

Republic Act No. 9505

An Act Establishing a Provident Personal Savings Plan, known as the Personal Equity and Retirement Account (PERA)

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. **Title.** - This Act shall be known as the "*Personal Equity and Retirement Account (PERA) Act of 2008*".

SEC. 2. **Declaration of Policy.** - It is declared the policy of the State to promote capital market development and savings mobilization by establishing a legal and regulatory framework of retirement plans for persons, comprised of voluntary personal savings and investments. The State recognizes the potential contribution of PERA to long-term fiscal sustainability through the provision of long-term financing and reduction of social pension benefits.

SEC. 3. **Definition of Terms.** - Unless the context requires otherwise, the following terms shall have the following significance as used in this Act:

(a) "Administrator" is an entity accredited by the Bureau of Internal Revenue (BIR), after pre-qualification by the concerned Regulatory Authority. The Administrator shall be responsible for overseeing the PERA, whose core functions shall include, but not limited to: reporting on contributions made to the account, computing the values of investments, educating the Contributor, enforcing PERA contributions and withdrawal limits, collecting appropriate taxes and penalties for the government, securing BIR Income Tax Credit Certificates for the Contributor, consolidating reports on all investments, income, expenses and withdrawals on the account and ensuring that PERA contributions are invested in accordance with the prudential guidelines set by the Regulatory Authorities.

(b) "Contributor" is any person with the capacity to contract and possesses a tax identification number. The Contributor establishes and makes contributions to a PERA.

(c) "Custodian" is a separate and distinct entity unrelated to the Administrator, accredited by the Bangko Sentral ng Pilipinas, providing services in connection with the custodianship of funds and securities comprising the PERA investments.

The Custodian shall be responsible for receiving all funds in connection with the PERA, maintaining custody of all original securities, evidence of deposits or other evidence of investment. The Custodian shall operate independently from the Administrator. The Custodian is required to report to the Contributor and the concerned Regulatory Authority at regular intervals all financial transactions and all documents in its custody under a PERA.

(d) "Early withdrawal" shall pertain to any withdrawal prior to the period of distribution as set forth under Section 12 hereof.

(e) "Investment Manager" is a regulated person or entity authorized by a Contributor to make investment decisions for his PERA. As such, it shall assume fiduciary duty and responsibility for PERA investments. An Investment Manager shall act with utmost fidelity by observing policies directed towards confidentiality, scrupulous care, safety and prudent management of PERA funds.

(f) "Personal Equity and Retirement Account (PERA)" refers to the voluntary retirement account established by and for the exclusive use and benefit of the Contributor for the purpose of being invested solely in PERA investment products in the Philippines. The Contributor shall retain the ownership, whether legal or beneficial, of funds placed therein, including all

earnings of such funds.

(g) "PEW Investment Product" refers to a unit investment trust fund, mutual fund, annuity contract, insurance pension products, pre-need pension plan, shares of stock and other securities listed and traded in a local exchange, exchange-traded bonds or any other investment product or outlet which the concerned Regulatory Authority may allow for PERA purposes: Provided, however, That to qualify as a PERA investment product under this Act, the product must be non-speculative, readily marketable, and with a track record of regular income payments to investors.

The concerned Regulatory Authority must first approve the product before being granted tax-exempt privileges by the BIR.

(h) "Regulatory Authority" refers to the Bangko Sentral ng Pilipinas (BSP) as regards banks, other supervised financial institutions and trust entities, the Securities and Exchange Commission (SEC) for investment companies, investment houses, stockbrokerages and pre-need plan companies, and the Office of the Insurance Commission (OIC) for insurance companies.

(i) "Overseas Filipino" refers to (1) an individual citizen of the Philippines who is working or deriving income from abroad, including one who retained or reacquired his Philippine citizenship under Republic Act No. 9225, otherwise known as the "Citizenship Retention and Reacquisition Act of 2003"; or (2) the legitimate spouse, whether or not said spouse is of Filipino ancestry, and the children of the Filipino citizen mentioned in item (1) hereof.

