**AUDIT OBSERVATIONS AND RECOMMENDATIONS**

1. **Financial Audit**
2. **Seventy-one General Ledger (GL) accounts amounting to P9.873 billion are of doubtful validity due to non-submission of reliable schedules to support the accounts’ balances, contrary to Sections 112 and 121 of Presidential Decree (PD) No. 1445 and Paragraph 15 of Philippine Accounting Standard (PAS) 1.** 
   1. Sections 112 and 121 of PD No. 1445 state that:

*Section 112. Recording of financial transaction. Each government agency shall record its financial transactions and operations conformity with generally accepted accounting principles and in accordance with pertinent laws and regulations.*

*Paragraph 2 of Section 121. The financial statements shall be based on official accounting records kept in accordance with law and the generally accepted accounting principles and standards.*

* 1. Further, Paragraph 15 of PAS 1 on fair presentation and compliance with PFRS states that:

*Financial statements shall present fairly the financial position, financial performance and cash flows of an entity. Fair presentation requires the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Framework. Xxx*

* 1. Our examination of the Trial Balance (TB) of Armed Forces of the Philippines Retirement and Separation Benefits System (AFPRSBS) revealed that supporting schedules of 71 GL accounts amounting to P9.873 billion were not submitted during the conduct of our audit. Such schedules constitute detailed information, explaining the balance in the controlling account appearing in the GL. These accounts comprise 45 per cent of the total accounts as reflected in the TB. Details are as follows:

| **Account description** | **Balance as at December 31, 2019** |
| --- | --- |
|  |  |
| AR trade, lessee | 154,145,114 |
| Allowance for doubtful accounts (PAPC) | 106,446,667 |
| Allowance for doubtful accounts (AR, others) | 68,749,620 |
| Allowance for doubtful accounts (lending) | 53,672,091 |
| Allowance for doubtful accounts (ICRs - Riviera) | 33,327,569 |
| AR non trade | 32,726,559 |
| Allowance for doubtful accounts (ICRs - Village East III) | 25,888,443 |
| Due from JV office/partner | 18,925,586 |
| Prepaid tax | 16,803,259 |
| (Forward)  Prepaid commissions | 10,324,668 |
| Allowance for doubtful accounts (ICRs - Orchard) | 7,866,488 |
| Allowance for doubtful accounts (ICR) | 6,741,126 |
| Accrued interest income, others | 6,164,636 |
| Employee salary loans | 5,892,902 |
| Allowance for doubtful accounts (AR, trade) | 5,130,003 |
| Accrued interest income on ICRs | 4,962,443 |
| AR trade, real estate buyers | 3,625,322 |
| AR JV memorial | 3,610,380 |
| Past due car loans | 3,116,997 |
| AR trade, 2nd REM | 2,888,575 |
| AR trade, others- beginning | 2,746,190 |
| AR JV residential | 1,603,480 |
| Member commutation loan | 1,419,952 |
| Past due other loans | 1,092,346 |
| Prepaid supplies & materials | 961,824 |
| Allowance for doubtful accounts (JMC Farms/Globan) | 533,106 |
| AR trade, equities | 399,915 |
| Prepaid insurance | 341,979 |
| AR trade, financing retention | 303,539 |
| Advances to suppliers | 282,108 |
| Prepaid rental | 101,400 |
| Past due salary loans | 94,520 |
| Member small business loans | 58,205 |
| Accrued interest income, member loans | 52,045 |
| Member salary loans | 33,870 |
| Allowance for doubtful accounts (other assets) | 1,506 |
| Prepaid subscription/membership | 0 |
|  | P 581,034,433 |
|  |  |
| AP others | 253,357,515 |
| Unearned interest, loans | 117,267,326 |
| Accounts payable, trade | 117,221,987 |
| Accrued employee benefits | 115,491,125 |
| AP non trade others | 109,783,738 |
| Buyers deposits, in house | 97,806,355 |
| Rental deposits | 45,144,493 |
| Reserve for real estate development | 28,478,889 |
| AP trade real estate brokers | 28,431,059 |
| Accrued expenses | 25,372,970 |
| Retention payable | 20,803,173 |
| Construction deposits | 14,968,800 |
| Buyers refund payable | 14,552,620 |
| Unearned income, commutation | 11,388,290 |
| Deferred credit (deposits & other liabilities) | 10,315,859 |
| AP trade investors/JV partner | 7,399,723 |
| Unapplied collections | 6,834,215 |
| Buyers deposits, external | 3,974,241 |
| AP contractor | 3,970,536 |
| Accrued consultant fees | 3,820,261 |
| Employees withholding tax payable | 2,375,071 |
| Unapplied receipts | 1,683,285 |
| AP trade land owner | 1,593,400 |
| (Forward)  Buyers deposits, JV | 1,588,425 |
| Unearned income, discounted members refund | 1,247,112 |
| Brokers withholding tax payable | 1,014,112 |
| AP trade others | 886,480 |
| Due to parent | 845,716 |
| VAT withholding tax, 5%/6% | 342,715 |
| Contractors/consultants withholding tax payable | 210,033 |
| Accrued interest expenses | 200,402 |
| Creditable VAT/Percentage tax | 30,704 |
|  | P 1,048,400,630 |
|  |  |
| Retained earnings, unappropriated | P 8,230,226,687 |
| Cumulative unrealized gain/loss-FVOCI | 13,826,096 |
|  | P 8,244,052,783 |
| **Total** | **P 9,873,487,846** |

* 1. The total amount of assets, liabilities and equity with corresponding percentage as to the total amount is illustrated as follows:

|  |  |  |
| --- | --- | --- |
| **Account** | **Total amount** | **% to total** |
| Assets | P 581,034,433 | 6 |
| Liabilities | 1,048,400,630 | 11 |
| Equity | 8,244,052,783 | 83 |
| **Total** | **P9,873,487,846** |  |

* 1. The Audit Team requested for the submission of the said schedules but was not furnished of the same as of writing.
  2. Further, some GL accounts with schedule showed a difference of P31.880 million consisting of automatic entries that were created in the Integrated Financial Management System (IFMS) - Lending module and unreconciled items still being traced by the Accounting Department (AD) amounting to P20.909 million and P10.971 million, respectively. To wit:

| **Account name** | **Per GL** | **Per schedule** | **Discrepancy** |
| --- | --- | --- | --- |
| ICR | P746,553,488 | P710,866,992 | P35,686,496 |
| ICR, acquired assets | 4,143,600 | 8,019,969 | (3,876,369) |
| ICR, past due | 80,372,499 | 80,303,048 | 69,451 |
| **Total** | **P831,069,587** | **P799,190,009** | **P31,879,578** |

* 1. The Installment Contract Receivable (ICR) account represents the balances of receivables arising from the sale of real estate inventories and acquired assets which were financed by the System through in-house financing scheme, while ICR-past due account represents the uncollected balance under the same financing scheme that remained unpaid for more than 180 days. Interview with Management revealed that AFPRSBS is insuring those ICRs covering properties with improvements.
  2. Inquiry with Management disclosed that the noted discrepancies were attributed to various adjustments or entries which are still unreconciled and are subject for validation. The ICR account is continuously being reconciled by the AD to include the discrepancies noted between the schedules submitted and the GL balances. However, the AD admitted that they are having difficulty in tracing the prior years’ transactions due to the crash of the computerized systems in 2012. Seven years had lapsed but the promised reconciliation by Management is not yet done.
  3. The Subsidiary Ledger (SL) is a book of final entry containing the details or breakdown of the balance of the controlling account appearing in the GL. Postings to the SL generally come from the source documents. The totals of the SL balances shall be reconciled with their respective control account regularly or at the end of each month. Schedules shall be prepared periodically to support the corresponding controlling GL accounts.
  4. However, due to non-submission of schedules, the unreconciled balance of GL account and the propriety of items composing the 71 GL accounts cannot be validated, thereby casting doubt on the reliability and accuracy of the whole financial statements (FS) considering the materiality of the amount.
  5. **We recommended that Management:**

1. **Make a timetable for the preparation of Schedules and reconciliation of the said schedules with the controlling accounts to determine the correct and reliable account balances and strictly comply with the established timetable; and**

1. **As a result of reconciliation, effect the necessary adjustments in the books for fair presentation of the accounts in the FS.**
   1. The Management commented that during the conduct of the annual audit of the System’s FS, the AFPRSBS submitted to the Audit Team all the requested schedules. One of the focuses of the System, particularly the AD, is the preparation of schedules and reconciliation of the Statement of Financial Position (SFP) accounts in view of the liquidation of AFPRSBS and the eventual turnover of its remaining assets to the designated recipient. The Management likewise asserted that the 60 out of the 71 accounts mentioned have schedules on file. The schedules for Unapplied Collections; Unapplied Receipts; Deferred Credit and Unearned Income-Commutation, which were subject of inquiry by the Audit Team during the audit, were not submitted since the same are still ongoing reconciliation.
   2. Nevertheless, the Management is amenable that they still have to update the schedules supporting the other SFP accounts. They committed to reconcile and prepare the same within Calendar Year (CY) 2020. And the necessary adjustments in the books, if any, will be made as a result of the reconciliation for fair presentation of the accounts in the FS.

* 1. As a rejoinder, the **Management’s actions in updating the schedules supporting the accounts in the FS as well as the reconciliation of these accounts will be monitored by the Audit Team. In this regard, we maintain our stand that the propriety of the 71 GL accounts cannot be determined because their corresponding schedules were not subjected to our audit.**

1. **The unreconciled balances of Member’s Contributions (MC) and Estimated liability on MC earnings account, amounting to P7.268 billion and P2.294 billion, respectively, representing collections of capital contribution and earnings on members’ capital contribution, respectively, have no updated SLs, thereby rendering doubtful the accuracy and correctness of presentation of members’ data in the SLs, contrary to Paragraph 15 of PAS 1, Section 111 of PD No. 1445 and Office of the President’s issuances, particularly, Executive Order (EO) Nos. 590 and 590-A and Memorandum Order (MO) No. 90 series of 2016.**
   1. Chapter 2, Section 111 of PD No. 1445 provides that:

*Keeping of accounts.*

1. *The accounts of an agency shall be kept in such detail as is necessary to meet the needs of the agency and at the same time be adequate to furnish the information needed by fiscal or control agencies of the government.*
2. *The highest standards of honesty, objectivity and consistency shall be observed in the keeping of accounts to safeguard against inaccurate or misleading information.*
   1. Paragraph 15 of PAS 1 as cited in Paragraph No. 1.2 hereof, provides for the requirement of fair presentation and compliance with the PFRS.
   2. The AFPRSBS was established as a funding mechanism to ensure the continuous payment of retirement and separation benefits due to the members of the AFP. EO No. 590, as amended by EO No. 590-A, prescribes the deactivation of the AFPRSBS and the transfer of the MCs into a trust account to be managed by a Government Financial Institution (GFI) as Trustee.
   3. Further, MO No. 90 directs the abolition, winding down and liquidation of the AFPRSBS effective April 8, 2016 to include, among others, the cessation of collecting MCs and accrual of interest and the refund of AFPRSBS members’ contributions as they fall due.
   4. On April 19, 2016, pursuant to the same MO, the System’s Board of Trustees (BOT) already convened as Board of Liquidators (BOL). The BOL approved in the meeting the stoppage of the collection of five per cent members’ contributions and the accrual of interest on members’ contributions effective March 31, 2016 as per Board Resolution (BR) No. SPL-01-2016.
   5. As at December 31, 2019, the balances of Refund of MC payable and Estimated liability on MC earnings amounting to P7.268 billion and P2.294 billion, respectively, represent the total accumulated MC to be refunded to the members upon their retirement, separation or discharge from active service and the interest earned on the contribution, respectively. The total of the two accounts represents 51 per cent of the P18.899 billion total liability and equity of the System as at December 31, 2019. Details are as follows:

| **Particulars** | **Refund of MC payable** | | **Estimated liability on MC earnings** | |
| --- | --- | --- | --- | --- |
| **Account number** | **Amount** | **Account number** | **Amount** |
| Current | 507101 | P3,929,006,302 | 508101 | P1,573,815,083 |
| Non-current | 601102 | 3,339,216,962 | 601102 | 719,769,031 |
| **Total** |  | **P7,268,223,264** |  | **P2,293,584,114** |

