

EN BANC

G.R. No. 205698 – HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND, *petitioner*, v. CHRISTINA SAGUN, *respondent*.

G.R. No. 205780 – DEPARTMENT OF JUSTICE, represented by SEC. LEILA DE LIMA, STATE PROSECUTOR THEODORE M. VILLANUEVA, PROSECUTOR GENERAL CLARO A. ARELLANO, and the NATIONAL BUREAU OF INVESTIGATION (NBI), *petitioners*, v. CHRISTINA SAGUN, *respondent*.

G.R. No. 208744 – DEPARTMENT OF JUSTICE, *petitioner*, v. DELFIN S. LEE, *respondent*.

G.R. No. 209424 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *petitioner*, v. GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, DELFIN S. LEE, in his capacity as the President of the Corporation, and TESSIE G. WANG, *respondents*.

G.R. No. 209446 – PEOPLE OF THE PHILIPPINES, *petitioner*, v. ALEX M. ALVAREZ, *respondent*.

G.R. No. 209489 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *petitioner*, v. ATTY. ALEX M. ALVAREZ, *respondent*.

G.R. No. 209852 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *petitioner*, v. DELFIN S. LEE, *respondent*.

G.R. No. 210095 – DEPARTMENT OF JUSTICE, *petitioner*, v. DELFIN S. LEE, *respondent*.

G.R. No. 210143 – PEOPLE OF THE PHILIPPINES, *petitioner*, v. DELFIN S. LEE, *respondent*.

G.R. No. 228452 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *petitioner*, v. DEXTER L. LEE, *respondent*.

G.R. No. 228730 – PEOPLE OF THE PHILIPPINES, *petitioner*, v. DEXTER L. LEE, *respondent*.

G.R. No. 230680 – CRISTINA SALAGAN, *petitioner*, v. PEOPLE OF THE PHILIPPINES and HOME DEVELOPMENT MUTUAL FUND (HDMF), *respondents*.

Promulgated:

July 31, 2018

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DISSENTING OPINION**LEONEN, J.:**

I join Senior Associate Justice Antonio T. Carpio in his dissent. I write separately to contribute to a more exhaustive understanding of syndicated estafa as defined by Presidential Decree No. 1689.

There was probable cause to file informations for syndicated estafa and to issue corresponding warrants of arrest against Delfin S. Lee (Delfin), Dexter L. Lee (Dexter), Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex M. Alvarez (Atty. Alvarez). Hence, it was error for the Court of Appeals to set aside the August 10, 2011 Review Resolution of the Department of Justice, to annul and set aside the May 22, 2012 and August 22, 2012 Resolutions penned by Judge Ma. Amifait S. Fider-Reyes (Judge Fider-Reyes) of Branch 42, Regional Trial Court, San Fernando City, Pampanga in Criminal Case No. 18480, and, lastly, to lift, quash, and recall the warrants of arrest issued pursuant to Judge Fider-Reyes' resolutions.

I

I take exception to the *ponencia*'s emphasis on the number of individuals who can be charged and how this number is supposedly determinative of the offense committed by Delfin, Dexter, Sagun, and Salagan. The *ponencia* explains how Atty. Alvarez should supposedly be excluded from the charge of estafa,¹ as "his act of notarizing various documents, . . . that were material for the processing and approval of the transactions, was insufficient to establish his having been part of the conspiracy."² The *ponencia* notes that with Atty. Alvarez's exclusion, only four (4) individuals remain to be charged. It maintains that a case for syndicated estafa may not be prosecuted considering that those who remain could not be considered as a syndicate.³

Articles 315 and 316 of the Revised Penal Code penalize estafa and other forms of swindling, respectively.⁴ Presidential Decree No. 1689 deals

¹ *Ponencia*, p. 38 and 44-45.

² *Id.* at 44.

³ *Id.* at 36-40.

⁴ REV. PEN. CODE, arts. 315 and 316.

Article 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

Ist. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.

