

FOURTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

7 JUL -3 P5:35

SENATE

S. B. No. 871

RECEIVED BY: _____

Introduced by SENATOR EDGARDO J. ANGARA

EXPLANATORY NOTE

Experience in the past highlighted the inability of the Bangko Sentral ng Pilipinas (BSP) to deal effectively and expeditiously with problem banks. The authority of the BSP over problem banks; in general, is limited to the grant of emergency advances in case of illiquidity, or closure in case of insolvency. Prompt corrective actions cannot be implemented due to the absence of clear and strong legal basis. Such inability of the BSP often causes losses of hard-earned money of the depositors and also losses of public funds.

Therefore, to better protect the interest of the depositors and to avoid losses of the public funds, this Bill seeks to adopt, among others, the following international best practices in banking supervision and other measures that will strengthen the regulatory and supervisory powers of the BSP over banks and other financial institutions:

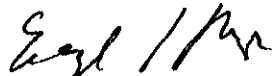
1. The principle of consolidated supervision - This will authorize the BSP, when examining a bank or other financial institution under its supervision, to examine its subsidiaries and affiliates engaged in allied activities. This is an international best practice and very important in our jurisdiction since the parent institution can be adversely affected by the failure of its subsidiaries and affiliates. Hence, the BSP should be able to evaluate and determine the financial condition, not only of the parent institution under its supervision but also of its subsidiaries and affiliates.
2. BSP's authority to approve transfers or acquisitions of shares in a supervised institution where such transfer or acquisition or series of transfers or acquisitions should be sufficient to elect at least one seat in the board or would effect a change in the majority ownership or control of the voting stock of the institution - This is a proactive measure that would empower the BSP to prevent the entry of undesirable persons into the supervised institution. This is very important because failure of institutions is usually caused by the actions of controlling stockholders.
3. The authority of the Monetary Board to prescribe guidelines for the examination of supervised authorities - This proposal will result in more effective supervision since the resources and manpower of the BSP can be properly allocated and the examination of problem institutions can be prioritized. *6*

4. The authority of the Monetary Board to direct existing stockholders to infuse additional capital or in case of their inability or refusal, to direct them to accept new investors or merge or consolidate with a qualified financial institution – This is also a proactive measure that could prevent failures of supervised institutions.
5. Prescribing additional and transparent grounds for bank closure announcement of unilateral closure, suspension of payment of deposit substitutes, or inability to pay liabilities as they become due – These proposed additional grounds for closing a bank will minimize losses on the part of the depositors and of public funds. This will even enable the PDIC to recover their payments of insured deposits.
6. Increase in penalties for violation of applicable laws and regulations - This is necessary because it has been observed in the past that banks opted to commit violations and just pay the penalty because the income from prohibited transactions was greater than the penalty. If not corrected, these practices would render useless some of BSP's monetary policies.
7. Indemnify BSP personnel for cost and expenses incurred by them in connection with any civil, administrative or criminal action, suit or proceedings - This will encourage BSP personnel, particularly the examiners, to discharge their duties and responsibilities properly without fear of retaliation.

The Bill also aims to enhance the ability of the BSP to provide policy directions in the areas of money, banking and credit through the following:

1. Grant of authority to the BSP to request data not only from government entities but also from any person.
2. Authority of the Monetary Board to require all supervised institutions including their subsidiaries and affiliates to maintain balanced currency position between their assets and liabilities.


Approval of this Bill which is primarily aimed at providing better protection to the public, particularly the depositors and creditors of BSP's supervised institutions, is therefore earnestly sought.


