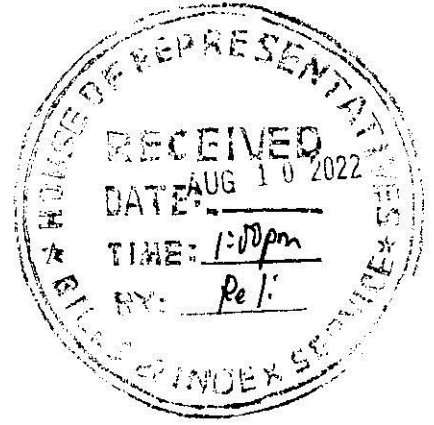


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City

NINETEENTH CONGRESS
First Regular Session

House Bill No. 3444



Introduced by: **REPRESENTATIVE EDWIN L. OLIVAREZ**

EXPLANATORY NOTE

One of the most damaging effects of the COVID-19 pandemic is the decline in the economy of the country. The pandemic caused a huge halt on the economic activities that damaged numerous businesses and industries. Considering that financial institutions play a huge part in the development of the country, it is only necessary that this portion's financial health be protected.

This Bill aims to extend support to financial institutions in order to be given an avenue to improve their financial stability and in effect become channels for a holistic economic upsurge for our country. Furthermore, this Bill proposes the enactment of the Financial Institution Strategic Transfer Law which is designed to rectify the injurious effects of the COVID-19 pandemic through helping in their bad debt resolution and management of non-performing assets.

In view of the foregoing, the passage of this Bill is earnestly sought.

EDWIN L. OLIVAREZ

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Introduced by: **REPRESENTATIVE EDWIN L. OLIVAREZ**

**“THE PHILIPPINE BANKING INDUSTRY RESILIENCY ACT AGAINST
COVID-19 PANDEMIC”**

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

SECTION 1. Short Title - This Act shall be known as the “*Financial Institutions Strategic Transfer (FIST) Law*”.

SECTION 2. Declaration of Policy. – It is hereby the declared policy of State to:

- a. Develop and maintain a sound financial sector for the country;
- b. Address the non-performing asset problems of the financial sector;
- c. Encourage public and private sector investments in non-performing assets;
- d. Eliminate existing barriers in the acquisition of non-performing assets;
- e. Help in the rehabilitation of distressed businesses with the end in view of contributing to economic value added; and
- f. Improve the liquidity of the financial system which can be harnessed to propel economic growth and maintain financial stability.

SECTION 3. Definition of Terms. – For purposes of this Act, the term:

- a. “*Approval Certificate*” shall mean the certificate of approval or authority issued by the Commission to an application by a Financial Institutions Strategic Transfer Corporation (FISTC) to issue Investment Unit Instruments (IUIs) pursuant to the provisions of this Act.
- b. “*Approved Plan*” shall mean an FISTC Plan for which an Approval Certificate has been issued by the Commission.
- c. “*BSP*” shall refer to the Bangko Sentral ng Pilipinas.
- d. “*Commission*” refers to the Securities and Exchange Commission.
- e. “*Financial Institutions or FIs*” shall mean credit-granting institutions which shall be limited to the following:
 - i. The BSP;
 - ii. A bank as defined under Republic Act No. 8791, also known as “*The General Banking Law of 2000*”;

