

# RECORD OF THE SENATE

WEDNESDAY, MARCH 17, 1999

## OPENING OF THE SESSION

*At 3:31 p.m., Senate President Marcelo B. Fernan called the session to order.*

**The President.** The 76th session of the First Regular Session of the Eleventh Congress is hereby called to order.

The Majority Leader is recognized.

**Senator Drilon.** Mr. President, may I ask our leader, the President of the Senate, to lead us in the prayer.

*Everybody rose for the prayer.*

## PRAYER

**The President.** Thank you very much.

Almighty God,

We thank You for Your gift of life;  
For in that gift are manifold blessings  
of opportunities  
To serve our fellowmen and humankind.

Make us, Lord, instruments of truth,  
That we may labor to discover the best  
Means to listen and to respond to the  
Direst yearnings of our people.

Make us, too, vessels of Your wisdom,  
That we may see in the present  
The firmest path to a better future  
Not only for ourselves but for all  
Who seek strength to overcome the  
uncertainties ahead.

Give us, Lord, even just the spark of Your  
Almighty spirit  
That we may have the strength to  
Weather every challenge  
Without bitterness nor recrimination  
Against anyone;  
Instead, let love overflow within us  
To compel us to act unselfishly  
And with total devotion to the welfare  
Of others.

Lord, nothing happens without Your willing it;

Nothing moves or is created, blooms or  
Flourishes without Your embraces;

In this light, be with us, Lord, embrace us  
And all our labors, that we may be able  
To make Your gift of life flourish  
For the fulfillment of our duty to You  
And to our country  
To make life better for the Filipino,  
Today and for always.

We ask all these with praise in our hearts  
Glorifying Your name  
Forever and ever.

Amen.

Thank you.

## ROLL CALL

**The President.** The Secretary will please call the roll.

**The Secretary, reading:**

Senator Teresa S. Aquino-Oreta .....	*
Senator Robert Z. Barbers .....	Present
Senator Rodolfo G. Biazon .....	Present
Senator Renato L. <i>Compañero</i> Cayetano ....	Present
Senator Anna Dominique M.L. Coseteng ....	Absent
Senator Franklin M. Drilon .....	Present
Senator Juan Ponce Enrile .....	Present
Senator Juan M. Flavio .....	*
Senator Teofisto T. Guingona Jr. ....	Present
Senator Gregorio B. Honasan .....	Present
Senator Robert S. Jaworski .....	Present
Senator Loren B. Legarda-Leviste .....	*
Senator Ramon B. Magsaysay Jr. ....	Present
Senator Blas F. Ople .....	Present
Senator John Henry R. Osmeña .....	Absent
Senator Sergio R. Osmeña III .....	Absent
Senator Aquilino Q. Pimentel Jr. ....	Present
Senator Ramon B. Revilla .....	Present
Senator Raul S. Roco .....	Present
Senator Miriam Defensor Santiago .....	*
Senator Vicente C. Sotto III .....	Present
Senator Francisco S. Tatad .....	Present
The President .....	Present

\* On official mission

**The President.** Referred to the Committees on Health and Demography; and Finance

**The Secretary.** Senate Bill No. 1517, entitled

AN ACT TO DECLARE APRIL 27 OF EVERY YEAR AS A SPECIAL NONWORKING HOLIDAY THROUGHOUT THE COUNTRY TO COMMEMORATE THE VICTORY OF LAPU-LAPU AND HIS MEN OVER THE SPANIARDS LED BY FERNANDO MAGALLANES IN THE HISTORIC BATTLE OF MACTAN ON APRIL 27, 1521, TO BE KNOWN AS "LAPU-LAPU DAY" OR "ADLAW NI LAPU-LAPU"

Introduced by Senator Sotto III

**The President.** Referred to the Committee on Constitutional Amendments, Revision of Codes and Laws

**The Secretary.** Senate Bill No. 1518, entitled

AN ACT PROHIBITING GOVERNMENT OFFICIALS, OFFICERS AND EMPLOYEES OF THE NATIONAL GOVERNMENT, PROVINCIAL, CITY OR LOCAL GOVERNMENT UNITS INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS OR AGENCIES, CONSTITUTIONAL COMMISSIONS, AUTHORITIES AND AD-HOC OR TASK-FORCE CREATIONS FROM OWNING, OPERATING OR MANAGING BUSINESSES, OR FROM ENGAGING IN TRANSACTIONS, ACTIVITIES OR UNDERTAKINGS, AFFECTED BY, OR WHICH WOULD HAVE DIRECT BEARING ON, OR RELATIONSHIP WITH, THEIR OFFICE OR FUNCTIONS; OR FROM SOLICITING, PROCURING OR EXECUTING CONTRACTS OR AGREEMENTS FOR THE SUPPLY AND/OR DELIVERY OF GOODS, MATERIALS, PRODUCTS, EQUIPMENT OR DEVICES TO THE OFFICES WHERE THEY ARE CONNECTED OR EMPLOYED

Introduced by Senator Ople

**The President.** Referred to the Committee on Constitutional Amendments, Revision of Codes and Laws

COMMUNICATION

**The Secretary.** Memorandum from Secretary Benjamin

Diokno of the Department of Budget and Management, furnishing the Senate a copy of Corporate Compensation Circular No. 10.

**The President.** Referred to the Committees on Civil Service and Government Reorganization; and Government Corporations and Public Enterprises

COMMITTEE REPORT

**The Secretary.** Committee Report No. 29, prepared and submitted jointly by the Committees on Banks, Financial Institutions and Currencies; and Ways and Means on Senate Bill No. 1519 with Senators Serge Osmeña, Drilon, Roco, Tatad and Enrile as authors thereof, entitled

AN ACT PROVIDING FOR THE REGULATION OF THE ORGANIZATION AND OPERATIONS OF BANKS, QUASI-BANKS, TRUST ENTITIES AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 253, 589, 882, 885 and 1241.

Sponsors: Senators Roco, Enrile, Serge Osmeña, Drilon and Tatad

**The President.** Referred to the Calendar for Ordinary Business.

The Majority Leader is recognized.

MOTION OF SENATOR DRILON  
(To Reconsider Termination of Individual Amendments on S. Ct. Res. No. 5)

**Senator Drilon.** Mr. President, yesterday we closed the period of individual amendments on Senate Concurrent Resolution No. 5 under Committee Report No. 21. New printed copies of this concurrent resolution were already distributed to all the members. There are a number of our colleagues who have requested time to review the resolution once more and may propose amendments.

In that light, Mr. President, may I move that we reconsider the termination of the period of individual amendments to allow our colleagues to once more review and propose any amendment, if necessary, to Senate Concurrent Resolution No. 5.

**The President.** Is there any objection? *[Silence]* There being none, the motion is approved.

## SPECIAL ORDERS

**Senator Drilon.** Mr. President, I move that we transfer from the Calendar for Ordinary Business to the Calendar for Special Orders, Committee Report No. 29 on Senate Bill No. 1519, entitled

AN ACT PROVIDING FOR THE REGULATION OF THE ORGANIZATION AND OPERATIONS OF BANKS, QUASI-BANKS, TRUST ENTITIES AND FOR OTHER PURPOSES.

**The President.** Is there any objection? [Silence] There being none, the motion is approved.

BILL ON SECOND READING  
S. No. 1519—General Banking Law of 1999

**Senator Drilon.** Mr. President, I move that we consider Senate Bill No. 1519 as reported out under Committee Report No. 29.

**The President.** Is there any objection? [Silence] There being none, the motion is approved.

Consideration of Senate Bill No. 1519 is now in order. With the permission of the Body, the Secretary will read only the title of the bill, without prejudice to inserting in the *Record* the whole text thereof.

**The Secretary.** Senate Bill No. 1519, entitled

AN ACT PROVIDING FOR THE REGULATION OF THE ORGANIZATION AND OPERATIONS OF BANKS, QUASI-BANKS, TRUST ENTITIES AND FOR OTHER PURPOSES

*The following is the whole text of the bill:*

Senate Bill No. 1519

AN ACT PROVIDING FOR THE REGULATIONS OF THE ORGANIZATION AND OPERATIONS OF BANKS, QUASI-BANKS, TRUST ENTITIES AND FOR OTHER PURPOSES

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

CHAPTER I  
TITLE AND CLASSIFICATION OF BANKS

SECTION 1. *Title.* - The short title of this Act shall

be "The General Banking Law of 1999".

SEC. 2. *Definition and Classification of Banks.* -

2.1 "Banks" shall refer to entities engaged in the lending of funds obtained in the form of deposits.

2.2 Banks shall be classified into:

- (A) Universal banks;
- (B) Commercial banks;
- (C) Thrift banks, composed of (i) Savings and mortgage banks, (ii) Stock savings and loan associations, and (iii) Private development banks, as defined in Republic Act No. 7906 (hereafter the "Thrift Banks Act");
- (D) Rural banks, as defined in Republic Act No. 7353 (hereafter the "Rural Banks Act");
- (E) Cooperative banks, as defined in Republic Act No. 6938 (hereafter the "Cooperative Code"); and
- (F) Other classifications of banks as determined by the Monetary Board of the Bangko Sentral ng Pilipinas.

CHAPTER II  
AUTHORITY OF THE BANGKO SENTRAL

SEC. 3. *Supervisory Powers.* - The operations and activities of banks shall be subject to supervision of the Bangko Sentral. "Supervision" shall include the following:

3.1 The issuance of rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered, taking into consideration the distinctive character of the operations of institutions and the substantive similarities of specific functions to which such rules, modes or standards are to be applied;

3.2 The conduct of special examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board;

3.3 Overseeing to ascertain that laws and regulations are complied with;

3.4 Regular investigation or examination which shall not be oftener than once a year from the last date

of examination to determine whether an institution is conducting its business on a safe or sound basis: *Provided*, That the deficiencies/irregularities found by or discovered by any regular or special audit shall be immediately addressed;

3.5 Inquiring into the solvency and liquidity of the institution; or

3.6 Enforcing prompt corrective action.

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

For the purposes of this Act, "quasi-banks" shall refer to entities engaged in the borrowing of funds through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Section 95 of Republic Act No. 7653 (hereafter the "New Central Bank Act") for purposes of relending or purchasing of receivables and other obligations.

**SEC. 4. Policy Direction; Ratios, Ceilings and Limitations.** - The Bangko Sentral shall provide policy direction in the areas of money, banking and credit.

For this purpose, the Monetary Board may prescribe ratios, ceilings, limitations, or other forms of regulation on the different types of accounts and practices of banks and quasi-banks. The Monetary Board may exempt particular categories of transactions from such ratios, ceilings and limitations.

**SEC. 5. Authority to Engage in Banking and Quasi-Banking Functions.** - No person or entity shall engage in banking operations or quasi-banking functions without authority from the Bangko Sentral: *Provided, however*, That an entity authorized by the Bangko Sentral to perform universal or commercial banking functions shall likewise have the authority to engage in quasi-banking functions.

The determination of whether a person or entity is performing banking or quasi-banking functions without Bangko Sentral authority shall be decided by the Monetary Board. For the purpose of resolving such issue, the Monetary Board may, through the appropriate supervising and examining department of the Bangko Sentral, examine, inspect or investigate the books and records of such person or entity.

The department head and the examiners of the appropriate supervising and examining department are hereby authorized to administer oaths to any such person, employee, officer, or director of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity.

