

[REPUBLIC ACT NO. 9267, March 19, 2004]

**AN ACT PROVIDING THE REGULATORY FRAMEWORK FOR
SECURITIZATION AND GRANTING FOR THE PURPOSE
EXEMPTIONS FROM THE OPERATION OF CERTAIN LAWS**

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

ARTICLE I

GENERAL PROVISIONS

SECTION 1. *Short Title.* — This Act shall be known as "The Securitization Act of 2004."

SEC. 2. *Declaration of Policy.* — It is the policy of the State to promote the development of the capital market by supporting securitization, by providing a legal and regulatory framework for securitization and by creating a favorable market environment for a range of asset-backed securities. For this purpose, the State shall rationalize the rules, regulations, and laws that impact upon the securitization process, particularly on matters of taxation and sale of real estate on installment. Furthermore, the State shall pursue the development of a secondary market, particularly for residential mortgage-backed securities and other housing-related financial instruments, as essential to its goal of generating investment and accelerating the growth of the housing finance sector, especially for socialized and low-income housing. The State shall likewise pursue the development of a secondary market for other types of asset-backed securities (ABS).

SEC. 3. *Definition of Terms.* — For purposes of this Act, the term:

- a. "Securitization" means the process by which assets are sold on a without recourse basis by the Seller to a Special Purpose Entity (SPE) and the issuance of asset-backed securities (ABS) by the SPE which depend, for their payment, on the cash flow from the assets so sold and in accordance with the Plan.
- b. "Asset-backed securities (ABS)" refer to the certificates issued by an SPE, the repayment of which shall be derived from the cash flow of the assets in accordance with the Plan.
- c. "Assets", whether used alone or in the term "asset-backed securities," refer to loans or receivables or other similar financial assets with an expected cash payment stream. The term "Assets" shall include, but shall not be limited to, receivables, mortgage loans and other debt instruments: *Provided*, That receivables that are to arise in the future and other receivables of similar nature shall be subject to approval by the Securities and Exchange Commission (SEC) or the Bangko Sentral ng Pilipinas (BSP), as the case may be: *Provided, further*, That the term "Assets" shall exclude receivables from

future expectation of revenues by government, national or local, arising from royalties, fees or imposts.

- d. "Asset Pool" means the group of identified, homogeneous assets underlying the ABS.
- e. "Commission" refers to the Securities and Exchange Commission (SEC).
- f. "Credit Enhancement" means any legally enforceable scheme intended to improve the marketability of the ABS and increase the probability that the holders of the ABS receive payment of amounts due them under the ABS in accordance with the Plan.
- g. "Originator" means the person or entity which was the original obligee of the Assets, such as financial institution that grants a loan or a corporation in the books of which the Assets were created in accordance with the Plan.
- h. "Plan" means the plan for securitization as approved by the Commission.
- i. "Secondary Mortgage Institution (SMI)" means an entity created for the purpose of enhancing a secondary market for residential mortgages and housing-related ABS.
- j. "Seller" means the person or entity which conveys to the SPE the Assets forming the Asset Pool in accordance with the Plan. In most instances, the Seller may itself be the Originator.
- k. "Servicer" refers to the entity designated by the SPE to collect and record payments received on the assets, to remit such collections to the SPE, and perform such other services as may be specifically required by the SPE, excluding asset management or administration.
- l. "Special Purpose Entity (SPE)" means either a Special Purpose Corporation (SPC) or a Special Purpose Trust (SPT).
- m. "Special Purpose Corporation (SPC)" refers to a juridical person created in accordance with the Corporation Code of the Philippines solely for the purpose of securitization and to which the Seller makes a true and absolute sale of assets.
- n. "Special Purpose Trust (SPT)" means a trust administered by an entity duly licensed to perform trust functions under the General Banking Law, and created solely for the purpose of securitization and to which the Seller makes a true and absolute sale of assets.

SEC. 4. *Declaration of Principles.* — The Commission shall exercise the powers provided for in this Act in consonance with the principles of full disclosure, transparency accountability. The Commission shall include in its annual report the list of SPEs with the corresponding types and amounts of assets securitized.

