



Republic of the Philippines
CONGRESS OF THE PHILIPPINES
SENATE

RE : **SPOT REPORT ON THE PUBLIC HEARING CONDUCTED BY THE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES, THE PERSONAL EQUITY AND RETIREMENT ACCOUNT OR PERA (SBN 1343, 1747 AND 1821) AND THE LENDING COMPANIES ACT (SBN 1103, 1180 AND 1762) HELD ON FRIDAY, 14 JANUARY 2005 AT 9:00 A.M., SEN. GERONIMA PECSON ROOM, PHILIPPINE SENATE**

I. PRELIMINARY

Senator Edgardo J. Angara, Chairman of the Committee on Banks, Financial Institutions and Currencies, promptly commenced the hearing at 9:12 a.m. Also present to provide quorum were Senators Juan Ponce Enrile and Ramon B. Magsaysay Jr.

At the outset, the Chairman emphasized that the enactment of the Personal Equity and Retirement Account (PERA) Act is necessary to ensure retirement plans and benefits for persons in their senior years while the legislative measures on Lending Companies would assist the public in borrowing and spending their money. In addition to this, Senator Angara said that the proposal for regulating the operation of lending companies is timely and urgent because the lending business has lately caused tremendous grief and losses to many having wreaked havoc on their savings and/or businesses.

With permission from the Vice-Chairman, Senator Angara decided to begin the discussions on the proposals concerning the Personal Equity and Retirement Act (PERA).

The following persons were in attendance:

Resource Persons	Designation/Office
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ATTY. JUAN DE ZUÑIGA, JR.	Assistant Governor and Legal Counsel Bangko Sentral ng Pilipinas (BSP)
MR. NESTOR ESPENILLA	Assistant Governor Bangko Sentral ng Pilipinas (BSP)
MS. JOSELIA POBLADOR	Commissioner, Securities and Exchange Commission (SEC)
MS. MA. LOURDES RECENTE	Department of Finance (DOF)
ATTY. GRACE AYSON	Philippine Stock Exchange (PSE)
MR. MIGUEL ANDAYA	Bankers Association of the Philippines (BAP)
MS. ELIZABETH PALER-CRUZ	President, Lending Companies Association of the Philippines
DR. MARIBEL P. ORTIZ	Assistant Vice President for Corporate Policy and Planning Office, Social Security System (SSS)
MR. SERGIO ANDAL	Vice President for Policy and Planning Office, Government Service Insurance System (GSIS)
MS. MARIA FE DAYCO	Senior Vice President for Actuarial Services, Government Service Insurance System (GSIS)
MR. REX MENDOZA	Assistant Vice President, Sales and Marketing, Philam Group of Companies
MR. JOEY RAMOS	Philam Group of Companies
ATTY. LAI-LYNN BARCENAS	Puyat, Jacinto & Santos Law Office
ATTY. ROLANDO DEL CASTILLO	ACCRA Law Office

II. HIGHLIGHTS OF THE MEETING:

1. In his opening statement Assistant Governor Juan de Zuñiga expressed the support of the Bangko Sentral ng Pilipinas (BSP) on the proposed measures on the Personal Equity and Retirement Act. He however raised some concerns regarding the following:
 - a.) The Accreditation of Administrators – Assistant Governor de Zuñiga said that the administrator must be subjected to strict accreditation similar to that implemented by the BSP on trust companies since they would be handling funds from the public.
 - b.) Scope of Investments for Administrators – it is proposed the investments of administrators be limited only to common trust funds, asset-backed securities and

mutual funds as to preclude abuse by administrators. He noted that this restriction is similar to the to that imposed by the BSP on trust companies and on banking institutions