- iii. A financing house as defined under Republic Act No. 8556, also known as "*The Financing Company Act of 1998*";
 - iv. An investment house as defined in Presidential Decree No. 129, also known as "*The Investment Houses Law*";
 - v. A lending company as defined under Republic Act No. 9474, also known as "*Lending Company Regulation Act of 2007*";
 - vi. Government financial institutions (GFIs), which for purposes of this Act, refers to the National Home Mortgage Finance Corporation (NHMFC), Philippine Guarantee Corporation (PGC), Home Development Mutual Fund (HDMF), Social Security System (SSS), Government Service Insurance System (GSIS), Small Business Corporation (SBC), National Housing Authority (NHA), and such other GOCCs as may be included by the Secretary of Finance; and
 - vii. Other institutions licensed by the BSP to perform (i) quasi-banking functions and (ii) credit-granting activities, including but not limited to non-stock savings and loan associations, pawnshops, and non-bank credit card issuers.
- f. "*FISTC*" shall mean the Financial Institutions Strategic Transfer Corporation created pursuant to the provisions of this Act.
- g. "*FISTC Plan*" shall refer to the plan submitted to the Commission for its approval as pre-requisite to the issuance of an IUI.
- h. "*Investment Unit Instruments or IUIs*" shall refer to participation certificates, debt instruments or similar instruments issued by the FISTC and subscribed by Permitted Investors as provided in Section 11 hereof, pursuant to an Approved Plan: *Provided*, That these shall not include the instruments to be issued by the FISTC to the selling FIs as full or partial settlement of the non-performing assets transferred to the said FISTC: *Provided, further*, That such issuances of the DISTC shall not be considered as deposit substitutes: *Provided, finally*, That these shall not form part of the capital stock of FISTC.
- i. "*Non-Performing Assets or NPAs*" shall consist of the Non-Performing Loans and Real and Other Properties Acquired (ROPA) by FIs.
- j. "*Non-Performing Loans or NPLs*" refer to secured or unsecured loans, receivables, and other financial assets of similar nature, including restructured loans, which are considered credit-impaired as defined in the Implementing Rules and Regulations (IRR).
- k. "*ROPAs*" shall refer to real and other properties, other than those used for operating purposes or held for investment, acquired by an FI in settlement of loans and receivables, including real properties, shares of stocks, and security interest which have been acquired by way of dation in payment (*dacion en pago*) or judicial or extra-judicial foreclosure or execution of judgment or enforcement of security interest.
- l. "*True Sale*" shall refer to a sale wherein the selling FI transfers or sells its NPAs without recourse for cash or property to an FISTC, without prejudice to the FI and FISTC agreeing on sharing of profits, and subject to the following results:

- i. The transferor transfers full legal and beneficial title to and relinquishes effective control over the transferred NPAs; and
- ii. The transferred NPAs are legally isolated and put beyond the reach of the transferor and its creditors:

Provided, that the transferring GI shall not have direct or indirect management of the transferee FISTC: *Provided, further*, That the selling FI does not have ownership of more than ten percent (10%) in the transferee FISTC.

SECTION 4. *Financial Institutions Strategic Transfer Corporation.*

– An FISTC is a stock corporation organized in accordance with Republic Act No. 11232, otherwise known as “*The Revised Corporation Code of the Philippines*,” and the rules promulgated by the Commission for purposes of registering the FISTC: *Provided*, That if the FISTC will acquire land, at least sixty percent (60%) of its outstanding capital stock shall be owned by Philippine nationals pursuant to Republic Act No. 7042, as amended, otherwise known as the “*Foreign Investments Act*”. BSP, GFIs and GOCCs may create an FISTC subject to their respective charters and the approval of the Governance Commission for Government Owned or Controlled Corporations: *Provided*, That the limitations under Section 3(l) of this Act shall not apply to BSP and such GFIs or GOCCs.

SECTION 5. *Powers of an FISTC.* – An FISTC shall have the following powers:

- a. Invest in, or acquire NPAs or FIs;
- b. Engage third parties to manage, operate, collect and dispose of NPAs acquired from an FI;
- c. Rent, lease, hire, subject to security interest, mortgage, transfer, sell, exchange, usufruct, secure, securitize, collect rents and profits, and other similar acts concerning its NPAs acquired from an FI;
- d. In case of NPLs, to restructure debt, condone debt and undertake other restructuring related activities. In restructuring debt, the FISTC may reduce the principal, 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;
- e. Take, transfer or buy shares issued by the borrower, subject to the provisions of the Revised Corporation Code of the Philippines 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;

- f. Enter into dation in payment (*dacion en pago*) arrangements, foreclose judicially or extra-judicially and other forms of debt settlement involving NPLs;
- g. Spend funds to renovate, improve, complete or alter its NPA acquired from an FI;
- h. 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;
- i. Borrow money and issue other instruments of indebtedness for the purpose of paying operational and administrative costs;
- j. Guarantee credit, accept or intervene for honor the bills of borrowers;
- k. 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
- l. Engage the services of a third-party asset servicing company for the collection and receipt of the debt payments for debts under debt restructuring or business reorganization, management and disposition of assets of the FISTC in accordance with the rules, procedures and conditions prescribed by the Commission or by the courts. Except in the case of ROPAs whose redemption periods have already expired, the FISTC 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 servicing company.

SECTION 6. *Period for Filing of Application.* – Applications for the establishment and registration of an FISTC shall be filed with the Commission not beyond eighteen (18) months from the date of effectivity of the IRR promulgated pursuant to Section 23 of this Act: *Provides*, That the Secretary of Finance may extend the period by a maximum of eighteen (18) months.

