ECONOMIC AND LEGAL ASPECTS OF PRIVATIZATION

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I. INTRODUCTION

The search for an appropriate economic setting for each people is a concern that has been wracking the minds of scholars and philosophers for centuries. Despite the variety of ideas presented, man can not seem to find the proper ideology as a workable solution for the satisfaction of human wants.

The dilemma for each nation is made more acute when the people has to make a decision on whether to adopt an economic system based on capitalism or on socialism. In some market economies, such as the Philippines, the state has been engaged in economic activities in competition with the private sector. Because of the inefficiency of government engaging in economic enterprise, the matter of privatization has been brought to the forefront.

Historical Background

Whether the economic ideology of capitalism or of socialism is adopted, there must be, in each country, an equilibrium between demand and supply [1] When supported by ability to pay, the desires of the people become part of demand. Their needs evidently must be satisfied with supply made available through the production of goods and of services which are components of the gross national product. Pursuant to this politico-economic theory, there must be an equilibrium between the volume of production and the needs of the population.[2]

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[1] The equilibrium contemplated has nothing to do with the generally accepted economic law of supply and demand.

[2] The theory may be presented as follows:

Supply = Demand

Since supply comes from production and demand from the needs of the population, then,

Production = Needs of Population

When demand increases because population increases, or even when population remains relatively constant but wants increase, there will be increase in pressure for greater production. If the economy is unable to dramatically increase the production of goods or the rendition of services, there will be a disequilibrium between the gross national product and the size of population. When that happens, then obviously there will be shortages that the people will have to endure.

To avoid dire consequences like rioting and other man-made problems within a nation, the gap between demand and supply could be filled by making available to the people the goods imported from abroad through the opening with commercial banks of letters of credit. However, the bills of exchange or drafts drawn against the letters of credit by the foreign suppliers will require foreign exchange. Such payments will, of course, exert pressure on the international reserve.[3]

In a contract of sale, whether domestic or foreign, the seller makes available goods and the buyer has to pay the consideration. There is thus an exchange of currency for goods. When a government decides to limit the entry of goods into its territorial jurisdiction because the international reserve cannot sustain the drain, it can control or regulate either the inflow of goods or the outflow of currency, especially of foreign exchange.

The Philippines, sometime in the late forties, tried to control the quantity of goods by adopting the import control system. The implementation, however, was attended with certain practices less than desirable. As a result, the government abolished the import control system and instead adopted exchange controls.[4]

The foregoing measures had to be undertaken because during the first half of the twentieth century, the Philippines was under the system of direct importation. This means opening of letters of credit that drained the international reserve. Decision-makers felt that this had to stop because the economy was not growing fast enough in relation

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Production may be roughly equated with gross national product which includes goods and services.

[3]The ideal is that the international reserve should consist of gold. Today, the reserve also includes foreign exchange and instruments for the international transfer of monetary value.

[4]REPUBLIC ACT No. 265 (1948) established the Central Bank of the Philippines.

to the growth of the population. Thus, Congress passed a law[5] paving the way for the establishment of new and necessary industries. Later on, the legislature enacted the Investment Incentives Law.[6] This was followed by the Export Incentives Law.[7] Thereafter, various incentives laws were passed.

The significance of this series of legislation lies in the fact that there was a shift of economic policy from direct importation to import substitution.

To implement a policy of import substitution, the local economy must have the capability to produce the goods that the people previously imported. In case of international sale of goods, the importing country or its inhabitants pay for the cost of the use of the land and the buildings of the manufacturer in the exporting country, for the cost of labor, the cost of raw materials, the share of entrepreneur, the use of capital, and the use of credit and other financial resources. When the importing country is enabled to implement a policy of import substitution, its government permits the establishment within its territorial jurisdiction of enterprises that can engage in the production of goods or the rendition of services.

