

TWENTIETH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

H.B. No. _____

Introduced by _____

**AN ACT AMENDING ARTICLE 2018 OF REPUBLIC ACT NO. 386,
OTHERWISE KNOWN AS THE CIVIL CODE OF THE PHILIPPINES, TO
PROVIDE EXCEPTIONS FOR HEDGING INSTRUMENTS, DERIVATIVES
CONTRACTS, REGULATED EXCHANGE TRANSACTIONS, AND ELECTRICITY
MARKET INSTRUMENTS, AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

The broad prohibition on contracts for difference (CfD) in Article 2018 of the Civil Code of the Philippines poses a legal obstacle to the development of legitimate hedging tools and derivatives in the country's financial and energy markets.

Article 2018 voids contracts that appear to involve the sale or delivery of goods, securities, or shares but are in reality agreements to pay the difference between the stipulated price and the market price, without any intent to deliver the underlying asset.

The Supreme Court in *Onapal Philippines Commodities, Inc. v. Court of Appeals* (G.R. No. 90707 February 1, 1993) applied this provision to invalidate off-exchange commodity futures contracts that functioned as wagers without intent of actual delivery of the underlying asset.

While originally intended to regulate gambling and games of chance, the provision has been interpreted since then to render void a broad array of legitimate hedging tools.

The *Onapal* ruling and the SEC's reliance on this ruling limited the development of

cash-settled derivatives and other hedging instruments, restricting businesses' ability to manage risk and exposing them to price volatility.

However, certain cash-settled derivatives (such as non-deliverable foreign exchange forwards and interest rate swaps) are globally recognized and acknowledged by the *Bangko Sentral ng Pilipinas* (BSP) as legitimate risk management tools, proving that not all cash-settled contracts are wagering transactions.

Moreover, the Philippine energy sector is evolving quickly: the Wholesale Electricity Spot Market (WESM) manages a significant volume of transactions and the Department of Energy (DOE) has a national goal to reach 35% renewables by 2030. Financial instruments like CfDs and financial power supply agreements (financial PSAs) are vital for managing risks in this context, yet legal uncertainties around such contracts deter investment and efficient risk allocation.

This proposed amendment to Article 2018 carves an exception for the following instruments from the provision's broad prohibition: (1) hedging instruments, (2) contracts on regulated exchanges and alternative trading systems, (3) innovative financial instruments within regulatory sandbox frameworks, and (4) recognized electricity derivatives, aligning Philippine law with international financial practices.

Globally, derivatives markets exceed \$600 trillion in notional value. Southeast Asian hubs like Singapore and Malaysia report average daily volumes over \$100 billion and \$30 billion, respectively. The Philippines' lack of an organized derivatives exchange reflects Article 2018's broad prohibition.

By removing legal barriers imposed by the *Onapa* ruling and Article 2018, this proposed amendment facilitates derivatives-based risk management, enhances market liquidity, attracts capital, and supports the electricity sector's stability and growth through effective price signaling and risk sharing.

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

1 **SECTION 1.** Article 2018 of Republic Act No. 386, otherwise known as the Civil Code
2 of the Philippines, is hereby amended to read as follows:

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4 Article 2018. If a contract which purports to be for the delivery of goods,
5 securities or shares of stock is entered into with the intention that the
6 difference between the price stipulated and the exchange or market price at
7 the time of the pretended delivery shall be paid by the loser to the winner, the
8 transaction is null and void. The loser may recover what he has paid.

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10 **THE FOREGOING SHALL NOT APPLY TO:**

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12 **(1) CONTRACTS ENTERED INTO FOR THE PURPOSE OF HEDGING**
13 **OR RISK MANAGEMENT OF AN UNDERLYING EXPOSURE,**

1 EVIDENCED BY DOCUMENTATION OF THE HEDGED RISK AT OR
2 PRIOR TO THE EXECUTION OF THE CONTRACT;

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4 (2) CONTRACTS EXECUTED ON, TRADED IN, OR SUBJECT TO THE
5 RULES OF A DULY REGISTERED AND REGULATED ORGANIZED
6 EXCHANGE OR ALTERNATIVE TRADING SYSTEM, DULY RECOGNIZED
7 AND SUPERVISED BY THE SECURITIES AND EXCHANGE
8 COMMISSION (SEC), OR ANY OTHER COMPETENT REGULATORY
9 AUTHORITY IN THE PHILIPPINES, WHETHER FOR HEDGING,
10 ARBITRAGE, OR SPECULATION;