Failure or refusal to comply with the required presentation or production of all books, documents, papers or records directly related to banking transactions shall subject the persons responsible therefor to the penal sanctions provided under Section 36 of the New Central Bank Act.

Persons or entities found to be performing banking or quasi-banking functions without authority from the Bangko Sentral shall be subject to Section 36 of the New Central Bank Act, and may be referred to the Securities and Exchange Commission for the revocation of their license to do business.

**SEC. 6. Examination by the Bangko Sentral.** - The Bangko Sentral shall, when examining a bank, have the authority to examine an enterprise which is wholly or majority-owned or controlled by a bank.

### CHAPTER III ORGANIZATION, MANAGEMENT AND ADMINISTRATION OF BANKS, QUASI-BANKS AND TRUST ENTITIES

**SEC. 7. Organization.** - The Monetary Board may authorize the organization of a bank or quasi-bank subject to the following conditions:

7.1. That the entity is a stock corporation ;

7.2. That its funds are obtained from the public, which shall mean twenty (20) or more persons; and

7.3. That the minimum capital requirements prescribed by the Monetary Board for each category of banks are satisfied.

**SEC. 8. Issuance of Stocks.** - No bank shall issue no-par value stock. For the purpose of determining compliance with laws and regulations governing capital and equity structure of banks, the Monetary Board may prescribe rules and regulations on the types of stock a bank may issue, including the terms thereof and rights appurtenant thereto.

SEC. 9. *Treasury Stocks.* - No bank shall purchase or acquire shares of its own capital stock or accept its own shares as a security for a loan, except when authorized by the Monetary Board: *Provided*, That in every case the stock so purchased or acquired shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at a public or private sale.

SEC. 10. *Foreign Stockholdings.* - Foreign individuals and non-bank corporations may own up to forty percent (40%) of the voting stock of a domestic bank.

The percentage of foreign-owned voting stocks in a bank shall be determined by the citizenship of the individual stockholders in that bank. The citizenship of the corporation which is a stockholder in a bank shall follow the citizenship of the controlling stockholders of the corporation, irrespective of the place of incorporation.

SEC. 11. *Stockholdings of Family Groups or Related Interests.* - Stockholdings of individuals related to each other within the fourth degree of consanguinity or affinity, legitimate or common-law, shall be considered family groups or related interests and must be fully disclosed in all transactions by such an individual with the bank.

SEC. 12. *Corporate Stockholdings.* - Two or more corporations owned or controlled by the same family group or same group of persons shall be considered related interests and must be fully disclosed in all transactions by such corporations or related groups of persons with the bank.

SEC. 13. *Certificate of Authority to Register.* - The Securities and Exchange Commission shall not register the articles of incorporation of any bank, or any amendment thereto, unless accompanied by a certificate of authority issued by the Monetary Board, under its seal. Such certificate shall not be issued unless the Monetary Board is satisfied from the evidence submitted to it:

13.1. That all requirements of existing laws and regulations to engage in the business for which the applicant is proposed to be incorporated have been complied with;

13.2. That the public interest and economic

conditions, both general and local, justify the authorization; and

13.3. That the amount of capital, the financing, organization, direction and administration, as well as the integrity and responsibility of the organizers and administrators reasonably assure the safety of deposits and the public interest.

The Securities and Exchange Commission shall not register the by-laws of any bank, or any amendment thereto, unless accompanied by a certificate of authority from the Bangko Sentral.

SEC. 14. *Board of Directors.* - There shall be at least seven (7) and a maximum of fifteen (15) members of the board of directors of a bank, two (2) of whom shall be independent directors. An "independent director" shall mean a person other than an officer or employee of the bank, its subsidiaries or affiliates or related interests.

Non-Filipino citizens may become members of the board of directors of a bank to the extent of the foreign participation in the equity of said bank. (Sec. 7, RA 7721)

The meetings of the board of directors may be conducted through modern technologies such as, but not limited to, teleconferencing and video-conferencing.

SEC. 15. *Fit and Proper Rule.* - To maintain the quality of bank management and afford better protection to depositors and the public in general, the Monetary Board shall prescribe, pass upon and review the qualifications and disqualifications of individuals elected or appointed bank directors or officers and disqualify those found unfit.

A bank director or officer may be disqualified, removed or suspended by the Monetary Board for acts or omissions which render him unfit for the position.

In determining whether an individual is fit and proper to hold the position of a director or officer of a bank, regard shall be given to his integrity, experience, education training, and competence.

SEC. 16. *Directors of Merged or Consolidated Banks.* - In the case of a bank merger or consolidation duly approved by the Monetary Board, the limitation on the number of directors in a corporation, as provided for in the Corporation Code, shall not be

applied so that membership in the new board may include up to the total number of directors provided for in the respective articles of incorporation of the merging or consolidating banks: *Provided*, That the number of board directors may exceed fifteen (15) for a period not exceeding one (1) year.

SEC. 17. *Compensation and Other Benefits of Directors and Officers.* - To protect the funds of depositors and creditors, the Monetary Board may regulate the payment by the bank to its directors and officers of compensation, allowance, fees, bonuses, stock options, profit sharing and fringe benefits only in exceptional cases and when the circumstances warrant, such as but not limited to the following:

17.1. When a bank is under comptrollership or conservatorship; or

17.2. When a bank is found by the Monetary board to be conducting business in an unsafe or unsound manner; or

17.3. When a bank is found by the Monetary Board to be in an unsatisfactory financial condition.

SEC. 18. *Prohibition on Public Officials.* - Except as otherwise provided in the Rural Banks Act, no appointive or elective public official, whether full-time or part-time shall at the same time serve as officer of any private bank, save in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled corporation to the bank or unless otherwise provided under existing laws.

SEC. 19. *Bank Branches.* - Universal or commercial banks may open branches or other offices within or outside the Philippines upon prior approval of the Bangko Sentral.

Branching by all other banks shall be governed by pertinent laws.

A bank authorized to establish branches or other offices shall be responsible for all business conducted in such branches and offices to the same extent and in the same manner as though such business had all been conducted in the head office. A bank and its branches and offices shall be treated as one unit.

SEC. 20. *Banking Days and Hours.* - Unless

otherwise authorized by the Bangko Sentral in the interest of the banking public, all banks including their branches and offices shall transact business on all working days for at least six (6) hours a day. In addition, banks or any of their branches or offices may open for business on Saturdays, Sundays or holidays for at least three (3) hours a day: *Provided*, That banks which opt to open on days other than working days shall report to the Bangko Sentral the additional days during which they or their branches or offices shall transact business.

For purposes of this Section, working days shall mean Mondays to Fridays, except if such days are holidays.

SEC. 21. *Strikes and Lockouts.* - The banking industry is hereby declared as indispensable to the national interest and, notwithstanding the provisions of any law to the contrary, any strike or lockout involving banks, if unsettled after seven (7) calendar days shall be reported by the Bangko Sentral to the Secretary of Labor who may assume jurisdiction over the dispute or decide it or certify the same to the National Labor Relations Commission for compulsory arbitration. However, the President of the Philippines may at anytime intervene and assume jurisdiction over such labor dispute in order to settle or terminate the same.

CHAPTER IV  
DEPOSITS, LOANS AND OTHER OPERATIONS

ARTICLE I  
OPERATIONS OF UNIVERSAL BANKS

SEC. 22. *Powers of a Universal Bank.* - A universal bank shall have the authority to exercise, in addition to the powers authorized for a commercial bank in Section 28, the powers of an investment house as provided in existing laws and the power to invest in non-allied enterprises as provided in this Act.

SEC. 23. *Equity Investments of a Universal Bank.* - A universal bank may, subject to the conditions stated in the succeeding paragraph, invest in the equities of allied and non-allied enterprises as may be determined by the Monetary Board. Allied enterprises may either be financial or non-financial.

Except as the Monetary Board may otherwise prescribe:

23.1. The total investment in equities of allied and

non-allied enterprises shall not exceed fifty percent (50%) of the net worth of the bank; and

23.2. The equity investment in any one enterprise, whether allied or non-allied, shall not exceed twenty-five percent (25%) of the net worth of the bank.

As used in this Act, "net worth" shall mean the total of the unimpaired paid-in capital including paid-in surplus, retained earnings and undivided profit, net of valuation reserves and other adjustments as may be required by the Bangko Sentral.

The acquisition of such equity or equities is subject to the prior approval of the Monetary Board which shall promulgate appropriate guidelines to govern such investments.

SEC. 24. *Equity Investments of a Universal Bank in Financial Allied Enterprises.* - A universal bank can own up to one hundred percent (100%) of the equity in a thrift bank, a rural bank or a financial allied enterprise.

A publicly-listed universal bank may own up to one hundred percent (100%) of the voting stock of only one other universal or commercial bank. For the purpose of complying with this Section, a universal bank shall be considered publicly-listed only if it shall publicly list with the Philippine Stock Exchange thirty-five percent (35%) of its total outstanding stocks. This rule shall also apply in the case of commercial banks.

SEC. 25. *Equity Investments of Universal Bank in Non-Financial Allied Enterprises.* - A universal bank may own up to one hundred percent (100%) of the equity in a non-financial allied enterprise.

SEC. 26. *Equity Investments of a Universal Bank in Non-Allied Enterprises.* - The equity investment of a universal bank, or of its wholly or majority-owned subsidiaries, in a single non-allied enterprise shall not exceed thirty-five percent (35%) of the total equity in that enterprise nor shall it exceed thirty-five percent (35%) of the voting stock in that enterprise.

SEC. 27. *Equity Investments in Quasi-Banks.* - To promote competitive conditions in financial markets, the Monetary Board may further limit to forty (40%) percent equity investments of universal banks in quasi-banks. This rule shall also apply in the case of commercial banks.

## ARTICLE II OPERATIONS OF COMMERCIAL BANKS

SEC. 28. *Powers of a Commercial Bank.* - A commercial bank shall have, in addition to the general powers incident to corporations, all such powers as may be necessary to carry on the business of commercial banking, such as accepting drafts and issuing letters of credit; discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; accepting or creating demand deposits; receiving other types of deposits and deposit substitutes, buying and selling foreign exchange and gold or silver bullion; acquiring marketable bonds and other debt securities; and extending credit, subject to such rules as the Monetary Board may promulgate. These rules may include, but not limited to, the determination of bonds and other debt securities eligible for investment; the maturities and aggregate amount of such investment.

SEC. 29. *Equity Investments of a Commercial Bank.* - A commercial bank may, subject to the conditions stated in the succeeding paragraphs, invest only in the equities of allied enterprises as may be determined by the Monetary Board. Allied enterprises may either be financial or non-financial.

Except as the Monetary Board may otherwise prescribe:

29.1. The total investment in equities of allied enterprises shall not exceed thirty-five percent (35%) of the net worth of the bank; and

29.2. The equity investment in any one enterprise shall not exceed twenty-five percent (25%) of the net worth of the bank.

The acquisition of such equity or equities is subject to the prior approval of the Monetary Board which shall promulgate appropriate guidelines to govern such investments.

SEC. 30. *Equity Investments of a Commercial Bank in Financial Allied Enterprises.* - A commercial bank may own up to one hundred percent (100%) of the equity of a thrift bank or a rural bank.