2nd. The penalty of *prisión correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:
 - (a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.
 - (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.
 - (c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.
2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
 - (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.
 - (b) By altering the quality, fineness or weight of anything pertaining to his art or business.
 - (c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.
 - (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)
 - (e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like, without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at a hotel, inn, restaurant, boarding house, lodging house or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house, or apartment house after obtaining credit, food, refreshment, or accommodation therein without paying for his food, refreshment or accommodation. (As amended by Com. Act No. 157, enacted November 9, 1936.)
3. Through any of the following fraudulent means:
 - (a) By inducing another, by means of deceit, to sign any document.
 - (b) By resorting to some fraudulent practice to insure success in a gambling game.
 - (c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

Article 316. Other forms of swindling. — The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same.
2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.
3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person.
4. Any person who, to the prejudice of another, shall execute any fictitious contract.
5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor.
6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner,

with heavier penalties when the acts penalized by Articles 315 and 316 are “committed by a syndicate”:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, “samahang nayon(s)”, or farmers’ association, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.⁵

Thus, syndicated estafa exists if the following elements are present:

1) [E]stafa or other forms of swindling as defined in Articles 315 and 316 of the [Revised Penal Code] was committed; 2) the estafa or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, “samahang nayon[s],” or farmers associations or of funds solicited by corporations/associations from the general public.”⁶

The recital of elements demonstrates that two (2) additional elements qualify swindling into syndicated estafa. The first is “commi[ssion] by a syndicate.” The second is misappropriation. The object of this misappropriation, in turn, can be either of two (2) categories of funds. The first category is “moneys contributed by stockholders, or members of rural banks, cooperatives, ‘samahang nayon(s)’, or farmers[’] associations.” The second category is “funds solicited by corporations/associations from the general public.”

Concerning the first additional element of “commi[ssion] by a syndicate,” Section 1 of Presidential Decree No. 1689 proceeds to identify when a syndicate exists. There is a syndicate when there is a collective of five (5) or more individuals, the intent of which is the “carrying out [of] the unlawful or illegal act, transaction, enterprise or scheme.”

encumber the real property or properties with which he guaranteed the fulfillment of such obligation.

⁵ Pres. Decree No. 1689 (1980), sec. 1.

⁶ *Belita v. Sy*, 788 Phil. 580, 589 (2016) [Per J. Perez, Third Division], citing *Hao v. People*, 743 Phil. 204 [Per J. Brion, Second Division].

While Section 1 specifies a minimum number of individuals acting out of a common design to defraud so that a syndicate may be deemed to exist, it does not specify the number of individuals who must be charged for syndicated estafa at any given time. At no point does Section 1 require a minimum of five (5) individuals to stand trial for syndicated estafa. Likewise, it does not state that, failing in any such threshold, prosecution cannot prosper.

Indeed, contingencies may make it so that even if five (5) or more individuals acted in concert to defraud, not everyone involved in the common scheme can stand trial. While some may have been brought into custody, others may remain at large. Some individuals who were part of the scheme may have predeceased the institution of a criminal action. Likewise, some conspirators may remain unidentified even when acts attributable to them have been pinpointed. Exigencies such as these cannot frustrate prosecution under Presidential Decree No. 1689. To hold otherwise would be to render Presidential Decree No. 1689 impotent. Prosecution can then be conveniently undermined by a numerical lacuna that is not the essence of an offense otherwise demonstrably committed.

What is critical is not the number of individuals actually available for or identified to stand trial, but a showing that a deceit mentioned in Articles 315 and/or 316 of the Revised Penal Code was committed by five (5) or more individuals acting in concert. For as long as this is shown, coupled with the requisite misappropriation, prosecution and conviction can proceed.

The primary task of investigators and prosecutors, then, is to demonstrate the fraudulent scheme employed by five (5) or more individuals. Once this is established, it is their task to demonstrate how an individual accused took part in effecting that scheme. When an individual's participation is ascertained, he or she may be penalized for syndicated estafa independently of his or her collaborators. Thus, an information may conceivably be brought against even just a single individual for as long that information makes averments on the scheme perpetrated by that person with at least four (4) other collaborators, as well as the nature of that person's participation in the scheme.

It is also not essential that an accused be formally named or identified as an affiliate such as by being a director, trustee, officer, stockholder, employee, functionary, member, or associate of the corporation or association used as an artifice for the fraudulent scheme. As with the inordinate fixation on the number of individuals being prosecuted, insisting on such an affiliation can also conveniently frustrate the ends of justice. A cabal of scammers can then nominally exclude one (1) of their ilk from their organized vehicle and already be beyond Presidential Decree No. 1689's

reach, regardless of the excluded collaborator's actual participation in their fraudulent designs.

Presidential Decree No. 1689 contemplates not only corporations but also associations as avenues for misappropriation. Affiliation with corporations whether as a director, trustee, officer, stockholder, or member is carefully delineated by law. In contrast, associations and affiliations with them are amorphous. Any number of individuals can organize themselves into a collective. Their very act of coming together with an understanding to pursue a shared purpose suffices to make them an association. A regulatory body's official recognition of their juridical existence and their collective's competence to act as its own person is irrelevant.

