

**IMPLEMENTING RULES AND REGULATIONS OF
THE SPECIAL PURPOSE VEHICLE (SPV) ACT OF 2002
(REPUBLIC ACT NO. 9182)**

SPV RULE 1 – TITLE

This shall be known as “The Implementing Rules and Regulations of The Special Purpose Vehicle (SPV) Act of 2002”.

SPV RULE 2 – DECLARATION OF POLICY

These Rules are promulgated consistent with the declared 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 business 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.

SPV RULE 3 – DEFINITIONS

For purposes of these Rules, the term:

- (a) “**Act**” is the Special Purpose Vehicle Act of 2002.
- (b) “**Appropriate Regulatory Authority**” refers to the agency/authority having jurisdiction over the FI’s operations, which shall be the following:
 - (1) the DOF – in the case of the PDIC and GOCCs, in consultation with other agencies that have primary jurisdiction over the said FIs whenever deemed appropriate by the DOF;
 - (2) the BSP – in the case of banks which include LBP and DBP, and trust and quasi-banking functions of financing companies and investment houses licensed by the BSP; and
 - (3) the Commission - in the case of financing companies and investment houses, except their trust and quasi-banking functions, or any qualified entity not under the DOF or BSP.
- (c) “**Audited Financial Statements**” means a set of financial reports consisting of balance sheet, income statement, statement of changes in equity and cash flow statement, audited by a Commission-accredited independent certified public accountant.
- (d) “**BIR**” is the Bureau of Internal Revenue.
- (e) “**BSP**” is the Bangko Sentral ng Pilipinas.

- (f) “**Certificate of Eligibility** or **COE**” refers to the certificate issued by the Appropriate Regulatory Authority as to the eligibility of the NPL or ROPOA for purposes of availing of the tax exemptions and privileges, pursuant to the provisions of the Act.
- (g) “**Code**” is Batas Pambansa Blg. 68 otherwise known as The Corporation Code of the Philippines.
- (h) “**Commission**” is the Securities and Exchange Commission.
- (i) “**Dation in Payment (dacion en pago)**” refers to a payment whereby property, whether real or personal, tangible or intangible, is alienated in favor of the creditor, which could either be an FI or an SPV, in satisfaction of an NPL.
- (j) “**DOF**” is the Department of Finance.
- (k) “**FIA**” refers to the Foreign Investment Act, Republic Act No. 7042, as amended.
- (l) “**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 the 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 the 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.
- (m) “**Investment Unit Instruments** or **IUIs**” refer to participation certificates, debt instruments or similar instruments issued by the SPV and subscribed by Permitted Investors as provided in Section 11 of the Act, 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 in accordance with the Act: *Provided, finally*, That these shall not form part of the capital stock of the SPV.

- (n) “**NIRC**” is the National Internal Revenue Code of 1997, as amended.
- (o) “**Non-Bank Financial Institutions performing Quasi-Banking functions or NBQBs**” shall refer to financing companies, investment houses and other institutions licensed by the BSP to perform quasi-banking functions.
- (p) “**Non-Performing Assets or NPAs**” consist of the NPLs and ROPOAs by the FIs, certified to be eligible as such by the Appropriate Regulatory Authority.
- (q) “**Non-Performing Loans or NPLs**” refer 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 has 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, as of June 30, 2002, as certified by the Appropriate Regulatory Authority.
- (r) “**ROPOA**” refers to real and other properties owned or acquired by an FI in settlement of loans and receivables, including real properties, shares of stock, 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 as of June 30, 2002, and to those acquired thereafter through the same modes and in settlement of a loan or receivable classified as NPL as of June 30, 2002, in either case as certified by the Appropriate Regulatory Authority: *Provided*, That a property is deemed acquired:
- (1) on the date of notarization of the Deed of Dacion in case of dation in payment (*dacion en pago*);
 - (2) on the date of the entry of judgment in case of judicial foreclosure; and
 - (3) on the date of notarization of the Sheriff’s Certificate in case of extra-judicial foreclosure.
- Provided further*, That the ROPOA of an absorbed corporation in case of merger will retain its status as ROPOA if the surviving corporation is an FI.
- (s) “**SPV**” is a Special Purpose Vehicle incorporated pursuant to the provisions of the Act.
- (t) “**SPV Plan**” refers to the plan submitted to and approved by the Commission as prerequisite to the offer for sale and/or sale of IUIs to the public.
- (u) “**SRC**” is the Republic Act No. 8799 otherwise known as Securities Regulation Code and its Implementing Rules and Regulations.
- (v) “**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.

SPV RULE 4 – SPECIAL PURPOSE VEHICLE

An SPV shall be organized as a stock corporation in accordance with the Code and with these Rules: *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 the FIA.