SEC. 4. Establishment of a PERA. - A Contributor may create and maintain a maximum of five (5) PERA, at any one time: Provided, That the Contributor shall designate and maintain only one (1) Administrator for all his PERA.

The Contributor shall make all investment decisions pertaining to his PERA. However, he has the option of appointing an Investment Manager, either in writing or in electronic form, to make investment decisions on his behalf without prior consultation.

SEC. 5. Maximum Annual PERA Contributions. - A Contributor may make an aggregate maximum contribution of One hundred thousand pesos (100,000) or its equivalent in any convertible foreign currency at the prevailing rate at the time of the actual contribution, to his/her PERA per year: Provided, That if the Contributor is married, each of the spouses shall be entitled to make a maximum contribution of One hundred thousand pesos (P100,000) or its equivalent in any convertible foreign currency per year to his/her respective PEW: Provided, further, That if the Contributor is an overseas Filipino, he shall be allowed to make maximum contributions double the allowable maximum amount.

A Contributor has the option to contribute more than the maximum amount prescribed herein: Provided, That the excess shall no longer be entitled to a tax credit of five percent (5%).

The Secretary of Finance may adjust the maximum contribution from time to time, taking into consideration the present value of the said maximum contribution using the Consumer Price Index as published by the National Statistics Office, fiscal position of the government and other pertinent factors.

Sec. 6. Employer's Contribution. - A private employer may contribute to its employee's PERA to the extent of the amount allowable to the Contributor: Provided, however, That the employer complies with the mandatory Social Security System (SSS) contribution and retirement pay under the Labor Code of the Philippines. Such contribution shall be allowed as a deduction from the employer's gross income. The Contributor, however, retains the prerogative to make investment decisions pertaining to his PERA.

SEC. 7. Separate Asset. - The PERA shall be kept separate from the other assets of an Administrator/Custodian and shall not be part of the general assets of the

Administrator/Custodian for purposes of insolvency.

Sec. 8. Tax Treatment of Contributions. - The Contributor shall be given an income tax credit equivalent to five percent (5%) of the total PERA contribution: Provided, however, That in no instance can there be any refund of the said tax credit arising from the PERA contributions. If the Contributor is an overseas Filipino, he shall be entitled to claim tax credit from any tax payable to the national government under the National Internal Revenue Code of 1997, as amended.

SEC. 9. Tax Treatment of Investment Income. - All income earned from the investments and reinvestments of the maximum amount allowed herein is tax exempt.

Sec. 10. Tax Treatment Of Distributions. - All distributions in accordance with Section 12 hereof are tax exempt.

SEC. 11. Termination. - Any premature termination shall be treated as an early withdrawal under Section 13 hereof: Provided, That the penalties thereunder shall not apply if the entire proceeds therefrom are immediately transferred to another PERA investment and/or another Administrator.

SEC. 12. Distributions Upon Retirement/Death. - Distributions may be made upon reaching the age of fifty-five (55) years: Povid, That the Contributor has made contributions to the PERA for at least five (5) years. The distribution shall be made in either lump sum or pension for a definite period or lifetime pension, the choice of which shall be at the option of the Contributor. The Contributor, however, has the option to continue the PERA. Complete distribution shall be made upon the death of the Contributor, irrespective of the age of the Contributor at the time of his death.

SEC.13. Penalty on Early Withdrawal. - Any early withdrawal shall be subject to a penalty, the amount of which would be determined by the Secretary of Finance and payable to the government: Provided, That the amount of the penalty shall in no case be less than the tax incentives enjoyed by the Contributor.

No early withdrawal penalty shall be imposed on any withdrawal of any funds for the following purposes:

- (a) For payment of accident or illness-related hospitalization in excess of thirty (30) days; and
- (b) For payment to a Contributor who has been subsequently rendered permanently totally disabled as defined under the Employees Compensation Law, Social Security Law and Government Service Insurance System Law.