EDGARDO J. ANGARA
Senator

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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
2 "The New Central Bank Act", is hereby amended to read as follows:

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

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

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

4 "MEETINGS OF THE MONETARY BOARD MAY BE
5 CONDUCTED THROUGH THE USE OF MODERN TECHNOLOGY
6 INCLUDING, BUT NOT LIMITED TO, TELECONFERENCING OR
7 VIDEO-CONFERENCING."
8

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

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

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

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

33 The costs and expenses incurred in defending the
34 aforementioned action, suit or proceeding may be paid by the Bangko
35 Sentral in advance of the final disposition of such action, suit or
36 proceeding upon receipt of an undertaking by or on behalf of the

1 member [, officer, or employee] AND OTHER PERSONNEL to repay
2 the amount advanced should it ultimately be determined by the
3 Monetary Board that he is not entitled to be indemnified as provided in
4 this subsection ON ACCOUNT OF BAD FAITH, MALICE, GROSS
5 NEGLIGENCE OR GROSS MISCONDUCT;

6
7 **SECTION 4.** The first paragraph of SECTION 16 of the same Act is
8 hereby amended to read as follows:

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

22
23 **SECTION 5.** The first paragraph of SECTION 21 of the same Act is
24 hereby amended to read as follows:

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

29
30 **SECTION 6.** The first paragraph of SECTION 23 of the same Act is
31 hereby amended to read as follows:

32 "SECTION 23. Authority to Obtain Data and Information.- The
33 Bangko Sentral shall have the authority to request from ANY
34 PERSON OR ENTITY, INCLUDING government offices and
35 instrumentalities, or government-owned or controlled corporations,
36 any data which it may require for the proper discharge of its functions

1 and responsibilities. The Bangko Sentral through the Governor or in
2 his absence, a duly authorized representative shall have the power to
3 issue a subpoena for the production of the books and records for the
4 aforesaid purpose. Those who refuse the subpoena without justifiable
5 cause, or who refuse to supply the bank with data requested or
6 required, shall be subject to punishment for contempt in accordance
7 with the provisions of the Rules of Court."
8

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

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

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

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

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

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

20 (C) POWER TO APPOINT OR REMOVE THE MAJORITY OF
21 THE MEMBERS OF THE BOARD OF DIRECTORS; OR

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

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

26 The department heads and the examiners of the supervising
27 and/or examining departments are hereby authorized to administer
28 oaths to any director, officer, or employee of any institution under their
29 respective supervision or subject to their examination and to compel
30 the presentation of all books, documents, papers or records necessary
31 in their judgment to ascertain the facts relative to the true condition of
32 any institution as well as the books and records of persons and entities
33 relative to or in connection with the operations, activities or
34 transactions of the institution under examination, subject to the
35 provision of existing laws protecting or safeguarding the secrecy or
36 confidentiality of bank deposits, as well as investments of private

1 persons, natural or juridical, in debt instruments issued by the
2 Government.

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

14
15 **SECTION 8.** Section 26 of the same Act is hereby amended to read as
16 follows:

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

33
34 **SECTION 9.** Section 28 of the same Act is hereby amended to read as
35 follows:

1 "SECTION 28. Examination and Fees. - The supervising and
2 examining department head, personally or by deputy, shall examine
3 the books of every [banking institution] BANK AND QUASI-BANK,
4 INCLUDING THEIR SUBSIDIARIES AND AFFILIATES ENGAGED
5 IN ALLIED ACTIVITIES AND OTHER FINANCIAL INSTITUTIONS
6 WHICH UNDER SPECIAL LAWS ARE SUBJECT TO BANGKO
7 SENTRAL SUPERVISION, IN ACCORDANCE WITH THE
8 GUIDELINES SET BY THE MONETARY BOARD: [once in every
9 twelve (12) months, and at such other times as the Monetary Board by
10 an affirmative vote of five (5) members, may deem expedient and to
11 make a report on the same to the Monetary Board:] Provided, That
12 there shall be an interval of at least twelve (12) months between
13 REGULAR [annual] examinations: PROVIDED, FURTHER, THAT
14 THE MONETARY BOARD BY AN AFFIRMATIVE VOTE OF AT
15 LEAST FIVE (5) MEMBERS MAY AUTHORIZE A SPECIAL
16 EXAMINATION IF THE CIRCUMSTANCES SO WARRANT.