SPV RULE 5 – POWERS OF AN SPV

An SPV shall be incorporated primarily to invest in, or acquire NPAs of FIs. Its secondary powers shall be limited to the following:

- (1) to engage third parties to manage, operate, collect and dispose of NPAs acquired from an FI;
- (2) 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 FIs;
- (3) in case of NPLs, to restructure debt, condone debt and undertake other restructuring related activities. In restructuring the 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;
- (4) 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;
- (5) to enter into dation in payment (dacion en pago) arrangements, foreclose judicially or extra-judicially and other forms of debt settlement involving NPLs;
- (6) to spend funds to renovate, improve, complete or alter its NPAs acquired from an FI;
- (7) 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;
- (8) to borrow money and issue other instruments of indebtedness for the purpose of paying operational and administrative costs;
- (9) to guarantee credit, accept or intervene for honor the bills of the borrowers;
- (10) 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
- (11) to entrust to third parties asset servicing company, the collection and receipt of the debt payments for debts under 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.

SPV RULE 6 – PERIOD FOR FILING OF APPLICATIONS

- (a) ***Period for Filing Applications.*** -The Articles of Incorporation of the SPV, its By-Laws and other documentary requirements shall be filed with the Commission not

later than eighteen (18) months from the date of approval of this IRR by the Congressional Oversight Committee created in Section 23 of the Act: *Provided*, That only SPVs whose applications are filed not later than the eighteen (18) month period and are subsequently approved by the Commission shall qualify for the tax exemptions and privileges granted under the Act.

- (b) **Registration Requirements.** -An SPV shall submit to the Commission the following documents for incorporation:
- (1) Name Verification Slip, showing its proposed name which shall always include the acronym "SPV-AMC (Asset Management Company)" appended thereto;
 - (2) Articles of Incorporation and By-Laws;
 - (3) Treasurer's Affidavit/Authority to Verify Bank Account;
 - (4) Bank Certificates of Deposits (notarized in the place where the bank is located);
 - (5) Written undertaking to change corporate name by any incorporator or director;
 - (6) Registration Data Sheet.

SPV RULE 7 – AUTHORIZED, SUBSCRIBED AND PAID-UP CAPITAL OF THE SPV

- (a) 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). The paid-up capital stock shall be in the form of cash.
- (b) If an SPV issues IUIs or offers other securities to the public, it shall maintain a net worth based on its Audited Financial Statements in an amount equivalent to not less than its minimum paid-up capital or such other amounts as may be determined by the Commission.

SPV RULE 8 – SUBMISSION OF SPV PLAN

After the establishment of an SPV pursuant to Rules 4 to 7 hereof, an SPV Plan shall be submitted to the Commission in accordance with SPV Rule 10 if the SPV will offer to sell or sell IUIs. Said Plan shall include, among others, the following:

- (a) investment policies of the SPV;
- (b) contribution plan including amounts and draft of subscription documents;
- (c) features of the IUIs including specific amounts issued and or to be issued;
- (d) timetable of issuance;
- (e) rights of the holders of the IUIs;
- (f) draft agreements for the appointment of trustees and agents with respect to the IUIs and the NPLs acquired from an FI;
- (g) appointment or engagement of an external auditor accredited by the Commission;
- (h) roles and responsibilities of the trustees, advisors, loan servicers and property managers;
- (i) draft form of financial reports of the SPV;
- (j) details of the distribution policies;
- (k) methods for the increase and decrease of future fund contribution;

- (l) methods for the alteration or modification of the approved SPV Plan;
- (m) methods for the liquidation and distribution of assets to the holders of IUIs;
- (n) 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
- (o) such other documents or information as may be required by the Commission.

SPV RULE 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.

SPV RULE 10 – ISSUANCE OF IUIs

(a) *Registration Requirements*

- (1) Any existing SRC rule or provision to the contrary notwithstanding, all IUIs proposed to be sold or distributed within the Philippines shall be duly registered with the Commission.
- (2) The submission of a registration statement shall include exhibits and full disclosure of the following in the prospectus:
 - (i) Business of the issuer;
 - (ii) Use of Proceeds;
 - (iii) Risk Factors;
 - (iv) Legal Proceedings;
 - (v) Market of Securities;
 - (vi) Management’s Discussion of Financial Condition and Results of Operation;
 - (vii) Directors and Officers;
 - (viii) Securities Ownership;
 - (ix) Certain Related Party Transactions;
 - (x) Audited and Interim Financial Statements in accordance with SRC Rule 68, as amended.
- (3) In addition, the following information shall be disclosed in the registration statements of an SPV:
 - (i) Details of the SPV Plan as required under SPV Rule 8.
 - (ii) Details of credit enhancements like guarantee 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.
 - (iii) Detailed description of the assets or loan constituting the pool of assets; or the assets or loan intended to form part of the pool of assets.
 - (iv) Rights and obligations of the selling financial institution/s assumed by the SPV.
 - (v) Description of any relationship or interest of the selling financial institution’s Parent, Subsidiaries, Affiliates or stockholders, directors or officers, with the SPV.
 - (vi) Incentives and exemption privileges.

