



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session



HOUSE BILL NO. 6773

Introduced by Representative Irwin C. Tieng

EXPLANATORY NOTE

The Financial Institutions Strategic Transfer (FIST) Act of 2021 (Republic Act No. 11523) was intended importantly to strengthen the financial sector so that economic recovery can be achieved faster, and with more lasting positive effects because of the COVID 19 pandemic which has greatly affected the Philippines, as well the nations worldwide. The FIST Act was expected to strengthen the balance sheets of the financial institutions and restore their capability to perform their role as mobilizers of savings and investment and in providing the needed financial system liquidity to keep the economy afloat. Thus, it is essential that banks and other financial institutions are able to maintain their financial health to cushion the adverse economic impact of the COVID-19 pandemic for the country growth and development.

To date, however, the benefits under the FIST Act have not been maximized. The implementation of the FIST Act comes at a time when the operation and manpower of the financial institutions and participants for the FIST Act, including government regulatory bodies, were not in full capacity because of the effect of the existing pandemic and its working protocol. It is of public knowledge, not only in the Philippines, but worldwide that economic activity was at a standstill since the early part of 2020 up to early part of 2022 because of the pandemic which, unfortunately, is still a health threat issue even at this time. Given this predicament, all of the participants carried additional burden over and above the normal obstacles faced by the FIST Law.

The urgent concern of the participating financial institutions is that the deferral of the losses arising from the sale/transfer of Non-Performing Assets (NPAs) under the Act up to a maximum period of only five (5) years is too short for bank and other financial institutions to maintain their financial health. It will be recalled that with the antecedent SPV Law, the period of deferral was 10 years, which 10-year period was availed of by all SPV Law bank sellers. This very significant change in the actual implementation of the FIST Act – from an initial capital deferral period of 10 years, down to 5 years – has been the most significant challenge for many of the financial institutions, as their balance sheets, hammered by the effects of the COVID 19 pandemic, have been severely weakened.

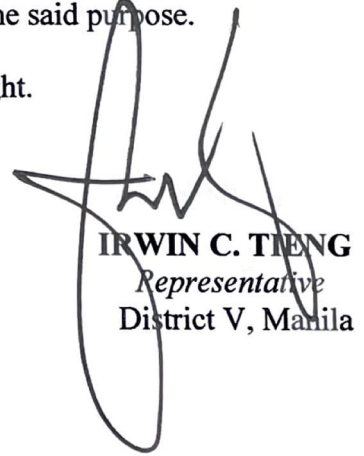
With the period for the availment of the benefits under the FIST Act coming to an end on February 18, 2023, participants under the FIST Act are very concerned about the impending deadline, even if they have already put in much resources towards the completion of their respective FIST transactions. It is also worth considering the degree of negotiation, documentation and processes involved in finalizing the sale/transfer of NPAs from FIs to FISTC. Given this predicament, all of the participants carried additional burden over and above the normal obstacles faced by the FIST Law.

If the operation of the SPV Law highly requires an amendatory act for it to meet its target, it is submitted that the FIST Law should likewise be given the same treatment. It is, therefore, crucial in helping the participating FIs and FISTC concerned that the period for the validity of the sale/transfer of NPAs under the FIST Act be appropriately extended for another two years from the effectivity of the intended amendatory act.

This bill proposes:

1. to extend period of validity for the sale/transfer of NPAs for another two (2) from the effectivity of the intended amendatory act;
2. to extend for three (3) more years the deadlines for the establishment of a FIST Corporation;
3. that losses of financial institutions arising from the sale/transfer of their NPAs be carried over for a period of ten (10) years, the same treatment of losses on non-performing assets of FIs accorded to them under the SPV Act of 2002; and
4. to extend the validity of the transfer of NPAs from financial institutions to FIST Corporations and from FIST Corporations to third parties, as well as the extension of the Tax Exemptions, incentives and Fee Privileges accorded on said transactions, in the same manner that SPV Law (RA 9182) was extended for the said purpose.

