Bank funders' claim on Maharlika returns questioned in Senate

By Alyssa Nicole O. Tan
Reporter

THE GOVERNMENT banks providing capital to the Maharlika Investment Fund (MIF) have no clear claim on the fund's returns in the bill setting up the proposed sovereign wealth fund, a Senate committee heard.

Senator Francis Joseph G. Escudero on Wednesday asked economic managers to provide specifics on how the Land Bank of the Philippines (LANDBANK) and the Development Bank of the Philippines (DBP) will share in the returns of the MIF.

"I did not see any provision in the bill stating that they have a share on their investment," he said at a hearing of the Senate Banks, Financial Institutions and Currencies committee.

"So... LANDBANK and DBP (will) give money to this fund without the bill saying anything with respect to their return of their investment," he said, noting only that the bill requires Maharlika to surrender 25% of its profits to the National Government," he added. "If that is the case, given that the bill is silent, is this an interest-free loan from LANDBANK and DBP?"

National Treasurer Rosalia V. de Leon said that the bill may need further clarification with regard to the government banks' share of the profits.

"The carved-out 25% will really just accrue for the investment of the National Government... so definitely there would also be dividends that would be declared for LANDBANK and DBP because of their contributions to the fund," she said.

The bill calls for some of the fund's initial capital to be provided by LANDBANK (P50 billion) and DBP (P25 billion).

The Bangko Sentral ng Pilipinas (BSP) has also been proposed as a funder at some point in the legislative process. If retained as funder, the central bank was to remit all of its dividends to Maharlika in the first and second fiscal years after the fund's establishment. In succeeding years, BSP was to remit half of its dividends to the fund.

The bill will also require the Philippine Amusement and Gaming Corp. (PAGCOR) and other government-owned gaming operators to contribute at least 10% of their gross gaming revenue. Other proposed sources were royalties and special assessments on natural resources, proceeds from privatization of government assets, as well as debt taken on by Maharlika.

The returns due the government banks "should be predictable and stable," Mr. Escudero said. "It should be clear from the very start, unlike their proposal where they leave it all up to the board of directors and the implementing rules and regulations."

Mr. Escudero said the unclear arrangements for distributing profits could lead to mismanagement and abuse.

"The composition of the board itself does not reflect the capital contribution of the entities giving the money," he added, noting that the government banks should be better represented, commensurate to their stakes.

"If you want proper corporate governance, isn't it only right that LANDBANK have proportional representation on the board, so that (its nominees) can protect the bank's investments," he said.

"Same is true for DBP, same is true for PAGCOR, same is true for private individuals. In fact, you have already allocated representation for future private investors even though they have yet to contribute money," he added.

The Maharlika board will have 15 members, including the Secretary of Finance, the fund's chief executive officer, and the presidents of LANDBANK and the DBP.

Six regular members will represent other fund contributors and five independent directors from the private sector, academe, the business sector and the investment industry.

LANDBANK President and Chief Executive Officer Cecilia C. Borromeo proposed that the bill contain a formula for dividing up the returns — if not a set percentage, then a scheme which uses as reference the bank's current average return on investment from its regular investments.

Governance Commission for Government-Owned or -Controlled Corporations (GCG) Commissioner Gideon DV. Mortel said the banks will be obliged to explain to their regulator, the GCG, the returns they will realize from Maharlika.

"DBP and LANDBANK will be doing some explaining on exactly what happened to their investment, because it will be part of their scorecard every year," he said.

Senator Mark A. Villar, who chaired the hearing, asked economic managers to send projections on how Maharlika will benefit the country and its investors.

Mr. Escudero said at a news conference on Wednesday that the Senate and House version of the bill will vary greatly.

"There's a big chance that it will be different... since that is the only hope for its passage (in the Senate)," Mr. Escudero said. "The current version that came from the House, I believe, will not pass the Senate."

Finance Secretary Benjamin E. Diokno, speaking at the hearing, said that the passage of the Maharlika bill will likely accelerate the completion of infrastructure projects.

"The purpose of the fund is to widen the options available to the government," he told the committee. Once Maharlika is established, "we're thinking of funding large infrastructure projects."

Mr. Diokno said it takes too long under the current system to fund and complete a large infrastructure project, citing as an example the international airport in Bicol which is allocated funding in installments every year.

"Let's say P200 million this year, then P200 million next year; it's taking too long for the project to finish, so the present value of the project, which should have been derived immediately, continues to decrease," he said.

"If, let's say, you can construct that within three years, in 10 years, there would already be a huge difference in terms of benefits," he added.

Senator Ana Theresia N. Hontiveros-Baraquel, however, said the fund's initial budget of P75 billion is too small to support big ticket projects.

Mr. Diokno said that "If the MIF is dedicated to huge projects like that, it will be easier to accomplish them... if the proposed budget (for a project) is cut by Congress, it cannot be established immediately. This is not aligned with the objective to have (projects) constructed as soon as possible to derive the most benefit."

Ms. Hontiveros replied that Congress, especially those who are not inclined to vote for the Maharlika bill, will take "timely action, through the General Appropriations Act and legislative support, from those who seek alternative means of funding for important government projects other than the MIF."