* 1. Every member should have his/her own individual SL which contains his/her contributions. However, updated individual SLs of MC was not provided by the System to the Audit Team. Alternatively, the AD submitted a list extracted from IFMS as of July 2015 which is still under reconciliation with the balance of MC payable per books. As of to date, the AD is continuously reconciling the data retrieved from the IFMS simultaneous to the processing of the member’s refund by the Membership Department (MD). According to them, once they are able to ascertain the balance of each member’s account, they will be able to compute the total contributions and to actualize the estimated interest or MC earnings.
  2. Based on second audit observation on Part II of 2015 Annual Audit Report (AAR) which involved the same issue, an expert was hired to extract the members’ individual SL from the IFMS and convert it into an excel file. As the AD continuously reconciles the MC account, the reconciliation is 76 per cent completed as at December 31, 2019. The remaining discrepancy was reduced to P1.182 billion from P4.914 billion in CY 2015. Details are as follows:

|  |  |
| --- | --- |
| **Particulars** | **Amount** |
| Balance per books, July 31, 2015 | P 10,844,040,316 |
| Balance per IFMS, July 31, 2015 | 12,026,066,245 |
| **Difference** | **P 1,182,025,929** |

* 1. On the other hand, comparison of the balance per books and the SL provided by Management disclosed a difference of P4.758 billion computed as follows:

| **Particulars** | **Amount** |
| --- | --- |
| Balance per books, December 31, 2019 | P 7,268,223,264 |
| Balance per SL, July 31, 2015 | 12,026,066,245 |
| **Difference** | **P 4,757,842,981** |

* 1. At the end of 2019, the AD set up P3.158 billion in the current portion of the MC payable coming from the non-current portion based on the estimated refund for 2020 by the MD which was presented to the BOL. In the said estimate, the MD estimated that by middle of 2021, they will be able to refund the contributions to all members. Furthermore, during the initial conference with Management, the AFPRSBS’ President presented AFPRSBS’ 2019 FS showing that the Cash and cash equivalents, Short-term investments-net, Non-current investments, Accrued interest and receivable, and Investment in bonds and commercial papers totaling to P9.429 billion are more than enough to cover the liabilities, particularly the refund to the members. However, the difference between the SL and IFMS balance amounting to P1.182 billion should be considered upon reconciliation. Thus, the System’s liquid assets are not enough to fully cover its obligation to refund members’ contributions and the interests thereon. To illustrate:

|  |  |
| --- | --- |
| **Liquid assets** |  |
| Investment in bonds & commercial papers | P5,075,285,230 |
| Short-term investments – net | 3,373,365,014 |
| Cash and cash equivalents | 898,380,540 |
| Accrued interest and receivables | 49,865,747 |
| Non-current investments | 32,246,271 |
|  | **P9,429,142,802** |
| **MC payable and interest** | 9,561,807,378 |
| **Deficiency** | **P 132,664,576** |

* 1. Moreover, there is no supporting schedule provided for the details of the Estimated liability on MC earnings account. The System failed to update the records of the members’ individual SLs, thus, the correct amount of MCs that should be transferred to the GFI, as Trustee, cannot be determined and the implementation of EO Nos. 590 and 590-A and MO No. 90 on the transfer of MC to the GFI Trustee cannot be facilitated.
  2. Continuous updating of the accounts is being performed by the System to determine the accurate amount of refund of MC and the interest earned thereon. However, the balance of the two accounts cannot be relied upon due to the absence of updated individual ledger of MC which is contrary to Paragraph 15 of PAS 1 and Section 111 of PD No. 1445.
  3. It is the System’s responsibility to have a complete, updated and accurate individual SL of MC since this will be the basis in the computation of the members refund and the corresponding interest thereon, thus, failure to do so affects their benefit claims and prolongs the liquidation process of AFPRSBS.
  4. **We reiterated our CY 2018 recommendation that Management update and reconcile the SLs of the IFMS with the books of accounts maintained by the AD in preparation for the transfer of the records of MC to the GFI Trustee in accordance with EO Nos. 590 and 590-A, as amended by MO No. 90.**
  5. **We further recommended that Management continue the disposal of individual residential units, in addition to the Bonds and commercial papers, to fully cover the obligation to refund members’ contributions and interests thereon.**
  6. **Management commented the following:**
     1. **Continuous efforts are being done to reconcile the SLs of the members per IFMS and the books of accounts maintained by AD. From the P4.914 billion discrepancy in July 2015, the accomplishments are as follows:**

|  |  |  |
| --- | --- | --- |
| **Cut-off date** | **Discrepancy**  **(in billions)** | **% of accomplishment** |
| **December 2019** | **P1.182** | **76** |
| **April 2020** | **P1.050** | **79** |

* + 1. **The System is continuously undertaking public biddings for the disposal of its major assets and equity shares to fully fund the remaining liabilities to the members amounting to P9.562 billion as at December 31, 2019. The System has available funds of P9.429 billion consisting of Cash on hand and in banks, Investments in money market placements, Treasury bills and Investments in long-term bonds and commercial papers.**

**The System also has existing receivables from a developer on the sale of a real estate in Iloilo amounting to P444.849 million payable until March 2021. Further, on March 12, 2020, the System was able to dispose its equity shares in a subsidiary for P150.780 million to a utility company payable in 35 working days from receipt of the Notice of Award (NOA) by the latter.**

* 1. As a rejoinder, we commend Management’s continuous efforts to reconcile the SLs of the members per IFMS and the books of accounts maintained by AD despite of limited manpower. However, prior to the refund of all contributions and interests to the members, the amount to be refunded must have been already determined. This will provide the Management a reliable information to actualize the recorded interests on MC and ensure that the System has enough fund for the refund of contributions and interests thereon. **Thus, we further recommend that Management provide timetable showing that the reconciliation of members’ SLs will be completed ahead of the MD’s projected completion of the refund of the members’ contributions and corresponding interests.**

1. **Dormant Accounts Receivables as at December 31, 2019 totaling to P955.148 million have remained outstanding for 11 to more than 20 years, thus, deprives the System of funds for its accelerated refund and payment of other obligations, contrary to Commission on Audit (COA) Circular No. 2016-005.** 
   1. COA Circular No. 2016-005 dated December 19, 2016 provides the Guidelines and Procedures on the Write-Off of Dormant Receivable Accounts, Unliquidated Cash Advances and Fund Transfers of National Government Agencies, Local Government Units and Government-Owned and Controlled Corporations. Section 5 of the said Circular defines the following terms:

*Xxx*

*5.5 Dormant Receivable Accounts – accounts which balances remained inactive or non-moving in the books of accounts for 10 years or more and where settlement/collectability could no longer be ascertained.*

*Xxx*

*5.9 Write-off of Dormant Accounts – the process of derecognizing the asset account and the corresponding allowance for impairment from the books of accounts and transferring the same to the Registry of Accounts Written off (RAWO). This does not mean condoning/extinguishing the obligation of the accountable officer/debtor.*

* 1. Moreover, under Sections 8.2 and 8.3 of the said Circular, the Head of the government entity shall file the request for the authority to write-off dormant receivable accounts, among others, supported by the Schedule of dormant accounts by accountable officer/debtor/government entity and by account, certified by the accountants and approved by the Head of the government entity together with the certified copies of relevant documents validating the existence of the conditions as enumerated in the said Circular.
  2. Also, the saving clause under Section 11 of the Circular states:

*This Circular shall not be interpreted to neither condone the written off accounts nor to extinguish the obligations. The Management shall continue to exert effort to collect the accounts appearing in the RAWO when circumstances would warrant. Further, this shall not be construed as a ground to exonerate the liability of the officers/employees for infidelity in the custody of documents.*

* 1. As at December 31, 2019, the Receivables-net, Loans receivable-net, and Advances to subsidiaries and associates-net have the following balances:

| **Account title** | **Amount** |
| --- | --- |
| **Accounts receivable, trade** |  |
| AR trade, lessee | P 154,145,114 |
| AR trade, real estate buyers | 3,625,321 |
| AR trade, second REM | 2,888,574 |
| AR trade, others-beginning | 2,746,190 |
| AR discounted | 1,010,081 |
| AR trade, equities | 399,915 |
| AR trade, financing retention | 303,539 |
| **Sub-total** | **P 165,118,734** |
| **Accrued interest and dividend receivable** | |
| Accrued interest income, long term investment | P 39,573,958 |
| Accrued interest income, short term investment | 6,500,134 |
| Accrued interest income, others | 6,164,636 |
| (Forward)  Accrued interest income on installment contract receivable | 4,962,443 |
| Dividend receivable | 2,381,660 |
| Accrued interest income, member loans | 52,045 |
| **Sub-total** | **P 59,634,876** |
| **Accounts receivables, others** |  |
| AR others | 364,944,197 |
| AR non trade | 32,726,559 |
| Due from JV office/partner | 18,925,586 |
| AR JV memorial | 3,610,380 |
| Advances to contractors | 1,750,452 |
| AR JV residential | 1,603,480 |
| Advances to suppliers | 282,108 |
| Allowance for doubtful accounts | (68,749,620) |
| Allowance for doubtful accounts (TRADE - AOM 2010-007) | (5,130,003) |
| **Sub-total** | **P 349,963,139** |
| **Receivables – net** | **P 574,716,749** |

| **Account title** | **Amount** |
| --- | --- |
| **Non-current portion of loans** |  |
| Unearned interest | P (117,267,326) |
| Allowance for doubtful accounts (PAPC) | (106,446,667) |
|  | P (223,713,993) |
| **Past due loans** |  |
| Accounts under litigation | P 776,535,403 |
| Past due commercial loans | 115,983,415 |
| Past due small business loans | 4,316,602 |
| Past due car loans | 3,116,997 |
| Past due other loans | 1,092,346 |
| Past due salary loans | 94,520 |
| Allowance for doubtful account, other loans | (118,560,963) |
| Allowance for doubtful account, other loans | (109,394,201) |
| Allowance for doubtful account, commercial loans | (6,118,064) |
| Allowance for doubtful account, other loans | (2,681,275) |
| Allowance for doubtful account, commercial loans | (2,370,500) |
| Allowance for doubtful account, other loans | (2,290,764) |
| Allowance for doubtful account, other loans | (1,461,518) |
|  | **P 658,261,999** |
| **Loans receivable - net** | **P 434,548,007** |

|  |  |
| --- | --- |
| **Account title** | **Amount** |
| Due from affiliates/subsidiaries | P 34,454,120 |
| Allowance for probable loss, other current assets | (16,416,120) |
| **Advances to subsidiaries and associates - net** | **P 18,038,000** |

