MONDAY, NOVEMBER 15, 1999

OPENING OF THE SESSION

At 3:33 p.m., the Senate President, Hon. Blas F. Ople, called the session to order.

The President. The 36th session of the Second Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Ramon B. Magsaysay Jr.

After the prayer, the UP Concert Chorus will lead us in the singing of the national anthem, and thereafter will also render another song, entitled *Mabuhay ang Pilipinas.*

Everybody rose for the prayer.

PRAYER

Senator Magsaysay. Thank you, Mr. President. This is an ecumenical prayer, courtesy of 98.7 DZFE.

Heavenly Father, we seek Your mercy, light and direction as we pray for hope for our nation, our people and ourselves... For Your words have said: "Woe on those who call evil good." And that is what we have done.

We confess, dear Lord, that: Our people have polluted the air with profanity and pornography and called it freedom of expression. Our people have abused power and called it political savvy. Our people have exploited the poor and called it lottery. Our people have rewarded laziness and called it welfare. Our people have killed the unborn and called it a choice. Our people have failed to discipline our children and called it building self-esteem. Our people have forsaken the absolute truth of Your word and called it pluralism. Our people have worshipped other gods and called it multiculturalism. Our people have ridiculed the time-honored values of our forefathers and called it enlightenment.

Search us, O God, cleanse us from every sin. Set us free and renew our hope.

We pray these through Jesus Christ, our Lord, Who purifies us.

Amen.

The President. Thank you, Senator Magsaysay.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

The President. The Senate wishes to thank the UP Concert Chorus for its inspiring songs.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, *reading*:

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

The President. With 19 Senators present, there is a quorum.

The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, I move that we suspend the session for one minute.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 3:42 p.m.

* Arrived after the roll call
** On official mission
*** On account of illness

BILL ON SECOND READING
S. No. 1519--General Banking Law of 1999
(Continuation)

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

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1519 is now in order.

Senator Drilon. Mr. President, we are still in the period of interpellations. May I ask that the principal sponsor, Sen. Raul S. Roco, be recognized.

The President. Sen. Raul S. Roco is recognized.

Senator Drilon. For the interpellation, Sen. Miriam Defensor Santiago wishes to take the floor. May I ask that she be recognized.

The President. Senator Santiago is recognized.

Senator Santiago. Mr. President, may I please inquire from the distinguished sponsor if he will have the kindness to yield the floor to me so that I can continue and possibly terminate interpellation this afternoon.

The President. The sponsor may do so.

Senator Roco. Yes, very happily, Mr. President. May I just request our distinguished colleague if she can move to the front only because it prevents me from moving the staff. If she can move forward, it may be easier for communicating with each other, and we can request our colleagues here to discuss on the other side.

Senator Santiago. In the firm belief that this is not a sexist request, I herein obey. *[Laughter]*

Senator Roco. Not by any chance, Mr. President. In fact, I would have moved back if it were to be chauvinist.

Senator Santiago. With the indulgence of the distinguished sponsor, I will refer sequentially to the pages, and I shall ask questions in clusters. I shall first read throughout the whole cluster and then I shall say, "That is the question," which will kindly be taken as a signal that I am finished with the question and the sponsor may answer.

I would like to begin using the version stamped "March 17." I would like to begin this afternoon on page 7, Section 16.

Senator Roco. That is where we left off last time, Mr. President.

Senator Santiago. Page 7, Section 16, entitled *"Directors of Merged or Consolidated Banks."* This is the cluster of questions.

Is there a need to allow the board of directors of the merged or consolidated bank to have as many directors as the aggregate number allowed in the Articles of Incorporation of the merging or consolidated corporations? Is this intended to be permanent or temporary? Would the return to normalcy in the operation and management of the merged or consolidated bank not be hastened by limiting the number of directors to the regular number—that is to say, not exceeding 15—instead of trying to preserve the board of directors of the two consolidated or merged banks? Does it mean that if a merged or consolidated bank merges anew with another bank, it can have as many as 45 directors, assuming the Articles of all the banks merged provide for 15 directors each?

In other words, let me summarize the question. I humbly submit that this section may be well-intentioned, but its application can get unwieldy and might be counterproductive rather than beneficial to the merged bank. That is the question.