SEC. 14. Non-Assignability. - No portion of the assets of a PERA may be assigned, alienated, pledged, encumbered, attached, garnished, seized or levied upon. PERA assets shall not be considered assets of the Contributor for purposes of insolvency and estate taxes.

SEC. 15. Rules and Regulations. - Consistent with the policy of promoting transparency in PERA investment and thereby affording protection to the Contributor, the Department of Finance, the Bureau of Internal Revenue and the concerned Regulatory Authorities, with the Bangko Sentral ng Pilipinas as lead agency, shall coordinate to establish uniform rules and regulations pertaining to the following subject matters:

- (a) Qualification and disqualification standards for Administrators, Custodians and Investment Managers, including directors and officers thereof;
- (b) Qualified and/or eligible PERA investment products;
- (c) Valuation standards for PERA investments;
- (d) Disclosure requirements on the terms and conditions of the PERA investments;
- (e) Minimum requirements imposed on the Administrators as regards inculcating financial

- literacy in investors;
- (f) Ascertainment of client suitability for PERA products;
 - (g) Fees to be charged by the Administrator, Custodian or Investment Manager shall always be reasonable and approved by the concerned Regulatory Authority;
 - (h) Record-keeping, reporting and audit requirement of Administrators and Custodians pertaining to records for all contributions, earnings and total account balances; and
 - (i) Other pertinent matters to be determined by the Regulatory Authorities.

SEC. 16. Administration of Tax Incentives. - The BIR shall issue the implementing rules and regulations regarding all aspects of tax administration relating to PERA. The BIR shall coordinate the qualification standards of the Administrator with the Regulatory Authorities.

SEC. 17. Penalty. - A fine of not less than Fifty thousand pesos (P50,000.00) nor more than Two hundred thousand pesos P200,000.00) or imprisonment of not less than six (6) years and one (1) day to not more than twelve (12) years or both such fine and imprisonment, at the discretion of the court, shall be imposed upon any person, association, partnership or corporation, its officer, employee or agent, who, acting alone or in connivance with others, shall:

- (a) Act as Administrator, Custodian or Investment Manager without being properly qualified or without being granted prior accreditation by the concerned Regulatory Authority;
- (b) Invest the contribution without written or electronically authenticated authority from the Contributor, or invest the contribution in contravention of the instructions of the Contributor;
- (c) Knowingly and willfully make any statement in any application, report, or document required to be filed under this Act, which statement is false or misleading with respect to any material fact;
- (d) Misappropriate or convert, to the prejudice of the Contributor, contributions to and investments or income from the PERA;
- (e) By gross negligence, cause any loss, conversion, or misappropriation of the contributions to, or investments from, the PERA; or
- (f) Violate any provision of this Act or rules and regulations issued pursuant to this Act.

Notwithstanding the foregoing, any willful violation by the accredited Administrator, Custodian or Investment Manager of any of the provisions of this Act, or its implementing rules and regulations, or other terms and conditions of the authority to act as Administrator, Custodian or Investment Manager may be subject to the administrative sanctions provided for in applicable laws.

The above penalties shall be without prejudice to whatever civil and criminal liability provided for under applicable laws for the same act or omission.

SEC. 18. Abuse of the Tax Exemption and Privileges. - Any person, natural or juridical, who unduly avails of the tax exemption privileges herein granted, possibly by co-mingling PERA accounts in an investment with other investments, when such person is not entitled hereto, shall be subject to the penalties provided in Section 17 hereof. In addition, the

offender shall refund to the government double the amount of the tax exemptions and privileges enjoyed under this Act, plus interest of twelve percent (12%) per year from the date of enjoyment of the tax exemptions and privileges to the date of actual payment.

SEC. 19. **Separability Clause.** - If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 20. **Repealing Clause.** - All laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby amended or modified accordingly.

SEC.21. **Effectivity.** - This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation: Provided, That the tax incentives granted hereunder shall take effect on January 1, 2009.

Approved: Aug. 22, 2008