* 1. Relative to the aforesaid accounts, AFPRSBS has dormant receivables totaling to P955.148 million which represents 93 per cent of the total receivables and five per cent of the total assets as of year-end. Details are as follows:

| **Account** | **No. of accounts** | **Aging of dormant receivable accounts** | | |
| --- | --- | --- | --- | --- |
| **11 to 15 years** | **16 to 20 years** | **more than 20 years** |
| Accounts receivable-discounted | 1 | P 0 | P 1,010,081 | P 0 |
| Past due-commercial loans | 5 | 6,118,064 | 0 | 109,824,865 |
| Past due-small business loans | 6 | 714,233 | 195,532 | 2,698,162 |
| Accounts under litigation | 8 | 732,293,828 | 0 | 43,998,603 |
| Accounts receivable-others | 8 | 5,758,005 | 2,407,644 | 0 |
| Accounts receivable-others beg | 8 | 0 | 4,119,139 | 0 |
| Accounts receivable-non-trade | 10 | 3,603,379 | 2,266,709 | 16,822,313 |
| Accounts receivable-trade financing | 8 | 303,539 | 0 | 0 |
| Past due car loan | 18 | 218,225 | 317,636 | 1,211,784 |
| Advances to subsidiaries | 6 | 8,320,650 | 5,894,093 | 2,201,377 |
| Past due-other loans | 3 | 779,668 | 0 | 0 |
| Advances to contractors | 4 | 0 | 0 | 1,750,452 |
| Dividends receivable | 1 | 0 | 2,320,000 | 0 |
| **Total** | **86** | **P758,109,591** | **P18,530,834** | **P178,507,556** |

* 1. Verification of the report on dormant receivable accounts revealed that some of the said receivables totaling to P120.429 million are due from the closed subsidiaries. Seven accounts totaling to P43.080 million are with pending cases handled by the Legal Department (LD). While the 18 accounts totaling to P7.778 million are still for collection since appropriate action to collect has not been done yet as of year-end. The 33 accounts totaling to P21.114 million are still for tracing and reconciliation because Management is having some difficulties in the retrieval of documents. There is currently an on-going foreclosure relative to the receivable from an individual debtor. The receivable from a realty corporation is still outstanding since the property foreclosed is not yet consolidated in the name of AFPRSBS. The receivable from a subsidiary is provided an allowance of P8.094 million and will be adjusted upon disposal of the company. Other dormant receivables totaling to P30.567 million, have been provided 100 per cent allowance for doubtful accounts.
  2. The inaction of Management to exhaust all available remedies to collect the said receivables, which have been long outstanding/remained past due/dormant, deprives the System of funds for its accelerated refund and payment of other obligations.
  3. Despite of providing allowance to the corresponding dormant accounts, the amount of which might still mislead the public while reading the FS of the System. The above-mentioned Circular facilitates the reconciling and cleaning of the books of accounts of Government Owned and/or Controlled Corporations (GOCCs), like AFPRSBS, of dormant receivables to give the public more reliable FS. Likewise, the Circular provides that it should not be interpreted to neither condone the written off accounts nor to extinguish the obligations. The Management shall continue to exert effort to collect the accounts when circumstances would warrant. Further, this shall not be construed as a ground to exonerate the liability of the officers/employees for infidelity in the custody of documents.
  4. **We recommended and Management agreed to:**

1. **Exhaust all available remedies to collect all long outstanding/dormant/past due accounts and ensure proper documentation of accounts and coordination of concerned Agencies;**
2. **Devise other options and if warranted, resort to legal means to enforce settlement of accounts including those pertaining to prior years without request for write-off;**
3. **Document all efforts to collect the dormant accounts; and**
4. **When all efforts have failed, request the COA for write-off as provided for under COA Circular No. 2016-005 dated December 19, 2016.**
5. **The account balance of Unapplied receipts and Deferred credit amounting to P1.683 million and P10.316 million, respectively, under the deposit and other liabilities account, cannot be relied upon because it has been long outstanding with no aging schedule. Also, Unearned income-commutation account has an abnormal balance amounting to P11.388 million. These are contrary to Section 112 of PD No. 1445 and Paragraph 15 of PAS 1.**
   1. Section 112 of PD No. 1445 as cited in Paragraph No. 1.1, hereof provides for the guideline on recording of financial transaction while Paragraph 15 of PAS 1 as cited in Paragraph No. 1.2, hereof provides for the requirement of fair presentation and compliance with the PFRS.
   2. The Deferred credit account represents billed or collected revenues that are not recognized as income pending completion of the earning process. On the other hand, the Unapplied receipts account represents collections done over the counter but not yet posted in the GL and SL.
   3. Inquiry with Management revealed that majority of the transactions related to Deferred credit account pertain to the sale of real estate inventories where recognition of income from sale of inventories was deferred pending completion of the 30 per cent down payment.
   4. Likewise, examination of records disclosed that as at December 31, 2019, Unapplied receipts and Deferred accounts amounting to P1.683 million and P10.316 million, respectively, have been outstanding since 2015 and 2017, respectively, to which no reversion, adjustment or transaction was recorded in the SL and no aging schedule is prepared.
   5. Considering the length of time that has elapsed, and if these payables are valid and supported with complete documents then, there is no reason why the same were not posted to individual SLs.
   6. Furthermore, the Unearned income-commutation account represents interest income that was deducted in advance from the loan proceeds of the members in relation to the discounting of commutation of leave credits. It is being amortized monthly depending on the term of the loan. Verification of records disclosed that the reported balance of unearned income-commutation under Deposits and other liabilities account has a debit balance of P11.388 million as at December 31, 2019. The failure to set-up the unearned income upon the granting of loan while continuously amortizing the same monthly resulted in the abnormal balance of the account.
   7. Inquiry with Management disclosed that continuous reconciliation is being made in order to account the unidentified transactions which were credited to the bank account. Likewise, the P11.388 million debit balance of Unearned income-commutation is still being reconciled by AD and any adjustment/(s) will be made based on the result of the reconciliation. However, they are having difficulty in the reconciliation since most of the entries were created in the previous accounting system.
   8. The presence of long outstanding Deposits and other liabilities account with no aging schedule or subsequent transactions recorded in the SL and of the abnormal balance of Unearned income-commutation account cast doubt on the reliability and accuracy of the respective accounts as reflected in the SFP.
   9. **We recommended and Management agreed to:**
6. **Review documents supporting the payables to determine their validity and completeness and recognize all the undocumented payables which have been long outstanding as income;**
7. **Make the necessary adjusting entries in the books as a result of the reconciliation for fair presentation of the accounts in the FS;**
8. **Prepare an aging schedule for the proper recognition of the corresponding income accounts; and**
9. **Prepare a timetable for the reconciliation of the debit balance of the Unearned income-commutation account amounting to P11.388 million and strictly implement the established timetable.**
10. **Compliance Audit**
11. **The System did not exercise due diligence in the examination of the title and documents presented by the former owner in connection with the acquisition of the 150 hectares agricultural lot. Further, it did not consider the possible disadvantages amounting to P284.237 million on the swapping of shares of stocks between Monterossa Development Corporation (MDC) and an AFPRSBS’ subsidiary realty corporation in 1999, thus, unfavorable to the Members of the System and is inconsistent with Section 2 of PD No. 1445.**
    1. Section 2 of PD No. 1445 provides that:

***Section 2. Declaration of Policy.*** *It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or head of the government agency concerned.*

* 1. The AFPRSBS invests its funds in various ventures to grow its assets for its members pursuant to its mandate. One of which occurred in 1989 when the System entered into a joint venture through its wholly owned subsidiary with a contractor for the construction of a 27-storey condominium in Binondo, Manila.
  2. Subsequently, the AFPRSBS’ subsidiary realty corporation, and a brokerage corporation, for a time the exclusive broker-seller of the former, entered into a Memorandum of Agreement (MOA), where the latter agreed to convey, transfer and assign its rights, interests and subsequent ownership over the 150 hectares lot located at Batulao, Nasugbu, Batangas, in exchange of the former’s 120 unsold condominium units. As at December 31, 2019, the title of the 150 hectares lot is registered in the name of MDC, a 100 per cent owned subsidiary of AFPRSBS.
  3. Perusal of the submitted documents relative to the acquisition of the 150 hectares lot revealed the following:
     1. Excerpts of Minutes of the January 29, 1998 BOT Meeting, under an undated Approval Sheet, showed that the Board resolved: (a) that AFPRSBS through a MOA authorizes a brokerage corporation to sell the remaining unsold units of the 27-storey condominium building in pursuit of the swap arrangement; (b) that brokerage corporation would create a corporation that would own a lone asset, the subject property; (c) that the new corporation would apply for a loan from a commercial bank; (d) that the proceeds of the sale of the condominium units shall be placed in escrow account in favor of AFPRSBS’ wholly owned subsidiary; (e) that on the basis of the escrow account, the commercial bank would grant the loan to the new corporation for the purchase of the aforesaid lone asset; (f) that the brokerage corporation shall transfer and register the Title covering the lone asset to the new corporation; (g) that upon the completion of all documentary requirements, the swap arrangement is effected; and (h) that AFPRSBS would then become the owner of the new corporation and its assets.

Further, it was also mentioned that the value of the subject property at the time was P896 million.

* + 1. In view of the creation of a new corporation mentioned in the preceding paragraph, MDC was incorporated on August 25, 1998 with Securities and Exchange Commission (SEC) Registration No. A199812882. It has an authorized capital stock of P100 million, divided into one million shares with the par value of P100 per share, incorporated and subscribed by the brokerage corporation. Based on its Articles of Incorporation (AOI), its primary purpose is to own, use, improve, develop, subdivide, sell, exchange, lease, and hold for investment or otherwise, real estate of all kinds, including buildings, house, apartments and other structures. On March 16, 1999, MDC amended its AOI particularly for the increase in capital stock from one million to 1.5 million shares. Another amendment was made in MDC’s AOI on March 17, 2004 for the change of address of its principal office from brokerage corporation building in Bangkal, Makati City to AFPRSBS in Quezon City.

It is worthy to note that the appraisal report of the 150 hectares lot, dated within the same year after the capital stock of MDC was increased to 1.5 million shares, disclosed the fair market value of the said property at P1.195 billion or equivalent to P796 per square meter (sqm) as of August 20, 1999. We noted further that the said appraisal report did not consider the presence of squatters in the subject property in the computation of the said fair market value. However, during the initial approval of the swap transaction mentioned in the foregoing minutes of meeting held in 1998, the value of the subject property was only P896 million.

