



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

23 May 2012

SEC-OGC Opinion No. 12-09
Non-Stock Savings and Loan
Associations; Unclaimed Capital
Contributions

RADM GEORGE T. UY, AFP (RET)

Armed Forces and Police Savings and Loan Association, Inc.
EDSA cor. Bonny Serrano Road,
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Sir:

This refers to your letter¹ dated 18 January 2012 addressed to the Chairperson of the Commission, concerning the Armed Forces and Police Savings and Loan Association, Inc. ("*AFPSLAI*"), with a query relating to the unclaimed capital contributions of some of its deceased members.

In your letter, three issues were raised, namely:

- 1) Whether the Unclaimed Balances Law, as amended, is applicable to AFPSLAI;
- 2) How to dispose of the unclaimed capital contributions and deposits of some of AFPSLAI's deceased members; and
- 3) The inclusion in AFPSLAI's by-laws of a provision that states that unclaimed capital contributions left dormant for ten (10) years shall form part of the income of AFPSLAI.

In your letter, you expressed your uncertainty as to the applicability of Act No. 3936, the Unclaimed Balances Law, to AFPSLAI, which is a non-stock savings and loan association.

On this matter, we defer to the opinion of the Bangko Sentral ng Pilipinas ("*BSP*"), which stated in the letter dated 19 August 2011, attached to your letter-request to this Commission, that:

¹ The letter-request for opinion was forwarded to the Office of the General Counsel on 06 February 2012. On 09 February 2012, this Office sent a letter requesting the payment of the opinion fee. A copy of the receipt of payment was only furnished to this office on 08 May 2012.

"On the issue on whether the Unclaimed Balances Law (Act 3936) applies to your case, the BSP General Counsel opined in the negative, noting that said law expressly applies to credits and deposits of money, bullion, security or other evidence of indebtedness of any kind, and interest in "banks", "building and loan association" and "trust corporations" as defined under the then General Banking Act (Republic Act No. 337)."

It must be considered, however, that AFPSLAI falls under the coverage of Republic Act No. 8367, the short title of which is the *Revised Non-Stock Savings and Loan Association Act of 1997*. Section 3 (a) of this law defines non-stock savings and loan associations as:

"a non-stock, non-profit corporation engaged in the business of accumulating the savings of its members and using such accumulations for loans to members to service the needs of households by providing long term financing for home building and development and for personal finance".

Based on this definition, AFPSLAI may be considered to be under the ambit of RA 8367, as the Primary Purpose of AFPSLAI as stated in its Amended Articles of Incorporation attached to the Certificate of Filing of Amended Articles of Incorporation issued on 17 January 2007 is "to engage in the operations of a non-stock and non-profit savings and loan association in order to encourage industry, frugality, savings among the members."

Under RA 8367, the extent of SEC's authority over non-stock savings and loan associations is only insofar as the registration of the association to give it juridical personality. Registration with the SEC requires prior acquisition by the association of a license from the Monetary Board of the BSP. Section 4 of RA 8367 mandates that:

"The SEC shall not register the articles of incorporation and bylaws of a proposed Association unless the application is accompanied by a certificate of the Monetary Board approving the same."

As regards the matter of disposition of the unclaimed capital contributions and deposits of some of the deceased members of AFPSLAI, the Commission, in a previous Opinion², held that the unclaimed capital contributions of therein subject savings and loan association were deemed to be held in trust for the legal owner thereof, because of a provision in its by-laws that stated that:

"upon cessation of membership, the association shall refund to the members, his/its authorized payee, heirs or assigns, the capital contribution, savings and time deposit, together with the interest and dividends earned, if any after deducting therefrom any loans outstanding or any other amounts due from him/it including guarantee obligations."

² SEC Opinion dated 15 July 1988 addressed to Ms. Flordeliza T. dela Cruz of CDCP Employees Savings and Loan Association, Inc. ("*CESLA*").

The Commission opined that the foregoing provision in the by-laws established a trust, citing Articles 1445 of the Civil Code of the Philippines³, which states:

"ARTICLE 1445.⁴ No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended."

It was also stated in the Opinion that:

"Capital contributions of former members of the Association, as well as their savings and time deposits together with all accrued dividends and interests, lawfully vest with the respective members of the association, whether or not their whereabouts are known, and considering that a trust has been created governing these properties, they cannot be reclassified and appropriated by the association as "income" thereof. The association should exhaust all available means of locating the whereabouts of former CESLA members, and if the search proves to be futile, nevertheless, it has the fiduciary duty to hold said amount as trustee for the legal owner thereof, unless otherwise escheated in accordance with law."

In the by-laws of AFPSLAI, Sections 1 and 2 of Article XI may be considered as creating a trust similar to that in CESLA. These provisions state that:

Section 1. - Separation. - Any member may severe [*sic*] his membership by written application addressed to the Board of Trustees (as amended on April 29, 1995) which shall act on the same within 30 days upon receipt of such application for withdrawal. The (As amended on April 29, 1995) Treasurer shall proceed to liquidate the account of the withdrawing members, and shall report the liquidation made by him to the Board of Trustees. (As amended on April 29, 1990) Such withdrawing member has, however, the right to demand reimbursement of his total capital contributions and/or savings deposits, plus dividends, and/or interest due, if any on the date of withdrawal after deducting all his obligations.

Section 2. - Expulsion. - Any member may be expelled from the Association by the Board of Trustees if he is convicted of any crime involving moral turpitude or graft and corruption by final judgment; or for any act inimical to the credit and good name, and financial stability of the Association. An expelled member shall not be deprived of his right to reimbursement of his capital contribution deposits or dividends, and interest due, if any on the date of expulsion, after deductions of all his existing obligations to the Association. (As amended on April 29, 1995).

Article 1453 may also be applicable to AFPSLAI's situation. It states that:

"Art. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor,

³ Republic Act No. 386 (1949).

⁴ "Copied verbatim from documents obtained directly from the Securities and Exchange Commission." The correct citation is Article 1444 of the Civil Code.

there is an implied trust in favor of the person whose benefit is contemplated."

When capital contributions or deposits from a member of the association are accepted by AFPSLAI, there is an understanding that AFPSLAI will eventually return this amount or a portion of it to the contributing member or his heirs or assigns. Therefore, a trust is created in favor of the contributing member, or his heirs or assigns.

You are proposing the inclusion in the by-laws of AFPSLAI of the following provision:

"Section 3. Capital Contributions, Savings and Time Deposits, which have been dormant for ten (10) years or have been left unclaimed after ten (10) years from the termination of the account and notice to the member or his heirs at his/their last registered address, shall form part of the income of the Association."

In this connection, Article XVI of the by-laws of AFPSLAI prescribes the manner by which amendments, repeal or adoption of by-laws are to be made, thus:

"Section 1. Majority of the members and majority of the Board of Trustees, may at a meeting duly called for the purpose, amend or repeal any by-laws or adopt new by-laws, **subject to the approval of the Bangko Sentral ng Pilipinas** and the Securities and Exchange Commission.

2/3 of the members may delegate the power to amend, repeal or adopt new by-laws to the Board of Trustees pursuant to the provision of the corporation code." (Emphasis supplied.)

The by-laws of AFPSLAI acknowledges the authority of the BSP over the association, the latter being its statutorily designated primary regulator. We recommend, thus, that the approval of BSP must be sought for the inclusion of the proposed by-laws provision, before the matter of or application for the amendment of the by-laws is brought to this Commission.

This Opinion is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CARLOS A. CORREA
General Counsel