



Republic of the Philippines  
**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT**

1 December 2020

**Executive Secretary Salvador C. Medialdea**  
*Executive Secretary*  
Malacanang Complex, J.P. Laurel St.  
San Miguel, Manila, Philippines

Subject : **Investigation of Loan Transactions Involving  
Development Bank of the Philippines (DBP)  
and Lopez Group of Companies**

Dear Executive Secretary Medialdea:

We humbly write to submit the Final Report of the investigation conducted by the Presidential Commission on Good Government (PCGG) as regards the above-mentioned subject matter. Thank you very much.

Respectfully yours,

  
**Reynold S. Munsayac**  
*Acting Chairperson*

  
**John A. Agbayani**  
*Commissioner*

Copy furnished:

  
**Usec. Jennifer Joy C. Ong**  
*Undersecretary*  
Office of the Special Assistant to the President  
New Executive Building, Malacanang, Manila



**Office of the President**  
REPUBLIC OF THE PHILIPPINES

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2020-MRO-43103



Republic of the Philippines  
Presidential Commission on Good Government

**Memorandum**

**FOR :** **ATTY. REYNOLD S. MUNSAYAC**  
*Acting Chairperson*

**ATTY. JOHN A. AGBAYANI**  
*Commissioner*

**FROM :** **SPECIAL TASK FORCE IN THE INVESTIGATION OF  
ALLEGED IRREGULARITIES IN DBP TRANSACTIONS WITH  
BAYANTEL, BENPRES HOLDINGS, CENTRAL CATV, INC.  
AND MAYNILAD WATER**

**SUBJECT :** **FINAL REPORT ON THE INVESTIGATION OF ALLEGED  
IRREGULARITIES IN DBP TRANSACTIONS WITH BAYANTEL,  
BENPRES HOLDINGS, CENTRAL CATV, INC. AND MAYNILAD  
WATER**

**DATE :** **27 NOVEMBER 2020**

*27 Nov 2020*  
*27 Nov. 2020*

**BACKGROUND**

**I. LOAN TRANSACTIONS FOR EACH CORPORATION SUBJECT OF INVESTIGATION**

**A. Bayan Telecommunications, Inc. (BTI)**

<b>LOAN APPROVAL DATE</b>	December 11, 1995  The loan was approved on December 11, 1995 with maturity of 10 years. A principal repayment every March 30 and September 30 was imposed. The purpose of the loan is to partially finance roll-out of 330,100 land-based lines in Bayantel's service areas.
<b>TYPE AND AMOUNT OF LOAN</b>	Syndicated Term Loan of US\$ 374.4 Million
<b>COLLATERALS</b>	Pari-passu share in the pools of collaterals consisting of: Irrevocable and unconditional guarantee of Bayantel Telecommunications Holdings, Inc. (BTHC). Pledge by BTHC of continuing First priority security interest in all of the issued and outstanding capital stock of BTI. Pledge by BTI of continuing first priority security interest in all of the telecoms infrastructure, stock and instruments. Assignment by BTI of all moneys payable to BTI under the project documents, contract rights, receivables, properties, and assets, whether intangible or intangible and chattel paper and documents. Real

	Estate Mortgage (REM) on present and future real assets.
MATURITY DATE	September 19, 2005
OUTSTANDING BALANCE AS OF 2006	Php 576,426,491

Bayantel is owned 98.63% by Bayantel Telecommunications Holdings, Inc. (BTHC). BTHC in turn is 66.53% owned by Lopez Inc. of which 47.3% is held through Benpres Holdings Corp. (Benpres), the holding vehicle for Lopez Inc.'s investments in communications, power, Infrastructures, real estate and other services.

Resolution No. 0266 dated May 11, 2000 "recommends the approval of the request of Bayantel and BTHC for the temporary waiver of the required debt-to-equity ratio and debt-service coverage ratio covering its existing DBP term loan facility for 1999 and 2000."

On July 20, 2003, certain unsecured creditors filed a Petition for the Rehabilitation of BTI.

On December 11, 2003, The Credit Committee recommended the approval of BTI loan restructuring request in view of the following:

1. Foreclosure is not viable option considering the type and loan value of the existing collaterals. Under the most optimistic scenario, recovery of the Bank's principal will be at a greatly reduced value.
2. Considering that DBP's participation is minor (4%), we cannot unilaterally carry out any action that the Bank wishes to make. The decision of the majority lenders prevailed. As it is, the restructuring of Bayantel's loans is supported by majority of the Creditors.

Estimated DBP pro-rate share in BTI's assets with an appraised value of 1.643 billion with an equivalent loan value of 862.1 million.

B. Benpres Holdings Corporation (Benpres)

LOAN APPROVAL DATE	May 10, 1996
TYPE AND AMOUNT OF LOAN	Underwriting a P 3.0 Billion Long Term Commercial Paper (LTCP) constituting direct, unconditional and general obligations of Benpres.  The loan is based on DBP's Underwriting on Php250Million of the LTCP (P13.0 Million sold to SSS and GSIS; P 237.0 Million unsold) with applicable base rate on a 91-day T-Bill, plus a spread of 1% p.a. It was granted on May 10, 1996. The purpose of the loan was used to finance the equity requirements of Benpres business interest in telecommunications, toll road construction and management, and real estate estate property development.
COLLATERALS	Negative Pledge over the assets of Benpres

OUTSTANDING BALANCE AS OF 2006	Php 157.95 Million
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DBP, along with Far East Bank and Trust Company, AB Capital and Investment Corp., First Metro Investment Corp., Filinvest Capital, Inc. and Phil. Commercial Capital Inc. (the "Consortium"), to participate as one of the Joint Lead Underwriters to raise up to P 3.0 billion worth of Long-Term Commercial Papers (LTCPs) to be issued by Benpres. DBP to underwrite on a firm basis of up to Php250,000,000.00.

