# The FIST Act (Republic Act No. 11523): A Relief Measure for the Philippine Banking Industry

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Republic Act No. 11523, also known as “An Act Ensuring Philippine Financial Industry Resiliency Against the COVID-19 Pandemic” (FIST Act)[1], which seeks to assist banks and financial institutions (FIs) in dealing with the adverse effects of the COVID-19 pandemic, took effect on February 18, 2021 upon its publication in the Official Gazette and in a newspaper of general circulation. This law provides a legal framework for the full transfer of the bad loans and assets of banks by allowing them to clean their books and re-channel their resources to improve liquidity in the financial system.

The Securities and Exchange Commission (SEC), jointly with the Bangko Sentral ng Pilipinas, Department of Finance, Bureau of Internal Revenue, and the Land Registration Authority, are tasked to issue implementing rules and regulations within 30 days from the effective date of the law.

**Repeal of the Special Purpose Vehicle Act of 2002**

The main mechanism under the FIST Act is to allow for the establishment of special purpose corporations, known as Financial Institutions Strategic Transfer Corporations (FISTC). The law then provides tax and other incentives for the FISTCs, as well as for the transfer of non-performing assets (NPAs) to and from these FISTCs.

The FIST Act repeals Republic Act No. 9182, as amended, or the Special Purpose Vehicle Act of 2002 (SPV Act). The SPV Act was passed to help banks dispose of their NPAs in the aftermath of the Asian financial crisis by providing a legal framework for this purpose and granting fiscal incentives. However, banks have stopped setting up SPVs under the SPV Act because transactions are no longer entitled to incentives. The law provided limited periods for transfers to or by SPVs to qualify for incentives and these periods have now expired.

The FIST Act is essentially the same as the SPV Act in terms of the creation and powers of the special purpose company, the conditions for the disposition of NPAs, and the incentives given at the various stages of the contemplated transactions.

SPVs created under the SPV Act may avail of the privileges and incentives granted under the FIST Act.

[1] https://www.officialgazette.gov.ph/downloads/2021/02feb/20210216-RA-11523-RRD.pdf

## How to Set Up a FISTC

A FISTC must be a stock corporation with the power to invest in, or acquire NPAs of FIs and to engage third parties to manage, operate, collect and dispose of NPAs acquired from FIs, among other powers.

A FISTC must be established within 36 months from the effectiveness of the FIST Act (or by February 2024).

A FISTC must also submit a FISTC Plan to the SEC within the period to be prescribed by the SEC. Once the FISTC Plan is approved by the SEC, the FISTC would be authorized to sell and distribute investment unit instruments pursuant to the FIST Act.

## Tax Incentives

The transfer of NPAs from an FI to an FISTC, and from an FISTC to a third party, or a dation in payment by the borrower or by a third party in favor of an FI or an FISTC, is exempt from the following taxes, when applicable: (a) documentary stamp tax; (b) capital gains tax on the sale of certain capital assets, or creditable withholding tax on the income from the sale of ordinary assets; and (c) value-added tax.

These transfers are also subject to reduced fees on the following: (a) registration and transfer fees on the transfer of real estate mortgage and security interest to and from the FISTC; (b) filing fees for any foreclosure initiated by the FISTC in relation to any NPA acquired from an FI; and (c) land registration fees.

The incentives are time bound. For example, transfers of NPAs from FIs to an FISTC must be done with two (2) years from effectiveness of the FIST Act, while transfers from a FISTC to third parties are given a five (5)-year window from the acquisition of NPAs to dispose of the same with incentives.

The FIST Act also gives tax exemptions and privileges to FISTCs, including exemption from income tax, documentary stamp tax, and mortgage registration fees on certain new loans. FISTCs are also exempt from documentary stamp tax in case of capital infusion to a borrower with non-performing loans.

## FIST Act v. SPV Act

As the FIST Act mirrors the provisions of the SPV Act, it remains to be seen if this measure will be more effective than its predecessor in addressing the problems of the financial sector with non-performing assets.

One provision of the FIST Act that may provide relief to FIs and FISTCs is the prohibition on the issuance of injunctive reliefs by courts, other than the Supreme Court and the Court of Appeals, against certain transfers of assets involving FISTCs and participating FIs. This provision was not in the SPV Act.

The FIST Act

Another factor that favors this new measure is that it will operate under a different insolvency regime, the Financial Rehabilitation and Insolvency Act, which allows more options for, and expedites, the rehabilitation of distressed companies. The SPV Act operated under the Insolvency Act, an archaic legal framework that was passed in 1909.

Similar to the SPV Act, the period to establish a FISTC and the incentives provided under the FIST Act remain time-bound. FIs may see this as a negative feature of the law, given the slow judicial processes in the country and the various approval and regulatory requirements to set up and operate a FISTC and to transfer assets.

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