

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. **5019**

Introduced by: **REP. RAUL V. DEL MAR**

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 criminal 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.



RAUL V. DEL MAR

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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:

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

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

SEC. 3. *Creation of the Public Assets Management Corporation of the Philippines.*

There is hereby created an independent central public assets management authority, which shall be a government-owned body corporate attached to the Department of Finance (DOF) to be known as the Public Assets Management Corporation of the Philippines (the Corporation). It shall have the primary responsibility and objective of administering the country's asset management regime, ensuring the proper and prudent disposition of all assets

seized or forfeited in favor of the State.

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

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

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

- (a) A President;
- (b) An Executive Vice President;
- (c) A Senior Vice President for Operations;
- (d) A Senior Vice President for Finance;
- (e) A General Counsel and Corporate Secretary; and
- (f) Three (3) Vice Presidents in charge of Asset Management, Asset Valuation and Asset Liquidation/Disposition; all of whom shall be appointed by the Chair upon endorsement by the Board of Directors.

SEC. 5. *Corporate Powers.* – The Corporation shall have the following corporate powers:

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

1. *Assets seized by administrative agencies.* In case of administrative forfeiture, the forfeiting agency has the option of either:
 - 1.1, disposing of forfeited assets in accordance with the authority inherent in their law enforcement mandates and pursuant to their established systems and procedures, or

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

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

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

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

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

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

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

(b) Enter into contracts and/or execute any deed or act in furtherance of its mandate to efficiently, economically and prudently manage, administer, preserve, appraise, liquidate and/or dispose of assets under its custody;

(c) Execute and deliver, on behalf of the Government, the deeds of sale, contracts and other instruments as may be necessary or appropriate to convey title to such assets;

(d) Sell or dispose of seized or forfeited assets, subject to the rules provided in paragraph (a) of this Section, without need of securing prior clearances from other governmental entities, *provided*, that all such transactions shall be subject to subsequent review under existing audit rules and regulations, and shall be guided by principles of fairness, prudence, accountability and transparency;

(e) Construct, own, lease, operate and maintain various forms of properties as well as infrastructure facilities;

(f) Receive donations, grants, bequests and assistance of all kinds from local and foreign governments and private sectors and utilize the same;

(g) Hire and retain such personnel complement as may be necessary for the execution of its mandate; engage external services as the exigencies of particular cases may require, including, but not limited to, technical consultants, accountants, auditors, counsels, appraisers, risk managers, curators, conservationists and others;

(h) Adopt, amend, or change its by-laws; to adopt, alter and use a seal; to sue; and to exercise the general powers of a corporation mentioned in the Corporation Code of the Philippines, insofar as such powers are not inconsistent or incompatible with the provisions of this Charter; and

(i) Conduct any such act, consistent with law, for the preservation of any seized or forfeited asset, consistent with the professional and economic management of the same.

SEC. 6. *Personnel.* – The Board of Directors shall provide for an organization and staff of officers and employees of the Corporation and, upon recommendation of the President, fix their remunerations and other emoluments. All positions in the Corporation, including consultancies, shall be governed by the compensation, position classification system and qualification standards approved by the Board of Directors based on a comprehensive job analysis of actual duties and responsibilities. The compensation plan shall be comparable to the prevailing compensation plans in the private sector and shall be

subject to periodic review by the Board of Directors once every two (2) years, without prejudice to yearly merit reviews or increases based on the Corporation's productivity and profitability. The Corporation shall, therefore, be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. The Corporation shall, however, endeavor to make its system conform as possible to the principles under the Compensation and Position Classification Act of 1989.

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

SEC. 7. *Proceeds of Operations.* – Proceeds derived from the management or disposition of seized or forfeited assets shall be remitted by the Corporation to the National Treasury or to the proper governmental office or agency as may be required by law, *provided*, the Corporation shall be entitled to deduct therefrom the following: (1) actual expenses incurred in the conservation, administration and disposition of said assets, and (2) an amount equivalent to ten per cent (10%) of the net proceeds as management fees. Management fees may be adjusted based on relevant industry and market standards and considerations, *provided*, that any adjustment must be subject to a detailed study and approved by the Board of Directors. All earnings retained by the Corporation shall be properly and prudently administered with a view to preserving its viability.

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

SEC. 9. *Relations with Forfeiting Agencies.* – The Corporation may enter into Memoranda of Agreement with relevant forfeiting agencies to define their respective roles,

functions and financial responsibilities relative to the management, administration, liquidation and disposition of seized or forfeited assets, and the transfer and payment of the proceeds of disposition.

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

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

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

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

SEC. 14. *Transitory Provision.* – Upon the enactment of this Charter, the Privatization and Management Office (PMO) shall wind up its affairs and be dissolved pursuant to applicable laws and rules. The existing staff of PMO, however, shall be absorbed by the Corporation and converted *ipso jure* as its core unit, *provided*, all PMO officers and employees who transition into the Corporation's staff shall not suffer any

diminution of benefits or disturbance of tenure, *provide further*, all PMO officers and employees who choose not to be part of the Corporation shall be entitled to separation benefits as provided by law. For the purpose of this Section, the Corporation shall not be regarded as a continuation of the corporate personality of the PMO.

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

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

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

Approved,