

Companies with more than P50M in assets are “public”

A “public company”, as contemplated by the Securities Regulation Code (SRC), is not limited to a corporation whose shares of stock are publicly listed. The Supreme Court ruled that even entities like the Philippine Veterans Bank (PVB), whose shares are offered only to a specific group of people, are considered public companies if they have assets in excess of P50 Million and have 200 or more holders, at least 200 of which are holding at least 100 shares of a class of equity securities.

When the Securities and Exchange Commission (SEC) directed PVB to comply with reportorial requirements of a “public company” under the SRC and its implementing rules, the bank countered that it should not be considered a “public company” because it is a private company whose shares of stock are available only to a limited class or sector, i.e., to World War II veterans and their widows, orphans and compulsory heirs, and not to the general public. The bank also said that compliance with the reportorial requirements under the SRC, if the bank would be considered a “public company,” would compel the bank to spend approximately P40 Million just to reproduce and mail the Information Statement to its 400,000 shareholders nationwide.

The SEC rejected the bank’s explanation and assessed it a total penalty of P1,937,262.80 for failing to comply with the SRC reportorial requirements from 2001 to 2003.

The High Court said that the SRC and its implementing rules are clear and that private entities which surpass the P50 Million-asset and 200 stockholders benchmarks are required to comply with the reportorial requirements. In particular, the Amended Implementing Rules and Regulations define a “public company” as any corporation with a class of equity securities listed on an Exchange or with assets in excess of P50 Million Pesos and having 200 or more holders, at least two hundred 200 of which are holding at

least 100 shares of a class of its equity securities.

The Tribunal added that the bank’s obligation to provide its stockholders with copies of its annual report is in fact for the benefit of the veterans-stockholders, as it gives these stockholders access to information on the bank’s financial status and operations, resulting in greater transparency on the part of the bank. While compliance with this requirement will undoubtedly cost further outlay at the start, the benefit provided to the shareholders clearly outweighs the expense. For many stockholders, said the Court, these annual reports are the only means of keeping in touch with the state of health of their investments; and that to them, these are invaluable and continuing links with PVB that contribute to the transparency in public companies that the law envisions. (*Philippine Veterans Bank vs. Justina Callangan, etc. and/or the Securities and Exchange Commission, G.R. No. 191995, August 3, 2011.*)

“Floating Status” covers managerial employees

The Supreme Court recently held that the concept of floating status can be applied also to managerial employees who are not in the security services business.

Although the concept of floating status cannot be found in the Labor Code, it was introduced by analogy to Article 286 of the same law as regards bona fide suspension of business operations. This doctrine is normally applied to security services where, as a consequence of the termination or non-renewal of the security contract with a client, the security agency is left saddled with security guards without any available work assignments. Similar to Article 286, if the duration of the floating status exceeds 6 months, this shall be considered as constructive dismissal. Thus, security guards who are placed under floating status for less than 6 months are not deemed to have been constructively dismissed.

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BIR issues rules on REIT Law

The Bureau of Internal Revenue promulgated Revenue Regulations No. 13-2011 on 25 July 2011 which prescribe guidelines and conditions for the registration of a real estate investment trust, the application of tax incentives, the availability of dividend tax exemption by an overseas Filipino investor, and the consequences of non-compliance of the legal requirements.

REIT Law

On 17 December 2009, Republic Act No. 9856, otherwise known as “The Real Estate Investment Trust Act of 2009,” was enacted for the purpose of broadening the participation of Filipinos in the ownership of real estate as well as the use of the capital market as an instrument to help finance and develop infrastructure projects in the Philippines. Its implementing rules and regulations were issued by the Securities and Exchange Commission on 13 May 2010.

REIT is defined as a stock corporation established principally for the purpose of owning income-generating real estate assets. Although designated as a “trust”, it does not have the same technical meaning as “trust” under existing laws and regulations but was used only to adopt the internationally accepted description of the company in accordance with global best practices. It is governed by the Corporation Code of the Philippines and pertinent rules issued by the SEC. A corporation becomes a REIT and qualified to avail of the incentives under the Act when its REIT Plan is rendered effective by the SEC and its listing is approved.

OFW investments

Overseas Filipinos who want to invest in a REIT can subscribe to or purchase its shares of stock, subject to the guidelines and restrictions under the REIT’s plan and the requirements of the SEC. Investments and transactions with a REIT enjoy certain privileges and tax benefits to encourage the public and overseas Filipino investors to participate in this program.

Under the Regulation, a REIT shall register with the BIR, Large Taxpayers Regular Audit Division 3, and submit pertinent documents prior to commencement of its

business. For tax purposes, a REIT is considered as a taxpayer engaged in real estate business.

Tax incentives

The transfer of real property to REITs, including the sale or transfer of any and all security interest thereto, shall be subject to (50%) of the applicable documentary stamp tax. In case the transfer involves shares of stocks representing interest in real property, the DST shall be one-half (1/2) of the amount imposed under the Tax Code. In case the stock transferred is without par value, the amount of DST shall be equivalent to (12 ½%) of the DST paid upon original issuance of said stock.

Another tax benefit provided by the law is that dividends paid by a REIT, which is generally subject to a final tax of (10%), is exempt from tax if received by a domestic corporation, a resident foreign corporation or by an overseas Filipino investor for a period of seven (7) years from the date of effectivity of the BIR regulation, in the case of the latter.