- c.) Supervising Agency – Mr. Zuñiga said that to avoid duplicity of functions it is advisable to have one existing regulatory body, either the Bangko Sentral (BSP), the Securities and Exchange Commission (SEC) or the Insurance Commission (IC) to undertake this responsibility. He added that this proposal is more practical than creating another regulatory body which would entail much work in defining its functions, providing for its budget and personnel
2. Commissioner Poblador expressed the full support of the SEC to the enactment of the Personal Equity and Retirement Account (PERA) Act, for this measure would be a medium to activate the market, provide more saving option for Filipinos as well as afford them the opportunity to direct their own pension fund activities.
 3. In review, Senator Angara raised the following issues to be addressed in the discussion:
 - a. The fiduciary and prudential management of funds by the administrator
 - b. The permitted investments under the PERA and the tax treatment for these investments
 - c. The necessity to create a new regulatory authority or whether it would be sufficient to leave the regulation of administrators to existing institutions
 4. In relation to the proposal of creating of a separate body to regulate administrators, Commissioner Poblador of the SEC expressed support to the proposal given by the Bangko Sentral (BSP). In addition, she commented that the supervision and deregulation exercised respectively by the Bangko Sentral over banks and the SEC over certain corporations be retained. Lastly, she pointed out that to address the issue of overlapping functions and jurisdictions the BSP, SEC, Insurance Commission and the Philippine Deposit Insurance Commission (PDIC) established “the financial services forum” under which they have adopted a set of procedures that would enable each institution to monitor products administered by corporations under their respective regulations.
 5. Senator Magsaysay Jr. remarked that at present Social Security System (SSS) seems unable to address the needs of its growing public since most of the investments they made in the past years are losing and their collection is barely fifty percent.
 6. Ms. Maribel Ortiz of the Social Security System (SSS) said that although they are servicing an estimate of twenty five million people, only eight million or roughly one-third are regularly paying. In addition she said that base on this low rate of collection, the SSS anticipates a collection of P44 billion for 2004.
 7. In response to Senator Enrile’s query on the policy purpose of the having a maximum or the cap on the contributions, Senator Angara said that this is a preventive measure to ensure that

- the revenue office does not lose money in case it has been decided in the law that such incentives would be tax-free
8. Senator Angara agreed to adopt the proposal of Senator Enrile that instead of applying the maximum value in nominal amounts, the limit on contributions must be set in terms of percentages to allow the investment to adjust with the inflationary tide and avoid the law from being prescriptive on the lifestyle of PERA investors
 9. Upon query of Senator Enrile on who retains the legal title over the fund after it has been waived by the contributor-beneficiary, Assistant Governor de Zuñiga explained that since this is a trust arrangement the legal title is awarded to the administrator or trustee, although there are certain provisions in the PERA which maintains that while it is a trust fund, the contributor or trustor retains control of his investments.
 10. Senator Angara stressed that a provision be included in the Personal Equity and Retirement Account (PERA) bill, stating the obligations and liabilities of the trustee to safeguard the interest of the contributor-beneficiary from losses incurred by investments made by his administrator.
 11. Mr. Andaya of the Bankers Association of the Philippines (BAP) recommended the following proposals. First, the number of trustees or fund managers should not be limited to promote competitive fees and second, the PERA bill must include provisions relating to the selection of a trustee and the forming of an infrastructure defining the roles of the trustee, fund manager and custodian.
 12. According to Mr. Mendoza of the Philam Group of Companies the responsibility of administrators or custodians should be limited only to institutions, which have already been granted trust licenses. He explained that the implementation of this scheme would benefit the saving public because through the payment of a single fee any person would be able to procure the services of an administrator and would avoid the involvement and payment for fund management at various levels (trustee, fund manager, investment advisers).
 13. On the issue raised by Senator Enrile on the mixture of the contributor's investment portfolio, Mr. Mendoza commented that although a host of products should be provided as to offer the investor an option to choose his own portfolio, the law should require that the administrator give the PERA investor full disclosure about his selection. Mr. Mendoza then presented the following options: a.) Portfolios that are absolutely fixed for the very conservative investor and b.) Funds that can be balanced for persons unacquainted with the stock market but would like to participate.
 14. Senator Angara said that the financial institution as a whole is liable to compensate the losses of the PERA investor presupposing that its trust officer acting as an administrator prodded the

- investor to make the investment in the said institution. He added that in such instances the private bank or counselor could not claim that the responsibility for such action is a personal undertaking. Senator Enrile then stressed that for protection of the PERA investors, an investment contract between the investor and the involved financial institution be made to guaranty the faithfulness of their employees in performing their trust obligations.
15. In connection with the statements made by Senator Enrile, Mr. Andaya of the Bankers Association of the Philippines (BAP) advised that PERA investor and their custodians make an agreement base on Trust Rules. The custodians are companies entrusted to safe keep the funds and securities of the investor. Mr. Andaya also said that aside from defining the roles and legal liabilities of the different players in fund management, the bill should also include the minimum standards of the contract between them and their clients.
 16. Upon query of Senator Enrile on whether the PERA investors would be authorized to invest their funds in foreign securities, Assistant Governor de Zuniga of the BSP said that this is allowable provided the securities are registered with the Securities and Exchange Commission.
 17. Senator Angara stressed two points: First, that the contributors have access to complete and truthful information about possible investments through their administrator and second, that government securities such as treasury bonds be included in the investor's portfolio mix.
 18. Senator Enrile added in order to protect its investors, that the bill on the Personal Equity and Retirement Account (PERA) Act should require that all contracts bearing on investments be uniform and supervised by a regulatory body.
 19. Assistant Governor Espenilla of the Bangko Sentral said that in drafting the final version of the PERA bill it is important to consider the characterization of the participants and to properly limit the kind of investment outlets available for these investors
 20. Ms. Dayco of the GSIS recommended the adoption of the following proposals:
 - a. Since there has been no mention of a minimum yield rate in the PERA bill, it is suggested that as a safeguard measure, specific provisions on monitoring and regulation be added
 - b. The definition of employer-sponsored retirement plans be included in the bill for clearer implementation
 - c. Government securities must be added as an investment outlet for PERA contributors and also a comprehensible definition of non-speculative equities be included
 - d. It is advised that the contributor has his investment approved before it is invested by his administrator