Senator Roco. Yes, Mr. President. The experience on bank mergers indicates that at times there may be a need to enlarge or allow a bigger number of directors only to get over the conflicts of personality in the merged or consolidated entities. That is why under certain instances, the Monetary Board may give that flexibility. It is not meant to be permanent; it is meant to be temporary and a transitory matter.

On the specific example of a board of 45 members, while theoretically in the context of the section it can happen, in the experience of the bank merger and consolidations I have seen, it never did happen. In fact, the 30-man board, I think, happened only once when IBAA consolidated with PCIB. But in the other consolidations, Mr. President, that transitory stage where there is a larger board never did happen. So I hope I covered all the specific questions.

Thank you, Mr. President.

Senator Santiago. I have no objection to that world view. But I would like to know if the sponsor would be willing, during the amendment stage, to accept an amendment so as to make it clear that Section 16 contemplates only a temporary situation.

Senator Roco. Yes, Mr. President. We will be happy.

Senator Santiago. Thank you. I would like now to proceed to page 7, lines 31 to 32 and continue on to page 8, lines 1 to 12. This refers to Section 17 of the bill which is entitled *"Compensation and Other Benefits of Directors and Officers."* This is my cluster of questions.

There are actually two questions. So please let me ask the first one.

Senator Roco. Yes, Mr. President.

Senator Santiago. Does the authority given to the Monetary Board under this section not violate the right of the directors and officers to nonimpairment of their contracts or constitute interference with the contractual relations between the bank and its directors and officers?

Senator Roco. The grant of authority will not constitute an impairment because there is still no contract changed. That is my top-of-the-head reaction, Mr. President. There are very specific instances when the Monetary Board may, in any event, regulate the payment of compensation by the bank to its directors and officers.

For instance, it says, when it is "under comptrollership or conservatorship." Under those instances, there is a serious problem in the bank, and therefore it may, in fact, be a matter of valid exercise of police power delegated to the Monetary Board to regulate the payment of compensation and allowances.

In the second instance, Mr. President, when a bank is found by the Monetary Board to be conducting business in an unsafe and unsound manner, then the terms of the contract itself between the officers and the bank—because they are supposed to be acting correctly and if there is already such a finding—become the bases for the modification.

The same observation, Mr. President, can probably apply when the bank is found by the Monetary Board to be in an unsatisfactory financial condition. So I hope that will alleviate at least the possibility of violating the nonimpairment of contract clause between the officers and the bank.

Senator Santiago. I take it that the sponsor's answer to this question is a way of underscoring the clause "only in exceptional cases and when the circumstances warrant," which is already part of Section 17.

Senator Roco. That is correct, Mr. President.

Senator Santiago. May I please proceed still on this line of thought. Does the authority of the Monetary Board to regulate the payment of compensation, bonuses, et cetera, under this section include the authority to reduce or withhold their payment? If so, the reduction or withholding of compensation and benefits in the enumerated cases—for example, the bank is placed under conservatorship; the bank is found conducting business in an unsafe or unsound manner; or the bank is found to be in an unsatisfactory financial condition—would constitute imposition of penalty by the Monetary Board on the affected officers and directors without due process.

The basic question really is: Does this provision giving authority to the Monetary Board include the authority to reduce or withhold the payment of compensation, et cetera?

Senator Roco. The way it is phrased, Mr. President, it will not include the power to withhold. It may just regulate the payment of the compensation or allowances under very specific circumstances and when the situation so merits.

Senator Santiago. That is a happy answer and I am pleased that it has been so serendipitously given. But I still have one last question on this section.

Senator Roco. Yes, Mr. President.

Senator Santiago. In Section 17.1, when is a bank under comptrollership and when is a bank under receivership? Lawyers are familiar with the term "conservatorship" but I think that it might be necessary to enter into the *Record* the definition of the terms "comptrollership" and "receivership."

Senator Roco. This is the definition I will now give, Mr. President. I will ask our distinguished colleague to give me a chance to recorrect the definition.

Mr. President, normally, the management has full control of the business and in the disposition of the property of a corporation; and in the comptrollership, there is an officer elected by the board. When the function to control financial flows is transferred by the Monetary Board to another person,—normally, an employee or officer of the Bangko Sentral because of certain circumstances—then the comptrollership functions are there. It prevents dissipation of the funds if the Monetary Board feels that there is a danger that they may be dissipated.

