

SENATE OF THE PHILIPPINES)
SIXTEENTH CONGRESS)
First Regular Session)



Senate
Office of the Secretary

13 OCT 16 AM 10:03

SENATE

Senate Bill No. 1852

RECEIVED BY *f*

Introduced by **SENATOR JOSEPH VICTOR G. EJERCITO**

EXPLANATORY NOTE

Since Republic Act No. 7653, otherwise known as the New Central Bank Act, was enacted in 1993, there have been dramatic developments in the banking environment brought about by automation, technology, globalization and the influence of best practices, on one hand, and by some structural weaknesses on the other hand, which may have abetted or tolerated instances of unsafe and unsound practices, poor governance, or even fraud.

The amendments hereby being proposed seeks to enhance the administration of the monetary, credit and banking system of the Republic by, among other things, affirming the authority of the Bangko Sentral to administer the payments and settlement systems. This will promote the safe, reliable and final settlement of financial transactions thereby contributing to good economic order.

This measure will be complemented by the proposed supervisory powers of the Bangko Sentral which will oblige transparency in the disclosure of bank ownerships; subject the bank owners to the fit and proper test, and compel restructuring and rehabilitation of distressed banks. To address early the commission of frauds and regularities, it is also proposed that the authority of the examiners to access deposit accounts, which was granted before and was exercised without abuse, be restored.

The Bangko Sentral should also be able to function as a more responsive organization. Towards this end, its officials and personnel should be granted the same legal protection given to the PDIC under Republic Act No. 9576. It should be able to access data from any person or entity in the Philippines, similar to what was enjoyed before by the defunct Central Bank of the Philippines, for completion of information and efficiency in the formulation of monetary policy. As an institution performing governmental functions, the Bangko Sentral should also be exempted from taxation.

Approval of this bill is therefore earnestly sought.

Joseph Victor G. Ejercito
JOSEPH VICTOR G. EJERCITO

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**AN ACT
STRENGTHENING FURTHER THE REGULATORY POWERS OF THE BANGKO
SENTRAL NG PILIPINAS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO.
7653, ENTITLED "THE NEW CENTRAL BANK ACT," AND FOR OTHER
PURPOSES**

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

SECTION 1. Section 3 of Republic Act No. 7653 is hereby amended to read as follows:

"SEC. 3. Responsibility and Primary Objective. - The *Bangko Sentral* shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks and institutions performing similar functions.

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

SEC. 2. Section 11 of the same Act is hereby amended to read as follows:

"SEC. 11. Meetings. - The Monetary Board shall meet at least once a week. The Board may be called to a meeting by the Governor of the *Bangko Sentral* or by two (2) other members of the Board.

The presence of four (4) members shall constitute a quorum: *Provided*, That in all cases the Governor or his duly designated alternate shall be among the four (4).

Unless otherwise provided in this Act, all decisions of the Monetary Board shall require the concurrence of at least four (4) members. **THE MEETING OF THE MONETARY BOARD MAY BE CONDUCTED THROUGH THE USE OF MODERN TECHNOLOGY INCLUDING, BUT NOT LIMITED TO, TELECONFERENCING OR VIDEO CONFERENCING.**

The *Bangko Sentral* shall maintain and preserve a complete record of the proceedings and deliberations of the Monetary Board, including the tapes and transcripts of the stenographic notes, either in their original form or in microfilm."

