Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
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IC RELEASES GUIDELINES FOR THE IMPLEMENTATION OF FINANCIAL INSTITUTION STRATEGIC TRANSFER (FIST) ACT

On 21 February 2022, Insurance Commissioner Dennis Funa issued Circular Letter No. 2022-08 on the "Guidelines on the Implementation of Republic Act No. 11523 or the Financial Institutions Strategic Transfer (FIST) Act".

"The IC issued Circular Letter No. 2022-08 as part of a 'whole-of-government approach' to the adverse economic effects of the COVID-19 pandemic. There is a need to issue such guidelines as insurance companies were identified under the FIST Act and its implementing rules and regulations (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)," said Commissioner Funa.

"Moreover, the same Circular Letter was issued in recognition of the fact that it is essential for our regulated insurance companies to be able to maintain their financial health in order to cushion the adverse economic impact of the pandemic," he added.

Transfer of NPAs

Under the FIST Act, insurance companies may transfer their NPAs to FISTCs. Said NPAs should have become non-performing on or before 31 December 2022.

NPAs include non-performing loans (NPLs) that include receivables and restructured loans whose principal and/or interest have remained unpaid for at least 90 days after they have become past due or after any events of default under the loan agreement. Insurance companies may likewise transfer to FISTCs real and other properties acquired (ROPAs) in settlement of loans and receivables, including shares of stocks and personal properties acquired by way of dation in payment or judicial or extrajudicial foreclosure or execution of judgment or enforcement of security interest.

An insurance company that intends to transfer NPAs to a FISTC shall file an application for eligibility of said assets with the IC. Thereafter, if the application is found in order, the IC shall issue a certificate of eligibility (COE), attesting that the NPAs subject of the application are indeed non-performing for the purposes of availing the tax exemptions and privileges pursuant to the provisions of the FIST Act and its IRR.

Sales or transfers of NPAs to a FISTC shall be in the nature of a true sale, wherein the transferor insurance company transfers full legal and beneficial title to and relinquishes effective control over the transferred NPAs, and that the NPAs are legally isolated and put beyond the reach of the transferor insurance company and its creditors.

Investments in FISTCs

Notably, under Circular Letter No. 2022-08, life insurance companies are now allowed to invest in equity shares and Investment Unit Instruments or “IUIs” of FISTCs up to ten percent (10%) of its latest verified total admitted assets. Likewise, non-life insurance companies are allowed to invest in equity shares or IUIs of FISTCs up to twenty percent (20%) of its net worth based on its latest approved annual statements.

Under the FIST Act and its IRR, a FISTC may issue IUIs to any qualified buyer, including insurance companies, in the minimum amount of ₱10 million, pursuant to a plan submitted to the Securities and Exchange Commission (SEC) and issued with a Certificate of Permit to Sell or Offer for Sale Securities.

Selling insurance companies, as well as its parent, subsidiaries, affiliates or stockholders, directors, officers or any related interest, shall likewise not acquire or hold, directly or indirectly, the IUIs of the FISTC that acquired its NPAs.

Incentives and tax exemptions

Under the FIST Act and its IRR, there are various tax incentives and privileges for the transfer of NPAs to a FISTC. These are: (1) Exemption from capital gains tax; (2) Exemption from documentary stamp tax; (3) Exemption from creditable withholding tax on transfers of ordinary assets; (4) Exemption from VAT; and (5) Reduced applicable fees of 50% of the: (a) Registration and transfer fees on the transfer of real estate mortgage and security interest to and from the FISTC; (b) Filing fees for foreclosure proceedings; and (c) Land registration fees.

All sales or transfers of NPAs to a FISTC shall be entitled to the above-mentioned privileges for two (2) years from the effective date of the FIST Act.

In the case of acquisitions of NPLs by a FISTC, the FISTC is eligible for exemption on income tax on net interest income, mortgage registration fees, and documentary stamp tax.

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