Under certain conditions,—just to complete, Mr. President, so that the conservatorship is very specifically defined in Section 29 of the Bangko Sentral Act—that definition is relatively new. It was introduced only under the new Bangko Sentral Law because the old Central Bank Act only had a reference to conservatorship without any definition. So that has evolved by practice.

I am proud to say, Mr. President,—although not proud of the situation when it occurred—that the first conservatorship, in fact, was something that I, as a practicing lawyer then, invented, and it was granted on a single day and that instigated a series of conservatorships.

Receivership, Mr. President, is forced takeover under the present law, as I remember, under the jurisdiction of the SEC.

The SEC, under certain conditions, may therefore order—it used to be the courts of general jurisdiction—that somebody, a receiver, take hold of all the assets. That is among the distinctions between comptrollership and receivership.

In terms of constitution, one comes from the BSP and the other from the SEC.

In terms of functions, comptrollership is really to hold on to cash flow; whereas receivership, when there is dissipation of property, can now be under practically the management of the receiver so that the creditors can be amply protected.

I hope that clarifies concepts, and I hope I am right in my understanding, Mr. President.

Senator Santiago. It definitely produced a clarification and I have no objection. In fact, I thought that it was a fairly accurate definition. But basically, what I wanted to find out from the distinguished gentleman is whether there might be any objection to include a definition of these terms in this section.

Senator Roco. At the appropriate time, Mr. President, no. We will be happy to include the definitions under that section. What we are only trying to avoid is putting the definitions and lumping them all together at the beginning of the bill, because they create debates that are conceptual in nature and are very difficult to resolve.

Senator Santiago. Thank you. On that understanding, I shall proceed to page 9, Section 21, entitled "*Strikes and Lockouts.*"

It is proposed in Section 21 that the strike or lockout involving a bank will be brought to the attention and appropriate action of the President after seven days. Moreover, it is proposed that the President shall thereafter certify the same to the appropriate court or government agency or commission for resolution.

What is the rationale for this procedure? I ask this question because I gain the impression that this procedure described in Section 21 is more circuitous than the procedure provided for in the Labor Code.

I understand that the Labor Code provides for a direct intervention of the secretary of Labor and Employment or compulsory arbitration by the NLRC or intervention of the President to directly settle the dispute without the extra step of referring it to another body.

So the thrust of my question is: Why do we not follow the procedure in the Labor Code? Or, is there some additional benefit that we could gain by this new procedure?

Senator Roco. The effort here, Mr. President, was influenced really by the existing law. We are not averse to the idea of following the same procedure.

The introduction of the Monetary Board is a necessity inasmuch as all banking matters are now put under the Bangko Sentral. It is more the initiation of the certification by the President that the particular bank is indispensable to national interestthat is added. So, subject to review of the specific provision of the Labor Law, Mr. President, again, the idea is not something that the committee will be averse to.

Senator Santiago. Thank you. Please allow me to proceed to page 10, Section 23.1.

Section 23.1 speaks of total investment which shall not exceed a certain percentage of the net worth of the bank.

In this context, might it not be profitable to define the term "net worth" at this point?

I am aware that "net worth" is defined under Section 33. But I believe that it might be better, in terms of mechanical bill drafting, that the definition of "net worth" under Section 33, if it is the same for purposes of this Section 23, should be moved up to Section 23.

Senator Roco. Again, we will welcome improvements on the draftmanship of the bill, Mr. President. So, conceptually, we accept that possibility.

Senator Santiago. Thank you. I am still on page 10. I will now move down to lines 22 to 26. I am referring to Section 24, which is entitled "*Equity Investments of a Universal Bank in Financial Allied Enterprises.*" I am really disturbed by this provision in line 22.

Mr. President, I humbly submit that the statement might not make sense because it is my understanding that when a company lists with the Philippine Stock Exchange, it does not have the option to list only 20% or 50% or 75% of its total outstanding capital stock.

My understanding is that a company listing with the PSC is required to publicly list all, that is to say, 100% of its issued and outstanding shares. Therefore, the criteria will have to be stated in some other way. My humble submission is that the criteria should not be the percentage of shares listed in the Philippine Stock Exchange, but the percentage of shares actually held by the public, that is, other than the controlling stockholders.