SEC. 3. Section 15, paragraphs (b) and (e) of the same Act is hereby amended to read as follows:

"SEC. 15. Exercise of Authority. - In the exercise of its authority, the Monetary Board shall:

- a) XXX
- b) direct the management, operations, and administration of the *Bangko Sentral*, reorganize its personnel, PROVIDE SEPARATION BENEFITS

WHENEVER NECESSARY, and issue such rules and regulations as it may deem necessary or convenient for this purpose. The legal units of *Bangko Sentral* shall be under the exclusive supervision and control of the Monetary Board;

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

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

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

subsection **ON ACCOUNT OF BAD FAITH, MALICE, GROSS NEGLIGENCE OR GROSS MISCONDUCT.**"

SEC. 4. Section 16 of the same Act is hereby amended to read as follows:

"SEC. 16. Responsibility. - THE GENERAL RULE AND THE EXCEPTION THEREFROM ON THE LIABILITY OF PUBLIC OFFICERS AS PROVIDED IN SECTIONS 38 AND 39 OF CHAPTER 9, BOOK 1 OF THE REVISED ADMINISTRATIVE CODE OF 1987 SHALL APPLY TO members of the Monetary Board [, officials, examiners, and employees] **AND OTHER PERSONNEL** of the *Bangko Sentral* [who willfully violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of his duties shall be held liable for any loss or injury suffered by the *Bangko Sentral* or other banking institutions as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence].

Similar responsibility shall apply to members, officers, and employees of the *Bangko Sentral* for: (1) the disclosure of any information of a confidential nature, or any information on the discussions or resolutions of the Monetary Board, or about the confidential operations of the *Bangko Sentral*, unless the disclosure is in connection with the performance of official functions with the *Bangko Sentral*, or is with prior authorization of the Monetary Board or the Governor; or (2) the use of such information for personal gain or to the detriment of the Government, the *Bangko Sentral* or third parties: *Provided, however,* That any data or information required to be submitted to the President and/or the Congress, or to be published under the provisions of this Act shall not be considered confidential."

"THE FOREGOING NOTWITHSTANDING, UNLESS THE ACTION OF THE BANGKO SENTRAL OR ANY OF ITS OFFICIALS AND EMPLOYEES ARE FOUND TO BE IN WILLFUL VIOLATION OF THIS ACT OR PERFORMED IN BAD FAITH, WITH MALICE AND/OR GROSS NEGLIGENCE, THE BANGKO SENTRAL, ITS OFFICIALS, EMPLOYEES AND AGENTS ARE HELD FREE AND HARMLESS TO THE FULL EXTENT PERMITTED BY LAW FROM ANY LIABILITY AND SHALL BE INDEMNIFIED FOR ANY AND ALL LIABILITIES, CLAIMS DEMANDS, DAMAGES, DEFICIENCIES, COSTS AND EXPENSES OF WHATSOEVER KIND AND NATURE THAT MAY ARISE IN CONNECTION WITH THE PERFORMANCE OF THEIR FUNCTIONS."

SEC. 5. Section 21 of the same Act is hereby amended to read as follows:

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

In the absence of the Governor, a Deputy Governor designated by the Governor shall act as chief executive of the *Bangko Sentral* and shall exercise the powers and perform the duties of the Governor. Whenever the Government is unable to attend meetings of government boards or councils in which he is an *ex officio* member pursuant to provisions of special laws, a Deputy Governor as may

be designated by the Governor shall be vested with authority to participate and exercise the right to vote in such meetings."

SEC. 6. Section 23 of the same Act is hereby amended to read as follows:

"SEC. 23. Authority to Obtain Data and Information. - The *Bangko Sentral* shall have the authority to [request] **REQUIRE** from **ANY PERSON OR ENTITY, INCLUDING** government offices and instrumentalities, or government-owned or controlled corporations, any data [which it may require for the proper discharge of its] **PERTAINING TO THE** functions and responsibilities **OF THE BANGKO SENTRAL**. The *Bangko Sentral* through the Governor or in his absence, a duly authorized representative shall have the power to issue a *subpoena* for the production of the books and records for the aforesaid purpose. Those who refuse the *subpoena* without justifiable cause, or who refuse to supply the bank with data [requested or] required, shall be subject to punishment for contempt in accordance with the provisions of the Rules of Court.