- e. A provision stating the grounds at which the contributor may change or discharge their administrator
21. Ms. Ortiz of the Social Security System (SSS) suggested that for the self-employed and private sector employees, they should first be required to be members of the SSS before being allowed to establish PERA accounts. In support of her proposal she said that requiring the membership to the SSS would guarantee minimum pension for an individual in his old age, she said that permitting a person to only have a PERA account to solely provide for his retirement would be detrimental because upon maturity all he would be receiving is his principal savings and income from investments. Also, she noted that a PERA account might incur losses when bad investments are made or when the investment climate is unstable. Lastly, she said that for an individual to benefit from the tax advantages of the PERA account, it is but fair that the individual be made to observe his tax responsibilities as well as his contributions to the GSIS or SSS which are mandatory programs for all workers in our economy.
22. According to Senator Angara the Financial Services Forum composed of the BSP, SEC, IC and PDIC is designated as the regulatory body of the Personal Equity and Retirement Account (PERA) Act and is tasked to draft its implementing rules and regulations. However, since there already are rules applicable to all kinds of investments, the forum may simply monitor, update or amend those working relations.
23. Concerning the tax treatment for PERA investments, Ms. Recente said that although the DOF supports in principle the initiative of for establishing an independent or individual retirement accounts, they suggest that the time element of the PERA be raised because they are apprehensive of its fiscal impact on our economy. The DOF advised that under the initial year, the Angara proposal would result to an estimated negative revenue impact of 4.24 billion; the Recto proposal will cause an impact of 2.69 while the Magsaysay proposal would result to an estimated revenue impact of 4.61 billion. Ms. Recente noted that these figures are only based on the tax preferred contribution to the PERA account, the DOF has yet to validate their old estimates on the cost of exempting PERA investment income to government, though she mentioned that this ranges from a low of 1.16 billion to a high of 8.82 billion. Ms. Recente added that it is crucial to determine the structure of the PERA in order that its negative impact would not be as large and could be accommodated or absorbed by the fiscal system.
24. Another issue Ms. Recente discussed was the shifting effect. She explained that DOF anticipates that the PERA would encourage the creation of new savings and would not result only to the transfer of old savings to the said account since it is tax preferred.
25. In relation to the issue of shifting, Assistant Governor Espenilla of the BSP recounted that in the past Congress it was discussed that cap on contribution be placed to mitigate such risk, as

- it would prevent an individual to transfer his entire savings of a PERA account. He also mentioned that another consideration for the cap on contributions is based on equity grounds, since a large portion of the country's population has a relatively low income, the wealthy would benefit more from their investments in the PERA as compared to the other investors.
26. Atty. Ayson expressed full support of the Philippine Stock Exchange (PSE) to the PERA bill, she then informed the Committee that the PSE proposes the inclusion of self directed accounts or individually-managed plans as an investment option under the bill. Self directed accounts or individually managed plans would allow investors to designate specific securities or funds that would constitute their respective accounts. She said that this is necessary because funds or accounts managed by accredited administrators may restrict investment choices and limit the potential of a PERA as an incentive for individual participation in the capital markets. She noted that this proposal is more appropriate for sophisticated or knowledgeable investors. Lastly, she mentioned that such schemes would be established when a participant opens an account through his plan, when he goes straight to a brokerage firm of his choice or when he chooses the securities to be invested in.
 27. Mr. Andaya said that since the Bankers Association of the Philippines (BAP) seeks to establish a fixed income exchange, the BAP recommends the inclusion of lesser corporate and municipal debt in the exchange as part of eligible investment outlets for PERA
 28. Assistant Governor de Zuñiga of the BSP recommended that as a means of safeguarding the interests of the investors, the bill should provide a general directive for the regulatory authority to allow certain investments to be subject to prudential regulations.
 29. In relation to the bills on the establishment, regulation and operation of lending companies, Commissioner Poblador of the SEC stressed that there is an urgent need for this bill to be passed because the opinion of the Department of Justice (DOJ) directs the SEC on the laws and regulatory framework to be followed. She also said that another issue that needs to be resolved is whether lending investors engaged in direct lending but are not exercising quasi-banking functions should be regulated by the SEC or by the BSP. This matter is further complicated by the fact that an estimated 6,000 or 60% of lending investors are single proprietors, which do not fall under the supervision of the SEC.
 30. Commissioner Poblador also mentioned that SEC is unable to implement the DOJ opinion of converting the lending investors into financing companies for them to be regulated under the Financing Company Act, because they encounter difficulty in imposing higher capital requirements on lending investors organized as sole proprietorships. She then said that as single proprietors, it is much proper for the Department of Trade and Industry (DTI) to be designated as the regulatory authority over the lending companies.