- (4) The SPV shall likewise submit a certification from the FI that the affected borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged have been notified by registered mail of the intended transfer of NPLs to an SPV; and that the borrower was given a period of at most ninety (90) days upon receipt of said notice, to renegotiate or restructure the loan with the FI. Said certification shall be supported by copies of notices to borrowers.
- (5) The SPV shall pay a registration fee of 1/10 of 1% of the aggregate offering price of the IUIs subject to a diminishing fee set by the Commission.
- (6) The SPV shall cause the publication of a notice of filing of registration statement at its expense, in two newspapers of general circulation in the Philippines, once a week for two consecutive weeks.
- (7) The Commission may audit the financial statements, assets and other information of an SPV applying for registration of its IUIs whenever it deems necessary to insure full disclosure of information to protect the interest of the investors and the public in general.
- (8) Upon the registration statement being declared effective by the Commission, the sale of the securities subject thereto shall be commenced within two (2) business days and be continued until the end of the offering period or until the sale has been terminated by action of the issuer.
- (9) The SPV shall ensure wide dissemination of the preliminary and final prospectuses in accordance with the SRC and its implementing rules and regulations.
- (10) Written notification shall be given to the Commission within three (3) business days from completion or termination of the offering by the issuer, including therein the number of securities sold.

(b) *Amendments or Rejection*

- (1) Within forty-five (45) days after the date of filing of the registration statement, or at such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 14 of the SRC. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements have been complied with.

The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

- (2) The Commission may reject a registration statement and refuse registration of the security thereunder, or revoke the effectivity of a registration statement and the registration of the security thereunder after due notice and hearing by issuing an order to such effect, setting forth its findings in respect thereto, if it finds that:
 - (i) The issuer:

- a. Has been judicially declared insolvent;
 - b. Has violated any of the provisions of the Corporation Code, the rules promulgated pursuant thereto, or any order of the Commission of which the issuer has notice in connection with the offering for which a registration statement has been filed;
 - c. Has been or is engaged or is about to engage in fraudulent transactions;
 - d. Has made any false or misleading representation of material facts in any prospectus concerning the issuer or its securities;
 - e. Has failed to comply with any requirement that the Commission may impose as a condition for registration of the security for which the registration statement has been filed; or
 - (ii) The registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or
 - (iii) The issuer, any officer, director or controlling person of the issuer, or person performing similar functions, or any underwriter has been convicted, by a competent judicial or administrative body, upon plea of guilty, or otherwise, of an offense involving moral turpitude and/or fraud or is enjoined or restrained by the Commission or other competent judicial or administrative body for violations of securities, commodities, and other related laws.
- (3) If the Commission deems it necessary, it may issue an order suspending the offer and sale of the securities pending any investigation. The order shall state the grounds for taking such action, but such order of suspension although binding upon the persons notified thereof, shall be deemed confidential, and shall not be published. Upon the issuance of the suspension order, no further offer or sale of such security shall be made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.

(c) Issuance of Securities to the Public Without Prior Registration

- (1) Any SPV that offers to sell or distribute its IUIs to the public within the Philippines without prior registration thereof shall be subject to the penalties provided under Sec. 54 of the SRC and its implementing rules and regulations.
- (2) The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.

(d) Tax Treatment of IUIs

Since IUIs are not considered as deposit substitutes under the Act, the interest or other monetary benefit derived from IUIs is not subject to the twenty-percent (20%) final withholding tax under Secs. 24(B)(1), 25(A)(2), 27(D)(1), and 28(A)(7) of the NIRC. However, the IUI and any income arising from the IUIs shall be subject to the normal income tax and/or such other applicable taxes, including but not limited to, documentary stamp tax, imposed under the NIRC and its implementing regulations.

SPV RULE 11 – PERMITTED INVESTORS

A permitted investor may acquire or hold IUIs of 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.

For purposes of this Rule, the term:

- (1) **“Affiliate”** is a juridical person, that directly or indirectly, through one or more intermediaries, is controlled by, or is under common control with, selling FI or its affiliates.
- (2) **“Control”** exists when the Parent owns directly or indirectly through subsidiaries more than one half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. Control may also exist even when the Parent owns one half or less of the voting power of an enterprise when there is:
 - (a) power over more than one half of the voting rights by virtue of an agreement with other investors; or
 - (b) power to govern the financial and operating policies of the enterprise under a statute or an agreement; or
 - (c) power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
 - (d) power to cast the majority of votes at meetings of the board of directors or equivalent governing body; or
 - (e) Any other arrangement similar to any of the above.
- (3) **“Parent”** is a juridical person who has control over another juridical person directly or indirectly through one or more intermediaries.
- (4) **“Related Interest”** means:
 - (a) entities in which the amount of investment of the selling FI is more than 20% but less than 50% of the outstanding capital stock thereof;
 - (b) trusts for the benefit of employees, such as pension and profit sharing trusts that are managed by or under the trusteeship of the selling FI;
 - (c) provident and other employees/officers' benefit funds of the selling FI;
 - (d) principal owners of the selling FI;
 - (e) management of the selling FI;
 - (f) members of the immediate families of the principal owners and management of the selling FI; or
 - (g) other parties with which the selling FI may deal with if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- (5) **“Subsidiary”** of a specified person is an Affiliate controlled by such person directly or indirectly through one or more intermediaries.

SPV RULE 12 – NOTICE AND MANNER OF TRANSFER OF ASSETS

(a) **Prior Notice**

No transfer of NPLs to an SPV/individual 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 his 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) **Procedures on the Transfer of Assets to the SPV**

An FI that intends to transfer its NPAs to an SPV shall file an application for eligibility of said NPAs, in the prescribed format, with the Appropriate Regulatory Authority having jurisdiction over its operations. Said application shall be filed for each transfer of asset/s.

The application by the FI for eligibility of its NPAs proposed to be transferred to an SPV shall be accompanied by a certification from the FI that:

- (1) the assets to be sold/transferred are NPAs as defined under the SPV Act of 2002;
- (2) the proposed sale/transfer of said NPAs is under a True Sale;
- (3) the notification requirement to the borrowers has been complied with; and
- (4) the maximum 90-day period for renegotiation and restructuring has been complied with.

The above certification from the transferring FI shall be signed by a senior officer with a rank of at least Senior Vice President or equivalent provided such officer is duly authorized by the FI's board of directors; or the Country Head, in the case of foreign banks.

Items 3 and 4 above shall not apply if the NPL has become a ROPOA after June 30, 2002.

The application may also be accompanied by a certification from an independent auditor acceptable to the Commission in cases of financing companies and investment houses under Rule 3 (a) (3) or from the Commission on Audit in the case of GFIs or GOCCs, that the assets to be sold or transferred are NPAs as defined under the Act.

(c) **Issuance of the COE**

Pursuant to SPV Rule 15(a), the Appropriate Regulatory Authority shall issue to the borrower, FI, individual, or SPV a COE within forty-five (45) days from the date of application. Said COE shall always be required by the BIR for purposes of availing the tax exemptions and other privileges under the Act. The Appropriate Regulatory Authority shall furnish the Commission and the BIR a duplicate (original) copy of the said COE subject to the conditions stated in the above paragraph. The Appropriate Regulatory Authority and the BIR shall coordinate to ensure the integrity of the COE.

(d) ***Subsequent notice***

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.

(e) ***Subsequent transfers***

Each COE shall be valid for only one transfer. All subsequent transfers shall require a separate COE from the Appropriate Regulatory Authority.

SPV RULE 13 – NATURE OF TRANSFER

All sales or transfers of NPAs by an FI shall be in the nature of a True Sale with proper notice in accordance with Rule 12, as approved by the Appropriate Regulatory Authority. Any transfer of NPAs not in the nature of True Sale as provided for in the Act shall not qualify for tax exemptions and fee privileges granted under the Act. *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.

The transfer by an FI of its NPAs to an SPV shall be considered not a True Sale if the FI:

- (a) Invests in or acquires, directly or indirectly, the IUIs issued by the SPV that acquired its NPAs; or
- (b) Has direct or indirect management of the transferee SPV; or
- (c) Has any of its directors, officers or employees on the board of the transferee SPV; or
- (d) Is obligated to repurchase or substitute/exchange the NPA or any part of the pool of NPAs at any time, except in cases of a breach of representation or warranty of the FI;
- (e) Has Related Interest, as defined under Rule 11, with the transferee SPV;
- (f) Possesses a claim of beneficial ownership of more than five percent (5%) of the transferee SPV.

Unless otherwise determined by the Appropriate Regulatory Authority, the following shall be presumed not a True Sale, if the FI:

- (a) Purchases/invests in the IUIs of the SPV that acquired its NPAs through its trust department including the trust department of its Subsidiaries/Affiliates, Parent bank and the trust department of the Parent bank's Subsidiaries/Affiliates; or
- (b) Is made the beneficiary of a trust used as a vehicle for purchasing and securitizing the NPAs; or
- (c) Pays further expenses in relation to the NPAs after said NPAs have been sold/transferred to the transferee SPV; or
- (d) Extends, directly or indirectly, any credit facility, guaranty or any similar financial transaction to the transferee SPV; or
- (e) Extends any credit facility, guaranty or any similar financial transaction to any party for the purpose of investing in the equity or IUIs of the SPV, or for acquiring the NPAs from the SPV; or
- (f) Extends any credit facility, guaranty or any similar financial transaction to any party for the purpose of acquiring the NPAs from the transferring FI; or
- (g) Acts as trustee (FI's trust department) or if the trust department of any of the FI's