Data on individual firms, other than banks, gathered by the Department of Economic Research and other departments or units of the *Bangko Sentral* shall not be made available to any person or entity outside of the *Bangko Sentral* whether public or private except under order of the court or under such conditions as may be prescribed by the Monetary Board: *Provided, however,* That the collective data on firms may be released to interested persons or entities: *Provided, finally,* That in the case of data on banks, the provisions of Section 27 of this Act shall apply."

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

"SEC. 25. Supervision and Examination. - The *Bangko Sentral* shall have supervision over, and conduct periodic or special examinations of banking institutions and quasi-banks, including their subsidiaries and affiliates engaged in allied activities. **IN ADDITION TO SUCH OTHER AUTHORITY GRANTED BY LAW, PRIOR APPROVAL BY THE BANGKO SENTRAL SHALL BE REQUIRED FOR TRANSFERS OR ACQUISITIONS OF SHARES OF STOCK IN BANKS OR QUASI-BANKS WHERE ANY SUCH TRANSFER OR ACQUISITION OR SERIES OF TRANSFERS OR ACQUISITIONS WOULD BE SUFFICIENT TO ELECT AT LEAST ONE SEAT IN THE BOARD OF DIRECTORS OR WOULD EFFECT A CHANGE IN THE MAJORITY OWNERSHIP OR CONTROL OF THE VOTING STOCK IN ANY OF THESE INSTITUTIONS. SUCH TRANSFER OR ACQUISITION SHALL BE SUBMITTED TO THE BANGKO SENTRAL FOR APPROVAL BY THE SELLING OR CONVEYING STOCKHOLDER WITHIN SUCH PERIOD AS MAY BE PRESCRIBED BY THE MONETARY BOARD BY REGULATION. PRIOR TO SUCH APPROVAL, NO SUCH TRANSFER OR ACQUISITION SHALL HAVE LEGAL EFFECT NOR SHALL THE SAME BE RECOGNIZED IN THE BOOKS OF THE INSTITUTION NOR BY ANY GOVERNMENT AGENCY AND THE TRANSFEROR-STOCKHOLDERS, IN CASES INVOLVING TRANSFERS, SHALL REMAIN ACCOUNTABLE AND RESPONSIBLE THEREFOR. IN APPROVING SAID TRANSFERS OR ACQUISITIONS, REGARD SHALL BE GIVEN BY THE BANGKO SENTRAL TO THE FITNESS OF THE INCOMING STOCKHOLDERS AS MAY BE INDICATED IN THEIR INTEGRITY AND FINANCIAL CAPACITY.**

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

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

- A) POWER OVER MORE THAN ONE HALF OF THE VOTING RIGHTS BY VIRTUE OF AN AGREEMENT WITH OTHER INVESTORS; OR**
- B) POWER TO GOVERN THE FINANCIAL AND OPERATING POLICIES OF THE ENTERPRISE UNDER A STATUTE OR AN AGREEMENT; OR**
- C) POWER TO APPOINT OR REMOVE THE MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS; OR**
- D) POWER TO CAST THE MAJORITY OF VOTES AT MEETINGS OF THE BOARD OF DIRECTORS; OR**
- E) OTHER ARRANGEMENTS SIMILAR TO ANY OF THE ABOVE.**

The department heads and the examiners of the supervising and/or examining departments are hereby authorized to administer oaths to any director, officer, or employee of any institution under their respective supervision or subject to their examination and to compel the presentation of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true condition of any institution as well as the books and records of persons and entities relative to or in connection with the operations, activities or transactions of the institution under examination, [subject to the provision of] **INCLUDING, ONLY FOR EXAMINATION PURPOSES, DEPOSIT AND INVESTMENT ACCOUNTS, NOTWITHSTANDING** existing laws protecting or safeguarding the secrecy or confidentiality of bank deposits as well as investments of private persons, natural or juridical, in debt instruments issued by the Government.

