

Office of the President
GOVERNANCE COMMISSION FOR GOCCs

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17 November 2011

HON. TERESITA J. HERBOSA
Chairperson
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City

RE: CREDIT INFORMATION CORPORATION (CIC)

Dear Chairperson Herbosa,

We reply to your letter of 24 October 2011 seeking guidance on the registration of the Credit Information Corporation (CIC) with the Securities and Exchange Commission (SEC) which was already approved by the Office of the President, pursuant to a Memorandum dated 29 September 2011, signed by Executive Secretary Paquito N. Ochoa, Jr. In particular, GCG's guidance in being sought in the light of the Opinion issued by Government Corporate Counsel, Hon. Raoul C. Creencia (replying to the query of CIC President, Mr. Baltazar N. Endriga), holding that "CIC must first register as a corporation with the SEC in order to acquire a legal personality for the transaction of business."

We have reviewed the provisions of Republic Act No. 9510 (RA No. 9510), otherwise known as the "*Credit Information System Act*"¹ (CISA), in the light of the discussions in your letter of 24 October 2011, and opine that CIC has been duly constituted as a juridical entity under RA No. 9510, and legally needs to register with the SEC upon the transfer of majority ownership to the private investors.

THE STATE POLICY UNDER CISA

The seemingly inconsistent provisions found in RA No. 9510 on the issue are the result of two primary objectives sought to be achieved CISA:

- (a) To constitute initially CIC as a government-owned or -controlled corporation (GOCC) with the "primary purpose . . . to receive and consolidate basic credit data, to act as a central registry or central repository of credit information, and to provide access to reliable,

¹Sec. 1, R.A. No. 9510.

standardized information on credit history and financial condition of borrowers;² and

- (b) To authorize the *eventual transfer* (within a period of five years) of the controlling equity interest in CIC to private investors, and thus remove it from its status as a GOCC.

Under the declared policy that the State “recognizes the need to establish a comprehensive and centralized credit information system for the collection and dissemination of fair and accurate information relevant to, or arising from, credit and credit-related activities of all entities participating in the financial system[;] [a] credit information system will directly address the need for reliable credit information concerning the credit standing and track record of borrowers,³ RA No. 9510 establishes for the country under Section 4 a “Credit Information System”, with CIC playing a central role therein.

There is no attempt under CISA to “governmentalize” the Philippine Credit Information System, for indeed it operates within the Philippine capital market system — essentially a private-sector and commercially-driven domain (*i.e.*, “Banks, quasi-banks, their subsidiaries and affiliates, life insurance companies, credit card companies and other entities that provide credit facilities are required to submit basic credit data and updates thereon on a regular basis to the Corporation.”⁴). However, CIC, which is the central corporate entity “to receive and consolidate basic credit data, to act as a central registry or central repository of credit information, and to provide access to reliable, standardized information on credit history and financial condition of borrowers,” has been established initially as a GOCC under the parameters of RA No. 9510, to ensure that within a period of five (5) years, and under the direction and control of the SEC, it would be able to establish the Philippine Credit Information System envisioned under CISA, before it is eventually turned over to the control of the private investors.

CIC ESTABLISHED AS A CORPORATE ENTITY UNDER CISA

The relevant provisions of RA No. 9510 clearly created and constituted CIC as a juridical entity without need of formal registration with the SEC under the provisions of the Corporation Code of the Philippines.

Firstly, Section 5 of RA No. 9510, which is entitled “***Establishment of the Central Credit Information Corporation***,” provides that “*There is hereby created a Corporation which shall be known as the Credit Information Corporation, whose primary purpose shall be to receive and consolidate basic credit data, to act as a central registry or central repository of credit information, and to provide access to reliable, standardized information on credit history and financial condition of borrowers;*” with the other provisions therein laying out what basically constitutes the charter of CIC, *e.g.*, providing for its corporate powers, setting-up its capital stock, providing for its Board of Directors and their qualifications.

