



Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



Circular Letter No.:	2022-08
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Supersedes:	NONE

CIRCULAR LETTER

TO : ALL DOMESTIC INSURANCE COMPANIES DOING BUSINESS IN THE PHILIPPINES

SUBJECT : GUIDELINES ON THE IMPLEMENTATION OF REPUBLIC ACT NO. 11523 OR THE "FINANCIAL INSTITUTIONS STRATEGIC TRANSFER (FIST) ACT"

WHEREAS, the Coronavirus Disease 2019 (COVID-19) pandemic has greatly affected nations worldwide, including the Philippines, and the measures adopted by the government to contain the outbreak have unavoidably caused serious economic setbacks and tremendous financial pressure on markets and industries. Because of the unpredictability of the course and outcome of the health crisis, it is necessary to lay down the appropriate policies not only to marshal available resources towards the most affected and vulnerable sectors but more importantly, to strengthen the financial sector so that economic recovery can be achieved faster, and with more lasting positive effects;

WHEREAS, the State recognizes the role of insurance companies as mobilizers of savings and investments and in providing the needed financial system liquidity to keep the economy afloat. Thus, it is essential that insurance companies are able to maintain their financial health in order to cushion the adverse economic impact of the COVID-19 pandemic;

WHEREAS, on 16 February 2021, Republic Act No. 11523, otherwise known as the "Financial Institutions Strategic Transfer (FIST) Act", was enacted into law as part of the country's response to the adverse economic effects of the COVID-19 pandemic;

WHEREAS, on 26 March 2021, the Department of Finance (DOF), Bangko Sentral ng Pilipinas (BSP), Securities Exchange Commission (SEC), and Bureau of Internal Revenue (BIR), issued the Implementing Rules and Regulations (IRR) of the Financial Institutions Strategic Transfer (FIST) Act;

WHEREAS, insurance companies are identified under the FIST Act and its IRR as one of the credit-granting institutions that may invest in, as well as transfer non-performing assets (NPAs) to, Financial Institutions Strategic Transfer Corporations (FISTCs). Hence, there is a need for this Commission to prescribe rules and regulations governing such investments in and transfers of NPAs to FISTCs;

NOW, THEREFORE, pursuant to the statutory authority of the Insurance Commissioner under Section 437 of the Insurance Code of the Philippines, as amended by Republic Act No. 10607, to issue rulings, instructions, circulars, orders, and decisions as may be deemed necessary to secure the enforcement of the provisions of the same Code and to ensure efficient regulation of the insurance industry in accordance with global best practices and to protect the insuring public, the following *“Guidelines on the Implementation of Republic Act No. 11523 or the Financial Institutions Strategic Transfer (FIST) Act”* are hereby adopted and promulgated, to wit:

Section 1. Definitions. – As used in this Circular Letter, the term:

- (a) *“Act”* is Republic Act No. 11523 also known as the *“Financial Institutions Strategic Transfer (FIST) Act”*;
- (b) *“Certificate of Eligibility”* or *“COE”* refers to the certificate issued by this Commission as to the eligibility of the Non-Performing Loans (NPL) or Real and Other Properties Acquired (ROPA) for the purposes of availing the tax exemptions and privileges pursuant to the provisions of the Act.
- (c) *“Individual”* shall mean a natural person who, subject to certain conditions provided under the Act, is entitled to the tax exemptions and fee privileges under the same Act;
- (d) *“Investment Unit Instruments”* or *“IUIs”* refer to a participation certificate, debt instrument or similar instrument issued by the FISTC and subscribed by an insurance company pursuant to an Approved Plan: Provided, That these shall not include the instruments to be issued by the FISTC to the selling insurance company as full or partial settlement of the NPAs transferred to the said FISTC: Provided, further, That such issuances of the FISTC shall not be considered as deposit substitutes: Provided, finally, That these shall not form part of the capital stock of the FISTC. In this regard, loans, advances or other credit accommodations obtained by the FISTC from any credit-granting institution under Section 3.1.(m) of the IRR of the Act (other than the selling insurance company) or from its shareholders shall not be considered an IUI under this Circular Letter.
- (e) *“Non-Performing Assets (NPAs)”* refer to the NPLs and ROPAs by insurance companies;
- (f) *“Non-Performing Loans (NPLs)”* refer to secured or unsecured loans, receivables, and other financial assets of similar nature, including restructured loans, whose principal and/or interest have remained unpaid for at least ninety (90) days after they have become past due or any of the events of default under the loan or restructuring agreement has occurred;
- (g) *“ROPAs”* refer to real and other properties acquired by an insurance company in settlement of loans and receivables, including real properties, shares of stocks, and personal properties that have been acquired by way of dation in

payment (dacion en pago) or judicial or extrajudicial foreclosure or execution of judgment or enforcement of security interest;