* 1. From the foregoing consideration, the AFPRSBS’ subsidiary realty corporation and the brokerage corporation executed a MOA defining the following obligations of the parties:
     1. The AFPRSBS’ subsidiary realty corporation and its stockholders convey, transfer and assign to the brokerage corporation all its shares of stocks and assets consisting primarily of the condominium units.
     2. It is also stipulated that simultaneous to the actual conveyance, transfer and assignment of shares of stocks to the respective parties, the AFPRSBS’ subsidiary realty corporation shall settle all indebtedness, advances, loans, claims whether monetary or otherwise, which it may have incurred, to any third party and secure the appropriate documents, instruments evidencing a general release from said obligations.
     3. The brokerage corporation has the exclusive option to buy a certain parcel of land situated at Barangay Balang, Nasugbu, Batangas consisting of 1,500,000 square meters more or less, covered by Transfer Certificate of Title (TCT) No. 41389 issued by the Registry of Deeds (RD) of Nasugbu, Batangas.
     4. Review of the pertinent documents showed that the brokerage corporation entered into a contract with a developer on November 22, 1997, granting the former the exclusive option to buy the subject property in Nasugbu, Batangas and such contract was made an integral part of the MOA.
     5. The brokerage corporation shall convey the subject property free and clear of any squatter, tenant or occupant and from any and all structures permanent and otherwise. The brokerage corporation warrants and guarantees that in its own exclusive account, it shall take full responsibility in the settlement of any and all claims of said tenants or occupants and the orderly relocation of the same which are deemed requisite and necessary for the peaceful surrender of the property.
  2. The alleged MOA signed and entered by both parties was not dated and not notarized by a notary public. An unnotarized document or instrument is merely a private instrument and cannot bind third parties. Notarization has a legal impact on the contract as it converts a private document to a public instrument. Agreements on the contract are enforceable once the document is notarized because it is a strong proof of the document’s authenticity. Nevertheless, with the wordings of the said MOA, it is apparent that the shares of stocks and assets, consisting primarily of the condominium units of AFPRSBS’ subsidiary realty corporation, were conveyed and transferred in favor of a brokerage corporation without any consideration since it was established that neither MDC nor the subject property was not yet formed and acquired, respectively, by the brokerage corporation. We noted further that MDC was only incorporated on August 25, 1998.
  3. Our ocular inspection of the subject property disclosed that there are still squatters or occupants and other structures in the vicinity. Most of them are farmers since the property is typically an agricultural land. From the foregoing consideration, the brokerage corporation did not comply with prestation in the MOA regarding the payment of any claims and relocation of occupants in the subject property.
  4. On March 16, 1999, an addendum to the above-mentioned MOA was entered into by the same parties. It was mentioned therein that the brokerage corporation has already acquired and purchased the subject property from its former owner-developer covered by TCT No. 41389 issued by the RD of Nasugbu. Allegedly, the foregoing TCT was cancelled and replaced by TCT No. 82447 registered in the name of MDC only on August 23, 1999.
  5. Upon the execution of the foregoing instrument, the following undertakings shall transpire:
     1. The AFPRSBS’ subsidiary realty corporation shall convey and deliver to the brokerage corporation a secretary’s certificate authorizing the latter to utilize and jointly withdraw with the former as a co-signatory, the “Joint” and “UNISA” accounts with a commercial bank under Joint Savings Account No. 3-197-00621-9 and UNISA Account Nos. 3-197-01335-5 and 3-197-01089-5 for the following purposes:
        1. To settle the claims and expenses relative to the clearing of the subject property from any squatter, tenant or occupant, which expenses include but are not limited to the disturbance compensation, legitimate claims of tenants/occupants, professional fees of lawyers, expenses for the disturbances compensation of tenants in the relocation site and such other expenses appurtenant thereto, which are deemed necessary and requisite for the orderly relocation of the tenants/occupants of the subject property and the peaceful surrender of the same to AFPRSBS’ subsidiary realty corporation;
        2. To secure the appropriate clearance from the Department of Agrarian Reform (DAR) or any other government agency, regarding the final order of exemption and/or conversion of the subject property from the coverage of the Comprehensive Agrarian Reform Law (CARL), including the aforementioned case in the Court of Appeals (CA), and settlements of the lawyer’s fees and any other case which would involve the subject property;
        3. To settle the taxes, fees and other incidental expenses necessary for the transfer of TCT No. 41389 with the RD of Nasugbu, Batangas to the registered name of MDC or should prove deficient in meeting the expenses, the brokerage corporation shall have sole responsibility of shouldering the excess or additional expense herein mentioned; and
        4. Upon fulfillment of the abovementioned paragraphs and upon presentation and receipt of a valid and clean title to the subject property by the brokerage corporation, the AFPRSBS’ subsidiary realty corporation shall cease to become a co-signatory of the foregoing “Joint” and “UNISA” accounts with the commercial bank. Consequently, the AFPRSBS’ subsidiary realty corporation shall immediately execute whatever documents that are necessary to terminate its status as a co-signatory in the said accounts with the commercial bank with the end view of making the brokerage corporation as the sole and exclusive signatory of the said accounts.

On the verification of the foregoing bank accounts, the Audit Team requested from the Management any documentary evidence to support the existence of the said account. However, Management was unable to submit the requested documents due to lack of documentations and improper turnover of documents from previous officers-in-charge. Further, the present Management alleged that they have no personal knowledge of the said bank accounts nor have they encountered any trail of their existence other than being mentioned in the addendum of the MOA.

* + 1. The undertaking of the AFPRSBS’ subsidiary realty corporation as provided in the Addendum to the MOA include but not limited to the delivery of following documents on April 30, 1999:

* + - 1. Stock certificates of the AFPRSBS’ subsidiary realty corporation in the amount of P1.5 million, all of which must be paid up, and duly endorsed by the stockholders;
      2. Board Resolution (BR) and/or approval sheet of AFPRSBS approving and authorizing the transfer of its subsidiary realty corporation’s shares to the brokerage corporation;
      3. Condominium Certificate of Titles (CCT) of the 120 units involved in the swap as per MOA;
      4. Original AOI and By-Laws of the AFPRSBS’ subsidiary realty corporation and the duly amended AOI extending the corporate term of the AFPRSBS’ subsidiary realty corporation with a certificate from the SEC evidencing the approval of the said amendment; and
      5. The AFPRSBS’ subsidiary realty corporation shall undertake to convey and deliver to the brokerage corporation on April 30, 1999 the relevant documents including an undertaking executed by AFPRSBS that it shall assume all unsettled liabilities and indebtedness of the AFPRSBS’ subsidiary realty corporation inclusive of unpaid real estate taxes until the first quarter of 1999. However, the taxes, fees and other charges assessed by reason of the sale of any of the 120 condominium units included in the MOA shall not be included in the undertaking.
    1. On the other hand, the undertakings of the brokerage corporation includes but not limited to the following:
       1. The brokerage corporation shall cause the registration of the subject property in the name of MDC and the expenses incurred in connection with the foregoing purpose which shall include but not be limited to the payment of capital gains tax (CGT), documentary stamp tax (DST), registration fee and other expenses related to the perfection of the registration and transfer of the title of the subject property in favor of the AFPRSBS’ subsidiary realty corporation or its assignee, shall be taken from the “Joint” and “UNISA” accounts, provided that in case of depletion or deficiency of the said accounts, the aforesaid expenses shall be borne by the brokerage corporation alone;
       2. It shall increase the authorized capital stock of MDC from current P100 million to P150 million all of which shall be paid-up, by April 30, 1999;
       3. It shall convey and deliver to the AFPRSBS’ subsidiary realty corporation on April 30, 1999 the stock certificates of MDC worth P150 million and secretary’s certificate of the developer, containing the board resolution authorizing and approving the sale of the subject property in favor of MDC;
       4. Secretary’s certificate certifying that a BR was issued approving the assignment of each and all shares of stocks of the brokerage corporation in MDC in favor of the AFPRSBS’ subsidiary realty corporation or its assignee; and
       5. Undertaking executed by the brokerage corporation that it shall assume all unsettled liabilities and indebtedness of MDC incurred prior to the actual final transfer and conveyance of the shares of stocks of the brokerage corporation.
  1. On September 10, 1999, a deed of assignment was executed by the AFPRSBS’ subsidiary realty corporation and the brokerage corporation with regard to the submission of corporate records and other relevant documents by both parties in view of the implementation of the MOA between them.
  2. We noted that AFPRSBS, the parent company, should have been the proper party of the MOA and the deed of assignment executed by the AFPRSBS’ subsidiary realty corporation and the brokerage corporation. The contract involved exchange of corporate assets and control over the respective subsidiary corporations with the end view of surrendering the full ownership of MDC and AFPRSBS’ subsidiary realty corporation to AFPRSBS and the brokerage corporation, respectively, the parent companies. As a remedy of the defect thereof, a contract was entered by both Parent Corporations subsequently.
  3. On May 11, 2000, a deed of confirmation was entered into by AFPRSBS and the brokerage corporation wherein both parties agreed on the following:
     1. That in the Deed of Assignment executed by the parties, it was inadvertently left unspecified that the essential element of the intention of the Parties, as of the date of the Deed of Assignment, is the mutual assumption of liabilities that would result in a total and complete setting-off and writing-off of any and all the liabilities existing as of said Deed of Assignment for both the AFPRSBS’ subsidiary realty corporation and MDC. Hence, as direct and automatic result of the corporate exchange or swap, AFPRSBS, being the controlling stockholder of its subsidiary realty corporation, shall waive any and all existing debts and/or liabilities of the latter to AFPRSBS. Likewise, the brokerage corporation, being the controlling stockholder of MDC, shall waive any and all existing debts and liabilities of the latter to the former.
     2. In the implementation of the corporate exchange of both parties, it was and it is the intention of the parties the following:
        1. Without any debt or claim or obligation of whatsoever kind and nature in favor of any person or entity, the AFPRSBS effectively took and received total ownership over MDC, including full and perpetual title in fee simple over the subject property;
        2. Without any debt claim or obligation of whatsoever kind and nature in favor of any person or entity, the brokerage corporation took and received total ownership of the AFPRSBS’ subsidiary realty corporation; and
        3. Any and all liabilities of the two corporations/entities exchanged between AFPRSBS and the brokerage corporation are hereby declared mutually set-off such that there are no other debts or claims or obligations of whatsoever kind and nature in favor of any other person or entity; and by these presents the parties forever quitclaim and render each other mutually free therefrom.
  4. We noted further that the intention of the contracting parties is to free themselves from any liability of MDC and AFPRSBS’ subsidiary realty corporation upon the execution of the corporate swap. Otherwise stated, the brokerage corporation shall not absorb any outstanding monetary liabilities of AFPRSBS’ subsidiary realty corporation’s payable to AFPRSBS. Review of the FS of AFPRSBS’ subsidiary realty corporation disclosed the comparative amount of liabilities and Additional paid-in-capital (APIC) recorded as of date as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Account name** | **CY 1999** | **CY 1998** | **CY 1997** |
| Notes payable | P 0 | P 868,976,847 | P 934,000,000 |
| Capital stock | 150,000,000 | 150,000,000 | 150,000,000 |
| APIC | 868,976,847 | 0 | 0 |
| **Total** | **P1,018,976,847** | **P1,018,976,847** | **P1,084,000,000** |

* 1. Further review of the CY 1999 FS of AFPRSBS’ subsidiary realty corporation disclosed that the notes payable amounting to P868.977 million was transferred to APIC account prior to the swap transaction which is not in accordance to the usual recognition of the said account. The APIC is recognized when investors pay beyond or above the stated par value through the issuance of shares. Per AFPRSBS’ records, on the contrary, the SL of advances to CSTI account showed an amount of P868.282 million, net of adjustments, were recorded per Journal Voucher (JV) Nos. 2015515 and 2017494 due to transfer of equity interest to MDC. Hence, AFPRSBS ceded not only the value of 120 condominium units of AFPRSBS’ subsidiary realty corporation but also its receivables from its subsidiary amounting to P868.977 million.
  2. The Audit Team requested from Management the copy of BR or other supporting documents relative to the settlement and condonation of AFPRSBS’ receivable from its subsidiary realty corporation prior to the effectivity of the corporate swap. However, Management failed to provide the Audit Team the requested documents due to lack of documentation of the financial records pertaining to the said corporate swap.
  3. Based on the appraisal reports submitted, the comparison of the value ceded and the consideration received by AFPRSBS at the time of the corporate swap of its subsidiary realty corporation and MDC disclosed a difference of P284.237 million unfavorable to the System. Details are as follows:

| **Conveyance of AFPRSBS’ subsidiary realty corporation** | | **Acquisition of MDC** | |
| --- | --- | --- | --- |
| **Particulars** | **Amount**  **ceded** | **Amount**  **received** | **Particulars** |
| 120 unsold condominium units | P 609,983,654 | P1,194,723,620 | Subject property |
| (Forward) |  |  |  |
| Condonation and settlement of receivable | 868,976,847 |  |  |
| **Total** | **P1,478,960,501** | **P1,194,723,620** | **P 284,236,881** |

