



19 February 2021

## **SEC RELEASES DRAFT IMPLEMENTING RULES OF FIST ACT**

The Securities and Exchange Commission (SEC) has released the draft Implementing Rules and Regulations (IRR) of Republic Act No. 11523, or the Financial Institutions Strategic Transfer (FIST) Act, for public comment.

The draft IRR will operationalize the newly signed law that allows for the creation of corporations that invest in or acquire non-performing assets (NPAs) of financial institutions such as banks, lending and financing companies, investment houses, and insurance companies.

President Rodrigo R. Duterte approved the measure on February 16 as part of efforts to cushion the “serious economic setbacks and tremendous financial pressure on markets and industries” caused by the COVID-19 pandemic.

The SEC, the primary implementing agency of the FIST Act, drafted the IRR with inputs from the Bangko Sentral ng Pilipinas (BSP), Bureau of Internal Revenue (BIR) and National Economic and Development Authority (NEDA).

### **Formation of FISTCs**

The law provides that a FIST corporation (FISTC) shall be organized as a stock corporation other than a one-person corporation, with a minimum authorized capital stock of P500 million, of which P125 million shall be subscribed and at least P31.25 million paid up in cash.

The draft IRR further provides that an FISTC shall be classified as corporations vested with public interest. As such, it shall have independent directors on its board of directors, appoint a compliance officer, submit compensation and performance reports, and comply with other requirements prescribed by law.

Applications for the establishment and registration of an FISTC shall be filed with the SEC within 36 months from the effectivity of the FIST Act. Those established on the 25th to 36th month cannot avail of the tax incentives unless an amendatory law extending the privileges is passed.

An entity created under Republic Act No. 9182, as amended, or The Special Purpose Vehicle (SPV) Act of 2002, may avail of the privileges and incentives provided under the FIST Act by submitting a notarized Secretary’s Certificate, its recent articles of incorporation and bylaws, and its latest audited financial statements and General Information Sheet showing its compliance with the minimum capital requirements.

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## **Transfer of non-performing assets**

Under the law, only the BSP, banks, pawnshops, non-stock savings and loan associations (NSSLAs), and non-bank credit card issuers and other credit-granting institutions supervised by the central bank; financing companies, lending companies, and accredited microfinance nongovernment organizations; investment houses; insurance companies; and select government-owned and -controlled corporations (GOCCs) and government financial institutions (GFIs) may transfer NPAs to FISTCs.

The covered GOCCs and GFIs are Philippine Deposit Insurance Corporation, Land Bank of the Philippines, Development Bank of the Philippines (DBP), National Home Mortgage Finance Corporation, Philippine Guarantee Corporation, Home Development Mutual Fund, Social Security System, Government Service Insurance System, Small Business Corporation, and National Housing Authority.

The assets should have become non-performing on or before December 31, 2022. They may be non-performing loans, which 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.

Financial institutions may likewise transfer to FISTCs real and other properties acquired (ROPA) in settlement of loans and receivables, including shares of stocks and personal properties acquired by way of dation in payment or judicial or extra-judicial foreclosure or execution of judgment or enforcement of security interest.

A financial institution that intends to transfer NPAs to an FISTC shall file an application for eligibility of said assets, in the prescribed format, with the appropriate regulatory authority for each transfer.

The certificate of eligibility (COE) shall be issued by the Department of Finance (DOF) in the case of GOCCs and GFIs other than Landbank and DBP, and by the Monetary Board or its designated authority in the case of the BSP.

The BSP, meanwhile, shall issue the COE in the case of banks and other credit-granting institutions under its supervision; the Insurance Commission in the case of insurance companies; and the SEC in the case of financing and lending companies, accredited microfinance NGOs, and investment houses, except their trust and quasi-banking functions, or any qualified entity not under the DOF or BSP.

All sales or transfers of NPAs to an FISTC shall be in the nature of a true sale, wherein the transferor 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 and its creditors.



## Investments in FISTCs

Meanwhile, an FISTC may issue Investment Unit Instruments (IUIs) to any qualified buyer in the minimum amount of P10 million, pursuant to a plan submitted to the SEC and issued with a Certificate of Permit to Sell or Offer for Sale Securities.

The plan shall include the investment policies of the FISTC, features of the IUIs including specific amounts issued and to be issued, rights of the IUI holders, and methods for the liquidation and distribution of assets to the IUI holders, among others.

The draft IRR prohibits an FISTC from acquiring the IUIs of another FISTC. The selling financial institution, 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.

Any FISTC or SPV that offers to sell or distribute its IUIs to non-permitted investors within the Philippines without prior approval of the SEC shall be subject to the penalties provided under Republic Act No. 8799, or the Securities Regulation Code, and its IRR.

## Incentives and tax exemptions

Under the draft IRR, the transfer and other related transactions involving eligible NPLs and ROPAs shall be exempt from the payment of certain taxes such as the documentary stamp tax, capital gains tax, creditable withholding income taxes and value-added tax, subject to the applicable revenue regulations.

To encourage the infusion of capital and financial assistance by the FISTC for the rehabilitation of the borrower's business, the draft IRR also exempts FISTCs from the income tax on net interest income arising from new loans in excess of existing loans, among others.

The [draft Implementing Rules and Regulations of the FIST Act](#) may be accessed through the SEC website.

All interested parties have until February 25, 2021 to submit their comments to the SEC Market Securities Regulation Department at Ground Floor Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City. They may also email their inputs to Atty. Gail Rose Anne C. Egar at [gracegar@sec.gov.ph](mailto:gracegar@sec.gov.ph), Ms. Gretchen C. Lagonoy at [gclagonoy@sec.gov.ph](mailto:gclagonoy@sec.gov.ph) or [msrd\\_covid19@sec.gov.ph](mailto:msrd_covid19@sec.gov.ph).

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