


14 DEC -9 P 4 :24

SENATE
S. B. 2503

RECEIVED BY: 

Introduced by Senator Poe

AN ACT
ESTABLISHING THE PUBLIC ASSETS MANAGEMENT CORPORATION OF THE PHILIPPINES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES

EXPLANATORY NOTE

One of the less visible yet very significant aspects of the justice system is the forfeiture of ill-gotten wealth and the seizure of proceeds and instruments of crime. In many cases, despite securing the conviction of an accused, the State could not claim a complete and meaningful victory because the criminal had already spirited away or consumed the fruits of his/her wrongdoing. Indeed, the interest of the State lies not only in ensuring that those who perpetrate unlawful activities will be punished accordingly. The State has an equally compelling interest in preventing criminals from profiting from the objects of their crime, and recovering the said objects for the benefit of the offended parties and the public in general.

Currently, there exists a regime of asset forfeiture and seizure embedded in the justice system. When violations of law and rules are committed, proceeds and instruments of crimes can be seized and eventually forfeited in favor of the State in the course of criminal and/or administrative proceedings. On the other hand, properties acquired by public officials above and beyond their legitimate income can be recovered by way of a civil action for forfeiture under Republic Act No. 1379.

This is, however, only the front end of the system. Even if there are sufficient legal provisions for forfeiting assets, if the State is ill-equipped to manage, preserve and administer them, it cannot fully maximize the benefits of the laws. It is therefore imperative that the State devise a mechanism to efficiently and economically manage or dispose of seized or forfeited assets so that their values can be optimized for the good of the public.

Under the present set-up, the management of assets under the custody of the government is neither systematic nor rational. Asset management is considered a mere auxiliary function of various government agencies; it is deemed merely incidental to said agencies' primary legal mandates. Being a highly technical and highly specialized independent field, asset management should be handled by qualified professionals, not by law enforcers, lawyers, prosecutors or judges.

This Bill seeks to fill this gap in the justice system by strengthening the back end of the criminal prosecution process – the management, preservation, liquidation and disposition of ill-gotten wealth and of instruments and proceeds of crimes. This Bill establishes the Public Assets Management Corporation of the Philippines – a centralized and specialized state corporation that

will serve as custodian and administrator of seized or forfeited assets that are the subject of criminal, administrative or civil actions. To preserve the value of seized assets, the Corporation will also be given powers to sell or dispose of them with the authority of the court, even prior to a final order of forfeiture, when it is in the best interests of justice to do so. Agencies currently exercising administrative forfeiture powers may likewise choose to turn over forfeited properties to the Corporation to produce better yields or returns.

The benefits of delegating the management of seized and forfeited assets to a state corporation are four-fold: (1) it creates an independent revenue stream for the government and facilitates the efficient, economical, transparent, centralized and optimal liquidation or disposition of assets; (2) it eases the burdens of law enforcement agencies and the courts regarding the preservation and management of seized or forfeited assets, thereby allowing them to focus on their primary legal mandates and competencies; (3) it avoids conflicts of interests by taking the asset management function out of the formal justice process being handled by law enforcers, prosecutors and judges; and (4) it professionalizes the management of seized or forfeited assets by letting independent and highly-qualified industry practitioners handle the technical aspects of asset preservation, valuation, liquidation and disposition, on behalf of the public.

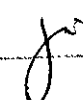
The pursuit of justice against criminals and corrupt public officials must be done within a tight and closed loop. The State should ensure the vigor not only of the law enforcement, prosecution and judicial pillars, but also of the asset forfeiture and asset management regimes so that all crimes can truly be high-risk and low-reward activities.

Considering all the foregoing, approval of this bill is earnestly sought.


GRACE POE

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**AN ACT
ESTABLISHING THE PUBLIC ASSETS MANAGEMENT CORPORATION OF THE
PHILIPPINES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES**

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

1 **SECTION 1. Short Title.** – This Act shall be known as the Charter of the Public
2 Assets Management Corporation of the Philippines.