ARTICLE II

SPECIAL PURPOSE ENTITY

SEC. 5. *Special Purpose Entity (SPE).* — The SPE in the form of an SPC shall be a stock corporation established in accordance with the Corporation Code of the Philippines and the rules promulgated by the Commission solely for the purpose of securitization and registered as such with the Commission. An SPE constituted as an SPT shall be a trust administered by an entity duly licensed to perform trust functions under the General Banking Law and need not be registered as such with the Commission. In any event, the SPE, whether in the form of an SPT or SPC, shall be solely organized and operated for purposes of securitization in accordance with this Act. The Commission and the BSP shall, from time to time, determine the required capitalization for the SPCs and SPTs, respectively.

SEC. 6. *Approval of the Plan.* — After the establishment of an SPE pursuant to Section 5 hereof, the proposed Plan shall be submitted to the Commission for approval, which shall include the following:

- a. The nature and mechanics of the sale of assets from the Seller to the SPE, including the terms, conditions and circumstances specified in the Plan, wherein the assets may be reverted to the Seller;
- b. The credit enhancements or liquidity supports for the ABS which may be provided in the following manner:
 - i. standby letter or credit issued by a commercial bank or universal bank other than the trustee bank or the Originator or Seller or its subsidiary/affiliate, its parent company or the parent company's subsidiary/affiliate;
 - ii. surety bond issued by any insurance company other than the Originator or Seller or its subsidiary/affiliate, its parent company or the parent company's subsidiary/affiliate, or the parent or subsidiary of the trustee bank;
 - iii. guarantee issued by any entity other than the Originator or Seller or its subsidiary/affiliate its parent company or the parent company's subsidiary/affiliate, or the trustee bank or its parent or subsidiary;
 - iv. over-collateralization provided by the Seller wherein the assets conveyed to the SPC or SPT exceed the amount of ABS to be issued;
 - v. subordinated securities issued by an SPE to any entity including those issued to the Seller that are lower ranking, or junior to other obligations, and are paid after claims to holders of senior securities are satisfied; and
 - vi. other credit enhancements as may be approved by the Commission.
- c. The identities and qualifications of the Originator, Seller, Servicer, underwriter and dealer of the ABS, and description of any compensation the issuer, seller or any underwriter has received or will receive in the future in connection with the ABS;
- d. The identity, qualifications and compensation of the trustee that will administer the assets conveyed to the SPE for the benefit of the ABS holders which trustee shall not be related directly or indirectly to the Originator or Seller;
- e. The aggregate principal amount of the value of ABS to be issued, the principal amount of each class within the ABS, and the denominations which shall not be lower than Five thousand pesos (P5,000.00) in which the ABS will be issued;
- f. The structure of the ABS to be registered, including the structure and payment priorities of each class of certificate within the ABS, anticipated payments and yields for each class, and the circumstances under which the ABS, may be redeemed or retired;
- g. A full description of the assets contained, or to be contained, in the asset pool supporting the ABS;
- h. The rating agency/agencies for the ABS, the criteria used or to be used to rate the ABS, and any limitation, qualifications or material risks not addressed by the rating agency/agencies;
- i. A full description of how the issuer will collect and maintain remittances from the assets pending distribution to holders of the ABS, including the issuer's investment policies and the identity of the issuer's investment advisor, if any;

- j. The plan for the management and administration of the assets, asset pool and the ABS, including the disposition of the foreclosed properties, if any; and
- k. The manner of disposal of any residual value or asset with the SPE after all obligations to holders of ABS shall have been settled.

SEC. 7. *Registration of Asset-Backed Securities (ABS).* — All ABS shall be registered with the Commission in accordance with Sections 8 and 12 of the Securities Regulation Code and its implementing rules and regulations: *Provided, however,* That issuers of ABS falling under Sections 9 and 10 thereof shall be required to file with the Commission, a notice, with a disclosure statement.

SEC. 8. *Approval.* — The Commission shall issue to an SPC or SPT the corresponding order and permit to sell ABS only after compliance with all the registration requirements and the approval of the Plan by the Commission.

SEC. 9. *Originator is a Bank; Special Purpose Trust.* — In case the originator of the assets is a bank or any other financial intermediary which under special laws is subject to the supervision of the BSP, or an entity directly related to said bank or other financial intermediary, or in the event the SPE is constituted in the form of an SPT, and endorsement by the BSP of the Plan shall be required before its approval by the Commission.