- subsidiaries/Affiliates, Parent bank or Parent bank's Subsidiaries/Affiliates acting as trustee, under any circumstances, in the securitization of NPAs that it has transferred to the SPV; or
- (h) Accepts as collateral for a loan extended by said FI the equity shares and IUIs of the SPV that acquired its NPAs; or
 - (i) Enters into buy-back and other similar arrangements, or financial derivative transactions with similar effect, involving the NPAs or the securities backed by such NPAs; or
 - (j) Enters into any other transaction where the FI retains effective control over the transferred NPAs or shares in the losses of the SPV.

For purposes of the foregoing, the term "any party" includes proxies, nominees and voting trustees.

The extension of credit to an individual for the purpose of acquiring a single family residential unit ROPOA or NPL secured by real estate mortgage on a residential unit, as contemplated under Section 15 of the Act, shall be allowed.

Penalties

Violation of any of the above prohibitions or any misrepresentation of any fact or information relative to the True Sale nature of the transfer of NPAs shall be subject to the penalties prescribed under Section 25 of the Act without prejudice to other penalties that may be imposed by the Appropriate Regulatory Authorities of the transferring FI under applicable laws.

SPV RULE 14 – ASSUMPTION OF RIGHTS AND OBLIGATIONS

The SPV shall assume all rights and obligations of the FI over the transferred NPA.

SPV RULE 15 – TAX EXEMPTIONS AND FEE PRIVILEGES

(a) *Transactions Covered*

Only the following transactions shall be exempt from the payment of taxes and reduction of fees, as provided in Section 15 of Article IV of the Act and Section (d) and (e) of this Rule:

- (1) The transfer of the NPL by the FI to an SPV;
- (2) The transfer of the ROPOA by the FI to an SPV;
- (3) The dacion in payment (dacion en pago) of the NPL by the borrower to the FI;
- (4) The dacion in payment (dacion en pago) of the NPL by a third party, on behalf of the borrower, to the FI;
- (5) The transfer of the NPL by the FI to an individual.;
- (6) The transfer of the ROPOA by the FI to an individual;
- (7) The transfer of the NPL by the SPV to a third party;
- (8) The transfer of the ROPOA by the SPV to a third party;
- (9) The dacion in payment (dacion en pago) of the NPL by the borrower to the SPV;
- (10) The dacion in payment (dacion en pago) of the NPL by a third party, on behalf of the borrower, to the SPV;

- (11) The transfer of the NPL by the individual to a third party; and, finally,
 - (12) The transfer of the ROPOA by the individual to a third party.
- (b)** *Provided*, That these tax exemptions and reduction of fees shall apply only if all of the following requirements are complied with:
- (1) The NPA has been certified by the Appropriate Regulatory Authority as an NPL or ROPOA as of June 30, 2002: *Provided*, That for tax purposes, a property shall be deemed acquired after the lapse of the redemption period in cases where such period still exists.
 - (2) All transfer taxes and registration fees have been paid or subsequently paid upon assessment on ROPOAs whose redemption period has lapsed as of 30 June 2002, where legal title has not been transferred in the name of the FI;
 - (3) The properties acquired by an SPV from the GFIs or GOCCs which are devoted to socialized or low-cost housing shall not be converted to other uses.
- (c)** *Provided, further*, That these tax exemptions and reduction of fees shall apply only if the following particular requirements, where applicable, are complied with:
- (1) For purposes of transactions other than (a)(3), (a)(4) (a)(9), and (a)(10), the transfer has been approved by the appropriate regulatory authorities as a true sale.
 - (2) For purposes of (a)(1) to (a)(6) of this Rule, the transaction occurred within a period of two (2) years from the date of effectivity of this IRR. After the lapse of such two year period, the tax exemptions and fee privileges provided for in this Rule shall not be allowed.
 - (3) For purposes of (a)(7) to (a)(12) of this Rule, the transaction occurred within a period of not more than five (5) years from the date of acquisition of NPA by the SPV or individuals from the FIs. *Provided*, That the SPV or individual acquired the NPA from the FI within the two-year period provided in (c)(2) of this Rule. After the lapse of these periods, the tax exemptions and fee privileges provided for in this Rule shall not be allowed.
 - (4) For purposes of (a)(3), (a)(4), (a)(9), and (a)(10) of this Rule, the tax exemption and fee privileges provided herein shall only apply to the extent of the value of the property tendered as payment, which is equivalent to the amount of the NPL paid, inclusive of interest and penalties. The value of the property dacioned shall be determined in accordance with the pertinent provisions of the NIRC.