Entities created under Republic Act No. 9182, as amended, are qualified to avail of the privileges and incentives under this Act, subject to compliance with the requirements prescribed in the IRR and the regulations that may be issued by the Commission.

SECTION 7. *Capitalization of an FISTC.* – An FISTC shall have adequate minimum capitalization in such amount as may be prescribed by the Commission.

SECTION 8. *Submission of FISTC Plan.* – After the establishment of an FISTC pursuant to Section 4 hereof, an FISTC Plan shall be submitted to the Commission for approval which shall include the following:

- a. Investment policies of FISTC;

- b. Contribution plan including the amounts and drafts of subscription documents;
- c. Features of the IUIs including the specific amount issued and/or to be issued;
- d. Rights of the holders of the IUIs;
- e. Draft agreements for the appointment of trustees and agents with respect to the IUIs and the NPLs acquired from an FI;
- f. Name of the external auditor of the FISTC;
- g. Roles and responsibilities of the trustees, advisors, loan servicers and property managers;
- h. Draft form of financial reports of the FISTC;
- i. Details of distribution policies;
- j. Methods for the increase and decrease of future fund contribution;
- k. Methods for the alteration or modification of the approved FISTC Plan;
- l. Methods for the liquidation and distribution of assets to the holders of IUIs;
- m. Details of credit enhancements like guarantees or standby letters of credit or advances that may be extended to the FISTC by an entity which shall not be the selling FI, its parent, subsidiaries or affiliates; and
- n. Such other documents or information as may be required by the Commission.

SECTION 9. *Approval.* - Upon approval of the FISTC Plan, the Commission shall issue an Approval Certificate stating that the application has been approved and that the IUIs may be issued.

SECTION 10. *Issuance of IUIs* - The FISTC may be allowed to issue IUIs subject to the rules and regulations the Commission is herein mandated to promulgate.

SECTION 11. *Permitted Investors.* - Any person may acquire or hold IUIs in an FISTC in the minimum amount of TEN MILLION PESOS (Php10,000,000.00): *Provided*, That an FISTC shall not be authorized to acquire the IUIs of another FISTC: *Provide, further*, That the parent, subsidiaries, affiliates or stockholders, directors, officers or any related interest shall not acquire or hold, directly or indirectly, the IUIs of the FISTC that acquired the NPAs of the FI.

SECTION 12. *Notice and Manner of Transfer of Assets.* -

- a. No transfer of NPLs to an FISTC shall take effect unless the FI concerned shall give prior to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or subject to security interest. Such notice shall be in writing and made in accordance with the Rules of Civil Procedure, as amended, and the IRR, at their last known address on file with the FI.

- b. The transfer of NPAs from an FI to an FISTC shall be subject to prior certification of eligibility as NPA by the appropriate regulatory authority having jurisdiction over its operations which shall issue its certification within forty-five (45) days from the date of application by the FI for eligibility.
- c. 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.

SECTION 13. Nature of Transfer. – All sales or transfers of NPAs to an FISTC shall be in the nature of a true sale after proper notice in accordance with the procedure as provided for in Section 12, without need for the borrower's consent: *Provided*, That GFIs' and GOCCs' disposition of assets shall be covered by special rules in the IRR: *Provided, further*. That after the sale, the FISTC shall assume all rights and obligations of the transferring FI.

SECTION 14. Issuance of Injunctive Relief Against Transfer of Assets. – No court, other than the Court of Appeals and the Supreme Court, shall issue any temporary restraining order, preliminary injunction, preliminary mandatory injunction, status quo order, stay order, commencement order, or any other issuance of injunctive relief against the transfer of NPAs from the FI to an FISTC, and from an FISTC to a third party, or dation in payment (*dacion en pago*) by the borrower or by a third party in favor of an FI or in favor of an FISTC, or judicial or extrajudicial foreclosure sales or execution sales of the FI or FISTC or collateral in settlement of NPLs.

Any restraining order, injunction, status quo order, stay order, commencement order, or any other issuance of injunctive relief issued in violation of this section is void and of no force and effect.

The provisions of the Rules of Court on injunctions insofar as these applicable and not inconsistent with the provisions of this Act shall govern the issuance and dissolution of restraining orders, injunctions, status quo orders or stay orders against said transfers.