Senator Roco. Mr. President, as a general rule, I think our distinguished colleague is correct in that observation. But there

may be instances when a company can list 35% of its total outstanding stocks without necessarily listing the others, if the others are preferred or nonparticipating or otherwise classified as nonvoting. So the 35% could refer to classified stocks so long as it is not a no-par-value stock. I guess, that is how the provision can work. But I can validate, I can research a little on how this has happened in the past, if it ever happened, because it is part of the existing law.

Senator Santiago. What the distinguished sponsor has educated us on may very well be that way in the statute books. I am not fully familiar with the matter. But in any event, I would like to recommend that we consider—with respect to this section—using the criteria of percentage of shares actually held by the public other than the controlling stockholders.

Senator Roco. We can look at that, Mr. President. I am trying to visualize it. And it is not easy to visualize immediately.

May I just point out that the way the terms are used and without trying to split hairs, while the title refers to equity investments, it is the 35% of the stockholdings that are referred to in the text insofar as they are listed in the Philippine Stock Exchange. But we can consider the proposal, Mr. President.

Senator Santiago. I thank the gentleman, Mr. President. Please allow me to proceed to page 12, lines 18 to 19, referring to Section 30, which is subtitled "*Equity Investments of a Commercial Bank in Financial Allied Enterprises.*" I am referring to lines 18 and 19, particularly the clause which says, "such investment shall remain a minority holding in that enterprise." The question is simple: What is meant by "minority holding"?

Senator Roco. Forty-nine percent, Mr. President.

Senator Santiago. Forty-nine percent.

Senator Roco. Yes, Mr. President. Our distinguished colleague may also take it in the total context of equity investments of a commercial bank on page 29. Here, we have equity investments in financial allied enterprises and then in the subsequent section, on the nonfinancial allied enterprises. Our distinguished colleague will notice that there is a graduation, a calibration of ownership depending on the type of enterprise.

Senator Santiago. That is correct, Mr. President. I take that point very well. I will proceed to page 13.

Senator Roco. Yes, Mr. President.

Senator Santiago. I am referring to the entire Section 33 as a whole.

May I please suggest that, for consistency and clarity, all references to "combined capital accounts" should be changed to "net worth" since my understanding is that both terms mean the same thing under the definition given in lines 5 to 9 of this page. I have been told that the Manual of Bank Regulations uses the term "net worth" and then in parenthesis "or combined capital accounts."

Senator Roco. Mr. President, the staff informs me that there is absolutely no difference between the two, and if we will just follow Strunk on style, "net worth" is shorter and should be preferred.

Senator Santiago. Thank you. Let us now go to page 14, lines 5 to 11. The first paragraph in Section 33 provides that 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 conditions as it may prescribe.

May I humbly submit or suggest that the law should expressly provide a maximum period that compliance with the required ratios may be suspended by the Monetary Board, so that the Monetary Board's authority in this regard is sufficiently circumscribed. In other words, I am just triple worried that this might be open-ended, and I would like to inquire whether it would be possible to circumscribe the powers and authorities of the Monetary Board that are provided for in lines 5 to 11.

Senator Roco. To minimize the possibility of abuse, Mr. President, I think time frames should be given the Bangko Sentral as long as we can invent the appropriate boards that give them flexibility in case the need arises.

Senator Santiago. I shall go up in this endeavor.

My next question will be lengthy. I am still on page 14. I am referring to Sections 34.1 and 34.2. I would like to request permission to explain the question at the same time that I am raising certain points.

The single borrower loan credit accommodation and guarantee limit has been reduced from 25% to 15% subject to additional 10%, which has been reduced from 15% under prescribed conditions. Considering that credit limits have been reduced and the provisions of the law will be prospectively applied, what will be the impact of this on existing loans which exceed the new prescribed limits?

My purpose in raising this question is actually to lead up to my recommendation that this provision should make clear that loans, credits or accommodations in excess of the prescribed limits at the

time of the effectivity of this new Act may be retained, but once reduced may not be increased beyond the limits provided in the new Act. May I please have a reaction to the first part of this question?

Senator Roco. Yes, there is no intention, Mr. President, to modify existing loan agreements. I guess the parties to a contract will be entitled to a vested interest in such a contract, and that is not the intention here. What is proposed under Section 34 is 15% with some liberality, plus 10% with more stringent conditions covered by Section 34.2.