No restraining order or injunction shall be issued by the court enjoining the *Bangko Sentral* from examining any institution subject to supervision or examination by the *Bangko Sentral*, unless there is convincing proof that the action of the *Bangko Sentral* is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the *Bangko Sentral*, in an amount to be fixed by the court. The provisions of Rules 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this section."

SEC. 8. Section 30 of the same Act is hereby amended to read as follows:

"SEC. 30. Proceedings in Receivership and Liquidation. -

Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

a) is unable to pay its liabilities as they become due in the ordinary course of business: *Provided*, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

b) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or

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

d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

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

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

IN ORDER TO REHABILITATE THE CLOSED INSTITUTION OR TO RESTORE ITS OPERATIONS WITH SAFETY TO ITS DEPOSITORS, CREDITORS AND THE GENERAL PUBLIC, OR TO MERGE OR CONSOLIDATE THE CLOSED INSTITUTION WITH ANOTHER QUALIFIED INSTITUTION, THE RECEIVER MAY IMMEDIATELY TRANSFER OR DISPOSE OF ANY OR ALL OF THE ASSETS OF THE CLOSED INSTITUTION AND PERFORM SUCH OTHER ACTS AS MAY BE AUTHORIZED BY LAW.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph OF THE SECTION, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the

Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

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

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

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

THE AUTHORITY OF THE MONETARY BOARD TO PLACE A BANK OR QUASI-BANK UNDER RECEIVERSHIP AS PROVIDED ABOVE MAY ALSO BE EXERCISED OVER NON-STOCK SAVINGS AND LOAN ASSOCIATIONS, BASED

ON THE SAME APPLICABLE GROUNDS. FOR THIS PURPOSE, ANY PERSON OF RECOGNIZED COMPETENCE IN BANKING, CREDIT AND FINANCE MAY BE DESIGNATED AS RECEIVER."

SEC. 9. A new section designated as Section 30-A is hereby inserted between Section 30 and Section 31 of the same Act to read as follows:

"SEC. 30-A. WHENEVER UPON THE REPORT OF THE HEAD OF THE SUPERVISING AND EXAMINING DEPARTMENT, THE MONETARY BOARD FINDS THAT THE ADJUSTED CAPITAL ACCOUNTS OF A BANK OR QUASI-BANK IS LOWER THAN THE MINIMUM CAPITAL REQUIRED UNDER EXISTING RULES AND REGULATIONS, OR IT HAS A CAPITAL ADEQUACY RATIO LOWER THAN THE MINIMUM RATIO PRESCRIBED UNDER EXISTING REGULATIONS, THE MONETARY BOARD SHALL HAVE THE AUTHORITY TO DIRECT THE EXISTING STOCKHOLDERS OF SAID BANK OR QUASI-BANK TO INFUSE CAPITAL WITHIN A PERIOD NOT EXCEEDING NINETY (90) DAYS FROM THE DATE OF THE DIRECTIVE IN SUCH AMOUNT AS MAY BE NECESSARY TO RESTORE THE ENTITY'S CAPITAL TO THE MINIMUM REQUIRED AMOUNT OR RATIO IN CASE OF INABILITY OR UNWILLINGNESS OF THE STOCKHOLDERS TO INFUSE THE REQUIRED AMOUNT OF ADDITIONAL CAPITAL WITHIN THE PRESCRIBED PERIOD, THE MONETARY BOARD MAY DIRECT SAID BANK OR QUASI-BANK TO ACCEPT INVESTMENTS FROM QUALIFIED THIRD PARTIES OR TO MERGE OR CONSOLIDATE WITH A QUALIFIED FINANCIAL INSTITUTION.