Where the equity investment of a commercial bank is in other financial allied enterprises, including another commercial bank, such investment shall remain a minority holding in that enterprise.

SEC. 31. *Equity Investment of a Commercial Bank in Non-Financial Allied Enterprises.* - A commercial bank may own up to one hundred percent (100%) of the equity in a non-financial allied enterprise.

### ARTICLE III

#### PROVISIONS APPLICABLE TO ALL BANKS, QUASI-BANKS, AND TRUST ENTITIES

SEC. 32. *Acceptance of Demand Deposits.* - A bank other than a universal or commercial bank cannot accept or create demand deposits except upon prior approval of, and subject to such conditions and rules as may be prescribed by the Monetary Board.

SEC. 33. *Risk-Based Capital.* - The Monetary Board shall prescribe the minimum ratio which the net worth of a bank must bear to its total risk assets which may include contingent accounts.

For purposes of this Section, the Monetary Board may require that such ratio be determined on the basis of the net worth and risk assets of a bank and its subsidiaries, financial or otherwise, as well as prescribe the composition and the manner of determining the net worth and total risk assets of banks and their subsidiaries: *Provided*, That in the exercise of this authority, the Monetary Board shall, to the extent feasible, conform to internationally accepted standards relating to risk-based capital requirements: *Provided, further*, That it may alter or suspend compliance with such ratio whenever necessary for a maximum period of one (1) year: *Provided, finally*, That such ratio shall be applied uniformly to banks of the same category.

In case a bank does not comply with the prescribed minimum ratio, the Monetary Board may limit or prohibit the distribution of net profits by such bank and may require that part or all of the net profits be used to increase the capital accounts of the bank until the minimum requirement has been met. The Monetary Board may, furthermore, restrict or prohibit the acquisition of major assets and the making of new investments by the bank, with the exception of purchases of readily marketable evidences of indebtedness of the Republic of the Philippines and of the Bangko Sentral and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines, until the minimum required capital ratio has been restored.

In case of a bank merger or consolidation, or when a bank is under rehabilitation under a program approved

by the Bangko Sentral, the Monetary Board may temporarily relieve the surviving bank, consolidated bank, or constituent bank or corporations under rehabilitation from full compliance with the required capital ratio under such conditions as it may prescribe.

Before the effectivity of the rules which the Monetary Board is authorized to prescribe under this provision, Section 22 of the General Banking Act, as amended, Section 9 of the Thrift Banks Act, and all pertinent rules issued pursuant thereto, shall continue to be in force.

SEC. 34. *Limit on Loans, Credit Accommodations and Guarantees.* -

34.1. Except as the Monetary Board may otherwise prescribe for reasons of national interest, the total amount of loans, credit accommodations and guarantees as may be defined by the Monetary Board that may be extended by a bank to any person, partnership, association, corporation or other entity shall at no time exceed fifteen percent (15%) of the net worth of such bank. The basis for determining compliance with single-borrower limit is the total credit commitment of the bank to the borrower.

34.2. Unless the Monetary Board prescribes otherwise, the total amount of loans, credit accommodations and guarantees prescribed in the preceding paragraph may be increased by an additional ten percent (10%) of the net worth of such bank provided the additional liabilities of any borrower are adequately secured by trust receipts, shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable, non-perishable goods which must be fully covered by insurance.

34.3. The above prescribed ceilings shall include: (A) the direct liability of the maker or acceptor of paper discounted with or sold to such bank and the liability of a general indorser, drawer or guarantor who obtains a loan or other credit accommodation from or discounts paper with or sells papers to such bank; (B) in the case of an individual who owns or controls a majority interest in a corporation, partnership, association or any other entity, the liabilities of said entities to such bank; (C) in the case of a corporation, all liabilities to such bank of all subsidiaries in which such corporation owns or controls a majority interest; and (D) in the case of a partnership, association



or other entity, the liabilities of the members thereof to such bank.

34.4. Even if a parent corporation, partnership, association, entity or an individual who owns or controls a majority interest in such entities has no liability to the bank, the Monetary Board may prescribe the combination of the liabilities of subsidiary corporations or members of the partnership, association, entity or such individual under certain circumstances, including but not limited to any of the following situations: (A) the parent corporation, partnership, association, entity or individual guarantees the repayment of the liabilities; (B) the liabilities were incurred for the accommodation of the parent corporation or another subsidiary or of the partnership or association or entity or such individual; or (C) the subsidiaries though separate entities operate merely as departments or divisions of a single entity.

34.5. For purposes of this Section, loans, other credit accommodations and guarantees shall exclude: (A) loans and other credit accommodations secured by obligations of the Bangko Sentral or of the Philippine Government; (B) loans and other credit accommodations fully guaranteed by the government as to the payment of principal and interest; (C) loans and other credit accommodations covered by assignment of deposits maintained in the lending bank and held in the Philippines; (D) loans, credit accommodations and acceptances under letters of credit to the extent covered by margin deposits; and (E) other loans or credit accommodations which the Monetary Board may from time to time, specify as non-risk items.

34.6. Loans and other credit accommodations, deposits maintained with, and usual guarantees by a bank to any other bank or non-bank entity, whether locally or abroad, shall be subject to the limits as herein prescribed.

34.7. Certain types of contingent accounts of borrowers may be included among those subject to the herein limit as may be determined by the Monetary Board.

**SEC. 35. Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests.** - No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, borrow from such bank nor shall he become a guarantor, indorser or surety for loans from such bank to

others, or in any manner to be obligor or incur any contractual liability to the bank except with the written approval of the majority of the directors of the bank, excluding the director concerned: *Provided*, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral. The office of any bank director or officer who violates the provisions of this Section shall immediately become vacant and the director or officer shall be subject to Sections 36 and 37 of the new Central Bank Act.

The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or controlled by said directors, officers, stockholders and their related interests. However, the outstanding loans, credit accommodations and guarantees which a bank may extend to each of its stockholders, directors, or officers and their related interests, shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: *Provided, however*, That loans, credit accommodations and advances to officers in the form of fringe benefits granted in accordance with rules as may be prescribed by the Monetary Board shall not be subject to the individual limit.

The Monetary Board shall define the term "related interests".

The limit on loans, credit accommodations and guarantees prescribed herein shall not apply to loans, credit accommodations and guarantees extended by a cooperative bank to its cooperative shareholders.

**SEC. 36. Loans and Other Credit Accommodations Against Real Estate.** - Except as the Monetary Board may otherwise prescribe, loans and other credit accommodations against real estate shall not exceed sixty percent (60%) of the appraised value of the respective real estate security, plus sixty percent (60%) of the appraised value of the insured improvements, and such loans shall not be made unless title to the real estate shall be in the name of the mortgagor.

SEC. 37. *Loans and Other Credit Accommodations on Security of Chattels and Intangible Properties.* - Except as the Monetary Board may otherwise prescribe, loans and other credit accommodations on security of chattels and intangible properties, such as, but not limited to, patents, trademarks, trade names, and copyrights shall not exceed fifty percent (50%) of the appraised value of the security, and such loans and other credit accommodations shall not be made unless title to the chattels and intangible properties, free from all encumbrances, shall be in the name of the mortgagor.

SEC. 38. *Grant and Purpose of Loans and Other Credit Accommodations.* - A bank shall grant loans and other credit accommodations only in amounts and for the periods of time essential for the effective completion of the operations to be financed. Such grant of loans and other credit accommodations shall be consistent with safe and sound banking practices.

The purpose of all loans and other credit accommodations shall be stated in the application and in the contract between the bank and the borrower. If the bank finds that the proceeds of the loan or other credit accommodation have been employed, without its approval, for purposes other than those agreed upon with the bank, it shall have the right to terminate the loan or other credit accommodation and demand immediate repayment of the obligation.

SEC. 39. *Requirement for Grant of Loans or Other Credit Accommodations.* - Before granting a loan or other credit accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank.

Toward this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of Monetary Board to enable the bank to properly evaluate the credit application. Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or other credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation. In formulating rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral.

SEC. 40. *Unsecured Loans or Other Credit Accommodations.* - The Monetary Board is hereby authorized to issue such regulations as it may deem necessary with respect to unsecured loans or other credit accommodations that may be granted by banks.

SEC. 41. *Other Security Requirements for Bank Credits.* - The Monetary Board may, by regulation, prescribe further security requirements to which the various types of bank credits shall be subject, and, in accordance with the authority granted to it in Section 106 of the New Central Bank Act, the Board may by regulation, reduce the maximum ratios established in Sections 36 and 37 of this Act, in special cases, increase the maximum ratios established therein.

SEC. 42. *Authority to Prescribe Terms and Conditions of Loans and Other Credit Accommodations.* - The Monetary Board may, similarly, in accordance with the authority granted to it in Section 106 of the New Central Bank Act, and taking into account the requirements of the economy for the effective utilization of long-term funds, prescribe the maturities, as well as related terms and conditions for various types of bank loans and other credit accommodations. Any change by the Board in the maximum maturities shall apply only to loans and other credit accommodations made after the date of such action.

SEC. 43. *Amortization on Loans and Other Credit Accommodations.* - The amortization schedule of bank loans and other credit accommodations shall be adapted to the nature of the operations to be financed.

In case of loans and other credit accommodations with maturities of more than five (5) years, provisions must be made for periodic amortization payments, but such payments must be made at least annually: *Provided, however,* That when the borrowed funds are to be used for purposes which do not initially produce revenues adequate for regular amortization payments therefrom, the bank may permit the initial amortization payment to be deferred until such time as said revenues are sufficient for such purpose, but in no case shall the initial amortization date be later than five (5) years from the date on which the loan or other credit accommodation is granted.

In case of loans and other credit accommodations to microfinance sectors, the schedule of loan amortization shall take into consideration the projected cash flow of the borrower and adopt this into the terms and conditions formulated by banks.

SEC. 44. *Prepayment of Loans and Other Credit Accommodations.* - A borrower may at any time prior to the agreed maturity date prepay, in whole or in part, the unpaid balance of any bank loan and other credit accommodation, subject to such reasonable terms and conditions as may be agreed upon between the bank and its borrower.

SEC. 45. *Development Assistance Incentives.* - The *Bangko Sentral* may provide incentives to banks which, without government guarantee, extend loans to finance educational institutions, cooperatives, hospitals and other medical services, socialized or low-cost housing, local government units and other activities with social content.

SEC. 46. *Foreclosure of Real Estate Mortgage.* - In the event of foreclosure, whether judicially or extra-judicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by enjoining or the restraint of the foreclosure proceeding.

SEC. 47. *Renewal or Extension of Loans and Other Credit Accommodations.* - The Monetary Board may, by regulation, prescribe the conditions and limitations under which a bank may grant extensions or renewals of its loans and other credit accommodations.

SEC. 48. *Provisions for Losses and Write-Offs.* - All debts due to any bank on which interest is past due and unpaid for such period as may be determined by the Monetary Board, unless the same are well-secured and in the process of collection shall be considered bad debts within the meaning of this Section.

The Monetary Board may fix, by regulation or by order in a specific case, the amount of reserves for bad debts or doubtful accounts or other contingencies.

Writing off of loans, other credit accommodations, advances and other assets shall be subject to regulations issued by the Monetary Board.