(h) “*True Sale*” refers to an arms-length sale transaction wherein the selling insurance company transfers or sells its NPAs to a FISTC, without recourse to cash or property in exchange for the transfer or sale, and without prejudice to the insurance company and FISTC agreeing on sharing of profits and subject to the following results:

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

Provided, That the transferring insurance company shall not have direct or indirect control of the transferee FISTC: Provided, further, That the selling insurance company does not have legal or beneficial ownership of more than ten percent (10%) of the (1) total number of outstanding shares of stock entitled to vote in the election of directors; and (2) the total number of outstanding shares of stock, whether or not entitled to vote, of the transferee FISTC.

Section 2. Investment in FISTC. – (a) Any domestic insurance company authorized to transact business in the Philippines may acquire or hold IUIs in a FISTC in the minimum amount of Ten Million Pesos (PHP 10,000,000.00): *Provided*, That the parent, subsidiaries, affiliates or stockholders, directors, or officers of any related interest of the selling insurance company or the parent’s 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 said insurance company. A transferor-insurance company cannot also acquire the IUIs of the transferee-FISTC.

(b) For the purposes of this Section, the term:

1. “*Affiliate*” shall refer to an entity linked, directly or indirectly, to a reporting entity through any one or a combination of any of the following:
 - (i) Ownership, control or power to vote, whether by permanent or temporary proxy or voting trust, or other similar contracts, by a company of at least ten percent (10%) or more of the outstanding voting stock of the reporting entity or vice-versa;
 - (ii) Interlocking directorship or officerships, except in cases involving independent directors as defined under existing regulations;
 - (iii) Common stockholders owning at least ten percent (10%) of the outstanding voting stock of the reporting entity or vice-versa;

- (iv) Management contract or any arrangement granting power to the reporting entity to direct or cause the direction of management and policies of the entity, or vice-versa.

2. “Control” exists if and only the investor has all of the following:

- (i) Power to direct the relevant activities of the investee, which significantly affect the investee's returns;
- (ii) Exposure, or rights, to variable returns from its involvement with the investee; and
- (iii) The ability to use its power over the investee to affect the amount of the investor's returns.

3. “Related interest” shall refer to any of the following:

- (i) Spouse or relative within the first degree of consanguinity or affinity or relative by legal adoption, of a director, officer or stockholder of the selling insurance company (or its parent);
- (ii) Partnership of which a director, officer, or stockholder of a selling insurance company or his or her spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, is a general partner;
- (iii) Co-owner with the director, officer, stockholder or his or her spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of the property or interest or right mortgaged, pledged or assigned to secure the loans or other credit accommodations, except when the mortgaged, pledged, or assigned to secure the loans or other credit accommodations, except when the mortgage, pledge or assignment covers only said co-owner's undivided interest;
- (iv) Corporation, association or firm of which any or a group of directors, officers, stockholders of the selling insurance company and/or their spouses or relatives within the first degree of consanguinity or affinity, or relative by legal adoption, hold or own at least twenty percent (20%) of the subscribed capital of such corporation, or of the equity of such association or firm; Provided, an entity may still be considered a related interest under this Section notwithstanding ownership of less than twenty percent (20%) if such entity clearly demonstrates control in the operating and financial policy decisions of the selling insurance company as provided in Section 2(b)(2) of this Circular Letter;

- (v) Corporation, association or firm wholly or majority-owned or controlled by any related entity or a group of related entities mentioned in Section 2(b)(3)(ii) and (iv) of this Circular Letter;
- (vi) Corporation, association or firm which owns or controls, directly or indirectly, whether singly or as part of a group of related interests at least twenty percent (20%) of the subscribed capital of a substantial stockholder of the selling insurance company (or its parent), or which controls majority interest of the selling insurance company (or its parent);
- (vii) Corporation, association or firm which has an existing management contract or any similar arrangement with the parent of the selling insurance company (or its parent); and
- (viii) Non-governmental organizations (NGOs) / foundations that are engaged in retail microfinance operations which are incorporated by any of the stockholders and/or directors and/or officers or related to the selling insurance company (or its parent).

4. “*Subsidiary*” refers to an entity that is controlled by another entity.

Section 3. Investment Limits. – A life insurance company may invest in equity shares and IULs of FISTCs up to ten percent (10%) of its latest verified total admitted assets. Meanwhile, a non-life insurance company may invest in equity shares and IULs of FISTCs up to twenty percent (20%) of its net worth based on its latest approved annual statement.