No dation in payment (*dacion en pago*) will be allowed which is intended to circumvent the intention of the law to benefit solely the borrower and the FI. The Appropriate Regulatory Authority shall determine if such circumvention exists in a dation in payment (*dacion en pago*).

- (5) In the case of (a)(1), (a)(2), (a)(5) and (a)(6) of this Rule, when the NPA of the FI is transferred to the SPV or an individual for less than an adequate and full consideration in money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall not be considered as a gift under Title III Chapter 2 of the NIRC.
- (6) For purposes of (a)(5), (a)(6), (a)(11), and (a)(12) of this Rule, the transaction is limited to a single family residential unit ROPOA or NPL secured by a real estate mortgage on a residential unit, and shall be limited to one NPA per individual.

(d) Tax Exemption Privileges

The transactions provided in Section (a) of this Rule shall be exempt from the payment of the following taxes:

- (1) Documentary stamp tax as may be imposed under Title VII of the NIRC;
- (2) 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 NIRC;
- (3) Creditable withholding income taxes imposed on the transfer of land and or buildings treated as ordinary assets pursuant to Revenue Regulations No. 2-98, as amended: *Provided*, That this shall not include exemption from income tax under Title II of the NIRC. The transfer by the FIs and SPVs of the NPAs which are classified under ordinary assets shall continue to be subject to the ordinary corporate income tax under Sec 27 (A) of the NIRC.
- (4) The value-added tax as may be imposed under Title IV of the NIRC, or gross receipts tax under Title V of the same NIRC.

(e) Reduction of Fees

The transactions provided in Section (a) of this Rule shall be entitled to the payment of reduced fees as follows:

- (1) 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/individual, imposed in accordance with the existing circulars of the Land Registration Authority (LRA);
- (2) Fifty percent (50%) of the filing fees for any foreclosure initiated by the SPV/individual in relation to any NPA acquired from an FI, as prescribed by the Rules of Court; and
- (3) Fifty percent (50%) of the land registration fees prescribed under existing circulars of the LRA.

(f) Manner of Claiming Tax Exemptions

- (1) Any person, natural or juridical, claiming any of the above tax exemptions under this Rule shall provide the BIR with the appropriate certificate of eligibility, in addition to such other documentary requirements pursuant to the revenue regulations to be issued by the DOF, upon recommendation of the Commissioner of the BIR, for purposes of implementing the tax provisions of the Act.
- (2) In the case of the transfer of real property or shares of stock, upon verification, the Commissioner of the BIR or his duly authorized representative shall issue a certificate (e.g. Certificate Authorizing Registration/Tax Clearance Certificate) that such transfer has been reported and is tax-exempt. No registration of any document transferring real property or shares of stock claimed to be tax exempt pursuant to the Act shall be effected by the Register of Deeds or by the Corporate Secretary,

without such certificate: *Provided*, That such certificate shall be issued only if all the taxes due, if any, on the previous transfer/s of such real property or shares of stock to the transferor-FI-SPV have been paid.

- (3) In case of tax-exempt transfer of NPLs and other assets classified as ROPOAs, the above mentioned documents must be presented upon request to the Commissioner of the BIR or his duly authorized representative for the examination of any taxpayer and the assessment of the correct amount of tax.

SPV RULE 16 – ADDITIONAL TAX EXEMPTIONS AND PRIVILEGES

(a) 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:

- (1) The SPV shall be exempt from income tax on the net interest income arising from new loans in excess of existing loans, extended to a borrower for the purpose of rehabilitating the latter's business, whose NPL has been acquired by the said SPV from the FI within a period of two (2) years from the date of the effectivity of this IRR. The term "net interest income" shall mean gross interest income less allowable deductions attributable thereto; hence, the said allowable deductions shall no longer be allowed as a deduction from the SPV's other taxable gross income.
- (2) Any document evidencing the new loans mentioned in paragraph (a)(1) above shall be exempt from DST and mortgage registration fees.
- (3) Any document evidencing an SPV's capital infusion to the borrower's business, whose NPL has been acquired by the said SPV from the FI within two years from the date of the effectivity of this IRR, shall be exempt from DST.

Provided, That the above-mentioned tax exemptions and fee privileges shall apply for a period of not more than five (5) years from the date of acquisition of the borrower's NPL by the SPV.

(b) Manner of Claiming the Additional Tax Exemption and Privileges by an SPV

An SPV claiming any of the above tax exemptions and privileges under this Rule shall upon request provide the appropriate COE to the Commissioner of the BIR or his duly authorized representative for purposes of examining any taxpayer and the assessment of the correct amount of tax. This is in addition to such other documentary requirements pursuant to the revenue regulations to be issued by the DOF, upon recommendation of the Commissioner of the BIR, for purposes of implementing the tax provisions of the Act.