Penalty Interest Clause: *"In case the amount payable by the issuer under the LTCP, whether for principal, interest, or otherwise, is not paid on due date, the issuer shall pay penalty interest on the defaulted amount at the rate of twenty-four percent (24%) per annum from the time the amount fell due until it is fully paid, whether or not an event of default occurs because of such non-payment."*

On the treasury considerations raised by the Vice Chairman, EVP Victor G. Villar explained that because of liquidity, long-term commercial papers are generally priced lower than the regular loans. Thus, in terms of yield and risk considerations such instruments are not attractive for Treasury. By way of example, a normal T-bill investment is more profitable than underwriting LTCPs in terms of returns, liquidity and risk considerations.

C. Philippine Home Cable Holdings, Inc. or Central CATV, Inc. (now Sky Cable Corporation)

LOAN APPROVAL DATE	1997
TYPE AND AMOUNT OF LOAN	Syndicated Term Loan Facility of Php450.0 Million  The purpose of the loan was to finance the acquisition and installation of equipment for expansion of cable TV operations and the acquisition of existing cable television operators.
COLLATERALS	Mortgage Participation Certificate (MPC) on borrower's Assets valued at 2.227 billion under a Mortgage Trust Indenture
OUTSTANDING BALANCE AS OF 2006	207.11 Million

In the Credit Application for loan restructuring dated October 12, 2001, the Credit Committee recommended that foreclosure is supposedly not a viable option considering the already existing loan value of the collateral, an existent and deteriorating deficiency even under the most optimistic recovery scenario and the information that should assets be sold, it will be at greatly reduced value.

D. Maynilad Water Services, Inc. (Maynilad)

LOAN APPROVAL DATE	April 26, 2000
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<b>TYPE AND AMOUNT OF LOAN</b>	<p>One-year (1) Bridge Financing for 1.0 Billion</p> <p>The amount of loan was P 1.0 Billion with an interest based on applicable 91-day T-Bill rate plus a spread of not less than 1.5% per annum.</p> <p>The purpose of the loan was to provide interim financing for Maynilad's various projects pending the closing of a US\$ 350 Million term loan facility being sought from multilateral agencies and foreign commercial banks from which repayment of the bridge facility will be sourced. The project involved the operation and management of the water and wastewater services under the 25-year concession for the MWSS West Zone franchise area.</p>
<b>COLLATERALS</b>	Secured by the joint and solidary signature of Benpres
<b>OUTSTANDING BALANCE AS OF 2006</b>	710,865,530.95

Maynilad, during that time, is a 60%-40% partnership between Lopez-owned Benpres Holding Corp. and French Firm Suez-Lyonnaise des Eaux. The Lopez family controls the majority of Benpres through Lopez, Inc., a privately held corporation. The company's shareholding structure is as follows:

<b>Shareholders</b>	<b>% of ownership</b>
Lopez, Inc. and affiliates	54.44
Global Depository Receipts	27.95
Free Float	17.61

When the loan of Maynilad was granted on April 2000, LGC has a total outstanding loan exposure with DBP in the amount of 1.663 Billion. Maynilad's financial standing at the time of the DBP loan:

Total Assets	14,900.38
Total Liabilities	9,602.83
Equity	5,297.55
Debt-to-Equity Ratio	1.81:1
Revenues	2,634.84
Cost and Expenses	5,075.80
Excess of Expenses over Revenue	2,440.96

Its assets consist mostly of development cost and concession assets. Development cost include: 1) capitalized losses during the rehabilitation phase; 2) interest and advances related to the payment of concession fees, bidding and start-up expenses; 3) cost incurred directly associated to the bidding process and 4) deferred charges related to loan negotiations and re-engineering projects.

By virtue of DBP Board Resolution No. 0528 dated September 14, 2001, the maturity date of Maynilad's four (4) promissory notes totaling 1.0 Billion was extended from September 14, 2001 to March 14, 2002.

On March 20, 2001, Maynilad filed a Petition for Prohibition with Prayer for the issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction with the Court of Appeals to restrain MWSS from calling the performance bond-stand by Letter of Credit (SB/LC). The Court of Appeals issued a TRO on March 22, 2001. As of 2005, Maynilad Account was under litigation with DBP.

E. The following were the Board of Directors and officers of DBP who granted the loan applications of the aforesaid corporation:

1. Fernando T. Barican,
2. Eligio V. Jimenez
3. Alexander R. Magno,
4. Ricardo G. Nepomuceno, Jr.,
5. Floro F. Oliveros
6. Joseph N. Pangilinan
7. Rey MagnoTeves;
8. First Vice President Cynthia Macaraeg
9. Vice Chairman, Reynaldo G. David
10. Chairman Vitaliano N. Nañagas II.