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12 (3) CONTRACTS FOR DIFFERENCE, FINANCIAL POWER SUPPLY
13 AGREEMENTS, AND OTHER DERIVATIVES INSTRUMENTS UTILIZED
14 IN THE TRADING, SETTLEMENT, OR RISK MANAGEMENT OF
15 ELECTRICITY OR RELATED PRODUCTS (INCLUDING THOSE
16 ASSOCIATED WITH OFFSHORE WIND PROJECTS) WITHIN THE
17 WHOLESALE ELECTRICITY SPOT MARKET (WESM) OR ANY
18 SUCCESSOR THEREOF OR AUTHORIZED POWER MARKET PLATFORM
19 ESTABLISHED PURSUANT TO REPUBLIC ACT NO. 9136 (ELECTRIC
20 POWER INDUSTRY REFORM ACT) OR OTHER RELATED LAWS; AND

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22 (4) CONTRACTS ENTERED INTO UNDER A REGULATORY SANDBOX
23 AUTHORIZED BY THE SEC, *BANGKO SENTRAL NG PILIPINAS* (BSP),
24 INSURANCE COMMISSION (IC), ENERGY REGULATORY
25 COMMISSION (ERC), DEPARTMENT OF ENERGY (DOE), OR ANY
26 OTHER COMPETENT REGULATORY AUTHORITY, FOR THE PURPOSE
27 OF TESTING INNOVATIVE FINANCIAL INSTRUMENTS, TRADING
28 PLATFORMS, OR MARKET MECHANISMS SUBJECT TO SPECIFIED
29 TERMS, CONDITIONS, AND LIMITATIONS PRESCRIBED BY THE
30 RESPECTIVE REGULATORY BODY;

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PROVIDED, THAT:

(a) THE CONTRACTS COVERED UNDER THIS ARTICLE SHALL BE SUBJECT TO THE RULES AND REGULATIONS OF THE BSP, SEC, IC, ERC, OR DOE, AS MAY BE APPLICABLE;

(b) "HEDGING" SHALL MEAN A FINANCIAL OR COMMERCIAL TRANSACTION ENTERED INTO WITH THE PURPOSE OF REDUCING OR MANAGING AN ACTUAL AND IDENTIFIABLE RISK EXPOSURE RELATED TO PRICE, RATE, OR OTHER MARKET FLUCTUATIONS, SUPPORTED BY VALID DOCUMENTATION OF SUCH EXPOSURE;

(c) "CONTRACTS FOR DIFFERENCE" SHALL MEAN BILATERAL FINANCIAL DERIVATIVE CONTRACTS WHEREBY COUNTERPARTIES AGREE TO EXCHANGE THE DIFFERENCE BETWEEN THE OPENING OR CONTRACT PRICE AND CLOSING OR SETTLEMENT PRICE OF AN UNDERLYING ASSET, INDEX, OR PRODUCT, WHICH MAY BE SETTLED IN CASH OR OTHERWISE, WITHOUT THE OBLIGATION FOR PHYSICAL DELIVERY;

(d) "FINANCIAL POWER SUPPLY AGREEMENTS" SHALL MEAN CONTRACTS THAT GOVERN THE FINANCIAL ARRANGEMENTS FOR THE SUPPLY OF ELECTRICITY, INCLUDING BUT NOT LIMITED TO CONTRACTS THAT SPECIFY TERMS FOR PRICING, SETTLEMENT, AND RISK ALLOCATION, WHETHER SUCH CONTRACTS PROVIDE FOR PHYSICAL DELIVERY OF ELECTRICITY OR ARE INTENDED FOR PURE CASH SETTLEMENT.

1 **SECTION 2.** *Repealing Clause.* – All laws, decrees, orders, issuances, rules and
2 regulations or parts thereof which are inconsistent with this Act are hereby repealed
3 or modified accordingly.

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5 **SECTION 3.** *Effectivity.* – This Act shall take effect fifteen (15) days after its
6 publication in the *Official Gazette* or in at least two (2) newspapers of general
7 circulation.

Approved,