SEC. 10. *Powers of the SPE.* — Each SPE shall have the power to:

- a. Accept the sale or transfer of assets;
- b. Issue and offer the ABS for sale to investors;
- c. Undertake on its own or through contracts with any person, such activities as contained in the approved Plan;
- d. Create any indebtedness or encumbrances to defray administrative or other necessary expenses as specified in the Plan; and
- e. Pay out or invest its funds in accordance with the Plan or as approved by the Commission.

SEC. 11. *Restriction.* — The SPE shall not undertake any activity other than that contained in the approved Plan except upon a written approval of the Commission and the written consent of the holders of the ABS representing at least two-thirds (2/3) of the outstanding among of the ABS: *Provided,* That in case the originator of the assets is a bank or any other financial intermediary which under special laws is subject to the supervision of the BSP, or an entity directly or indirectly related to the said bank or other financial intermediary, or in the event the SPE is constituted in the form of an SPT, prior endorsement by the BSP is necessary.

SEC. 12. *Transfer of Assets and Security.* — The transfer of the assets from the Originator or Seller to the SPE shall be deemed to be a "true sale" when it results in the following:

- a. The transferred Assets are legally isolated and put beyond the reach of the Originator or Seller and its creditors;
- b. The transferee SPE has the right to pledge, mortgage or exchange those transferred Assets;
- c. The transferor relinquishes effective control over the transferred assets;
- d. The transfer shall be effected by either a sale, assignment or exchange, in any event on a without recourse basis to the Originator or Seller;

- e. The transferee shall have the right to profits and disposition with respect to the assets;
- f. The transferor shall not have the right to recover the assets and the transferee shall not have the right to reimbursement of the price or other consideration paid for the assets; and
- g. The transferee shall undertake the risks associated with the assets. This shall not, however, prevent the transferor from giving moral representations or warranties in respect of the assets sold.

SEC. 13. *Withdrawal of Registration.* — If the Commission finds that the Originator or Seller has undertaken the securitization so as to seek the benefits of this Act without a true intention to carry it out, the Commission shall withdraw or cancel the registration of the ABS and the registration of the SPE as issuer, and cause the dissolution of the SPC or termination of the SPT. The Originator or Seller and as the case may be, the trustee, shall pay as fine an amount equal to the taxes from which the SPE has been exempted plus a surcharge of twenty-five percent (25%) of the face value of the ABS issued without prejudice to the penalties under this law and the National Internal Revenue Code of 1997.

SEC. 14. *Inheritance and Donor's Tax Evasion.* — It shall be unlawful for any person, whether or not in contemplation of death, to cause directly or indirectly, the issuance, for the benefit of another or others, of ABS and avail of the tax incentives granted by this Act for the purpose of evading the payment of donor's or estate taxes.

SEC. 15. *Dissolution of the Special Purpose Entity (SPE).* — The SPE shall be dissolved in the following cases:

- a. It fails to accept the transfer of assets or issue ABS to investors within six (6) months from the date of approval of the Plan unless extended by the Commission;
- b. Holders of at least two thirds (2/3) of the total amount of its ABS still outstanding have resolved to dissolve the SPE and the approval of the Commission has been obtained; in case the Originator of the assets is a bank or any other financial intermediary which under special laws, is subject to the supervision of the BSP, or an entity directly or indirectly related to said bank or other financial intermediary, or in the event the SPE is constituted in the form of an SPT, an endorsement by the BSP shall be required prior to approval of the Commission;
- c. Conditions for dissolution that are specified in the Plan occur; or
- d. The Commission order dissolution in accordance with Sections 13 and 19.

SEC. 16. *Effects of Dissolution of SPE.* — The SPE and the registration of the ABS shall be terminated, cancelled or withdrawn in any of the cases provided for under the last preceding section.

SEC. 17. *Appointment of an Interim Representative.* — If the Commission finds that an SPE has no authorized representative to act on its behalf or such persons cannot act for any reason resulting in the interruption of its activities pursuant to the approved Plan, the Commission shall have the power to appoint any person or persons to act as interim representative for the SPE. The interim representative shall have full and exclusive authority to implement the approved Plan.