SEC. 49. *Ceiling on Investments in Certain Assets.* - Any bank may acquire real estate as shall be necessary for its own use in the conduct of its business: *Provided, however,* That the total investment in such real estate and improvements thereof, including bank equipment, shall not exceed fifty percent (50%) of combined capital accounts: *Provided, further,* That the equity investment of a bank in another corporation engaged primarily in real estate shall be considered as part of the bank's total investment in real estate, unless otherwise provided by the Monetary Board.

SEC. 50. *Acquisition of Real Estate by Way of Satisfaction of Claims.* - Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

50.1. Such as shall be mortgaged to it in good faith by way of security for debts;

50.2. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or

50.3. Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deeds held by it and such as it shall purchase to secure debts due it.

Any real property acquired or held under the circumstances enumerated in the above paragraph shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: *Provided, however,* That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section.

SEC. 51. *Other Banking Services.* - In addition to the operations specifically authorized in this Act, a bank may perform the following services:

51.1. Receive in custody funds, documents and valuable objects;

51.2. Act as financial agent and buy and sell, by

order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;

51.3. Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business;

51.4. Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/advisory/consultancy accounts; and

51.5. Rent out safety deposit boxes.

The bank shall perform the services permitted under Subsections 51.1, 51.2, 51.3 and 51.4 as depository or as an agent. Accordingly, it shall keep the funds, securities and other effects which it receives duly separate from the bank's own assets and liabilities.

The Monetary Board may regulate the operations authorized by this Section in order to ensure that such operations do not endanger the interests of the depositors and other creditors of the bank.

SEC. 52. *Prohibition to Act as Insurer.* - A bank shall not directly engage in insurance business as the insurer.

SEC. 53. *Prohibited Transactions.* -

53.1. No director, officer, employee, or agent of any bank shall -

(A) Make false entries in any bank report or statement or participate in any fraudulent transaction, thereby affecting the financial interest of, or causing damage to, the bank or any person;

(B) Without order of a court of competent jurisdiction, disclose to any unauthorized person any information relative to the funds or properties in the custody of the bank belonging to private individuals, corporations, or any other entity: *Provided*, That with respect to bank deposits, the provisions of existing laws shall prevail;

(C) Accept gifts, fees or commissions or any other form of remuneration in connection with the approval of a loan or other credit accommodation from said bank; or

(D) Overvalue or aid in overvaluing any security for

the purpose of influencing in any way the actions of the bank or any bank; or

(E) Out sourcing of inherent banking functions.

53.2. No borrower of a bank shall -

(A) Fraudulently overvalue property offered as security for a loan or other credit accommodation from the bank;

(B) Furnish false, or make misrepresentation or suppression of material facts for the purpose of obtaining, renewing, or increasing a loan or other credit accommodation or extending the period thereof;

(C) Attempt to defraud the said bank in the event of a court action to recover a loan or other credit accommodation; or

(D) Offer any director, officer, employee or agent of a bank any gift, fee, commission, or any other form of compensation in order to influence such persons into approving a loan or other credit accommodation application.

53.3. No examiner, officer or employee of the Bangko Sentral or of any department, bureau, office, branch or agency of the Government that is assigned to supervise, examine, assist or render technical assistance to any bank shall commit any of the acts enumerated in this Section or aid in the commission of the same.

The making of false reports or misrepresentation or suppression of material facts by personnel of the Bangko Sentral ng Pilipinas shall constitute fraud and shall be subject to the administrative and criminal sanctions provided under the Bangko Sentral Law.

53.4. Consistent with the provisions of Republic Act No. 1405, otherwise known as the Bank Secrecy Law, no bank shall employ casual or nonregular personnel or too lengthy probationary personnel in the conduct of its business involving bank deposits.

SEC. 54. *Conducting Business in an Unsafe or Unsound Manner.* - In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule, or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner for purposes of this Section, the Monetary Board shall consider any of the following circumstances:

54.1. The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the institution;

54.2. The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general;

54.3. The act or omission has caused any undue injury, or has given any unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or

54.4. The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, quasi-bank or trust entity, whether or not the director or officer profited or will profit thereby.

Whenever a bank, quasi-bank or trust entity persists in conducting its business in an unsafe or unsound manner, the Monetary Board may, without prejudice to the administrative sanctions provided in Section 37 of the New Central Bank Act, take action under Section 30 of the same Act and/or immediately exclude the erring bank from clearing, the provisions of law to the contrary notwithstanding.

**SEC. 55. Prohibition on Dividend Declaration.** - No bank or quasi-bank shall declare dividends greater than its accumulated net profits then on hand, deducting therefrom its losses and bad debts. Neither shall the bank nor quasi-bank declare dividends, if at the time of declaration:

55.1. Its clearing account with the Bangko Sentral is overdrawn; or

55.2. It is deficient in the required liquidity floor for government deposits for five or more consecutive days; or

55.3. It does not comply with the liquidity standards/ratios prescribed by the Bangko Sentral for purposes of determining funds available for dividend declaration; or

55.4. It has committed a major violation as may be determined by the Bangko Sentral.

**SEC. 56. Independent Auditor.** - The Monetary Board may require a bank, quasi-bank or trust entity to engage the services of an independent auditor to be chosen by the bank, quasi-bank or trust entity concerned from a list of certified public accountants acceptable to the Monetary Board. The term of the engagement shall be as prescribed by the Monetary Board which may either be on a continuing basis where the auditor shall act as resident examiner, or on the basis of special engagements, but in any case, the independent auditor shall be responsible not only to the bank's, quasi-bank's or trust entity's board of directors, but to the Monetary Board as well. The Monetary Board may also direct the board of directors of a bank, quasi-bank, trust entity and/or the individual members thereof, to conduct, either personally or by a committee created by the board, an annual balance sheet audit of the bank, quasi-bank or trust entity to review the internal audit and control system of the bank, quasi-bank or trust entity and to submit a report of such audit.

**SEC. 57. Authority to Regulate Electronic Transactions.** - The Bangko Sentral shall have full authority to regulate the use of electronic devices, such as computers, and processes for recording, storing and transmitting information or data in connection with the operations of a bank, quasi-bank or trust entity, including the delivery of services and products to customers by such entity.

**SEC. 58. Financial Statements.** - Every bank, quasi-bank or trust entity shall submit to the appropriate supervising and examining department of the Bangko Sentral financial statement in such form and frequency as may be prescribed by the Bangko Sentral. Such statement which shall be as of a specific date designated by the Bangko Sentral, shall show the actual financial condition of the institution submitting the statement, and of its branches, offices, subsidiaries and affiliates, including the results of its operations, and shall contain such information as may be required in Bangko Sentral regulations, or as may be called for the Bangko Sentral in special inquiries.

**SEC. 59. Publication of Financial Statements.** - Every bank, quasi-bank or trust entity, shall publish a statement of its financial condition, including those of its subsidiaries and affiliates, in such terms understandable to the layman and in such frequency as may be prescribed by the Bangko Sentral, in English or Filipino, at least once every quarter in a newspaper of general circulation in the city or province where the principal

office in the case of a domestic institution, or the principal branch or office in the case of a foreign bank, is located, but if no newspaper is published in the same province, then in a newspaper published in Metro Manila or in the nearest city or province.

Such published financial statements shall contain at least the following:

59.1. Balance sheet items;

59.2. Off-balance sheet items;

59.3. Income statements;

59.4. Bank exposure to its own directors, officers, stockholders and related interest (DOSRI);

59.5. Non-performing loans;

59.6. Compliance with risk-based capital ratios; and

59.7. List of board of directors and advisers as of date of publication.

The Bangko Sentral may by regulation prescribe the newspaper where the statements prescribed herein shall be published.

The Monetary Board may allow the posting of the financial statements of a bank, quasi-bank or trust entity in public places it may determine, in lieu of the publication required in the preceding paragraph, when warranted by the circumstances.

In periods of national and/or local emergency or of imminent panic which directly threaten monetary and banking stability, the Monetary Board, by a vote of at least five (5) of its members, in special cases and upon application of the bank, quasi-bank or trust entity, may allow such bank, quasi-bank or trust entity to defer for a stated period of time the publication of the statement of financial condition required herein.

**SEC. 60. *Publication of Capital Stock.*** - A bank, quasi-bank or trust entity incorporated under the laws of the Philippines shall not publish the amount of its authorized or subscribed capital stock without indicating at the same time and with equal prominence, the amount of its capital actually paid up.

No branch of any foreign bank doing business in

the Philippines shall in any way announce the amount of the capital and surplus of its head office, or of the bank in its entirety without indicating at the same time and with equal prominence the amount of the capital, if any, definitely assigned to such branch. In case no capital has been definitely assigned to such branch, such fact shall be stated in, and shall form part of the publication.

**SEC. 61. *Settlement of Disputes.*** - The provisions of any law to the contrary notwithstanding, the Bangko Sentral shall be consulted by other government agencies or instrumentalities in actions or proceedings initiated by or brought before them involving controversies in banks, quasi-banks or trust entities arising out of and involving relations between and among their directors, officers or stockholders, as well as disputes between any or all of them and the bank, quasi-banks or trust entity of which they are directors, officers or stockholders.

**SEC. 62. *Unauthorized Advertisement on Business Representation.*** - No person, association, or corporation unless duly authorized to engage in the business of a bank, quasi-banks, trust entity, or savings and loan association as defined in this Act, or other banking laws, shall advertise or hold itself out as being engaged in the business of such bank, quasi-bank, trust entity, or association, or use in connection with its business title, the word or words "bank", "banking", "banker", "quasi-bank", "quasi-banking", "quasi-banker", "savings and loan association", "trust corporation", "trust company" or words of similar import or transact in any manner the business of any such bank, corporation or association.

**SEC. 63. *Service Fees.*** - The Bangko Sentral may charge equitable rates, commissions or fees, as may be prescribed by the Monetary Board for supervision, examination and other services which it renders under this Act.

**SEC. 64. *Penalty for Violation of this Act.*** - Unless otherwise herein provided, the violation of any of the provisions of this Act shall be subject to Sections 34, 35, 36 and 37 of the New Central Bank Act. If the offender is a director or officer of a bank, quasi-bank or trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by *quo warranto* proceedings instituted by the Solicitor General.

CHAPTER V  
PLACEMENT UNDER CONSERVATORSHIP

SEC. 65. *Conservatorship.* - The grounds and procedures for placing a bank under conservatorship, as well as, the powers and duties of the conservator appointed for the bank shall be governed by the provisions of Section 29 and the last two paragraphs of Section 30 of the New Central Bank Act: *Provided*, That this Section shall also apply to consevatorship proceedings of quasi-banks.

CHAPTER VI  
CESSATION OF BANKING BUSINESS

SEC. 66. *Voluntary Liquidation.* - In case of the voluntary liquidation of any bank organized under the laws of the Philippines, or of any branch or office in the Philippines of a foreign bank, written notice of such liquidation shall be sent to the Monetary Board before such liquidation is undertaken, and the Monetary Board shall have the right to intervene and take such steps as may be necessary to protect the interests of creditors.

SEC. 67. *Receivership and Involuntary Liquidation.* - The grounds and procedures for placing a bank under receivership or liquidation, as well as the powers and duties of the receiver or liquidator appointed for the bank shall be governed by the provisions of Sections 30, 31, 32 and 33 of the New Central Bank Act: *Provided*, That 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: *Provided, further*, That the restraining order or injunction shall be refused or if granted, shall be dissolved upon filing by the Bangko Sentral of a bond, which shall be in the form of cash or Bangko Sentral cashier's check, in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. This Section shall also apply to the extent possible to the receivership and liquidation proceedings of quasi-banks.