The economic theory involved in the policy of import substitution, which the Philippines has been trying to implement,[8] is that by getting the manufacturer to come to the Philippines, the country can save on the cost of the use of the land and the factory buildings, the cost of labor for local workers can be hired, and the cost of the raw materials for some of the domestic resources can be used. The country will, however, still have to pay the entrepreneur his share in production, as well as the cost of technology transfer.

In the implementation of a policy of direct importation, commercial banks as well as specialized government banks, like the Philippine National Bank and the Development Bank of the Philippines, open letters of credit or of guarantee through which both consumers and producers can import goods. When the central monetary authority can no longer provide funds from the international reserve, some banking institutions may be unable to pay their obligations contracted under the letters of guarantee or the letters of credit. The

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[5]REPUBLIC ACT No. 35 (1946), as amended by REP. ACT NO. 901 (1953).

[6]REPUBLIC ACT No. 5186 (1967).

[7]REPUBLIC ACT No. 6135 (1970).

[8]The Philippines has done this through the passage of Republic Act No. 35 and later laws, notably the Omnibus Investments Code of 1987 and the Foreign Investments Act of 1991.

result is that the domestic banking system becomes indebted to foreign banks.

While the entire banking system is under pressure to pay the foreign banks for originally private sector debts incurred for direct importations, the government is hard pressed to keep the judicial, legislative, and executive branches of government operating under a budget that consists of receipts and expenditures. Very often, government is unable to raise the revenue to cover the expenditure; hence, the result is deficit spending of funds obtained by the sovereign government from its own central monetary authority.

When the international reserve is depleted, the Central Bank cannot simply print more paper money. If it does so, there will be inflation, followed by high prices, and perhaps a deterioration of the economy unless there is corresponding increase of the gross national product. To finance its international transactions, the government must secure financial resources elsewhere, such as from foreign governments, international financial or monetary institutions, and foreign banks. These loans to the Philippine Government are public sector debts. The proceeds of the loans go to the international reserve, thereby becoming part of the basis for the printing of domestic currency for the maintenance of government.

The private sector debts are incurred through the opening of letters of credit with commercial banks as well as through the opening of letters of guarantee by specialized government banks. The public sector debts come about because the Secretary of Finance and the Governor of the Central Bank keep asking foreign governments, foreign banks, and foreign financial institutions for assistance. The bills of exchange and the drafts that are drawn by or through the foreign bank against the letters of credit of the commercial banking system and the letters of guarantee of the government banking sector result in the accumulation of debts which will continue to be incurred as long as there is a disequilibrium between the demand for goods and services and the supply emanating from domestic production.

Growth of Government Corporate Sector

Ideally, all private corporations should be owned or controlled by the private sector in a market economy. However, that is not easy to attain. Many of the developing countries are unable to get their private sector to fully engage in trade and business. Thus, government itself engages in economic activities, and what the state does is to establish private corporations.

In the Philippines, the State establishes government-owned or controlled corporations for virtually all kinds of activities. In reality, while it discharges its functions in the regulation and supervision of business and financial enterprises, it also participates in the conduct of economic activities. Today, there is a proliferation not only of government-owned corporations but also of government-owned banks. This happened because of certain influences from abroad.

There were three principal trends in the development of the corporate form of business organization in the United States.[9]

One of these patterns was with respect to the manner of creation of corporations. The colonial and state legislatures permitted the establishment of private corporations only by means of special charters. This resulted in log-rolling. The later practice was to do away with the establishment of private corporations through special charters and to provide for the enactment of general incorporation laws. Through the latter, any group of individuals, by simply complying with the requirements of the law, could establish a private corporation. That mode was copied in all the Philippine constitutions adopted since 1935. There is invariably a provision to the effect that save for government-owned or controlled corporations, the legislature or Congress shall not provide for the creation of corporations except through a general incorporation law.