As best as I can understand it, in the experience of the monetary management that may be better for the protection of the consumers, Mr. President.

Senator Santiago. I am still on this point, and I would now like to raise another issue. In determining the 15% single-borrower limit, is the basis the amount of the loans or credit accommodations actually availed of by the borrower, or is it to be based on the total amount of commitments of the bank to the borrower?

Please allow me to give an example. Company A has been extended a credit facility by Bank X of up to P1 billion. If Company A has only actually availed of P100 million out of the P1 billion credit facility, will compliance with a single-borrower limit of 15% of net worth of the bank be based on the actual credit extended to Company A, that is, the sum of P100 million or on the total credit commitment of Bank X to Company A amounting to P1 billion?

The real purpose of raising this example is to serve as a premise or suggestion that for purposes of determining compliance with the single borrower limit, the basis should be that total credit commitment of the bank to the borrower, whether availed of fully or only partially, and not the outstanding or actual loan or credit of the borrower.

In any case, I humbly submit that this provision should expressly provide the basis for determining compliance with the single borrower limit. That is, whether it shall be based on actual outstanding loan and accommodation or whether it shall be based on the loan commitment of the bank to the borrower regardless of the amount actually availed of by the borrower? That is the question.

Senator Roco. Under present rules and regulations, which refers to the total commitment, and I understand from the lady senator that that is what she would also wish.

Senator Santiago. Yes, that is right.

Senator Roco. So, the total commitment. In the example, if the P1 billion is in fact the total net worth of the bank, then P100 million here, if that is the total commitment, is within the single borrower's limit at 15%.

But if the total commitment, let us say, is P200 million, even if only P100 million is drawn down by the borrower, the borrower cannot go beyond P150 million.

Senator Santiago. Thank you. So we agreed that the basis should be the total credit commitment of the bank to the borrower?

Senator Roco. Yes, Mr. President.

Senator Santiago. Thank you.

Please allow me to proceed to page 15, lines 14 to 15. I am referring to Section 34.3.

Senator Roco. Yes, Mr. President.

Senator Santiago. Under this Section 34.3, will it be possible to clarify the phrase "controls a majority interest"? I beg for clarification because I think it might be necessary in order that we can indicate the basis or test for determining "control."

Senator Roco. We would be open to a suggestion, Mr. President.

Senator Santiago. Thank you, Mr. President.

Let me go on to page 17, lines 29 to 30, referring to Section 35.

This line states that "Unless otherwise provided in this law, the Monetary Board shall define the term 'related interests'." As we have previously discussed the term "family group" should be the term defined instead of "related interests," which as now defined by the manual of regulations for banks is a broader term than "family group," the latter being one type of related interests.

If Section 11, as I previously proposed, is amended to change the reference to "related interests" to "family group," then the proposed Act would not contain any definition of related interests. Besides, it might be absurd to have two definitions of the same term. I am referring to the term "related interests." One provided in the Act; and the other to be determined by the Monetary Board for purposes of implementing the provisions of the same Act.

On this basis, I respectfully submit that the preliminary clause should be deleted, such that the sentence will simply read as follows: "The Monetary Board shall define the term 'related interests'."

Senator Roco. We are not averse to the suggestion, Mr. President. But when I was reviewing the possible committee amendments based on the interpellations of our distinguished colleagues, one of the problems precisely was the question of family interest, which we discussed on an earlier section. So, all we need is a way of reconciling the two.

I just want to make sure that the concept of related interests other than family interest is also adequately provided for.

Senator Santiago. Thank you, Mr. President.

Please let me move on to page 18. Lines 3 to 10 refer to Section 36, which is entitled, *"Loans and Other Credit Accommodations Against Real Estate."*

I would like to explain the premise of the question. This provision reduces the maximum amount of the loan which may be extended upon a real estate collateral offered by a borrower.

Under the present General Banking Act, banks are allowed to extend a loan of up to 70% of the appraised value of the real estate collateral. I humbly propose that this maximum be reduced to 60%. While this proposal may afford better protection to the banks and stability to the banking system in general, I will be the first to admit that this is at the expense of the borrowers. This proposal makes it more difficult for borrowers to obtain adequate financing given their limited resources or collateral.