SEC. 68. *Penalty for Transactions After a Bank Becomes Insolvent.* - Any director or officer of any bank who receives or permits or causes to be received in said bank any deposit, or who pays out or permits or causes to be transferred any funds of said bank, or who transfers or permits or causes to be transferred any securities or property of said bank, after said bank has been declared insolvent by the Monetary Board shall be subject to Sections 36 and 37 of the New Central Bank Act.

CHAPTER VII  
LAWS GOVERNING OTHER TYPES OF BANKS

SEC. 69. *Other Banking Laws.* - The organization, ownership and capital requirements, powers, supervision and general conduct of business of thrift banks, rural banks and cooperative banks shall be governed by the provisions of the Thrift Banks Act, the Rural Banks Act, and the Cooperative Code, respectively.

The provisions of this Act, however, insofar as they are not in conflict with the provisions of the Thrift Banks Act, the Rural Banks Act, and the Cooperative Code shall likewise apply to thrift banks, rural banks and cooperative banks, respectively. However, for purposes of prescribing the minimum ratio which the net worth of a thrift bank must bear to its total risk assets, the provisions of Section 36 of this Act shall govern.

CHAPTER VIII  
FOREIGN BANKS

SEC. 70. *Transacting Business in the Philippines.* - The entry of foreign banks in the Philippines through the establishment of branches shall be governed by the provisions of the Foreign Banks Liberalization Act.

The conduct of offshore banking business in the Philippines shall be governed by the provisions of the Presidential Decree No. 1034, otherwise known as the "Offshore Banking System Decree."

SEC. 71. *Acquisition of Voting Stock in a Domestic Bank.* - Subject to guidelines provided under Section 3 of the Foreign Banks Liberalization Act, the Monetary Board may authorize a foreign bank to acquire up to one hundred percent (100%) of the voting stock of only one (1) bank organized under the laws of the Republic of the Philippines: *Provided*, That the Monetary Board may authorize any foreign bank, which prior to the effectivity of this Act has availed itself of the privilege to acquire up to sixty percent (60%) of the voting stock of a bank under the Foreign Banks Liberalization Act and the Thrift Banks Act, to further acquire voting shares of such bank to the extent necessary for it to own one hundred percent (100%) of the voting stock thereof.

In the exercise of this authority, the Monetary Board shall adopt measures as may be necessary to ensure that at all times the control of seventy percent (70%) of the resources or assets of the entire banking system is held by banks which are at least majority-owned by Filipinos.

Any right, privilege or incentive granted to a foreign bank under this Section shall be equally enjoyed by and extended under the same conditions to banks organized under the laws of the Republic of the Philippines.

**SEC. 72. Local Branches of Foreign Banks.** - In the case of a foreign bank which has more than one (1) branch in the Philippines, all such branches shall be treated as one (1) unit for the purpose of this Act, and all references to the Philippine branches of foreign banks shall be held to refer to such units.

**SEC. 73. Head Office Guarantee.** - In order to provide effective protection of the interests of the depositors and other creditors of Philippine branches of a foreign bank, the head office of such branches shall fully guarantee the prompt payment of all liabilities of its Philippine branch.

Residents and citizens of the Philippines who are creditors of a branch in the Philippines of a foreign bank shall have preferential rights to the assets of such branch in accordance with existing laws.

**SEC. 74. Summons and Legal Process.** - Summons and legal process served upon the Philippine agent or head of any foreign bank designated to accept service thereof shall give jurisdiction to the courts over such bank, and service of notices on such agent or head shall be as binding upon the bank which he represents as if made upon the bank itself.

Should the authority of such agent or head to accept service of summons and legal processes for the bank or notice to it be revoked, or should such agent or head become mentally incompetent or otherwise unable to accept service while exercising such authority, it shall be the duty of the bank to name and designate promptly another agent or head upon whom service of summons and processes in legal proceedings against the bank and of notices affecting the bank may be made, and to file with the Securities and Exchange Commission a duly authenticated nomination of such agent.

In the absence of the agent or head or should there be no person authorized by the bank upon whom service of summons, processes and all legal notices may be made, service of summons, processes and legal notices may be made upon the Bangko Sentral Deputy Governor In-Charge of the supervising and examining departments and such service shall be as effective as if made upon the bank or its duly authorized agent or head.

In case of service for the bank upon the Bangko Sentral Deputy Governor In-charge of the supervising and examining departments, the said Deputy Governor shall register and transmit by mail to the president or the secretary of the bank at its head or principal office a copy, duly certified by him, of the summons, process, or notice. The sending of such copy of the summons, process, or notice shall be a necessary part of the services and shall complete the service. The registry receipt of mailing shall be *prima facie* evidence of the transmission of the summons, process or notice. All costs necessarily incurred by the said Deputy Governor for the making and mailing and sending of a copy of the summons, process, or notice to the president or the secretary of the bank at its head or principal office shall be paid in advance by the party at whose instance the service is made.

**SEC. 75. Revocation of License of a Foreign Bank.** - The Monetary Board may revoke the license to transact business in the Philippines of any foreign bank, if it finds that the foreign bank is insolvent or in imminent danger thereof or that its continuance in business will involve probable loss to those transacting business with it. After the revocation of its license, it shall be unlawful for any such foreign bank to transact business in the Philippines unless its license is renewed or reissued. After the revocation of such license, the Bangko Sentral shall take the necessary action to protect the creditors of such foreign bank and the public. The provisions of the New Central Bank Act on sanctions and penalties shall likewise be applicable.

**SEC. 76. Laws Applicable.** - In all matters not specifically covered by special provisions applicable only to a foreign bank or its branches and other offices in the Philippines, any foreign bank licensed to do business in the Philippines shall be bound by the provisions of this Act, all other laws, rules and regulations applicable to banks organized under the laws of the Philippines of the same class, except those that provide for the creation, formation, organization or dissolution of corporations or for the fixing of the relations, liabilities, responsibilities or duties of stockholders, members, directors or officers of corporations to each other or to the corporation.

#### CHAPTER IX TRUST OPERATIONS

**SEC. 77. Authority to Engage in Trust Business.** - Only a stock corporation duly authorized by the Monetary Board to engage in trust business shall act as a trustee



or administer any trust or hold property in trust or on deposit for the use, benefit, or behoof of others. For purposes of this Act, such a corporation shall be referred to as a trust entity.

**SEC. 78. *Conduct of Trust Business.*** - A trust entity shall administer the funds or property under its custody with the diligence that a prudent man would exercise in the conduct of an enterprise of a like character and with similar aims.

No trust entity shall, for the account of the trustor or the beneficiary of the trust, purchase or acquire property from, or sell, transfer, assign or lend money or property to, or purchase debt instruments of, any of the departments, directors, officers, stockholders, or employees of the trust entity, relatives within the first degree of consanguinity or affinity, or the related interests, of such directors, officers and stockholders, unless the transaction is specifically authorized by the trustor and the relationship of the trustee and the other party involved in the transaction is fully disclosed to the trustor or beneficiary of the trust prior to the transaction.

The Monetary Board shall promulgate such rules and regulations as may be necessary to prevent circumvention of this prohibition or the evasion of the responsibility herein imposed on a trust entity.

**SEC. 79. *Registration of Articles of Incorporation and By-Laws of a Trust Entity.*** - The Securities and Exchange Commission shall not register the articles of incorporation and by-laws or any amendment thereto, of any trust entity, unless accompanied by a certificate of authority issued by the Bangko Sentral.

**SEC. 80. *Minimum Capitalization.*** - A trust entity, before it can engage in trust or other fiduciary business, shall comply with the minimum paid-in capital requirement which will be determined by the Monetary Board.

**SEC. 81. *Powers of a Trust Entity.*** - A trust entity, in addition to the general powers incident to corporations, shall have the power to:

81.1. Act as trustee on any mortgage or bond issued by any municipality, corporation or any body politic and to accept and execute any trust consistent with law;

81.2. Act under the order or appointment of any court as guardian, receiver, trustee, or depositary of the estate of any minor or other incompetent person, and as

receiver and depositary of any moneys paid into court by parties to any legal proceedings and of property of any kind which may be brought under the jurisdiction of the court;

81.3. Act as the executor of any will when it is named the executor thereof;

81.4. Act as administrator of the estate of any deceased person, with the will annexed, or as administrator of the estate of any deceased person when there is no will;

81.5. Accept and execute any trust for the holding, management and administration of any estate, real or personal, and the rents, issues and profits thereof; and

81.6. Establish and manage common trust funds, subject to such rules and regulations as may be prescribed by the Monetary Board.

**SEC. 82. *Deposit for the Faithful Performance of Trust Duties.*** - Before transacting trust business, every trust entity shall deposit with the Bangko Sentral as security for the faithful performance of its trust duties, cash or securities approved by the Monetary Board in an amount equal to not less than Five hundred thousand pesos (P500,000.00) or such higher amount as may be fixed by the Monetary Board: *Provided, however,* That the Monetary Board shall require every trust entity to increase the amount of its cash or securities on deposit with the Bangko Sentral whenever in its judgment such increase is necessary by reason of the trust business of such entity: *Provided, further,* That the paid-in capital and surplus of such entity must be at least equal to the amount required to be deposited with the Bangko Sentral in accordance with the provisions of this paragraph. Should the capital and surplus fall below said amount, the Monetary Board shall have the same authority as that granted to it under the provisions of the fifth paragraph of Section 33 of this Act.

A trust entity so long as it shall continue to be solvent and comply with laws or regulations shall have the right to collect the interest earned on such securities deposited with the Bangko Sentral and, from time to time, with the approval of the Bangko Sentral, to exchange the securities for others. If the trust entity fails to comply with any law or regulation, the Bangko Sentral shall retain such interest on the securities deposited with it for the benefit of rightful claimants.

All claims arising out of the trust business of a trust entity shall have priority over all other claims as regards the cash or securities deposited as above provided. The Monetary Board may not permit the cash or securities deposited in accordance with the provisions of this Section to be reduced below the prescribed minimum amount until the depositing entity shall discontinue its trust business and shall satisfy the Monetary Board that it has complied with all its obligations in connection with such business.

**SEC. 83. *Bond of Certain Persons for the Faithful Performance of Duties.*** - Before an executor, administrator, guardian, trustee, receiver or depositary appointed by the court enters upon the execution of his duties, he shall, upon order of the court, file a bond in such sum as the court may direct.

Upon the application of any executor, administrator, guardian, trustee, receiver, depositary or any other person in interest, the court may, after notice and hearing, order that the subject matter of the trust or any part thereof be deposited with a trust entity. Upon presentation of proof to the court that the subject matter of the trust has been deposited with a trust entity, the court may order that the bond given by such persons for the faithful performance of their duties be reduced to such sums as it may deem proper: *Provided, however,* That the reduced bond shall be sufficient to secure adequately the proper administration and care of any property remaining under the control of such persons and the proper accounting for such property.

Property deposited with any trust entity in conformity with this Section shall be held by such entity under the orders and direction of the court.