3
4 **SECTION 2. Declaration of Policy.** – It is hereby declared the policy of the State to
5 ensure the efficient, economical, systematic, transparent and optimal preservation,
6 administration, management, liquidation and disposition of all assets seized or forfeited in
7 favor of the government in the course or as a consequence of criminal, administrative and
8 civil actions.

9
10 **SECTION 3. Creation of the Public Assets Management Corporation of the Philippines.**
11 – There is hereby created an independent central public assets management authority, which
12 shall be a government-owned body corporate attached to the Department of Finance (DOF) to
13 be known as the Public Assets Management Corporation of the Philippines (the
14 Corporation). It shall have the primary responsibility and objective of administering the
15 country's asset management regime, ensuring the proper and prudent disposition of all
16 assets seized or forfeited in favor of the State.

17
18 **SECTION 4. Corporate Governance.** – The Corporation shall be governed by a Board
19 of Directors composed of the following:

- 20
21 (a) The Secretary of Finance, as *ex officio* Chair;
22 (b) The Secretary of Budget and Management as *ex officio* Vice Chair;
23 (c) Three (3) members with backgrounds in banking and financial services, insurance,
24 real estate, property appraisal, engineering and other technical fields, to be appointed
25 by the President of the Philippines and to serve for a term of five (5) years; and
26 (d) Two (2) members with backgrounds in general business or other similar areas, to be
27 appointed by the President of the Philippines and to serve for a term of five (5) years.

28
29 The operations and management of the Corporation shall be conducted by an
30 Executive Committee composed of the following:

- 31
32 (a) A President;
33 (b) An Executive Vice President;
34 (c) A Senior Vice President for Operations;
35 (d) A Senior Vice President for Finance;
36 (e) A General Counsel and Corporate Secretary; and

1 (f) Three (3) Vice Presidents in charge of Asset Management, Asset Valuation and Asset
2 Liquidation/Disposition; all of whom shall be appointed by the Chair upon
3 endorsement by the Board of Directors.
4

5 **SECTION 5. Corporate Powers.** – The Corporation shall have the following
6 corporate powers:
7

8 (a) Accept and take title to, custody over and possession of such assets and other
9 properties seized and/or forfeited by law enforcement, judicial and other
10 governmental entities in favor of the State in the course of criminal, civil,
11 administrative, anti-corruption, anti-money laundering or similar proceedings, subject
12 to the following rules:
13

14 1. *Assets seized by administrative agencies.* In cases of administrative forfeiture, the
15 forfeiting agency has the option of either:
16

17 1.1. disposing of forfeited assets in accordance with the authority inherent in
18 their law enforcement mandates and pursuant to their established systems and procedures, or
19

20 1.2. turning over the same to the Corporation, especially in cases where the
21 optimal management or disposition of assets require technical expertise and competence;
22

23 2. *Assets forfeited in favor of the State.* In cases where assets have been forfeited in
24 favor of the State by virtue of a final and executory order of a court, the
25 Corporation shall automatically take custody over the same for proper
26 administration and/or disposition; and
27

28 3. *Assets seized and subject of ongoing litigation.* In cases where assets are seized in
29 connection with an ongoing criminal or forfeiture litigation, said assets shall be
30 considered *in custodia legis* and may be placed under the physical custody of the
31 Corporation, the agency which seized the same, or such other person or office as
32 the court may designate, in which case, the designated custodian is deemed
33 constituted as an agent of the court.
34

35 3.1. Prior to an official designation of a custodian by the court, seized assets
36 are deemed *ipso jure* under the accountability and fiduciary responsibility of the agency
37 which seized the same, or the agency with the duty to take possession thereof in
38 accordance with existing laws and rules.
39

40 3.2. Upon motion by any interested party, including the Corporation, the
41 court shall conduct a summary hearing, to be concluded within twenty (20) days from the
42 filing of such motion, to determine whether seized assets should be sold or disposed of, if
43 doing so would best serve the interests of justice. The court must render a ruling on the
44 motion no later than ten (10) days from the conclusion of the summary hearing.
45

