



Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills, Mandaluyong City 1554

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT

24 August 2015

MS. DINA ROSSBACHER

Secretariat of the Human Rights Council Advisory Committee
Office of the United Nations High Commissioner for Human Rights
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United Nations Office at Geneva,
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RE: QUESTIONNAIRE ON THE ACTIVITIES OF VULTURE FUNDS AND THEIR IMPACT ON HUMAN RIGHTS¹

Dear Ms. Rossbacher:

This refers to the above-subject Questionnaire, questions 6-10 of which were forwarded to this Commission, for its answer/comment, by the Philippine Department of Finance (DOF) for the reason that they will be best addressed by this Commission given its technical expertise and experience.

As a brief background, one of the countries hardly hit by the Asian Financial Crisis before was our country, the Philippines. Non-Performing Loan Ratio (NPL Ratio), the ratio of non-performing loans to total loans of banks, reached its peak to as much as twenty percent (20%) on their balance sheets. In order to address this problem, the Philippine Congress passed a law in 2002 called Special Purpose Vehicle Act of 2002 (SPV Act of 2002). This particular law gave huge tax incentive to vulture funds buying distressed debts and assets of banks. Six years after the passage of the law, banks now have considerably reduced their NPL ratio to as low as five percent (5%), disposing billions of distressed debts and assets to vulture funds set up by leading investment banks such as Deutsche Bank, Lehman Brothers, JP Morgan Chase, Morgan Stanley, Amroc Investment, and Barclays Capital.²

Thus, the answers to questions 6-10 were culled from existing Philippine jurisprudence and applicable law on the matter, the Special Purpose Vehicle Act of 2002 or Republic Act No. 9182. Sections 4 and 5 of Article II of the SPV Act of 2002 state the following:

“Section 4. Special Purpose Vehicle. – An SPV shall be organized as 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 Philippines nationals pursuant to Republic Act No7042, as amended, otherwise known as "The Foreign Investment Act".

Section 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;

¹ See attached.

² Vulture Funds on Hunt for Distressed Investments, 25 December 2008, Tyrone Solee.

- (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 structuring 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 debtor 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 (*dation 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 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 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."

We hope you find our answers in order.


Very truly yours,


JUSTINA CALLANGAN
Director

Copy Furnished:

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 8.24.15

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

QUESTIONNAIRE

6. How can human rights law contribute to determine whether vulture funds claims or processes are excessive?

-Intervene in the lawsuit, if allowed.

-Set up own body, independent of the International Monetary Fund and Paris Club, that will investigate whether or not such claims or processes are excessive.

7. Can a judge under the law of your country seek disclosure of the precise amount for which the plaintiff/vulture fund or vulture company has purchased the debt?

-Yes

- Section 1, Rule 27 of the 1997 Philippine Rules of Court, states:

“Section 1. Motion for production or inspection; order. – Upon motion of any party showing good cause therefor, the court in which an action is pending may a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; xxx”

- Section 17, Rule 132 of the 1997 Philippine Rules of Court, states further:

“When part of a writing or record is given in evidence by one party, the whole of the same subject, may be inquired into by the other, and when a detached writing or record is given in evidence, any other writing or record necessary to its understanding may also be given in evidence xxx”

- In the case of Eagleridge Development Corporation (EDC), et. al vs. Cameron Granville 3 Asset Management, Inc.(Cameron)³, the Philippine Supreme Court applied the above-mentioned Rules. In this case, petitioners Eagleridge, et. al., were sued for collection of a sum of money by Export and Industry Bank which by virtue of a Deed of Assignment transferred EDC's outstanding loan obligations to respondent Cameron, a special purpose vehicle. EDC filed a Motion for Production/Inspection of the Loan Sale and Purchase Agreement (LSPA) referred to in the Deed of Assignment alleging that since its loan obligations may be reimbursed up to the extent of the amount paid by the respondent in the acquisition thereof, it becomes necessary to verify the amount of the consideration from the LSPA considering that the Deed of Assignment was silent on this matter.

The Supreme Court held for the petitioners stating that “it must be remembered that “litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties/Litigants, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy.” Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits.”

³ G.R. No. 204700, Promulgated April 10, 2013.

8. Can a judge explore or ask a plaintiff to demonstrate good faith while commencing litigation based on purchase of a debt?

-Yes

- As in the above-cited case, a Judge can require the production of pertinent documents to see if litigants act in good faith in filing a case based on purchase of a debt. As above-stated, "litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties/Litigants, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy."

9. Is there any case-law on or precedent of cases disallowing unjust enrichment of vulture funds arising from the purchase of debts?

- None yet. Based on research, albeit there are various cases involving Special Purpose Vehicles (SPVs) in the Philippines, there is yet no decided Philippine jurisprudence disallowing unjust enrichment by SPVs arising from the purchase of debts.

10. Can a judge reject a claim if he/she is of the opinion that the litigant/vulture fund is misusing the legal process to unjustly enrich itself through the purchase of a debt?

-Yes

-However, this opinion should be supported by a legal basis and after evidence presented during the trial are weighed proving misuse of the legal process and not merely based on the judge's personal opinion.

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