

SENATE

Senate Bill No. 708

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

This measure was adopted by the Committee on Banks, Financial Institutions and Currencies during the 14th Congress primarily to strengthen the regulatory and supervisory powers of the Bangko Sentral ng Pilipinas thereby maintaining price stability conducive to a balanced and sustainable growth in our economy. Additionally, the BSP shall promote, oversee and maintain the stability of the financial and payment systems in accordance with internationally accepted principles.

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.
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.


In view of the foregoing, approval of this bill is earnestly sought.


JINGGOY EJERCITO ESTRADA
Senator

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Senate Bill No. 708

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

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 House of Representatives of the Philippines in
Congress assembled:*

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

"SECTION 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, QUASI-BANKS, AND OTHER FINANCIAL INSTITUTIONS WHICH UNDER THIS ACT OR SPECIAL LAWS ARE SUBJECT TO BANGKO SENTRAL SUPERVISION and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of [finance companies and] OTHER non-bank financial institutions NOT SUPERVISED OR REGULATED BY OTHER GOVERNMENT AGENCIES [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 by inserting a new paragraph between the third and the fourth paragraphs which shall read as follows:

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

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

"(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 the Bangko Sentral shall be under the exclusive supervision and control of the Monetary Board;

"(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. The first paragraph of SECTION 16 of the same Act is hereby amended to read as follows:

"SECTION 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 I 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.]

SEC. 5. The first paragraph of SECTION 21 of the same Act is hereby amended to read as follows:

"SECTION 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."

SEC. 6. The first paragraph of SECTION 23 of the same Act is hereby amended to read as follows:

"SECTION 23. Authority to Obtain Data and Information.- The Bangko Sentral shall have the authority to request 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 functions and responsibilities. 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."

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

"SECTION 25. Supervision and Examination. - The Bangko Sentral shall have , supervision over, and conduct periodic or special examination of [banking institutions, and] 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. PURSUANT TO THE AUTHORITY OF THE BANGKO SENTRAL UNDER THIS SECTION, AND 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. PRIOR TO SUCH APPROVAL, NO SUCH TRANSFER OR ACQUISITION SHALL BE RECOGNIZED IN THE BOOKS OF THE INSTITUTION NOR BY ANY GOVERNMENT AGENCY AND THE TRANSFERORSTOCKHOLDERS, 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 BY 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, 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 OWNS DIRECTLY OR INDIRECTLY MORE THAN ONE HALF OF THE VOTING STOCK OF AN ENTERPRISE. CONTROL MAY ALSO EXIST EVEN WHEN THE PARENT 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 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 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 Rule 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 26 of the same Act is hereby amended to read as follows:

"SECTION 26. Bank Deposits and Investments. - Any director, officer or stockholder who, together with his related interest, 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 ONE PERCENT (1%) of the capital and surplus of the bank, or in the maximum amount permitted by law, whichever is lower, shall be required by the lending bank to waive the secrecy of his deposits of whatever nature in all banks in the Philippines. Any information obtained from an examination of his deposits shall be held strictly confidential and may be used by the examiners only in connection with their supervisory and examination responsibility or by the Bangko Sentral in an appropriate legal action it has initiated involving the deposit account."

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

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

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

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

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

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

(a) HAS NOTIFIED THE BANGKO SENTRAL OR PUBLICLY ANNOUNCED A UNILATERAL CLOSURE, OR IN ANY MANNER HAS SUSPENDED THE PAYMENT OF ITS DEPOSIT/DEPOSIT SUBSTITUTES LIABILITIES, OR 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 OR FINANCIAL community; OR

(b) has insufficient realizable assets TO MEET ITS LIABILITIES, as determined by the Bangko Sentral IN ACCORDANCE WITH THE BANKING REGULATIONS [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 IN CASE IT IS A BANK, 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 designated 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] THIS 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 institutions. 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 institution 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 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 receiver."

THE AUTHORITY OF THE MONETARY BOARD TO PLACE A BANK OR QUASI-BANK UNDER RECEIVERSHIP AS PROVIDED DESIGNATED AS A RECEIVER. 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 A RECEIVER.

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

"SECTION 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 90 DAYS FROM THE DATE OF DIRECTIVE IN SUCH AMOUNT AS MAY BE NECESSARY TO RESTORE THE ENTITY'S CAPITAL TO THE MINIMUM REQUIRED AMOUNT AND/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. 12. Section 36 of the same Act is hereby amended to read as follows:

"SECTION 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 (P50,000.00) nor more than [Two hundred thousand pesos (P200,000.00)] TWO MILLION PESOS (P2,000,000.00 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. 13. Section 37 of the same Act is hereby amended to read as follows:

"SECTION 37. Administrative Sanctions [on Banks and Quasi-Banks]. - Without prejudice to the criminal sanctions against the culpable persons provided in Sections 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 determined by the Monetary Board to be appropriate, [but in no case to exceed Thirty thousand pesos (P30,000.00) 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;] FOR EACH VIOLATION OR IRREGULARITY BUT IN NO CASE TO EXCEED THE FOLLOWING AMOUNTS PER BANKING DAY:

NATURE OF VIOLATION OR IRREGULARITY/ TYPE OF INSTITUTION 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 150,000	
VIOLATION/IRREGULARITY	
- 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

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 PARENT UNIVERSAL OR COMMERCIAL BANK 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/OR

(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 Ranking 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 (P100,000.99) a] ONE HUNDRED THOUSAND PESOS (P100,000.00) 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. 14. Section 77 of the same Act is hereby amended to read as follows:

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

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

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

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

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

"SECTION 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 re-lending 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 FROM THIS SECTION: Provided, however, That deposit substitutes of commercial, industrial and other non-financial companies issued 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. 18. The second paragraph of Section 102 of the same Act is hereby amended to read as follows:

"The deposit reserves maintained by the banks in the Bangko Sentral in accordance with the provisions of Section 94 of this Act shall serve as basis for the clearing of checks and the settlement of interbank balances, subject to such rules and regulations as the Monetary Board may issue with respect to such operations: Provided, That any bank which incurs an overdrawn in its deposit account with Bangko Sentral shall fully cover said overdraft, including interest thereon at a rate equivalent to one-tenth of

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

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

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

"SECTION 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 [.I NOW IN FORCE OR HEREAFTER ESTABLISHED. The exemptions 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 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 other taxes if the payment of such taxes has been assumed by the Bangko Sentral."

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

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

"SECTION 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] AN enterprise, either directly or indirectly [.] PROVIDED, THAT THIS PROHIBITION SHALL NOT APPLY WHENEVER SUCH OWNERSHIP AND/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."

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

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

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

Approved,