

SENATE

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S.B. NO. 1943

(In substitution of Senate Bill Nos. 557 and 1822)

Prepared by the Committee on Banks, Financial Institutions and Currencies,
with Senators Sergio Osmeña III and Edgardo J. Angara, as authors.

AN ACT
AMENDING REPUBLIC ACT NUMBERED SEVENTY-SIX HUNDRED AND
FIFTY-THREE ENTITLED "THE NEW CENTRAL BANK ACT" AND
FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in

Congress assembled:

1 **Section 1.** Section 3, Republic Act No. 7653, otherwise known as the "The New Central
2 Bank Act", is hereby amended to read as follows:

3 "SECTION 3. Responsibility and Primary Objective. - The Bangko Sentral shall
4 provide policy directions in the areas of money, banking and credit. It shall have
5 supervision over the operations of banks, QUASI-BANKS, AND OTHER FINANCIAL
6 INSTITUTIONS WHICH UNDER THIS ACT OR SPECIAL LAWS ARE SUBJECT TO BANGKO
7 SENTRAL SUPERVISION and exercise such regulatory powers as provided in this Act and
8 other pertinent laws over the operations of [finance companies and] OTHER non-bank
9 financial institutions NOT SUPERVISED OR REGULATED BY OTHER GOVERNMENT
10 AGENCIES [performing quasi-banking functions, hereafter referred to as quasi-banks,
11 and institutions performing similar functions].

12 The primary objective of the Bangko Sentral is to maintain price stability
13 conducive to a balanced and sustainable growth of the economy. It shall also promote
14 and maintain monetary stability and the convertibility of the peso. IT SHALL LIKEWISE
15 PROMOTE, OVERSEE AND MAINTAIN THE STABILITY OF THE FINANCIAL AND
16 PAYMENTS SYSTEMS OF THE COUNTRY IN ACCORDANCE WITH INTERNATIONALLY-
17 ACCEPTED PRINCIPLES. TOWARDS THIS END, THE BANGKO SENTRAL SHALL ISSUE
18 AND ENFORCE APPROPRIATE REGULATIONS.

1 **Section 2.** Section 11 of the same Act is hereby amended by inserting a new
2 paragraph between the third and the fourth paragraphs which shall read as follows:

3 "MEETINGS OF THE MONETARY BOARD MAY BE CONDUCTED THROUGH THE
4 USE OF MODERN TECHNOLOGY INCLUDING, BUT NOT LIMITED TO, TELE-
5 CONFERENCING OR VIDEO-CONFERENCING."

6 **Section 3.** Section 15 (Exercise of the Authority of the Monetary Board), paragraphs
7 (b) and (e), of the same Act is hereby amended to read as follows:

8 "(b) direct the management, operations, and administration of the Bangko
9 Sentral, reorganize its personnel, PROVIDE SEPARATION BENEFITS WHENEVER
10 NECESSARY, and issue such rules and regulations as it may deem necessary or
11 convenient for this purpose. The legal units of the Bangko Sentral shall be under the
12 exclusive supervision and control of the Monetary Board;

13 "(e) indemnify its members and other [officials] PERSONNEL of the Bangko
14 Sentral [, including personnel of the departments performing supervision and
15 examination functions] against all costs and expenses reasonably incurred by such
16 persons in connection with any civil or criminal action, suit or proceedings to which
17 he may be, or is, made a party by reason of the performance of his functions or duties,
18 unless he is finally adjudged in such action or proceeding to be liable for BAD FAITH,
19 MALICE, GROSS negligence or GROSS misconduct.

20 In the event of a settlement or compromise, indemnification shall be provided
21 only in connection with such matters covered by the settlement as to which the
22 Bangko Sentral is advised by external counsel that the person to be indemnified [did
23 not commit any] HAD NOT ACTED WITH BAD FAITH, MALICE, GROSS negligence or
24 GROSS misconduct.

25 The costs and expenses incurred in defending the aforementioned action, suit
26 or proceeding may be paid by the Bangko Sentral in advance of the final disposition of
27 such action, suit or proceeding upon receipt of an undertaking by or on behalf of the
28 member [, officer, or employee] AND OTHER PERSONNEL to repay the amount
29 advanced should it ultimately be determined by the Monetary Board that he is not

1 entitled to be indemnified as provided in this subsection ON ACCOUNT OF BAD
2 FAITH, MALICE, GROSS NEGLIGENCE OR GROSS MISCONDUCT.

3 **Section 4.** *The first paragraph of Section 16 of the same Act is hereby amended to*
4 *read as follows:*

5 "SECTION 16. Responsibility. - THE GENERAL RULE AND THE EXCEPTION
6 THEREFROM ON THE LIABILITY OF PUBLIC OFFICERS AS PROVIDED IN SECTIONS 38
7 AND 39 OF CHAPTER 9, BOOK I OF THE REVISED ADMINISTRATIVE CODE OF 1987
8 SHALL APPLY TO members of the Monetary Board [,officials, examiners, and
9 employees] AND OTHER PERSONNEL of the Bangko Sentral. [who willfully violate
10 this Act or who are guilty of negligence, abuses or acts of malfeasance or
11 misfeasance or fail to exercise extraordinary diligence in the performance of his duties
12 shall be held liable for any loss or injury suffered by the Bangko Sentral or other
13 banking institutions as a result of such violation, negligence, abuse, malfeasance,
14 misfeasance or failure to exercise extraordinary diligence.]

15 **Section 5.** *The first paragraph of Section 21 of the same Act is hereby amended to*
16 *read as follows:*

17 "SECTION 21. Deputy Governors. - The Governor of the Bangko Sentral, with
18 the approval of the Monetary Board, shall appoint not more than [three (3)] FIVE (5)
19 Deputy Governors who shall perform duties as may be assigned to them by the
20 Governor and the Board."

21 **Section 6.** *The first paragraph of Section 23 of the same Act is hereby amended to*
22 *read as follows:*

23 "SECTION 23. Authority to Obtain Data and Information.- The Bangko Sentral
24 shall have the authority to request from ANY PERSON OR ENTITY, INCLUDING
25 government offices and instrumentalities, or government-owned or controlled
26 corporations, any data which it may require for the proper discharge of its functions
27 and responsibilities. The Bangko Sentral through the Governor or in his absence, a
28 duly authorized representative shall have the power to issue a subpoena for the
29 production of the books and records for the aforesaid purpose. Those who refuse
30 the subpoena without justifiable cause, or who refuse to supply the bank with data

1 requested or required, shall be subject to punishment for contempt in accordance
2 with the provisions of the Rules of Court."