Ms. Hontiveros cited the potential for the MIF to add to the national debt.

"We would be better off strengthening existing economic and financial institutions and fulfilling our developmental aspirations," she said.

ERC reviewing secondary price cap after DoE cites potential to unlock investment

THE Energy Regulatory Commission (ERC) said it is reviewing the secondary price cap after the Energy department said its removal could attract more investment in energy.

"The ERC is evaluating the mechanics of the secondary price cap given, on one hand, its clear mitigating impact on rates charged to consumers exposed to WESM (Wholesale Electricity Spot Market) prices; on the other hand, the distortion it creates on price signals that should have allowed us to see the real cost of generation and need for more capacity," ERC Chairperson and Chief Executive Officer Monalisa C. Dimalanta said in a Viber message.

Energy Secretary Raphael P.M. Lotilla said in a forum on Monday that the Department of Energy (DoE) will take a market-driven approach to attracting investment to the industry.

Mr. Lotilla said the secondary price cap was difficult to lift because of its impact on prices but the DoE "will have to deal with this if we want to attract more investments."

The secondary price cap seeks to temper volatility in power markets by capping price rises after a set threshold is breached.

Ms. Dimalanta said that for several months last year, the price cap was triggered in more than 50% of trading intervals in the WESM. "This means that the cap — instead of the market — was setting the price."

The ERC set the secondary price cap at P6.245 per kilowatt-hour (kWh) upon breach of a P9 per kWh rolling average of the generator-weighted average price for a three-day period.

Last year, the Philippine Independent Power Producers Association, Inc. proposed the removal or review of the secondary price cap as it distorts the true cost of power. — **Ashley Erika O. Jose**

Citi expects 2023 PHL inflation to average 5.3%

CITIGROUP, INC. (Citi) expects Philippine headline inflation to average 5.3% this year, above the central bank's 2-4% target, with food prices remaining elevated and subject to further upside due to weather disturbances.

"Our expectation for inflation this year is still pretty high at 5.3% on average, before lowering to about 3.3% next year," Citi Economist for Thailand and the Philippines Nalin Chutchotitham said in a media briefing on Wednesday.

The bank sees inflation at 7.1% in the first quarter, 5.9% in the second, 4.9% in the third, and 3.6% in the fourth quarter.

Ms. Chutchotitham noted that the main factors driving the estimate are the continued pass-through of higher production costs in 2022 into 2023, import dependency in certain food items, and robust domestic demand, causing inflation to broaden towards services as well as goods.

"There are still some concerns about agricultural production and also potential severe weather impacting agricultural production projections," she added.

Ms. Chutchotitham also noted that the bank is also keeping an eye on how food inflation reacts to strong domestic demand.

The Bangko Sentral ng Pilipinas (BSP) will be closely watching inflation, Citi noted, with the central bank expected to hike rates by 25 basis points (bps) in the next policy setting meeting in mid-February. Monetary authorities have downplayed the need for any further "jumbo" rate hikes.

The BSP hiked benchmark rates by 350 bps in 2022, bringing its key rate to a 14-year high of 5.5%, from a record low of 2% in 2021. The next meeting is scheduled for Feb. 16.

Ms. Chutchotitham said Citi expects the BSP to hike rates by only 50 bps this year, bringing the key rate to 6%. It expects this to happen within the first half, she added.

Citi sees economic growth this year slowing to 6.2% from 2022's 7.6%, due to higher financing costs and expectations of a global slowdown.

The 2022 reading was the highest since 1976 amid robust domestic demand, the Philippine Statistics Authority said.

Going forward, Citi expects the BSP to bring policy rates to above 4% by the end of 2024, which will help ease overall financing costs.

Ms. Chutchotitham expects the Philippines to continue its rapid growth trajectory from last year.

Gross domestic product in the fourth quarter expanded 7.2%, against the 7.6% posted in the third quarter and 7.8% a year earlier.

"As you can see from the momentum of gross domestic product over the past few quarters, we can see that household spending remains well supported by the strong employment growth," Ms. Chutchotitham said.

"We do also see the younger population supporting overall spending and labor income growth," she added.

The expected easing in inflation, as well as the revival of tourism, remittances, investment and public spending will be the main drivers of the growth forecast for this year, Ms. Chutchotitham said. — **Aaron Michael C. Sy**

BIR to allow more transactions via online portal in late January

THE Bureau of Internal Revenue (BIR) said it will allow taxpayers to conduct more transactions online late this month.

Individuals will be permitted to update their information or applications through the online registration and update system (ORUS) starting Jan. 23, according to a memorandum circular.

Through ORUS, taxpayers can update their registration information with regard to opting for the 8% income tax on gross sales, submit applications to change their accounting period, register for or add new tax incentives, and change or update contact information and the identities of shareholders, among others.

They may also use the system to seek secondary registrations with regard to permits to use loose-leaf books, and to register their computerized accounting systems.

ORUS will also allow users to submit applications to close or de-register businesses and cancel taxpayer identification number.

In a separate memorandum circular, the BIR also encouraged taxpayers habitually engaged in the sale of real estate to use its web-based system.