True enough, the different Philippine legislatures created government-owned corporations through special charters. As they became bigger, and in some cases more progressive, what some of their officials did was to establish subsidiaries. The newly created corporations were either wholly-owned or majority-owned entities. The directors and other officers of the parent government-owned or controlled corporations became the incorporators of the subsidiaries using the funds of the holding company with special charter as the paid-up capital of the government-owned subsidiary. This was effected through the filing with the Securities and Exchange Commission of Articles of Incorporation. Understandably, there has been incessant increase in the number of government-owned or controlled corporations.

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[9] 1 FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS 6-8 (1983). *See also* Aguedo F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines* 1133 - 1135 (1964). The three (3) trends in the United States are: (1) trend from special legislative acts to general enabling laws in the manner of granting of corporate franchises; (2) trend from strict to liberal policy in incorporation; and, (3) trend from small to large business units.

In a free market economy, when the state establishes or allows the establishment of a banking system, it is ideal that the government should not be a part of it. The public sector must only participate in its regulation, supervision and examination. That is probably true in the more mature market economies, but in the less-developed countries, including the Philippines, governments participate in the establishment, operation, ownership, management, supervision, and maintenance of the banking system. Hence, in those societies where the private sector cannot provide enough financial resources, the government must participate through the establishment of government banks, the capitalization of which comes from the treasury. The State thus makes available to the people financial resources through such institutions.

In the Philippines, the law established the Development Bank of the Philippines, the Philippine National Bank, and other financial institutions which are supposed to grant credit facilities to the borrowers principally by way of loans.

A bank can grant loans or other forms of credit facilities to a private individual, a single proprietorship, a partnership, or a corporation. Sometimes, when the borrower is a corporation, it mortgages real property, or pledges shares of stock of its stockholders as collateral. When the shares amount to 51% or more of the outstanding capital stock of the borrowing corporation, then the lending government-owned bank becomes the stockholder of 51% or more of the capital stock of the borrowing corporation when the latter is unable to pay. In such a case, the government-owned or controlled bank becomes the holding company of the borrowing entity which then becomes a government-owned or controlled corporation.

It is evident that in the foregoing transactions, the government financial institution has made available to the borrower corporation public revenues subject to examination by the Commission on Audit.[10] It is likewise obvious that the system of granting credit facilities helps in increasing the number of government-owned or controlled corporations even if the government-owned banks do not deliberately establish subsidiaries by filing articles of incorporation with the proper agencies.

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[10]CONST., Art. IX(D), Sec. 2(1).

Consequences of the Foreign Debt

Records indicate that the Philippines has incurred debts from both the public and private sectors. Those obligations are being restructured because they can not be paid on time as expected.

To restructure a loan, the debtor must convince the creditor; otherwise, the debt can not be extended or renewed. Because of the nature of the relationship, the creditor imposes conditions.

A domestic financial institution, like a commercial bank, may grant credit facilities against collaterals in the form of real estate or chattel mortgage. When the borrower is unable to pay, the creditor forecloses on the mortgage. However, when an international monetary or financial institution grants a loan, there are, or there may be, no specific collaterals. In any event, even if there are specific collaterals, such as real property, that a borrowing government may offer to mortage, the international financial institution may not accept them because they cannot be foreclosed.

Philippine commercial banks generally continue to owe their correspondent banks abroad when the drafts or bills of exchange drawn against letters of credit are presented for payment but are not paid due to lack of foreign exchange in the international reserve. Because of the dishonor, the foreign banks usually stop honoring the letters of credit opened by Philippine commercial banks as well as the letters of guarantee of Philippine specialized government banks.

Where the gap between the supply of goods and the demand therefor continues, and the people are still in need, then more letters of credit will have to be opened. However, when the foreign banks whose drafts or bills of exchange are dishonored would no longer want to honor the letters of credit, then the government has no choice but to negotiate with the private foreign banks on behalf of the Philippine banking system so that the said foreign banks can be paid. And when the private foreign banks insist that the Philippine government guarantee or assume the private sector debts, then the latter must do so; otherwise, the foreign banks will not honor future letters of credit. Furthermore, when the private foreign banks insist as a condition, among others, that they will only continue in the future to honor letters of credit of Philippine commercial banks if an international monetary or financial institution will restructure the public sector debts, then the private sector debts contracted with private foreign banks can or will not be restructured until such time as the international financial institution consents to the restructuring of the Philippine government loans.