3 **Section 7.** Section 25 of the same Act is hereby amended to read as follows:

4 "SECTION 25. Supervision and Examination. - The Bangko Sentral shall have
5 supervision over, and conduct periodic or special examination of [banking institutions,
6 and] BANKS AND quasi-banks, including their subsidiaries and affiliates engaged in
7 allied activities, AND OTHER FINANCIAL INSTITUTIONS WHICH, UNDER SPECIAL LAWS,
8 ARE SUBJECT TO BANGKO SENTRAL SUPERVISION. PURSUANT TO THE
9 AUTHORITY OF THE BANGKO SENTRAL UNDER THIS SECTION, AND IN ADDITION
10 TO SUCH OTHER AUTHORITY GRANTED BY LAW, PRIOR APPROVAL BY THE BANGKO
11 SENTRAL SHALL BE REQUIRED FOR TRANSFERS OR ACQUISITIONS OF SHARES OF
12 STOCK IN BANKS OR QUASI-BANKS WHERE ANY SUCH TRANSFER OR ACQUISITION
13 OR SERIES OF TRANSFERS OR ACQUISITIONS WOULD BE SUFFICIENT TO ELECT AT
14 LEAST ONE SEAT IN THE BOARD OF DIRECTORS OR WOULD EFFECT A CHANGE
15 IN THE MAJORITY OWNERSHIP OR CONTROL OF THE VOTING STOCK IN ANY OF
16 THESE INSTITUTIONS. PRIOR TO SUCH APPROVAL, NO SUCH TRANSFER OR
17 ACQUISITION SHALL BE RECOGNIZED IN THE BOOKS OF THE INSTITUTION NOR BY
18 ANY GOVERNMENT AGENCY AND THE TRANSFEROR-STOCKHOLDERS, IN CASES
19 INVOLVING TRANSFERS, SHALL REMAIN ACCOUNTABLE AND RESPONSIBLE
20 THEREFOR. IN APPROVING SAID TRANSFERS OR ACQUISITIONS, REGARD SHALL BE
21 GIVEN BY THE BANGKO SENTRAL TO THE FITNESS OF THE INCOMING
22 STOCKHOLDERS AS MAY BE INDICATED BY THEIR INTEGRITY AND FINANCIAL
23 CAPACITY.

24 For purposes of this section, a subsidiary means a corporation more than fifty
25 percent (50%) of the voting stock of which is owned DIRECTLY OR INDIRECTLY by a
26 bank or quasi-bank and an affiliate means a corporation the voting stock of which,
27 to the extent of fifty percent (50%) or less, is owned by a bank, quasi-bank or which
28 is related or linked to such institution or intermediary through common stockholders
29 or such other factors as may be determined by the Monetary Board.

1 CONTROL EXISTS WHEN THE PARENT OWNS DIRECTLY OR INDIRECTLY
2 MORE THAN ONE HALF OF THE VOTING STOCK OF AN ENTERPRISE. CONTROL
3 MAY ALSO EXIST EVEN WHEN THE PARENT OWNS ONE HALF OR LESS OF THE VOTING
4 STOCK OF AN ENTERPRISE WHEN THERE IS:

5 (A) POWER OVER MORE THAN ONE HALF OF THE VOTING RIGHTS BY VIRTUE
6 OF AN AGREEMENT WITH OTHER INVESTORS; OR

7 (B) POWER TO GOVERN THE FINANCIAL AND OPERATING POLICIES OF THE
8 ENTERPRISE UNDER A STATUTE OR AN AGREEMENT; OR

9 (C) POWER TO APPOINT OR REMOVE THE MAJORITY OF THE MEMBERS OF
10 THE BOARD OF DIRECTORS; OR

11 (D) POWER TO CAST THE MAJORITY OF VOTES AT MEETINGS OF THE BOARD
12 OF DIRECTORS; OR

13 (E) OTHER ARRANGEMENTS SIMILAR TO ANY OF THE ABOVE.

14 The department heads and the examiners of the supervising and/or
15 examining departments are hereby authorized to administer oaths to any director,
16 officer, or employee of any institution under their respective supervision or
17 subject to their examination and to compel the presentation of all books, documents,
18 papers or records necessary in their judgment to ascertain the facts relative to the
19 true condition of any institution as well as the books and records of persons and
20 entities relative to or in connection with the operations, activities or transactions
21 of the institution under examination, subject to the provision of existing laws
22 protecting or safeguarding the secrecy or confidentiality of bank deposits as well
23 as investments of private persons, natural or juridical, in debt instruments issued
24 by the Government.

25 No restraining order or injunction shall be issued by the court enjoining
26 the Bangko Sentral from examining any institution subject to supervision or
27 examination by the Bangko Sentral, unless there is convincing proof that the
28 action of the Bangko Sentral is plainly arbitrary and made in bad faith and the
29 petitioner or plaintiff files with the clerk or judge of court in which the action is
30 pending a bond executed in favor of the Bangko Sentral, in an amount to be fixed by

1 the court. The provisions of Rule 58 of the New Rules of Court insofar as they are
2 applicable and not inconsistent with the provisions of this section shall govern the
3 issuance and dissolution of the restraining order or injunction contemplated in this
4 section.

5 **Section 8.** Section 26 of the same Act is hereby amended to read as follows:

6 "SECTION 26. Bank Deposits and Investments. - Any director, officer or
7 stockholder who, together with his related interest, contracts a loan or any form of
8 financial accommodation from: (1) his bank; or (2) from a bank (a) which is a
9 subsidiary of a bank holding company of which both his bank and the lending bank
10 are subsidiaries or (b) in which a controlling proportion of the shares is owned by the
11 same interest that owns a controlling proportion of the shares of his bank, in excess
12 of ONE PERCENT (1%) of the capital and surplus of the bank, or in the maximum
13 amount permitted by law, whichever is lower, shall be required by the lending bank to
14 waive the secrecy of his deposits of whatever nature in all banks in the Philippines.
15 Any information obtained from an examination of his deposits shall be held strictly
16 confidential and may be used by the examiners only in connection with their
17 supervisory and examination responsibility or by the Bangko Sentral in an
18 appropriate legal action it has initiated involving the deposit account."

19 **Section 9.** Section 28 of the same Act is hereby amended to read as follows:

20 "SECTION 28. Examination and Fees. - The supervising and examining
21 department head, personally or by deputy, shall examine the books of every [banking
22 institution] BANK AND QUASI-BANK, INCLUDING THEIR SUBSIDIARIES AND
23 AFFILIATES ENGAGED IN ALLIED ACTIVITIES AND OTHER FINANCIAL
24 INSTITUTIONS WHICH UNDER SPECIAL LAWS ARE SUBJECT TO BANGKO SENTRAL
25 SUPERVISION, IN ACCORDANCE WITH THE GUIDELINES SET BY THE MONETARY
26 BOARD: [once in every twelve (12) months, and at such other times as the Monetary
27 Board by an affirmative vote of five (5) members, may deem expedient and to
28 make a report on the same to the Monetary Board:] Provided, That there shall be
29 an interval of at least twelve (12) months between REGULAR [annual] examinations:
30 PROVIDED, FURTHER, THAT THE MONETARY BOARD BY AN AFFIRMATIVE VOTE OF

1 AT LEAST FIVE (5) MEMBERS MAY AUTHORIZE A SPECIAL EXAMINATION IF THE
2 CIRCUMSTANCES SO WARRANT.

3 The [bank] INSTITUTION concerned shall afford to the head of the
4 appropriate supervising and examining departments and to his authorized deputies
5 full opportunity to examine its books, cash and available assets and general condition
6 at any time during [banking] BUSINESS hours when requested to do so by the Bangko
7 Sentral: Provided, however, that none of the reports and other papers relative to
8 such examinations shall be open to inspection by the public except insofar
9 as such publicity is incidental to the proceedings hereinafter authorized or is
10 necessary for the prosecution of violations in connection with the business of such
11 institutions.