Presidential Decree No. 1689's similar treatment of associations with corporations rebuffs the need for an accused's formally designated relationship with the organization which was used to facilitate the fraudulent scheme. The statutory inclusion of the term "association," which is without a specific restrictive legal definition unlike the term "corporation," manifests the law's intent to make as inclusive as practicable its application. It exhibits the law's intent to not otherwise be strangled by prohibitive technicalities on organizational membership.

II

Senior Associate Justice Carpio's dissent details how Atty. Alvarez should not be considered a mere notary public so detached from the fraudulent scheme that is subject of these consolidated petitions. Indeed, it would be foolhardy to discount the gravity of the offense committed by dwelling on Atty. Alvarez's nominal lack of "relat[ion] to Globe Asiatique either by employment or by ownership."⁷

The *ponencia* acknowledges that Atty. Alvarez was not affiliated with Globe Asiatique Realty Holdings Corporation (Globe Asiatique) as he was Home Development Mutual Fund's employee and not Globe Asiatique's employee or stockholder. Specifically, he was the Manager of Home Development Mutual Fund's Foreclosure Department.⁸ As Senior Associate Justice Carpio emphasizes, Atty. Alvarez's position at Home Development Mutual Fund and his simultaneous "moonlighting as head of the legal department of Globe Asiatique,"⁹ at whose headquarters he even held office, incriminates, rather than exonerates, him.

⁷ *Ponencia*, p. 38.

⁸ *Id.*

⁹ Dissenting Opinion, J. Carpio, p. 27.

Evidently, with his continuing employment at Home Development Mutual Fund, Atty. Alvarez could not be simultaneously employed by Globe Asiatique, let alone be formally declared the head of its legal department. This anomaly should not frustrate his liability alongside Delfin, Dexter, Sagun, and Salagan. If at all, it should aggravate his liability because knowing fully well that he was in no position to render services for Globe Asiatique, and that doing so amounted to a conflict of interest, Atty. Alvarez went ahead and did so anyway. His knowing notarization of documents concerning mortgages which he may himself foreclose shows malicious intent. Worse, his services for Globe Asiatique did not amount to innocuous, run of the mill tasks but were an integral component of the overarching fraudulent scheme. In Senior Associate Justice Carpio's words:

Any agreement between Globe Asiatique and HDMF would not have materialized if it were not for Globe Asiatique's submission of mortgage documents notarized by Atty. Alvarez. Atty. Alvarez's participation in the entire scheme was a crucial and necessary step in Globe Asiatique's inducement of HDMF to release the loan proceeds to Globe Asiatique.¹⁰

The *ponencia's* emphasis on how Atty. Alvarez should be segregated from Delfin, Dexter, Sagun, and Salagan is misplaced. His circumstances should not be used to reduce the persons accused to a number short of the threshold maintained by the *ponencia*. The absurdity of Atty. Alvarez's personal condition cannot conveniently deter prosecution for syndicated estafa.

III

Granting that Atty. Alvarez cannot be held liable as an integral cog to the uncovered fraudulent apparatus, his exclusion does not *ipso facto* negate the existence of a syndicate of at least five (5) individuals who worked to carry out an illegal scheme through which funds solicited from the general public were misappropriated. Even Atty. Alvarez's hypothetical exclusion does not negate syndicated estafa.

The fraudulent scheme uncovered in this case did not merely involve Delfin, Dexter, Sagun, Salagan, and Atty. Alvarez. A defining feature of the scheme was the use of "special buyers" who were induced by a fee to enlist for a Home Development Mutual Fund membership and then to lend their names and memberships to Globe Asiatique. It was Globe Asiatique's use of these spurious members' names and memberships which enabled it to siphon funds from Home Development Mutual Fund through fund releases by way of take-out of the special buyers' supposed housing loans.¹¹

¹⁰ Id.

¹¹ *Ponencia*, pp. 11–13.

Such an elaborate machination could not have been exclusively carried out by four (4) individuals. The plot's basic design demanded the involvement of persons other than Delfin and Dexter and high-level executives Sagun and Salagan. At the lowest rungs of the mechanism to effect the plot to involve special buyers were agents who recruited, paid, and induced each of the special buyers to enlist for Home Development Mutual Fund membership, and to allow their names and memberships to be used. At an intermediate level were officers who oversaw the operational aspects of the scheme.