* 1. The P1.195 billion cost of the subject property represents the 1.5 million authorized shares of MDC since it is its sole asset. The real estate appraiser used the Market Approach in the valuation of the 120 condominium units of AFPRSBS’ subsidiary realty corporation based on the 106 documented actual sales of its units. Based on the actual average price of the condominium units sold at P5.083 million per unit, the indicative value of the 120 units amounted to P609.984 million as at September 7, 1999. On the other hand, the appraised value of the subject property did not consider the presence of squatters in the property. Hence, the final amount of difference due to the System is not limited to P284.237 million then.
  2. From the foregoing, subject property was initially acquired by the brokerage corporation from its prior owner through an alleged deed of sale. The brokerage corporation, on the other hand, entered into a MOA with AFPRSBS’ subsidiary realty corporation for the acquisition of the latter’s corporate shares including its 120 condominium units in exchange of the corporate shares of MDC who shall own the subject property. During the execution of the contract between the brokerage corporation and AFPRSBS’ subsidiary realty corporation, the former transferred the ownership of the subject property to MDC in accordance with the subject MOA. Thus, the ownership of the subject property was transferred to AFPRSBS when the System acquired MDC from the brokerage corporation.
  3. Upon further examination of documents, the Audit Team established that the title of the subject property was transferred to MDC on August 23, 1999, evidenced by TCT No. T-82447. While the new corporation’s 1,500,000 shares of stocks were acquired by the AFPRSBS on September 7, 1999, evidenced by a certificate of stock. Hence, the subject property was already an asset of MDC when its 1,500,000 shares of stocks, representing 100 per cent ownership, were acquired by AFPRSBS. However, in the amended AOI of MDC, its principal office was changed from the brokerage corporation building in Bangkal, Makati City to AFPRSBS’ in Quezon City only on March 17, 2004. Further, preceded to these transactions, AFPRSBS’ subsidiary realty corporation, in behalf of AFPRSBS, handed over the operations of realty corporation to the brokerage corporation.
  4. In view of the deactivation of AFPRSBS by virtue of EO Nos. 590 and 590-A dated December 15, 2016 and January 31, 2007, respectively, and as stated in AFPRSBS BOT Meeting No. 02-2007 dated March 5, 2007, the BOT of AFPRSBS decided to sell through public bidding the shares of stock of MDC on cash and “as-is, where-is” bases for a minimum bid price of P892.500 million. Relative thereto, the publications of the invitation to prospective bidders, upon the knowledge of the general public, gave rise to the civil case filed by the developer on the action of reconveyance of the subject property opposing the supposed sale and claiming as the lawful owner over the said property.
  5. The Court of Appeals (CA), in its decision on February 28, 2019, affirmed the decision of the trial court that the brokerage corporation shall reimburse AFPRSBS the proceeds of the 120 condominium units and its corresponding 110 parking lots with a total floor area of 20,637 sqm and parking area of 1,813 sqm, respectively, given up in exchange of the corporate shares of MDC plus legal interest computed from 1999 until fully paid. Based on the above-mentioned appraisal report as of June 30, 2019, the indicative market value of the subject condominium units as at September 7, 1999 is P610 million and the legal interest for the period from September 7, 1999 to June 30, 2019 is P1.230 billion or a total of P1.840 billion.
  6. As of date, the Court’s decision relative to the civil case between the developer and the brokerage corporation, MDC and AFPRSBS is not yet final and executory. The Legal Department (LD) committed to update COA about their course of action after the decision rendered by the CA and the status of it.
  7. In Sandoval v. CA, G.R. No. 106657, August 1, 1996, the Supreme Court has held:

*Xxx that a person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need of inquiring further* ***except when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor*** *or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith and, hence, does not merit the protection of the law.* (Emphasis supplied)

* 1. In addition, in the case of Rosaroso v. Soria, G.R. No. 194846, June 19, 2013, which was cited by the CA in its decision, the Supreme Court has held that:

*Xxx. When a piece of land is in actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession.* ***Without making such inquiry, one cannot claim that he is a buyer in good faith.***

*Xxx.* ***The buyer who has failed to know or discover that the land sold to him is in adverse possession of another is a buyer in bad faith.*** (Emphasis supplied)

* 1. The Audit Team agrees with the trial court and CA ruling that AFPRSBS, considering the nature of the business it is engaged in, the Court expects more from it than the mere superficial examination of the title and the documents presented to it by the brokerage corporation. Based on the rationalization of the trial court, AFPRSBS cannot feign ignorance of the non-compliance by the brokerage corporation of its prestations in the MOA with the developer because it is precisely the same undertaking embodied in the deed of assignment executed between AFPRSBS’ subsidiary realty corporation and the brokerage corporation on September 7, 1999. AFPRSBS, therefore, knew that the brokerage corporation did not comply with its undertaking with the developer. AFPRSBS must have also been aware that these prestations form part of the purchase price of developer’s property and that the same were not complied with. With the exercise of due diligence, AFPRSBS could have ascertained the status of the property and that the same remained in the possession of the developer. While based on the CA findings, the exercise of due diligence on the part of AFPRSBS is belied by the fact that it never even inquired how MDC, with the capitalization of only P150 million and without any source of funds in its FS could afford to pay the developer the large amount of the purchase price covering the subject property. Hence, failure to undertake precautionary measures of verification beyond the four corners of the Torrens title considering that the subject property is in adverse possession is tantamount to lack of exercise of due diligence.
  2. Based on the foregoing verification of appraisal reports and other relevant documents, the System has given up P1.479 billion in exchange for the subject property amounting to P1.195 billion by acquiring all the 150 million shares of MDC. A comparison and analysis of the foregoing amounts ceded by both parties showed a difference amounting to P284.237 million excluding the cost of removal of illegal squatters due to non-fulfillment of the obligations of the brokerage corporation, thus disadvantageous on the part of the System.
  3. **We recommended that Management:**

1. **Submit all BOT’s directives, decisions, minutes of meeting and preliminaries to establish the true intention of the swap;**
2. **Make the officers directly and indirectly involved in the corporates swap liable for the loss of P284.237 million; and**
3. **Prepare the necessary accounting of the sales price of the 120 condominium units and the interest from 1999 to present to expedite the execution of judgment in case it becomes final and executory.** 
   1. The Management commented that at this point in time, the true intention of the previous Management about the corporate swap they entered into by virtue of AFPRSBS Board of Trustees Approval dated January 29, 1998 is still undetermined. However, they submitted some documents relative to the Corporate Swap. And as part of their concurrence to the COA recommendations, they committed that they will convene an appropriate committee to conduct investigations against the officers directly or indirectly involved in the corporate swap.
   2. As a rejoinder, the Audit Team acknowledges the authority of the Court to determine and affirm the factual antecedents of the corporate swap and to decide the matter in dispute between the parties. The Audit Team noted that the present Management of the System cannot determine the intention of those officers and members of the Board who approved the corporate swap more than two decades ago. However, it can be inferred from the memoranda of agreement of the contracting parties and other pertinent documents submitted to the Audit Team that the System did not exercise due diligence in connection with the acquisition of the subject property. In the initial proposal of the corporate swap, the comparative amounts and/or appraised values of condominium units and the subject property at the time were P896 million and P1.135 billion, respectively, which may result in equity gain amounting to P234.78 million in favor of AFPRSBS. Management merely relied on the aforesaid comparative values without regard to the net assets foregone by AFPRSBS’ subsidiary realty corporation when the corporate swap was approved. Subsequently, the System had to condone its receivables from or liabilities of its subsidiary realty corporation amounting to P869 million to concur with the debt-free transaction in view of the acquisition of the subject property and MDC as a whole. Moreover, the respective contracts/agreements were consummated and the ownership of both properties were exchanged despite non-performance of the deliverables provided therefrom. Thus, the Audit Team stands in this observation, subject to an extensive audit of the Commission, that the System may have incurred actual loss amounting to P284.237 million out of the said transaction based on available documents as of date.
4. **The System did not register the certificate of sale of the foreclosed properties from the real estate corporation thereby depriving it of economic benefits including but not limited to receiving rental income and consolidation of title under its name, contrary to the Section 6 of Act No. 3135 or the Real Estate Mortgage Law and Article 428 of the Civil Code.**
   1. Section 6 of Act No. 3135 expressly mandates that:

*In all cases in which the extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest, or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold,* ***may redeem the same at any time within the term of one year from and after the date of sale;*** *and such redemption shall be governed by the provisions of sections 464 to 466 inclusive, of the Code of Civil Procedure, insofar as these are not inconsistent with the provisions of this Act.* (Emphasis supplied)

* 1. The Supreme Court, in the case of Garcia v. Ocampo, G.R. No. L-13029, June 30, 1959, explained that the “**date of the sale**” under Section 6 of Act No. 3135, as amended, is the **date that the certificate of sale is registered with the Register of Deeds since the sale of registered land does not take effect as a conveyance, or bind the land until it is registered.** Likewise, in the same case, the Supreme Court held that failure to register the certificate of sale violates the provisions of the said law.
  2. Article 428 of the Civil Code provides that:

*The* ***owner has the right to enjoy and dispose of a thing, without other limitations than those established by law****. The owner has also a right of action against the holder and possessor of the thing in order to recover it.* (Emphasis supplied)

* 1. The subject foreclosed properties are composed of land, commercial, residential and accessory unit of the hotel as well as the parking area. The property has two towers located at Remedios Street, Malate, Manila.
  2. The ocular inspection of the property on February 13, 2020 disclosed the following:
     1. The office space unit 1001A located at the 10th floor of Tower A with an area of 963.77 sqm is being rented by a manning agency for a period of five years since November 11, 2019;
     2. There are improvements being introduced by the previous owner in the 10th, 11th, 12th and 14th floors of Tower B;
     3. The parking area located at the third floor is also leased to various lessees; and
     4. The properties in Tower A are finished units while the properties in Tower B are unhabitable and unfinished.
  3. In 2012, AFPRSBS instituted an extra-judicial foreclosure proceeding against the Real Estate Mortgage and caused the sale at public auction of the mortgaged properties, where AFPRSBS was awarded the certificate of sale dated February 28, 2013. In the said certificate of sale, it is stated that the **period of redemption of real property will expire one year from and after the date of registration of the certificate of sale with the corresponding Registry of Deeds (RD).** Inquiry with Management disclosed that as of to date, certificate of sale is not yet registered with the RD because AFPRSBS does not have yet the Certificate Authorizing Registration (CAR) which is a requirement for the registration of certificate of sale with the RD. Further inquiry revealed that the Bureau of Internal Revenue (BIR) has not yet issued the CAR because of the deficiency assessment it issued against AFPRSBS.