12 [Banking] BANKS, [and quasi-banking institutions] QUASI-BANKS, AND
13 OTHER FINANCIAL INSTITUTIONS WHICH UNDER SPECIAL LAWS, [which] are
14 subject to examination by the Bangko Sentral, shall pay to the Bangko Sentral, within
15 the first thirty (30) days of each year, an annual fee in an amount equal to a
16 percentage as may be prescribed by the Monetary Board [of] BASED ON its
17 average total assets during the preceding year [as shown on its end-of-month
18 balance sheets, after deducting cash on hand and amounts due from banks, including
19 the Bangko Sentral and banks abroad]. IN CONSOLIDATED EXAMINATION OF
20 RESOURCES, THE FEES FOR THE EXAMINATION OF SUBSIDIARIES AND AFFILIATES
21 ENGAGED IN ALLIED ACTIVITIES SHALL BE CHARGED AGAINST THEIR PARENT
22 INSTITUTION UNDER EXAMINATION."

23 **Section 10.** Section 30 of the same Act is hereby amended to read as follows:

24 "SECTION 30. Proceedings in Receivership and Liquidation.- Whenever,
25 upon report of the head of the supervising [or] AND examining department, the
26 Monetary Board finds that a bank, or quasi-bank:

27 (a) HAS NOTIFIED THE BANGKO SENTRAL OR PUBLICLY ANNOUNCED A
28 UNILATERAL CLOSURE, OR IN ANY MANNER HAS SUSPENDED THE PAYMENT OF
29 ITS DEPOSIT/DEPOSIT SUBSTITUTES LIABILITIES, OR is unable to pay its
30 liabilities as they become due in the ordinary course of business: Provided, That

1 this shall not include inability to pay caused by extraordinary demands induced
2 by financial panic in the banking OR FINANCIAL community; OR

3 (b) has insufficient realizable assets TO MEET ITS LIABILITIES, as
4 determined by the Bangko Sentral IN ACCORDANCE WITH THE BANKING
5 REGULATIONS [to meet its liabilities]; or

6 (c) cannot continue in business without involving probable losses to its
7 depositors or creditors; or

8 (d) has willfully violated a cease and desist order under Section 37 that has
9 become final, involving acts or transactions which amount to fraud or a dissipation of
10 the assets of the institution;

11 in which cases, the Monetary Board may summarily and without need for prior
12 hearing forbid the institution from doing business in the Philippines and IN CASE
13 IT IS A BANK, designate the Philippine Deposit Insurance Corporation as receiver of the
14 banking institution.

15 For a quasi-bank, any person of recognized competence in banking or finance
16 may be designated as receiver.

17 The receiver shall immediately gather and take charge of all the assets and
18 liabilities of the institution, administer the same for the benefit of its creditors, and,
19 exercise the general powers of a receiver under the Revised Rules of Court but shall not,
20 with the exception of administrative expenditures, pay or commit any act that will
21 involve the transfer or disposition of any asset of the institution: Provided, That the
22 receiver may deposit or place the funds of the institution in non-speculative
23 investments. The receiver shall determine as soon as possible, but not later than
24 ninety (90) days from take-over, whether the institution may be rehabilitated or
25 otherwise placed in such a condition so that it may be permitted to resume
26 business with safety to its depositors and creditors and the general public:
27 Provided, That any determination for the resumption of business of the institution shall
28 be subject to prior approval of the Monetary Board.

29 IN ORDER TO REHABILITATE THE CLOSED INSTITUTION OR TO RESTORE ITS
30 OPERATIONS WITH SAFETY TO ITS DEPOSITORS, CREDITORS AND THE GENERAL

1 PUBLIC OR TO MERGE OR CONSOLIDATE THE CLOSED INSTITUTION WITH ANOTHER
2 QUALIFIED INSTITUTION, THE RECEIVER MAY IMMEDIATELY TRANSFER OR DISPOSE
3 OF ANY OR ALL OF THE ASSETS OF THE CLOSED INSTITUTION AND PERFORM SUCH
4 OTHER ACTS AS MAY BE AUTHORIZED BY LAW.

5 If the receiver determines that the institution cannot be rehabilitated or
6 permitted to resume business in accordance with [the next preceding
7 paragraph] THIS SECTION, the Monetary Board shall notify in writing the board of
8 directors of its findings and direct the receiver to proceed with the liquidation of the
9 institutions. The receiver shall:

10 (1) file ex parte with the proper regional trial court, and without requirement
11 of prior notice or any other action, a petition for assistance in the liquidation of the
12 institution pursuant to a liquidation plan adopted by the Philippine Deposit
13 Insurance Corporation for general application to all closed banks. In case of quasi-
14 banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring
15 jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate
16 disputed claims against the institution, assist the enforcement of individual liabilities of
17 the stockholders, directors and officers, and decide on other issues as may be material
18 to implement the liquidation plan adopted. The receiver shall pay the cost of the
19 proceedings from the assets of the institution.

20 (2) convert the assets of the institution to money, dispose of the same to
21 creditors and other parties, for the purpose of paying the debts of such institution
22 in accordance with the rules on concurrence and preference of credit under the
23 Civil Code of the Philippines and he may, in the name of the institution, and with the
24 assistance of counsel as he may retain, institute such actions as may be
25 necessary to collect and recover accounts and assets of, or defend any action against
26 the institution. The assets of an institution under receivership or liquidation shall be
27 deemed in custodia legis in the hands of the receiver and shall, from the moment the
28 institution was placed under such receivership or liquidation, be exempt from any
29 order of garnishment, levy, attachment, or execution.

1 The actions of the Monetary Board taken under this section or under Section
2 29 of this Act shall be final and executory, and may not be restrained or set aside
3 by the court except on petition for certiorari on the ground AND UPON A FINDING
4 AFTER DUE HEARING that the action taken was in excess of jurisdiction or with
5 such grave abuse of discretion as to amount to lack or excess of jurisdiction:
6 PROVIDED, HOWEVER, THAT ANY ORDER RESTRAINING, ENJOINING OR SETTING
7 ASIDE THE ACTION COMPLAINED OF IN THE PETITION FOR CERTIORARI, MAY
8 ONLY BE ISSUED BY THE COURT OF APPEALS, BUT MAY BE DISSOLVED OR
9 STAYED UPON BANGKO SENTRAL FILING A WRITTEN UNDERTAKING THAT IT WILL
10 PAY ALL DAMAGES WHICH THE PETITIONER MAY SUFFER FROM THE DENIAL,
11 DISSOLUTION OR STAY OF THE INJUNCTION SHOULD IT BE DECIDED IN A FINAL
12 JUDGMENT THAT THE PETITIONER IS ENTITLED TO HAVE THE ACTS
13 COMPLAINED OF PERMANENTLY ENJOINED. The petition for certiorari may only be
14 filed by the stockholders of record representing the majority of the capital stock
15 within ten (10) days from receipt by the board of directors of the institution of the
16 order directing receivership, liquidation or conservatorship. THE PROVISIONS OF RULE
17 58 OF THE 1997 RULES ON CIVIL PROCEDURE IN SO FAR AS THEY ARE APPLICABLE
18 AND NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION SHALL
19 GOVERN THE ISSUANCE AND DISSOLUTION OF THE RESTRAINING ORDER OR
20 INJUNCTION CONTEMPLATED IN THIS SECTION.

21 The designation of a conservator under Section 29 of this Act or the appointment
22 of a receiver under this section shall be vested exclusively with the Monetary Board.
23 Furthermore, the designation of a conservator is not a precondition to the designation of
24 receiver."