The creation of CIC as a juridical entity under Section 5 RA No. 9510 is likewise affirmed by its definition under the earlier Section 3, thus: “(e) “*Corporation*” refers to the Credit Information Corporation established under Section 5 of this Act.”

²Sec. 5, R.A. No. 9510.

³Sec. 2, RA No. 9510.

⁴Sec. 4(a), RA No. 9510.

Secondly, although there is nothing that prevents the State from creating a GOCC through registration with the SEC under the provisions of the Corporation Code, when the Legislature so requires that a GOCC shall be registered with the SEC to be duly constituted as a juridical entity, then it expressly so provides, as you aptly discussed in your letter. In the case of CIC being duly created and/or constituted as a juridical entity, there is nothing in RA No. 9510 that requires it to be so registered with the SEC under the provisions of the Corporation Code.

This leads us therefore to a discussion of the provisions of RA No. 9510 that indicate a need for CIC to go to the SEC in order to achieve certain legal ends.

CIC MUST REGISTER WITH THE SEC ONLY AS PART OF THE PRIVATIZATION PROCESS MANDATED UNDER CISA

Section 5(m) of RA No. 9510 provides the particular directive for the eventual privatization of CIC, thus:

(m) The national government shall continue to hold sixty percent (60%) of the common shares for a period not to exceed five (5) years from the date of commencement of operations of the Corporation. After the said period, the national government shall dispose of at least twenty percent (20%) of its stockholdings in the Corporation to qualified investors which shall be limited to industry associations of banks, quasi-banks and other credit-related associations, including associations of consumers. The national government shall offer equal equity participation in the Corporation to all qualified investors. ***When the ownership of the majority of the common voting shares of the Corporation passes to private investors, the stockholders shall cause the adoption and registration with the SEC of the amended articles of incorporation within three (3) months from such transfer of ownership.***⁵

At present, RA No. 9510 constitutes the charter of CIC, with provisions therein that remain peculiar to it as a GOCC, thus:

- (a) The SEC Chairman shall be the chairman of the CIC Board of Directors;⁶
- (b) The members of the CIC Board representing the government shares shall be appointed by the President of the Philippines;⁷
- (c) The power of the SEC to pass upon the qualifications of CIC Directors, and with power to suspend, disqualify or remove them;⁸
- (d) Exemption of CIC from the Salary Standardization Law, but coverage of the Civil Service Act;⁹
- (e) Subjecting CIC to the Procurement Laws;¹⁰

⁵*Emphasis supplied.*

⁶Sec. 5(f), RA No. 9510.

⁷Sec. 5(f), RA No. 9510.

⁸Sec. 5(g), RA No. 9510.

⁹Sec. 5(h), R.A. No. 9510.

Once CIC is majority-owned by private investors, it ceases to be a GOCC, and thereupon the provisions of its charter (RA No. 9510) may become incongruous to its essence as a privatized corporation. This is the reason why Section 5(m) of CISA provides that “When the ownership of the majority of the common voting shares of the Corporation passes to private investors, ***the stockholders shall cause the adoption and registration with the SEC of the amended articles of incorporation within three (3) months from such transfer of ownership.***”¹¹ We note that the quoted section uses the term “*adoption and registration with the SEC*” in reference to a specific timeframe: when ownership of the majority of the common voting shares of CIC passes to private investors. There is therefore no doubt that CISA requires the registration of CIC with the SEC not as a condition for it to act as a juridical person or to perform its functions under the law, but only within three months from the time it is completely privatized under the 5-year period. In addition, the quoted section refers not to an original, but rather to an “***amended*** articles of incorporation,”¹² which is a recognition of the fact that the original charter of CIS is RA No. 9510, and the articles of incorporation that is going to be adopted for CIC by the majority-private investors, can only constitute its amended charter or articles of incorporation.