**SEC. 84. *Exemption of Trust Entity from Bond Requirement.*** - No bond or other security shall be required by the court from a trust entity for the faithful performance of its duties as court-appointed trustee, executor, administrator, guardian, receiver or depositary. However, the court may, upon proper application with it showing special cause therefor, require the trust entity to post a bond or other security for the protection of funds or property confided to such entity.

**SEC. 85. *Separation of Trust Business from General Business.*** - The trust business and all funds, properties or securities received by any trust entity as executor, administrator, guardian, trustee, receiver, or depositary shall be kept separate and distinct from the general business including all other funds, properties and assets

of such trust entity. The accounts of all such funds, properties, or securities shall likewise be kept separate and distinct from the accounts of the general business of the trust entity.

**SEC. 86. *Investment Limitations of a Trust Entity.*** - Unless otherwise directed by the instrument creating the trust, the lending and investment of funds and other assets acquired by a trust entity as executor, administrator, guardian, trustee, receiver or depositary of the estate of any minor or other incompetent person shall be limited to loans or investments as may be prescribed by law, the Monetary Board or any court of competent jurisdiction.

**SEC. 87. *Real Estate Acquired by a Trust Entity.*** - Unless otherwise specifically directed by the trustor or the nature of the trust, real estate acquired by a trust entity in whatever manner and for whatever purpose, shall likewise be governed by the relevant provisions of Section 50 of this Act.

**SEC. 88. *Investment of Non-Trust Funds.*** - The investment of funds other than trust funds of a trust entity which is a bank, financing company or an investment house shall be governed by the relevant provisions of this Act and other applicable laws.

**SEC. 89. *Sanctions and Penalties.*** - A trust entity or any of its officers and directors found to have willfully violated any pertinent provisions of this Act, shall be subject to the sanctions and penalties provided under Section 64 of this Act as well as Sections 36 and 37 of the New Central Bank Act.

**SEC. 90. *Exemption of Trust Assets from Claims.*** - No assets held by a trust entity in its capacity as trustee shall be subject to any claims other than those of the parties interested in the specific trusts.

**SEC. 91. *Establishment of Branches of a Trust Entity.*** - The ordinary business of a trust entity shall be transacted at the place of business specified in its articles of incorporation. Such trust entity may, with prior approval of the Monetary Board, establish branches in the Philippines, and the said entity shall be responsible for all business conducted in such branches to the same extent and in the same manner as though such business had all been conducted in the head office.

For the purpose of this Act, the trust entity and its branches shall be treated as one unit.

CHAPTER X  
FINAL PROVISIONS

**SEC. 92. Phase Out of Bangko Sentral Powers Over Building and Loan Associations.** - Within a period of three (3) years from the effectivity of this Act, the Bangko Sentral shall phase out and transfer its supervising and regulatory powers over building and loan associations to the Home Insurance and Guaranty Corporation which shall assume the same. Until otherwise provided by law, building and loan associations shall continue to be governed by Sections 39 to 55, Chapter VI of the General Banking Act, as amended, including such rules and regulations issued pursuant thereto. Upon assumption by the Home Insurance and Guaranty Corporation of supervising and regulatory powers over building and loan associations, all references in Sections 39 to 55 of the General Banking Act, as amended, to the Bangko Sentral and the Monetary Board shall be deemed to refer to the Home Insurance and Guaranty Corporation and its board of directors, respectively.

**SEC. 93. Repealing Clause.** - Except as may be provided for in Sections 33 and 92 of this Act, the General Banking Act, as amended, and the provisions of any other law, special charters, rule or regulation issued pursuant to said General Banking Act, as amended, or parts thereof, which may be inconsistent with the provisions of this Act are hereby repealed.

**SEC. 94. Separability Clause.** - If any provision of this Act or the application thereof to any person or circumstance is held 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. 95. Effectivity Clause.** - This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in two (2) national newspapers of general circulation.

Approved,

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**Senator Drilon.** Mr. President, may I ask the Chair to recognize the Chairman of the Committee on Banks, Financial Institutions and Currencies, Sen. Raul S. Roco, to sponsor the measure.

**The President.** Senator Roco, Chairman of the Committee on Banks, Financial Institutions and Currencies, is recognized for the sponsorship.

SPONSORSHIP SPEECH OF SENATOR ROCO

**Senator Roco.** Thank you, Mr. President.

Mr. President, our Committee on Banks, Financial Institutions and Currencies and the Committee on Ways and Means are very pleased to report out this mystical report. It is mystical because of the numbers.

Under numerology, Mr. President, this Committee Report No. 29—mark the “9”—submitting Senate Bill No. 1519, seeks to reform the General Banking Act of 1949 and is proposed to be known as the “General Banking Law of 1999”.

It seems, Mr. President, that this committee report—even the numbers, yes, there is one that is being xeroxed, but that is not yet in the speech—will, hopefully, introduce nine lives to the banking industry. And nine, as we know, is the number that when multiplied by any single digit results in a sum that when added amounts to nine. So that two times nine is 18, and one plus eight is nine; three times nine is 27, and two plus seven is nine; four times nine is 36, and three plus six is nine.

Mr. President, we are very grateful for the support of our colleagues in submitting this bill for deliberation, and we hope acceptance of the collegiate wisdom of this Chamber in trying to bring about this mystical bill. Maybe it is also mystical because it is difficult to understand some parts.

Senate Bill No. 1519 is a combination and consolidation of bills authored by Sen. Sergio Osmeña, Sen. Drilon, Sen. Roco, Sen. Tatar and was embodied in the report together with the Committee on Ways and Means. It simplifies, we hope, the banking law so that everybody can understand.

Mr. President, for the record, to put in context to the bill, may we read the following:

The General Banking Act, Mr. President, took effect on the same day that the Central Bank commenced operation on January 3, 1949. While the Central Bank Act focuses on the organization of the central bank and the objective and manner of conducting monetary policy, the General Banking Act deals with the organization of banks and the manner of conducting banking regulation and supervision to safeguard the stability of the financial system.

There is a historical annotation that we may wish to submit.

In 1948 and 1949, when the Central Bank Law was being drafted, there was a group of technical people from the United States lent to the Philippine Government by the Federal Reserve of the United States. They prepared and finished the old charter

of the Central Bank. They forgot totally, Mr. President, that we also needed a charter for the banks.

So, when they approved the Central Bank Law, they rushed it over a two-day period. There was only one single committee member left and I think it was a she, a lady lawyer. The lady lawyer then hurriedly prepared the old General Banking Act. This is now what we propose to reform.

The banking system must be able to perform five basic functions: To mobilize savings, to allocate resources, to facilitate risk amelioration, to facilitate the exchange of goods and services between sellers and buyers, and to monitor corporate governance of the banking or financial institutions.

In a developing economy like ours, Mr. President, the banking system usually plays a greater role than any other type of financial institution in mobilizing financial resources and allocating them to those who can put these resources to best use. Every year, more financial resources are needed to finance the growing number of our enterprises and increasingly diverse needs of the households.

Although the relationship between the depositors and banks and between the borrowers and banks are considered commercial in nature, the system hangs together because of trust. It is like money, Mr. President. Blank white sheets of paper printed with figures of Ninoy Aquino becomes P500. The paper may have been worth only P10 but it is worth P500 only because we trust that the Bangko Sentral will answer for that liability.

Banking, therefore, Mr. President, is built on trust. The banking system must earn the confidence of the general public so that it can effectively mobilize funds. The safety and soundness of the banking system is a key element to earning the confidence of the general public. It can avoid unwanted developments, such as a failure of one bank spilling over to the entire banking system thereby disrupting the payment system.

Maintaining a safe-and-sound-banking system is a worthwhile objective to pursue. But there is more to having a safe and sound banking system. The manner and the extent to which changes in monetary policy are transmitted to the consumers and productive sectors of the economy depends on the health of the banking system and the ability of a bank to adjust its balance sheet promptly and efficiently. In short, a safe-and-sound-banking system is necessary to effectively conduct monetary policy. It is therefore understandable, that the General Banking Act was made a companion piece of legislation to the Central Bank Act.

The Chamber will recall, Mr. President, that we enacted the new Central Bank Act in June 1993 to respond to the emerging domestic and international developments. We now have an

independent Central Bank, the Bangko Sentral ng Pilipinas, which has a more focused objective and functions fitting to a modern central monetary authority. It may be appropriate to annotate a little because our committees are conducting an investigation right now on the Bangko Sentral.

But one of the elements that the Chamber introduced into the new Bangko Sentral was what the corporate lawyers may call an effective reorganization in bankruptcy. We had a bankrupted old Central Bank. But we did not want to pay with tax money the liabilities of the old Central Bank, neither did we want to impose new taxes just to be able to pay those old liabilities. Whether they were behest loans, whether they were the result of the fluctuation in the dollar from P4 to P26 or for whatever reason, we did not want to pay those old loans certainly from fresh money raised.

The new Central Bank, Mr. President, then created the liquidating company and there was a mandate. Considering that it was the technical men, the finance men, the wizards of our financial empires that ran the country into great liabilities, they must therefore work to pay off those liabilities. We capitalized the new Central Bank and created a liquidating company, and those old loans could only be paid from the profits of the new Central Bank. The old loans could only be paid from profit. Let our monetary authorities earn money to pay for old loans.

Since then, Mr. President, the vision of this Chamber has been proven correct. The 75 percent of the profits have gone to paying old loans and the 25 percent of the profits have been remitted to the national government.

Although amended several times in the past, the General Banking Act needs to be seriously reviewed now. This is because the last ten years saw the phenomenal growth of our financial markets following the tide of liberalization, globalization and technological innovations.

Of course, we must face up to such developments, Mr. President, because they spur innovations, new products and services that cater to new demands by the general public. However, we must not gloss over the fact that they too pose new dangers to the safety and soundness of our banking system.

We all know that banking system fragility poses a serious threat to the stability of the economy as demonstrated by the recent Southeast Asian financial crisis, and that is now reverberating in Latin America. Indeed, we are greatly aware of and seriously concerned with these new developments.

More than three years ago, Mr. President, this Chamber already thought of overhauling the General Banking Act so that we can remove those measures that have constrained us from adopting the best practices in bank regulation and supervision

that have been recently developed and tested in countries which were ahead of us in deregulating and integrating their banking system to the global financial systems. We wanted to do this to assure ourselves that we can maintain a strong, safe and sound banking system that can fulfill the five basic functions I mentioned above as we go through the new terrain of highly open, internationally integrated financial markets.

In fact, Mr. President, there were five bills filed to this effect. All of them were the product of extensive studies by the banking industries, by the Senate Committee on Banks, Financial Institutions and Currencies and by many different sectors of the business community. They had one theme—to fashion a legal framework so that our banking system can adequately meet currently emerging issues associated with deregulation and increasing financial globalization and the challenges that lie ahead of us in the 21st century. What the Davos conference in Switzerland, Mr. President, referred to as globality of the economy.

The recent regional financial crisis revealed the weaknesses of the banking systems of the Southeast Asian countries. The tragedy is that there was basic unfairness; that after four or five years of being considered the growth area of the world, and after the Asian countries worked so hard for their development, including the Philippines, the precise rapidity of transfer of funds and the accumulated funds in the developed world and their ability to move these in many countries contributed to the collapse of that long effort of development. We must respond, Mr. President, as the legislature.