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

27 [Banking] BANKS, [and quasi-banking institutions] QUASI-
28 BANKS, AND OTHER FINANCIAL INSTITUTIONS WHICH UNDER
29 SPECIAL LAWS, [which] are subject to examination by the Bangko
30 Sentral, shall pay to the Bangko Sentral, within the first thirty (30)
31 days of each year, an annual fee in an amount equal to a percentage as
32 may be prescribed by the Monetary Board [of] BASED ON its average
33 total assets during the preceding year [as shown on its end-of-month
34 balance sheets, after deducting cash on hand and amounts due from
35 banks, including the Bangko Sentral and banks abroad]. IN
36 CONSOLIDATED EXAMINATION OF RESOURCES, THE FEES

1 FOR THE EXAMINATION OF SUBSIDIARIES AND AFFILIATES
2 ENGAGED IN ALLIED ACTIVITIES SHALL BE CHARGED
3 AGAINST THEIR PARENT INSTITUTION UNDER
4 EXAMINATION."

5
6 SECTION 10. Section 30 of the same Act is hereby amended to read
7 as follows:

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

12 (a) HAS NOTIFIED THE BANGKO SENTRAL OR PUBLICLY
13 ANNOUNCED A UNILATERAL CLOSURE, OR IN ANY MANNER
14 HAS SUSPENDED THE PAYMENT OF ITS DEPOSIT/DEPOSIT
15 SUBSTITUTES LIABILITIES, OR is unable to pay its liabilities as
16 they become due in the ordinary course of business: Provided, That
17 this shall not include inability to pay caused by extraordinary demands
18 induced by financial panic in the banking OR FINANCIAL community;
19 OR

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

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

26 (d) has willfully violated a cease and desist order under Section
27 37 that has become final, involving acts or transactions which amount
28 to fraud or a dissipation of the assets of the institution;

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

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

35 The receiver shall immediately gather and take charge of all the
36 assets and liabilities of the institution, administer the same for the

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

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

21 If the receiver determines that the institution cannot be
22 rehabilitated or permitted to resume business in accordance with [the
23 next preceding paragraph] THIS SECTION, the Monetary Board shall
24 notify in writing the board of directors of its findings and direct the
25 receiver to proceed with the liquidation of the institutions. The receiver
26 shall:

27 (1) file ex parte with the proper regional trial court, and without
28 requirement of prior notice or any other action, a petition for
29 assistance in the liquidation of the institution pursuant to a
30 liquidation plan adopted by the Philippine Deposit Insurance
31 Corporation for general application to all closed banks. In case of
32 quasi-banks, the liquidation plan shall be adopted by the Monetary
33 Board. Upon acquiring jurisdiction, the court shall, upon motion by the
34 receiver after due notice, adjudicate disputed claims against the
35 institution, assist the enforcement of individual liabilities of the
36 stockholders, directors and officers, and decide on other issues as may

1 be material to implement the liquidation plan adopted. The receiver
2 shall pay the cost of the proceedings from the assets of the institution.

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

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

1 THE PROVISIONS OF THIS SECTION SHALL GOVERN THE
2 ISSUANCE AND DISSOLUTION OF THE RESTRAINING ORDER
3 OR INJUNCTION CONTEMPLATED IN THIS SECTION.

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

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

15
16 **SECTION 11.** A new section entitled Section 30-A of the same Act
17 shall be inserted between Sections 30 and 31 which shall read as follows:

18 "SECTION 30-A. WHENEVER UPON THE REPORT OF THE
19 HEAD OF THE SUPERVISING AND EXAMINING DEPARTMENT,
20 THE MONETARY BOARD FINDS THAT THE ADJUSTED CAPITAL
21 ACCOUNTS OF A BANK OR QUASI-BANK IS LOWER THAN THE
22 MINIMUM CAPITAL REQUIRED UNDER EXISTING RULES AND
23 REGULATIONS, OR IT HAS A CAPITAL ADEQUACY RATIO
24 LOWER THAN THE MINIMUM RATIO PRESCRIBED UNDER
25 EXISTING REGULATIONS, THE MONETARY BOARD SHALL
26 HAVE THE AUTHORITY TO DIRECT THE EXISTING
27 STOCKHOLDERS OF SAID BANK OR QUASI-BANK TO INFUSE
28 CAPITAL WITHIN A PERIOD NOT EXCEEDING 90 DAYS FROM
29 THE DATE OF DIRECTIVE IN SUCH AMOUNT AS MAY BE
30 NECESSARY TO RESTORE THE ENTITY'S CAPITAL TO THE
31 MINIMUM REQUIRED AMOUNT AND/OR RATIO. IN CASE OF
32 INABILITY OR UNWILLINGNESS OF THE STOCKHOLDERS TO
33 INFUSE THE REQUIRED AMOUNT OF ADDITIONAL CAPITAL
34 WITHIN THE PRESCRIBED PERIOD, THE MONETARY BOARD
35 MAY DIRECT SAID BANK OR QUASI-BANK TO ACCEPT
36 INVESTMENTS FROM QUALIFIED THIRD PARTIES OR TO