## II. SPECIAL PURPOSE VEHICLE LAW

### A. History of Special Purpose Vehicle Law (R.A. No. 9182)

The Special Purpose Asset Vehicle Law was enacted in January 2003. Its purpose is to provide solution to the problem on non-performing assets of Philippine banks. From pre-crisis level of only 2.4% as of 1996, non-performing assets as a percentage of total bank assets was 13.8% as of June 2004.<sup>1</sup> The government response to this problem of the banking system is to provide a legal framework through which banks can transfer these non-performing assets to a separate entity called SPAV - privately owned asset management companies.<sup>2</sup> SPAV would clean-up banks' balance sheets providing banks' liquidity to propel stronger lending to the business sector.

Unlike other countries in Asia, e.g. Indonesia, Malaysia, Thailand, and South Korea, the Philippine government has not taken the lead role in the creation of asset management companies. Instead, it encourages private sector participation through Special Purpose Vehicles.<sup>3</sup>

SPV Law (RA 9182) provides the regulatory framework for granting fiscal incentives to Asset Management Companies (AMC) or SPVs that purchase the NPAs of banks at discount. R.A. No. 9343, approved 14 November 2006, is a law amending R.A. No. 9182 for the purpose of allowing the establishment and registration of new SPVs and giving tax exemptions and privileges to transferees of NPAs acquired by SPV.

<sup>1</sup>Congressional Planning and Budget Dept., House of Representative September 2004.

<sup>2</sup>Special Purpose Vehicles & Insolvency Reforms in the Philippines by Gloria Padilla

<sup>3</sup>Congressional Planning, supra.

B. Requirements & Procedures for Approval of SPVs:<sup>4</sup>

1. An SPV shall submit to the SEC the following documents for incorporation, such as:
  - a) Name Verification Slip showing its proposed name which shall always include the acronym "SPV-AMC (Asset Management Company)" appended thereto;
  - b) Articles of incorporation and by-laws;
  - c) Treasurer's affidavit/authority to verify bank account;
  - d) Bank Certificate of Deposits (notaries in the place where the bank is located)
  - e) Written undertaking to change corporate name by any incorporator director;
  - f) Registration data sheet.

2. An SPV shall have a minimum authorized capital stock of Php500 Million pesos with a minimum subscribed capital stock of Php 125 Million and a minimum paid up capital Php 31,250,000 in the form of cash.

If an SPV issues Instrument Unit Instruments (IUIs) or offers other securities to the public, it shall maintain a net worth based on its audited financial statements in an amount equivalent to not less than its minimum paid up capital or such other amounts as may be determined by the Commission.

3. The Articles of Incorporation of SPV, its by-laws and other documents shall be filed with the Commission not later than 18 months from the date of approval of IRR of RA No. 9182, or within 18 months from the date of effectivity of this amendatory law, RA No. 9343.
4. After the establishment of an SPV, An SPV Plan shall be submitted to the Commission which shall include the following:
  - a) Investment policies of the SPV;
  - b) Contribution plan including amounts and draft of subscription documents;
  - c) Features of the IUIs including specific amounts issued and to be issued;
  - d) Timetable of issuance;
  - e) Rights of the holders of IUIs;
  - f) Draft agreements for the appointments of trustees and agents with respect to the IUIs and the NPLs (non-performing loans) acquired from an FI (financial institution);
  - g) Appointment/engagement of an external auditor accredited by the Commission;
  - h) Roles/responsibilities of trustees, advisors, loan servicers and property managers;
  - i) Draft form of financial reports of the SPV;
  - j) Details of the distribution policies;
  - k) Methods for the increase and decrease of future fund contribution.
5. If the SEC approves the SPV plan, it shall issue an Approval Certificate stating that the application has been approved and IUIs may be issued. All IUIs

<sup>4</sup> R.A. No. 9182 and its IRR dated 19 March 2003; R.A. No. 9343.

proposed to be sold/distributed within the Philippines shall be duly registered with the SEC.

C. Corporate Profile of the SPVs subject on the present Investigation

a. **Philippine Investment One**

Name of Company	Philippine Investment One (SPV-AMC), Inc.
Status	Operational
Classification	Private
Office Address	Unit 1410 Ayala Tower One, Exchange Plaza, Ayala Avenue corner Paseo de Roxas Avenue, Makati City
Business Address	23 <sup>rd</sup> Floor, PSE Building 5 <sup>th</sup> Avenue corner 28 <sup>th</sup> Street Bonifacio Global City, Taguig City
SEC Registration Number/ Status	CS 200414355
Date of Incorporation	9/14/2004
Primary Purpose	To invest in, or acquire Non- Performing Assets (NPAs) of Financial Institutions (FIs), as such terms are defined under the Special Purpose Vehicle (SPV) Act of 2002
Names of Incorporators; Amount Subscribed/Paid- up/Percent of Ownership	<ol style="list-style-type: none"> <li>1.) Norman H. Macasaet</li> <li>2.) Carlos Manalac</li> <li>3.) Michael Rabonza</li> <li>4.) Teresita Asuncion M. Lacandula</li> <li>5.) Edilberto T. Castaneda</li> </ol>
Name of the present stockholders; Amount subscribed/paid up	<ol style="list-style-type: none"> <li>1.) Macasaet Holdings1, INC Amount subscribed: P124, 999,600.00 Amount paid: P31, 249,500.00</li> <li>2.) Herminio S. Ozaeta, Jr. Amount subscribed: P100.00 Amount paid: P100.00</li> <li>3.) Carlos Gaudencio M. Manalac Amount subscribed: P100.00 Amount paid: P100.00</li> <li>4.) Carolina Quezora Amount subscribed: P100.00 Amount paid: P100.00</li> <li>5.) Ma Erlinda Manalac</li> </ol>