Apart from the plot's basic configuration, the sheer scale to which it appears to have been effected also belies the exclusive involvement of four (4) individuals. As the information subject of Criminal Case No. 18480 underscored, "644 borrowers endorsed by [Globe Asiatique] are not genuine buyers of Xevera [H]omes while 802 are nowhere to be found; 3 buyers are already deceased; and 275 were not around during the visit, hence, establishing that all of them are fictitious buyers."¹² The carrying out of the scheme was simply too broad to have merely been the result of four (4) persons' exclusive handiwork.

The fraudulent scheme where at least five (5) individuals collaborated is clear to see. Atty. Alvarez's convenient dislocation from the ranks of Globe Asiatique's employees is too far-fetched to be indulged. But even if he were to be excluded, the operation of a fraudulent syndicate cannot be discounted. This Court should not render itself blind and condone a miscarriage of justice merely on account of a numerical artifice. Five (5) persons accused, minus one (1) absurdly discharged, do not erase the elaborate stratagem by a syndicate wherein Delfin, Dexter, Sagun, and Salagan are, thus far, the ones identified to have been on top, but which also indispensably involved many others.

IV

I also cannot agree to the assertion that there could not be syndicated estafa because "the association of respondents did not solicit funds from the general public"¹³ and that "it was . . . not Globe Asiatique, that solicited funds from the public."¹⁴

The *ponencia* reasons that it was not Globe Asiatique but Home Development Mutual Fund that solicited funds from the public.¹⁵ It adds that "[t]he funds solicited by [Home Development Mutual Fund] from the public were in the nature of their contributions as members of [Home

¹² Id. at 12.

¹³ Id. at 38.

¹⁴ Id.

¹⁵ Id.

Development Mutual Fund], and had nothing to do with their being a stockholder or member of Globe Asiatique.”¹⁶ Thus, “the funds supposedly misappropriated did not belong to Globe Asiatique’s stockholders or members, or to the general public, but to [Home Development Mutual Fund].”¹⁷

The *ponencia* overemphasizes the technicality of Home Development Mutual Fund’s separate and distinct juridical personality at the expense of a proper appreciation of the gravity of the offense involved.

Republic Act No. 9679, or the Home Development Mutual Fund Law of 2009, emphasizes the “provident character” of the Home Development Mutual Fund, thus:

Section 10. Provident Character. — The Fund shall be private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit. All the personal and employer contributions shall be fully credited to each member, accounted for individually and transferable in case of change of employment. They shall earn dividends as may be provided for in the implementing rules. The said amounts shall constitute the provident fund of each member, to be paid to him, his estate or beneficiaries upon termination of membership, or from which peripheral benefits for the member may be drawn.

As a provident fund, Home Development Mutual Fund relies on the required remittance of savings by its members. Membership is either mandated or voluntary. Its mandated membership consists of all private individuals covered by the Social Security System, all public employees covered by the Government Service Insurance System, uniformed personnel in the Armed Forces of the Philippines, the Philippine National Police, the Bureau of Jail Management and Penology, the Bureau of Fire Protection, and all Filipinos employed by foreign employers regardless of their place of deployment.¹⁸ Voluntary membership is open to Filipinos aged 18 to 65.¹⁹

¹⁶ Id. at 39.

¹⁷ Id.

¹⁸ Per Home Development Mutual Fund’s official website <<http://www.pagibigfund.gov.ph>>, mandatory membership is for:

- All employees who are or ought to be covered by the Social Security System (SSS), provided that actual membership in the SSS shall not be a condition precedent to the mandatory coverage in the Fund. It shall include, but are not limited to:
 - A private employee, whether permanent, temporary, or provisional who is not over sixty (60) years old;
 - A household helper earning at least P1,000.00 a month. A household helper is any person who renders domestic services exclusively to a household such as a driver, gardener, cook, governess, and other similar occupations;
 - A Filipino seafarer upon the signing of the standard contract of employment between the seafarer and the manning agency, which together with the foreign ship owner, acts as the employer;
 - A self-employed person regardless of trade, business or occupation, with an income of at least P1,000.00 a month and not over sixty (60) years old;
 - An expatriate who is not more than sixty (60) years old and is compulsorily covered by the Social Security System (SSS), regardless of citizenship, nature and duration of employment,

It is true that Home Development Mutual Fund has a personality distinct and separate from its members and exercises competencies independently of them. However, considering its provident character and its membership base, it is incorrect to say that the misappropriated funds in this case are Home Development Mutual Fund's alone and not the general public's. By Republic Act No. 9679's express language and Home Development Mutual Fund's membership base, that is, practically the same as the general public, it is erroneous to insulate Globe Asiatique from the general public by hyperbolizing Home Development Mutual Fund's role as an intervening layer between them.