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

SEC. 10. Section 36 and Section 37 of the same Act are hereby amended to read as follows:

"SEC. 36. Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions. - Whenever a bank, [or] quasi-bank, **OR OTHER FINANCIAL INSTITUTION WHICH UNDER THIS ACT OR SPECIAL LAWS IS SUBJECT TO BANGKO SENTRAL SUPERVISION** or whenever any person or entity willfully violates this Act or other pertinent banking laws being enforced or implemented by the *Bangko Sentral* or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall unless otherwise provided in this Act be punished by a fine of not less than Fifty thousand pesos (P 50,000) nor more than [Two hundred thousand pesos (P 200,000)] **TWO MILLION PESOS** (P 2,000,000.00) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

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

"SEC. 37. Administrative Sanctions [on Banks and Quasi-banks. -

Without prejudice to the criminal sanctions against the culpable persons provided in Section 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank or quasi-bank, **INCLUDING THEIR SUBSIDIARIES AND AFFILIATES ENGAGED IN ALLIED ACTIVITIES, OR OTHER INSTITUTIONS WHICH UNDER SPECIAL LAWS ARE SUBJECT TO THE BANGKO SENTRAL SUPERVISION**, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with , or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

a) fines in amounts as may be **PRESCRIBED AND** determined by the Monetary Board to be appropriate. [but in no case to exceed Thirty thousand pesos (P 30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;] **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 THE NATURE AND GRAVITY OF THE VIOLATION OR IRREGULARITY AND THE SIZE OF THE INSTITUTION AND PRESCRIBE THE FINES THEREFOR THAT MAY BE IMPOSED FOR EACH DAY OF VIOLATION OR ON A PER TRANSACTION BASIS; PROVIDED, THAT WILLFUL VIOLATIONS AND IRREGULARITIES MAY BE AUTOMATICALLY CONSIDERED BY THE MONETARY BOARD AS SERIOUS OR GRAVE REGARDLESS OF THEIR EFFECT TO THE FINANCIAL CONDITION OF THE INSTITUTION: PROVIDED, FURTHER, THAT WITHOUT PREJUDICE TO THE IMPOSITION OF APPLICABLE SANCTION TO THE INSTITUTION THAT COMMITTED A SPECIFIC VIOLATION OR IRREGULARITY, THE MONETARY BOARD MAY ALSO IMPOSE SANCTIONS TO ITS PARENT UNIVERSAL OR COMMERCIAL BANKS IF THERE IS EVIDENCE THAT SAID PARENT INSTITUTION ABETTED THE COMMISSION OF THE VIOLATION OR IRREGULARITY OR DID NOT EXERCISE REASONABLE MEANS TO PREVENT THE SAME.**

b) suspension of rediscounting privileges or access to *Bangko Sentral* credit facilities;

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

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

e) revocation of quasi-banking license[.];

f) **REVOCATION OF TRUST LICENSE;**

g) **PROHIBITION FROM DECLARING CASH DIVIDENDS;**

h) **CONFISCATION BY AND FORFEITURE IN FAVOR OF THE BANGKO SENTRAL OF ANY AND ALL PROFITS, AS MAY BE**

DETERMINED BY THE MONETARY BOARD, ARISING FROM THE OFFENSE OR VIOLATION OF BANKING LAWS, RULES AND REGULATIONS; AND

i) OTHER SANCTIONS AS THE MONETARY BOARD MAY DEEM APPROPRIATE UNDER THE CIRCUMSTANCES.

THE DIRECTOR OR OFFICER RESPONSIBLE FOR THE VIOLATION MAY, AFTER DUE PROCESS, BE SUSPENDED, REMOVED OR DISQUALIFIED FROM HOLDING OFFICE, OR ANY POSITION, IN AN INSTITUTION UNDER THE SUPERVISION OF THE BANGKO SENTRAL, FOR A PERIOD TO BE DETERMINED BY THE MONETARY BOARD, TAKING INTO CONSIDERATION THE ATTENDANT CIRCUMSTANCES, SUCH AS THE NATURE AND GRAVITY OF THE ACT OR OMISSION AND THE SIZE OF THE INSTITUTION.