	Amount subscribed: P100.00 Amount paid: P100.00  6.) Conrado Miguel M. Manalac Amount subscribed: P100.00 Amount paid: P100.00
Last available financial statement	Year 2014
Net Asset/ Known Assets	Php 472,868,411.00
Valuation Multiples: Par value	100
Book value	
Earnings	
Board of Directors (past/present)	Carlos Gaudencio M. Manalac- Chairman Herminio S. Ozeta, Jr. – Member Carolina Quezorai- President Ma. Erlinda Manalac- Treasurer Conrado Miguel M. Manalac- Member Rodrigo U. Lopez- Corporate Secretary Jolinamae Q. Francisco – Assistant Corporate Secretary
Corporate Secretary	Rodrigo U. Lopez

Philippine Investment One (SPV-AMC), Inc. (the Company) was incorporated in the Philippines and registered with the SEC on September 14, 2004 for the purpose of investing or acquiring non-performing assets (NPA) such as real and other properties acquired from banks as defined under Republic Act (RA) 9182, otherwise known as the Special-Purpose Vehicle (SPV) Act of 2002.

Prior to June 2012, the Company was a wholly-owned subsidiary of Lehman Brothers South East Asia Investments Pte. Limited (LBSEA), an investment house based in Singapore. The ultimate parent of the Company was Lehman Brothers Holding, Inc. (LBHI). On September 15, 2008, LBHI filed a petition under Chapter 11 of the United States Bankruptcy Code with the US Bankruptcy Court for the Southern District of New York. In June 2012, MRM Asset Holding 1, Inc., a company incorporated and registered in the Philippine Securities and Exchange Commission, acquired 100% ownership from LBSEA.

These were the members of the Board of Directors of Philippine Investment-1 (SPV-AMC) Inc at the time the loans of the Lopez Group of Companies were sold:<sup>5</sup>

<sup>5</sup> PI Inc. By-Laws dated September 2004

- a) Norman H. Macasaet
- b) Carlos Manalac
- c) Michael C. Rabonza
- d) Edilberto T. Castaneda
- e) Teresita Asuncion M. Lacandula

**b. Philippine Investment Two**

Name of Company:	PHILIPPINE INVESTMENT (SPV-AMC), INC.
Status:	Operational
Classification:	Private
Office/ Business Address	Unit 1410 Ayala Tower One, Exchange Plaza, corner Paseo de Roxas & Ayala Ave., Makati City
Business Address	23 <sup>rd</sup> Flr PSE Bldg., 5 <sup>th</sup> Ave. corner 28 <sup>th</sup> St, Bonifacio Global City, Taguig City
SEC Registration Number/ Status	CS 200414824
Date of Incorporation	September 17, 2004
Primary Purpose	To invest in or acquire Non-Performing Assets (NPAs) of Financial Institutions (FIs), as such terms are defined under the Special Purpose Vehicle (SPV) Act of 2002.
Names of Incorporators; Amount Subscribed/Paid-up/Percent of Ownership	Norman H. Macasaet Ana Maria Katigbak Michael Rabonza Teresita Asucion M. Lacandula Edilberto T. Castaneda
Name of the present stockholders;	Philippine Investment One (SPV-AMC), Inc. Argoman Real Estate Investments, Inc. Carlos Gaudencio M. Manalac Carolina Quezora Ma. Erlinda Manalac Conrado Miguel M. Manalac Herminio S. Ozaeta Jr.
Last available financial statement	Year 2014

Net Asset/ Known Assets	Php 777,873,439.00
Valuation Multiples: Par Value	100
Book value	(490,501,374.00)
Present Value: Dividends	The Company has a capital deficiency because of significant losses incurred in the past.
Number of shares to a board seat	1
Board of Directors (past/present)	Carlos Gaudencio M. Manalac - Chairman Herminio S. Ozaeta Jr. - Member Carolina Quezora - President Ma. Erlinda Manalac - Treasurer Conrado Miguel M. Manalac - Member Rodrigo U. Lopez – Corporate Secretary Jolinamae Q. Francisco – Assistant Corporate Secretary
Corporate Secretary	Rodrigo U. Lopez

Philippine Investment Two (SPV-AMC), Inc. (the Company) was incorporated in the Philippines on September 17, 2004 for the purpose of investing or acquiring non-performing assets (NPA) such as real and other properties acquired from banks as defined under Republic Act (RA) 9182, otherwise known as the Special-Purpose Vehicle (SPV) Act of 2002.

The Company is 60% owned by Argoman Real Estate Investments, Inc. (Argoman) and 40% owned by the Philippine Investment One (SPV-AMC), Inc. (PIOne). The Company's ultimate parent company is MRM Asset Holdings Two, Inc. (MRM Two), a company incorporated in the Philippines.