In asserting that Globe Asiatique neither solicited funds from the general public nor committed misappropriation, the *ponencia* similarly fails to account for how Globe Asiatique used and manipulated Home Development Mutual Fund. While it is true that the funds collected, and eventually misappropriated, from Home Development Mutual Fund members were in the nature of their contributions which did not accrue to

and the manner by which the compensation is paid. In the absence of an explicit exemption from SSS coverage, the said expatriate, upon assumption of office, shall be covered by the Fund.

An expatriate shall refer to a citizen of another country who is living and working in the Philippines.

- All employees who are subject to mandatory coverage by the Government Service Insurance System (GSIS), regardless of their status of appointment, including members of the judiciary and constitutional commissions;
- Uniformed members of the Armed Forces of the Philippines, the Bureau of Fire Protection, the Bureau of Jail Management and Penology, and the Philippine National Police;
- Filipinos employed by foreign-based employers, whether they are deployed here or abroad or a combination thereof.

¹⁹ Per Home Development Mutual Fund's official website <<http://www.pagibigfund.gov.ph>>, voluntary membership is for:

An individual at least 18 years old but not more than 65 years old may register with the Fund under voluntary membership. However, said individual shall be required to comply with the set of rules and regulations for Pag-IBIG members including the amount of contribution and schedule of payment. In addition, they shall be subject to the eligibility requirements in the event of availment of loans and other programs/benefits offered by the Fund.

The following shall be allowed to apply for voluntary membership:

- Non-working spouses who devote full time to managing the household and family affairs, unless they also engage in another vocation or employment which is subject to mandatory coverage, provided the employed spouse is a registered Pag-IBIG member and consents to the Fund membership of the non-working spouse;
- Filipino employees of foreign government or international organization, or their wholly-owned instrumentality based in the Philippines, in the absence of an administrative agreement with the Fund;
- Employees of an employer who is granted a waiver or suspension of coverage by the Fund under RA 9679;
- Leaders and members of religious groups;
- A member separated from employment, local or abroad, or ceased to be self-employed but would like to continue paying his/her personal contribution. Such member may be a pensioner, investor, or any other individual with passive income or allowances;
- Public officials or employees who are not covered by the GSIS such as Barangay Officials, including Barangay Chairmen, Barangay Council Members, Chairmen of the Barangay Sangguniang Kabataan, and Barangay Secretaries and Treasurers;
- Such other earning individuals/groups as may be determined by the Board by rules and regulations.

Globe Asiatique, the essence of the fraudulent scheme was that Globe Asiatique used Home Development Mutual Fund as a medium for its pilferage.

The fraudulent scheme could not have been effected had Globe Asiatique not been enabled to act for and on behalf of Home Development Mutual Fund. The *ponencia*'s own recital of facts acknowledges that under the Funding Commitment Agreements, Globe Asiatique pre-processed housing loans and even collected monthly amortizations on the loans obtained by its buyers.²⁰ Under its special buyers scheme, it even enticed non-members of Home Development Mutual Fund to avail of its membership.

Globe Asiatique's commission by Home Development Mutual Fund is precisely what enabled its fraudulent scheme. The machination of Delfin and his compatriots turned on Globe Asiatique's delegation to act for Home Development Mutual Fund. The *ponencia* ignores this devious agency and insists on Home Development Mutual Fund's distinct identity. As with its emphasis on the number of individuals charged, it again places a primacy on technicality at the expense of the essence of Presidential Decree No. 1689. Such disregard compels me to differ from its conclusions on the existence of probable cause to indict for syndicated estafa and to issue corresponding warrants of arrest for Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex M. Alvarez.

ACCORDINGLY, I vote to GRANT the petitions subject of G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, and 228730.

The October 5, 2012 Decision and February 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 121346, the October 3, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 127690, the November 7, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 127553, and the November 16, 2016 Decision of the Court of Appeals in CA-G.R. SP No. 127554 must be REVERSED.

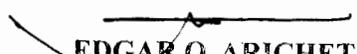
The warrants of arrest issued by Branch 42, Regional Trial Court, San Fernando City, Pampanga against Christina Sagun, Delfin S. Lee, Dexter L. Lee, and Atty. Alex Alvarez must be REINSTATED.



MARVIC M.V.F. LEONEN
Associate Justice

²⁰ *Ponencia*, p. 5.

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court