In the past few months, our Committee, with the assistance of resource persons from PDIC and various sectors of our society, the academe and the business community, including NGOs discussed and studied carefully the emerging issues and potential future problems related to the safety and soundness of our banking system. We isolated some of the issues and hopefully addressed most of these in the bill.

#### *Brief Description of the Current State of the Banking Institution*

We may now go, Mr. President, to the current state of the banking system to put in context our effort to reform the banking system.

The structure of the banking system has substantially changed in the 1990s. There are now more banks scattered all over the country providing a much broader array of financial services to our people. In 1990, one banking office served approximately 17,000 people. Today, one banking office serves about 10,000 people. There are now more foreign banks—18 out of 54 universal and commercial banks—actively participating in the domestic banking system, bringing with them capital, new technology

and a variety of financial products. Since 1990, the assets of the banking system in nominal terms increased fourfold to P2.8 trillion—the size of one of the smaller mutual funds of the United States. As a ratio to GNP, the banking systems' total assets rose from 57 percent in 1990 to 110 percent in 1997, indicating that the banking system is able to mobilize more resources to support the growing economy.

Finally, our banking system is now more closely integrated with the international banking system. In 1997, it intermediated US\$5.4 billion compared to only US\$715,000 thousand in 1990.

The substantial change in the structure of our banking system did not happen accidentally. In the past eight years, Congress crafted laws liberalizing the entry and scope of operations of foreign banks and changing the regulatory framework for thrift and rural banks. We must credit former President Ramos for this effort. The Bangko Sentral ng Pilipinas, on the other hand, lifted the moratorium on the entry of new domestic banks, relaxed the regulations on the opening of branches for all types of banks and deregulated the foreign exchange market. All told, these legislative and administrative measures were aimed at improving the effectiveness and efficiency of the banking system in mobilizing and allocating funds and in operating the payments system. The gains that we realized from these measures must be sustained, if not enhanced, so that the banking system can continuously provide the best financial services to our people at internationally competitive prices. It, however, requires that our banking system must be operated in a safe and sound manner at all times.

The recent deregulation of the banking system, globalization in the provision of financial services and financial innovations have given us an impetus to reexamine regulatory and supervisory issues related to the safety and soundness of our banking system. Banks now are engaged in a variety of balance sheet and off-balance sheet activities, and in the process expose themselves to greater market, credit, liquidity, and foreign exchange risks.

The ongoing Southeast Asian financial crisis also provides us another compelling reason for reexamining the General Banking Law. In the last two years, the BSP closed one small commercial bank, seven thrift banks and 30 rural banks. This is out of the total of more or less 1,500 banks. When compared to Thailand that closed 800 banks, we do seem to be doing rather well. This excludes some medium-sized thrift banks, which went under in the wake of the financial crisis but were rescued or taken over by other banks, Monte de Piedad, being one of them, Mr. President.

As of December 1998, the nonperforming loans of our commercial banking system stood at 10.4 percent of total loans outstanding. Although this is comparatively better than the nonperforming loans of the banking systems of our neighboring countries and the nonperforming loans of our commercial banking

system when our country experienced an economywide crisis in the mid-1980s, still it gives us cause for worry. Imagine P160 billion trapped in the abyss of nonperforming loans. This P160 billion is one-fourth of the total national budget this year. This amount could have been recycled back to the system to finance growing demand for credit by exporters, small and medium enterprises and others. Banks are now reluctant to lend, and under this condition monetary policy will have a difficult time in doing its job to pump prime the economy while at the same time maintaining price stability and controlling inflation.

However, the new architecture of our banking system and the substantially altered environment under which it operates requires a fresh regulatory and supervisory that will support the ongoing financial innovations. The regulatory and supervisory agency must measure up to the rapidly growing and dynamic banking system operating in a more open and increasingly competitive environment.

#### *A Framework for Maintaining a Safe and Sound Banking System*

There is a growing acceptance to the view that to build a safe and sound banking system, we must have external governance complemented by internal or corporate governance and market discipline. These three elements must be understood in our discussion of the proposed bill, Mr. President.

External governance, meaning to say, bank regulation and supervision must be complemented by internal or corporate governance of the banks themselves and the market discipline that allows for the economic factors to freely play in affecting supply, demand and the economy in the Philippines.

Corporate governance is "the assurance by a corporation that its assets will be managed in the best interests of owners and stockholders." The objective of good corporate governance is maximizing the long-term shareholder value. Clearly, the bank's owners, directors and managers have the primary responsibility for keeping their bank safe and sound. Knowing that their own money is at risk, the bank's owners should have all the motivations to elect competent board of directors and officers and appoint good managers to run the bank. The latter should adopt best practices in banking and institute internal controls including internal risk-management systems to assess the bank's exposure to risks. This is important especially at this time when financial conditions of banks can quickly change in so short a time.

There is one important advantage of having banks instituting best practices in corporate governance. Since they lend to the nonbank corporate sectors, banks have the incentive to monitor closely the behavior of their borrowers to reduce the borrowers'

incentives not to pay the loans, which is pervasive in credit markets. By doing so, Mr. President, banks become effective monitors of corporate governance. It must be noted that weak corporate governance in Southeast Asia led many corporations to borrow more either from the domestic or international capital markets, which contributed to the regional financial crisis.

Nonetheless, internal corporate governance may be ineffective in safeguarding the soundness of banks due to a number of reasons. One is conflict of interest. Bank owners and managers may be interested in capturing the deposits of banks in order to place them in highly risky ventures, such as real estate development or other highly speculative stocks. If the investments succeed, they reap the benefits. If the investments fail, the bank collapses; but they lose a little because they put little capital in the bank while depositors lose a lot. The history of our banking system is replete with examples of this sad experience. The regulatory and supervision approach, therefore, must be keyed towards supporting internal governance of banks.

The other pillar of building a safe and sound banking system is market discipline. This means, Mr. President, that the market, if working properly, and not subjected to unnecessary or misguided or unknowing interventions from government, can exert pressure on banks to maintain their safety and soundness. A competitive market structure is one key element in instituting market discipline. The general public should have a wide choice of financial services and providers. Failing banks should be weeded in a fairly and orderly manner. The other element is information and access to information. Important information about the true financial conditions of banks must be transparent and sufficiently disclosed to the general public so that creditors of banks, the depositors, can easily monitor banks and respond to signals of unsafe and unsound practices so that the general public will not be misled by inadequate information. In this way, banks will be under great pressure to behave prudently and immediately correct their deficiencies or halt unsafe and unsound practices; otherwise investors and the depositing public will "vote with their feet" and transfer their business to safe and sound banks.

Maybe all of us in the Chamber, when we are asked about banks, should tell them "Go, choose your bank because the senators cannot protect you very often when the bank is in trouble."

The third pillar is external governance, that is, bank regulation and supervision. This is familiar to all of us, and very often, it tends to be the only answer given to protect depositors. But that cannot be the only solitary isolated answer. We propose to take a different approach by making bank regulation and supervision supportive of internal governance and market

discipline. However, in areas where internal governance and market discipline are weak or ineffective, bank regulation and supervision must play a greater role.

It is really the effort and initiative and creativity of our bankers and our own people, it is their concern for protecting their own interests, that will protect the Filipino people. We in government can only be supportive, and can only add. But the essential protection of the economy must rest with our people.

The three pillars should reinforce each other in building a safe and sound banking system. The major issues and problems relative to the maintenance of a safe and sound banking system have been identified and built around these three pillars.

#### *Some Major Issues Addressed by the Consolidated Bill*

Let me first mention, for the guidance of our colleagues who may want to plow through this, that the structure of the bill is fairly simple and follows a very simple thesis—from birth to death of a bank. That seems to be a simple thesis.

Who is responsible for regulating the Central Bank? What is a bank and what are the kinds of bank? How do they operate? If for some reason they get into trouble, how do we intervene from the beginning to the potential, and hopefully, orderly dismissal or termination of the life of a bank? That becomes the simple outline of this new bill.

#### *I. Internal Governance*

There are some major departures which we want to call attention to, so that we can be guided by the policy, inputs and the collective wisdom of the Chamber.

Allow me to begin with internal governance. Using the framework developed above, allow me to start with issues related to internal governance.

The organization of banks. The bill prescribes, as a departure from the corporate law, at least seven members of the board of directors for a bank, two of whom shall be independent directors, so that we can avoid the in-breeding. Aside from the technical expertise and experience they can lend to the bank, the presence of independent directors in the board can deter any attempt by bank owners and managers to resort to unsafe and unsound practices that can unduly put the bank at greater risk. This is good for professionals who have no money but have knowledge. Maybe they shall have opportunity to participate in the policy and in the management of the bank. But this is something we call attention to so that we can have the feel and the collective wisdom to guide this proposal.

Our experience shows that in other countries, unqualified DOSRI lending—referring to directors, officers, stockholders and related interests or insiders borrowing from same bank—has been a major factor contributing to the collapse of banks.

We cannot prohibit DOSRI lending, Mr. President. Naturally, one would encourage his own officers to the extent possible to borrow within limits from the bank. He must patronize after all his own company. But this must be done in an arms-length manner. Simply because one is an insider does not mean he should get better terms when he borrows from the bank.

We have seen this as one of the causes. The Orient Bank is just one example because the owner or the controlling stockholder or director borrowed from the bank itself, we saw the collapse of the bank at the expense of the depositors.

Because the financial conditions of a bank can quickly change in so short a time, bank directors are expected to meet at least as often as possible. The bill recognizes the availability of modern technologies, and we again seek a departure from corporate law so that teleconferencing or videoconferencing could be used more conveniently in meetings of the board of directors so that they will be less costly.

It is proposed that meetings of the board of directors may be conducted through such means provided a majority of the directors are physically present. The more members of the board can participate in meetings, the better for internal governance. One does not therefore have to buy a first-class ticket if one is in the United States to come here to attend the board meetings. As we encourage or we expect to encourage more foreign investors to come in, they may not have to attend meetings in Makati or Quezon City or Naga City. They can be, wherever they are,—Geneva, New York, London—by teleconferencing, present and participating in the collegial discussions of the board of directors.

The Monetary Board normally sets “fit-and-proper” rule for board of directors and managers of banks upon licensing. To establish the ideals of quality management for the protection of the banking public, the powers of the Monetary Board over bank management will be broadened and strengthened beyond imposing the penalties of disqualification and preventive suspension.

The bill specifically includes a provision that will ensure that the board of directors, officers and managers continue to meet the “fit-and-proper” rule set when they were licensed. A bank director or officer may be disqualified, removed, or suspended by the Monetary Board for acts or omissions which render him unfit for the position.

Right now, Mr. President, for instance, there is a letter going around saying that we cannot reveal the names of the big gamblers because it might destroy their reputation in Makati or in the business community. Can we imagine, if they are bankers and they are always in the gambling casino, should it not be a matter of public duty to precisely reveal them? Let their reputations be ruined, otherwise it is the pocketbooks of the depositors that are lost. Anyway, that is an aside.

With this provision, the Monetary Board will be enjoined to constantly monitor the performance of the bank directors and officers, and the latter will always be conscious of the need to make prudent decisions for their banks.

There is nothing particularly immoral or grossly incompetent in gambling. But if one is trusted with other people's money, the least one can do is lead a less risky life than attending casinos.