On September 18, 2008, Lehman Brothers Holdings, Inc. (LBHI), the Company's former ultimate parent company, filed a petition under Chapter 11 of the United States (US) Bankruptcy Code with the U.S. Bankruptcy Court for the Southern District of New York. Bryan Marshal of Alvarez & Marshal has joined LBHI as Chief Restructuring Officer (CFR), with responsibility for the oversight of the Chapter 11 process. Metropolitan Bank and Trust Corporation (MBTC), a local bank from which the Company has significant borrowings (10,000,000.00), consequently, filed before a Rehabilitation Court. The Court approved a Rehabilitation Plan for the Company on December 14, 2009.

These were the members of the Board of Directors of Philippine Investment 2 (SPV-AMC) Inc. at the time the loans of the Lopez Group of Companies were sold:<sup>6</sup>

- a) Norman H. Macasaet
- b) Ana Maria Katigbak
- c) Michael C. Rabonza
- d) Edilberto T. Castaneda
- e) Teresita Asuncion M. Lacandula

D. Board of Directors or Officers of the Lopez Group of Companies and DBP at the time the SPVs were approved by DBP:

**1. Benpress Holdings Corporation:<sup>7</sup>**

- a) Oscar M. Lopez
- b) Manuel M. Lopez
- c) Steve E. Psinais
- d) Eugenio L. Lopez III
- e) Washington Z. Sycip
- f) Felipe B. Alfonso
- g) Vicente Paterno
- h) Mr. Christian S. Monsod served as Director until Nov. 2002
- i) Mr. Vicente R. Jayme was elected as Director in April 2003
- j) Enrique Quiason – Corporate Secretary
- k) Maria Amina Amado- Assistant Corporate Secretary

**2. Maynilad Water Services Inc..<sup>8</sup>**

- a) Isidro A. Consunji
- b) Fiorello R. Estuar
- c) Jorge A. Consunji
- d) Eric O. Recto
- e) Jose Ma K. Lim
- f) Herbert M. Consunji
- g) Randolph T. Estrellado
- h) Leovigildo S. Veroy

**3. Sky Cable Corporation<sup>9</sup>**

- a) Manuel M. Lopez
- b) Eugenio Lopez III
- c) Augusto Almeda-Lopez
- d) Luis Alejandro
- e) Mario Luza-Bautista
- f) Frederico M. Garcia
- g) Carlo L. Katigbak
- h) Ma. Rosario Santos-Concio
- i) Enrique I. Quiason

<sup>6</sup>PI Inc. By-Laws dated September 2004

<sup>7</sup> 2002 & 2003 Annual Reports

<sup>8</sup> 2007 Maynilad By-laws

<sup>9</sup>Directors Certificate on the Amended By-Laws (Sky Cable)

#### 4. Bayantel Inc.<sup>10</sup>

- a) Eugenio Lopez Jr.
- b) Eugenio Lopez III
- c) Augusto Almeda Lopez
- d) Rodolfo Salazar
- e) Primitivo T. Penaranda Jr.
- f) Antonio M. Urera
- g) Enrique I. Quiason

### III. DBP Non-Performing Loans and Assets (NPLs and NPAs)

- a. In order that loans and receivables such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including but not limited to, real estate mortgages, chattel mortgages, pledges and antichresis, can be considered as non-performing (Non-Performing Loans or NPLs), the principal and/or interest of the said loan should have remained unpaid for at least one hundred and eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred.<sup>11</sup>

Moreover, the Board of Directors of the financial institution shall have approved the characterization of such loans or assets as non-performing. Thereafter, a request for certification will be sought by the financial institution from the Bangko Sentral ng Pilipinas (BSP) that the loans and/or assets are eligible for transfer or sale to the SPV.

#### b. Approval of the NPLs/NPAs

In a joint meeting held on June 1, 2006, DBP's Management Committee and Credit Committee approved for endorsement to the Board the list of NPAs and other assets for bulk sale.

In a Board Meeting held on June 5, 2006, the following were approved:

1. List of NPAs and other assets for bulk sale
2. Approval of the amount of investor's due diligence fee; and
3. Authority of the Marketing Heads for both Head Office and Branches to sign, in behalf of the Bank, any and all documents related to the bulk sale

The following were the members of the Board of Directors of DBP who approved the bulk sale of the NPAs during the June 5, 2006 Board meeting:<sup>12</sup>

1. Ramon Durano IV, Director
2. Alexander R. Magno, Director
3. Ricardo G. Nepomuceno, Jr., Director
4. Floro F. Oliveros, Director
5. Joseph N. Pangilinan, Director
6. Miguel L. Romero, Director

<sup>10</sup>Directors Certificate on the Amended articles of Inc. (Bayantel Inc.)

<sup>11</sup> Republic Act No. 9182

<sup>12</sup> Resolution No. 0182 dated June 5, 2006

7. Rey Magno Teves, Director
  8. Reynaldo G. David, Vice Chairman
  9. Antonino L. Alindogan, Jr., Chairman
- c. Members of the Monetary Board and the BSP Governor who approved the DBP NPLs and NPAs:

CHAIRMAN: GOV. AMANDO M. TETANGCO Jr.

MEMBERS: Romulo C. Neri  
Raul A. Boncan  
Juanita D. Amatong  
Alfredo C. Antonio  
Nelly F. Villafuerte  
Vicente B. Valdepenas, Jr.