An international monetary institution is not interested in foreclosing any of the real properties of the Philippine government. None is usually offered as collateral and the foreign lender, not being in possession of any mortgage document, has no way of assuring itself that it will be repaid by the borrowing government. It will thus inform the Philippine government, like most other governments which are borrowers, that if it wants its loans to be restructured, it must comply with some conditionalities. One of these is to have the economy restructured so that it can be improved. The idea is that when the economy improves, the country will be able to raise financial resources, increase the international reserve, and pay its debts. As a corollary, the foreign lender may suggest to the borrower government to improve its tax system.

The lending international monetary institution may study and analyze the national budget. If the foreign lender discovers that the expenditures exceed the revenues, it may suggest to the government to balance the budget so that the revenues will at least equal the expenditures. Likewise, it may inquire as to where the expenditures come from and why said expenditures are always bigger than the revenues. The Philippine government may explain that it cannot increase its income because the country is not producing enough, the people are not earning enough, and it is unable to collect more public revenues. For it to impose more taxes would mean pressing the people for more burdens and that would have political repercussions.

The international monetary institution may then take a look at the nature of government expenditures. It may be explained that like most governments, that of the Philippines exercises both sovereign and proprietary functions and that while sovereign functions are performed by the legislative, judicial and executive branches, only the last one discharges proprietary functions. Consistently with the constitutional set-up, government banks and the government-owned or controlled corporations perform proprietary functions.

The economic history of the Philippines indicates that the number of government corporations has increased through the establishment of wholly-owned and of majority-owned subsidiaries, through foreclosure of properties and shares of stocks.

The foreclosed properties are considered as acquired assets. However, in some cases, the acquired asset is not a physical asset, but a corporation. Since the funds for the executive branch of the government come from the Treasury, it is obvious that the more the acquired assets, the greater the difficulty in balancing the revenues with the expenditures.

Public revenues are lodged with, and taken from, the Treasury. When more taxes can no longer be collected, and expenditures mount, it is obvious that the Treasury will be exhausted. When that happens there will be greater necessity for the Treasury to borrow from the Central Bank. If the Central Bank does not have enough, the government will have to borrow from international financial institutions which may not be willing to lend more unless the outstanding debts are first restructured.

Since the expenditures for the government financial institutions and the government corporations are huge, it may be suggested by creditors that the number of government-owned subsidiaries as well as of private corporations foreclosed be reduced through privatization. It may likewise be insinuated that in order to dispose of some of the acquired assets of the government banks, the capitalization of said banks be similarly reduced. That move should include the Development Bank of the Philippines and the Philippine National Bank. In so doing, the government corporations and the acquired assets could be disposed of.

II. THE NATIONAL POLICY

With the foregoing as the historical background, it is easier to comprehend the moves taken by the Philippine government for the launching of the program of privatization.

In 1986, the President of the Philippines issued a proclamation[11] directing the disposition of some government corporations, and creating a so-called Committee on Privatization consisting of Cabinet members and a public trust known as the Asset Privatization Trust.

For the attainment of national policy, it was declared categorically that the cornerstones of the program include: (1) the judicious use of the corporate form in the creation of government entities for the production and distribution of economic goods and services with the end in view of giving primacy to the private sector so that the government will assume only a supplemental role; and, (2) the reduction

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[11] PROCLAMATION NO. 50 (1986), as amended by PROCLAMATION NO. 50-A (1986). The discussion that follows is in accordance with, or based upon, such proclamation.

of the number of government corporations which have proliferated to unmanageable proportions.