A REIT shall likewise be taxable on all income derived from sources within and without the Philippines at the applicable income tax rate of 30% but in no case shall be subject to a minimum corporate income tax under the Tax Code. Dividends allowed as deductions during the taxable year shall pertain to dividends actually distributed out of the REIT’s distributable income at any time after the close of but not later than the last day of the fifth month from the close of the taxable year.

All income payments subject to the expanded withholding tax received by a REIT are also subject to lower creditable withholding tax rate of 1%. Cash or property dividends paid by a REIT shall be subject to a final tax of (10%), unless otherwise specified in the Regulation.

As regards value-added tax, a REIT is covered on its gross sales from any disposal of real property, and on its gross receipts from rental of such real property. However, it shall not be considered as a dealer in securities and shall not be subject to VAT on its sale, exchange or transfer of securities forming part of its real estate-related assets.

New Truth in Lending rules released

In an effort to further enhance credit transparency and bolster consumer protection, the Monetary Board on issued Circular No. 730, Series of 2011 entitled “Updated Rules Implementing the Truth in Lending Act to Enhance Loan Transaction Transparency.”

The declared policy of the State to protect its citizens from a lack of awareness of the true cost of credit led to the enactment in Republic Act No. 3765, otherwise known as “Truth in Lending Act”. The Act assures full disclosure by requiring the lender to give the borrower all the credit details in a clear statement in writing prior to the consummation of the transaction, in accordance with rules and regulations prescribed by the Board.

The new Circular, which took effect on 2012, amended certain provisions on the method of computing interests, definition of terms, information to be disclosed, and posting requirements of the revised format of disclosure statement.

Method of Computing Interest

Pursuant to the new Circular, banks may only charge interest based on the outstanding balance of a loan at the beginning of an interest period. For a loan where principal is payable in installments, interest per the installment period shall be calculated based on the outstanding balance of the loan at the beginning of each installment period. All loan-related documents shall show repayment schedules in a manner consistent with the new circular. Furthermore, the creditors are required to make their marketing materials and presentations consistent with the new circular.

Definition of Terms

Under the new Circular, “finance charge” includes interest, fees, service charges, discounts,

and such other charges incident to the extension of credit.

Simple annual rate is the uniform percentage which represents the ratio between the finance charge and the amount to be financed under the assumption that the loan is payable in one year with single payment upon maturity and there are no up-front deductions to principal.

For loans with terms different from the above assumptions, the effective annual interest rate (EIR) shall be calculated and disclosed to the borrower as the relevant true cost of the loan comparable to the concept of simple annual rate. For loans with contractual interest rates stated on monthly basis, the effective interest rate may be expressed as a monthly rate.

In accordance with the Philippine Accounting Standards definition, effective interest rate is the rate that exactly discounts estimated future cash flows through the life of the loan to the net amount of loan proceeds. According to the Bangko Sentral ng Pilipinas, computing the EIR in accordance with the PAS definition prohibits charging flat interest rates and other methods that misleadingly projects to consumers a lower contractual interest rate.

Information to be disclosed

The format of disclosure statement was further revised to reflect present industry practices, specifically targeted towards small business, retail and consumer loans, wherein borrowers are often victimized due to lack or improper disclosure of information on the loan transactions. As a general rule, loan terms shall be disclosed to all types of borrower. For small business/retail/consumer credit, the following are the minimum information to be disclosed:

- a. The total amount to be financed;
- b. The finance charges expressed in terms of pesos and centavos;
- c. The net proceeds of the loan; and
- d. The percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate or an effective annual interest rate. EIR may also be quoted as a monthly rate in parallel with the quotation of the contractual rate.

In the case of Nippon Housing Philippines Inc. (Nippon) vs. Leynes, the High Court held to be valid the termination of a managerial employee who was placed on floating status after she expressed her desire to resign from her employment and was replaced due to the urgency of the work involved.

NHPI ventured into a building management business with Bay Gardens Condominium Corporation (Bay Gardens) as its first and only client. Nippon hired Maiah Angela Leynes as the property manager. Nippon issued a decision which disgruntled Leynes who went on emergency leave of absence in order to make arrangements with her lawyer to prepare her resignation letter. Nippon, upon the request of Bay Gardens, immediately hired a replacement for Leynes. She was placed under floating status because Nippon no longer has a similar position to offer her. Eventually, she was served a notice of termination on the ground of redundancy.

The Supreme Court said that Leynes was correctly placed under floating status. It was her rash announcement to resign that triggered the events which lead to her replacement. Considering the sensitive nature of her position and the critical stage of the project's business development, Nippon's immediate hiring of her replacement was justified by a legitimate business necessity. Nippon had no choice but to place her under floating status because it has no other similar position considering that it has only one client. Thus, her placement under floating status is not akin to constructive dismissal. (*Nippon Housing Philippines Inc. vs. Leynes*, G.R. No. 177816, August 3, 2011.)



The FNS Inter-Color Bowling Tournament rolled-off last 16 September 2011 with six teams competing for the bragging rights of being this year's bowling champions. Also at stake are the Bowler of the Year and High Game trophies. The bowler with a perfect of score of 300 will be awarded a brand new bowling bowl of his or her choice.

As of press time, teams led by Sig Fortun (Black Team), Myls Creencia (Red Team), Maricar Lazaro (Green Team) and Karl Castillo (Purple Team) have advanced to the play-offs.

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