RA No. 9510 has therefore adopted the same process discussed in your letter where PNB, an original GFI with its own charter, underwent privatization accompanied with an executive order mandating the adoption of a new set of articles of incorporation and by-laws to be registered with the SEC, *albeit* with one important difference: there is no indication under CISA that once the amended articles of incorporation and a new set of by-laws are registered for CIC with the SEC, that RA No. 9510 ceases to be effective as part of the charter of CIC, other than the portions provided for in the new set of amended articles and by-laws. This matter will be discussed further in the next section below.

We next consider the provisions of Section 5(e) of RA No. 9510 which mandate the SEC “in coordination with relevant government agencies, [to] prescribe additional requirements for the establishment of the [CIC],” which seem to suggest that there is a need for CIC to be registered with the SEC first to be established as a juridical person. We quote paragraph (e) of Section 5, together with paragraph (d), thus:

(d) Equal equity participation in the Corporation shall be offered and held by qualified private sector investors but in no case shall each of the qualified investor represented by an association of banks, quasi-banks and other credit-related associations including the associations of consumers have more than ten percent (10%) each of the total common shares issued by the Corporation.

(e) The SEC in coordination with relevant government agencies, shall prescribe additional requirements for the establishment of the Corporation, such as industry representation, capital structure, number of independent directors, and the process for nominating directors, and such other requirements to ensure consumer protection and free, fair and healthy competition in the industry.

¹⁰Sec. 5(l), R.A. No. 9510.

¹¹*Emphasis supplied.*

¹²*Emphasis supplied.*

We note that Section 5(d) of CISA, read in conjunction with Section 5(m), allow during the period that CIC is clearly a GOCC to sell and transfer at least 40% of its outstanding capital stock to four associations (of 10% each allocation) of banks, *quasi*-banks, other credit associations, and consumers; but that after five (5) years from its constitution under CISA, CIC must dispose of at least 20% of its remaining 60% holding in CISA to private investors to transform it into a private corporation. The correlation of Section 5(d) to Section 5(m) is the only manner by which we can place any logic into the figures appearing in both subsections; and such correlation is what gives the true meaning to the provisions of Section 5(e), coming as they do after Section 5(d) — that as the National Government moves towards the privatization of CIC, the SEC must coordinate with relevant government agencies “to ensure consumer protection and free, fair and healthy competition in the industry,” towards the “establishment” of CIC as a private corporation, “such as industry representation, capital structure, number of independent directors, and the process for nominating directors, and such other requirements.”

In order words, the meaning of the phrase “*The SEC in coordination with relevant government agencies, shall prescribe additional requirements for the establishment of the Corporation,*” is not meant to cover the creation and constitution of CIC as a juridical person (that has been effected clearly in the opening paragraph of Section 5), but as part of the power of the SEC to proceed with the process of providing amendments to the CIC charter (through an amended articles of incorporation registered by the CIC with the SEC), but which to ensure that once established as a private (non-GOCC) corporation, CIC continues to have within its charter the necessary provisions that should “ensure consumer protection and free, fair and healthy competition in the industry.”

Although the “the adoption and registration with the SEC of the amended articles of incorporation” is legally required only “within three (3) months from such transfer of [majority] ownership” of CIC to private investors, nonetheless, it seems the mandate of SEC under CISA that even during the process of privatization (as it begins to offer CIC equity to the qualified associations), it must begin to consider what appropriate provisions must end up in the amended articles of incorporation of CIC, as part of the contractual commitments of those qualified investors who purchase the shares of CIC.

Consideration of such mandate may in fact require that SEC may proceed into the formal “adoption and registration” of CIC’s amended articles of incorporation and a new set of by-laws, even before reaching the critical point of CIC being majority-owned by private investors. This leads into the final section of this opinion.

CIC REMAINS A PRIVATE CORPORATION VESTED WITH PUBLIC INTEREST

A consideration of the foregoing issues leads to a clear impression that RA No. 9510 operates under the ultimate objective that the CIC would better achieve its central role under the Philippine Credit Information System as a private corporation, owned and controlled by private investors who have the highest stake in the capital market system; but even then, CIC is a private corporation that is “vested with public interest,” and having in its charter requisite provisions that promote such public interests. Such an ultimate end could not be achieved under CISA unless a transitory process is adopted, by first constituting CIC to be a GOCC to comply with constitutional requirements, and to allow the National Government, through the SEC, to have control over the charter thereof.

