

[REPUBLIC ACT NO. 2629, June 18, 1960]

INVESTMENT COMPANY ACT

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

SECTION 1. *Short title.*—This Act may be cited as the "Investment Company Act".

SEC. 2. *Declaration of policy.*—It is hereby declared that the policy and purposes of this Act in accordance with which the provisions of this Act shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the following conditions which adversely affect the national public interest and the interest of investors:

- a. When investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;
- b. When investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;
- c. When investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;
- d. When the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons;
- e. When investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;
- f. When investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders;
- g. When investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior; securities; or
- h. When investment companies operate without adequate assets or reserves.

SEC. 3. *Definitions.*—When used in this Act, unless the context otherwise requires—

(a) "Advisory board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, or an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(b) "Affiliated company" means a company which is an affiliated person.

(c) "Affiliated person" of another person means (1) any person directly or indirectly owning, controlling or holding with power to vote, ten *per centum* or more of the outstanding voting securities of such other person; (2) any person ten *per centum* or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (3) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (4) any officer, director, partner, copartner, or employee of such other person; and (5) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

(d) "Bank" means (1) a banking institution organized under the laws of the Philippines, (2) any other banking institution or trust company, doing business under the laws of the Philippines, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks.

(e) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(f) "Commission" means the Securities and Exchange Commission.

(g) "Company" means a corporation, a registered partnership, or an association lawfully transacting business in the Philippines.

(h) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than thirty *per centum* of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than thirty *per centum* of the voting securities of any company shall be presumed not to control such

company. A natural person shall be presumed not to be a controlled person within the meaning of this Act. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary is made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(i) "Convicted" includes a verdict, judgment, or plea of guilty, if such verdict, judgment or plea has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(j) "Dealers" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

(k) "Director" means any director of a corporation or any person performing similar functions with respect to any organization.

(l) "Exchange" means any organization, association, or group of persons which constitutes, maintains, or provides market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(m) "Government security" means any security issued or guaranteed as to principal or interest by the Republic of the Philippines, or by a person controlled or supervised by and acting as an instrumentality of the Government of the Republic of the Philippines pursuant to authority granted by the Congress of the Philippines; or any certificate of deposit for any of the foregoing.

(n) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the Insurance Commissioner; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(o) "Investment adviser" of an investment company means (1) any person (other than a bona fide officer, director, trustee, member of an

advisory board, or employee of such company as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (2) any other person who pursuant to contract with a person described in clause (1) of this paragraph regularly performs substantially all of the duties undertaken by such person described in said clause (1); but does not include (A) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (B) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (C) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (D) any person the character and amount of whose compensation for such services must be approved by a court or (E) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(p) "Investment banker" means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions, but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(q) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(r) "Lend" includes a purchase coupled with an agreement by the vendor to repurchase; "borrow" includes a sale coupled with a similar agreement.

(s) "Majority-owned subsidiary" of a person means a company fifty *per centum* or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(t) "Periodic payment plan certificate" means (1) any certificate, investment contract, or other security providing for a series of periodic payments by the holders, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (2) any security the issuer of which is also issuing securities of the character described in clause (1) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (1) have upon completing the periodic payments for which such securities provide.

(u) "Person" means a natural person or a company.

(v) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (1) is in privity of contract with the issuer or an affiliated person of the issuer; (2) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (3) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(w) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons is initiating or directing, or has within one year initiated or directed, the organization of such company.

(x) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(y) "Reorganization" means (1) a reorganization under the supervision of a court of competent jurisdiction; (2) a merger or consolidation; (3) a sale of seventy-five *per centum* or more in value of the assets of a company; (4) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (5) a voluntary dissolution or liquidation of a company; (6) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (7) an exchange of securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (8) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(z) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute