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[G.R. Nos. 177857-58. September 17, 2009]

PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, and RAYMUNDO C. DE VILLA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, ANA THERESIA HONTIVEROS, and TEOFISTO L. GUINGONA III, *oppositors-intervenors.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); HAS THE AUTHORITY TO SEEK THE COURT'S APPROVAL FOR THE CONVERSION OF THE SEQUESTERED SAN MIGUEL CORPORATION (SMC) COMMON SHARES INTO PREFERRED SHARES.— On the preliminary issue as to the proper party to seek the imprimatur on the conversion, the Court rules that it is the PCGG, not COCOFED, that is authorized to seek the approval of the Court of the Series 1 preferred shares conversion. As records show, PCGG sequestered the 753,848,312 SMC common shares registered in the name of CIIF companies on April 7, 1986. From that time on, these sequestered shares became subject to the management, supervision, and control of PCGG, pursuant to Executive Order No. (EO) 1, Series of 1986 x x x The PCGG, therefore, as the "receiver" of sequestered assets and in consonance with its duty under EO 1, Series of 1986, to protect and preserve them, has the power to exercise acts of dominion provided that those acts are approved by the proper court. From the foregoing discussion, it is clear that it is the PCGG—not COCOFED or the CIIF companies—that has the right

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and/or authority during sequestration to seek this Court's approval for the proposed conversion.

2. ID.; ID.; ID.; COURT'S APPROVAL ON THE CONVERSION OF SEQUESTERED SMC COMMON SHARES INTO PREFERRED SHARES, OBTAINED; REASONS, EXPLAINED.— After a circumspect evaluation of the incident at bar, we resolve to **approve** the conversion, taking into account certain circumstances and hard economic realities as discussed below: x x x respondent Republic has satisfactorily demonstrated that the conversion will redound to the clear advantage and material benefit of the eventual owner of the CIIF SMC shares in question. Positive action must be taken in order to preserve the value of the sequestered CIIF SMC common shares. The worldwide economic crisis that started last year affected the Philippines and adversely impacted on several banks and financial institutions, resulting in billions of loses. The Philippine Stock Exchange Index retreated x x x. [T]he CIIF SMC shares traded in the local bourse have substantially dropped in value in the last two (2) years. x x x No doubt shares of stock are not the safest of investments, moored as they are on the ever changing worldwide and local financial conditions. The proposed conversion would provide better protection either to the government or to the eventually declared real stock owners, depending on the final ruling on the ownership issue. In the event SMC suffers serious financial reverses in the short or long term and seeks insolvency protection, the owners of the preferred shares, being considered creditors, shall have, *vis-à-vis* common stock shareholders, preference in the corporate assets of the insolvent or dissolved corporation. In the case of the SMC Series 1 Preferred Shares, these preferential features are made available to buyers of said shares and are amply protected in the investment. More importantly, the conversion will ensure a higher cumulative and fixed dividend rate of 8% per annum computed at an issue price of PhP 75 per share, a yield not currently available to common shareholders. x x x The redemption value of the preferred shares depends upon and is actually tied up with the issue price plus all the cumulated and unpaid dividends. This redemption feature is envisaged to effectively eliminate the market volatility risks on the side of the share owners. Undoubtedly, these are clear advantages and benefits that inure to the share owners who, on one hand, prefer a stable dividend yield on their investments

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and, on the other hand, want security from the uncertainty of market forces over which they do not have control. Recent developments saw SMC venturing and diversifying into several huge projects (*i.e.,* oil, power, telecommunications), business moves which understandably have caused some critics to raise the concern over a possible prejudice to the CIIF SMC common shares presently under sequestration should such investments turn sour. A number of people claim these new acquisitions are likely to dissipate the assets of SMC. Some sectors ratiocinate that the huge capital investments poured into these projects may substantially erode SMC's profitability in the next few years, resulting in diminished dividends declaration. The proposed conversion will address the concerns and allay the fears of well meaning sectors, and insulate and protect the sequestered CIIF SMC shares from potential damage or loss. Moreover, the conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares. Preservation is attained by fixing the value today at a significant premium over the market price and ensuring that such value is not going to decline despite negative market conditions. Conservation is realized thru an improvement in the earnings value via the 8% per annum dividends versus the uncertain and most likely lower dividends on common shares. A fixed dividend rate of 8% per annum translates to PhP 6 per preferred share or a guaranteed yearly dividend of PhP4,523,308,987.20 for the entire sequestered CIIF SMC shares. The figures jibe with the estimate made by intervenors Salonga, *et al.* Compare this amount to the dividends declared for common shares for the recent past years which are in the vicinity of PhP1.40 per unit share or a total amount of PhP1,055,387,636.80 per annum. The whopping difference is around PhP 3.5 billion annually or PhP 10.5 billion in three (3) years. On a year-to-year basis, the difference reflects an estimated increase of 77% in dividend earnings. With the bold investments of SMC in various lines of business, there is no assurance of substantial earnings in the coming years. There may even be no earnings. The modest dividends that accrue to the common shares in the recent years may be a thing of the past and may even be obliterated by poor or unstable performance in the initial years of operation of newly-acquired ventures. In the light of the above findings, the Court holds that respondent Republic has satisfactorily hurdled the *onus*

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of showing that the conversion is advantageous to the public interest or will result in clear and material benefit to the eventually declared stock owners, be they the coconut farmers or the government itself.

3. ID.; ID.; ID.; THE ONLY INTEREST OF PCGG IN SMC IS TO PROTECT THE SEQUESTERED SMC COMMON SHARES FROM DISSIPATION.— The Court can perhaps take judicial notice of the government's enunciated policy to reduce, if not eliminate, its exposure to business. The PCGG has held on to the sequestered shares for more than 20 years and this may be the opportune time to do away with its participation in SMC, especially considering the claim that the sequestration of the CIIF SMC common shares has frightened away investors and stunted growth of the company. The only interest of PCGG in SMC is to protect the CIIF SMC common shares from dissipation. PCGG is neither tasked to bar Cojuangco, Jr., or any individual for that matter, from securing domination of the SMC Board, nor avert Cojuangco, Jr.'s acquisition of the CIIF SMC common shares once released from sequestration. Even if the conversion is approved, nothing can prevent the government from prosecuting the people whom intervenors tag as responsible for "greasing the government and the coconut farmers of billions of pesos."

4. ID.; ID.; ID.; THE DECISION ON WHETHER TO PROCEED WITH THE CONVERSION OR DEFER ACTION THEREON UNTIL FINAL ADJUDICATION OF THE ISSUE OF OWNERSHIP OVER THE SEQUESTERED SHARES PERTAINS TO THE EXECUTIVE BRANCH THROUGH THE PCGG.— [T]he decision on whether to proceed with the conversion or defer action thereon until final adjudication of the issue of ownership over the sequestered shares properly pertains to the executive branch, represented by the PCGG. Just as it cannot look into the wisdom behind the enactment of a law, the Court cannot question the wisdom and reasons behind the decision of the executive branch to ask for the conversion of the common shares to preferred shares. Else, the Court would be trenching on the well-settled doctrine of separation of powers. The cardinal postulate explains that the three branches must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach

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on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws, and the judiciary to their interpretation and application to cases and controversies.

5. ID.; ID.; ID.; THE PCGG'S APPROVAL OF THE CONVERSION IS A POLICY DECISION THAT CANNOT BE INTERFERED WITH IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.— The approval by the PCGG, for respondent Republic, of the conversion is a policy decision which cannot be interfered with in the absence of a showing or proof, as here, that PCGG committed grave abuse of discretion. In the similar *Palm Avenue Realty Development Corporation v. PCGG*, the Court ruled that the approval by PCGG of the sale of the sequestered shares of petitioner corporations allegedly owned and controlled by Kokoy Romualdez was legal and could not be the subject of a writ of *certiorari* or prohibition, absent proof that PCGG committed a grave abuse of discretion. The price of PhP29 per share approved by the PCGG was even below the prevailing price of PhP 43 per share.

6. ID.; ID.; ID.; THE LOSS OF VOTING RIGHTS IN THE SMC THROUGH THE CONVERSION HAS NO SIGNIFICANT EFFECT ON PCGG'S FUNCTION TO RECOVER ILL-GOTTEN WEALTH OR PREVENT DISSIPATION OF SEQUESTERED ASSETS.— By relinquishing its voting rights in the SMC Board through the conversion, the government, it is argued, would be surrendering its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth. It may, as feared, be rendered helpless in preventing an impending peril of a "lurking dissipation." This contention has no merit. The mere presence of four (4) PCGG nominated directors in the SMC Board does not mean it can prevent board actions that are viewed to fritter away the company assets. Even under the *status quo*, PCGG has no controlling sway in the SMC Board, let alone a veto power at 24% of the stockholdings. In relinquishing the voting rights, the government, through PCGG, is not in reality ceding control. Moreover, PCGG has ample powers to address alleged strategies to thwart recovery of ill-gotten wealth. Thus, the loss of voting rights has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets.

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7. ID.; ID.; ID.; THE PCGG DOES NOT EXERCISE ACTS OF OWNERSHIP OVER SEQUESTERED ASSETS BUT IT MAY SEEK THE APPROVAL OF THE PROPER COURT FOR THE SALE OF THE SAID ASSETS.— Salonga, *et al*. also contend that PCGG cannot pursue the exchange offer of SMC for want of power to exercise acts of strict dominion over the sequestered shares. This is incorrect. The Court, to be sure, has not barred the conversion of any sequestered common shares of a corporation into preferred shares. It may be argued that the conversion scheme under consideration may later on be treated as an indirect sale of the common shares from the registered owner to another person if and when SMC decides to redeem the Series 1 preferred shares on the third anniversary from the issue date of the preferred shares. Still, given the circumstances of the pending incident, the Court can validly allow the proposed conversion in accordance with Rule 57, Sec. 11, in relation to Rule 59, Sec. 6 of the Rules of Court. x x x Even if the conversion-cum-redemption partakes of an indirect sale, PCGG can be allowed to approve the conversion in line with our ruling in *Palm Avenue Realty Development Corporation*, subject to the approval of the Court. Evidently, as long as the interests of all the parties will be subserved by the sale of the sequestered properties, the Court may allow the properties to be sold. More so, the Rules would allow the mere conversion of the shares of stock given the evident benefit that all the parties would receive from such conversion that far outweighs any perceived disadvantage. Thus, the Court is clearly empowered to allow the conversion herein pressed by the PCGG. While the PCGG, as sequestrator, does not exercise acts of ownership over sequestered assets, the proper court, where the case involving the sequestered asset is pending, may, nevertheless, issue a positive and definite order authorizing the sale of said assets.

CARPIO MORALES, *J.*, *dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); AS A TRUSTEE, PCGG IS NOT ALLOWED BY LAW TO DISPOSE OF TRUST ASSETS BELOW THE ACTUAL MARKET VALUE.— The subject block of shares is sufficient to elect four of the 15 members of the SMC Board of Directors. There is always a premium or added intrinsic value whenever a block

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of shares that is sufficient to elect a director is transacted. The owner of such block of shares will not dispose them of at the same price per share. The conversion value for the shares should include a professional valuation of the premium that should be part of the consideration and factored in the actual market price. Without considering the premium inherent in this block of shares, the subject block of shares would be perpetually locked or impounded to a value much lower than the actual market value. In effect, the PCGG would be downgrading the value of the trust assets. Moreover, one of the features of the conversion is an optional redemption and purchase. The terms provide that "SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares on the third anniversary from the Issue Date or on any Dividend Date thereafter at a redemption price equal to the Issue Price of the Preferred Shares plus all cumulated and unpaid cash dividends." The majority opinion observes that the share prices of Class "A" and "B" common shares of SMC have been declining for the past three years, and closed in the local bourse at ₱53.50 and ₱54 as of June 1, 2009 compared to their 2006 prices of ₱65 and ₱74.50, respectively. With the conversion, the issue price is pegged at ₱75. If at the time of redemption, however, the prevailing market price is higher than the issue price, then the redemption price is below the actual market price. In such instance and for apparent reasons, SMC could readily exercise its option. The PCGG would then be disposing of the trust assets below the actual market value. If the reverse situation occurs, SMC could forego its option on the third year and exercise it on a future dividend date. SMC's availment of its optional redemption and purchase is thus risk-free. A trustee and conservator, of whom the highest degree of diligence and rectitude is required, is not allowed by law to dispose of the assets held in trust below the actual market value. The redemption price should be the issue price or the then prevailing market price, whichever is higher, plus any unpaid cumulative dividends.

2. ID.; ID.; ID.; THE REPUBLIC, REPRESENTED BY THE PCGG, SURRENDERS ITS FINAL ARSENAL IN COMBATING THE MANEUVERINGS TO FRUSTRATE THE RECOVERY OF ILL-GOTTEN WEALTH ONCE THE CONVERSION OF THE SEQUESTERED SMC COMMON SHARES IS ACCOMPLISHED.— [T]he subject block of shares is sufficient

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to elect four directors. The majority opinion discusses that the only disadvantage of the conversion scheme is the loss of the voting rights that common shareholders have. It dismisses this loss by resorting to sophistry and instead vividly depicts a financial windfall. **Once the conversion is accomplished, the Republic surrenders its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth.** The right to vote the sequestered shares, when proper under the circumstances, may only be exercised within the parameters and context of the stated purposes of sequestration or provisional takeover, *i.e.*, to prevent the dispersion or undue disposal of the corporate assets. It was in [*Republic v. COCOFED*] that the Court ruled that for purposes of determining the right to vote the shares *pendente lite*, the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. The crucial question left, for purposes of exercising the right to vote, is whether there is immediate danger of dissipation. In the present case, in the event of an immediate danger of dissipation after the proposed conversion, the Republic can no longer move to vote the sequestered shares and prevent the impending peril. **In case the conversion pushes through, the hands of the Republic are tied and helpless in the face of a lurking dissipation.** While the promise of financial gains is alluring with the fixed dividend rate of 8% and preference in the liquidation of assets, there is nothing left to prevent the SMC from diluting its corporate assets, diversifying into risky ventures, and consequently depreciating the market value of the shares. After all, SMC could not be forced to redeem the shares at the issue price of ₱75 when the market value is plummeting. Of course, there is that preference in the liquidation of assets that it can go after. By that time, the percentage in the total shareholdings may remain the same, but its equivalence in pecuniary terms, however, would have been watered down or devaluated. It bears noting that what sequestration is guarding against is more on the dissipation of the corporate assets *than* the decrease of the share value. The law cannot possibly control the infinite market forces affecting the value of the stocks, but it can see to it that the corporate assets that these stocks represent remain intact.

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APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for COCOFED, *et al.*
The Solicitor General for public respondent.
Estelito P. Mendoza for Eduardo M. Cojuangco, Jr.

R E S O L U T I O N

VELASCO, JR., *J.*:

For consideration is the *Urgent Motion to Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares* dated July 24, 2009 (Motion) interposed by petitioners Philippine Coconut Producers Federation, Inc., *et al.* (collectively, COCOFED). COCOFED seeks the Court's approval of the conversion of 753,848,312 Class "A" and Class "B" common shares of San Miguel Corporation (SMC) registered in the names of Coconut Industry Investment Fund and the so-called "14 Holding Companies" (collectively known as "CIIF companies") into 753,848,312 SMC Series 1 Preferred Shares (hereinafter, the Conversion).

SMC's conversion or stock exchange offer is embodied in its *Information Statement*[1] and yields the following relevant features:

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[1] Annex "A", Urgent Motion: To Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares, pp. 15-16 provides:

Description of the New Securities

The Series "I" Preferred Shares will be Philippine Peso-denominated, perpetual, cumulative and non-voting. The shares will have a par value of Five Pesos (₱5.00) per share and the following features;

(a) Dividends – The Board of Directors of the Company shall have the sole discretion to declare dividends on the Series "I" Preferred shares. The annual dividends shall be based on the five (5)- year Philippine Dealing System Treasury Fixing treasury securities benchmark rate ("PDST-F Rate"), plus a spread which the Board of Directors of the Company has authorized Management to determine ("Dividend Rate"). On this basis and pursuant to such authority granted to Management, the dividend Rate has been determined to be eight percent (8%) per annum. The dividends are payable

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Instrument - Peso denominated, perpetual, cumulative, **non-voting preferred shares with a par value of Php 5.00 per share and Issue Price of Php 75 per share.**

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quarterly, beginning on the third month after the issue date thereof ("Issue Date") and every three months thereafter ("Dividend Payment Date") and calculated by reference to the Issue Price. Unless the Series "I" Preferred shares are redeemed by the Company at the end of the fifth year from the Issue Date, the Dividend Rate shall be adjusted at the end of the fifth year to the higher of (a) the Dividend Rate, and (b) the prevailing ten (10)-year PDST-F Rate (or such successor benchmark rate) as displayed under the heading "Bid Yield" as published on the PDEx Page (or such successor page) of Bloomberg (or such successor electronic service provider) at approximately 11:30 a.m. Manila time on the date corresponding to the end of the fifth year from the Issue Date (or if not available, the PDST-F Rate on the banking day prior to such date, or if still not available, the nearest preceding date on which the PDST-F Rate is available, but if such nearest preceding date is more than five [5] days prior to the date corresponding to the end of the fifth year from the Issue Date, the Board of Directors, at its reasonable discretion, shall determine the appropriate substitute rate) plus a spread of up to 300 basis points. The holders of Series "I" Preferred shares shall not be entitled to any participation or share in the retained earnings remaining after dividend payment shall have been made on the said shares.

(b) Redemption – The Company has the option, but not the obligation, to redeem all or part of the Series "I" Preferred shares on the third anniversary from the Issue Date or on any Dividend Payment Date thereafter, at a redemption price equal to the Issue Price of the Series "I" Preferred shares plus all accumulated and unpaid cash dividends. The Series "I" Preferred shares, when redeemed, shall not be considered retired and may be re-issued by the Company at a price to be determined by the board of Directors.

(c) Liquidation – In the event of liquidation, dissolution, bankruptcy or winding up of the Company, the Series "I" Preferred shares shall have preference in payment, in full or, if the assets of the Company are insufficient, on a pro-rata basis as among holders of Series "I" Preferred shares, of the Issue Price of their shares plus any previously declared and unpaid dividends, before any asset of the Company is paid or distributed to holders of the common shares of the Company.

(d) Voting Rights – Holders of the Series "I" Preferred shares shall not be entitled to vote except in cases expressly provided by law.

(e) Pre-emptive Rights – Holders of the Series "I" Preferred shares shall have no pre-emptive right to any issue or disposition of any class of the Company.

The Series "I" Preferred shares will be listed on The Philippine Stock Exchange, Inc. within one year from the date of their issuance.

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Dividend Rate - The SMC Board of Directors shall have the sole discretion to declare dividends on the Series 1 Preferred Shares as redeemed by SMC, the **dividend rate shall be at a fixed rate of 8% per annum,** payable quarterly and **calculated by reference to the issue price**.

Dividend Rate Step Up - Unless the Series 1 Preferred Shares are redeemed by SMC, the **Dividend Rate shall be adjusted at the end of the fifth year** to the higher of (a) the Dividend Rate or (b) the prevailing 10-year PDSTF rate plus a spread of 300 bps.

Optional Redemption and Purchase - SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares on the third anniversary from the Issue Date or on any Dividend Date thereafter at a redemption price equal to the Issue price of the Preferred Shares plus all cumulated and unpaid cash dividends.

Preference in the event of the liquidation of SMC - The Series 1 Preferred Shares shall have preference over the common shares.

Selling costs - All selling costs pertaining to the Common Shares shall be borne by the common shareholders. x x x (Emphasis added.)

COCOFED proposes to constitute a trust fund to be known as the "Coconut Industry Trust Fund (CITF) for the Benefit of the Coconut Farmers," with respondent Republic, acting through the Philippine Coconut Authority (PCA), as trustee. As proposed, the constitution of the CITF shall be subject to terms and conditions which, for the most part, reiterate the features of SMC's conversion offer, albeit specific reference is made to the shares of the 14 CIIF companies. Among the terms and conditions are the following:

Standard 1. There must be a prior approval by this Honorable Court in this instant case G.R. No. 177857-58 entitled "*COCOFED, et. al. vs. Republic of the Philippines,*" of the conversion of the sequestered SMC Common Shares, Both Class "A" and Class "B", registered in the respective names of the 14 CIIF Holding Companies, into SMC Series 1 Preferred Shares.

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Standard 2. The SMC shares to be exchanged are all the shares of stock of SMC that are presently sequestered and registered in the respective names of the 14 CIIF Holding Companies in the total number of 753,848,312, both Class "A" and Class "B" shares x x x (hereinafter, collectively referred to as the "SMC Common Shares").

x x x x x x x x x

Standard 4. The SMC Common Shares shall be converted at an exchange ratio of one (1) SMC Series 1 Preferred Share (hereinafter, "SMC Series 1 Preferred Share") for every one (1) SMC Common Share tendered. Each SMC Series 1 Preferred Share shall have a par value of (₱5.00) per share and an Issue Price of Seventy Five Pesos per share (₱75.00). Dividends on the SMC Series 1 Preferred Share shall be cumulative and with dividend rate of 8% per annum computed on the Issue Price of Seventy Five Pesos (₱75.00) per share.

x x x x x x x x x

Standard 6. If and when SMC exercises its right, but not an obligation, to redeem after a period of three (3) years the SMC Series 1 Preferred Shares, the redemption shall in no case be less than the Issue Price of Seventy Five Pesos (₱75.00) per share plus unpaid cumulative dividends.

x x x x x x x x x

Standard 8. Upon written appointment to the Board of Governors of the [PCA] of the three (3) nominees submitted to the President of the Philippines by the [COCOFED], as required by PD 1468, a trust fund is thereby automatically created to be identified and known as the "Coconut Industry Trust Fund (CITF) For the Benefit of the Coconut Farmers" and the trustee of the Coconut Industry Trust fund shall be: "The Republic of the Philippines Acting Through the Philippine Coconut Authority for the Benefit of the Coconut Farmers."

Standard 9. The initial capital of the [CITF] shall be the SMC Series 1 Preferred Shares that will be issued by SMC as herein described.

Standard 10. Within ten (10) days from and after the date of the final approval by this Honorable Court of the Conversion, the Republic of the Philippines, acting through the Presidential Commission on Good Government through its duly authorized Chairman, shall deliver to SMC these documents.

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Standard 11. As the issuer, SMC shall within a reasonable period from a trade, or exchange, of the SMC Common Shares into 753,848,312 SMC Series 1 Preferred Shares through the facilities of the Philippine Stock Exchange, deliver duly-signed and issued SMC Series 1 Preferred Stock Certificate(s) in the name of "The Republic of the Philippines acting though the Philippine Coconut Authority as Trustee of the Coconut Industry Trust Fund (CITF) For the Benefit of the Coconut Farmers."

Standard 12. Upon compliance by the SMC with its reciprocal obligations according to the terms and intent of the approval by this Honorable Court, then it shall acquire absolute ownership of the SMC Common Shares free from all liens, writs, demands, or claims x x x.

Standard 13. The trustee of the [CITF] shall have no authority to sell, dispose, assign, encumber or otherwise impair the value of the SMC Series 1 Preferred Shares, unless the same are redeemed by SMC in accordance with its Articles of Incorporation, as amended.

Standard 14. For purposes of ascertaining x x x the identities and addresses of coconut farmers, the beneficiaries of the developmental projects herein authorized to be financed, a ground survey of coconut farmers as presently defined, or hereafter defined, by the [PCA], shall be conducted by the [PCA] x x x.

Standard 15. Thirty (30) days after the receipt of any dividend paid on the SMC Series 1 preferred Shares, the net proceeds x x x shall be disbursed by the Trustee in favor of these entities in these proportions:

a. Forty percent (40%) – Coconut Industry Trust Fund constituted under Paragraph 11, Standard 8 and Standard 9 hereof which the Trustee should invest and re-invest only in the permissible investments authorized under Paragraph 11, Standard 16.

b. Twenty percent (20%) – To the (PCA) "in trust and for the benefit of the coconut farmers," being the governmental agency designated by law to implement projects for the coconut industry.

c. Twenty percent (20%) – To the [COCOFED], in its capacity as the duly recognized organization of the coconut farmers with the highest membership.

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d. Twenty percent (20%) – To the PCA Accredited Other Coconut Farmers' organizations – The trustee shall disburse this allocation to each and all of those PCA Accredited Other Coconut Farmers Organizations.

Standard 16. In the event of redemption of the SMC Series 1 Preferred Shares, whether in full or in part, the proceeds of such redemption shall form part of the capital of the [CITF] which the Trustee shall invest, within a period of forty eight (48) hours from receipt of the proceeds of such redemption, and reinvest in these permissible investments x x x.[2]

To the basic motion, respondent Republic filed its Comment questioning COCOFED's personality to seek the Court's approval of the desired conversion. Respondent Republic also disputes COCOFED's right to impose and prescribe terms and conditions on the proposed conversion, maintaining that the CIIF SMC common shares are sequestered assets and are in *custodia legis* under Presidential Commission on Good Government's (PCGG's) administration. It postulates that, owing to the sequestrated status of the said common shares, only PCGG has the authority to approve the proposed conversion and seek the necessary Court approval. In this connection, respondent Republic cites *Republic v. Sandiganbayan*[3] where the coconut levy funds were declared as *prima facie* public funds, thus reinforcing its position that only PCGG, a government agency, can ask for approval of the conversion.

On September 4, 2009, Jovito R. Salonga and four others sought leave to intervene. Attached to the motion was their Comment/Opposition-in-Intervention, asserting that "the government bears the burden of showing that the conversion is indubitably advantageous to the public interest or will result in clear and material benefit. Failure of the government to carry the burden means that the current status of the sequestered stocks should be maintained pending final disposition of G.R. Nos. 177857-58." They further postulate that "even assuming that the proposal to convert the SMC shares

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[2] *Id.*

[3] G.R. No. 88336, December 26, 1990, 192 SCRA 743.

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is beneficial to the government, it cannot pursue the exchange offer because it is without power to exercise acts of strict dominion over the sequestered shares." Lastly, they argue that "the proposed conversion x x x is not only not advantageous to the public interest but is in fact positively disadvantageous."

On September 4, 2009, respondent Republic filed a Supplemental Comment in which it cited the Partial Summary Judgment rendered by the Sandiganbayan on May 27, 2004 in Civil Case No. 33-F, declaring the Republic as owner, in trust for the coconut farmers, of the subject CIIF SMC shares (27%). The same comment also referred to Resolution No. 365-2009 passed on August 28, 2009 by the United Coconut Planters Bank (UCPB) Board of Directors expressing the sense that "the proposed conversion of the CIIF SMC common shares to SMC Series I preferred shares is financially beneficial."[4] Reference was also made to PCGG Resolution 2009-037-756 dated September 2, 2009, requesting the Office of the Solicitor General (OSG) to seek approval of this Court for the proposed conversion.[5] By way of relief, respondent Republic prayed that the PCGG be allowed to proceed and effect the conversion.

On the preliminary issue as to the proper party to seek the imprimatur on the conversion, the Court rules that it is the PCGG, not COCOFED, that is authorized to seek the approval of the Court of the Series 1 preferred shares conversion.

As records show, PCGG sequestered the 753,848,312 SMC common shares registered in the name of CIIF companies on April 7, 1986.[6] From that time on, these sequestered shares became subject to the management, supervision, and control of PCGG, pursuant to Executive Order No. (EO) 1, Series of 1986, creating that commission and vesting it with the following powers:

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[4] Annex "A", Supplemental Comment of respondent Republic, p. 6.

[5] Annex "B", *id.* at 7.

[6] *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 514 SCRA 25, 34.

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Sec. 3. The Commission shall have the power and authority:

x x x x x x x x x

(b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

(c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

Eventually, the coconut levy funds that were used to acquire the sequestered CIIF SMC common shares in question were peremptorily determined to be *prima facie* public funds. The Court, in *Republic v. COCOFED*,[7] elucidated on the nature of the coconut levy funds:

Coconut Levy Funds Are Prima Facie Public Funds

To avoid misunderstanding and confusion, this Court will even be more categorical and positive than its earlier pronouncements: the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds.

Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations. Undeniably, coconut levy funds satisfy this general definition of public funds, because of the following reasons:

1. Coconut levy funds are raised with the use of the police and taxing powers of the State.

2. They are levies imposed by the State for the benefit of the coconut industry and its farmers.

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[7] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

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3. Respondents have judicially admitted that the sequestered shares were purchased with public funds.

x x x x x x x x x

6. The very laws governing coconut levies recognize their public character.[8]

x x x x x x x x x

2. Coconut Funds Are Levied for the Benefit of the Coconut Industry and Its Farmers.

x x x x x x x x x

And explaining the PCGG's authority to vote the sequestered shares acquired from the coconut levy, the Court further wrote:

Having Been Acquired With Public Funds, UCPB Shares Belong, Prima Facie, to the Government

Having shown that the coconut levy funds are not only affected with public interest, but are in fact *prima facie* public funds, this Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the *prima facie* beneficial and true owner.

As stated at the beginning, voting is an act of dominion that should be exercised by the share owner. One of the recognized rights of an owner is the right to vote at meetings of the corporation. The right to vote is classified as the right to control. Voting rights may be for the purpose of, among others, electing or removing directors, amending a charter, or making or amending by laws. Because the subject UCPB shares were acquired with government funds, the government becomes their *prima facie* beneficial and true owner.

Ownership includes the right to enjoy, dispose of, exclude and recover a thing without limitations other than those established by law or by the owner. x x x And the right to vote shares is a mere incident of ownership. In the present case, the government has been shown to be the *prima facie* owner of the funds used to purchase the shares. Hence, it should be allowed the rights and privileges flowing from such fact.[9]

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[8] *Id.* at 481-482.

[9] *Id.* at 491-492.

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Time and again, the Court has likened sequestration to preliminary attachment and receivership under Rules 57 and 59 of the Rules of Court and has accordingly applied the said rules to sequestration cases. So it was that in *Republic v. Sandiganbayan*[10] the Court noted that the powers and duties of the PCGG as conservator and protector of sequestered assets are virtually the same as those possessed by a receiver under Rule 59, Section 6:

> SEC. 6. *General powers of receiver*.—Subject to the control of the court in which the action or proceeding is pending, a receiver shall have the power to bring and defend, in such capacity, actions in his own name; to take and keep possession of the property in controversy; to receive rents; to collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is the receiver; to compound for and compromise the same; to make transfers; to pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same; and **generally to do such acts respecting the property as the court may authorize**. However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action.
>
> No action may be filed by or against a receiver without leave of the court which appointed him. (Emphasis supplied.)

And in *Republic v. Sandiganbayan*,[11] the Court observed that "the PCGG's power to sequester alleged ill-gotten properties is likened to the provisional remedies of preliminary attachment or receivership which are always subject to the control of the court."

The PCGG, therefore, as the "receiver" of sequestered assets and in consonance with its duty under EO 1, Series of 1986, to protect and preserve them, has the power to exercise acts of dominion provided that those acts are approved by the proper court.

From the foregoing discussion, it is clear that it is the PCGG—not COCOFED or the CIIF companies—that has

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[10] *Supra* note 3, at 753-754.

[11] G.R. No. 88228, June 27, 1990, 186 SCRA 864, 871.

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the right and/or authority during sequestration to seek this Court's approval for the proposed conversion. Consequently, the terms and conditions sought by COCOFED for the conversion are not material to the proposed conversion. At most, COCOFED's prayer for approval of the conversion reflects its conformity to said transfiguration.

After a circumspect evaluation of the incident at bar, we resolve to **approve** the conversion, taking into account certain circumstances and hard economic realities as discussed below:

Contrary to the assertion of intervenors Salonga, *et al.*, respondent Republic has satisfactorily demonstrated that the conversion will redound to the clear advantage and material benefit of the eventual owner of the CIIF SMC shares in question.

Positive action must be taken in order to preserve the value of the sequestered CIIF SMC common shares. The worldwide economic crisis that started last year affected the Philippines and adversely impacted on several banks and financial institutions, resulting in billions of loses. The Philippine Stock Exchange Index retreated by a record 12.3% on October 27, 2008, the biggest single day fall since July 24, 1987. This year, 2009, the recorded index of 2,859 has not regained the pre-October 27, 2008 level of 3,837.89.

Moreover, the CIIF SMC shares traded in the local bourse have substantially dropped in value in the last two (2) years. The SMC Class "A" shares, which commanded the unit price of PhP 48 per share as of November 6, 2008, were trading at PhP 57.50 in 2007 and PhP 65 in 2006. SMC Class "B" shares, on the other hand, which fetched a price of PhP 49 per share on November 6, 2008, were priced at PhP 61 in 2007 and PhP 74.50 in 2006. As of June 1, 2009, Class "A" and Class "B" common shares of CIIF SMC closed at PhP 53.50 and PhP 54 per unit, respectively. CIIF SMC share prices may decline over the years.

No doubt shares of stock are not the safest of investments, moored as they are on the ever changing worldwide and local financial conditions. The proposed conversion would provide

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better protection either to the government or to the eventually declared real stock owners, depending on the final ruling on the ownership issue. In the event SMC suffers serious financial reverses in the short or long term and seeks insolvency protection, the owners of the preferred shares, being considered creditors, shall have, *vis-à-vis* common stock shareholders, preference in the corporate assets of the insolvent or dissolved corporation. In the case of the SMC Series 1 Preferred Shares, these preferential features are made available to buyers of said shares and are amply protected in the investment.[12]

More importantly, the conversion will ensure a higher cumulative and fixed dividend rate of 8% per annum computed at an issue price of PhP 75 per share, a yield not currently available to common shareholders. The OSG succinctly explained the undeniable advantages to be gained from the conversion, thus:

> Assuming that the data contained in the SMC Information Sheet is accurate and true, the closing prices of SMC Common Class "A" and "B" Shares, as of June 1, 2009, are Fifty-three pesos and 50/100 (₱53.50) and Fifty-four Pesos (₱54.00), respectively. The proposed conversion into Series 1 Preferred Shares would give said share an issue price of seventy-five pesos (₱75.00) per share. Corollarily, while the current SMC Common shares have no fixed dividend rate, the Series 1 Preferred Shares have a determined dividend rate of eight percent (8%) per annum. On these points alone, **the benefits to the shareholders are clearly quantifiable.**
>
> Further still, the SMC Series 1 Preferred Shares are deemed cumulative. As a cumulative share with preference in the payment of dividends, it is entitled to cumulate the dividends in those years where no dividend is declared. Thus, if a cumulative share is entitled to 10% of par value as cumulative dividend yearly, where no dividends are declared in 1989, 1990 and 1991 because there are no profits, and dividends are declared in 1992 because of surplus or unrestricted earnings, the holder of the preferred cumulative shares is entitled to receive 40% of par value as his cumulative dividends for the years 1989 to 1991.

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[12] Annex "A" of COCOFED's Urgent Motion to Approve the Conversion of the SMC Common Shares into Series 1 Preferred Shares, p. 20.s

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The declaration of dividends is still generally subject to the discretion of the board but once dividends are declared, the cumulative preferred shareholders are entitled to receive the dividends for the years when no declaration was made. When dividends are declared, cumulative dividends must be paid regardless of the year in which they are earned. Therefore, holders of the converted preferred shares are assured of accumulated annual dividends.[13] (Emphasis added.)

As it were, the issue price of PhP 75 per share represents a 40% premium, more or less, over the prevailing market price, *i.e.*, about PhP 54 per share, of the CIIF SMC common shares as of June 1, 2009. The 40% premium amply covers the "block" and "control" features of the CIIF SMC common shares. These shares below 33.33% are, to many, not even considered vested with "control" premium. It can be safely assumed that the issue price of PhP 75 per share was based on an independent valuation of the CIIF SMC shares, a requisite usually prescribed as a prelude to Board approval.

The redemption value of the preferred shares depends upon and is actually tied up with the issue price plus all the cumulated and unpaid dividends. This redemption feature is envisaged to effectively eliminate the market volatility risks on the side of the share owners. Undoubtedly, these are clear advantages and benefits that inure to the share owners who, on one hand, prefer a stable dividend yield on their investments and, on the other hand, want security from the uncertainty of market forces over which they do not have control.

Recent developments saw SMC venturing and diversifying into several huge projects (*i.e.,* oil, power, telecommunications), business moves which understandably have caused some critics to raise the concern over a possible prejudice to the CIIF SMC common shares presently under sequestration should such investments turn sour. A number of people claim these new acquisitions are likely to dissipate the assets of SMC. Some sectors ratiocinate that the huge capital investments poured into these projects may substantially erode SMC's profitability

[13] Republic's Comment dated August 14, 2009, pp. 23-24.

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in the next few years, resulting in diminished dividends declaration. The proposed conversion will address the concerns and allay the fears of well meaning sectors, and insulate and protect the sequestered CIIF SMC shares from potential damage or loss.

Moreover, the conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares. Preservation is attained by fixing the value today at a significant premium over the market price and ensuring that such value is not going to decline despite negative market conditions. Conservation is realized thru an improvement in the earnings value via the 8% per annum dividends versus the uncertain and most likely lower dividends on common shares.

A fixed dividend rate of 8% per annum translates to PhP6 per preferred share or a guaranteed yearly dividend of PhP4,523,308,987.20 for the entire sequestered CIIF SMC shares. The figures jibe with the estimate made by intervenors Salonga, *et al*.[14] Compare this amount to the dividends declared for common shares for the recent past years which are in the vicinity of PhP1.40 per unit share or a total amount of PhP1,055,387,636.80 per annum. The whopping difference is around PhP 3.5 billion annually or PhP 10.5 billion in three (3) years. On a year-to-year basis, the difference reflects an estimated increase of 77% in dividend earnings. With the bold investments of SMC in various lines of business, there is no assurance of substantial earnings in the coming years. There may even be no earnings. The modest dividends that accrue to the common shares in the recent years may be a thing of the past and may even be obliterated by poor or unstable performance in the initial years of operation of newly-acquired ventures.

In the light of the above findings, the Court holds that respondent Republic has satisfactorily hurdled the *onus* of showing that the conversion is advantageous to the public interest or will result in clear and material benefit to the eventually declared

[14] Comment/Opposition in Intervention, p. 23.

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stock owners, be they the coconut farmers or the government itself.

In their Comment/Opposition in Intervention, intervenors Salonga, *et al.*, however, assert that the proposed conversion is positively disadvantageous to respondent. They label the conversion as a "devious compromise favorable only to COCOFED and Cojuangco, Jr." This allegation is simply conjectural. No evidence of the alleged compromise was presented, as it was only COCOFED that initiated the proposal for conversion.

The claim that the Cojuangco, Jr. group will be able to oust the government nominees from the SMC Board, buy the sequestered shares without encumbrances, and do so with SMC funds is inaccurate and even speculative. Intervenors completely miss the point. The genuine issue is whether or not the desired conversion will be beneficial and advantageous to the government or the eventual owners of the shares. The perceived full control by Cojuangco, Jr. over SMC after the common shares are released from sequestration is hardly relevant to the propriety of the conversion. Intervenors have not been able to demonstrate how the domination of SMC by Cojuangco, Jr., if that should come to pass, will prejudice or impair the interests of respondent Republic in the preferred shares. The more important consideration in the exercise at hand is the preservation and conservation of the preferred shares and the innumerable benefits and substantial financial gains that will redound to the owner of these shares.

The conversion, so intervenors claim, will result in the loss of voting rights of PCGG in SMC and enable Cojuangco, Jr. to acquire the sequestered shares, without encumbrances, using SMC funds. This is incorrect. The common shares after conversion and release from sequestration become treasury stocks or shares. Treasury shares under Sec. 9 of the Corporation Code (*Batas Pambansa Blg.* 68) are "shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means. Such shares may again

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be disposed of for a reasonable price fixed by the board of directors."

A treasury share or stock, which may be common or preferred, may be used for a variety of corporate purposes, such as for a stock bonus plan for management and employees or for acquiring another company. It may be held indefinitely, resold or retired. While held in the company's treasury, the stock earns no dividends and has no vote in company affairs.[15] Thus, the CIIF common shares that would become treasury shares are not entitled to voting rights. And should conversion push through, SMC, not Cojuangco, Jr., becomes the owner of the reacquired sequestered CIIF SMC common shares. Should SMC opt, however, to sell said shares in the future, prospective buyers, including possibly Cojuangco, Jr., have to put up their own money to acquire said common shares. Thus, it is erroneous for intervenors to say that Cojuangco, Jr., with the use of SMC funds, will be acquiring the CIIF SMC common shares.

It bears to stress that it was SMC which amended its articles of incorporation, reclassifying the existing composition of the authorized capital stock from PhP4.5 billion common shares to PhP 3.39 billion common shares and PhP1.11 billion Series 1 Preferred Shares. The conversion in question is a legitimate exercise of corporate powers under the Corporation Code. The shares in question will not be acquired with SMC funds but by reason of the reconfiguration of said shares to preferred shares.

The Court can perhaps take judicial notice of the government's enunciated policy to reduce, if not eliminate, its exposure to business. The PCGG has held on to the sequestered shares for more than 20 years and this may be the opportune time to do away with its participation in SMC, especially considering the claim that the sequestration of the CIIF SMC common shares has frightened away investors and stunted growth of the company.

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[15] S.H. Gufis, *BARON'S DICTIONARY OF LEGAL TERMS* 508 (3rd ed., 1998).

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The only interest of PCGG in SMC is to protect the CIIF SMC common shares from dissipation. PCGG is neither tasked to bar Cojuangco, Jr., or any individual for that matter, from securing domination of the SMC Board, nor avert Cojuangco, Jr.'s acquisition of the CIIF SMC common shares once released from sequestration. Even if the conversion is approved, nothing can prevent the government from prosecuting the people whom intervenors tag as responsible for "greasing the government and the coconut farmers of billions of pesos."

On the other hand, COCOFED does not stand to benefit from the conversion, because portions of the dividends or proceeds from the redemption cannot be allocated directly to proposed beneficiaries, as this will be contrary to Sec. 2 of Presidential Decree No. (PD) 961,[16] as amended by PD 1468. In addition, the preferred shares which will be placed in the names of the CIIF companies, or the dividends derived from said shares, shall remain as sequestered assets until final resolution of the ownership issue.

Intervenors suggest a deferment of any action on the conversion until the CIIF SMC shares ownership issue is settled. The General Offer of conversion, originally expiring on August 24, 2009, was extended up to September 21, 2009. Availment of the conversion calls for immediate action. Almost all of the parties-in-interest—COCOFED, UCPB as administrator of the CIIF, and respondent Republic through PCGG—have in one way or another signified their assent to the conversion.

It has not successfully been demonstrated, however, how the alleged eventual ownership by Cojuangco, Jr. of the sequestered shares will prejudice the interests of respondent Republic in the preferred shares. It cannot likewise be figured out what distinct benefits the government will obtain if the common shares are converted to preferred shares or used in another manner after final resolution of the ownership issue.

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[16] An Act to Codify the Laws Dealing with the Development of the Coconut and Other Palm Oil Industry and for Other Purposes (1976).

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The indicated advantages of conversion, if accomplished now, will surely make up for the apprehensions arising from the possible domination by Cojuangco, Jr. of the SMC in the future. The primordial consideration is that the shares be shielded from dissipation and potential risks that may arise from uncertainty of market and business conditions. The conversion will ensure stable share value and enhanced earnings of the shares.

Lest it be overlooked, the decision on whether to proceed with the conversion or defer action thereon until final adjudication of the issue of ownership over the sequestered shares properly pertains to the executive branch, represented by the PCGG. Just as it cannot look into the wisdom behind the enactment of a law, the Court cannot question the wisdom and reasons behind the decision of the executive branch to ask for the conversion of the common shares to preferred shares. Else, the Court would be trenching on the well-settled doctrine of separation of powers. The cardinal postulate explains that the three branches must discharge their respective functions within the limits of authority conferred by the Constitution. Under the principle of separation of powers, neither Congress, the President, nor the Judiciary may encroach on fields allocated to the other branches of government. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws, and the judiciary to their interpretation and application to cases and controversies.[17]

Jurisprudence is well-established that the courts cannot intervene or interfere with executive or legislative discretion exercised within constitutional limits. In *JG Summit Holdings, Inc. v. Court of Appeals*,[18] the Court explained:

> The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide

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[17] *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[18] G.R. No. 124293, January 31, 2005, 450 SCRA 169; citing *Bureau Veritas v. Office of the President*, G.R. No. 101678, February 3, 1992, 205 SCRA 705, 717-719.

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latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award (*Jalandoni v. NARRA,* 108 Phil. 486 [1960]). x x x The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies x x x. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. **Otherwise, it strays into the realm of policy decision-making**.

It is only upon a clear showing of grave abuse of discretion that the Courts will set aside the award of a contract made by a government entity. Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power (*Filinvest Credit Corp. v. Intermediate Appellate Court*, No. 65935, 30 September 1988, 166 SCRA 155). The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as to act at all in contemplation of law, where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility (*Litton Mills, Inc. v. Galleon Trader, Inc., et al.*, L-40867, 26 July 1988, 163 SCRA 489). (Emphasis supplied.)

In *Ledesma v. Court of Appeals*,[19] the Court added:

x x x [A] court is without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. It is not empowered to substitute its judgment for that of Congress or of the President. It may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

In *Francisco, Jr. v. UEM-MARA Philippines Corporation*,[20] the Court elucidated the co-equal status of the three branches of government:

Considering the co-equal status of the three branches of government, courts may not tread into matters requiring the **exercise of discretion** of a functionary or office in the executive and legislative

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[19] G.R. No. 113216, September 5, 1997, 278 SCRA 656.

[20] G.R. Nos. 135688-89, October 18, 2007, 536 SCRA 518, 530.

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branches, unless it is clearly shown that the government official or office concerned abused his or its discretion. x x x

Furthermore,

> "x x x courts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is so because such bodies are generally better equipped technically to decide administrative questions and that non-legal factors, such as government policy on the matter, are usually involved in the decisions." (Emphasis supplied.)

Corollary to the principle of separation of powers is the doctrine of primary jurisdiction that the courts will DEFER to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them. Administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.[21]

The only instance when the Courts ought to interfere is when a department or an agency has acted with grave abuse of discretion or violated a law. A circumspect review of the pleadings and evidence extant on record shows that the PCGG approved the conversion only after it conducted an in-depth inquiry, thorough study, and judicious evaluation of the pros and cons of the proposed conversion. PCGG took into consideration the following:

(1) Resolution of the UCPB Board of Directors approved during its July 20, 2009 special meeting, where it categorically decided and concluded that it is financially beneficial to convert the CIIF SMC shares as offered by the SMC.

(2) Resolution No. 365-2009 of the UCPB Board of Directors issued on August 28, 2009 reiterating its position that the proposed conversion is financially beneficial, thus:

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[21] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*, G.R. Nos. 169080, 172936, 176226 & 176319, December 19, 2007, 541 SCRA 166, 209.

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WHEREAS, in its regular meeting on June 26, 2009, the UCPB Board of Directors instructed the UCPB-TBG to undertake a study on the financial and economic viability of the proposed SMC share conversion;

WHEREAS, the UCPB Board of Directors in a special meeting on July 16, 2009 noted and referred to the PCGG and CIIF 14 Holding Companies for appropriate action UCPB-TBG's study on the financial and economic viability of the proposed SMC share conversion, which states that, "x x x it would be more advantageous to convert the CIIF's SMC common shares to the proposed SMC Series "1" Preferred Shares.";

WHEREAS, during a special meeting on July 20, 2009 among the UCPB committee, PCGG and CIIF 14 Holding Companies, **UCPB-TBG's study on the financial and economic viability of the proposed SMC share conversion was affirmed and endorsed to the PCGG and CIIF 14 Holding Companies for appropriate action**;

WHEREAS, apart from the legal issues surrounding the CIIF SMC shares and **considering the immediate concern to preserve the value of the said shares, taking into account the current global financial crisis and its effects on the Philippine financial situation, and as recommended by the UCPB-TBG, the proposed SMC share conversion is financially and economically advantageous**;

WHEREAS, in addition, **given the dynamic market environment, when the shares are converted, the shareholders will no longer gain from any profits or suffer from any losses resulting from the change in business strategy of SMC, or from any change in the economic situation or market developments**;

BE IT RESOLVED, That, **based on the facts and circumstances prevailing as of even date and the results of the study conducted by the UCPB-TBG, UCPB, as the administrator of the CIIF and in compliance with its mandate under PD 1468, concluded that it is financially beneficial to convert the CIIF SMC shares as offered by the San Miguel Corporation**. (Emphasis supplied.)

(3) The Department of Finance, through Secretary Margarito B. Teves, upon the recommendation of the Development Bank of the Philippines, confirmed that the CIIF SMC shares conversion is financially and economically advantageous and that it shall

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work for the best interest of the farmers who are the ultimate and beneficial owners of said shares.

(4) The letter of the OSG dated July 30, 2009 opined that the proposed conversion is legally allowable as long as PCGG approval is obtained, thus:

> Parenthetically, x x x our Office received a copy of COCOFED, *et al.*'s Urgent Motion To Approve the Conversion of the SMC Common Share Into SMC Series 1 Preferred Shares dated July 24, 2009. Attached therewith is the SMC Notice of Regular Meeting and Information Statement dated July 23, 2009 which discusses and compares the common shares and Series 1 preferred shares. As can be gleaned from the x x x Information Statement dated July 23, 2009, the advantages of conversion of the common shares to Series 1 preferred shares are as follows:
>
> 1. The Series 1 preferred shares shall be entitled to receive cash dividends upon declaration made at the sole option of the Board of Directors, fixed at 8% per annum as determined by Management. On the other hand, there is no fixed dividend rate for common shares. Further, no dividend shall be declared and paid to holders of common shares unless cash dividends shall have been declared and paid to all holders of the Series 1 preferred shares. Moreover, the Series 1 preferred shares are cumulative, which means that should dividend payments get delayed, it would eventually be paid in the future. This feature is not available for common shareholders.
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> 2. The Series 1 preferred shares are redeemable in whole or in part, at the sole option of the Company (SMC), at the end of three (3) years from the Issue Date or on any Dividend Payment Date thereafter, at the price equal to the Issue Price plus any accumulated unpaid cash dividends. Series 1 preferred shares are also perpetual or have no stated maturity.
>
> 3. Should SMC decide not to redeem the Series 1 preferred shares at the end of the fifth year from Issue Date, the Dividend Rate will be adjusted to the higher of 8% per annum, and the prevailing 10-year Philippine Dealing System Treasury Fixing (PDST-F) Rate plus a spread of up to 300 basis points. This is an advantage because there is the opportunity for the Series 1 Preferred Shareholders to enjoy a higher dividend rate.

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4. The Series 1 preferred shares have preference over common shares upon liquidation.

5. The Series 1 preferred shares shall be listed with the Philippine Stock Exchange within one year from issue date which should provide liquidity to the issue.

On the other hand, the disadvantages to the conversion are as follows:

1. Holders of Series 1 preferred shares will have no voting rights except as provided by law. Thus, the PCGG's representatives in the SMC Board will have been effectively removed from participating in the management of the SMC.

2. Series 1 preferred shares have no maturing date as these are perpetual shares. There is no definite assurance that the SMC will exercise its option of redemption.

3. Holders of the Series 1 preferred shares shall not be entitled to any participation or share in the retained earnings remaining after dividend payment shall have been made on Series 1 preferred shares.

4. There is no expiry date on the SMC's option to redeem the Series 1 Preferred Shares. Should market interest rates fall below the Dividend Rate, on or after the 3rd anniversary from Issue Date, the SMC may exercise the option to redeem the Series 1 Preferred Shares.

It is also our considered view that the conversion of the CIIF SMC common shares to SMC Series 1 preferred shares does not take them away from the jurisdiction of the courts. In conversion, the SMC common shares are merely reclassified into SMC Series 1 preferred shares without changing the proportional interest of the stockholder in San Miguel Corporation. Verily, the conversion of the SMC common shares to SMC Series 1 preferred shares does not involve a change in the condition of said shares.

The conversion of the SMC common shares to SMC Series 1 preferred shares and its eventual redemption is legally allowable as long as the approval of the PCGG is obtained for the amendment of the Articles of Incorporation of SMC, to allow the creation of the proposed preferred share with its various features. As long as the PCGG approval is obtained, the exercise of the redemption feature of the SMC in accordance with the Amended Articles of Incorporation

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would not constitute a "sale" of the sequestered asset that is prohibited.

Hence, on September 2, 2009, the PCGG issued Resolution No. 2009-037-756 approving the proposed conversion:

WHEREAS, guided by the foregoing, the Commission interposes no objection to the conversion of the CIIF shares in SMC, as well as the PCGG ITF-CARP shares, including the qualifying shares issued to PCGG/government nominee-directors, to Series "1" Preferred shares.

NOW, THEREFORE, be it RESOLVED, as it is hereby RESOLVED, that the Commission hereby APPROVES, as it is hereby APPROVED, the conversion of the CIIF owned common shares, as well as the PCGG ITF-CARP common shares, including the qualifying shares issued to PCGG/government nominee-directors in San Miguel Corporation (SMC), to Series "1" Preferred Shares, **PURSUANT to the confirmation of the Department of Finance (DOF) and legal opinion of the Office of the Solicitor General (OSG), and SUBJECT to the conditions set forth in the said OSG opinion and requests of the OSG to seek the approval of the Honorable Supreme Court for the said proposed conversion**. (Emphasis supplied.)

The approval by the PCGG, for respondent Republic, of the conversion is a policy decision which cannot be interfered with in the absence of a showing or proof, as here, that PCGG committed grave abuse of discretion.

In the similar *Palm Avenue Realty Development Corporation v. PCGG*,[22] the Court ruled that the approval by PCGG of the sale of the sequestered shares of petitioner corporations allegedly owned and controlled by Kokoy Romualdez was legal and could not be the subject of a writ of *certiorari* or prohibition, absent proof that PCGG committed a grave abuse of discretion. The price of PhP 29 per share approved by the PCGG was even below the prevailing price of PhP 43 per share.

The Court ratiocinated in that case, thus:

It was no doubt in the light of these undeniable actualities, and in an attempt to discharge its responsibility to preserve the sequestered

[22] G.R. No. 76296, August 31, 1987, 153 SCRA 579.

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stock and put an end to its continuing and inexorable depreciation, that the PCGG performed the acts now subject of attack in the case at bar. **Upon these facts and considerations, it cannot be said that the PCGG acted beyond the scope of the power conferred upon it by law. Indeed, it would appear that its acts were motivated and guided by the law creating it and prescribing its powers, functions, duties and responsibilities. Neither can it be said that it acted with grave abuse of discretion. It evidently considered and assessed the facts, the conflicting positions of the parties concerned, and the options open to it, before taking the course of action that it did. The possibility that it has erred cannot, to be sure, be completely eliminated. As above stated, it is entirely possible that a better bargain might have been struck with someone else. What cannot be denied is that the arrangement actually adopted and implemented has resulted in the satisfactory reconciliation of the conflicting facts in the case and the preservation of the stock for the benefit of the party that may finally be adjudged by competent court to be the owner thereof, and to a certain extent, to the advantage of numerous employees**.

The petitioners have failed to demonstrate that respondent PCGG has acted without or in excess of the authority granted to it by law, or with grave abuse of discretion, or that it had exercised judicial or quasi-judicial functions in this case, correctible by *certiorari*. The Court thus finds itself bereft of any justification to issue the prerogative writ of *certiorari* or prohibition that petitioners seek. (Emphasis supplied.)

Salonga, *et al.* question the position of respondent Republic that the benefits derived from the conversion are clearly quantifiable. As they claim, the price differential of PhP 21 per share is only profit on paper and at the price of losing membership in the SMC Board. Moreover, they point out that the dividends to be distributed to the common shares may even be higher than the guaranteed 8% dividends.

These contentions are specious. While it is conceded that the price differential of PhP 21 is an unrealized gain, the clear financial advantage derived from the transaction is not the price differential but the guaranteed 8% dividend per annum based on the issue price of PhP 75 per share as compared to a much lower dividend rate that common shares may earn. Worse, there

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may even be no dividends for the common shares after distribution of the dividends to the holders of the preferred shares in the event of poor or weak business performance. In addition, unless the Series 1 Preferred Shares are redeemed at the end of the fifth year from issue date, the dividend rate of 8% shall be increased based on the following formula:

> [T]he dividend rate shall be adjusted to the higher of (i) the Dividend Rate, and (ii) the prevailing 10-year PDST-F Rate (or such successor benchmark rate) as displayed under the heading "Bid Yield" as published on the PDEx Page (or such successor page) of Bloomberg (or such successor electronic service provider) at approximately 11:30 a.m. Manila time on the date corresponding to the end of the fifth year from the Issue Date (or if not available, the PDST-F Rate on the banking day prior to such date, or if still not available, the nearest preceding date on which the PDST-F Rate is available, but if such nearest preceding date is more than five days prior to the date corresponding to the end of the fifth year from the Issue Date, the Board of Directors at its reasonable discretion shall determine the appropriate substitute rate), plus a spread of up to 300 basis points, in either case calculated in respect of each share by reference to the Issue Price.[23]

Undoubtedly, the holders of preferred shares will have distinct advantages over common shareholders.

By relinquishing its voting rights in the SMC Board through the conversion, the government, it is argued, would be surrendering its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth. It may, as feared, be rendered helpless in preventing an impending peril of a "lurking dissipation."

This contention has no merit.

The mere presence of four (4) PCGG nominated directors in the SMC Board does not mean it can prevent board actions that are viewed to fritter away the company assets. Even under the status quo, PCGG has no controlling sway in the SMC Board, let alone a veto power at 24% of the stockholdings. In relinquishing

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[23] Annex "A", Urgent Motion: To Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares.

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the voting rights, the government, through PCGG, is not in reality ceding control.

Moreover, PCGG has ample powers to address alleged strategies to thwart recovery of ill-gotten wealth. Thus, the loss of voting rights has no significant effect on PCGG's function to recover ill-gotten wealth or prevent dissipation of sequestered assets.

It is also not correct to say that the holders of the preferred shares lose all their voting rights. Sec. 6 of the Corporation Code provides for the situations where non-voting shares like preferred shares are granted voting rights, *viz*:

> Section 6. *Classification of shares*.—The shares of stock in corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: ***Provided*, That no share may be deprived of voting rights except those classified and issues as "preferred" or "redeemable" shares, unless otherwise provided in this Code**: *Provided, further*, That there shall always be a class or series of shares which have complete voting rights.
>
> x x x x x x x x x
>
> Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:
>
> 1. Amendment of the articles of incorporation;
> 2. Adoption and amendment of by-laws;
> 3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporation property;
> 4. Incurring, creating or increasing bonded indebtedness;
> 5. Increase or decrease of capital stock;
> 6. Merger or consolidation of the corporation with another corporation or other corporations;
> 7. Investment of corporate funds in another corporation or business in accordance with this Code; and

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8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

In addition, the holders of the preferred shares retain the right to dissent and demand payment of the fair value of their shares, to wit:

Sec. 81. *Instances of appraisal right*.—Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;

2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code, and

3. In case of merger or consolidation.

Lastly, the preferred shares will be placed under sequestration and management of PCGG. It has powers to protect and preserve the sequestered preferred shares even if there are no government-nominated directors in the SMC Board.

Thus, the loss of four (4) board seats would not in reality prejudice the rights and interests of the holders of the preferred shares. And such loss is compensated by the tremendous financial gains and benefits and enormous protection from loss or deterioration of the value of the CIIF SMC shares. The advantages accorded to the preferred shares are undeniable, namely: the significant premium in the price being offered; the preference enjoyed in the dividends as well as in the liquidation of assets; and the voting rights still retained by preferred shares in major corporate actions. All things considered, conversion to preferred shares would best serve the interests and rights

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of the government or the eventual owner of the CIIF SMC shares.

It is likewise postulated that the dividends distributed to the common shares may end up higher than 8% guaranteed to preferred shares. This assumption is speculative. With the huge investments SMC poured into several big ticket projects, it is unlikely that there will be much earnings left to be distributed to common shareholders. And to reiterate, the decision to convert is best left to the sound business discretion of the government agencies concerned.

Salonga, *et al.* also argue that the proposed redemption is a right to buy the preferred shares at less than the market value. That the market value of the preferred shares may be higher than the issue price of PhP 75 per share at the time of redemption is possible. But then the opposite scenario is also possible. Again, the Court need not delve into policy decisions of government agencies because of their expertise and special knowledge of these matters. Suffice it to say that all indications show that SMC will redeem said preferred shares in the third year and not later because the dividend rate of 8% it has to pay on said shares is higher than the interest it will pay to the banks in case it simply obtains a loan. When market prices of shares are low, it is possible that interest rate on loans will likewise be low. On the other hand, if SMC has available cash, it would be prudent for it to use such cash to redeem the shares than place it in a regular bank deposit which will earn lower interests. It is plainly expensive and costly for SMC to keep on paying the 8% dividend rate annually in the hope that the market value of the shares will go up before it redeems the shares. Likewise, the conclusion that respondent Republic will suffer a loss corresponding to the difference between a high market value and the issue price does not take into account the dividends to be earned by the preferred shares for the three years prior to redemption. The guaranteed PhP 6 per share dividend multiplied by three years will amount to PhP 18. If one adds PhP 18 to the issue price of PhP 75, then the holders of the preferred shares will have actually attained a price of PhP 93 which hews closely to the speculative PhP 100 per

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share price indicated by movants-intervenors. In effect, there will not be much prejudice to respondent on the assumption that the speculative PhP 100 per share will be attained.

On the issue of the net dividends accruing to COCOFED, the Court rules that the dividends shall be placed in escrow either at the Land Bank of the Philippines or at the Development Bank of the Philippines in the name of respondent Republic and not COCOFED.

Salonga, *et al.* also contend that PCGG cannot pursue the exchange offer of SMC for want of power to exercise acts of strict dominion over the sequestered shares.

This is incorrect.

The Court, to be sure, has not barred the conversion of any sequestered common shares of a corporation into preferred shares. It may be argued that the conversion scheme under consideration may later on be treated as an indirect sale of the common shares from the registered owner to another person if and when SMC decides to redeem the Series 1 preferred shares on the third anniversary from the issue date of the preferred shares. Still, given the circumstances of the pending incident, the Court can validly allow the proposed conversion in accordance with Rule 57, Sec. 11, in relation to Rule 59, Sec. 6 of the Rules of Court. Sec. 11 reads:

> SEC. 11. *When attached property may be sold after levy on attachment and before entry of judgment*.—Whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that the property attached is perishable, or **that the interests of all the parties to the action will be subserved by the sale thereof, the court may order such property to be sold at public auction in such manner as it may direct, and the proceeds of such sale to be deposited in court to abide the judgment in the action**. (Emphasis supplied.)

Republic v. Sandiganbayan[24] teaches that sequestration is akin to preliminary attachment or receivership, thus:

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[24] *Supra* note 3.

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As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, or receivership. x x x By attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending the action. x x x By receivership, property, real or personal, which is subject of litigation, is placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it. x x x All these remedies—sequestration, freezing, provisional, takeover, attachment and receivership—are provisional, temporary, designed for particular exigencies, attended by no character of permanency or finality, and **always subject to the control of the issuing court or agency**. (Emphasis supplied.)

Even if the conversion-cum-redemption partakes of an indirect sale, PCGG can be allowed to approve the conversion in line with our ruling in *Palm Avenue Realty Development Corporation*,[25] subject to the approval of the Court.

Evidently, as long as the interests of all the parties will be subserved by the sale of the sequestered properties, the Court may allow the properties to be sold. More so, the Rules would allow the mere conversion of the shares of stock given the evident benefit that all the parties would receive from such conversion that far outweighs any perceived disadvantage. Thus, the Court is clearly empowered to allow the conversion herein pressed by the PCGG.

While the PCGG, as sequestrator, does not exercise acts of ownership over sequestered assets, the proper court, where the case involving the sequestered asset is pending, may, nevertheless, issue a positive and definite order authorizing the sale of said assets. As we held in *Republic v. Sandiganbayan*:

Our temporary restraining order lifting the Sandiganbayan restraining order did not, by any stretch of the imagination, authorize PCGG to sell the Falcon aircraft. A *definite and positive order* of a court is needed before the jet plane may be sold. The proper procedure

[25] *Supra* note 22.

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after the lifting of the restraining order was for PCGG to go to Sandiganbayan and ask for *formal authority* to sell the aircraft.[26] x x x

The ruling in *Republic v. Sandiganbayan* voiding the sale by PCGG of a sequestered jet does not apply squarely to the incident at bar, because PCGG did not, in that case, seek court approval before the sale. Moreover, PCGG was not able to provide any justification for the seizure of the jet from the lessee. In the pending incident before the Court, it has long been settled that the CIIF SMC common shares were bought by what have been declared as *prima facie* public funds. Thus, the sequestration is justified. More importantly, respondent Republic, as contained in the Supplemental Comment filed by the OSG dated September 4, 2009, has adopted Resolution No. 2009-037-756 approving the conversion of the shares, and has prayed for the approval by the Court of such conversion.

In sum, the conversion of the CIIF SMC Common Shares to Series 1 Preferred Shares should be approved in the best interests of everyone concerned including the government and the Filipino people.

Once the subject conversion is accomplished, the preferred shares shall remain in *custodia legis* and their ownership shall be subject to final ownership determination by the Court. In addition, the preferred shares shall be registered in the name of the CIIF companies until the final adjudication of the issue as to the true and legal owners of said shares. Unless and until the ownership issue shall have been resolved with finality, said preferred shares shall remain under sequestration and PCGG management.[27]

WHEREFORE, the Court *APPROVES* the conversion of the 753,848,312 SMC Common Shares registered in the name of CIIF companies to *SMC SERIES 1 PREFERRED SHARES* of 753,848,312, the converted shares to be registered in the names of CIIF companies in accordance with the terms and

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[26] *Supra* note 3, at 766.

[27] *Uy v. Sandiganbayan*, G.R. No. 111544, July 6, 2004, 433 SCRA 424, 431.

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conditions specified in the conversion offer set forth in SMC's Information Statement and appended as Annex "A" of COCOFED's Urgent Motion to Approve the Conversion of the CIIF SMC Common Shares into SMC Series 1 Preferred Shares. The preferred shares shall remain in *custodia legis* and their ownership shall be subject to the final ownership determination of the Court. Until the ownership issue has been resolved, the preferred shares in the name of the CIIF companies shall be placed under sequestration and PCGG management.

The net dividend earnings and/or redemption proceeds from the Series 1 Preferred Shares shall be deposited in an escrow account with the Land Bank of the Philippines or the Development Bank of the Philippines.

Respondent Republic, thru the PCGG, is hereby directed to cause the CIIF companies, including their respective directors, officers, employees, agents, and all other persons acting in their behalf, to perform such acts and execute such documents as required to effectuate the conversion of the common shares into SMC Series 1 Preferred Shares, within ten (10) days from receipt of this Resolution.

Once the conversion is accomplished, the SMC Common Shares previously registered in the names of the CIIF companies shall be released from sequestration.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Corona, Chico-Nazario, Nachura, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Carpio Morales, J., see dissenting opinion.

Brion, J., joins the dissent of *J*. Conchita Carpio Morales.

Leonardo-De Castro and *Peralta, JJ*., no part.

Quisumbing and *Carpio, JJ.,* on official leave.

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DISSENTING OPINION

CARPIO MORALES, *J.*:

Petitioner Philippine Coconut Producers Federation, Inc. (Cocofed) and its individual co-petitioners filed an Urgent Motion to Approve the Conversion of the San Miguel Corporation (SMC) Common Shares into SMC Series 1 Preferred Shares of July 24, 2009 (Motion).

Involved in the conversion into Series 1 Preferred Shares are 753,848,312 Class "A" and "B" common shares of SMC registered in the name of the Coconut Industry Investment Fund (CIIF) Holding Companies representing around 24% of the total SMC voting shares.

A trustee is not allowed by law to dispose of or deal with the trust assets below the actual market value

The subject block of shares is sufficient to elect four of the 15 members of the SMC Board of Directors. There is always a premium or added intrinsic value whenever a block of shares that is sufficient to elect a director is transacted. The owner of such block of shares will not dispose them of at the same price per share. The conversion value for the shares should include a professional valuation of the premium that should be part of the consideration and factored in the actual market price.

Without considering the premium inherent in this block of shares, the subject block of shares would be perpetually locked or impounded to a value much lower than the actual market value. In effect, the PCGG would be downgrading the value of the trust assets.

Moreover, one of the features of the conversion is an optional redemption and purchase. The terms provide that "SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares on the third anniversary from the Issue Date or on any Dividend Date thereafter at a redemption

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price equal to the Issue Price of the Preferred Shares plus all cumulated and unpaid cash dividends."

The majority opinion observes that the share prices of Class "A" and "B" common shares of SMC have been declining for the past three years, and closed in the local bourse at ₱53.50 and ₱54 as of June 1, 2009 compared to their 2006 prices of ₱65 and ₱74.50, respectively. With the conversion, the issue price is pegged at ₱75.

If at the time of redemption, however, the prevailing market price is higher than the issue price, then the redemption price is below the actual market price. In such instance and for apparent reasons, SMC could readily exercise its option. The PCGG would then be disposing of the trust assets below the actual market value.

If the reverse situation occurs, SMC could forego its option on the third year and exercise it on a future dividend date. SMC's availment of its optional redemption and purchase is thus risk-free.

A trustee and conservator, of whom the highest degree of diligence and rectitude is required, is not allowed by law to dispose of the assets held in trust below the actual market value. The redemption price should be the issue price or the then prevailing market price, whichever is higher, plus any unpaid cumulative dividends.

There is nothing urgent with the Urgent Motion

Petitioners denominated their Motion as urgent, albeit the original draft Resolution-basis of this Court's deliberative discussion, did not state the pressing need for the approval of the conversion. And considering that as of April 11, 2008, the Republic already filed its Comment on the Petition, there is no basis for the Court to immediately act on the motion to preserve the value of the SMC common shares or to protect the interest of the rightful owners *pendente lite*.

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Since the case already reached this Court on its terminal phase, it is incredulous for the parties to devise on the drawing board a scheme that will last beyond the next three years when a final decision is forthcoming in the next few months. The rhetorical speculation over the business climate during the remaining period of the final leg of the case is inconsequential compared to the assumption of greater risks from the conversion of the shares. The fleeting calvary of momentary waiting outweighs the eternal condemnation of a shortchanged transaction.

After the filing of the present Urgent Motion *and* the circulation by the *ponente* of the original draft Resolution thereon, the undersigned in her Reflections observed that the draft Resolution "effectively bars the PCGG from objecting to or even renegotiating the terms and conditions of the conversion."

In the final Resolution, the *ponente* relates that respondent Republic, this time **represented by the PCGG**, filed a Supplemental Comment reiterating its prayer for the approval of the present motion.

The majority opinion thus points out that the Republic, through the Office of the Solicitor General (OSG) and the PCGG, prays for the approval of the proposed conversion although it questions the personality of the Cocofed as movant. The assent of the parties, however, does not reduce the Court into a mere stamping pad.

The majority opinion concedes that all incidents arising from the sequestration case are always subject to the control of the court. The power to control the proceedings refers to the issuance of ancillary orders or writs to effectuate its judgment.[1]

It extends not only to the principal causes of action, *i.e.*, the recovery of ill-gotten wealth, but also to all incidents arising from, incidental to, or related to, such cases, such as the dispute over the sale of the shares, the propriety of the issuance of ancillary writs or provisional remedies relative thereto, and the

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[1] *Vide Republic v. Sandiganbayan*, G.R. No. 88126, July 12, 1996, 258 SCRA 685, 698.

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sequestration thereof.[2] Indeed, the court has ample power to make such interlocutory orders as may be necessary to ensure that its judgment would not be rendered ineffective.[3]

The principle is not a license, however, for the Court to issue every order the parties commonly deem fit. Recall that the remedies are intended to be *preservative* or *conservative* in nature, so that in any event, the assets may be returned to the rightful owner as far as possible in the **same condition** as it was at the time of sequestration.[4] In the present case, the rightful owner's business options would be tied with the terms and conditions of the conversion.

The majority opinion relies on *Republic v. Sandiganbayan*[5] on the Court's power to sanction a sale of a sequestered asset. There is no dispute that a proper court authority is a condition *sine qua non* to the sale of a sequestered property. The Court in said case added, however, that the PCGG may perform such acts of strict ownership only as may necessarily be required by or result from the exercise of its vested power to vote on the sequestered shares of stock of a corporation; and secondly, such act is essential to the attainment of the PCGG's stated purpose for sequestration, *i.e.*, to prevent the dissipation of the corporate assets.[6]

Far from complying with the strict and limited interpretation of the exercise of acts of ownership, the proposed conversion sells out the only recognized means by which the PCGG may exercise future acts of strict ownership (*i.e.*, through the right

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[2] *Soriano III v. Yuson*, No. 74910, August 10, 1988, 164 SCRA 226.

[3] *Republic v. Sandiganbayan*, G.R. No. 88228, June 27, 1990, 186 SCRA 864 where the Sandiganbayan, upon motion, placed the cash dividends of a sequestered corporation in *custodia legis* instead of allowing them to remain in the name and under the control of one of the litigants.

[4] *Bataan Shipyard and Engineering Co., Inc. (BASECO) v. PCGG*, 234 Phil. 180, 234 (1987).

[5] G.R. No. 88336, December 26, 1990, 192 SCRA 743.

[6] *Id*. at 755.

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to vote) and, as will be discussed hereafter, bargains away the safeguard against the dissipation of corporate assets.

The right to vote the sequestered shares to avoid dissipation of assets

As earlier stated, the subject block of shares is sufficient to elect four directors. The majority opinion discusses that the only disadvantage of the conversion scheme is the loss of the voting rights that common shareholders have.[7] It dismisses this loss by resorting to sophistry and instead vividly depicts a financial windfall.

Once the conversion is accomplished, the Republic surrenders its final arsenal in combating the maneuverings to frustrate the recovery of ill-gotten wealth.

The right to vote the sequestered shares, when proper under the circumstances, may only be exercised within the parameters and context of the stated purposes of sequestration or provisional takeover, *i.e.*, to prevent the dispersion or undue disposal of the corporate assets.[8]

Republic v. COCOFED[9] further elucidates this essential right. The Court therein explained that the PCGG generally cannot perform acts of strict ownership including the right to vote the sequestered shares and elect members of the board of directors. The only conceivable exception is in a case of takeover of a business belonging to the government or whose capital comes from public funds but which landed in private hands. There are two clear "public character" exceptions: (a) where government shares are taken over by private persons/ entities who/which registered them in their own names, and (b) where the capitalization or shares that were acquired with public funds but somehow landed in private hands. The *prima facie* beneficial owner should be given the privilege of enjoying

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[7] Except as provided by law.

[8] *Bataan Shipyard and Engineering Co., Inc. (BASECO) v. PCGG*, *supra* at 236.

[9] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

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the rights flowing from the *prima facie* fact of ownership. When the sequestered shares are alleged to have been acquired with ill-gotten wealth, then the "two-tiered test" is applied, to wit: (a) there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the state, and (b) there is immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends.

It was in that immediately-cited case that the Court ruled that for purposes of determining the right to vote the shares *pendente lite*, the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. The crucial question left, for purposes of exercising the right to vote, is whether there is immediate danger of dissipation.

In the present case, in the event of an immediate danger of dissipation after the proposed conversion, the Republic can no longer move to vote the sequestered shares and prevent the impending peril. **In case the conversion pushes through, the hands of the Republic are tied and helpless in the face of a lurking dissipation**.

While the promise of financial gains is alluring with the fixed dividend rate of 8% and preference in the liquidation of assets, there is nothing left to prevent the SMC from diluting its corporate assets, diversifying into risky ventures,[10] and consequently depreciating the market value of the shares. After all, SMC could not be forced to redeem the shares at the issue price of ₱75 when the market value is plummeting. Of course, there is that preference in the liquidation of assets that it can go after. By that time, the percentage in the total shareholdings may remain the same, but its equivalence in pecuniary terms, however, would have been watered down or devaluated.

It bears noting that what sequestration is guarding against is more on the dissipation of the corporate assets *than* the

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[10] The majority opinion, in fact, recognizes this aggressive policy of the SMC (Resolution, p. 13.).

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decrease of the share value. The law cannot possibly control the infinite market forces affecting the value of the stocks, but it can see to it that the corporate assets that these stocks represent remain intact.

I, therefore, vote to DENY the Urgent Motion.

THIRD DIVISION

[G.R. No. 179103. September 17, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PREMIER SHIPPING LINES, INC.,** *respondent.*

[G.R. No. 180209. September 17, 2009]

PREMIER SHIPPING LINES, INC., *petitioner, vs.* **NATIONAL POWER CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACT, CONSTRUED; CLAIM FOR ADDITIONAL COST INCURRED FOR THE SEGREGATION OF THE DELIVERED ITEMS AT THE DELIVERY POINTS, HELD IMPROPER.— Number 4, Article II (Scope of Work) of the contract provides that the contractor (Premier) shall provide labor and all necessary equipment for the *proper segregation of the delivered items at the designated stockyards*. This provision, according to Premier, shows that segregation could only be made at the port of destination and not at the port of origin. We do not subscribe to such explanation. There is nothing in said provision that limits or confines the segregation of the wood poles at the delivery points. What is clear from said provision is that the wood poles, when delivered at the points of destination, should have already been segregated as specified in the contract. Thus, it was up to the service provider/contractor to choose