1 MERGE OR CONSOLIDATE WITH A QUALIFIED FINANCIAL
2 INSTITUTION.

3 THE MONETARY BOARD MAY ALSO AUTHORIZE OR
4 ORDER THE EXISTING STOCKHOLDERS OF THE CONCERNED
5 ENTITY TO EFFECT A QUASI-REORGANIZATION OF SAID
6 ENTITY TO REFLECT THE FAIR VALUE OF TTS CAPITAL.

7
8 **SECTION 12.** Section 36 of the same Act is hereby amended to read
9 as follows:

10 "SECTION 36. Proceedings Upon Violation of This Act and
11 Other Banking Laws, Rules, Regulations, Orders or Instructions.-
12 Whenever a bank, [or] quasi-bank, OR OTHER FINANCIAL
13 INSTITUTION WHICH UNDER THIS ACT OR SPECIAL LAWS IS
14 SUBJECT TO BANGKO SENTRAL SUPERVISION or whenever any
15 person or entity willfully violates this Act or other pertinent banking
16 laws being enforced or implemented by the Bangko Sentral or any
17 order, instruction, rule or regulation issued by the Monetary Board,
18 the person or persons responsible for such violation shall unless
19 otherwise provided in this Act be punished by a fine of not less than
20 Fifty thousand pesos (P50,000.00) nor more than [Two hundred
21 thousand pesos (P200,000.00)] TWO MILLION PESOS (P2,000,000.00)
22 or by imprisonment of not less than two (2) years nor more than ten
23 (10) years, or both, at the discretion of the court.

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

30
31 **SECTION 13.** Section 37 of the same Act is hereby amended to
32 read as follows:

33 "SECTION 37. Administrative Sanctions [on Banks and Quasi-
34 Banks]. – Without prejudice to the criminal sanctions against the
35 culpable persons provided in Sections 34, 35, and 36 of this Act, the
36 Monetary Board may, at its discretion, impose upon any bank or quasi-

1 bank, INCLUDING THEIR SUBSIDIARIES AND AFFILIATES
 2 ENGAGED IN ALLIED ACTIVITIES, OR OTHER INSTLTUTIONS
 3 WHICH UNDER SPECIAL LAWS ARE SUBJECT TO THE BANGKO
 4 SENTRAL SUPERVISION, their directors and/or officers, for any
 5 willful violation of its charter or by-laws, willful delay in the
 6 submission of reports or publications thereof as required by law, rules
 7 and regulations; any refusal to permit examination into the affairs of
 8 the institution; any willful making of a false or misleading statement
 9 to the Board or the appropriate supervising and examining department
 10 or its examiners; any willful failure, or refusal to comply with, or
 11 violation of, any banking law or any order, instruction or regulation
 12 issued by the Monetary Board, or any order, instruction or ruling by
 13 the Governor; or any commission of irregularities, and/or conducting
 14 business in an unsafe or unsound manner as may be determined by the
 15 Monetary Board, the following administrative sanctions, whenever
 16 applicable:

17 (a) Fines in amounts as may be determined by the Monetary
 18 Board to be appropriate, [but in no case to exceed Thirty thousand
 19 pesos (P30,000.00) a day for each violation, taking into consideration
 20 the attendant circumstances, such as the nature and gravity of the
 21 violation or irregularity and the size of the bank or quasi-bank;] FOR
 22 EACH VIOLATION OR IRREGULARTTY BUT IN NO CASE TO
 23 EXCEED THE FOLLOWING AMOUNTS PER BANKING DAY:
 24

NATURE OF VIOLATION OR IRREGULARITY/ <u>TYPE OF INSTITUTION</u>		MAXIMUM AMOUNT IN PESOS
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/IRREGULARIN	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/IRREGULARIY	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 OR IRREGULAR AND THE SIZE OF THE INSTITUTION: 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 CONCERNED 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

1 PARENT UNIVERSAL OR COMMERCIAL BANK IF THERE IS
2 EVIDENCE THAT SAID PARENT INSTITUTION ABETTED THE
3 COMMISSION OF THE VIOLATION OR IRREGULARITY OR DID
4 NOT EXERCISE REASONABLE MEANS TO PREVENT THE
5 SAME."

6 (b) suspension of rediscounting privileges or access to Bangko
7 Sentral credit facilities;

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

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

11 (e) revocation of quasi-banking license;

12 (F) REVOCATION OF TRUST LICENSE;

13 (G) PROHIBITION FROM DECLARING CASH DIVIDENDS;

14 (H) CONFISCATION BY AND FORFEITURE IN FAVOR OF
15 THE BANGKO SENTRAL OF ANY AND ALL PROFITS, AS MAY BE
16 DETERMINED BY THE MONETARY BOARD, ARISING FROM THE
17 OFFENSE OR VIOLATION OF BANKING LAWS, RULES AND
18 REGULATIONS; AND/OR

19 (I) OTHER SANCTIONS AS THE MONETARY BOARD MAY
20 DEEM APPROPRIATE UNDER THE CIRCUMSTANCES.

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

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

32 The Monetary Board may, whenever warranted by
33 circumstances, preventively suspend any director or officer of [a bank
34 or quasi-bank] THE INSTITUTION pending an investigation:
35 Provided, That should the case be not finally decided by the Bangko
36 Sentral within a period of one hundred twenty (120) days after the

1 date of suspension, said director or officer shall be reinstated in his
2 position: Provided further, That when the delay in the disposition of
3 the case is due to the fault, negligence or petition of the director or
4 officer, the period of delay shall not be counted in computing the period
5 of suspension herein provided.

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

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

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

25 The Governor is hereby authorized, at his discretion, to impose
26 upon [banking institutions,] BANKS AND QUASI-BANKS,
27 INCLUDING THEIR SUBSIDIARIES AND AFFILIATES ENGAGED
28 IN ALLIED ACTIVITIES, AND OTHER FINANCIAL INSTITUTIONS
29 WHICH UNDER SPECIAL LAWS ARE SUBJECT TO BANGKO
30 CENTRAL SUPERVISION for any failure to comply with the
31 requirements of law, Monetary Board regulations and policies, and/or
32 instructions issued by the Monetary Board or by the Governor, fines
33 not in excess of [Ten thousand pesos (P10,000.99) a] ONE HUNDRED
34 THOUSAND PESOS (P100,000.00) PER BANKING day for each
35 violation, the imposition of which shall be final and executory until
36 reversed, modified or lifted by the Monetary Board on appeal."

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

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

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

17
18 **SECTION 15.** A new section entitled Section 88-A of the same Act
19 shall be inserted between Sections 88' and 89 which shall read as follows:

20
21 "SECTION 88-A. EXEMPTION FROM ATTACHMENT. THE
22 PROVISIONS OF ANY LAW TO THE CONTRARY
23 NOTWITHSTANDING AND SECTION 31 OF THIS ACT,
24 COLLATERALS ON LOANS AND ADVANCES GRANTED BY THE
25 BANGKO SENTRAL TO BANKING INSTITUTIONS SHALL NOT BE
26 SUBJECT TO ATTACHMENT, EXECUTION OR ANY OTHER
27 COURT PROCESS, NOR SHALL THEY BE INCLUDED IN THE
28 PROPERTY OF INSOLVENT PERSONS OR INSTITUTIONS,
29 UNLESS ALL DEBTS AND OBLIGATIONS OF THE BANKING
30 INSTITUTIONS TO THE BANGKO SENTRAL, WHETHER
31 REGISTERED OR NOT, HAVE BEEN PAID, INCLUDING
32 ACCRUED INEREST, PENALTIES, COLLECTION EXPENSES,
33 AND OTHER CHARGES."