- d. The following were the signatories for the Asset Sale and Purchase Agreement<sup>13</sup>

- i. Development Bank of the Philippines (Seller)

Reynaldo G. David, *President and Chief Executive officer*

Alberto B. Reyno, *First Senior Vice President, DBP-Trust Services*

- i. Lehman Brothers Asian Investments, Ltd. (Purchaser), Philippine Investments One and Philippine Investments Two (Assignee)

Norman H. Macasaet, *Director*

#### IV. FINDINGS OF THE SPECIAL TASK FORCE

##### Maynilad Loan

**The Special Task Force discovered that, with respect to the approval of the loan of Maynilad and the release of the joint and solidary signature and waiver of payment of default and penalty fees, a violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act may have been committed by the officials of DBP, Maynilad, and the officials of Benpres who signed the joint solidary signature that served as a guarantor for the loan.**

##### Bayantel, Benpres, and Central CATv Loans

Upon the other hand, as regards to the approval and transfer and/or sale of the loans, as well as assets, if any, of Bayantel, Benpres, and Central CATv, there exists no findings of liability that may be imputed to the officials of DBP or the other concerned parties who were involved in the approval of the loans and the transfer of these loans to the SPVs.

<sup>13</sup> Asset Sale and Purchase Agreement dated October 16, 2006

## V. DISCUSSION

### A. DBP'S ACTIONS FAVORED MAYNILAD

On April 26, 2000, DBP granted Maynilad a Special One-Shot Transaction - Clean Bridge Credit Facility of P 1.0 Billion knowing fully well that the only project of Maynilad for the remaining months of the year 2000 was purportedly the replacement of 70 kilometers of pipes, installation of 40,000 new service connections, 1000 valves and 600 fire hydrants, conduct of leak detection on about 2,000 kilometers of pipes, repair of 35,000 leaks and replacement of 200,000 water meters.<sup>14</sup> The projects for which the loans were obtained were, however, unverified considering that there were no records showing that DBP verified, as part of due diligence, whether the loans were utilized for the aforesaid purposes.

As mentioned above, Maynilad was undercapitalized and, at the same time, had no collaterals for its loan at the time the one-year fully drawn Bridge Financing of P 1.0 Billion was granted by DBP, considering that its debt to equity ratio of .67:1 (1.000 B/1.500 B) excludes a similar bridge financing of US\$ 100 Million loan, equivalent to more or less P 5.0 Billion, earlier granted to it by multilateral agencies and foreign banks, out of the US\$ 350 Million bridge financing being negotiated by the Asian Development Bank, accordingly as a sign of lender's confidence to Maynilad.

Benpres, the project sponsor or proponent of the Maynilad loan, cannot also provide the necessary collateral cover since it has already issued in 1996 a prior negative pledge over its assets when it obtained a P 250 million loan from DBP. A negative pledge is a type of negative covenant that prevents a borrower from pledging any assets more than once in order to prevent conflict over which lending institution has the right to the assets if the borrower defaults.

**DBP, therefore, granted the loan to Maynilad solely on the basis of a guaranty from Benpres who accordingly executed a Joint and Solidary Signature (JSS) over the loan.**<sup>15</sup> A JSS is an additional security for loans granted to a corporation. It operates as a security that the signatories to the JSS will be compelled to ensure that the loan would be used for the purpose agreed upon and that it would be paid by the corporation. In the event of the default of the borrower corporation, the creditor's recourse, which is normally limited to the corporate properties under the veil of separate corporate personality, would extend to the personal properties of the surety who signed the JSS.

**Maynilad defaulted in its loan obligations with DBP on October 5, 2001. Hence, DBP already had the right and obligation to call on the JSS Benpres guaranty. However, the DBP instead granted seven (7) extensions for the maturity dates with only an instruction for Maynilad to put up more collateral to provide a cover for the extensions. The said requirement of putting up more collateral was, however, subsequently waived leaving DBP without sufficient protection from the extensions of the maturity periods of the defaulting account of Maynilad.**<sup>16</sup>

Moreover, DBP also approved the restructuring of the Maynilad loan account, thereby waiving its right under the joint and solidary signature. DBP's board approved to convert into cumulative preferred shares the Php 530 Million unpaid obligation of DBP into another clean term loan amounting to Php 738 Million, and

<sup>14</sup> DBP Board Resolution No. 0219

<sup>15</sup> DBP Offering Ticket No. 2000-0017 dated April 7, 2000

<sup>16</sup> DBP Board Resolution No. 0223 dated June 14, 2002

restructured the remaining Php 280 Million unpaid and unconverted balance into an upfront principal amount of only Php 72 Million, via Short-Term Facility, in exchange for the release of all JSS guarantee of Benpres to the Maynilad loan, leaving the bank no further recourse against the Benpres guarantee. DBP also issued an unconditional waiver of all accumulated default and penalty fees amounting to P 144.5 Million, as of December 31, 2004.<sup>17</sup>

**It is very clear that the waiver and release of the JSS of Benpres over the unpaid loan account of Maynilad amounting to Php 810.5 Million and the unconditional waiver of all accumulated default and penalty fees amounting to Php 144.5 Million, or a total of Php 955.0 Million, caused undue injury to the government, represented by DBP, and resulted into unwarranted benefits and advantage to Maynilad and Benpres.**

