June 21, 2018

BIR RULING NO. 1016-18

000-00

Mr. Norman C. Legaspi
President & CEO
AFP Retirement and Separation Benefits System
Camp General Emilio Aguinaldo
1110 Quezon City

Dear Mr. Legaspi,

This refers to your letter dated February 23, 2017, as endorsed by Usec. Antonette C. Tionko on April 4, 2017, requesting on behalf of AFP Retirement and Separation Benefits System (AFPRSBS) for clearance to continue dealing with non-government banks and/or other private financial institutions for its depository requirements, treasury investment activities and other banking needs.

As represented, on September 30, 2014, the Department of Finance denied the request of AFPRSBS to continue maintaining depository accounts with private banks and further advises the AFPRSBS to take necessary steps to wind down deposits with the private banks and allow Land Bank of the Philippines (LBP) and Development Bank of the Philippines (DBP) to handle depository requirements and other banking needs of the System.

On August 6, 2015, the AFPRSBS requested another clearance from DOF if the AFPRSBS can use private banks/financial intermediaries as broker for the trading of government securities under the Non-Restricted Trading System (NRTS). However, DOF advised the System to utilize LBP and DBP for the proposed treasury investment activities.

The AFPRSBS used to maintain accounts with private commercial and universal banks for several years when it was allowed under Rules and Regulations No. A-97 Implementing PD No. 361, as amended by PD No. 1656. AFPRSBS is a pension/trust fund of the Armed Forces of the Philippines duly created pursuant to PD No. 361, as amended by PD No. 1656 for the exclusive benefit of all military members or commissioned officers and enlisted personnel of the Armed Forces of the Philippines. All earnings of the AFPRSBS are intended purely for the retirement and separation benefits of these military personnel and no

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part thereof is diverted for any other purpose other than the benefit of the latter. Per PD No. 1656, *"the funds of the System shall be allowed to grow to be able to provide perpetually the cash requirement covering retirement and separation benefit payment to military members of the Armed Forces of the Philippines on a self-sustaining basis; x x x."*

On April 8, 2016, Memorandum Order No. 90 was approved by the President of the Republic of the Philippines directing the abolition of AFPRSBS. While the AFPRSBS has been abolished by M.O. No. 90, the AFPRSBS will still continue to operate as a going concern, will pursue and fulfill its plans and programs every year (which include divestment of its subsidiaries and affiliates, sale of its real estate assets and continuous refund of AFPRSBS members' contributions as they fall due) until its complete abolition which may take at least three (3) years.

In reply, please be informed that DOF Department Circular (DC) No. 001-2015 dated June 1, 2015 banned all government agencies and state-owned companies from depositing public funds in private banks. Based on the circular, public funds by government agencies, government-owned and controlled corporations and local government units are limited only to government financial institutions with a universal bank license and a Camels rating of at least 3 from international banks.

It appears that AFPRSBS is a government-owned and controlled corporation (GOCC) as held by the Supreme Court in the case of *Julian A. Alzaga, Meinrado Enrique A. Bello, and Manuel S. Satuito vs. Honorable Sandiganbayan (2nd Division) and People of the Philippines*, G.R. No. 169328, promulgated on October 27, 2006.

Since AFPRSBS is a GOCC, it is, therefore, covered by DC No. 001-2015. Until the Department of Finance repeals or revokes the aforesaid circular, AFPRSBS is required to deposit their funds only in government financial institutions (GFIs).

In view of the foregoing, your request is hereby denied.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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