Section 4. Transfer of Assets to a FISTC. – (a) An insurance company that intends to transfer its NPAs to a FISTC shall file an application for COEs for said NPAs with this Commission. Said application shall be filed for each transfer of asset/s, and shall be subject to this Commission’s assessment, without prejudice to existing Circular Letters and such other guidelines as may subsequently be issued by this Commission.

(b) The application by the insurance company for COE of its NPAs intended to be transferred to a FISTC or an individual shall be accompanied by a certification from the insurance company that:

1. The assets to be sold / transferred are NPAs as defined under the Act;
2. The proposed sale / transfer of said NPAs is a True Sale;
3. The notification requirement to the borrowers and all persons holding prior encumbrance upon the asset mortgaged or subject to security interest has been complied with; and
4. The maximum thirty (30)-day period for renegotiating and restructuring of NPLs has been complied with.

(c) The above certification from the insurance company shall be signed by its duly authorized officer.

(d) Items (3) and (4) above shall apply only to an NPL.

(e) Pursuant to Section 12 (b) of the Act, nothing therein shall be construed to prevent the transfer of NPAs as authorized under other applicable laws. In this regard, the terms and conditions for such transfer shall be governed by the applicable law and its implementing rules and regulations. Moreover, while a transfer of NPA from an insurance company to a FISTC without COE is allowed, it shall not be entitled to fiscal incentives under the Act.

Section 5. Issuance of the COE. – This Commission shall issue to the insurance company a COE within twenty (20) working days from the date of application with complete requirements. Said COE shall be required by the BIR for purposes of availing the tax exemptions and other privileges under the Act. This Commission shall furnish the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR) a duplicate (original) copy of said COE within five (5) working days from issuance of the same. The concerned regulatory agencies and this Commission shall coordinate to ensure the integrity of the COE.

Section 6. Prior Notice. – No transfer of NPLs to a FISTC or an individual shall take effect unless the insurance company concerned shall give prior notice to the borrowers of the NPLs and all persons actually or constructively known to the insurance company to be holding prior encumbrances upon the assets mortgaged or subject to security interest. Such notice shall be in writing and made in accordance with the 2019 Rules of Civil Procedure, as amended, at their last known address or their email address registered and on file with the insurance company. The borrower shall be given a period not exceeding thirty (30) calendar days upon receipt of notice from the insurance company to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the insurance company concerned. Failure of the borrower to respond within thirty (30) days from receipt of notice shall be construed as a waiver of the right to restructure or renegotiate on the part of the borrower.

Section 7. Subsequent notice. – Within fifteen (15) working days after the execution of the NPL's sale or transfer documents, the transferring insurance company shall inform the borrower, in writing sent to the latter's last known address or e-mail address, of the fact of the sale or transfer of the NPLs. Non-compliance with the post-notification requirement shall not invalidate the sale or transfer of NPLs but shall subject the erring insurance company to appropriate sanctions and penalties under the Act, as well as other pertinent laws, rules and regulations.

Section 8. Subsequent transfers. – The re-acquisition of the NPA by the borrower or owner from the FISTC, individual, or subsequent transferee other than by the exercise of the right of redemption as provided for in Section 20 of the Act shall be in

accordance with the terms and conditions as may be agreed upon by them.

Section 9. Nature of Transfer. – (a) All sales or transfers of NPAs to a FISTC shall be in the nature of a True Sale after proper notice in accordance with the procedure as provided for in Section 4 of this Circular Letter, without need for the borrower's consent: *Provided*, That in the transfer of the NPLs, the provisions on the right of the debtor to reimburse the assignee or transferee under Article 1634 of the Civil Code of the Philippines shall not apply: *Provided, further*, That after the sale, the FISTC shall assume all legally transferable rights and obligations of the transferring insurance company.

(b) In the transfer of NPAs, FISTCs cannot use the NPAs it acquired from insurance companies as collateral for the payment for the sale / transfer of the same. Moreover, profit-sharing agreements executed between selling insurance companies and FISTCs shall be submitted for review to this Commission with a duplicate copy to be submitted to the SEC. Upon exercise of the profit-sharing agreement, the same shall be disclosed to the investors of the FISTC through a report as allowed under Rule 22 of the IRR of the Act. Lastly, the existence of any profit-sharing agreements shall always be disclosed to any IUI investor through the FISTC Plan and its Exhibits under Annex A of the IRR.