46 3.3. In the event that the seized assets are liable to progressive wasting,
47 dissipation, devaluation, depreciation or deterioration, or cannot reasonably be conserved in a
48 cost-efficient manner, the court shall order a disposition *pendente lite* unless it is established by
49 competent evidence during the summary hearing that such disposition will cause undue injury
50 or will adversely affect the substantive rights of the parties or any third party,
51 *provided*, that an order of the court to sell or dispose of seized assets *pendente lite*
52 shall not affect the trial of the case or be construed as an adjudication of the merits of the
53 parties' claims and defenses.
54

55 3.4. The proceeds of the sale of seized assets disposed of *pendente lite* shall
56 be kept in a separate account and turned over to the custody of the court, for eventual release to
57 the prevailing party or to whoever may be adjudged as lawfully entitled thereto.

- 1
2 (b) Enter into contracts and/or execute any deed or act in furtherance of its mandate to
3 efficiently, economically and prudently manage, administer, preserve, appraise,
4 liquidate and/or dispose of assets under its custody;
5
6 (c) Execute and deliver, on behalf of the Government, the deeds of sale, contracts and
7 other instruments as may be necessary or appropriate to convey title to such assets;
8
9 (d) Sell or dispose of seized or forfeited assets, subject to the rules provided in paragraph
10 (a) of this Section, without need of securing prior clearances from other governmental
11 entities, *provided*, that all such transactions shall be subject to subsequent review
12 under existing audit rules and regulations, and shall be guided by principles of
13 fairness, prudence, accountability and transparency;
14
15 (e) Construct, own, lease, operate and maintain various forms of properties as well as
16 infrastructure facilities;
17
18 (f) Receive donations, grants, bequests and assistance of all kinds from local and foreign
19 governments and private sectors and utilize the same;
20
21 (g) Hire and retain such personnel complement as may be necessary for the execution of
22 its mandate; engage external services as the exigencies of particular cases may
23 require, including, but not limited to, technical consultants, accountants, auditors,
24 counsels, appraisers, risk managers, curators, conservationists and others;
25
26 (h) Adopt, amend, or change its by-laws; to adopt, alter and use a seal; to sue; and to
27 exercise the general powers of a corporation mentioned in the Corporation Code of
28 the Philippines, insofar as such powers are not inconsistent or incompatible with the
29 provisions of this Charter; and
30
31 (i) Conduct any such act, consistent with law, for the preservation of any seized or
32 forfeited asset, consistent with the professional and economic management of the
33 same.
34

35 **SECTION 6. *Personnel.*** – The Board of Directors shall provide for an organization and
36 staff of officers and employees of the Corporation and, upon recommendation of the President,
37 fix their remunerations and other emoluments. All positions in the Corporation, including
38 consultancies, shall be governed by the compensation, position classification system and
39 qualification standards approved by the Board of Directors based on a comprehensive job
40 analysis of actual duties and responsibilities. The compensation plan shall be comparable to
41 the prevailing compensation plans in the private sector and shall be subject to periodic review
42 by the Board of Directors once every two (2) years, without prejudice to yearly merit reviews or
43 increases based on the Corporation's productivity and profitability. The Corporation shall,
44 therefore, be exempt from existing laws, rules, and regulations on compensation, position
45 classification and qualification standards. The Corporation shall, however, endeavor to make its
46 system conform as possible to the principles under the Compensation and Position Classification
47 Act of 1989.
48

49 No officer or employee of the Corporation subject to Civil Service Law shall be
50 dismissed except for cause as provided by law.
51

52 **SECTION 7. *Proceeds of Operations.*** – Proceeds derived from the management or
53 disposition of seized or forfeited assets shall be remitted by the Corporation to the National
54 Treasury or to the proper governmental office or agency as may be required by law, *provided*,
55 the Corporation shall be entitled to deduct therefrom the following: (1) actual expenses incurred
56 in the conservation, administration and disposition of said assets, and (2) an amount equivalent to
57 ten per cent (10%) of the net proceeds as management fees. Management fees may be adjusted

1 based on relevant industry and market standards and considerations, *provided*, that any
2 adjustment must be subject to a detailed study and approved by the Board of Directors. All
3 earnings retained by the Corporation shall be properly and prudently administered with a view to
4 preserving its viability.