The creation and constitution *initially* of CIC as stock GOCC (with the National Government initially holding 100% of its equity) under RA No. 9510 is consistent with Section 16, Article XII of the 1987 Constitution, which mandates that Congress cannot, *except by general law*, provide for the formation, organization, or regulation of private corporations, but which allows GOCCs to be created or established by special charters in the interests of the common good and subject to the test of economic viability.¹³ Were CIC constituted under CISA as private-investors-controlled corporation, it would have offended the constitutional prohibition, and CIC would be void and inexistent as held in other similar attempts in the past.¹⁴

In addition, by being first organized as a GOCC and subject to mandatory privatization, CIC has been lawfully granted features and powers that are peculiar to GOCCs and other government agencies to allow it to pursue the objectives of RA No. 9510, but with power on the part of the SEC to mold its corporate powers and features as it moves through the process of privatization that would ensure that even in private sector hands, CIC would still have in its charter (the amended articles of incorporation and a new set of by-laws) provisions that protect the public interests for which it has been established, and with the ability to retain some of the privileges and features under the CISA to achieve those ends.

The process mandated under CISA ensures that even under private sector control, CIC can retain its feature as a private corporation “vested with public interest”, since there is no indication under RA No. 9510 that even as it adopts and registers its amended articles of incorporation, it ceases to have provisions of CISA not inconsistent with its private sector essence be retained as part of its charter (which feature can be ensured that such enabling clause appearing in the amended articles of incorporation). For example, the roles, powers and functions of CIC under the Philippine Credit Information System as provided under Section 4 of RA No. 9510 should remain in place even without specific reference under the amended articles of incorporation once CIC becomes a private corporation controlled by the qualified private investors. Other features of CISA, such as the SEC Chairman remaining the Chairman of the CISA Board of Directors, may remain in place in order to ensure that CIC fulfills its feature as a private corporation “vested with public interests.”

The point being made is that, pursuant to its mandate under Section 5(e) of RA No. 9510, SEC has the power, as opined by the Government Corporate Counsel, to already proceed, in coordination with relevant government agencies, with the process of earlier drafting for CIC the amended articles of incorporation, as well as its by-laws, containing the features that SEC considers critical to be in such legal documents at the time CIC becomes a private corporation; the amended articles of incorporation and by-laws, may both expressly incorporate CISA as constituting part of the charter of the CIC, with a provision that once privatized only those provisions in the CISA that are inconsistent with CIC being a non-GOCC are deemed not to constitute part of the charter of CIC. Once in place, privatization can proceed with prospective investors being fully cognizant of the binding features of the amended articles of incorporation and by-laws of the CIC, which remain in place even at the critical point mandated under RA No. 9510 when CIC is actually majority-owned by qualified private investors.

¹³Congress cannot enact a law creating a private corporation with a special charter. Since private corporations cannot have a special charter, it follows that Congress can create corporations with special charters only if such corporations are government-owned or -controlled. *Feliciano v. Commission on Audit*, 419 SCRA 363 (2004). *Reiterated in Veterans Federation of the Philippines v. Reyes*, 483 SCRA 526 (2006).

¹⁴*NDC v. Phil. Veterans Bank*, 192 SCRA 257 (1990). In that case Pres. Decree No. 117 created a new private corporation in lieu of one that had become insolvent, but which new corporation was neither to be owner nor to be controlled by the Government, since the law provided that NDC was to extend new loans to the new corporation, and the shares of the new corporation were to be issued to the old investors and stockholders of the insolvent corporation.

For the consideration of the Honorable Chairperson of the SEC.

Very truly yours,



CESAR L. VILLANUEVA
Chairman