(c) In the transfer of NPAs, the parties shall exercise the requisite due diligence and any fraud, collusion and irregularity shall be subject to penalties in Section 24 of the Act, as well as other pertinent laws, rules and regulations.

(d) The transfer by an insurance company of its NPAs to a FISTC or individual shall be considered not a True Sale if the insurance company satisfies any of the enumerated below:

1. Has direct or indirect management of the FISTC;
2. Has any of its directors, officers or employees on the board of the transferee FISTC;
3. Is obligated to repurchase or substitute / exchange the NPA or any part of the pool of NPAs at any time, except in cases of a breach of representation or warranty of the insurance company;
4. Is a Related Interest, as defined under Section 2(b)(3) of this Circular Letter, of the transferee FISTC;
5. Has legal and beneficial ownership of more than ten percent (10%) of the (a) total number of outstanding shares of stock entitled to vote in the election of directors; and (b) the total number of outstanding shares of stock, whether or not entitled to vote, of the transferee FISTC; or
6. Accepts the transferred NPAs as the FISTC's collateral for any unpaid balance of the consideration of the transfer of said NPAs.

(e) Unless otherwise determined by this Commission, the following shall be presumed not a True Sale, if the selling insurance company:

1. Is made the beneficiary of a trust used as a vehicle for purchasing and securitizing NPAs; or
2. Pays further expenses in relation to the NPAs after said NPAs have been sold / transferred to the transferee FISTC; or
3. Extends, directly or indirectly, any credit facility, guaranty or any similar financial transaction to the transferee FISTC; or
4. Extends any credit facility, guaranty, or any similar financial transaction to any party for the purpose of investing in the equity or IUIs of the FISTC, or for acquiring the NPAs from the FISTC; or
5. Extends any credit facility, guaranty or any similar financial transaction to any party for the purpose of acquiring the NPAs from the transferring insurance company; or
6. Acts as trustee (insurance company's trust department, if applicable) or if the trust department of any of the insurance company's subsidiaries / affiliates, parent bank or parent bank's subsidiaries / affiliates acting as trustee, under any circumstances, in the securitization of NPAs that it has transferred to the FISTC; or
7. Accepts as collateral for a loan extended by said insurance company the equity shares and IUIs of the FISTC that acquired its NPAs; or
8. Enters into buy-back and other similar arrangements, or financial derivative transactions with similar effect, involving the NPAs or the securities backed by such NPAs; or
9. Enters into any other transaction where the insurance company retains effective control over the transferred NPAs or shares in the losses of the FISTC.

For purposes of the foregoing, the term "any party" includes proxies, nominees and voting trustees.

(f) Violation of any of the above prohibitions or any misrepresentation of any fact or information relative to the True Sale nature of the transfer of NPAs shall be subject to the penalties prescribed under Section 24 of the Act, without prejudice to the imposition of other penalties and regulatory sanctions as may be deemed appropriate by this Commission.

Section 10. Applicability Clause. – The provisions of this Circular Letter shall be applicable to assets that have become non-performing on or before 31 December 2022. The NPAs shall include:

- (a) Loans, regardless of the payment scheme, whose principal and/or interest have remained unpaid for at least ninety (90) days after they have become past due or any of the events of default under the loan agreement has occurred;
- (b) Items in litigation which are loans classified as NPAs on or before 31 December 2022 for which collection and foreclosure cases have been filed, and restructured loans which are classified as NPAs on or before 31 December 2021; and
- (c) ROPA acquired by an insurance company on or before 31 December 2022, and those acquired a ROPA after 31 December 2022 in settlement of loans that became eligible NPLs on or before 31 December 2022.

The foregoing notwithstanding, the provisions of this Circular Letter shall be without prejudice to the application of relevant provisions of the Insurance Code, as amended, and other existing guidelines, as well as such other rules and regulations as may be subsequently issued by this Commission.

Section 11. Conscience Clause. – (a) Nothing in this Circular Letter shall be construed to condone or exempt from any liability any person responsible for acts or omissions constituting unsound business practices or mismanagement.

(b) “Unsound business practices”, as used in this Circular Letter, shall include, among others, the use by entities of deceptive, fraudulent, or otherwise unethical methods to gain an advantage or turn a profit, engaging in transactions or activities that substantially restrict, prevent, or lessen competition, or by taking advantage of one’s position or inducing an entity to transact on unconscionable or grossly one-sided terms.

Section 12. Separability Clause. – If any provision of this Circular Letter is held unconstitutional or invalid, all other provisions not affected thereby shall remain valid.

Section 13. Effectivity. – This Circular Letter shall take effect immediately.

DENNIS B. FUNA
Insurance Commissioner

