

PCGG defiance

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'They can go farther if nobody in government takes the first step towards punishing a crime.'



“ WE are of the view that PCGG has lost the authority to be involved in matters of management and representation with respect to POTC (Philippine Overseas Telecommunications Corp.) and its wholly-owned subsidiary, PHILCOMSAT (Philippine Communications Satellite Corp.), following the transfer of POTC Stock Certificate No. 131 for 4,727 shares in the name of the Republic of the Philippines.

“It is the Republic through DOF that can exercise the rights that are appurtenant to the 4,727 shares.”

This legal opinion was issued by Justice Secretary Lilia De Lima on Feb. 25, 2015, in answer to the query of Katrina C. Ponce Enrile, daughter of Sen. Juan Ponce Enrile who was a big original investor of the country's first satellite communications system, and president of POTC.

Since the state is beneficial owner of 4,727 shares of POTC, it has the right to elect one or two members to the board. The right to nominate the board members is an exclusive function of the Department of Finance which is now custodian of the shares.

Beyond that, there should be no commissioners in the PCGG representing the state. Andres Bautista, lawyer and dean of law in some university sticks to his seat as chairman of the PCGG, not because he was elected by the board in an organizational meeting. He believes he is a representative of the state. He would not leave his post.

The question of ownership of the shares was resolved by the Supreme Court as early as 2005. POTC may not be considered a sequestered company for the simple reason that sequestration under Executive Order No. 1 requires the consent and signature of two of three commissioners.

The order on POTC had one signature of a PCGG commissioner. The good government body could not produce the minutes of the investigation.

The PCGG created in its favor two problems regarding the 35 percent share of the state. First, it acted as if it did not know the government has that many shares. It went by the belief the state owns 40 percent representing what Jose Y. Campos surrendered to the PCGG saying he was keeping them for Ferdinand Marcos and his family.

Second, the PCGG itself adopted a resolution requiring the transfer of the state's shares to the Department of Finance. It took them time to do it precisely because if they complied, the PCGG will be a minority proxy holders by force.

On top of all these, there is an Executive Order placing the PCGG under the control and supervision of the Department of Justice.

The pretension by the PCGG that it believes the state owns 40 percent of POTC was a ruse to keep control of POTC by higher than 50 percent. The PCGG lumped the spurious 40 percent with the shares of other investors to justify control of the board.

If the five percent were to be used by the legitimate private stockholders, the PCGG would be a minority by questionable authority 40 percent of the outstanding POTC shares.

It is not only apparent but real that the intention of the PCGG was to loot the finances of Philcomsat Holdings another POTC subsidiary which is not sequestered.

We do not tire repeating what the PHC documents clearly prove. The P800 million in PHC capital provided by Philcomsat is gone and went to the pockets of PCGG commissioners and other officers.

If the PCGG nominees in the board of PHC did not believe their positions are illegal why didn't they object to the listing of the company's shares? It was much later that PCGG Commissioner Amurao objected to the lifting of the suspension of trading of PHC shares.

He now argues the public may be buying worthless shares of PHC made so by the legitimate board. Really? Wasn't it the PCGG nominees who bled the company dry? The documents proving it are on file with PHC.

The dissipation of the assets of PHC is a criminal act that has gone unpunished. Nobody in government seems to mind the anomaly at all. Not President Aquino whose mother issued the EO creating the PCGG. Not such agencies like the Securities and Exchange Commission which implements the Corporation and Securities laws.

In refusing to lift the order suspending the trading of PHC shares, the SEC declared the refusal is a matter of inter-agency committee. That to them, is in respect of the opinion of the Solicitor General who claims there are unresolved issues regarding the ownership of the shares.

One thing has already been made clear by the Supreme Court. The 35 percent seized by the state is presumed to have been acquired with ill-gotten wealth. If there are suspicions other stockholders acquired their shares using the influence with Marcos why doesn't the PCGG file criminal and civil cases?

The PCGG would not do that. Its commissioners are benefiting immensely from the finances of PHC.

Where in the corporate world does one find an official ordering the issuance of a check paid to cash and make it appear as advances to affiliates, in this case POTC and Philcomsat. There are no records either of the two companies having received the "advances."

To begin with why should a subsidiary make advances to Philcomsat, the other major subsidiary that capitalized the holding company to the tune of P800 million?

There is widespread theft of funds of PHC by PCGG nominees.

There are serial thieves in PHC. The PCGG which has the duty to preserve the assets allows its nominees to rob the company blind and blames the legitimate stockholders for the mess.

They have gone far enough. They can go farther if nobody in government takes the first step towards punishing a crime.

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