and property managers;

- (h) draft form of financial reports of the SPV;
- (i) details of distribution policies;
- (j) methods for the increase and decrease of future fund contribution;
- (k) methods for the alteration or modification of the approved SPV Plan;
- (l) methods for the liquidation and distribution of assets to the holders of IUIs;
- (m) details of credit enhancements like guarantees or standby letters of credit or advances that may be extended to the SPV by an entity which shall not be the selling FI, its parent, subsidiaries or affiliates; and
- (n) such other documents or information as may be required by the Commission.

SEC. 9. *Approval.* – Upon approval of the SPV Plan, the Commission shall issue an Approval Certificate stating that the application has been approved and that the IUIs may be issued.

SEC. 10. *Issuance of IUIs.* – The SPV may be allowed to issue IUIs subject to the rules and regulations the Commission is herein mandated to promulgate.

SEC. 11. *Permitted Investors.* – Any person may acquire or hold IUIs in an SPV in the minimum amount of Ten million pesos (P10,000,000.00): *Provided,* That an SPV shall not be authorized to acquire the IUIs of another SPV: *Provided, further,* That the parent, subsidiaries, affiliates or stockholders, directors, officers or any related interest of the selling FI or the parent's subsidiaries, affiliates or stockholders, directors, officers or any related interest shall not acquire or hold, directly or indirectly, the IUIs of the SPV that acquired the NPAs of the FI.

Article III

Transfer of Assets to SPV

SEC. 12. *Notice and Manner of Transfer of Assets.* – (a) No transfer of NPLs to an SPV shall take effect unless the FI concerned shall give prior notice, pursuant to the Rules of Court, thereof to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged. Such notice shall be in writing to the borrower by registered mail at their last known address on file with the FI. The borrower and the FI shall be given a period of at most ninety (90) days upon receipt of notice, pursuant to the Rules of Court, to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the FIs concerned.

(b) The transfer of NPAs from an FI to an SPV shall be subject to prior certification of eligibility as NPA by the appropriate regulatory authority having jurisdiction over its operations which shall issue its ruling within forty-five (45) days from the date of application by the FI for eligibility.

(c) After the sale or transfer of the NPLs, the transferring FI shall inform the borrower in writing at the last known address of the fact of the sale or transfer of the NPLs.

SEC. 13. *Nature of Transfer.* – All sales or transfers of NPAs to an SPV shall be in the nature of a true sale after proper notice in accordance with the procedures as provided for in Section 12: *Provided*, That GFIs and GOCCs shall be subject to existing law on the disposition of assets: *Provided, further*, That in the transfer of the NPLs, the provisions on subrogation and assignment of credits under the New Civil Code shall apply.

SEC. 14. *Assumption of Rights and Obligations.* – The SPV shall assume all rights and obligations of the transferring FI.

Article IV

Incentives and Exemption Privileges

SEC. 15. *Tax Exemptions and Fee Privileges.* – Any existing law to the contrary notwithstanding, the transfer of NPAs from the FI to an SPV, and from an SPV to a third party or dation in payment (*dacion en pago*) by the borrower or by a third party in favor of an FI or in favor of an SPV shall be exempt from the following taxes:

(a) Documentary stamp tax on the abovementioned transfer of NPAs and dation in payment (*dacion en pago*) as may be imposed under Title VII of the National Internal Revenue Code of 1997;

(b) Capital gains tax imposed on the transfer of lands and/or other assets treated as capital assets as defined under Section 39(A)(1) of the National Internal Revenue Code of 1997;

(c) Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to Revenue Regulation No. 2-98, as amended;

(d) Value-added tax on the transfer of NPAs as may be imposed under Title IV of the National Internal Revenue Code of 1997 or gross receipts tax under Title V of the same Code, whichever is applicable.

The abovementioned transfers shall also be subject to the following, in lieu of the applicable fees:

(a) Fifty percent (50%) of the applicable mortgage registration and transfer fees on the transfer of real estate mortgage and chattel mortgage registrations to and from the SPV, as imposed in accordance with the existing circulars of the Land Registration Authority (LRA);

(b) Fifty percent (50%) of the filing fees for any foreclosure initiated by the SPV in relation to any NPA acquired from an FI, as prescribed by the Rules of Court; and

(c) Fifty percent (50%) of the land registration fees prescribed under the existing circulars of the LRA.

