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REPUBLIC OF THE PHILIPPINES )  
First Regular Session )

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SENATE  
P.S. RES. No. 263

RECEIVED BY:

**Introduced by Senator WIN GATCHALIAN**

**A RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE TRANSFERS OF CONTROLLING INTERESTS OF THE MEMBERS OF THE MALAMPAYA CONSORTIUM, WITH A SPECIFIC FOCUS ON THE RECENTLY APPROVED TRANSFER OF SHELL PETROLEUM N.V.'S OWNERSHIP OF SHELL PHILIPPINES EXPLORATION B.V. TO PRIME INFRASTRUCTURE CAPITAL, TO ASCERTAIN THEIR LEGAL, TECHNICAL, AND FINANCIAL QUALIFICATIONS, THEIR COMPLIANCE WITH THE SERVICE CONTRACT, AND THE STATUS OF THE OPERATIONS OF MALAMPAYA TOWARDS ENSURING CONTINUOUS ENERGY SUPPLY IN THE COUNTRY**

1 WHEREAS, Art. XII Sec. 2 of the Constitution states that all petroleum are  
2 owned by the State, and that "the exploration, development, and utilization of natural  
3 resources shall be under the full control and supervision of the State";

4 WHEREAS, towards this end, Presidential Decree No. 87 (PD 87), otherwise  
5 known as the Oil Exploration and Development Act of 1972, provides that "the  
6 GOVERNMENT may directly explore for and produce indigenous petroleum. It may  
7 also indirectly undertake the same under service contracts as hereafter provided".  
8 Moreover, "the contractor must be competent and financially capable XXX to  
9 undertake the operations required in the contract";<sup>1</sup>

<sup>1</sup> Sec. 4, Presidential Decree No. 87 (1972)

1 WHEREAS, Section 11 of PD 87 requires that "rights and obligations under a  
2 contract executed under this Act shall not be assigned or transferred without the prior  
3 approval of the Petroleum Board";

4 WHEREAS, to implement Section 11 of PD 87, the Department of Energy (DOE)  
5 promulgated DOE Department Circular DC2007-04-0003 (DC2007-04-0003)  
6 PRESCRIBING THE GUIDELINES AND PROCEDURES FOR THE TRANSFER OF RIGHTS  
7 AND OBLIGATIONS IN PETROLEUM SERVICE CONTRACTS UNDER PRESIDENTIAL  
8 DECREE NO. 87, AS AMENDED, which requires "documents evidencing financial, legal  
9 and technical qualification of the prospective transferee or assignee";<sup>2</sup>

10 WHEREAS, one of the service contracts awarded by the Government is Service  
11 Contract No. 38 or the Malampaya Deepwater Gas-to-Power Project (Malampaya).  
12 Malampaya plays an important role in the Philippines' energy security as it accounts  
13 for 19.35% of the installed capacity of the Luzon grid as of 2020,<sup>3</sup> providing 48.50%  
14 of Meralco's 2021 electricity demand,<sup>4</sup> and has likewise provided the government an  
15 average annual revenue of USD 644 million from the period 2017 to November 2021  
16 proving to be a crucial source of funding for various energy resource development  
17 programs<sup>5</sup> and initiatives;<sup>6</sup>

18 WHEREAS, Malampaya was previously held by a consortium composed of Shell  
19 Philippines Exploration, B.V. (SPEX) with a 45% share, Chevron Malampaya LLC  
20 (CMLLC) Philippine branch with a 45% share, and Philippine National Oil Corporation  
21 Exploration Corporation (PNOC-EC) with a 10% share. SPEX is wholly owned by Shell  
22 Petroleum N.V. (Shell), while CMLLC Philippine branch is a branch of CMLLC Delaware  
23 which in turn is wholly owned by Chevron Philippines (Bermuda);<sup>7</sup>

24 WHEREAS, on 25 October 2019, UC Malampaya Philippines Pte. Ltd. (UCMPPL)  
25 signed a Sale Purchase Agreement to acquire 100% of the shares of Chevron  
26 Philippines Pte. Ltd in CMLCC;<sup>8</sup>

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<sup>2</sup> Sec. 2(e), Department of Energy (DOE) DC2007-04-0003. (2007)

<sup>3</sup> DOE 2020 Key Energy Statistics.

<sup>4</sup> Page 61. Kalinga: 2021 Meraico Sustainability Report.

<sup>5</sup> PD 910, entitled Creating an Energy Development Board, Defining Its Powers and Functions, Providing Funds, Therefor, and for other Purposes. (1976). Section 8.