To achieve the first imperative, the Government Corporate Monitoring and Coordinating Committee was revitalized. For the attainment of the second imperative, the Committee on Privatization was constituted. And to centralize the privatization effort, the Asset Privatization Trust was organized.

Basically, the conceptualization is that the government must get the acquired assets, whether in the form of real or personal properties or of shares of stocks, out of the Development Bank of the Philippines, the Philippine National Bank and other government financial institutions. They have to be lodged somewhere, and that somewhere is the Asset Privatization Trust. To get the acquired assets into the trust, the government financial institution initially prepares the list of all the disposable assets together with the liabilities, and from the list, the Committee chooses what are to be sold to the private sector. After a final decision has been made, the assets are transferred to the Asset Privatization Trust. The government financial institution itself executes the necessary deeds of assignments with the Secretary of Finance acting as attorney-in-fact.

III. IMPLEMENTATION OF THE PROGRAM

In compliance with the presidential proclamation, the Committee on Privatization arranges for the transfer to, and eventual disposition by, the National Government of certain acquired, and therefore, non-performing assets of government financial institutions, notably the Philippine National Bank and the Development Bank of the Philippines. It also arranges for the disposition of certain government-owned or controlled corporations which have been approved for divestment by the President.

For the purpose of implementing the program of privatization, the presidential proclamation defines the term "assets" to include: (1) receivables and other obligations due to government institutions under credit, lease indemnity or other agreements together with all collateral security and other rights including, but not limited to, those in relation to shares of stock, such as voting rights as well as rights to appoint directors of corporations or otherwise engage in the management thereof, granted to such government institutions by contract or by operation of law to secure or enforce the payment of such obligations; (2) real and personal property of any kind owned or held by government institutions, including shares of stock obtained by such government institutions, whether directly or indirectly, through foreclosure or other means, in settlement of debtor's obligations; (3) shares of stock and other investments held by government institutions; and (4) the government institutions themselves, regardless of whether they are parent or subsidiary corporations.

In the case of certain government corporations created under special law, the President is authorized under the aforementioned proclamation to amend the corporate charters thereof in order to terminate their corporate existence.

The Committee on Privatization identifies such assets of government institutions as are appropriate for privatization and divestment through an instrument describing the assets, or identifying the loan or other transactions giving rise to the receivables, obligations, and other property constituting the assets to be transferred. Thereafter, the Committee determines which of the assets for divestment shall be transferred to the Trust and which to other government institutions. The instrument executed in connection therewith is constituted as the operative act of transfer or referral of the assets described therein.

Each government institution from which assets are transferred executes a deed of assignment in favor of the National Government describing account by account, the nature and extent of the assets. It then delivers to the Committee such agreements, instruments, records, and other papers in respect of such assets as are deemed by the Committee to be reasonably necessary.

A copy of the deed of assignment duly certified to be true by the appropriate official before a notary public, or other official authorized by law to administer oaths, provides sufficient basis for registers of deeds, stock transfer agents, and other persons duly authorized therefor, to issue new certificates of title, stock certificates, or other instruments evidencing title to the assets in the name of the National Government or its duly authorized agent.

It is made explicit in the presidential proclamation that the transfer of any asset of any government institution directly to the National Government is for the purpose of disposition, liquidation and/or privatization only. Such transfer does not operate to revert the assets automatically to the general fund of the National Government or to the national patrimony, and does not require specific enabling legislation to authorize their subsequent disposition. They remain as duly appropriated public properties earmarked for assignment, transfer, or conveyance under the signature of the Secretary of Finance.

In the event of transfer to the Trust of government-owned or controlled corporations organized or created in accordance with the Corporation Code, the executive trustees may cause them to undergo reorganization, merger, consolidation, spin-off, or other corporate acts of similar nature to hasten their disposition or privatization.