Bank regulators and supervisors cannot prevent banks from taking on risk. After all, the business of banking is inherently risky. They take on the risk of lending to borrowers whose ability to repay is uncertain or assets whose values may change over time. We have seen that in the dollar transactions. However, if they wish to take on more risk, such risk should be identified, quantified and managed, and that bank owners should put more of their money on the line to cover the additional risks.

Thus, the bill proposes to adopt risk-based capital adequacy ratios, which have gained acceptance worldwide since their introduction in 1988 by the Basle Committee on Bank Supervision.

When the *Bangko Sentral* law was being discussed, this was still not acceptable to the general banking community. But it seems, after only six years or less than six years, that these standards are now acceptable for Philippine purposes.

Unlike our present practice as prescribed by the General Banking Act in which assets are classified into only two categories, the risky and nonrisky assets, the risk-based capital adequacy ratios take into account the fact that bank assets have different degrees of exposure to credit and market risk, and that off-balance sheet items also expose banks to risk. This new approach is more realistic than the existing one, and it is being followed internationally by most of the banks.

## 2. Market Discipline

Allow me now to turn to market discipline, Mr. President. The bill seeks to enhance market discipline. One way of doing it is by improving further the competitiveness of the domestic banking system through a more liberal policy on the entry of foreign banks and nonbank foreign investors. The bill proposes to give the Monetary Board the authority to allow a foreign bank to acquire

up to 100 percent of the voting stock of only one bank organized under our laws. Any foreign bank which is now operating in the country may avail itself of such an opportunity. In the case of foreign individuals—we stress, individuals—and nonbank corporations, they may own up to 40 percent of the voting stock of a domestic bank.

Related to this issue, Mr. President, the bill favors the ownership-control test over the grandfather rule, wherein the citizenship of individual stockholders of the corporation owning bank shares is used in computing the percentage of foreign-owned voting stocks, because it is much simpler and easier for us to determine the foreign stockholdings in a bank.

This policy should not be misunderstood as a signal that we are surrendering control of the banking system to foreigners, Mr. President. We stress that the bill reiterates our standing policy that at least 70 percent of the resources or assets of our banking system are held by banks which are at least majority-owned by Filipinos. The Monetary Board shall take this policy into account when approving applications of foreign banks.

Statistically, Mr. President, four years ago, despite the increase in the foreign banks, their participation in the total resources or assets of the banking system is really less than 10 percent. Although there are more foreign banks now, they really control less than 10 percent, so they even have 20 percent more and we can still live within the law and the policy of the *Bangko Sentral ng Pilipinas*.

Informed bank creditors, Mr. President, especially the depositors, can effectively exert market discipline on banks. The banks should, therefore, disclose relevant information and be transparent to their creditors. There is great transparency in this bill that we require banks. The bill proposes to tighten the disclosure requirements of banks. Whenever a conflict arises between prescribing detailed rules for the regulatory agency to implement and disclosure of relevant and material information that can affect decisions of bank customers, the bill leans towards the latter.

Meaning to say, Mr. President, instead of being always guarding and have hawk eyes watching the banks, we thought it is simpler to keep requiring banks to fully disclose what is going on.

Allow us, Mr. President, to cite examples. Stockholdings of family groups and stockholdings of related interests are clearly defined and must be fully disclosed in all transactions by the parties with the bank. Meaning to say, our present law prescribes 20 percent for a family, 20 percent for a corporation, and it may be increased to 30 percent or 40 percent. The rules are so circuitous that lawyers are the only ones who enjoy these rules and they earn



their livelihood. Because they are so such complicated rules that lawyers therefore become essential.

Here, Mr. President, we simplify. If we belong to the same family or we are with the same family group and we own shareholdings, regardless of how much we own, we must disclose it so that all of them, the ordinary depositors, know that a certain family is borrowing huge amounts. The only limit is the single borrower's limit which we are now reimposing at 15 percent because, for one reason or the other, it was extended to 25 percent.

Regarding the publication of financial statements of banks, the bill proposes to set minimum amount of relevant information to be disclosed, such as the balance sheet, the off-balance sheet items, income statements, exposures to DOSRI, nonperforming loans, compliance with risk-based capital ratios, and the list of board of directors and advisers as of the date of publication. Thus, anyone who is interested can examine a bank upwards and downwards and determine whether they want to establish a relationship with such a bank. We, therefore, make the citizen and the depositor more responsible for looking at the banks they will deal with.

### 3. *External Governance on Bank Regulation and Supervision*

The bill institutes several measures to strengthen prudential regulation and supervision. One of these is the authority given to the Monetary Board to institute prompt and corrective action. This was at issue in one of the committee hearings, this was at issue in the Orient Bank closure, and, I think, this was at issue in the Monte De Piedad closure.

We are aware, Mr. President, that there are various ways of formulating prompt and corrective action programs. In some jurisdictions, the US and Japan, for instance, the laws specify the parameters and the actions the regulators must take as the condition of a bank deteriorates. In other jurisdictions, the central banks are given the authority to specify the parameters and actions to be taken. The bill favors the second and gives the Bangko Sentral the flexibility to determine the appropriate parameters and specific actions to be taken as the condition of a bank deteriorates.

Let me focus, Mr. President, on an example, in the case of Orient Bank. In the case of Orient Bank, we will recall that the depositors organized themselves and they came to the Senate seeking help.

The problem, Mr. President, is that depositors—because banks are licensed by government—tend to believe that there is an implicit warranty by the government. In fact, in Japan, it had to bail out most of the banks. In Thailand, I think, it spent US\$800 billion to bail out almost all the banks. This happened in the Philippines in 1983 and 1984, starting with the 1981 Dewey Dee

disappearance to the 1983-1984 collapse of the system after the death of Ninoy Aquino, and the government had to bail out by printing more money.

Here, Mr. President, we try to mitigate the situation through full disclosure and by acquainting our depositors with their responsibilities, duties and rights. So that they must study and we must encourage all the public, including ourselves, to understand why X, Y, or Z bank is more trustworthy than A or B or C bank. This is only through enlightened participation by the citizenry in the financial system of the country that we can truly stabilize development of our economy.

Under the present practice, Mr. President, banks can accurately predict when bank examiners visit them for the annual examination. For some reason, we tell the banks that we are about to examine, and so the banks prepare and they always look good, because it is foolish not to look good if one is told that somebody will examine him.

However, the cases of bank failures show that many of the unsound and unsafe practices were done by bank owners, directors, officers and managers in between these examination periods. So after the cat is away, then the mouse will play.

The bill, Mr. President, proposes that the periodic investigation and examination will be done by the Bangko Sentral not oftener than twice every calendar year to discourage banks from continuing such practices, if at all they did it in the past.

We seek the support of the Chamber, Mr. President. We hope there is not too much static as regards this particular proposal.

As I already mentioned, Mr. President, DOSRI loans had been the major cause of bank failures in the past. Again, for those who are not too familiar, DOSRI are directors, officers, stockholders and related interests. Thus, the bill tightens the rules on DOSRI loans. For instance, the single borrower limit is set at 15 percent, as I mentioned earlier, of the combined capital of the bank. The Monetary Board will be given authority to issue regulations covering unsecured loans.

There is a financial effect of this single borrower limit, Mr. President. The big companies like the BPI, PNB, San Miguel, Allied Bank, Fortune Tobacco—probably the top 100 companies—cannot borrow purely from the internal resources because if they do, they hit the 15 percent of all the different banks and there will not be enough money for their needs. This position therefore encourages them to develop credit reputation outside the Philippines so that they borrow abroad. Many of the big companies are doing this and therefore it helps us in the balance of payments because they bring in the dollars. Hopefully, they try to maintain their reputation and performance as trustworthy businessmen.

There are other major proposals put forward in the bill and I could not discuss them all, Mr. President. We can examine them later on at great length.

Mr. President, first, the bill recognizes the rapid development of electronic banking and we specifically give powers to the Bangko Sentral to regulate electronic banking. In this regard, the bill proposes to give the Monetary Board the authority to be up-to-date on developments and not only for regulations. It is something akin to the Y2K bill of Senator Sotto.

Second, the bill sets a legislative framework for banks that will cater only to the elite and the more sophisticated enterprises. This early, we wish to stress that the bill tries to avoid that.

We are using this bill to build a safe and sound banking system for all. In fact, there are at least two provisions in the bill that recognize the aspirations of microenterprises to have greater access to banking systems.

Mr. President, let me mention also that one of the policy stresses of the bill is, there must be participation by the general public. And so we give certain benefits to banks when they list themselves in the stock market.

When 35 percent of the stockholdings or the equity of a bank or a business corporation is listed and can be bought by the public, then they have certain benefits. We cannot tell them how to behave, but we are saying that if there is a good business opportunity, this must be shared with the rest of the people.

#### *Concluding Remarks*

In conclusion, Mr. President, the proposed General Banking Law of 1999 approaches regulatory and supervisory issues from three dimensions complementing each other. These are: internal governance, market discipline, and external governance.

When our tasks are done and the law is implemented, we hope that we shall have a much safer and sounder banking system. However, this is not tantamount to guaranteeing a system free of bank failures. The law cannot strengthen character and cannot ensure sincerity or honesty. The law tries to give a framework.

Even more developed countries which have more sophisticated regulatory and supervisory framework and seem to have more capable or experienced regulatory and supervisory agencies do experience bank failures. The collapse of banks in the United States, despite their sophistication even in econometrics, could not be avoided. This is because there are many factors: the general economic conditions, the capability, experience and ability to focus of the regulatory and supervisory staff, calamities. They all can affect the health of banks. But a banking system that operates under a much better regulatory and supervisory legal framework

will have a better chance of quickly weathering a crisis or preventing a bank failure from developing into a systemic banking failure.

These are the visions that we hope the bill can help achieve. But much is demanded of our people. Much is demanded of our financial and monetary leaders, and much is demanded of our awareness as lawmakers in ensuring that we do not become like Sisyphus who is always pushing up the rock and upon reaching the top of the hill, the rock rolls over the other side. That has been the history of Philippine development. We go up, push the rock of development, and it rolls down on the other side because of corruption, graft, cynicism, outright exploitation by some leaders of the rest of the Filipino people, Mr. President.

We hope we contribute to a framework that minimizes, if not eradicates totally, this incessant inability to grow because the Filipinos certainly deserve growth. We have the capacity, the creativity, the innovativeness, and, I hope, eventually the discipline for hard work that should make us grow.

Mr. President, with the bill, which we crafted for a long time with the help of so many people, we hope that it meets the approval and acceptance of the Chamber.

Thank you, Mr. President.

**The President.** The Chair wishes to express its thanks and appreciation to Sen. Raul S. Roco for his very enlightening sponsorship speech.

The Majority Leader is recognized.

**Senator Drilon.** Indeed, the President has reflected the sentiment of our colleagues in expressing the appreciation of the Chamber to the gentleman from Camarines Sur, not only for the exhaustive sponsorship speech but, more importantly, for the effort of the committee in crafting this very complicated piece of legislation so essential to our economic development.

For that, Mr. President, we thank the good sponsor.

#### SUSPENSION OF CONSIDERATION OF S. NO. 1519

Mr. President, to enable our colleagues to go over this exhaustive and very technical sponsorship speech, I move that we suspend consideration of Senate Bill No. 1519 under Committee Report No. 29.

**The President.** Is there any objection? [*Silence*] There being none, the motion is approved.

The Majority Leader is recognized.