I respectfully request that note should be taken that the appraised value referred to in this section is not the fair market value of the property. Appraised value of a property is as much as 20% below the fair market value, thus, with an asset with a fair market value of P1 million, a borrower will be allowed to borrow only about P480,000, computed as follows: P1 million x 80% to get the appraised value x 60% to get the maximum loanable amount.

If I am correct in these computations in this number crunching, I would like to raise this question: Would the loans not be overcollateralized in this case? Does this not jeopardize the capacity of businesses and borrowers to obtain sufficient financing for valid purposes?

Senator Roco. That may be partially true, Mr. President. The committee itself is again open to reevaluating the valuations. We must strike a balance, however, between keeping the banks solvent, stable, and with optimum capacity to react and to protect their depositors as against the need for the borrowers leveraging their real estate. Again, if the lady senator can help us formulate the words to give that flexibility, then the committee will certainly consider those proposals.

Senator Santiago. Yes, Mr. President, I stand ready to do so. In the meantime, I shall move on to page 19 referring to Section 39.

Senator Roco. Yes, Mr. President.

Senator Santiago. Again, I would like to beg indulgence so that I can lay the premise. While the present Senate Bill No. 1519 is supposed to have consolidated Senate Bill No. 253, entitled "AN ACT REQUIRING THE OFFICERS AND DIRECTORS OF BANKS AND OTHER FINANCIAL INSTITUTIONS TO UTILIZE AS THE BASIS OF APPROVAL OF CREDIT ACCOMMODATIONS THE FINANCIAL STATEMENTS USED FOR PAYMENT OF TAX OBLIGATIONS BY THE PROSPECTIVE BORROWERS," there is no mention whatsoever of the duty of banks to evaluate the credit worthiness and the amount of reasonable credit accommodation to be extended to borrowers on the basis of financial statements duly submitted to and received by the Bureau of Internal Revenue. Such requirement on banks should appropriately be included under this particular section which discusses the requirements for the grant of loans and other credit accommodations. In requiring the banks to evaluate borrowers on the basis of financial statements submitted to the BIR, it should be expressly provided that any evaluation by the Monetary Board of the propriety or soundness of a bank's lending policies shall be based on the BIR-received financial statements of its listed borrowers.

Senator Roco. Is the lady senator through?

Senator Santiago. I am not yet through but that is the extent of the question on that particular point.

Senator Roco. Yes, Mr. President. There is no disagreement in concept about evaluations to be made by the bank in the ordinary course and in the ordinary norms of the Bangko Sentral. That is expected of every bank. This one, however, is an effort to put truth in borrowing. There is a truth in the Lending Act requiring banks to tell one exactly what he is paying, but the truth in borrowing was a suggestion by the Bank Credit Management Association to precisely help it in evaluating so that the borrower must also tell the truth about his condition.

The other stimulus for that suggestion was the behest loans investigation. In the behest loans investigation of the 9th Congress, that was one of the recommendations that the borrower should also put under oath and show expressly the truth of his condition.

So, while we do not disagree with the concept, Mr. President, again there may be no need to put in provisions about the proper evaluation of the property because it is expected and it is covered already by practice and a lot of rules and regulations.

Senator Santiago. Thank you, Mr. President. I am enlightened but, perhaps, the distinguished sponsor might possibly consider whether this section could mention the duty of the bank to evaluate credit worthiness and the amount of credit accommodation to be extended on the basis of those financial statements so that the imposition of a duty is clarified under this provision.

Senator Roco. Again, we will not be averse to such a restatement of standards if only to make everybody conscious of the obligations to ensure that a bank will not be subjected to unnecessary and uncalled for risks.

Senator Santiago. Thank you, Mr. President.

I am still on page 19, line 20, also Section 39. There is here a mention of the term "microfinancing."

Senator Roco. That is correct, Mr. President.

Senator Santiago. There is no clear indication, however, as to what would qualify as "microfinancing." For the proper guidance of the Monetary Board, may I submit that the term should be defined even broadly if it is to be given the authority to define "microfinancing" in greater detail.