25 THE AUTHORITY OF THE MONETARY BOARD TO PLACE A BANK OR QUASI-
26 BANK UNDER RECEIVERSHIP AS PROVIDED ABOVE MAY ALSO BE EXERCISED OVER
27 NON-STOCK SAVINGS AND LOAN ASSOCIATIONS, BASED ON THE SAME APPLICABLE
28 GROUNDS. FOR THIS PURPOSE, ANY PERSON OF RECOGNIZED COMPETENCE IN
29 BANKING, CREDIT AND FINANCE MAY BE DESIGNATED AS A RECEIVER.

1 **Section 11.** A new section entitled Section 30-A of the same Act shall be inserted
2 between Sections 30 and 31 which shall read as follows:

3 "SECTION 30-A. WHENEVER UPON THE REPORT OF THE HEAD OF THE
4 SUPERVISING AND EXAMINING DEPARTMENT, THE MONETARY BOARD FINDS THAT
5 THE ADJUSTED CAPITAL ACCOUNTS OF A BANK OR QUASI-BANK IS LOWER THAN
6 THE MINIMUM CAPITAL REQUIRED UNDER EXISTING RULES AND REGULATIONS, OR
7 IT HAS A CAPITAL ADEQUACY RATIO LOWER THAN THE MINIMUM RATIO
8 PRESCRIBED UNDER EXISTING REGULATIONS, THE MONETARY BOARD SHALL HAVE
9 THE AUTHORITY TO DIRECT THE EXISTING STOCKHOLDERS OF SAID BANK OR
10 QUASI-BANK TO INFUSE CAPITAL WITHIN A PERIOD NOT EXCEEDING 90 DAYS
11 FROM THE DATE OF DIRECTIVE IN SUCH AMOUNT AS MAY BE NECESSARY TO
12 RESTORE THE ENTITY'S CAPITAL TO THE MINIMUM REQUIRED AMOUNT AND/OR
13 RATIO. IN CASE OF INABILITY OR UNWILLINGNESS OF THE STOCKHOLDERS TO
14 INFUSE THE REQUIRED AMOUNT OF ADDITIONAL CAPITAL WITHIN THE
15 PRESCRIBED PERIOD, THE MONETARY BOARD MAY DIRECT SAID BANK OR QUASI-
16 BANK TO ACCEPT INVESTMENTS FROM QUALIFIED THIRD PARTIES OR TO MERGE
17 OR CONSOLIDATE WITH A QUALIFIED FINANCIAL INSTITUTION.

18 THE MONETARY BOARD MAY ALSO AUTHORIZE OR ORDER THE
19 EXISTING STOCKHOLDERS OF THE CONCERNED ENTITY TO EFFECT A QUASI-
20 REORGANIZATION OF SAID ENTITY TO REFLECT THE FAIR VALUE OF ITS CAPITAL.

21 **Section 12.** Section 36 of the same Act is hereby amended to read as follows:

22 "SECTION 36. Proceedings Upon Violation of This Act and Other Banking
23 Laws, Rules, Regulations, Orders or Instructions.- Whenever a bank, [or] quasi-bank,
24 OR OTHER FINANCIAL INSTITUTION WHICH UNDER THIS ACT OR SPECIAL LAWS
25 IS SUBJECT TO BANGKO SENTRAL SUPERVISION or whenever any person or entity
26 willfully violates this Act or other pertinent banking laws being enforced or
27 implemented by the Bangko Sentral or any order, instruction, rule or regulation
28 issued by the Monetary Board, the person or persons responsible for such violation
29 shall unless otherwise provided in this Act be punished by a fine of not less than Fifty
30 thousand pesos (P50,000) nor more than [Two hundred thousand pesos

1 (P200,000)] TWO MILLION PESOS (P2,000,000) or by imprisonment of not less than
2 two (2) years nor more than ten (10) years, or both, at the discretion of the court.

3 Whenever AN ENTITY UNDER BANGKO SENTRAL SUPERVISION [a bank or
4 quasi-bank] persists in carrying on its business in an unlawful or unsafe manner, the
5 Board may, without prejudice to the penalties provided in the preceding paragraph of
6 this section and the administrative sanctions provided in Section 37 of this Act, take
7 action under Section 30 of this Act."

8 **Section 13.** Section 37 of the same Act is hereby amended to read as follows:

9 "SECTION 37. Administrative Sanctions [on Banks and Quasi-Banks]. - Without
10 prejudice to the criminal sanctions against the culpable persons provided in
11 Sections 34, 35, and 36 of this Act, the Monetary Board may, at its discretion,
12 impose upon any bank or quasi-bank, INCLUDING THEIR SUBSIDIARIES AND
13 AFFILIATES ENGAGED IN ALLIED ACTIVITIES, OR OTHER INSTITUTIONS WHICH
14 UNDER SPECIAL LAWS ARE SUBJECT TO THE BANGKO SENTRAL SUPERVISION,
15 their directors and/or officers, for any willful violation of its charter or by-laws,
16 willful delay in the submission of reports or publications thereof as required by law,
17 rules and regulations; any refusal to permit examination into the affairs of the
18 institution; any willful making of a false or misleading statement to the Board or
19 the appropriate supervising and examining department or its examiners; any willful
20 failure or refusal to comply with, or violation of, any banking law or any order,
21 instruction or regulation issued by the Monetary Board, or any order, instruction or
22 ruling by the Governor; or any commission of irregularities, and/or conducting
23 business in an unsafe or unsound manner as may be determined by the Monetary
24 Board, the following administrative sanctions, whenever applicable:

25 (a) fines in amounts as may be determined by the Monetary Board to be
26 appropriate, [but in no case to exceed Thirty thousand pesos (P30,000) a day
27 for each violation, taking into consideration the attendant circumstances, such as
28 the nature and gravity of the violation or irregularity and the size of the bank or quasi-
29 bank;] FOR EACH VIOLATION OR IRREGULARITY BUT IN NO CASE TO EXCEED THE
30 FOLLOWING AMOUNTS PER BANKING DAY:

NATURE OF VIOLATION OR IRREGULARITY/ <u>TYPE OF INSTITUTION</u>	MAXIMUM AMOUNT <u>IN PESOS</u>
UNIVERSAL BANKS, COMMERCIAL BANKS, THEIR DIRECTORS AND/OR OFFICERS	
- SERIOUS OR GRAVE VIOLATION/IRREGULARITY	300,000
- LESS SERIOUS OR LESS GRAVE VIOLATION/IRREGULARITY	150,000
- MINOR VIOLATION/IRREGULARITY	50,000
SUBSIDIARIES AND AFFILIATES OF UNIVERSAL BANKS AND COMMERCIAL BANKS, THRIFT BANKS, QUASI-BANKS, THEIR SUBSIDIARIES AND AFFILIATES, OTHER INSTITUTIONS UNDER BSP SUPERVISION, THEIR DIRECTORS AND/OR OFFICERS.	
- SERIOUS OR GRAVE VIOLATION/IRREGULARITY	100,000
- LESS SERIOUS OR LESS GRAVE VIOLATION/IRREGULARITY	50,000
- MINOR VIOLATION/IRREGULARITY	25,000
RURAL BANKS, NON-STOCK SAVINGS AND LOAN ASSOCIATIONS, PAWNSHOPS, THEIR SUBSIDIARIES AND AFFILIATES, DIRECTORS AND OFFICERS	
- SERIOUS OR GRAVE VIOLATION/IRREGULARITY	50,000
- LESS SERIOUS OR LESS GRAVE VIOLATION/IRREGULARITY	25,000
- MINOR VIOLATION/IRREGULARITY	10,000