31. Atty. de Zuñiga of the BSP said that the business of lending investors was an offshoot from the operation of pawnshops. He mentioned that since there is a specific law, which provides for the organizational requirements for pawnshops as well as protects consumers from their illegal practices such as premature foreclosure of collaterals, a similar law must be enacted to cover lending investors. He also expressed support to the proposal of the SEC that lending investors be placed under the supervision of the DTI instead of local government units because imposing or requiring uniform enforcement of the law would be a problem.
32. Assistant Governor de Zuñiga said that the responsibility of the BSP does not cover lending entities unless they fall under the category of banking institutions. He also remarked that the BSP is not structurally prepared to handle lending investors because they do not have the network to supervise lending investors, which are distributed nationwide. Assistant Governor Espenilla added that from the BSP perspective, the monitoring of lending investors requires less of a prudential regulation but more of a consumer protection-type of regulation to protect the borrowers from disadvantageous agreements and/or lack of transparency in their transactions.
33. Assistant Espenilla commented that although the DTI seems the most practical choice as regulator since they have a consumer protection division, it would be unfair to impose on the DTI the sole burden of supervising lending investors given the large magnitude of these entities. He also noted that the pending bills have no provision mandating the DTI to create a unit to properly perform its consumer watchdog responsibilities.
34. Ms. Cruz of the Lending Companies Association of the Philippines (LeCap) expressed the request of the lending investors requests that they be properly represented and that they respect the decision of the Committee on deciding which regulatory agency would be designated to oversee their operations.
35. Upon query of Ms. Cruz on whether the Circular 13 of the SEC is still in force, Commissioner Poblador said that this circular, which recommends that lending investors convert to financing companies, is presently under suspension.
36. On the issue of capitalization, Ms. Cruz expressed the LeCap's support of adopting the proposals of Senators Magsaysay and Madrigal, that lending companies be required to have minimum capitalization of at least P4 million. Ms. Cruz also relayed that the association has no objection to the proposal that majority of incorporators for financing companies be required to be Filipino citizens.
37. In closing, Senator Angara said that there is a need to evaluate whether the consumer bureau of the DTI is capable to monitor and enforce the law over lending investors taking into consideration that there exists a huge, informal arrangement in the country as a result of the incapacity of banks and insurance companies to assist in rural development.

He also stressed that aside from the urgent need to provide consumer protection to borrowers; the persons involved in lending should adopt a code of ethics since this will ultimately guide them to be self-regulating in supplement with the policies of the DTI or any designated regulatory body.

III. FURTHER INSTRUCTIONS:

1. Senator Angara instructed Ms. Ortiz of the SSS to do an actuarial study to determine the monthly or annual pension to be received by an individual assuming that he is in his early thirties and would be retiring in twenty years.
2. The Chair instructed Assistant Governor Espenilla to head the technical committee on the Personal Equity and Retirement Account (PERA). Other members of the group are as follows:
 - a. Ms. Recente of the Department of Finance
 - b. Ms Dayco of the Government Service Insurance System (GSIS)
 - c. Ms. Ortiz of the Social Security System (SSS)
 - d. Mr. Rex Mendoza of the Philam Group of Companies
 - e. Corporate Lawyer Representative: Ms. Lai-lynn Barcenas of Puyat, Jacinto & Santos law office or Atty. Rolando del Castillo of ACCRALAW
 - f. Representatives from the offices of Senators Magsaysay, Recto, Angara and the Committee

Senator Angara gave the technical committee a deadline of ten days to gather the important points raised in the discussion and prepare a draft bill on the PERA.
3. For purposes of continuity, the Chair directed the Committee that the position papers and the transcript of hearing held on June 3, 2003 be made part and parcel of the hearing
4. Senator Angara instructed the Committee to study whether the Consumer Act designates a particular bureau in the Department of Trade and Industry to undertake the implementation of consumer protection regulations.

IV. ADJOURNMENT:

Senator Angara requested the resource persons to send their position papers in the soonest possible time as to allow other members of the Committee sufficient time to refine their proposed measures on the Personal Equity and Retirement Account (PERA) and on the establishment, regulation and operation of lending companies. He thereafter adjourned the meeting at 10:50 a.m.