<sup>6</sup> RA 11371 otherwise known as Murang Kuryente Act. (2018).

<sup>7</sup> DOE submission on 14 July 2021, Annex H of the Memo for Secretary Cusi (Annex A) with file name: Chevron's Request for Change of Name dated 7 September 2020

<sup>8</sup> DOE submission on 14 July 2021, Annex A-1 of Annex H as attachment to the Memo for Secretary Cusi (Annex A) with file name: Chevron's Request for Change of Name dated 7 September 2020.

1           WHEREAS, UCMPPPL is wholly owned by UC Malampaya Holdings Pte. Ltd, which  
2 in turn is wholly owned by UC Energy Holdings Pte. Ltd. UC Energy Holdings Pte. Ltd.  
3 is 100% owned by Udenna Corporation;<sup>9</sup>

4           WHEREAS, on 11 March 2020, Chevron Philippines Ltd. and UCMPPPL entered  
5 into a document entitled Assignment of Membership Interests in CMLLC.<sup>10</sup> Afterwards,  
6 CMLLC Philippine branch was renamed to UC38 LLC;<sup>11</sup>

7           WHEREAS, on 26 March 2021, then DOE Secretary Alfonso G. Cusi approved  
8 the transfer of participating interest of CMLLC to UCMPPPL; <sup>12</sup>

9           WHEREAS, the compliance of the DOE approval with PD 87 and DC2007-04-  
10 0003 approval was investigated in a series of hearings<sup>13</sup> by the Senate Committee on  
11 Energy, where the Committee flagged the lack of financial capability of UCMPPPL given  
12 its negative working capital 137.156 million dollars;<sup>14</sup>

13           WHEREAS, due to these hearings and the initial findings of the Senate  
14 Committee on Energy Chairperson,<sup>15</sup> the Senate adopted Resolution No. 137  
15 "RESOLUTION EXPRESSING THE SENSE OF THE SENATE TO FILE THE APPROPRIATE  
16 CRIMINAL AND ADMINISTRATIVE CHARGES BEFORE THE OFFICE OF THE  
17 OMBUDSMAN AND THE CIVIL SERVICE COMMISSION AGAINST SECRETARY  
18 ALFONSO G. CUSI AND OTHER CONCERNED OFFICIALS OF THE DEPARTMENT OF  
19 ENERGY FOR APPROVING AND RECOMMENDING APPROVAL OF THE CHEVRON  
20 PHILIPPINES – UC MALAMPAYA TRANSACTION CONTRARY TO LAW AND  
21 REGULATION" on 2 February 2022;

22           WHEREAS, on 20 May 2021, Shell, as seller, and Malampaya Energy XP Pte Ltd  
23 (Malampaya Energy), as buyer, entered into an "Agreement for the Sale and Purchase  
24 of the Share Capital" of Shell in SPEX. <sup>16</sup> This agreement, according to Malampaya  
25 Energy, is subject to the consent of PNOC-EC and DOE approval;<sup>17</sup>

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<sup>9</sup> Singapore Accounting and Corporate Regulatory Authority

<sup>10</sup> DOE submission on 14 July 2021, Annex A-2 of Annex H as attachment to the Memo for Secretary Cusi (Annex A) with file name: Chevron's Request for Change of Name dated 7 September 2020.

<sup>11</sup> DOE submission on 14 July 2021, Annex K as attachment to the Memo for Secretary Cusi (Annex A) with file name: UC38 Letter to DOE dated 22 October 2020 – Change of Name issued by SEC.

<sup>12</sup> Attachment to Memo for Secretary Cusi (Annex A)

<sup>13</sup> Hearing held on: 10 November 2020, 14 July 2021, 28 September 2021, and 15 December 2021.

<sup>14</sup> DOE submission. Memorandum dated 2 February 2021 from DOE Financial Services to DOE Energy Resource Development Bureau.

<sup>15</sup> Sponsorship Speech by Senator Gatchalian 2 February 2022.

<sup>16</sup> DOE submission dated 5 July 2021, Annex E - SPEX letter to DOE dated 8 June 2021)

<sup>17</sup> Transcript of Stenographic Notes. 14 July 2021 Senate Committee on Energy Hearing. p. 86.