SPV RULE 17 – PRIVILEGES OF PARTICIPATING FIs

(a) Loss Carry-Over

Any loss that is incurred by an FI as a result of the transfer of NPAs to an SPV within the two-year (2) period from the date of the effectivity of this IRR, excluding accrued

interests and penalties receivable, and which had not been previously offset as deduction from gross income, shall be treated as ordinary loss, and may be carried over as a deduction from its taxable gross income for a period of five (5) consecutive taxable years immediately following the year of sale that resulted to such loss: *Provided*, That the rules applicable to NOLCO under the NIRC shall continue to apply.

(b) The tax savings derived by the FI from such loss carry-over shall not be made available for dividend declaration but shall be retained as a form of capital build-up pursuant to the rules to be issued by the Appropriate Regulatory Authorities.

(c) The Appropriate Regulatory Authority shall promulgate the necessary rules and regulations governing the treatment of any loss of the FI in the books of account as a result of the transfer of the NPAs.

(d) In the case of non-bank GFIs and GOCCs enumerated under Section 3 of the Act, the DOF, in consultation with the Commission on Audit, 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.

SPV RULE 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 Rule 24 hereof. In addition, the offender shall refund to the government double the amount of the tax exemptions and privileges availed of under the Act, plus interest of twelve percent per year from the date prescribed for its payment until the full payment thereof: *Provided*, That this is without prejudice to the applicable penalties under the NIRC.

SPV RULE 19 – REDEMPTION PERIODS

The redemption periods allowed to borrowers under Section 47 of the Republic Act No. 8791, also known as “The General Banking Law of 2000”, the Rules of Court and/or other laws shall be applicable.

SPV RULE 20 – BOOKS OF ACCOUNTS AND RECORDS

(a) *Internal Record Keeping and Accounting Controls*

- (1) An SPV shall make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets, its minutes of meetings and other business transactions;
- (2) It shall devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) Transactions and access to assets are pursuant to management authorization;
 - (ii) Financial statements are prepared in conformity with generally accepted accounting principles that are adopted by the Accounting

- Standards Council and the rules promulgated by the Commission with regard to the preparation of financial statements; and
- (iii) Recorded assets are compared with existing assets at reasonable intervals and differences are reconciled.

(b) External Auditor

An SPV shall appoint an external auditor accredited by the Commission.

(c) Inspection of Books and Records

- (1) A stockholder of an SPV or a holder of an IUI issued thereof shall have the right to inspect the books and records of said SPV at reasonable hours of business days and may demand, in writing, for a copy of excerpts from said records at the expense of the stockholder or holder of IUI.
- (2) Authorized representatives of the Commission, the BIR or the BSP may look into the books and records of the SPV at any time.
- (3) Failure of an SPV or of any other person in custody of its books and records, to cooperate, or his obstruction or refusal to undergo an examination, shall be a ground for the issuance of a suspension order on the offering of its IUIs or its operation.

SPV RULE 21 – REPORTS

(a) Reports to be Submitted to the Commission by an SPV

- (1) As Stock Corporation

The SPV shall submit to the Commission the following:

- (i) General Information Sheet (GIS) within thirty (30) days from stockholders' meeting date;
- (ii) Audited Financial Statements prepared in accordance with SRC Rule 68 within one hundred twenty (120) days from the end of the fiscal year.

- (2) As Issuer of Securities to the Public

If an SPV satisfies the requirements under Section 17.2 of the SRC, it shall file with the Commission the following reports as required under Section 17.1 of the said SRC:

- (i) an annual report on SEC Form 17-A for the fiscal year in which the registration statement approved by the Commission became effective, and for each fiscal year thereafter, within 105 days after the end of the fiscal year. The report shall contain information as of the end of the fiscal year of the SPV on the following:
 - (a) Business;
 - (b) Properties;
 - (c) Legal Proceedings;
 - (d) Market Information;

- (e) Management's Discussion of Financial Condition and Results of Operation;
 - (f) Directors and Officers;
 - (g) Securities Ownership;
 - (h) Certain Related Party Transactions;
 - (i) Audited Financial Statements.
- (ii) a quarterly report on SEC Form 17-Q, within forty-five (45) days after the end of each of the first three quarters of each fiscal year. The first quarterly report of the issuer shall be filed either within forty-five (45) days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required previously to file reports on SEC Form 17-Q, whichever is later. The report shall contain the following information:
- (a) Management's Discussion of Financial Condition and Results of Operation;
 - (b) Interim Financial Statements;
 - (c) Material information not disclosed in a current report.
- (iii) a current report on SEC Form 17-C, as necessary, to make a full, fair and accurate disclosure to the public of every material fact or event that occurs, which would reasonably be expected to affect investors' decisions in relation to those securities. In the event a news report appears in the media involving an alleged material event, a report shall be made within the period prescribed herein, in order to clarify said news item, which could create public speculation if not officially denied or clarified by the concerned company.