5
6 **SECTION 8. *Reimbursements for Expenses.*** – The Corporation shall be entitled to
7 reimbursement of actual and necessary costs for the maintenance, preservation and conservation
8 of seized assets in the event that a court of law adjudicates the same against the State, *provided*,
9 such costs shall be reimbursed by the prevailing party in an amount to be equitably fixed by the
10 court, *provided further*, the Corporation shall render periodic reports to the proper courts
11 regarding the status of assets under its custody and the costs incurred for their maintenance,
12 preservation and conservation, the same to be considered by the said courts for purposes of
13 fixing the amount of reimbursements due the Corporation at the conclusion of trial.

14
15 **SECTION 9. *Relations with Forfeiting Agencies.*** – The Corporation may enter into
16 Memoranda of Agreement with relevant forfeiting agencies to define their respective roles,
17 functions and financial responsibilities relative to the management, administration, liquidation
18 and disposition of seized or forfeited assets, and the transfer and payment of the proceeds of
19 disposition.

20
21 **SECTION 10. *Immunity from Suit.*** – The Corporation shall not be subject to criminal,
22 civil or administrative suits in connection with any act done or omitted by it in the regular
23 exercise of its functions and powers, *provided*, it acts in good faith and in consonance with the
24 State policy herein set forth.

25
26 **SECTION 11. *Third Party Claims.*** Any and all third party claims arising from any
27 seized or forfeited asset under the Corporation's custody shall be directed to, and resolved by,
28 such agency, tribunal or court hearing the case.

29
30 **SECTION 12. *Capitalization and Initial Funding.*** – The capital of the Corporation shall
31 be Five Hundred Million Pesos (Php 500,000,000.00), to be fully subscribed by the Government
32 of the Republic of the Philippines, One Hundred Million Pesos (Php 100,000,000.00) of which
33 shall be fully paid for by the Government within three (3) years upon the effectivity of this
34 Charter and the balance to be paid for within a period of three (3) years thereafter, in such
35 manner and form as the Government, through the Secretary of Finance and Secretary of Budget
36 and Management, may thereafter determine. The initial funding for the operations of the
37 Corporation for the first year following the effectivity of this Charter shall be advanced by the
38 DOF. Thereafter, the capitalization of the Corporation shall be paid for by the Government by
39 way of appropriations from Congress.

40
41 **SECTION 13. *By-Laws and Rules.*** – The Corporation shall adopt its by-Laws, rules of
42 procedure and other regulatory issuances within ninety (90) days from the effectivity of this
43 Charter, and as often thereafter as exigencies may require.

44
45 **SECTION 14. *Transitory Provision.*** – Upon the enactment of this Charter, the
46 Privatization and Management Office (PMO) shall wind up its affairs and be dissolved pursuant
47 to applicable laws and rules. The existing staff of the PMO, however, shall be absorbed by the
48 Corporation and converted *ipso jure* as its core unit, *provided*, all PMO officers and employees
49 who transition into the Corporation's staff shall not suffer any diminution of benefits or
50 disturbance of tenure, *provided further*, all PMO officers and employees who choose not to be
51 part of the Corporation shall be entitled to separation benefits as provided by law. For the
52 purpose of this Section, the Corporation shall not be regarded as a continuation of the corporate
53 personality of the PMO.

54
55 **SECTION 15. *Separability Clause.*** – If any provision of this Charter shall be declared
56 unconstitutional, any other provision not affected thereby shall remain in full force and effect.

1 **SECTION 16. *Repealing Clause.*** –All laws, decrees, orders, rules and regulations or
2 parts thereof inconsistent with this Charter are hereby repealed or modified accordingly.

3
4 **SECTION 17. *Effectivity.*** – This Charter shall take effect within fifteen (15) days after
5 its publication in at least two (2) newspapers of general circulation.

6
7 Approved,
8
9