Non-stock government-owned or controlled corporations created by special law, when transferred to the Trust, may be converted into stock corporations. This means amendment of their respective charters so that their net worth can be divided into common shares with par values as may be determined by the Trust.

In case of transfer of corporations attached to regular ministries or departments, the power and functions over such corporations are likewise transferred to, and continue to develve upon, the Trust. The unexpended balance of appropriations earmarked for the operations of the transferred corporations are considered appropriated for the Trust as part of its operating funds in view of the transfer of the disposable entity itself.

There are instances when the Trust may seek the assistance of other government entities. For example, upon petition filed *ex-parte* by the Trust, the Securities and Exchange Commission may appoint a receiver nominated by the Trust to take over the management and custody of the properties of a corporation referred to the Trust, or whose obligations have been referred to the Trust, or which holds assets subject to liens in favor of the Trust, in cases: (1) where such equity, obligations or liens have been referred by the Trust to external agencies for conservation and disposition and there is imminent danger of dissipation, loss, wastage, or destruction of assets or other properties, or paralyzation of the business operations of such corporations which may be prejudicial to the interests of its stockholders, creditors, the general public, or the National Government; or (2) where the appointment of a receiver has been stipulated by the parties to a real or chattel mortgage or other agreement as an aid to foreclosure thereof.

To ensure the smooth flow of its operations as well as the continuity of the dispositions, the Trust as well as the corporations and assets held by it are declared by the presidential proclamation to be exempt from all taxes, fees, charges, imposts and assessments arising from, or occasioned by, the passing of title over such corporations or assets from the government institutions to the Trust and/or from the Trust to a private acquisitor or buyer, imposed by the National Government or any subdivision thereof. If the government institutions acquired the assets by foreclosure, the non-payment of similar taxes, fees, charges, imposts, and assessments shall not be a bar to the consolidation of title in the foreclosing institutions and the subsequent passing of title to the Trust or the corporation held by the Trust.

To add strength to the privatization process, the sale or transfer of the corporations or assets may not be enjoined or hindered by reason of any liens arising out of taxes or other assessments in favor of the government at the time of sale or transfer. The assumption is that the liens do not arise out of the transfer to, or sale from, the Trust. If, however, there are liens that have already attached prior to the transfer to the Trust, then the proceeds from the sale or transfer shall be subject to the tax lien and shall first be applied to satisfy the obligations secured by said liens.

The determination by the Committee that the terms under which an asset is to be sold or otherwise disposed of are consistent with the best interest of the National Government is conclusive upon all concerned. The validity of any sale or disposition concluded by the National Government, acting through the Trust, is, except for fraud, breach, or material misrepresentation on the part of the purchaser, incontestable, binding, and enforceable against the National Government and all third parties.

All proceeds from the sale or other disposition of assets, net of fees, commissions, and other reimbursable expenses of the Trust, become part of the general fund of the National Government. They are remitted to the National Treasury immediately upon receipt of such proceeds. However, the Trust is entitled to retain, upon approval by the Committee, such portion of the proceeds as are necessary to maintain a revolving fund for the payment of fees, expenses, and costs incurred by the Trust in the conservation and subsequent disposition of the assets held by it, including amounts required to service borrowings obtained by the Trust pursuant to law.

With respect to the proceeds of sales or other dispositions of subsidiaries of government corporations, the amounts accrue to the holding companies. The amounts remitted are, however, net of fees, commissions, and other reimbursable expenses of the Trust.

Upon the sale or other disposition of the ownership and/or controlling interest of the government in any corporation held by the Trust, or of all or substantially all of the assets of such corporation, the employer-employee relationship between the government and the perosnnel of such corporations terminates by operation of law. None of such personnel retains any vested right to employment in the privatized corporation since the new owners or controlling interest holders have the full and absolute discretion to retain or dismiss them and to hire their replacements at the pleasure and confidence of such owners or interest holders. However, neither the presidential proclamation nor any other law deprives the personnel of their vested entitlements, under applicable employment contracts, collective bargaining agreements, or applicable legislation, to accrued or accumulated compensation and other benefits incident to their employment, or arising out of their termination.