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TO PROPERLY AND EFFECTIVELY IMPLEMENT THE FOREGOING SANCTIONS,
THE MONETARY BOARD SHALL, BY REGULATION, DEFINE SERIOUS OR GRAVE, LESS
SERIOUS OR LESS GRAVE, AND MINOR OFFENSES TAKING INTO CONSIDERATION THE
ATTENDANT CIRCUMSTANCES, SUCH AS NATURE AND GRAVITY OF THE VIOLATION

1 OR IRREGULARITY AND THE SIZE OF THE INSTITUTION: PROVIDED, THAT WILLFUL
2 VIOLATIONS AND IRREGULARITIES MAY BE AUTOMATICALLY CONSIDERED BY THE
3 MONETARY BOARD AS SERIOUS OR GRAVE REGARDLESS OF THEIR EFFECT TO THE
4 FINANCIAL CONDITION OF THE CONCERNED INSTITUTION: PROVIDED, FURTHER,
5 THAT WITHOUT PREJUDICE TO THE IMPOSITION OF APPLICABLE SANCTION TO THE
6 INSTITUTION THAT COMMITTED A SPECIFIC VIOLATION OR IRREGULARITY, THE
7 MONETARY BOARD MAY ALSO IMPOSE SANCTIONS TO ITS PARENT UNIVERSAL OR
8 COMMERCIAL BANK IF THERE IS EVIDENCE THAT SAID PARENT INSTITUTION
9 ABETTED THE COMMISSION OF THE VIOLATION OR IRREGULARITY OR DID NOT
10 EXERCISE REASONABLE MEANS TO PREVENT THE SAME."

11 (b) suspension of rediscounting privileges or access to Bangko Sentral credit
12 facilities;

13 (c) suspension of lending or foreign exchange operations or authority to accept
14 new deposits or make new investments;

15 (d) suspension of interbank clearing privileges; [and/or]

16 (e) revocation of quasi-banking license;

17 (F) REVOCATION OF TRUST LICENSE;

18 (G) PROHIBITION FROM DECLARING CASH DIVIDENDS;

19 (H) CONFISCATION BY AND FORFEITURE IN FAVOR OF THE BANGKO SENTRAL
20 OF ANY AND ALL PROFITS, AS MAY BE DETERMINED BY THE MONETARY BOARD,
21 ARISING FROM THE OFFENSE OR VIOLATION OF BANKING LAWS, RULES AND
22 REGULATIONS; AND/OR

23 (I) OTHER SANCTIONS AS THE MONETARY BOARD MAY DEEM APPROPRIATE
24 UNDER THE CIRCUMSTANCES.

25 THE DIRECTOR OR OFFICER RESPONSIBLE FOR THE VIOLATION MAY,
26 AFTER DUE PROCESS, BE SUSPENDED, REMOVED OR DISQUALIFIED FROM
27 HOLDING OFFICE, OR ANY POSITION, IN AN INSTITUTION UNDER THE
28 SUPERVISION OF THE BANGKO SENTRAL, FOR A PERIOD TO BE DETERMINED BY
29 THE MONETARY BOARD, TAKING INTO CONSIDERATION THE ATTENDANT

1 CIRCUMSTANCES, SUCH AS THE NATURE AND GRAVITY OF THE ACT OR
2 OMISSION AND THE SIZE OF THE INSTITUTION.

3 Resignation or termination from office shall not exempt such director or officer
4 from administrative or criminal sanctions.

5 The Monetary Board may, whenever warranted by circumstances,
6 preventively suspend any director or officer of [a bank or quasi-bank] THE
7 INSTITUTION pending an investigation: Provided, That should the case be not finally
8 decided by the *Bangko Sentral* within a period of one hundred twenty (120) days
9 after the date of suspension, said director or officer shall be reinstated in his position:
10 Provided further, That when the delay in the disposition of the case is due to the fault,
11 negligence or petition of the director or officer, the period of delay shall not be
12 counted in computing the period of suspension herein provided.

13 The above administrative sanctions need not be applied in the order of their
14 severity.

15 Whether or not there is an administrative proceeding, if the institution and/or
16 the directors and/or officers concerned continue with or otherwise persist in the
17 commission of the indicated practice or violation, the Monetary Board may issue an
18 order requiring the institution and/or the directors and/or officers concerned to cease
19 and desist from the indicated practice or violation, and may further order that
20 immediate action be taken to correct the conditions resulting from such practice or
21 violation. The cease and desist order shall be immediately effective upon service on the
22 respondents.

23 The respondents shall be afforded an opportunity to defend their action in a
24 hearing before the Monetary Board or any committee chaired by any Monetary Board
25 member created for the purpose, upon request made by the respondents within five
26 (5) days from their receipt of the order. If no such hearing is requested within said
27 period, the order shall be final. If a hearing is conducted, all issues shall
28 be determined on the basis of records, after which the Monetary Board may either
29 reconsider or make final its order.

1 The Governor is hereby authorized, at his discretion, to impose upon [banking
2 institutions,] BANKS AND QUASI-BANKS, INCLUDING THEIR SUBSIDIARIES AND
3 AFFILIATES ENGAGED IN ALLIED ACTIVITIES, AND OTHER FINANCIAL INSTITUTIONS
4 WHICH UNDER SPECIAL LAWS ARE SUBJECT TO BANGKO SENTRAL SUPERVISION
5 for any failure to comply with the requirements of law, Monetary Board regulations and
6 policies, and/or instructions issued by the Monetary Board or by the Governor, fines
7 not in excess of [Ten thousand pesos (P10,000) a] ONE HUNDRED THOUSAND PESOS
8 (P100,000) PER BANKING day for each violation, the imposition of which shall be final
9 and executory until reversed, modified or lifted by the Monetary Board on appeal."

10 **Section 14.** Section 77 of the same Act is hereby amended to read as follows:

11 "SECTION 77. Requirement of Balanced Currency Position.- The Monetary
12 Board may require [the] banks AND QUASI-BANKS, INCLUDING THEIR
13 SUBSIDIARIES AND AFFILIATES ENGAGED IN ALLIED ACTIVITIES, to maintain a
14 balanced position between their assets and liabilities in Philippine pesos or in any
15 other currency or currencies in which they operate. [The Banks] THEY shall be
16 granted a reasonable period of time in which to adjust their currency positions to any
17 such requirement.

18 The powers granted under this section shall be exercised only when special
19 circumstances make such action necessary, in the opinion of the Monetary Board,
20 and shall be applied to all banks AND QUASI-BANKS, INCLUDING THEIR
21 SUBSIDIARIES AND AFFILIATES ENGAGED IN ALLIED ACTIVITIES, alike and without
22 discrimination."

23 **Section 15.** A new section entitled Section 88-A of the same Act shall be inserted
24 between Sections 88 and 89 which shall read as follows:

25 "SECTION 88-A. EXEMPTION FROM ATTACHMENT. THE PROVISIONS OF ANY
26 LAW TO THE CONTRARY NOTWITHSTANDING AND SECTION 31 OF THIS ACT,
27 COLLATERALS ON LOANS AND ADVANCES GRANTED BY THE BANGKO SENTRAL TO
28 BANKING INSTITUTIONS SHALL NOT BE SUBJECT TO ATTACHMENT, EXECUTION OR
29 ANY OTHER COURT PROCESS, NOR SHALL THEY BE INCLUDED IN THE PROPERTY
30 OF INSOLVENT PERSONS OR INSTITUTIONS, UNLESS ALL DEBTS AND OBLIGATIONS

1 OF THE BANKING INSTITUTIONS TO THE BANGKO SENTRAL, WHETHER REGISTERED
2 OR NOT, HAVE BEEN PAID, INCLUDING ACCRUED INTEREST, PENALTIES,
3 COLLECTION EXPENSES, AND OTHER CHARGES."

