

REQUIRING GOVERNMENT FINANCIAL INSTITUTIONS TO FORECLOSE MANDATORILY ALL LOANS WITH ARREARAGES, INCLUDING INTEREST AND CHARGES, AMOUNTING TO AT LEAST TWENTY PERCENT (20%) OF THE...

PRESIDENTIAL DECREE NO. 385, January 31, 1974

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WHEREAS, the government financial institutions, particularly the Philippine National Bank and its subsidiary, the National Investment and Development Corporation, the Development Bank of the Philippines, the Government Service Insurance System, and the Social Security System, are the largest individual mobilizers of savings and investment capital in the country;

WHEREAS, these institutions have a large and important role to play in the economic development of the country by reason of the magnitude of the resources they command for financing essential and high-priority programs and projects;

WHEREAS, the loans and investments made by these institutions in favor of private projects and enterprises reflect the trust and confidence placed by these institutions in the ability and willingness of the recipients to use such funds efficiently and faithfully in pursuing the projects being financed and to manage their affairs in such a manner as to enable them to pay back their loans and investments to these institutions on due dates together with the income and charges thereon;

WHEREAS, borrowing or obtaining investment funds from these government financial institutions is not a demandable right but is a privilege enjoyed by the recipients of such funds;

WHEREAS, borrowers or recipients of investment funds from these financial institutions have a clear, legal and moral obligation to repay their obligations to these institutions on due dates;

WHEREAS, a number of large borrowers from these institutions have long records of failure to pay their obligations when due;

WHEREAS, said long-standing delinquencies deny said financial institutions of substantial cash inflow which could otherwise be used to finance other development projects for the benefit of the whole country;

WHEREAS, borrowers who accumulate large arrearages have already received to the fullest extent the most lenient and patient consideration that government financial institutions can afford to give;

WHEREAS, the government financial institutions prejudiced by such borrowers should not be unreasonably hampered in their efforts to recover their loans and investments in order to rechannel the same to new or additional projects that further enhance the development of the country;

WHEREAS, it has been the experience of government financial institutions that their efforts to recover their large loans and investments are frequently prevented or delayed by action brought to the courts by such borrowers;

WHEREAS, in many of foreclosure/collection cases brought to court, legal niceties and technicalities are invoked

in their own favor by delinquent borrowers to cover and distract the court's attention away from the undeniable and compelling fact of their delinquencies with government financial institutions;

WHEREAS, one of the grounds usually invoked by delinquent borrowers in seeking restraining orders and/or injunctions from the courts to block the foreclosure by government financial institutions on their loans are alleged discrepancies between the accounting records of the creditor and the debtor with respect to the amount of the outstanding obligations of the debtor, when as a matter of fact the arrearages have reached such proportions as to render said discrepancies insignificant;

WHEREAS, it has been shown by the experience of government financial institutions that in instances where extrajudicial foreclosure on large loans is successfully pursued, the assets, aside from land, that form part of the foreclosed collaterals, including buildings, machinery, equipment, materials, furniture and fixtures, are usually pilfered or lost rendering it necessary that the foreclosing government creditor have a writ of possession issued in its favor without delay after the foreclosure auction sale; and

WHEREAS, the accumulation of such large delinquencies by borrowers from government financial institutions are not in accord with the principle of discipline being instilled in the people and promoted by the New Society;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, as amended by Proclamation No. 1104, dated January 17, 1973, as amended, in order to effect the early collection of delinquent loans from government financial institutions and enable them to continue effectively financing the development needs of the country; and in accordance with desired policies of achieving changes and reforms in the social and economic structure of our society, hereby order and decree:

SECTION 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

SEC. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

In case a restraining order or injunction is issued, the borrower shall nevertheless be legally obligated to liquidate the remaining balance of the arrearages, paying ten percent (10%) of the arrearages outstanding as of the time of foreclosure, plus interest and other charges, on every succeeding thirtieth (30th) day after the issuance of such restraining order or injunction until the entire arrearages have been liquidated. These shall be in addition to the payment of amortizations currently maturing. The restraining order or injunction shall automatically be dissolved should the borrower fail to make any of the above-mentioned payments on due dates, and no restraining order or injunction shall be issued thereafter. This shall be without prejudice to the exercise by the government financial

institutions of such rights and/or remedies available to them under their respective charters and their respective contracts with their debtors, nor should this provision be construed as restricting the government financial institutions concerned from approving, solely at its own discretion, any restructuring, recapitalization, or any other arrangement that would place the entire account on a current basis: Provided, however, That at least twenty percent (20%) of the arrearages outstanding at the time of the foreclosure is paid.

All restraining orders and injunctions existing as of the date of this Decree on foreclosure proceedings filed by said government financial institutions shall be considered lifted unless finally resolved by the court within sixty (60) days from date hereof.

SEC. 3. Upon the application for foreclosure of the collateral of delinquent borrowers, whether judicially or extra judicially, by any government financial institution, the court and/or officials concerned shall immediately act and give priority to the same and schedule the publication thereof within five (5) days from receipt of the application, the auction sale to be held not later than ten (10) days from the date of the last publication. The Certificate of Sale must be issued on the date of sale and the same must be registered by the Register of Deeds concerned not later than five (5) days after submission of the Certificate of Sale.

SEC. 4. As a result of foreclosure or any other legal proceedings wherein the properties of the debtor which are foreclosed, attached, or levied upon in satisfaction of a judgment are sold to a government financial institution, the said properties shall be placed in the possession and control of the financial institution concerned, with the assistance of the Armed Forces of the Philippines whenever necessary. The Petition for Writ of Possession shall be acted upon by the court within fifteen (15) days from the date of filing.

SEC. 5. The government financial institutions are hereby directed to report to the Office of the President any official who delays the proceedings as provided herein or who violates any of the provisions of this Decree. Actions taken pursuant to the provisions of this Decree shall, likewise, be reported by the government financial institution concerned to the Monetary Board, through the Governor, Central Bank of the Philippines, in accordance with such schedule, forms and procedures as the Governor may prescribe for the purpose.

SEC. 6. This Decree shall take effect immediately.

Done in the City of Manila, this 31st day of January, in the year of Our Lord, nineteen hundred and seventy-four.

(Sgd.) FERDINAND E. MARCOS

President

Republic of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR

Executive Secretary

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