1           WHEREAS, Malampaya Energy is wholly owned by MEXP Holdings Pte. Ltd.,  
2 which in turn is wholly owned by Malampaya Holdings. Malampaya Holdings is 100%  
3 owned by Udenna Corporation;<sup>18</sup>

4           WHEREAS, on 31 May 2021, Udenna Corporation sent a letter to DOE  
5 requesting for its approval of the sale of all the shares of Shell in SPEX to Malampaya  
6 Energy;<sup>19</sup>

7           WHEREAS, during the 15 December 2021 hearing of the Senate Committee on  
8 Energy, then PNOC-EC President Lt. Gen. Rozzano Briguez stated: "As of 13 December  
9 2021, PNOC-EC has officially communicated with SPEX that PNOC-EC is withholding  
10 its consent to the transaction";<sup>20</sup>

11           WHEREAS, as a result of PNOC-EC's decision, DOE did not continue to act on  
12 Udenna Corporation's request for approval of the transaction between Shell and  
13 Malampaya Energy;<sup>21</sup>

14           WHEREAS, on 25 July 2022, it was reported that BDO sent a notice of  
15 declaration of default to Udenna Corporation. It was further reported that as of 31  
16 December 2020, Udenna Corporation had Php 254 billion in debt;<sup>22</sup>

17           WHEREAS, on 29 July 2022, Prime Infra issued a press release entitled "Prime  
18 Infra acquires Malampaya operator" wherein it stated: "Prime Exploration Pte. Ltd., a  
19 subsidiary of Prime Infrastructure Capital Inc. (Prime Infra), recently signed a share  
20 purchase agreement acquiring MEXP Holding Pte. Ltd. (MEXP) from a subsidiary of  
21 Udenna Corporation. MEXP previously signed an agreement with Shell Petroleum N.V.  
22 (Shell) acquiring Shell Philippines Exploration B.V. (SPEX) from the latter";

23           WHEREAS, on 22 September 2022, PNOC-EC gave its consent to the to Prime  
24 Infra. Moreover, on 3 October 2022, the DOE issued a media statement stating that  
25 it "has completed the review of the sale from Shell to Prime Infrastructure Capital,  
26 Inc. (Prime Infra) of Shell's 45% interest in the Malampaya Service Contract 38" and  
27 that "Prime Infra was found to be technically, financially and legally qualified as a

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<sup>18</sup> Singapore's Accounting and Corporate Regulatory Authority (ACRA) and OPENGOVSG (May 2021)

<sup>19</sup> DOE submission on 5 July 2021, Annex P

<sup>20</sup> Transcript of Stenographic Notes. 15 December 2021 Senate Committee on Energy Hearing, pp. 191-192.

<sup>21</sup> Per Dir. Cesar Dela Fuente of DOE Energy Resource Development Bureau. Conveyed via phone call on 29 July 2022.

<sup>22</sup> <https://www.philstar.com/business/stock-commentary/2022/07/25/2197842/bdo-sends-notice-declaration-default-udenna>  
Accessed on 2 August 2022.

1 transferee and as successor to Shell as Operator of the Malampaya natural gas  
2 project”;<sup>23</sup>

3 WHEREAS, considering the foregoing, it is crucial for Congress and the Filipino  
4 people to be apprised of and clarified on the following matters considering the  
5 importance of Malampaya: *First*, what is the financial status of UC38 LLC considering  
6 the financial challenges faced by its ultimate parent company and how it affects the  
7 Malampaya consortium; *Second*, what is the basis of PNOC-EC in giving its consent to  
8 the transaction between Prime Infra and Shell; *Third*, what is the reason behind DOE’s  
9 approval specifically the agency’s basis in saying that Prime Infra is legally, technically,  
10 and financial qualified to acquire all of Shell’s interest in SPEX; and *Fourth*, how all  
11 these transactions affect the current operations of Malampaya and the compliance of  
12 the Malampaya consortium with its service contract;

13 NOW THEREFORE BE IT RESOLVED, as it is hereby resolved, to direct the  
14 appropriate Senate Committee to conduct an inquiry, in aid of legislation, on the  
15 transfers of controlling interests of the members of the Malampaya consortium, with  
16 a specific focus on the recently approved transfer of Shell Petroleum N.V.’s ownership  
17 of Shell Philippines Exploration B.V. to Prime Infrastructure Capital, to ascertain their  
18 legal, technical, and financial qualifications, their compliance with the service contract,  
19 and the status of the operations of Malampaya towards ensuring continuous electricity  
20 supply in the country.

Adopted,



WIN GATCHALIAN

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<sup>23</sup> DOE Media Statement. 03 October 2022.