

AMENDING FURTHER SECTIONS 2, 3, 5, 6, AND 8 OF PRESIDENTIAL DECREE NO. 902-A

PRESIDENTIAL DECREE NO. 1758, January 02, 1981

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WHEREAS, one of the objectives of the government as envisioned under Presidential Decree No. 902-A, as amended by P. D. 1653, is to attract and to mobilize investments, domestic and foreign, through the participation of private enterprises in activities identified as most contributive to the growth of the national economy;

WHEREAS, in order to attain this national objectively it is incumbent upon government to provide a favor-role climate for investments to be vigorously mobilized to insure a wider and more meaningful equitable distribution of wealth;

WHEREAS, being the principal agency of the government charged with the establishment of the needed atmosphere in all phases of the country's economic and industrial development, the Securities and .Exchange Commission must be provided with the appropriate organizational structure, financial support and manpower capabilities commensurate with the scope of its tasks; and

WHEREAS, for these programs to succeed, there is now a pressing need to restructure the Securities and Exchange Commission not only to make it a more potent, responsive and effective arm of the government but to enable it to play a more effective role in the socio-economic development of the country;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, and the authority vested in me by Presidential Decree No. 1416, do hereby order and decree;

SECTION 1. The first and second paragraphs of Section 2 of Presidential Decree No. 902-A, as amended by Presidential Decree No. 1653, is hereby further amended to read as follows:

"SEC. 2. That the Commission shall be a collegial body composed of a Chairman and four (4) Associate Commissioners who shall be appointed by the President and the term of office of each member shall be seven (7) years; Provided, however, That the Chairman and the two Associate Commissioners of the Commission first appointed by the President shall serve for a period of seven (7) years; five (5) years and three (3) years as continue in Office in accordance with the terms fixed in their current respective appointments, and the two additional Associate Commissioners first appointed by the President under this Decree, as amended, shall serve for five (5) years and three (3) years as fixed in their respective appointments; Provided, further, That upon the expiration of his term, a member shall serve as such until his successor shall have been appointed and qualified; and Provided, finally, That no vacancy shall be filled except for the unexpired portion of the term.

The Commission shall meet as often as may be necessary on such day or days as the Chairman may fix. The notice of the meeting shall be given to all members of the Commission and the presence of at least three (3) shall constitute a quorum. In the absence of the Chairman, the more senior Associate Commissioner shall act as presiding officer of the meeting."

SEC. 2. Section 3 of the same Presidential Decree, as amended by Presidential Decree No. 1653, is hereby further

amended to read as follows:

"SEC. 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines, and in the exercise of its authority, it shall have the power to enlist the aid and support of and to deputize any and all enforcement, agencies of the government, civil or military as well as any private institution, corporation, firm, association or person."

SEC. 3. Section 5 of the same Presidential Decree is hereby amended by adding thereunder sub-paragraph (d) to read as follows:

"d) Petitions of corporations, partnerships or association to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree."

SEC. 4. Sub-paragraph c), d), h) and m) of Presidential Decree No. 902-A, as amended by Presidential Decree No. 1653, is hereby further amended to read as follows:

"c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors. Provided, however, that the Commission may, in appropriate cases, appoint a Rehabilitation Receiver who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof. Provided, further, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly,"

"d) To create and appoint a management committee, board, or body upon petition or motu proprio to undertake the management of corporations, partnerships or other associations in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of and control over, all the existing assets and property of such entities under management to evaluate the existing, assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission. Provided, however, That the Commission, may, on the basis of the findings and recommendation of the management committee, of rehabilitation receiver, board or body, or on its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The Management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred."

"h) To issue subpoena duces tecum and summon witnesses to appear in any proceedings of the Commission and in appropriate cases order the examination, search and seizure of all documents, papers, files and records, tax returns, books of accounts, as well as all deposits of whatever nature with bank or banking institutions in the Philippines, including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities and similar documents, of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, notwithstanding the provisions of any law to the contrary.

"m) To exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted to the Commission to achieve the objectives and purposes of this Decree."

SEC. 5. Section 8 of the same Presidential Decree, as amended by Presidential Decree No. 1653, is hereby further amended to read as follows:

"SEC. 8. The Commission shall have nine (9) departments each to be headed by a director, namely: Corporate and Legal; Examiners and appraisers; Brokers and Exchanges; Money Market Operations; Securities Investigations and Clearing; Investment Research and Statistics; Administrative and Finance; Prosecution and Enforcement; and Supervision and Monitoring Departments.

The staffing pattern to implement this amended departmental structure shall be approved pursuant to Section 40 of P.D. No. 1177, with any additional costs incurred for 1980 and 1981 to be charged to the Special activities Fund of the corresponding year upon approval by the President."

SEC. 6. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, the exclusive authority to investigate, on complaint or motu proprio, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; to file and prosecute in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon prima facie finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission.

Prosecution under this Decree or any Act, Law, Rules and Regulations enforced and administered by the Commission shall be without prejudice to any liability for violation of any provision of the Revised Penal Code.

SEC. 7. The Supervision and Monitoring Department shall have the power of supervision over all corporations, partnership and associations registered with the Commission in all matters pertaining to their compliance with the laws, mandatory provisions and requirements of pertinent rules and regulations administered and enforced by the Commission, as well as their respective by-laws duly approved by the Commission, integrate, analyze and evaluate ongoing operations or activities of such entities; coordinate with, and recommend to the appropriate departments for proper action and enforcement; and to do and perform such other functions as may be duly delegated by the Commission.

SEC. 8. The proceeds and effects of crimes committed by any person or entity in violation of the laws and regulations administered and enforced by the Commission shall be forfeited, seized and confiscated in favor of the

State upon order of the Commission, after fine notice and bearing.

SEC. 9. Any provisions of existing law, decree, order, rules and regulations inconsistent with this Decree, is hereby repealed, amended or modified accordingly.

SEC. 10. This Decree shall take effect immediately.

Done in the City of Manila, this 2nd day of January, in the year of Our Lord, nineteen hundred and eighty one.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(Sgd.) JOAQUIN T. VENUS, JR.
Deputy Presidential Executive Assistant

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