SECTION 15. Tax Exemptions and Fee Privileges. – Any existing law to the contrary notwithstanding, the transfer of NPAs from the FI to an FISTC, and from an FISTC to a third party or dation in payment (*dacion en pago*) by the borrower or by a third party in favor of an FI or in favor of an FISTC shall be exempt from the following taxes:

- a. Documentary stamp tax on the abovementioned transfer of NPAs and dation in payment (*dacion en pago*) as may be imposed under Title VII of the National Internal Revenue Code of 1991, as amended by Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Act;

- b. Capital gains tax imposed on the transfer of lands and/or other assets treated as capital assets as designed under Section 39(A)(1) of the National Internal Revenue Code of 1997 as amended;
- c. Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to Revenue Regulation No. 2-98, as amended;
- d. Value-added tax on the transfer of NPAs as may be imposed under Title IV of the National Internal Revenue Code of 1997, as amended, or gross receipts tax under Title V of the same Code, whichever is applicable pursuant to regulations of the Bureau of Internal Revenue (BIR).

The abovementioned transfers shall also be subject to the following, in lieu of the applicable fees:

- i. Fifty percent (50%) of the applicable registration and transfer of fees on the transfer of real estate mortgage and security interest to and from the FISTC, as imposed in accordance with the existing circulars of the Land Registration Authority (LRA);
- ii. Fifty percent (50%) of the filing fees for any foreclosure initiated by the FISTC in relation to an NPA acquired from an FI, as prescribed by the Rules of Court; and
- iii. Fifty percent (50%) of the land registration fees prescribed under the existing circulars of the LRA

All sales or transfers of NPAs from the FIs to an FISTC or transfers from the FIs to an FISTC or transfers by way of dation in payment (*dacion en pago*) by the borrower or by a third party to the FI shall be entitled to the privileges enumerated herein for a period of no more than two (2) years from the date of effectivity of the IRR: *Provided*, That the Secretary of Finance may extend the period by a maximum of two (2) years.

Transfers from an FISTC to a third party of NPAs acquired by the FISTC within such two-year period, or within such extended period, or transfers by way of dation in payment (*dacion en pago*) by a borrower to the FISTC shall enjoy the privileges enumerated herein for a period of not more than five (5) years from the date of acquisition by the FISTC: *Provided*, That Secretary of Finance may extend such five-year period by a maximum of five (5) years: *Provided, further*, That properties acquired by an FISTC from GFIs or GOCCs which are devoted to socialized or low-cost housing shall not be converted to other uses.

The abovementioned tax exemptions, incentives, and fee privileges given to FIs and FISTC at the various stages of the transactions under this section shall likewise be extended to any individual in accordance with the IRR: *Provided*, That:

- i. The transaction is limited to a single family residential unit ROPA or NPL secured by real estate mortgage on a residential unit;
- ii. There shall only be one transaction consisting of one residential unit per individual;
- iii. The two-year transfer period, including its extension, and the five-year entitlement period granted to NPA, as may be extended by the Secretary of Finance, shall also apply to said single family residential unit.

SECTION 16. Additional Tax Exemptions and Fee Privileges. – To encourage the infusion of capital and/or financial assistance by the FISTC for the purpose of rehabilitating the borrower's business, the following additional tax exemptions and privileges shall be enjoyed:

- a. The FISTC shall be exempt from income tax on net interest income, documentary stamp tax and mortgage registration fees on new loans in excess of existing loans extended to borrowers with NPLs which have been acquired by the FISTC.
- b. In case of capital infusion by the FISTC to the borrower with NPLs, the FISTC shall also be exempt from the documentary stamp tax.

Provided, That the abovementioned tax exemptions and fee privileges shall apply for a period of not more than five (5) years from the date of acquisition of NPLs by the FISTC: *Provided, further*, That the Secretary of Finance may extend the period by a maximum of five (5) years.

SECTION 17. Privileges of Participating FIs. –

- a. Any loss that is incurred by the financial institutions as a result of the transfer of NPAs shall be treated as ordinary loss: *Provided*, That the accrued interest and penalties shall not be included as loss on said loss carry over from operations subject to the provisions of the National Internal Revenue Code of 1997 on net operating loss carry-over (NOLCO), except that the loss incurred by the FI from the transfer of NPAs within the two-year period from the effectivity of the IRR may be carried over for a period of five (5) consecutive taxable years immediately following the year of such loss: *Provided, further*, That for purposes of corporate gain or loss carry-over shall be subject to pertinent laws: *Provided, finally*, That the tax savings derived by FIs from the NOLCO shall not be made available for dividend declaration but shall be retained as a form of capital build-up. The BIR shall issue the applicable rules and regulations to effectively implement the provisions of this section.
- b. The regulatory authority concerned shall promulgate the necessary rules and regulations governing the treatment of any loss of the FIs in the books of account as a result of the transfer of the NPAs.