All sales or transfers of NPAs from the FIs to an SPV or transfers by way of dation in payment (*dacion en pago*) by the borrower or by a third party to the FI shall be entitled to the privileges enumerated herein for a period of not more than two (2) years from the date of effectivity of the IRR: *Provided*, That transfers from an SPV to a third party of NPAs acquired by the SPV within such two-year period or transfers by way of dation in payment (*dacion en pago*) by a borrower to the SPV shall enjoy the privileges enumerated herein for a period of not more than five (5) years from the date of acquisition by the SPV: *Provided, further*, That properties acquired by an SPV from GFIs or GOCCs which are devoted to socialized or low-cost housing shall not be converted to other uses.

The abovementioned tax exemptions, incentives, and fee privileges given to FIs and SPV at the various stages of the transactions under this section shall likewise be extended to any individual in accordance with the IRR: *Provided, That*:

(i) the transaction is limited to a single family residential unit ROPOA or NPL secured by real estate mortgage on a residential unit;

(ii) there shall only be one transaction consisting of one residential unit per individual; and

(iii) the two-year transfer and the five-year entitlement period granted to NPA shall also apply to said single family residential unit.

SEC. 16. Additional Tax Exemptions and Fee Privileges. – To encourage the infusion of capital and/or financial assistance by the SPV for the purpose of rehabilitating the borrower's business, the following additional tax exemptions and privileges shall be enjoyed:

(a) The SPV shall be exempt from income tax on net interest income, documentary stamp tax and mortgage registration fees on new loans in excess of existing loans extended to borrowers with NPLs which have been acquired by the SPV.

(b) In case of capital infusion by the SPV to the borrower with NPLs, the SPV shall also be exempt from the documentary stamp tax.

Provided, That the abovementioned tax exemptions and fee privileges shall apply for a period of not more than five (5) years from the date of acquisition of NPLs by the SPV.

SEC. 17. *Privileges of Participating FIs.* – (a) Any loss that is incurred by the financial institutions as a result of the transfer of NPAs shall be treated as ordinary loss: *Provided*, That the accrued interest and penalties shall not be included as loss on said loss carry over from operations subject to the provisions of the National Internal Revenue Code of 1997 on net operating loss carry-over (NOLCO), except that the loss incurred by the FI from the transfer of NPAs within the two-year period from the effectivity of the IRR may be carried over for a period of five (5) consecutive taxable years immediately following the year of such loss: *Provided, further*, That for purposes of corporate gain or loss the carry-over shall be subject to pertinent laws: *Provided, finally*, That the tax savings derived by FIs from the NOLCO shall not be made available for dividend declaration but shall be retained as a form of capital build-up.

(b) The regulatory authority concerned shall promulgate the necessary rules and regulations governing the treatment of any loss of the FIs in the books of account as a result of the transfer of the NPAs.

(c) In the case of non-bank GFIs and GOCCs enumerated in Section 3 hereof, the Department of Finance (DOF), in consultation with the Commission on Audit (COA), shall promulgate the necessary rules and regulations governing the treatment of any loss in their books of account as a result of the transfer of their NPAs.

SEC. 18. *Abuse of Tax Exemptions and Privileges.* – Any person, natural or juridical, who benefits from the tax exemptions and privileges herein granted, when such person is not entitled thereto, shall be subject to the penalties provided in Section 25 hereof. In addition, the offender shall refund to the government double the amount of the tax exemptions and privileges availed of under this Act, plus interest of twelve percent (12%) per year from the date prescribed for its payment until the full payment thereof.

Article V

Enforcement and Protection Provisions

SEC. 19. *Redemption Periods.* – The redemption periods allowed to borrowers under Section 47 of Republic Act No. 8791, also known as "The General Banking Law of 2000", the Rules of Court and/or other laws shall be applicable.

Article VI

Reporting Provisions

SEC. 20. *Books of Accounts and Records.* – The SPV shall set and keep accurate accounts and internal financial controls and shall appoint an external auditor acceptable to the Commission in this regard. The Commission, the BSP, and the Bureau of Internal Revenue (BIR) may look into the books of accounts and records of the SPV at any time.

SEC. 21. *Reports.* – The Commission, the regulatory authorities, and the BIR shall prescribe the submission of reports from the SPV and the FIs for the proper implementation of this Act.