IV. OPPORTUNITIES FOR THE INVESTING PUBLIC

The guidelines for the privatization of government corporations promulgated by the Committee on Privatization categorically declare that all dispositions shall be conducted in such a manner as to prevent undue concentration of economic power in the hands of an individual or a small group of individuals. Consistent with such a policy, the Asset Privatization Trust has been considering the sale of government corporations thru the public offering of shares of stocks in view of the wide market that could be tapped. Corollarily, the Trust is also encouraging employees of government corporations to formulate their own stock ownership plans.

Due to certain nationalization provisions in the Constitution and in some statutes, the government gives preference to citizens of the Philippines in the implementation of the privatization program. Thus, purchasers who intend to rehabilitate distressed government corporations for productive utilization within the country are being given preferential attention. Such policies, however, do not exclude non-citizens from acquiring financial interest in government corporations. In accordance with the provisions of investments laws which have been in force for quite sometime, foreigners may make direct foreign investments in certain designated areas of economic activities.

Business opportunities for the private sector may be found in the modes of disposition being contemplated or implemented by the government. The direct-debt-buy-out method allows previous owners of acquired assets to re-acquire their interests by paying to the Asset Privatization Trust the price equivalent to the amount at which a particular asset has been transferred from the government financial institution that has foreclosed to the Trust, plus interest and other charges.

Under the debt-to-equity scheme, any investor may purchase at a discount, unmatured Philippine public or private sector debts incurred in foreign currency, and with the Philippine currency proceeds of the debt instruments, buy acquired assets from the Trust.

The debt-for-asset system allows any investor to buy Philippine Treasury debt papers at a discount. The same could then be used for the purchase of acquired assets from the Trust.

Under consideration is the so-called land-for-asset swap. An interested landowner may exchange his real property for shares of stocks or other acquired assets of government corporations.

With the projected sale of shares of some government corporations through the stock exchanges, more investors can participate in the program. Hopefully, the base for stock ownership will be broadened.

V. PROBLEMS IN IMPLEMENTATION

The present pace of privatization as reported by Philippine media is considered by many as slow.[12] It is said that the Committee on Privatization has been unable to draw up a satisfactory program of dispositions. The main reason advanced is that privatization is only one of the many concerns of the Committee members since they are all members of the Cabinet and, therefore, are Secretaries of Departments of the Government. Some, if not all, of them also sit in the boards of the corporations to be privatized. Moreover, the apparent failure to hasten the privatization process may be due to the fact that control of government corporations can be used for dispensing political patronage.

Public perception, according to the same media sources, is that at the commencement of the program, there was a high degree of enthusiasm on the part of the newly appointed executives of the corporations to be privatized. However, as they gradually became accustomed to the power and privileges of the positions they respectively occupied, the enthusiasm waned, and there is now less desire to sell to the private sector the corporations to which they are connected.

Some quarters believe that there is inadequacy of domestic capital for investment in government corporations. They aver that foreign investors will have to be fed with incentives in order to enter the

[12]Manila Chronicle, September 20, 1988, at 13; January 2, 1989, at 13; and January 4, 1989, at 15.

picture. Moreover, several disposable government enterprises are inefficient and are not attractive enough for investment purposes.

Finally, many of the government entities required to dispose of their assets want to adopt their own programs of privatization. If they can have their way, there will be no centralization of policy-making and implementation. This may prove to be an obstacle to the success of the privatization effort.

CONCLUSION

There is no doubt that the entry of government into the economic field involves ideological considerations. Consequently, an economy operating under the principle of free enterprise must face and solve the problem of privatization. Whether the State will continue to engage in economic activities or not is a question of national policy. The success of privatization will, therefore, depend in the end upon the sincerity of those in power in pursuing a program of disposition of government enterprises.