

[Commonwealth Act No. 83, October 26, 1936]

AN ACT TO REGULATE THE SALE OF SECURITIES, TO CREATE A SECURITIES AND EXCHANGE COMMISSION TO ENFORCE THE PROVISIONS OF THE SAME, AND TO APPROPRIATE FUNDS THEREFOR.

Be it enacted by the National Assembly of the Philippines:

CHAPTER I.—*Short Title and Definitions*

SECTION 1. *Short title.*—This Act may be cited as "Securities Act."

SEC. 2. *Definitions.*—When used in this Act, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

- a. "Securities" shall include stock certificates, treasury stock certificates, bonds, debentures; certificates of participation in, or right to subscribe to, any of the foregoing; certificates of participation, collateral trust certificates, investment contracts, voting trust certificates, certificates of deposit for a security, premium or gift sharing certificates or tickets, preorganization certificates or subscriptions; certificates evidencing shares of, or interest in, trust estates or associations; certificates of interest or participation in any profit sharing agreement or in an agreement to incorporate or to form an association or in mutual incorporation or association contracts involving more than fifteen proposed incorporators or associates; any certificate, contract, or instrument whatsoever representing or constituting evidence of, or secured by, title to, or interest in, or any lien or charge upon, the capital or any property or assets of the issuer thereof, or in any oil, gas or mining lease and/or holding; and interest, units or shares in any such lease or leases and/or holdings or in an association, partnership, corporation, or combination of persons having interest in such lease or leases and/or holdings; contracts or bonds for the sale and conveyance of land on deferred payments or installment plan, or other instruments in the nature thereof by whatsoever name they may be known or called; promissory notes of any individual, firm, partnership, corporation, or association of any kind, the proceeds from the sale of which are to be used in capitalizing, furthering or promoting any manufacturing, selling, distributing, industrial, mercantile, mining, drilling for oil or gas, or development enterprise of any kind or nature whatsoever, where said promissory notes are accompanied by any oral or written promise or representation that the purchasers of said promissory note shall share in any of the profits of said enterprise, or benefit from the success of said enterprise either directly or indirectly; and, in general, certificates or instruments evidencing beneficial interest in title to property, profits, or earnings, or any other instrument commonly known as a security; including an interim or temporary bond, debenture, note certificate, or receipt for a security or for subscription to a security.
- b. "Speculative securities" shall mean and include:
 1. All securities to promote or induce the sale of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised

or promised;

2. All securities the value of which materially depends upon proposed or promised future promotion or development rather than on present tangible assets and conditions;
3. All securities for promoting the sale of which a commission of more than five per centum is offered or paid;
4. All securities into the value of which the elements of chance or hazard or speculative profit or possible loss equals or predominates over the elements of reasonable certainty or safety of investment;
5. The securities of any enterprise or corporation which has included, or proposes to include, in its assets, as a material part thereof, patents, formulae, goodwill, promotion or other intangible assets, or which has issued or proposes to issue a material part of its securities in payment for patents, formulae, goodwill, promotion or other intangible assets; and
6. The securities of any enterprise engaged in the business of promoting, exploring, developing, exploiting or operating mineral properties and/or mineral rights: Provided, however, That the following class of securities shall not be deemed to be speculative securities:

(1) Securities issued by a person owning a property, business or industry which has been in continuous operation not less than three years and which has shown during a period of not less than two years next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges not including the charges upon securities to be retired out of the proceeds of sale, as follows:

- a. In the case of interest-bearing securities, not less than one and one-half times the annual interest charged thereon and upon all other outstanding interest-bearing obligations of equal rank;
- b. In the case of preferred stock, not less than one and one-half times the annual dividend requirements on such preferred stock and on all other outstanding stock of equal rank;
- c. In the case of common stock, not less than five per centum upon all outstanding common stock of equal rank together with the amount of common stock then offered for sale reckoned upon the price at which such stock is then offered for sale or sold.

The ownership by a person of more than fifty per centum of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of the property, business or industry of such corporation, and shall permit the inclusion of the earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the person issuing the securities sought to be registered.

- d. "Person" shall mean and include a natural person, firm, corporation, copartnership, limited partnership, sociedad anonima, joint stock company, syndicate, unincorporated organization or association, trust and trustee of a trust, excepting a trust created or a trustee designated by law or by a last will or by judicial authority, or any public charitable trust; or a government or political subdivision thereof. As used herein, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