In view hereof, the immediate passage of this bill is earnestly sought.



IRWIN C. TIENG
Representative
District V, Manila



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**AN ACT AMENDING REPUBLIC ACT NO. 11523, OTHERWISE KNOWN AS AN
ACT ENSURING PHILIPPINE FINANCIAL INDUSTRY RESILIENCY AGAINST
THE COVID-19**

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

SECTION 1. Section 6 of Republic Act No. 11523 is hereby amended to read as follows:

"SEC. 6. *Period for filing of Applications.* - Applications for the establishment and registration of a FISTC shall be filed with the Commission within thirty-six (36) months from the date of effectivity of this **AMENDATORY Act**."

SECTION 2. Section 15 of the same Act is hereby amended to read as follows:

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

"(a) Documentary stamp tax on the abovementioned transfer of NPAs and dation in payment as may be imposed under Title VII of the National Internal Revenue Code of 1997, 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 defined 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 Bureau of Internal Revenue (BIR) 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 BIR.

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

"(a) Fifty percent (50%) of the applicable registration and transfer 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);

"(b) Fifty percent (50%) of the filing fees for any foreclosure initiated by the FISTC in relation to any NPA acquired from an FI, as prescribed by the Rules of Court; and

"(c) 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 a FISTC or transfers by way of dation in payment by the borrower or by a third party to the FI shall be entitled to the privileges enumerated herein for a period of not more than two (2) years from the date of effectivity of this **AMENDATORY** Act:

Transfers from a 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 by a borrower or by a third party 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, further,* That properties acquired by a FISTC from GFIs or GOCCs which are devoted to socialized or low-cost housing shall not be converted to other uses.

The 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; *Provided, That:*

(a) The transaction is limited to a ROPA that is either a single family residential unit or an empty lot, or to NPL secured by real estate mortgage on a residential unit or an empty lot;

(b) There shall only be one (1) transaction consisting of one (1) residential unit or empty lot per individual;

(c) The two-year transfer period, including its extension, and the five (5)-year entitlement period granted to NPA shall also apply to said single family residential unit or empty lot.

To prevent inordinate delay in the grant of incentives and exemption privileges, the Certificate of Eligibility duly issued by the appropriate regulatory agency is sufficient proof of the entity's entitlement thereto.

SECTION 3. Section 17 of the same Act is hereby amended to read as follows:

“SEC. 17. *Net Operating Loss Carry-Over (NOLCO) of participating FIs.* –

(a) Any loss that is incurred by an FI as a result of the transfer of an NPA within the two (2) year period from the effectivity of this Act or within such extended period 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 NOLCO. Such loss incurred by the FI from the transfer of NPAs within the two (2)-year period from the effectivity of this **AMENDATORY** Act may be carried over for a period of **TEN (10) CONSECUTIVE TAXABLE YEARS** immediately following the year of such loss: *Provided, further*, That for purposes of corporate gain or loss, the carry-over shall be subject to pertinent laws; **PROVIDED FURTHER, THAT THE BOOKING OF SUCH LOSSES OVER THE TEN (10) YEAR PERIOD BE CONSISTENT WITH THE BOOKING OF SUCH LOSSES ALLOWED TO THE FIS UNDER THE ANTECEDENT SPV LAW.** *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 Department of Finance (DOF), upon the recommendation of the BIR, shall issue the 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 accounts as a result of the transfer of the NPAs.

(c) In the case of GFIs and GOCCs enumerated in Section 3(3) hereof, the 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 accounts as a result of the transfer of their NPAs.”

SECTION 4. *Separability Clause*—If any provision of this Act shall be held invalid or unconstitutional, the remaining provisions not affected thereby shall continue to be in full force and effect.

SECTION 5. *Repealing Clause*—All laws, decrees, executive orders, proclamations, rules and regulations, and other issuances, or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 6. *Effectivity*—This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,