**B. BAYANTEL, BENPRES AND CENTRAL CATV WERE SUFFICIENTLY CAPITALIZED AT THE TIME OF LOAN AND LOANS WERE COLLATERALIZED**

Meanwhile, Bayantel, Benpres and Central CATv had sufficient capital at the time the various DBP loans were approved and granted as shown hereunder:

Company	Year	Capital/Equity	Amount of DBP Loan	Amount of Non-DBP Loans
Bayantel	1995	Php 4.590 B	Php 1.0 B	Php 1.750 B
Benpres	1996	Php 20.13 B	Php 250M	Php 2.750 B
Central CATv	1997	Php 722 M	Php 260 M	Php 190 M
Maynilad	2000	Php 1.5 B	Php 1.0 B	Php 5.0 B

Undercapitalization occurs when a company does not have sufficient capital to make investments necessary for business expansions. Undercapitalized companies do not have enough capital to pay creditors and often need to borrow more money.

Moreover, except for Maynilad's loan, the loans obtained by Bayantel, Benpres and Central CATv are fully collateralized, not only to the extent of their exposures to DBP but also to other non-DBP loans, with the exception of the Bayantel loan which had insufficient collateral value, as shown by the following computations:

Company	Year	Collateral Value	Amount of DBP Loan	Amount of Non-DBP Loans
Bayantel	1995	Php 862.1M	Php 1.000 B	Php 17.750 B
Benpres	1996	Php 32.322 B (Negative pledge of all net value assets)	Php 250 M	Php 2.750 B
Central CATV	1997	Php 386.6 M	Php 260 M	Php 190 M

<sup>17</sup> DBP Board Resolution No. 0526 dated December 16, 2004

Maynilad	2000	Secured by the joint and solidary signature of Benpres	Php 1.0 B	Php 5.000 B
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Only Maynilad had no collateral value considering that what was executed instead was a joint and solidary signature of Benpres. No document pertaining to the joint and solidary signature was, however, provided to the investigation team. With respect to that of Bayantel, the amount of collateral given was insufficient to cover the loan secured from DBP. This, however, is a minimal defect considering that the difference between the amount of security and the amount secured is insignificant.

### **C. NO CROSS-DEFAULT PROVISION IN THE LOAN DOCUMENTS**

The DBP Board of Directors raised its concern that cross-default provision has not been incorporated in the loan documents of the Lopez group and its subsidiaries and instructed that policy exception/s should be highlighted if there are changes in the policy in all future transactions upon renewal of the request of companies belonging to the same group, as in Lopez Group. To avert problems in future cases, the Chief of Legal Counsel and the AO should ensure that the standard loan conditions are followed even if these are not expressly mentioned in the Credit Application.<sup>18</sup>

DBP did not require a cross-default clause in the loan documents of the Lopez Group of companies for the reason that the loans are syndicated loans.<sup>19</sup> A cross-default clause is a provision in a bond indenture or loan agreement that puts a borrower in default if the borrower defaults on another obligation. It is intended to protect the lender who desires to have rights to the borrower's assets in case of default in one of the loan contracts.

It is also worth-mentioning that DBP only incorporated the cross-default clause on the loan accounts of the Lopez Group of Companies on June 14, 2002 after all the loan accounts of the Lopez Group of Companies have already defaulted.<sup>20</sup>

### **D. THERE IS NO SHOWING OF FRAUD AS REGARDS THE TRANSFER OF LOANS AND ASSETS TO THE SPVs**

The transfer of the loans and assets of the four Lopez corporations subject of the investigation is based on the Special Purpose Vehicle Law which was enacted essentially to assist financial institutions and authorized government entities to dispose their bad loans by unloading their portfolio of non-performing assets (NPAs) — non-performing loans (NPLs) and Real and Other Properties

<sup>18</sup> DBP Board Resolution No. 0608 dated October 19, 2001

<sup>19</sup> DBP Board Resolution No. 0223 dated June 14, 2002

<sup>20</sup> DBP Board Resolution No. 0223

Acquired (ROPAs) — to create liquidity that can be used to generate economic growth and rehabilitate distressed businesses.<sup>21</sup> As earlier discussed, the law granted fiscal incentives such as tax exemptions and fee privileges to SPVs which acquire or invest in NPAs.

The investigation team considered the probability of fraud in the formation of the SPVs particularly as to whether there was a collusion among the Lopez Group of Companies and the parties involved in the execution of the ASPA and the subsequent Accession Agreement assigning the NPLs to PI-One and PI-Two in order to effectively write-off the loans without the need to collect them from the LGC.

Upon review of the corporate compositions of the parties involved on the basis of documents submitted by DBP to BSP for the approval of Lehman, PI-One and PI-Two as SPVs and the corporate documents of the SPVs from SEC, no fraud can be attributed to the officers and directors of the Lopez Group of Companies, DBP and the SPVs. The compositions of those corporations at the time of the execution of the ASPA and the subsequent Accession Agreement assigning the NPLs to PI-One and PI-Two and since then until the present are totally distinct. Hence, no collusion can be ascribed to the transfer of the loans of the Lopez Group of Companies and the assets attached thereto from DBP to PI-One and PI-Two.