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

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

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

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

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

The Governor is hereby authorized, at his discretion, to impose upon [banking institutions,] **BANKS AND QUASI-BANKS, INCLUDING THEIR SUBSIDIARIES AND AFFILIATES ENGAGED IN ALLIED ACTIVITIES, AND OTHER FINANCIAL INSTITUTIONS WHICH UNDER SPECIAL LAWS ARE SUBJECT TO BANGKO SENTRAL SUPERVISION** for any failure to comply with

the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of [Ten Thousand pesos (P 10,000) a] **ONE HUNDRED THOUSAND PESOS** (P 100,000.00) **PER BANKING** day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal."

SEC. 11. Section 63 of the same Act is hereby amended to read as follows:

"SEC. 63. *Action When Abnormal Movements Occur in the Monetary Aggregates, Credit, or Price Level.* - Whenever abnormal movements in the monetary aggregates, in credit, or in prices endanger the stability of the Philippine economy or important sectors thereof, the Monetary Board shall:

a) take such remedial measures as are appropriate and within the powers granted to the Monetary Board and the *Bangko Sentral* under the provisions of this Act; and

b) submit to the President of the Philippines and the Congress, and make public, a detailed report which shall include, as a minimum, a description and analysis of:

1) the causes of the rise or fall of the monetary aggregates, of credit or of prices;

2) the extent to which the changes in the monetary aggregates, in credit, or in prices have been reflected in changes in the level of domestic output, employment, wages and economic activity in general, and the nature and significance of any such changes; and

3) the measures which the Monetary Board has taken and the other monetary, fiscal or administrative measures which it recommends to be adopted.

[Whenever the monetary aggregates, or the level of credit, increases or decreases by more than fifteen percent (15%), or the cost of living index increases by more than ten percent (10%), in relation to the level existing at the end of the corresponding month of the preceding year, or even though any of these quantitative guidelines have not been reached when in its judgment the circumstances so warrant, the Monetary Board shall submit the reports mentioned in this section, and shall state therein whether, in the opinion of the Board, said changes in the monetary aggregates, credit or cost of living represent a threat to the stability of the Philippine economy or of important sectors thereof.]

The Monetary Board shall continue to submit periodic reports to the President of the Philippines and to Congress until it considers that the monetary, credit or price disturbances have disappeared or have been adequately controlled."

SEC. 12. Section 83 of the same Act is hereby amended to read as follows:

"SEC. 83. *Loans for Liquidity Purposes.* - The *Bangko Sentral* may extend loans and advances to banking AND QUASI-BANKING institutions for a

period of not more than seven (7) days without any collateral for the purpose of providing liquidity to the banking system in times of need."

SEC. 13. A new section designated as Section 88-A is hereby inserted between Section 88 and Section 89 of the same Act to read as follows:

"SEC. 88-A. EXEMPTION FROM ATTACHMENT. - THE PROVISIONS OF ANY LAW TO THE CONTRARY NOTWITHSTANDING AND SECTION 31 OF THIS ACT, COLLATERALS ON LOANS AND ADVANCES GRANTED BY THE BANGKO SENTRAL TO BANKING INSTITUTIONS SHALL NOT BE SUBJECT TO ATTACHMENT, EXECUTION OR ANY OTHER COURT PROCESS, NOR SHALL THEY BE INCLUDED IN THE PROPERTY OF INSOLVENT PERSONS OR INSTITUTIONS, UNLESS ALL DEBTS AND OBLIGATIONS OF THE BANKING INSTITUTIONS TO THE BANGKO SENTRAL, WHETHER REGISTERED OR NOT, HAVE BEEN PAID, INCLUDING ACCRUED INTEREST, PENALTIES, COLLECTION EXPENSES, AND OTHER CHARGES."