4 **Section 16.** A new section entitled Section 89-A of the same Act shall be inserted
5 between Sections 89 which shall read as follows:

6 "SECTION 89-A. CREDIT FACILITIES FOR ISLAMIC BANKS. THE BANGKO
7 SENTRAL MAY, TAKING INTO CONSIDERATION THE PECULIAR CHARACTERISTICS OF
8 ISLAMIC BANKING, FORMULATE RULES AND REGULATIONS FOR THE EXTENSION OF
9 REDISCOUNTING OR OTHER SIMILAR FACILITIES TO ISLAMIC BANKS."

10 **Section 17.** Section 95 of the same Act is hereby amended to read as follows:

11 "SECTION 95. Definition of Deposit Substitutes. - The term "deposit
12 substitutes" is defined as an alternative form of obtaining funds from the public, other
13 than deposits, through the issuance, endorsement, or acceptance of debt
14 instruments for the borrower's own account, for the purpose of re-lending or
15 purchasing of receivables and other obligations. These instruments may include, but
16 need not be limited to, bankers, acceptances, promissory notes, participations,
17 certificates of assignment and similar instruments with recourse, and repurchase
18 agreements. The Monetary Board shall determine what specific instruments shall
19 be considered as deposit substitutes for the purposes of Section 94 of this Act[:]. THE
20 MONETARY BOARD MAY ALSO EXCLUDE FUNDS OBTAINED OR BORROWED FROM
21 CERTAIN INSTITUTIONAL LENDERS FROM THIS SECTION: Provided, however, That
22 deposit substitutes of commercial, industrial and other non-financial companies
23 issued for the limited purpose of financing their own needs or the needs of their agents
24 or dealers shall not be covered by the provisions of Section 94 of this Act."

25 **Section 18.** The second paragraph of Section 102 of the same Act is hereby amended
26 to read as follows:

27 "The deposit reserves maintained by the banks in the Bangko Sentral in
28 accordance with the provisions of Section 94 of this Act shall serve as basis for the
29 clearing of checks and the settlement of interbank balances, subject to such rules and
30 regulations as the Monetary Board may issue with respect to such

1 operations: Provided, That any bank which incurs an overdrawing in its deposit
2 account with Bangko Sentral shall fully cover said overdraft, including interest thereon at
3 a rate equivalent to one-tenth of one percent (1/10 of 1%) per day or the
4 prevailing ninety-one-day treasury bill rate plus three percentage points, whichever is
5 higher, not later than the next clearing day: Provided, HOWEVER,[further], That
6 settlement of clearing balances shall not be effected for any account which IS
7 [continues to be] overdrawn for A PERIOD AS MAY BE DECIDED BY THE MONETARY
8 BOARD WHENEVER WARRANTED BY THE CIRCUMSTANCES: PROVIDED, THAT SUCH
9 PERIOD SHALL IN NO CASE EXCEED five (5) consecutive banking days until such
10 time as the overdrawing is fully covered or otherwise converted into an emergency
11 loan or advance pursuant to the provisions of Section 84 of this Act: Provided,
12 finally, That the appropriate clearing office shall be officially notified of banks with
13 overdrawn balances. Banks with existing overdrafts with the Bangko Sentral as of the
14 effectivity of this Act shall, within such period as may be prescribed by the Monetary
15 Board, either convert the overdraft into an emergency loan or advance with a plan
16 of payment, or settle such overdrafts, and that, upon failure to so comply
17 herewith, the Bangko Sentral shall take such action against the bank as may be
18 warranted under this Act."

19 **Section 19.** Section 108 of the same Act is hereby amended to read as follows:

20 "SECTION 108. Minimum Capital Ratios. - The Monetary Board may
21 prescribe minimum RISK-BASED CAPITAL ADEQUACY ratios BASED ON
22 INTERNATIONALLY ACCEPTED STANDARDS [which the capital and surplus of the
23 banks must bear to the volume of their assets, or to specific categories thereof,]
24 and may alter said ratios whenever it deems necessary. IN THE EXERCISE OF ITS
25 AUTHORITY UNDER THIS SECTION, THE MONETARY BOARD MAY PRESCRIBE A
26 HIGHER MINIMUM CAPITAL ADEQUACY RATIO FOR INDIVIDUAL BANKS WHICH ARE
27 EXPOSED TO MORE THAN NORMAL RISKS."

28 **Section 20.** Section 125 of the same Act is hereby amended to read as follows:

29 "SECTION 125. Tax Exemptions.- THE PROVISIONS OF ANY GENERAL OR
30 SPECIAL LAW TO THE CONTRARY NOTWITHSTANDING, the Bangko Sentral

1 shall be exempt [, for a period of five (5) years from the approval of this Act] from
2 all national, provincial, municipal and city taxes, fees, charges and assessments [.] NOW
3 IN FORCE OR HEREAFTER ESTABLISHED. The exemptions authorized in the
4 preceding paragraph of this section shall apply to all property of the Bangko
5 Sentral, to the resources, receipts, expenditures, profits and income of the Bangko
6 Sentral, as well as to all contracts, deeds, documents and transactions related to
7 the conduct of the business of the Bangko Sentral: Provided, however, That said
8 exemptions shall apply only such taxes, fees, charges, and assessments for which the
9 Bangko Sentral itself would otherwise be [,] liable, and shall not apply to taxes,
10 fees, charges, or assessments payable by persons or other entities doing business
11 with the Bangko Sentral: Provided, further, That foreign loans and other obligations
12 of the Bangko Sentral shall be exempt, both as to principal and interest, from any and
13 all other taxes if the payment of such taxes has been assumed by the Bangko Sentral."

14 **Section 21.** The first paragraph of Section 126 of the same Act is hereby amended to
15 read as follows:

16 "SECTION 126. Exemption from Customs Duties. - The provision of any
17 general or special law to the contrary notwithstanding, the importation and exportation
18 by the Bangko Sentral of notes and coins, and of gold and other metals to be used
19 for purposes authorized under this Act, and the importation of all equipment AND
20 SUPPLIES needed [for] IN THE BANGKO SENTRAL OPERATIONS SUCH AS bank
21 note production, minting of coins, metal refining, [and other] security printing
22 operations AND TRANSPORT OF CURRENCY shall be fully exempt from all customs
23 duties and consular fees and from all other taxes, assessments and charges
24 related to such importation or exportation."

25 **Section 22.** The first paragraph of Section 128 of the same Act is hereby amended to
26 read as follows:

27 "SECTION 128. Prohibitions.- The Bangko Sentral shall not acquire shares of
28 any kind or accept them as collateral, and shall not participate in the ownership or
29 management of [any] AN enterprise, either directly or indirectly [.]: PROVIDED,
30 THAT THIS PROHIBITION SHALL NOT APPLY WHENEVER SUCH OWNERSHIP

1 AND/OR MANAGEMENT IS EXPRESSLY AUTHORIZED BY LAW, OR THE MONETARY
2 BOARD BY A VOTE OF AT LEAST FIVE (5) OF ITS MEMBERS DEEMS AN ACQUISITION
3 OR INVESTMENT TO BE NECESSARY TO THE PERFORMANCE BY BANGKO SENTRAL OF
4 ITS MANDATES UNDER THIS ACT OR TO QUALIFY OR AS REQUIRED FOR
5 MEMBERSHIP IN INTERNATIONAL AND REGIONAL ORGANIZATIONS."