On August 10, 2017, AFPRSBS received the Preliminary Assessment Notice (PAN) regarding the alleged deficiency taxes arising from the extra-judicial foreclosure of the land and 329 condominium units. On August 18, 2017, AFPRSBS filed a protest/opposition to the PAN asserting that it should not be liable to pay the alleged deficiency taxes, penalties, surcharges and that it already filed a request for re-zonal or re-evaluation on June 17, 2013 because the subject property is composed of finished and unfinished condominium units.

* 1. AFPRSBS was unable to cause the registration of the certificate of sale before the corresponding RD because it did not pay or settle the tax deficiency. Accordingly, the effects are as follows:
     1. The title of the foreclosed properties cannot be transferred under the name of AFPRSBS;

* + 1. The one year redemption period will not start to run, thereby, depriving AFPRSBS the occasion to consolidate ownership after the expiration of the redemption period as a matter of right. Considering that the certificate of sale is dated February 28, 2013, had AFPRSBS caused its registration with the RD during the same year, the running of the one year prescriptive period to redeem could have started and by the expiration of the redemption period would have capacitated AFPRSBS to consolidate ownership as a matter of right. It appears thereon that for more than five years that had passed, AFPRSBS has been deprived of economic benefits accruing from the said foreclosed properties; and
    2. AFPRSBS is denied of actual possession of the properties.
  1. Had AFPRSBS paid the Capital Gains Tax (CGT) as per BIR assessment, the registration of certificate of sale would have been registered with the RD and caused consolidation of ownership. By then, it would have been able to exercise all the rights of an owner without any limitation except those provided by the law. Likewise, AFPRSBS could have already started enjoying its economic benefits including rental income and enforced its right to dispose the properties on an “as is, where is” basis. Until such time that the title of the foreclosed properties is consolidated under the name of AFPRSBS, it would not be subrogated to the rights of the real estate corporation.
  2. Furthermore, in the case of Mahinay vs. Dura*,* G.R. No.194152, June 5, 2017the Court ruled that a pending action to annul the foreclosure sale does not toll the running of the one-year period of redemption under Act No. 3135. Therefore, although there is a pending case for annulment of extrajudicial foreclosure of real estate mortgage filed by the previous owner against AFPRSBS, it would not bar the running of the period to redeem if only AFPRSBS had registered the certificate of sale with the RD. Seemingly, the failure of AFPRSBS to aggressively assert its right has caused undue disadvantage to the System.
  3. **We recommended and Management agreed to pay the deficiency tax assessments and cause the registration of certificate of sale with the RD.**

1. **Monthly rental payments were not remitted and collected from January 1, 2017 to December 31, 2019, contrary to Sections 3.2.1 and 3.3.2 of the lease contract between AFPRSBS and its subsidiary, thus, deprives the System of additional funds for its operations amounting to P3.600 million. Moreover, rental receivables, if not collected is prejudicial to the interest of System upon the eventual disposal of the subsidiary.**
   1. The contract of lease provides:

*Section 3.3.1. Without need of demand of whatever kind, an initial payment equivalent to rental of one (1) calendar month or the total sum of One Hundred Thousand (P100,000) Philippine Pesos, shall be paid upon signing of this contract not later than at noon the fifth (5th) regular business day following the date this Lease Contract signed by the Parties.*

*Section 3.3.2.* ***Without the need of demand, all subsequent payments of monthly rentals shall be made at or before noon on the fifth (5th) regular day of the month.*** *(*Emphasis supplied*)*

* 1. The lessee water utility corporation, a wholly owned subsidiary of the System, whose primary purpose is to operate, maintain and manage water utilities including but not limited to water distribution, deep well servicing, repair or rehabilitation of water systems and operations of water refilling station/s, entered into a contract of lease with AFPRSBS, as the lessor, who owned the seven water tank lots for use in the operation of the lessee located at a subdivision in Sta. Rosa City, Laguna.
  2. The term of the contract of lease shall be for a period of one year expiring on December 31, 2016 and provides for an automatic renewal/extension yearly thereafter unless a written notice to the contrary shall be given by the lessee to AFPRSBS within a period of 60 days prior to said expiration. The agreed monthly lease rate is fixed at P100,000.
  3. In 2016, the System collected rental payment from the lessee amounting to P1.200 million based on the existing lease contract. Subsequently, no rental payments were collected covering the period from January 1, 2017 to December 31, 2019 or for three years from the lessee. Per verification with the lessee, a total of P2.400 million was accrued and reported as tank lot rentals in its audited FS in CY 2018 and CY 2017. In 2019, the lessee accrued tank lot rentals amounting to P1.200 million.
  4. Inquiry with the AD disclosed that the lease rentals were not collected from the lessee in the belief that the contract was already expired on December 31, 2016. However, according to the Property Management and Enhancement Department (PMED), the Management suspended the collection of the lease rentals from the lessee beginning January 2017 in anticipation of the turn-over of the Subdivision to the Local Government Unit (LGU) of Sta. Rosa City and the impending disposal of the lessee in the same year. The Audit Team requested from Management a copy of board resolution or any other documentary evidence relative to the suspension of collection of the lease rentals from the lessee. However, as of to date, Management failed to provide the documents requested by the Audit Team. As a result of the foregoing, the monthly lease rental of P100,000 was not collected beginning from January 2017 to December 31, 2019 or a total of P3.600 million remains to be uncollected as at reporting date.
  5. Further, inquiry with the LD disclosed that the stipulations of both contracting parties, the AFPRSBS and the water utility corporation, provided in the lease contract shall govern. As agreed, the term of the lease contract shall be automatically renewed/extended yearly thereafter, unless a written notice to the contrary shall be given by the lessee to the lessor prior to the said expiration. Otherwise stated, the contract of lease remains to be valid and effective since there was no documentary evidence to the contrary showing that the lessee submitted the aforementioned written notice prior to the expiration of the contract of lease. It was also noted that there is no need to issue another contract of lease in case of the automatic renewal and extension of the lease. All the other terms and conditions in the existing contract shall remain applicable except, only such other terms and conditions, if any, as may be agreed by both AFPRSBS and the water utility corporation in writing.
  6. Assuming arguendo that the contract ceased to be valid after its expiration on December 31, 2016, the New Civil Code, with regard to the provisions on Leases, provides that an implied new lease also known as *tacita reconduccion* is created:

***Art. 1669. If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand.***

***Art. 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.***

***Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. Xxx.*(Emphasis supplied)**

* 1. **Pursuant to the provisions mentioned above, lease agreement is created after an existing contract of lease expired. Thus, the lessee shall continue to pay monthly rental unless the lessee actually vacates the leased premises and surrenders possession thereof to the lessor. In the present case, it is impossible for water utility corporation to vacate and surrender the tank lots, since the water tanks are immovable in nature rooted within the leased premises, without disrupting its main operations.**
  2. As at December 31, 2019, the sale through public bidding of the shares of stock of AFPRSBS in the subsidiary water utility corporation is scheduled in CY 2020. Relative thereto, the Terms of Reference (TOR) on the disposal of the said subsidiary disclosed that the subsidiary’s cash and cash equivalents shall be remitted to AFPRSBS prior to its turnover. In effect, the uncollected rental receivables from the said subsidiary shall be deemed eliminated assuming that the disposal of the subsidiary shall be completed in the given year. However, in the accounting parlance, the collections and payment of rental expenses between AFPRSBS and the subsidiary are intercompany transactions that are eliminated only upon consolidation of the FS of the Parent company. Unfortunately, the System is unable to consolidate its FS with its investment in subsidiaries, thus such intercompany transactions are not eliminated. Further, the subsidiary has to report accurate expense/income for tax purposes while AFPRSBS has to withhold the corresponding Value Added Tax (VAT).
  3. The contract of lease between AFPRSBS and the lessee remains to be valid and effective as at December 31, 2019 or until the eventual sale of the latter. The monthly rentals, without need of demand, were not remitted to and collected by the System contrary to the abovementioned provisions in the contract of lease. Further, the suspension of the collection of lease rental receivables deprives the System of additional funds for its operation, in particular, on its accelerated refund and payment of other obligations amounting to P3.600 million. In connection with the disposal of the lessee, it would be more efficient and convenient on the part of the System to collect the amount of P3.600 million, including the subsequent collections beginning CY 2020, rather than wait for the disposal of the lessee and deal with its new management.

* 1. **We recommended and Management agreed to collect the amount of P3.600 million representing lease rental payments for the period January 2017 to December 2019.**

1. **The deposit/placement maintained by the AFPRSBS in a private commercial bank and non-government financial institution amounting to P4.628 million and P14.228 million, respectively, without first securing authority to open deposit accounts from duly authorized official of the Bureau of the Treasury (BTr)/Department of Finance (DOF) is contrary to DOF Department Circular Nos. 001-2015 and 001-2017 dated June 1, 2015 and May 11, 2017, respectively.** 
   1. Section 4.1 of DOF Department Circular No. 001-2015 dated June 1, 2015 provides:

*4.1 As the Government’s steward of fiscal policy, the DOF formulates, institutionalizes and administers policies to ensure that the government resources are managed and mobilized judiciously in a manner supportive of the development objectives of the government in promoting the welfare of the people and accelerating economic growth and stability.*

* 1. Section 5.2, as amended, of DOF Department Circular No. 001-2017 dated May 11, 2017 provides:

*5.2 National Government Agencies (NGAs), GOCCs and LGUs, specifically allowed by law, rules and regulations to retain income and/or for operations and/or working balances, shall deposit and maintain Government Funds with any of the following banks:*

1. *Land Bank of the Philippines;*
2. *Development Bank of the Philippines;*
3. *Philippine Postal Savings Bank;*
4. *Al Amanah Islamic Investment Bank of the Philippines;*
5. *United Coconut Planters Bank – authorized to accept funds from NGAs/GOCCs/LGUs until further notice from the Bangko Sentral ng Pilipinas (BSP), and subject to limitations that may be prescribed by the Monetary Board; and*
6. *Philippine Veterans Bank – authorized to accept funds from NGAs/GOCCs/LGUs, and subject to limitations prescribed by the Monetary Board.*

*5.2.1 NGAs and GOCCs* ***shall secure written authority to open deposit accounts and/or deposit Government Funds from the duly authorized official of the BTr/DOF in all banks, including those listed in Section 5.2, in accordance with relevant laws, issuances, and regulations of the BSP****. XXX*

*Subject to the existence of* ***any of the circumstances under Section 5.4******and prior approval*** *under Section 5.5, a GOCC may be allowed to deposit Government Funds and maintain accounts with banks other than those listed in Section 5.2, XXX* (Emphasis supplied)

* 1. Furthermore, Sections 5.3 to 5.5, as amended, of the preceding Circular provide:

*5.3 To remove revenue and expenditure floats:*

*5.3.1 The NGA/GOCC/LGU, may engage the payment and collection services of banks other than those listed in Section 5.2, thru a transaction fee-based arrangement, without the need of prior approval from the DOF, in the case of GOCCs, XXX: provided, finally that, all collections of collection banks shall be transferred to any of those listed in Section 5.2, or in the case of NGAs/GOCCs, to the TSA or to any of those listed in Section 5.2, on the next banking day counted from the collection date.*

*5.4 Deposits with banks other than those listed in Section 5.2 may be allowed, only if any of the following circumstances exists:*

*5.4.1 The banks listed in Section 5.2 cannot provide the required banking products and services;*

