

SENATE

P. S. RES. NO. 1337

Introduced by Senator Juan Ponce Enrile

RESOLUTION

DIRECTING THE SENATE COMMITTEE ON TRADE AND COMMERCE AND THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED ANOMALOUS MULTI-BILLION LAND TRANSACTION BETWEEN CAPITOL HILLS GOLF & COUNTRY CLUB, INC. (CHGCCI) AND AYALA LAND INC. (ALI), WITH THE ALLEGED CULPABLE COMPLICITY AND/OR NEGLIGENCE OF THE SECURITIES AND EXCHANGE COMMISSION (SEC) IN FAILING TO EXERCISE ITS JURISDICTION TO PROTECT THE RIGHTS AND INTERESTS OF THE STOCKHOLDERS OF CHGCCI, WITH THE END IN VIEW OF COMING UP WITH REMEDIAL MEASURES TO PREVENT THE OCCURRENCE OF SIMILAR TRANSACTIONS IN THE FUTURE

WHEREAS, the minority stockholders of Capitol Hills Golf & Country Club, Inc. (CHGCCI) have brought to the Senate's attention the alleged anomalous, immoral, unconscionable and illegal multi-billion land transaction entered into by CHGCCI with Ayala Land Inc. (ALI) which started way back in 1996 or more than a decade ago;

WHEREAS, despite the order of the proper trial court to produce and present the supposed two-thirds (2/3) proxy votes of the stockholders of CHGCCI approving the challenged Memorandum of Agreement (MOA) covering the scandalous land transaction, the corporate secretary of CHGCCI has refused and failed to comply with the court order on the pretext that the alleged proxies in his custody have been lost or stolen;

WHEREAS, ALI implemented and virtually completed the subdivision project known as "Ayala Hillside Estate" and sold subdivision lots to the public, knowing fully well that its transaction with CHGCCI is flawed and illegal with pending judicial actions challenging its validity for lack of authority on the part of CHGCCI to enter into said transaction, and which, as a result, depleted the land assets of CHGCCI without a fair return and rendered CHGCCI as a golf club with virtually no golf course;

WHEREAS, ALI cannot produce any legal and valid documents to justify its implementation of the MOA and, moreover, ALI maliciously disbursed millions of pesos initially in the amount of seventy-five million pesos (Php75,000,000.00) under BPI Check No. 724906, signed by Francisco Licuanan and Merceditas Nollojo of ALI, purportedly in favour of CHGCCI, suspiciously through a conduit corporation, Pacific Asia Capital Corporation headed by Mark Dayrit, and followed by other huge amount and the subject amounts which have not been accounted for by the concerned responsible officials of CHGCCI despite repeated demands from concerned stockholders;

WHEREAS, in the MOA or joint venture agreement, CHGCCI's contribution consisted of prime land totalling 220,000 square meters more or less conservatively valued at about P20,000.00 per sq. m. [valued at four billion four hundred million pesos (Php 4,400,000,000.00)], and ALI's contribution consisted of development cost at about P4,000.00 per sq. m., costing about eight hundred eighty million pesos (Php 880,000,000.00);

WHEREAS, while CHGCCCI's contribution is five (5) times more than ALI's, the sharing of the proceeds was divided into sixty percent (60%) for ALI and only forty percent (40%) for CHGCCCI, which is grossly and onerously disadvantageous to CHGCCCI;

WHEREAS, although the business transaction or agreement entered into by CHGCCCI with ALI is private in character, it is also imbued with public interest considering that the entities involved are registered or listed corporations. Furthermore, the business transaction or agreement entered into by the corporations involved had to pass through different government agencies in the course of its implementation;

WHEREAS, the Securities and Exchange Commission (SEC) stands accused of being involved in the alleged land scam, either by indirect complicity and/or culpable neglect in contumaciously failing to exercise its jurisdiction and its regulatory, supervisory, visitorial and pre-emptive powers;

WHEREAS, the culpable acts and omissions of the responsible officials of the SEC, if proven, may constitute violations of the Anti-Graft and Corrupt Practices Act (RA 3109) and the Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713);

WHEREAS, belatedly, and perhaps to cover-up its failures and unjust inaction on the matter, the SEC has recently filed a criminal complaint against some officers and directors of CHGCCCI before the Department of Justice for violation of the Section 48 of the Revised Securities Act or Republic Act No. 8799, as amended, in relation to Section 68 of the Implementing Rules and Regulations of the Securities Regulation Code, which case is related to the alleged anomalous transaction entered into by CHGCCCI with ALI;

WHEREAS, notwithstanding the filing of said criminal case, the minority stockholders of CHGCCCI claim that the SEC, as government watchdog over all corporations, has failed to do and perform its mandated duty, since the anomaly had been repeatedly brought to its attention as early as 1996;

WHEREAS, the minority stockholders of CHGCCCI likewise claim that the SEC has been selective in the prosecution of said criminal case because of the exclusion of ALI, among other entities and personalities involved, since ALI is an indispensable principal in the alleged land scam;

WHEREAS, the minority stockholders of CHGCCCI presented substantial evidence showing collusion or conspiratorial acts and omissions on the part of responsible officials of the SEC in the performance of their respective official duties and functions as provided for by law;

WHEREAS, based on available documents, it appears that there were irregularities committed in the execution and implementation of the assailed business transaction or agreement between CHGCCCI and ALI which may have been participated in and/or condoned principally by the SEC and its responsible officers who failed to protect the rights and interests of the minority stockholders of CHGCCCI;

WHEREAS, the Philippine Senate recognizes the importance of, encourages and promotes transparency and accountability in any undertaking, especially when government agencies and its responsible officials are involved;

WHEREAS, the Philippine Senate similarly acknowledges the important role of business in the national growth and economy of our country, thus, the need to protect the investing public from any anomalous or illegal transactions which are prejudicial to their rights and interest;

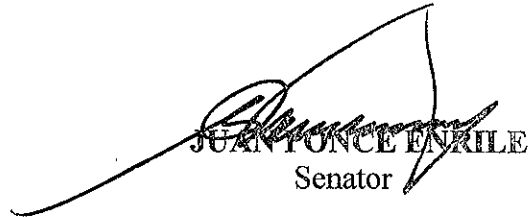
WHEREAS, the alleged injustices and corruption being committed against the complainants have not been addressed not only because of the culpable inaction of government

functionaries but possibly because of some inadequacies in existing laws wherein remedial legislation is imperative;

WHEREAS, all of the perpetrators of the alleged multi-billion land transaction between CHGCCCI and ALI, including the responsible officials of the SEC who may have colluded or conspired with or condoned the acts of the perpetrators, must be exposed consistent with the tenets of good governance and transparency;

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, that the Senate Committee on Trade and Commerce, and the Committee on Accountability of Public Officers and Investigations to conduct an inquiry, in aid of legislation, the alleged anomalous multi-billion land transaction between Capitol Hills Golf & Country Club, Inc. and Ayala Land, Inc., with the alleged culpable complicity and/or neglect of the Securities and Exchange Commission in failing to exercise its jurisdiction to protect the rights and interests of the stockholders of CHGCCCI, with the end in view of coming up with remedial measures to prevent the occurrence of similar transactions in the future

Adopted ,



JUAN PONCE ENRILE
Senator