SEC. 14. A new section designated as Section 89-A is hereby inserted between Section 89 and Section 90 of the same Act to read as follows:

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

SEC. 15. Section 92 of the same Act is hereby amended to read as follows:

"SEC. 92. Issue and Negotiation of Bangko Sentral Obligations. - In order to provide the *Bangko Sentral* with effective instruments for open market operations, the *Bangko Sentral* may, subject to such rules and regulations as the Monetary Board may prescribe and in accordance with the principles stated in Section 90 of this Act, issue, place, buy and sell freely negotiable evidences of indebtedness of the *Bangko Sentral*: *Provided*, That issuance of such certificates of indebtedness shall be made only in cases of extraordinary movement in price level[s]. Said evidences of indebtedness may be issued directly against the international reserve of the *Bangko Sentral* or against the securities which it has acquired under the provisions of Section 91 of this Act, or may be issued without relation to specific types of assets of the *Bangko Sentral*.

The Monetary Board shall determine the interest rates, maturities and other characteristics of said obligations of the *Bangko Sentral*, and may, if it deems it advisable, denominate the obligations in gold or foreign currencies.

Subject to the principles stated in Section 90 of this Act, the evidences of indebtedness of the *Bangko Sentral* to which this section refers may be acquired by the *Bangko Sentral* before their maturity, either through purchases in the open market or through redemptions at par and by lot if the *Bangko Sentral* has reserved the right to make such redemptions. The evidences of indebtedness acquired or redeemed by the *Bangko Sentral* shall not be included among its assets, and shall be immediately retired and cancelled."

SEC. 16. Section 95 of the same Act is hereby amended to read as follows:

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

SEC. 17. Section 108 of the same Act is hereby amended to read as follows:

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

SEC. 18. Section 125 and Section 126 of the same Act are hereby amended to read as follows:

"SEC. 125. Tax Exemptions. - **THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW TO THE CONTRARY NOTWITHSTANDING,** the *Bangko Sentral* shall be exempt [for a period of five (5) years from the approval of this Act] from all national, provincial, municipal and city taxes, fees, charges and assessments[.]

[The exemption authorized in the preceding paragraph of this section shall apply to all property of the *Bangko Sentral*, to the resources, receipts, expenditures, profits and income of the *Bangko Sentral*, as well as to all contracts, deeds, documents and transactions related to the conduct of the business of the *Bangko Sentral*: *Provided, however,* That said exemptions shall apply only to such taxes, fees, charges and assessments for which the *Bangko Sentral* itself would otherwise be liable, and shall not apply to taxes, fees, charges, or assessments payable by persons or other entities doing business with the *Bangko Sentral*: *Provided, further,* That foreign loans and other obligations of the *Bangko Sentral* shall be exempt, both as to principal and

interest, from any and all taxes if the payment of such taxes has been assumed by the *Bangko Sentral* .]

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

SEC. 19. Section 128 of the same Act is hereby amended to read as follows:

"SEC. 128. Prohibitions. - The *Bangko Sentral* shall not acquire shares of any kind or accept them as collateral, and shall not participate in the ownership or management of any enterprise, either directly or indirectly[.] **PROVIDED, THAT THIS PROHIBITION SHALL NOT APPLY WHENEVER SUCH OWNERSHIP OR MANAGEMENT IS EXPRESSLY AUTHORIZED BY LAW, OR THE MONETARY BOARD, BY A VOTE OF AT LEAST FIVE (5) OF ITS MEMBERS, DEEMS AN ACQUISITION OR INVESTMENT TO BE NECESSARY TO THE PERFORMANCE BY BANGKO SENTRAL OF ITS MANDATES UNDER THIS ACT OR TO QUALIFY OR AS REQUIRED FOR MEMBERSHIP IN INTERNATIONAL AND REGIONAL ORGANIZATIONS.**

The *Bangko Sentral* shall not engage in development banking or financing: *Provided, however,* That outstanding loans obtained or extended for development financing shall not be affected by the prohibition of this section."

SEC. 20. This Act shall take effect fifteen (15) days following its publication in at least two (2) national newspapers of general circulation.

Approved,