- c. In the case of non-bank GFIs and GOCCs enumerated in Section 3 hereof, the Department of Finance (DOF), in consultation with the Commission on Audit (COA), 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.

SECTION 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 Section 25 hereof. In addition, the offender shall refund to the government double the amount of the tax exemptions and privileges availed of under this Act, plus interest of twelve percent (12%) per annum from the date prescribed for its payment until the full payment thereof.

SECTION 19. Consumer Protection Mechanism. – The FISTC shall set up an appropriate consumer protection mechanism as may be prescribed in the IRR issued by the appropriate regulatory authority.

SECTION 20. Redemption Periods. – The redemption periods allowed to borrowers of banks under Section 47 of Republic Act No. 8791, also known as “The General Banking Law of 2000”, the Rules of Court, as well as other relevant laws for non-bank borrowers shall be applicable.

SECTION 21. Books of Accounts and Records. – The FISTC shall set and keep accurate accounts and internal financial controls and shall appoint an external auditor acceptable to the Commission in this regard. The Commission, the BSP, and the BIR may look into the books of accounts and records of the FISTC at any time.

SECTION 22. Reports. – The Commission, the regulatory authorities, and the BIR shall prescribe the submission of reports from the FISTC and the FIs for the proper implementation of this Act.

SECTION 23. Implementing Rules and Regulations. – Within thirty (30) days from the effectivity of this Act, the Commission, jointly with the BSP, the DOF, and the BIR, shall promulgate the necessary IRR for the effective implementation of this Act: *Provided*, That the Commission, BSP, DOF and BIR may issue separate regulations that will apply exclusively to the institutions under their respective jurisdiction. In drafting their separate regulations, the appropriate regulatory authorities may grant incentives and privileges as may be allowed by their respective charters and by this Act.

SECTION 24. Oversight Committee. – There is hereby created an Oversight Committee to oversee, monitor, and evaluate the implementation of this Act. The Oversight Committee shall be composed of three (3) members each from the House of Representatives (HOR) and from the Senate. The members of the HOR shall come from the Committee on Banks and Financial Intermediaries

while the members of the Senate shall come from the Committee on Banks, Financial Institutions and Currencies. The Oversight Committee shall be co-chaired by the Chairpersons of the HOR Committee on Banks and Financial Intermediaries and the Senate Committee on Banks, Financial Institutions and Currencies.

SECTION 25. *Primary Implementing Agency.* – The Commission shall be the primary implementing agency of this Act and for its effective implementation, it shall have the authority to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including GOCCs and GFIs which may include the use and transfer of its personnel, facilities and resources.

SECTION 26. *Penalties.* – Any person who violates any of the provisions of this Act, or any person who, in a registration statement, notice, certification or plan filed under this Act, 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 ONE HUNDRED THOUSAND PESOS (Php100,000.00) or not more than TWO MILLION PESOS (Php2,000,000.00) or imprisonment of not less than six (6) years or more than twelve (12) years, or both, at the discretion of the court, without prejudice to the penalties provided under Section 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 a juridical person, other than a bank or financial institution supervised by the BSP, the court may order the suspension or revocation of license. 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.

SECTION 27. *Applicability Clause.* – The provisions of this Act shall be applicable to assets that have become non-performing as of December 31, 2020: *Provided*, That the Secretary of Finance may extend the said period by a maximum of two (2) years.

SECTION 28. *Conscience Clause.* – Nothing in this Act shall be construed to condone or exempt from any liability any person responsible for acts or omissions constituting unsound business practices or mismanagement.

SECTION 29. *Use of Registration Fees.* – To carry out the purposes of this Act, the Commission shall retain and use all fees paid to it relative to the

establishment of an FISTC in addition to its annual budget and to what is provided for under Section 75 of the Securities Regulation Code.

SECTION 30. *Separability Clause.* – If any provision of this Act is held unconstitutional or invalid, all other provisions not affected thereby shall remain valid.

SECTION 31. *Repealing Clause.* – Republic Act No. 9182, as amended by Republic Act No. 9343, otherwise known as “The Special Purpose Vehicle (SPV) Act of 2002,” is hereby repealed. All laws, decrees, executive orders, rules and regulations or part thereof, which are inconsistent with this Act, are hereby repealed, amended or modified accordingly.

SECTION 32. *Effectivity.* – This Act shall take effect immediately upon its publication in the Official Gazette or in a newspaper of general circulation.

Approved,