- e. "Sale" or "sell" shall include every disposition, or attempt to dispose of a security or interest in a 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 a part of the subject of such purchase and to have been sold for value. "Sale" and "sell" shall also include a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise: Provided, That a privilege pertaining to a security giving the holder the privilege to convert such security into another security of the same issuer shall not be deemed a sale of such other security within the meaning of this definition, and such privilege shall not be construed as affecting the status of the security to which such privilege pertains with respect to exemption or registration or licensing under the provisions of this Act, but when such privilege of conversion shall be exercised, such conversion shall be subject to the limitations hereinafter provided in subsection (g) of section six of Chapter III hereof; And provided, further, That the issue or transfer of a right pertaining to a security and entitling the holder of such right to subscribe to another security of the same issuer, when such right is issued or transferred with the security to which it pertains, shall not be deemed a sale of such other security within the meaning of this definition and such right shall not be construed as affecting the status of the security to which such right pertains with respect to exemption or registration or licensing under the provisions of this Act; but the sale of such other security upon the exercise of such right shall be subject to the provisions of this Act.
- f. The terms "buy" and "purchase" shall include any contract to buy, purchase, or otherwise acquire.
- g. "Dealer" shall include every person other than a salesman who engages either for all or part of his time, directly or through an agent, in the business of selling any securities issued by another person or purchasing or otherwise acquiring such securities from another for the purpose of reselling them or of offering them for sale to the public, or offering, buying, selling or otherwise dealing or trading in securities for a profit, or who deals in futures or differences in market quotations of price or values of any securities, or accepts margins on purchases or sales or pretended purchases or sales of securities: Provided, That the word "dealer" shall not include a person having no place of business for the purpose, who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling securities as a business.
- h. "Issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), or of the fixed restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; and except that with respect to fractional undivided rights in oil, gas, or other mineral rights, or

claims or properties, the term "issuer" means the owner of any such right or property or of any interest therein (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

- i. "Salesman" shall include every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer, to sell securities in any manner. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer shall not be salesmen within the meaning of this definition.
- j. "Broker", means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.
- k. "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a 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.
- l. "Facility," when used with respect to an exchange, includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.
- m. "Member," when used with respect to an exchange, means any person who is permitted either to effect transactions on the exchange without the services of another person acting as broker, or to make use of the facilities of an exchange for transactions thereon without payment of a commission or fee or with the payment of a commission or fee which is less than that charged the general public, and includes any firm transacting a business as broker or dealer of which a member is a partner, and any partner of any such firm.
- n. "Bank" means (1) a banking or trust institution organized under the laws of the Philippines or of the United States, or any state, territory or possession thereof, or of a foreign country, whether incorporated or not, doing business in the Philippines, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers, and which is not operated for the purpose of evading the provisions of this Act, and (2) a receiver, or other liquidating agent of any banking or trust institution.
- o. "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.
- p. "Commission" means the Securities and Exchange Commission established by this Act.
- q. The Commission hereby established shall have power, by rules and regulations, to define any technical, trade or accounting term used in this Act in so far as such definitions are not inconsistent with the provisions hereof.

CHAPTER II.—*Securities and Exchange Commission*

SEC. 3. *Securities and Exchange Commission.*—

- a. There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be under the direction of a commissioner to be appointed by the President with the consent of the Commission on Appointments of the National Assembly. The commissioner shall not engage in any other business, vocation, or employment than that of serving as commissioner, nor shall he participate, directly or indirectly, in any stock market operations or transactions of a character subject to regulation by the Commission pursuant to this Act. The commissioner shall receive a salary at the rate of ten thousand pesos a year and shall hold office during good behavior. The Commission shall be under the executive supervision of the Department of Justice.
- b. The Commission is authorized to appoint and the compensation of such officers, attorneys, examiners, engineers, and other technical staff as may be necessary for carrying out its functions under this Act, and may, subject to the Civil Service laws, appoint such employees as are likewise necessary in the execution of its functions and fix their salaries, with the approval of the Secretary of Justice. Such officers, attorneys, examiners, engineers, employees and technical staff shall not participate directly or indirectly in any stock market operations or transactions of a character subject to regulation by the Commission pursuant to this Act. The President of the Philippines may transfer to the Commission all or some of the personnel of the various bureaus and offices of the Government who are now engaged in the enforcement of laws regulating securities and exchanges, together with such corresponding appropriations, records, equipment and other properties as may be necessary or convenient to carry out the provisions of this Act.
- c. The Commission shall report to the President annually or oftener as he may require. The report shall contain an account of the work of the Commission, during the period covered and such further data and information as may be deemed necessary or appropriate or may be called for by the President.

CHAPTER III.—*Registration of Securities*

SEC. 4. *Sale and registration of securities.*—No securities except of a class exempt under any of the provisions of section five hereof or unless sold in any transaction exempt under any of the provisions of section six hereof shall be sold within the Philippines unless such securities shall have been registered and/or licensed as hereinafter provided. Registration of stock shall be deemed to include the registration of rights to subscribe to such stock if the registration statement filed pursuant to section seven of this Act includes a statement that such rights are to be issued. A record of the registration of securities shall be kept in a Register of Securities to be kept in the office of the Commission, in which Register of Securities shall also be recorded any orders entered by the Commission with respect to such securities. Such register, and all information with respect to the securities registered therein, shall be open to public inspection.

SEC. 5. *Exempt securities.*—

- a. Except as hereinafter expressly provided, the provisions of this Act shall not apply to any of the following classes of securities:
 1. Any security which, prior to the taking effect of this Act, has been sold or disposed of by the issuer or bona fide offered to the public.