The electronic one-time transaction system aims to cut down on the manual filing of returns and payment of taxes, as well as other applications. — **Luisa Maria Jacinta C. Jocson**

PHL pet food demand seen rising to $434M

PET FOOD demand in the Philippines is expected to rise 9% in 2023 in line with growing pet ownership, the US Department of Agriculture (USDA) said.

The USDA's Foreign Agricultural Service (FAS) in Manila projected the Philippine pet food market at $434 million this year in its Global Agricultural Information Network report.

"As pets became more popular household companions, especially during the pandemic, pet ownership and pet food sales have grown immensely over the past five years," it said.

The dry dog food market was expected to grow 9% in 2023, it said. The wet cat food segment, on the other hand, is expected to grow 13%.

Food products for birds, fish, and small mammals have been posting "minimal growth" with the market for these products averaging $4 million a year since 2017, the FAS said.

The FAS said that the Philippines was the ninth-largest market for US dog and cat food products in 2021. It was the seventh-largest US agricultural export market.

"Dog and cat food exports to the Philippines showed immense growth in 2021 and are expected to grow in 2023. The majority of imported dog and cat food originates in Thailand, the US, and Europe," the FAS said. — **Sheldeen Joy Talavera**

OPINION

Tax refund requirements: Are they ever enough?

TAXWISE OR OTHERWISE
EDELWEISS CHUA

Is the Bureau of Internal Revenue (BIR) inclined to approve refund claims? At a time where the government's budget is dedicated to reviving the economy after the COVID-19 pandemic, granting tax refunds would put the agency in a pickle. However, rejecting such refund applications due to these considerations would be arbitrary on the part of the BIR.

The rules are clear. For tax refunds of unutilized excess creditable expanded withholding tax (CWT), three essential conditions must be met: (i) the timeliness of the refund application, (ii) the fact of withholding is established, and (iii) that the income upon which the taxes were withheld was included in the return of the recipient/claimant. To prove that these three conditions were satisfied, the refund application should be accompanied by complete documentary support for the BIR's verification.

Since claims for refund are construed strictly against the taxpayer and in favor of the government, the documents supporting a CWT refund application are carefully scrutinized by the BIR. In *Merck Sharp & Dohme (I.A.) LLC - Philippine Branch vs. Commissioner of Internal Revenue* (CTA Case No. 9803, 25 June 2021), the BIR alleged that the instant claim for tax refund is tainted with procedural infirmity due to the taxpayer's failure to submit complete documents in support of its administrative claim for refund. According to the BIR, taxpayers must prove compliance with both Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006 to support the validity of their claim for unutilized CWT.

In relation to the aforementioned RMO and RR, the BIR particularly insisted that the submission of proof of actual remittance is indispensable in claims for refund or issuance of a tax credit certificate for unutilized excess CWT for purposes of proving the CWT withheld.

With the BIR holding firm on the requirements, what would count as sufficient evidence in proving tax refund claims?

RMO No. 53-98 prescribes the documents that a taxpayer is required to submit to the BIR upon audit of his tax liabilities, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Office. On the other hand, RR No. 2-06 prescribes the mandatory attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld as Source (SAWT) to tax returns with claimed tax credits due to CWT at source.

The Tax Court ruled that the non-submission of the documents enumerated in RMO No. 53-98 should not result in an outright denial of the tax refund claim. It is not fatal to the claim for refund since the RMO is merely a guide to revenue officers as to what documents they may require taxpayers to present during an audit. Nothing stated in the issuance would show that it was intended as a benchmark in determining the completeness of the submitted documents to support a taxpayer's claim for tax refund.

What is more critical is that the taxpayer should be able to establish the fact of withholding through a copy of the withholding tax statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

The Tax Court cited the case of *Commissioner of Internal Revenue vs. Philippine National Bank* (G.R. No. 180290, 29 September 2014) where the Supreme Court clarified that the certificate of creditable tax withheld at source (BIR Form 2307) is the competent proof to establish the fact that taxes were withheld, and upon presentation of a withholding tax certificate complete in its relevant detail and with a written statement that it was made under the penalties of perjury, the burden of evidence shifts to the Commissioner of Internal Revenue to examine.

Further, contrary to the BIR's claim that the proof of actual remittance should be submitted, the aforementioned Supreme Court case clarified that proof of actual remittance of the withholding tax is not a prerequisite to claim a refund of unutilized tax credits, since it is the payor-withholding agent, and not the payee-refund claimant who is vested with the responsibility of withholding and remitting income taxes.

Similar to this instant case, taxpayers are generally intent on presenting adequate proof of their claim for refund. However, if the BIR were to demand undue requirements, refund claims at the administrative level would naturally result in a denial. As taxpayers are keen to recover their losses, I hope that the BIR would conscientiously evaluate submitted documents for refund applications. At the end of the day, both the government and the taxpayer are on the same boat in seeking to revive the economy.

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EDELWEISS CHUA is an assistant manager at the Tax Services department of Isla Lipana & Co., the Philippine member firm of the PwC network.
edelweiss.chua@pwc.com