6 **Section 23.** Repealing Clause. All provisions of existing laws, orders, rules and
7 regulations, or parts thereof, in conflict or inconsistent with the provisions of this Act are hereby
8 repealed.

9 **Section 24.** Separability Clause. If any provision or section of this Act or the
10 application thereof to any person or circumstance is held to be invalid, the other provisions or
11 sections of this Act, and the application of such provision or section to other persons or
12 circumstances, shall not be affected thereby.

13 **Section 25.** Effectivity. This Act shall take effect after fifteen (15) days following its
14 publication either in the Official Gazette or in a newspaper of general circulation in the
15 Philippines.

16 Approved.
17

COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES

SUMMARY OF PROCEEDINGS

I. BACKGROUND

The banking system remains the dominant sector in the Philippine financial market. Its assets make up 81.6 percent of GDP and 82.3 percent of the whole financial system.

The Bangko Sentral ng Pilipinas (the "BSP") has the mandate to oversee the banking system. It has the duty to supervise the operations of banks and exercise regulatory powers over non-bank financial institutions with quasi-banking functions.¹ Since the BSP Charter's enactment in 1993, new developments have occurred in the local and global financial environment. The BSP's experience would show that the powers and authority granted to the BSP seem inadequate to combat and address more efficiently and promptly problems in the financial system, particularly in the banking sector. A proof of the inadequacy of such power is the high incidence of bank failures.

NUMBER OF CLOSED PDIC MEMBER BANKS

	1981-1990	1991-2000	2001-2003
Commercial Banks	3	2	0
Thrift Banks	36	13	2
Rural Banks	182	122	38
Specialized Government Banks	0	0	0
Total	221	137	40

The impact of a bank closure to the economy as a whole, and to the financial sector, in particular, is immense. The high frequency of bank failures, as well as the new developments in the local and global financial environment, made it necessary for the BSP's supervisory powers and authority to be strengthened.

Thus, the proposed amendments.

Two bills were proposed for the amendment of the BSP Charter – Senate Bill Nos. 553 and 1822, introduced by Senators Sergio Osmeña III and Edgardo J. Angara, respectively. These bills focused on four major objectives, to wit:

- A. To protect public interest through a more effective supervision of the banking system.

This objective will be met by allowing the BSP to examine banks and related companies on a consolidated basis since in reality, the performance, and exposure of the affiliates and subsidiaries can also affect the financial standing of a parent bank. This also calls for an increase in the penal and administrative sanctions on erring banks, their directors and officers to deter them from risking

¹ Republic Act No. 7653, otherwise known as the "New Central Bank Act" which was enacted in 1993.

non-compliance with regulations in consideration of lower penalties but with higher returns.

- B. To improve the quality of bank ownership and encourage banks to maintain a sound capital position.

The BSP will be given the authority to screen incoming substantial stockholders so that it may prevent the entry into the system of persons with questionable background and capital. The BSP should also be able to direct acceptance of new capital, mergers and quasi-reorganization so that the bank will reflect the true value of its capital.

- C. To enhance the administration of the monetary, credit and banking system.

This objective will be met by strengthening the payment system which is a key component of the financial structure. Moreover, the BSP should be able to obtain data on a broader basis in the performance of its mandate to formulate monetary policy.

- D. To develop a stronger and more responsive BSP.

The BSP should have the flexibility in managing its resource complement. Also, it is important for the examiners, who are prone to suits in the performance of their functions, to be given adequate legal protection. The bills likewise proposed that the degree of diligence required of BSP's officers and employees be made at par with those of other similar public officers.

The adoption of the proposed amendments is geared towards making our laws in accord with the international best practices in banking supervision.

II. COMMITTEE ACTION

- A. The Committee on Banks, Financial Institutions and Currencies (the "Committee") conducted a public hearing on the two bills on 9 November 2004. The hearing was attended by the Governor of the BSP, Governor Rafael Buenaventura, and other ranking officials of the institution, as well as the Chairperson of the Securities and Exchange Commission, Ms. Fe Barin, who herself was the Secretary to the Monetary Board for several years. The private sector was likewise represented by the representatives of the Bankers Association of the Philippines, the Chamber of Thrift Banks and the Rural Bankers Association of the Philippines.
- B. The discussions in the hearing, as well as the comments and suggestions in the position papers submitted to the Committee, were taken into consideration in the drafting of the Substitute Bill.

III. FINDINGS

Some of the proposed amendments gathered no objections from the concerned parties. However, the following issues were controverted:

- A. On the scope of BSP's supervision

Proposed Amendment

It was proposed that the supervisory powers of the BSP be broadened to include quasi-banks,¹ trust entities, and other financial institutions which under RA 7653 and other laws are subject to BSP supervision. This will align RA 7653 with Section 4 of RA 8791, otherwise known as the General Banking Law", which provides that –

"The Bangko Sentral shall also have supervision over the operations of and exercise regulatory powers over quasi-banks, trust entities and other financial institutions which under special laws are subject to Bangko Sentral supervision."

Discussion

The inclusion of trust entities was questioned on the ground that at present, there are no trust entities established independently of banking institutions². Despite the fact that under the GBL, trust entities may be established separately from banks, the BSP's supervisory powers should not, as yet, be expanded to cover them.

Committee Consensus

The Committee decided to exclude trust entities from the expanded coverage of BSP supervision as the Senate should not legislate in a vacuum.

- B. On the waiver of the confidentiality of bank deposits for DOSRI borrowings

Section 26 of the New Central Bank Act presently requires any director, officer, stockholder or their related interest ("DOSRI") who contracts a loan or any form of financial accommodation from:

(1) his bank; or

(2) from a bank

(a) which is a subsidiary of a bank holding company of which both his bank and the lending bank are subsidiaries or

(b) in which a controlling proportion of the shares is owned by the same interest that owns a controlling proportion of the shares of his bank,

in excess of five percent (5%) of the capital and surplus of the bank, or in the maximum amount permitted by law, whichever is lower, **to waive the secrecy of his deposits of whatever nature in all banks in the Philippines.**

Proposed Amendment

The two bills proposed for the waiver to be required for all borrowings by DOSRIs, regardless of amount.

Discussions

² Senator Juan Ponce Enrile, Vice Chairman

The proposed amendment will have a very grave impact on investors of the covered institutions. Any borrowing by a DOSRI, even for a very minimal amount, will require the said waiver, not only of the bank deposits with the lending institution but also deposits with other banks. This might discourage investments in banks, quasi-banks and other financial institutions under the supervision of the BSP.³

However, the present 5% threshold is "quite big and very few DOSRIs may be able to borrow this much,"⁴ thus, this is not sufficient to protect the general public from excessive borrowings of DOSRIs.

Committee Consensus

Based on the report submitted by the BSP, there are still several cases of DOSRI violations⁵ despite the protective measures in the existing law. The Committee decided that there is a need to incorporate a stricter safeguard against abuses of DOSRIs. A more feasible solution, however, is not to remove the threshold altogether, but to find a balance between the two-fold objectives of encouraging investment in the financial system and the protection of the depositors from abuses of DOSRIs. Thus, the decision of lowering the threshold from 5% to 1%.