#### **E. THE LACK OF DOCUMENTATION AS TO THE ISSUANCE OF CERTIFICATION FROM THE BSP**

One of the requirements under the SPV Act, as discussed above, is that a request for certification should be requested by the financial institution from the appropriate regulatory authority having jurisdiction over its operations that the loans and/or assets are eligible for transfer or sale to the SPV. Hence, the transfer of NPAs from an FI to an SPV shall be subject to prior certification of eligibility as NPA by the Bangko Sentral ng Pilipinas (BSP).<sup>22</sup> DBP provided the investigation team a copy of the Certificate of Eligibility (COE) issued by BSP in 2007, listing therein the Non-Performing Assets and the approval of the transfer of these assets to Lehman.

However, only the loans of Bayantel and Philippine Home Cable Holdings, Inc. or Central CATv were included in the submitted COE. No copy of the COE for the other two corporations, namely Benpres and Maynilad, was presented. Considering that the COE is one of the requirements before the NPLs/NPAs could be transferred or sold to the SPVs, the absence of proof that the BSP has issued eligibility certification for the loans and assets sold to Philippine Investment-One and Philippine Investment-Two despite the investigation team's request for the same leads us to conclude that no such certification was issued by the BSP for the loans of Benpres and Maynilad. A copy of such document was also requested from the BSP but no such copy has been provided up until today.

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<sup>21</sup> Republic Act No. 9182

<sup>22</sup> Republic Act No. 9182

## VI. CONCLUSION AND RECOMMENDATIONS

With respect to the Maynilad loan, the signatories to the joint and solidary signature (JSS) and the DBP officials who approved the loan of Maynilad and subsequently granted waivers in favor of Maynilad's loan and the guaranty should be held liable for violation of Republic Act No. 3019.

Section 3 (e) of R.A. No. 3019 provides:

SECTION 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

XXX

- e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

XXX

- g. Entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

XXX

The foregoing circumstances find similarity with the case of *Singian, Jr. vs. Sandiganbayan*<sup>23</sup>. In the said case, Gregorio Singian, Jr., a private person who was then Executive Vice-President of Integrated Shoe, Inc. (ISI), together with some officers of the Philippine National Bank (PNB), was charged with violation of Section 3(e) and (g) of RA 3019 in connection with the loan accommodations that the said bank extended to ISI which were characterized as behest loans. The Supreme Court upheld the conclusion of the Sandiganbayan finding that the loan transactions of ISI were grossly and manifestly disadvantageous to the government based on the documentary evidence presented by the prosecution showing that ISI was undercapitalized while the loans were undercollateralized.

**This is clearly the situation in the manner the DBP handled the Maynilad loan. They entered into grossly disadvantageous contract with Maynilad and extended unwarranted benefits causing damage to the government. Again, the DBP granted seven (7) extensions for the maturity dates and subsequently waived requirement of additional collateral, leaving DBP without sufficient protection from the extensions of the maturity periods of the defaulting account of Maynilad.**

<sup>23</sup> G.R. Nos. 195011-19, September 30, 2013

Thus, the following individuals must be held accountable for violation of Section 3(e) and (g) of RA 3019:

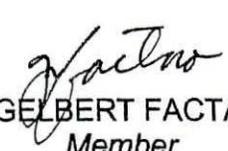
- a. The officials who caused the release of the joint and solidary signature and waived payment of default and penalty fees, namely: (Directors) Fernando T. Barican, Eligio V. Jimenez, Alexander R. Magno, Ricardo G. Nepomuceno, Jr., Floro F. Oliveros, Joseph N. Pangilinan and Rey Magno Teves; First Vice President Cynthia Macaraeg, Vice Chairman Reynaldo G. David and Chairman Vitaliano N. Nañagas II, and,
- b. All the signatories of the joint and solidary signature which was used to secure the loan of Maynilad;

As regards the loan transactions of Bayantel, Benpres and Central CATv, however, there is absence of any proof that there was an anomaly in the grant of the loans of the aforesaid corporations. The companies were fully capitalized, with only an insignificant amount of insufficiency for that of Bayantel's collaterals, and the loan accounts were fully collateralized at the time the loans were granted. Moreover, said loans were transferred to Lehman Brothers Asian Investments Ltd. and assigned to Philippine Investment One and Philippine Investment Two by virtue of the ASPA and the subsequent Accession Agreement based on the SPV Law. Respectfully submitted.

MEMBERS OF THE  
SPECIAL TASK FORCE IN THE INVESTIGATION  
OF IRREGULARITIES IN DBP TRANSACTIONS  
WITH BAYANTEL, BENPRES HOLDINGS,  
CENTRAL CATV, INC. AND MAYNILAD WATER:

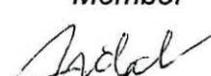
  
STEPHEN P. TANCHULING  
Chairperson

  
RAUL FERNANDEZ  
Vice-Chairperson

  
GELBERT FACTAO  
Member

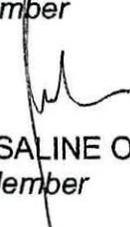
  
MARIA LOURDES MAGNO  
Member

  
FROI LAN ZUBIRI  
Member

  
IRWIN S. VIDAL  
Member

  
DENNYSON CASTILLO  
Member

  
ATTY. MIVEZ ANNE I. PAWID  
Member

  
ATTY. ROSALINE O. ESCOBAR  
Member