34
35 **SECTION 16.** A new section entitled Section 89-A of the same Act
36 shall be inserted between Sections 89 which shall read as follows:

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

7
8 **SECTION 17.** Section 95 of the same Act is hereby amended to read as
9 follows:

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

27
28 **SECTION 18.** The second paragraph of Section 102 of the same Act is
29 hereby amended to read as follows:

30 "The deposit reserves maintained by the banks in the Bangko
31 Sentral in accordance with the provisions of Section 94 of this Act shall
32 serve as basis for the clearing of checks and the settlement of
33 interbank balances, subject to such rules and regulations as the
34 Monetary Board may issue with respect to such operations: Provided,
35 That any bank which incurs an overdrawing in its deposit account with
36 Bangko Sentral shall fully cover said overdraft, including interest

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

20
21 **SECTION 19.** Section 108 of the same Act is hereby amended to read
22 as follows:

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

33
34 **SECTION 20.** Section 125 of the same Act is hereby amended to read
35 as follows:

1 "SECTION 125. Tax Exemptions.- THE PROVISIONS OF ANY
2 GENERAL OR SPECIAL LAW TO THE CONTRARY
3 NOTWITHSTANDING, the Bangko Sentral shall be exempt [, for a
4 period of five (5) years from the approval of this Act] from all national,
5 provincial, municipal and city taxes, fees, charges and assessments [.]
6 NOW IN FORCE OR HEREAFTER ESTABLISHED. The exemptions
7 authorized in the preceding paragraph of this section shall apply to all
8 property of the Bangko Sentral, to the resources, receipts,
9 expenditures, profits and income of the Bangko Sentral, as well as to
10 all contracts, deeds, documents and transactions related to the conduct
11 of the business of the Bangko Sentral: Provided, however, That said
12 exemptions shall apply only such taxes, fees, charges, and assessments
13 for which the Bangko Sentral itself would otherwise be [,] liable, and
14 shall not apply to taxes, fees, charges, or assessments payable by
15 persons or other entities doing business with the Bangko Sentral:
16 Provided, further, That foreign loans and other obligations of the
17 Bangko Sentral shall be exempt, both as to principal and interest, from
18 any and all other taxes if the payment of such taxes has been assumed
19 by the Bangko Sentral."
20

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

23 "SECTION 126. Exemption from Customs Duties. - The
24 provision of any general or special law to the contrary
25 notwithstanding, the importation and exportation by the Bangko
26 Sentral of notes and coins, and of gold and other metals to be used for
27 purposes authorized under this Act, and the importation of all
28 equipment AND SUPPLIES needed [for] IN THE BANGKO SENTRAL
29 OPERATIONS SUCH AS bank note production, minting of coins,
30 metal refining, [and other] security printing operations AND
31 TRANSPORT OF CURRENCY shall be fully exempt from all customs
32 duties and consular fees and from all other taxes, assessments and
33 charges related to such importation or exportation."
34

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

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

14
15 **SECTION 23.** Repealing Clause. All provisions of existing laws,
16 orders, rules and regulations, or parts thereof, in conflict or inconsistent with
17 the provisions of this Act are hereby repealed.

18
19 **SECTION 24.** Separability Clause. If any provision or section of this
20 Act or the application thereof to any person or circumstance is held to be
21 invalid, the other provisions or sections of this Act, and the application of
22 such provision or section to other persons or circumstances, shall not be
23 affected thereby.

24
25 **SECTION 25.** Effectivity. This Act shall take effect after fifteen (15)
26 days following its publication either in the Official Gazette or in a newspaper
27 of general circulation in the Philippines.

28
29 *Approved,*