A 1% threshold may be reasonable considering the minimum capital requirements as follows:

<u>Type of Bank</u>	<u>Minimum Capital Requirement</u> (In Million Pesos)	<u>Borrowings subject to the Waiver Requirement (1% Floor)</u> (In Million Pesos)
a. Universal Banks	4,950.0	49.5
b. Commercial Banks	2,400.0	24
c. Thrift Banks		
- With head office within Metro Manila	325.0	3.25
- With head office outside Metro Manila	52.0	0.52
d. Rural Banks		
- within Metro Manila	26.0	0.26
- Cities of Cebu and Davao	13.0	0.13
- In 1st, 2nd & 3rd class cities and 1st class municipalities	6.5	0.065
- In 4th, 5th & 6th class cities and in 2nd, 3rd & 4th class municipalities	3.9	0.039
- In 5th & 6th class municipalities	2.6	0.026

³ Former Prime Minister Cesar Virata, President of the Bankers' Association of the Philippines.

⁴ Atty. Fe Barin, Chairperson of the Securities and Exchange Commission, Former Secretary to the Monetary Board.

⁵ Report dated 1 December 2004.

C. On the administrative fines

Proposed Amendment

The bills proposed an increase in the maximum amount imposable by the Monetary Board from thirty Thousand Pesos (P30,000.00) to Three Hundred Thousand Pesos (P300,000.00) a day for each violation. The maximum amount imposable by the Governor was likewise raised from Ten Thousand Pesos (P10,000.00) to One Hundred Thousand Pesos a day for each violation.

Discussions

The higher sanctions will serve as a deterrent to the violation or circumvention of regulations. Based on the present rates, banks may deliberately violate the regulations in exchange for higher returns.⁶

The increase, however, raised concerns from the private sector. The Chamber of Thrift Banks⁷ and the Rural Bankers Association of the Philippines⁸ raised their concerns as "the increase is confiscatory and grossly disproportionate" to small banks and will eat up the finances of the banking sector. Moreover, the ground for the imposition of the said sanctions – that is the conduct of business in an "unsafe and unsound" manner – is relative and may be subject to different interpretations. Increasing the penalty to a very high level may be subject to abuses. The Bankers Association of the Philippines likewise objected to the very high increases in the administrative fines.

Committee consensus

In order to balance the concerns of both the regulatory body and the private sector, the Committee decided that the administrative fines be graduated depending on the classification of erring institution and the gravity of the violations.⁹

D. On the exemption from taxes and customs duties

Proposed Amendment

The bills proposed that the BSP shall be exempt from taxes and customs duties.

Discussions

Since BSP is performing purely governmental functions, it should not be hampered in its performance by the revenue programs of the government. Moreover, in lieu of the taxes, the BSP is under the obligation to remit 75% of its annual income as dividends to the National Government.¹⁰

⁶ Atty. Juan de Zuñiga, Assistant Governor of the BSP.

⁷ Position paper dated 5 November 2004.

⁸ Position paper dated 8 November 2004.

⁹ As proposed by Senator Edgardo J. Angara, Chairman.

¹⁰ BSP Governor Rafael Buenaventura.

Committee Consensus

Exempting the BSP from taxes will not only reduce friction cost and intermediation cost but will also produce greater cash flow for the National Government in view of BSP's obligation to remit 75% of its income to the National Government. Moreover, the Department of Finance is agreeable to the exemption of the BSP from income tax and customs duties.¹¹ Thus, the proposed amendment was adopted.

E. On the complete exemption from the Salary Standardization Law

Proposed Amendment

The Senate Bill No. 557 proposed that rank and file employees of the BSP shall be exempt from the Salary Standardization Law ("SSL").¹²

Discussions

The proposed exemption will give the BSP flexibility in managing its human resource complement. The applicability of the SSL to the rank and file employees has led to an equitable and double standard of treating BSP personnel.

Committee Consensus

In view of the planned review of the SSL, the Committee decided not to adopt the proposed amendment.

(NOTA BENE: In view of subsequent developments whereby the continuous application of the SSL to the rank and file employees of the BSP was declared by the Supreme Court as unconstitutional,¹³ the BSP withdrew this particular proposed amendment.)

F. On the legal protection to BSP personnel

Proposed Amendment

Adequate legal protection should be provided the personnel of the BSP who are sued in the course of the performance of their duties. They may be held liable only for gross negligence or gross misconduct.

Moreover, the standard of diligence to be applied to the officials and personnel of the BSP shall be in accordance with the revised Administrative Code.

¹¹ Governor Buenaventura's letter dated 27 January 2005.

¹² The New Central Bank Act provides that "compensation and wage structure of employees whose positions fall under salary grade 19 and below shall be in accordance with the rates prescribed under Republic Act No. 6758".

¹³ Central Bank Employees Association, Inc. vs. Bangko Sentral ng Pilipinas, et al. (G.R. No. 148208, 15 December 2004)

Discussions

BSP personnel should be able to perform their functions confidently and with firm resolve, without the threat or burden of harassment suits against them. This is a protection that is being afforded to examiners in other jurisdictions (e.g. USA, Australia, UK, Hong Kong, New Zealand, Canada and Singapore).

The extraordinary diligence required under the present provision is a very exacting standard, which, in the Philippine legal system, has only been required of common carriers. The present provision has virtually encouraged the filing of suits against BSP officials for the slightest perception of any inaccuracy or omission, although immaterial, in the performance of their work.¹⁴

The above amendments were fully supported by the Chamber of Thrift banks and the Rural Bankers Association of the Philippines.

Committee Consensus

The Committee decided to adopt the proposed amendment since BSP personnel should not be brought up or below the standard applicable to the public servants in general.¹⁵ However, in addition to gross negligence or gross misconduct, indemnity should likewise not be allowed upon findings of bad faith and malice.

G. On the immunity of BSP officials and personnel

Proposed Amendment

SBN 557 proposed immunity from suit of officials and personnel of BSP's supervision and Examination Sector.

Discussion

Both the Rural Bankers Association of the Philippines and the Chamber of Thrift Banks opposed the grant of immunity to the examiners because of their direct responsibility for the banks' evaluation and performance rating. Not granting them immunity would make them more careful in making assessments of a bank's performance.

Committee Consensus

In view of the decision of putting BSP personnel within the coverage of the Revised Administrative Code and thus subjecting them to similar standard applicable to the public servants in general, the Committee deemed it proper not to include the proposed amendment granting BSP officials and personnel immunity from suit.

H. On remuneration for other services.

¹⁴ BSP Assistant Governor Juan de Zuñiga.

¹⁵ Senator Edgardo J. Angara, Chairman.

Proposed Amendment

The bills proposed to give the BSP an authority to charge fees for other services rendered to banks and other supervised institutions. This will be on top of the supervisory fees.

Discussion

The present law mentions only the charging of supervision fees on banks. Since the BSP renders other services to banks and other financial institutions under its supervision, it should be compensated for the services rendered.

This provision is being opposed by the Chamber of Thrift Banks and the Rural Bankers Association of the Philippines since the supervision fees are already very high. Additional charges will be unaffordable to the banks.

Committee Consensus

In view of the supervision fees already being collected from the supervised institutions, they should not be burdened with additional fees which they will eventually pass on to their clientele. The additional charges will only increase finance charges.