The disclosure required by this item shall be reported:

- (a) promptly to the public through the news media;
 - (b) if the issuer is listed in an Exchange, to that Exchange within ten (10) minutes after occurrence of the event and prior to its release to the public through the news media, copy furnished the Commission;
 - (c) to the Commission on SEC Form 17-C within two (2) business days after occurrence of the event being reported, unless substantially similar information as that required by Form 17-C has been previously reported to the Commission by the registrant.
- (iv) Monthly reports on total issuances and the amount of IUIs outstanding as at the end of each month, to be submitted within ten (10) business days following the end of the reference month.
- (v) In the event that equity securities are issued by the SPV, it shall likewise comply with the requirements of Sections 17.1 and 20 of the SRC and its implementing rules and regulations.
- (3) Audited Financial Statements

The filing of the annual report on SEC Form 17-A by the SPV shall satisfy the requirement of the submission of the Audited Financial Statements

required under paragraph (1) of this Rule.

(4) Violations

Any violation by an SPV of paragraphs (1) to (3) above due to its failure to submit the required reports on due dates shall subject the same to sanctions provided under the Code, SRC and their implementing rules and regulations.

(b) Reports to be Submitted to the BIR by an SPV

The SPV shall, in addition to the existing requirements under the NIRC and its implementing regulations, submit to the BIR such reporting requirement as may be required under the revenue regulations to be issued by the DOF, upon recommendation of the Commissioner of the BIR, for purposes of implementing the tax provisions of the Act.

(c) Reports to be Filed to the BSP

(1) By SPV

The SPV shall submit the following reports to the BSP using the prescribed formats:

- (i) Report on any sale/transfer to any party of NPLs and ROPOAs acquired from banks and NBQBs (quarterly); and
- (ii) Report on the Latest Appraised/Fair Market Value of ROPOAs and real estate properties/chattels used as collateral of the NPLs acquired from banks and NBQBs (semi-annually).

For purposes of item (ii) above, ROPOAs and properties used as collateral for NPLs acquired by the SPV at Five Million Pesos (P5,000,000.00) or more shall be appraised by an independent appraisal company acceptable to the Commission while the rest may be appraised by in-house appraisers of the SPV. In any case, re-appraisal shall be made at least every other year.

(2) By Selling Financial Institution

The selling FI shall submit a monthly report to the BSP, using the prescribed format, of NPLs and ROPOAs actually sold/transferred to an SPV and to any party other than the SPV sold/transferred under the SPV Act.

The BSP may require the submission of other reports under this Rule.

SPV RULE 22 – IMPLEMENTING RULES AND REGULATIONS

In addition to these IRR approved by the Congressional Oversight Committee, the Commission, BSP, DOF and BIR may issue separate circulars/issuances that will apply exclusively to the institutions under their respective jurisdiction which shall not be inconsistent to these IRR.

SPV RULE 23 – PRIMARY IMPLEMENTING AGENCY

The Commission shall be the primary implementing agency of the Act and for its effective implementation, it shall have the authority to enlist the assistance of any branch, any department, bureau, office, agency or instrumentality including its personnel, facilities and resources.

SPV RULE 24 – PENALTIES

Any person who violates any of the provisions of these Rules or the provisions of the Act, or any person who, in a registration statement, notice, certification or plan filed under these Rules, 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) nor more than One Million Pesos (P1,000,000) 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 Rule 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 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.

SPV RULE 25 – APPLICABILITY CLAUSE

The provisions of the SPV Act shall be applicable to ROPOAs and NPLs that have become non-performing as of June 30, 2002.

The NPLs shall include:

- (a) loans whose principal and/or interest have remained unpaid for at least one hundred eighty (180) days after they have become past due under existing BSP rules and regulations or any of the events of default under the loan agreement has occurred;
- (b) items in litigation which are NPLs before June 30, 2002 for which collection and foreclosure cases have been filed, and
- (c) restructured NPLs before June 30, 2002 which do not meet the requirements to be treated as performing loans under existing BSP rules and regulations.

SPV RULE 26 – CONSCIENCE CLAUSE

Nothing in the Act shall be construed to condone or exempt from any liability any person responsible for acts or omissions constituting unsound business practices or mismanagement.

SPV RULE 27 – USE OF REGISTRATION FEES

To carry out the purposes of the 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 SRC.

SPV RULE 28 – EFFECTIVITY

These Rules shall take effect fifteen (15) days after publication in any newspaper of general circulation.

APPROVED, this 19th day of March, 2003 in the City of Makati

BY THE CONGRESSIONAL OVERSIGHT COMMITTEE ON THE SPECIAL PURPOSE VEHICLE ACT

HOUSE OF REPRESENTATIVES

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