

Assignment of Credit in Favor of Special Purpose Vehicle Corporations (SPVC): Current Problems and Solutions

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The law with respect to Special Purpose Vehicle Corporations (SPVCs), Republic Act No. 9182, suffers from several problem areas which runs anathema to its aim of providing a remedy to rehabilitate distressed business interests. These problems include, but are not limited to, transfer of assets, the breach of the right of first refusal, and the application of the Civil Code to the said law. In fact, its implementation has caused detriment to borrowers, most of them misunderstandings concerning legal norms and policies of Philippine law regarding unjust enrichment, fair dealings, and good faith.

High standards are imposed on the banking sector under the Special Purpose Vehicle Act: fiduciary duty of extraordinary diligence, fair dealing, honesty and good faith, and proscription against unjust enrichment. However, the harsh reality of the law persists. For example, while these standards are imposed on the sector, no right of first refusal exists in favor of the borrower. While it may be the most equitable situation demanded by the circumstances, it is not expressly written in the law.

As a result, there is a need to come up with a solution that would give a person one's due, such as an equitable right of redemption. In addition, the basic respect for substantive and procedural requirements should be given, since provisions dealing with the assignment of credits, in line with the fiduciary obligation of creditor banks, should be scrutinized with elementary legal norms.