*5.4.2 The banks listed in Section 5.2, or their collection facilities, are not accessible within a twenty (20) kilometer radius; or*

*5.4.3 There are security and safety risks.*

*5.5 Where any of the circumstances under Section 5.4 exists:*

*5.5.1 The NGA/GOCC/LGUs* ***shall request prior approval from the BTr*** *for NGAs/* ***DOF for GOCCs****/ BLGF for LGUs,* ***to open and maintain an account in a bank other than those listed in Section 5.2.*** *It shall submit the following to the BTr/DOF/Bureau of Local Governance Finance (BLGF), as applicable:*

1. *Letter from the Head of the NGA/GOCC/LGU or its duly designated officer stating; (i) the terms of the deposit, purpose for opening and maintaining an account with the proposed bank, and the specific circumstance under Section 5.4; and, (ii) that the NGA/GOCC/LGU shall comply with fiscal and financial reporting requirements of the BTr/DOF/BLGF;*
2. *In the case of a GOCC, it shall submit: (i) a copy of the board resolution authorizing the GOCC to deposit funds with the proposed bank, (ii) its latest audited financial statements issued not more than 18 months at the time of the submission of the request, and (iii) a Summary of its Daily Collection Report for the last three months.* (Emphasis supplied)
   1. The AFPRSBS currently maintains four bank accounts: one with a private commercial bank; another with a non-government financial institution; and the remaining two with government banks. Notwithstanding the audit observations for the past several years and the issuance by the DOF of Circulars revising the guidelines prescribing the authorized government depositary banks, the System continues to deposit its funds (current, savings and money market placements) with a private commercial bank and a non-government financial institution without the requisite approval or authority from the authorized official of the BTr/DOF.
   2. As at December 31, 2019, the System’s deposit with the private commercial bank and non-government financial institution amounted to P4.628 million and P11.228 million, respectively, represents 35 per cent of the total cash in bank account of P31.838 million. Meanwhile, out of the total cash equivalents of P866.000 million, P3.000 million are with the non-government financial institution and considered as other fixed income securities.
   3. Perusal of the Board Approval Sheet dated May 10, 2013 showed that the private commercial bank account was opened to address the unaccounted collection from a real estate project in Iloilo and to serve as the System’s collecting/servicing bank for remittance of the monthly amortization of such project lot buyers. Review of the SL disclosed that collections from customers were subsequently transferred to the government bank account beyond the prescribed period from the collection date, contrary to Section 5.3.1 of the DOF Circular.
   4. On the other hand, the purpose of creating the non-government financial institution account cannot be ascertained because the Management failed to submit the Board Approval Sheet which contains the approval of the said account’s opening. However, our inquiry with Management disclosed that the said account was maintained because of the high yield it guarantees to the System which is at 15.50 per cent average rate per annum for money market placement and three per cent average rate per annum for savings deposit account. Moreover, the same return cannot be equally matched by government depository banks and for this reason the COA’s audit observation memorandum issued for CY 2013 involving the same issue remains not implemented as at December 31, 2019. The 15.50 per cent return per annum on the money market placement is higher than the treasury bills rate offered by the BTr which ranges from 4.67 per cent to 5.32 per cent in 2019 for 91 days to 364 days maturity. The same holds true with respect to the three per cent average rate per annum for savings deposit accounts as compared to rates offered by the government banks which ranges from 0.075 per cent to 0.10 per cent annually. Albeit said returns are greater than what government financial institutions offer, the same cannot be considered as risk-free investments as compared to government issued securities and that the Philippine Deposit Insurance Corporation (PDIC) only insures up to P500,000 deposit in case of closure of banks. While we understand the AFPRSBS’ effort to achieve the maximum yield from its liquidity portfolio by investing the funds to investments with greatest return is for the benefit of the members, the same should be achieved without violating any laws, rules and regulations.
   5. As stated in the above DOF Circular, the AFPRSBS being a GOCC, is required to secure written authority to open deposit accounts from the duly authorized official of the BTr/DOF as a condition sine qua non prior to opening of an account in all banks, including the requirements mentioned in Section 5.2. However, the same Circular provides for an exception which allows GOCCs to open deposit accounts with banks other than those listed in Section 5.2 if any of the circumstances mentioned in Section 5.4 exists. Nevertheless, such exception is not without limitation since it is stated in Section 5.2 thereof that a GOCC may be allowed to deposit Government Funds and maintain accounts with banks other than those listed in Section 5.2, subject to existence of the circumstances under Section 5.4 and prior approval under Section 5.5. Assuming that any of the circumstances mentioned in Section 5.4 is applicable to AFPRSBS, the requisite approval is still necessary as the latter cannot be dispensed with. Thus, absence of such approval contravenes the tenor of the DOF Circular.
   6. The same DOF Circular defines a GFI as a financial institution or corporation in which the government directly or indirectly owns majority of the capital stocks which are either: (1) registered with or directly supervised by the BSP; or are (2) collecting or transacting funds or contributions from the public and thereafter, placing them in financial instruments or assets such as deposits, loans, bonds and equity including but not limited to, the Government Service Insurance System (GSIS) and the Social Security System (SSS). Verily, the private commercial bank and the non-government financial institution do not fall under the said definition being a private domestic financial institution. Hence, the continued placement of funds by the AFPRSBS to these private domestic financial institutions is contrary to DOF Department Circular No. 001-2017 dated May 11, 2017.
   7. The deposit of funds in the private commercial bank and non-government financial institution deprives the government of the maximum utilization of its resources and defeats the purpose of the Circular, particularly, to ensure that the government resources are managed and mobilized judiciously in the manner supportive of the development objectives of the government. Moreover, Section 6 of the said DOF Circular provides that any violation thereof will expose the Head of the GOCC concerned to possible criminal and/or administrative liability in accordance with existing laws, rules and regulations.
   8. **We recommended that Management:**
3. **Secure the requisite DOF approval as provided in DOF Department Circular No. 001-2017 dated May 11, 2017 on its deposit with private banks; and**
4. **Pending approval of the same, the System has to transfer its funds from the current depository private commercial banks to government depository banks.**
   1. The Management commented that the account with the private commercial bank, being a bank with greater network of branches nationwide, was opened to cater the demand of the buyers who are mostly based in Iloilo City and some are from abroad in order to facilitate their payments for their purchase of the lots at the System’s real estate project in Iloilo. The government banks cannot provide the same deposit reference facility needed by the System in Iloilo. Since the DOF Circular mentioned in the recommendation above allows for placement with private banks for payment and collection system, the deposit with the private commercial bank will be retained by the System. The requirement, however, to deposit all collections to the depository government bank(s) the next banking day will be done by the System and it will ensure that only the required minimum average daily balance will be maintained. The System will still endeavor to seek exemption from the DOF regarding its non-governmental financial institution accounts.
   2. As a rejoinder, while Section 2 of DOF Department Circular No. 001-2017 allows GOCCs to engage the payment and collection services of banks other than those listed in Section 5.2, thru a transaction fee-based arrangements, without need for prior approval from the DOF, thus, the reason of the System for opening its account with a private commercial bank, the same Circular provides that all collections of collecting banks shall be transferred to any of those listed in Section 5.2 on the next banking day counted from the collection date. We shall monitor the System’s compliance with Section 2 of the said Circular until it has been fully complied with.
   3. On the other hand, as regards the account maintained in a non-government financial institution, we maintain our position that AFPRSBS should have secured the DOF approval prior to depositing and maintaining its funds with the former. It is also worth mentioning that this Observation is reiterated from a CY 2013 audit observation, the recommendations for which have remained unimplemented. Considering that the same recommendations have been proposed and the ample time given to comply with such, the System has no reason not to comply. Also, the Circular does not mention other conditions for the exception to apply other than those expressly provided to get rid of the requisite approval.
5. **The granting and liquidation of cash advances (CA) disclosed that: (a) a CA for local travel was not liquidated within 30 days after return to the permanent official station; and (b) liquidation of CA were not supported with proper documentation, contrary to COA Circular No. 2012-001 dated June 14, 2012, thus, exposes the funds to possible loss, misuse or misapplication.**
6. ***A CA for local travel was not liquidated within 30 days after return to the permanent official station.*** 
   1. Section 1.2 of COA Circular No. 2012-001 provides:
   2. **Liquidation of Cash Advances**

*General Guidelines*

*The accountable officer shall liquidate cash advances within the following period:*

*Xxx*

*Traveling Expenses –* ***within 30 days after the return of the official/employee concerned to his official station for local travel*** *and within 60 days after the return of the official/employee concerned to the Philippines in the case of foreign travel.* (Emphasis supplied)

* 1. Audit of liquidation of CA pertinent to the official travel of one Office of the General Corporate Counsel (OGCC) lawyer, who represented the System in a hearing conducted before the Regional Trial Court (RTC) Branch 37 of General Santos City on August 15, 2019, disclosed that the cash advance was not liquidated within the prescribed period as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Period of actual travel** | **Date check/cash advance was granted** | **Amount of cash advance granted** | **Date due for liquidation** | **Date liquidated/**  **refunded** |
| Aug. 15-16, 2019 | 7/29/2019 | 25,000 | 9/16/2019 | 10/7/2019 |

* 1. As shown in the above table, it was noted that the CA was liquidated beyond the 30-day period after return to permanent official station or completion of the local travel, contrary to the above-cited regulations.

1. ***Liquidation of CA were not supported with proper documentation***
   1. Sections 1.1.4.1 and 1.2.4.1 of COA Circular No. 2012-001 provide:

*1.1* ***Granting of Cash Advance***

*Xxx*

*1.1.4.1* ***Local Travel***

*Documentary Requirements*

* *Office Order/Travel Order approved in accordance with Section 3 of EO No. 298*
* *Duly approved itinerary of travel*
* *Certification from the accountant that the previous cash advance has been liquidated and accounted for in the books. Xxx*

*1.2* ***Liquidation of Cash Advances***

*Xxx*

*1.2.4.1* ***Local Travel***

*Documentary Requirements*

* *Paper/electronic plane, boat or bus tickets, boarding pass, terminal fee*
* *Certificate of appearance/attendance*
* *Copy of previously approved itinerary of travel*
* *Revised or supplemental Office Order or any proof supporting the change of schedule*
* *Revised Itinerary of Travel, if the previous approved itinerary was not followed*
* *Certification by the Head of Agency as to the absolute necessity of the expenses together with the corresponding bills or receipts, if the expenses incurred for official travel exceeded the prescribed rate per day (certification or affidavit of loss shall not be considered as an appropriate replacement for the required hotel/lodging bills and receipts)*
* *Liquidation Report*
* *Reimbursement Expense Receipt (RER)*

* 1. Review of liquidation reports pertinent to various official local travels during the CY 2019 showed that the following were not submitted:

1. Approved Itinerary of Travel detailing the transportation expenses and travel expenses to be incurred as basis for determining the amount of CA; and
2. Revised Itinerary of Travel, if the previous approved itinerary of travel was not followed.
   1. In the drawing of CA, the approved itinerary of travel detailing the transportation and travel expenses to be incurred should be submitted as basis for determining the propriety of CA. However, the accountable officer failed to submit/prepare the approved and revised itinerary of travel, contrary to the above regulation, thus resulted in overdrawing of the cash advances, to wit:

| **Location** | **Period of actual travel** | **Date check/cash advance was granted** | **Amount of cash advance granted** | **Unused amount for refund** |
| --- | --- | --- | --- | --- |
| **General Santos City** | **Nov. 22-23, 2018** | **11/20/2018** | **P25,000** | **P4,026** |
| **Jan. 10-11, 2019** | **01/09/2019** | **63,000** | **15,567** |
| **Feb. 12-13, 2019** | **02/11/2019** | **78,000** | **26,238** |
| **Mar. 6-8, 2019** | **02/19/2019** | **25,000** | **6,693** |
| **Mar. 21-22, 2019** | **03/18/2019** | **20,000** | **530** |
| **Apr. 22-23, 2019** | **04/12/2019** | **25,000** | **4,935** |
| **Aug. 15-17, 2019** | **07/29/2019** | **25,000** | **3,879** |
| **Aug. 15-16, 2019** | **07/29/2019** | **25,000** | **3,782** |
| **Sep. 11-13, 2019** | **09/09/2019** | **22,000** | **3,452** |
| **Sep. 11-13, 2019** | **09/10/2019** | **28,200** | **8,286** |
| **Oct. 23-25, 2019** | **10/22/2019** | **64,500** | **0** |
| **Oct. 23-24, 2019** | **10/22/2019** | **20,000** | **7,473** |
| **Nov. 13-15, 2019** | **11/05/2019** | **20,000** | **584** |
| **Bansud, Oriental Mindoro** | **Feb. 7-9, 2019** | **02/07/2019** | **14,950** | **2,980** |
| **Romblon** | **Apr. 4-5, 2019** | **04/02/2019** | **15,900** | **3,997** |
| **Nueva Vizcaya** | **May 16-18, 2019** | **05/16/2019** | **20,600** | **12,070** |
| **Iloilo City** | **July 3-5, 2019** | **07/02/2019** | **59,500** | **13,503** |
| **Dumaguete City** | **Sep. 3-4, 2019** | **09/02/2019** | **19,631** | **7,808** |
| **Sep. 18-20, 2019** | **09/17/2019** | **19,185** | **4,011** |
| **Manila** | **Dec. 6-7, 2019** | **11/26/2019** | **20,600** | **8,179** |
| **Total** |  |  | **P611,066** | **P137,993** |

* 1. As shown in the preceding table, the total CA of P611,066, only P473,073 or 77 per cent were expended and P137,993 or 23 per cent were unused amounts which indicate over granting of cash advances. Such practice will expose to risk of loss, misappropriation of funds and the unused funds retained in the hands of the AO.
  2. **We recommended and Management agreed to:**

1. **Strictly comply with Section 1.2 of COA Circular No. 2012-001 in liquidating CA within 30 days from return to permanent official station; and**
2. **Prepare the itinerary of travel following the format prescribed in Appendix A of COA Circular No. 96-004 dated April 19, 1996 to ensure that the amount of CA is reasonable.**
3. **The System’s Appointive Director holds more than two other board seats in three Subsidiaries and three Affiliates of AFPRSBS, contrary to Section 11 of the Code of Corporate Governance for GOCCs or Governance Commission for GOCCs Memorandum Circular (GCG MC) No. 2012-07, thus, the required due diligence of the Appointive Director may be compromised. Moreover, no Manual of Corporate Governance for the GOCC was issued and adopted, contrary to Section 42 of the same Circular.**
   1. GCG MC No. 2012-07 provides:

***SEC. 11. Multiple Board Seats****. – The capacity of Appointive Directors to serve with diligence shall not be compromised. As such, no Appointive Director in a GOCC, Subsidiary or Affiliate may* ***hold more than two (2) other Board seats in other GOCCs, Subsidiaries and/or Affiliates.*** (Emphasis supplied)

* 1. Also, Section 42 of the same Circular provides:

***SEC. 42. GOCC Manual of Corporate Governance. – Every GOCC, acting through its Governing Board, shall promulgate and adopt its corporate governance rules and principles in accordance with this Code****. XXX*

*The Manual shall be submitted to the GCG, which shall evaluate the same and their compliance with this Code taking into account the classification and industry of the GOCC. The Manual shall be available for inspection by any of the identified Stakeholders of the GOCC at reasonable hours on business days.* (Emphasis supplied)

* 1. The aforementioned Circular also provides the following definition of terms:

***Appointive Directors*** *refers to: (a) In the case of Chartered GOCCs, all members of its Board of Directors/Trustees who are not ex officio members thereof; (b) In the case of Nonchartered GOCCs, members of its Board of Directors/Trustees whom the State nominates, or is entitled to nominate, to the extent of its percentage shareholdings in such GOCC; and (c) In the case of Subsidiaries and Affiliates, members of its Board of Directors/Trustees whom the GOCC nominates, or is entitled to nominate to the extent of its percentage shareholdings in such Subsidiary or Affiliate.*

***Ex Officio Board Member (Ex Officio Director)*** *refers to any individual who sits or acts as a member of the Board of Director/Trustees by virtue of one’s title to another office, and without further warrant or appointment.*

***“Chartered GOCC”*** *refers to a GOCC, including a GFI, created and vested with functions by a special law.*

***Government-Owned or Controlled Corporation (GOCC)*** *refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public need, whether governmental or proprietary in nature and owned by the Government of the Republic of the Philippines, directly or through its instrumentalities, either wholly or, where applicable, as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock. The term also includes a* ***Subsidiary*** *of a GOCC.*

***Subsidiary*** *refers to a corporation where at least a majority of the outstanding capital stock is owned or controlled, directly or indirectly, through one or more intermediaries, by the GOCC.*

***Affiliate*** *refers to a corporation fifty percent (50%) or less of the outstanding capital stock of which is owned or controlled, directly or indirectly, by the GOCC.*

* 1. The System is a chartered GOCC created by virtue of PD No. 361, which was promulgated on December 30, 1973. The System is engaged in various business operations which include the management of funds invested in the stock market and equity holdings in subsidiaries and associates. As at December 31, 2019, the President of AFPRSBS is currently the Vice-Chairman of its BOT which is the policy making body of the System.

* 1. Review of the composition of Appointive Directors in the Board of the System’s Subsidiaries and Affiliates disclosed that the President holds more than two board seats, contrary to the aforementioned GCG Circular. Details are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Subsidiaries** | **Ownership** | **Position** |
| 1. | Southern Utility Management and Services, Inc (SUMSI) | 100.00% | Chairman |
| 2. | Monterrosa Development Corporation (MDC) | 100.00% | Chairman |
| 3. | Bay Resources and Development Corporation (BRADCO) | 50.00% | Director |
|  |  |  |  |
|  | **Affiliates** | **Ownership** | **Position** |
| 1. | Riviera Golf Club, Inc (RGCI) | 47.80% | Chairman |
| 2. | Marilaque Land, Inc. (MLI) | 40.00% | Director |
| 3. | EK Holdings, Inc. (EKHI) | 10.92% | Director |

* 1. The Audit Team requested from Management a copy of Manual of Corporate Governance to verify its compliance with the Code of Corporate Governance for GOCCs. However, as of writing date, Management failed to provide to the Audit Team the requested document. In the absence thereof, the disclosure and transparency requirements for GOCCs were not complied with. The said Manual should contain: (a) Detailed responsibilities of members of the Board, which shall be available to all Stakeholders and to the public; (b) Formal Charter of expectations that each Director shall sign and be committed to; (c) List of Disclosures to be made by Directors; (d) Statement by the Directors confirming the truth and fairness of the GOCC’s FS similar to a Statement of Management Responsibility; and (e) List of Fines and other consequences when Directors violate, or omit to carry out their duties, under the applicable law.
  2. Directors of the Parent company frequently hold multiple board seats simultaneously exercising control and lending their expertise to the Board over its subsidiaries and associates, respectively. Relative thereto, intercompany transactions may arise, such as, settlement of obligations, renewal of contracts and other related transactions which may involve approval of the President or authorization of the Board, in a larger scale. Thus, the necessary due diligence in properly discharging the responsibilities and functions of the Appointive Directors may be compromised by holding multiple board seats. Further, we understand that the System’s interest in its investment in various subsidiaries and affiliates should always be represented and safe-guarded at all times. However, such representations in the Board may be achieved without disregarding the rules and policy of the government.
  3. **We recommended and Management agreed to:**
  4. **Promulgate and adopt the corporate governance rules and principle in accordance with the Code of Corporate Governance for GOCCs as provided under GCG Circular No. 2012-07; and**
  5. **As to the excess in allowable number of board seats, appoint another officer/s to represent the interest of AFPRSBS in its subsidiaries and affiliates.**

1. **Status of Suspensions, Disallowances and Charges**
   1. As at year-end, the status of audit suspension, disallowances and charges issued is as follows:

| **Audit action** | **Beginning balance 01/01/2019** | **Issued this period** | **Settled this period** | **Ending balance 12/31/2019** |
| --- | --- | --- | --- | --- |
| Suspensions | P 0 | 0 | P 0 | P 0 |
| Disallowances | 250,392,092 | 0 | 1,049,881 | 249,342,211 |
| Charges | 0 | 0 | 0 | 0 |
|  | **P250,392,092** | **0** | **P 1,049,881** | **P249,342,211** |

* 1. In 2019, the settled accounts are as follows: ND No. 16-004-AFPRSBS (13); ND No. 16-005-AFPRSBS (13); and ND No. 16-007-AFPRSBS (13) for the amount of P20,000; P15,000; and P25,000, respectively. These settlements pertain to the disallowance of granting of loyalty award to three AFPRSBS employees.
  2. The Notice of Disallowance (ND) on the overpriced land acquisition by the System in the amount of P250.318 million and the corresponding Notice of Charge (NC) on the deficiency taxes on the overpriced land amounting to P16.271 million were affirmed by the Commission Proper (CP) under COA Decision Nos. 2012-188 and 2012-139 dated November 5, 2012 and September 13, 2012, respectively. Moreover, the motion for reconsideration (MR) filed by the System on the COA Decisions was denied under CP En Banc Resolution dated February 27, 2015. Accordingly, Notice of Finality of Decision (NFD) and COA Order of Execution (COE) were issued.
  3. Furthermore, the Supreme Court (SC) promulgated its Decision under G.R. No. 217948 dated January 12, 2016 on the Petition for Certiorari for the ND on the overpriced land acquisition affirming COA Decision No. 2012-188 dated November 5, 2012. The System has partially collected a total of P2,165,496 from the person liable as at December 31, 2019.
  4. The NC numbered N.C. No. 2010-07-001 in CY 1996 is considered as settled under Notice of Settlement of Suspension/Disallowance/Charge (NSSDC) No. 18-001 dated June 27, 2018 due to the SC decision under G.R. No. 213716. The Court found that it was incongruent to disallow the difference of P250.318 million but, at the same time, charge P16.271 million against the petitioner for the alleged underpaid taxes. Considering that the amount is being held as the correct purchase price of the sale, the correct taxes in the amount of P5.917 million have already been settled. To demand more on the ground that all income from whatever sources is taxable would unjustly enrich the government.
  5. The details of the other disallowances that were issued in CY 2016 in the total amount of P1.180 million includes: (a) disallowances awaiting decision of the CP on gasoline withdrawn from AFP Commissary and Exchange Services (AFPCES) using private vehicles, granting of rice subsidy in excess of the allowable P1,500 per sack and granting of monthly cell card subsidy to a postpaid plan holder and claims for communication allowance while on official travel amounting to P534,132, P236,656 and P27,720, respectively; (b) granting of cash gift amounting to P325,999; and (c) granting of loyalty award to three AFPRSBS employees amounting to P65,000.