Article VII

Final Provisions

SEC. 22. *Implementing Rules and Regulations.* – Within sixty (60) days from the effectivity of this Act, the Commission, in

coordination with the *BSP*, the *DOF*, and the *BIR* shall draft and submit to *COC* the *IRR*: *Provided*, That the Commission, *BSP*, *DOF* and *BIR* may issue separate circulars that will apply exclusively to the institutions under their respective jurisdiction, which shall not be inconsistent with the *IRR* to be issued by the Commission. Said *IRR* shall be submitted to the *COC* which shall review, revise and approve the same within a period of sixty (60) days from the date of receipt thereof upon which the Commission, in consultation with the *BSP*, *DOF* and *BIR* shall promulgate the *IRR*.

SEC. 23. *Congressional Oversight Committee (COC)*. – There is hereby created a *COC* composed of seven (7) members from the Senate and seven (7) members from the House of Representatives. The members from the Senate shall be appointed by the Senate President based on the proportional representation of the parties or coalitions therein with at least two (2) Senators representing the Minority. The members from the House of Representatives shall be appointed by the Speaker also based on proportional representation of the parties or coalitions therein with at least two (2) members representing the Minority. The *COC* shall have the power to promulgate its own rules and to oversee the implementation of this Act and to review or revise the implementing rules issued within sixty (60) days from the promulgation of said Rules.

SEC. 24. *Primary Implementing Agency*. – The Commission shall be the primary implementing agency of this Act and for its effective implementation, it shall have the authority to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including *GOCCs* and *GFI*s which may include the use and transfer of its personnel, facilities and resources.

SEC. 25. *Penalties*. – Any person who violates any of the provisions of this Act, or any person who, in a registration statement, notice, certification or plan filed under this Act, makes any untruthful statement of a material fact or omits to state any material fact required to be stated therein, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor

more than One million pesos (P1,000,000.00) or imprisonment of not less than six (6) years and one (1) day nor more than twelve (12) years, or both, in the discretion of the court, without prejudice to the penalties provided under Section 18 hereof and other applicable laws. If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may order the suspension or revocation of license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer absolute or temporary disqualification from government or public office, as the case may be.

SEC. 26. *Applicability Clause.* – The provisions of this Act shall be applicable to assets that have become non-performing as of June 30, 2002.

SEC. 27. *Conscience Clause.* – Nothing in this Act shall be construed to condone or exempt from any liability any person responsible for acts or omissions constituting unsound business practices or mismanagement.

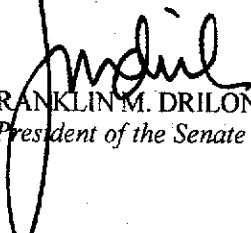
SEC. 28. *Use of Registration Fees.* – To carry out the purposes of this Act, the Commission shall retain and use all fees paid to it relative to the establishment of an SPV in addition to its annual budget and to what is provided for under Section 75 of the Securities Regulation Code.

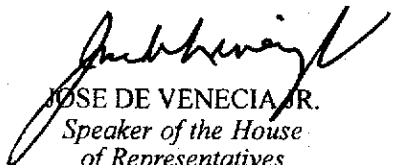
SEC. 29. *Separability Clause.* – If any provision of this Act is held unconstitutional or invalid, all other provisions not affected thereby shall remain valid.

SEC. 30. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations or parts thereof, which are inconsistent with this Act, are hereby repealed, amended or modified accordingly.

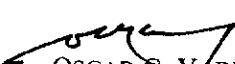
SEC. 31. *Effectivity.*— This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

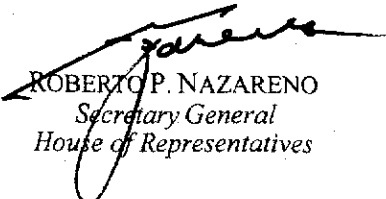
Approved,


FRANKLIN M. DRILON
President of the Senate



JOSE DE VENECIA, JR.
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 4403 and Senate Bill No. 2116 was finally passed by the House of Representatives and the Senate on December 18, 2002 and December 17, 2002, respectively.


OSCAR G. YABES
Secretary of the Senate


ROBERTO P. NAZARENO
Secretary General House of Representatives

Approved: DEC 23 2002


GLORIA MACAPAGAL-ARROYO
President of the Philippines

O