Senator Roco. I understand that microfinancing is a standard term used by the NEDA and subjected to adjustments on and off considering the value of the money and considering inflation. So, while defining "microfinancing" is not something that we should avoid, it might be better to leave it to usage as understood by the NEDA and the monetary authorities considering that it is peculiarly attached to monetary values. And P1 today can be P0.90 or the equivalent of P0.90 tomorrow.

So, I hope the lady senator will appreciate that concern for flexibility.

Senator Santiago. That is certainly appreciated. So, I will move on to page 20, particularly Section 42, entitled *"Authority to Prescribe Terms and Conditions of Loans and Other Credit Accommodations."* The question is brief.

While it is true that the Usury Law has been repealed giving the parties to loan agreements unlimited discretion to agree on the interest rate, would it not be proper to include a provision which will give some measure of protection to borrowers against highly onerous provisions in loan agreements? In other words, I am against an open horizon with respect to interest rates because it is possible that in desperation, the borrower might agree to terms and conditions which would normally be characterized as adhesive terms and conditions, that is to say, he virtually has no choice.

Would it not be acceptable to include some provision on protecting the borrowers against extremely onerous provisions on interest rates? Or, should that just be kept open-ended in order to stimulate business?

I would just like to elicit the gentleman's reaction.

Senator Roco. Mr. President, on a personal basis, I share the moral reaction against usury. It is probably one of the oldest oppressive and exploitative practices of man. The reason the Usury Law was repealed was a concession to the free market economy.

Again, I want to dwell on it longer. I want to study it a little bit more in terms of the conflict of policy recommendations.

Theoretically, when we are in a free market, business operates on the basis of what the market can take or give. While the Monetary Board can step in if there is an abusive interest imposition that is not called for, we must again balance it with the duty of the Monetary Board to keep price stability without intervening in market forces.

Because, as we have learned, Mr. President, even oil, even the most powerful executive officer of the Republic cannot obviously tamper with market forces, and an attempt to do so only tends to create disenchantment.

So that is my only problem, Mr. President. I do not want to be able to say yes or no yet to our distinguished colleague. I must reflect and must discuss with her the balance between the intervention by the Monetary Board on such matters and the market forces.

The only time, to my memory, that interest rates went up to 47% was, I think, in 1983-84 after the Aquino assassination. At that time, it was the banks which made money, not by lending but by depositing with the government. All they did was they bought from the government and the government therefore worked for the banks. The bankers were playing golf morning/afternoon and they did not even know what to do with their evenings because at 47%-49% interest rates, they were earning money not because they were good bankers, but because the government had to borrow money and had to pay through the nose.

Again, the ideas are, to me, Mr. President, morally repulsive when from suffering, money lenders even, I think, in the Old Testament, will now impose and tax high interest rates. But in terms of the draftmanship and the policy thrusts, we only ask the lady senator to give us a little time to study and reflect on the policy effect.

Senator Santiago. Yes, certainly. I will move on to page

22, lines 1 to 10. I am referring to Section 46. I am going, with permission, to play the role of consumer advocate just to test whether the provision will serve social policy.

I would like to note that a petition to enjoin or to restrain the foreclosure proceedings in court is allowed only when a bond equivalent to the full amount of the outstanding debt or obligation due to the creditor bank, plus expenses of the foreclosure, is filed by the petitioner. I humbly submit the obvious that this provision is grossly prejudicial to the borrower. The fact that his property is subject to foreclosure proceedings is evidence enough of the borrower's limited financial capacity. This provision practically prevents the borrower from questioning the validity of the foreclosure.

Further, if I remember correctly, I am referring to the *Rules of Court*, Rule 58, Section 4, which states:

> Ordinary rules only require a petitioner filing a preliminary injunction or temporary restraining order petition to file a bond in an amount fixed by the court sufficient to cover the damages that the other party may sustain by reason of such injunction, if the court finally decides that the applicant was not entitled thereto.

May I please propose that this provision be modified to reduce the bond required to restrain foreclosure proceedings.

Senator Roco. To the extent that it must coincide with the *Rules of Court* and the interpretation by the appropriate judge or the appropriate court with jurisdiction, we have, again, no objection to that reworking of the data.

The important idea here, however, is, there must be a way also of strengthening or encouraging the application of supersedeas bonds because sometimes development is hindered simply because of a restraining order, and if there is a gross abuse of discretion, at least there is an apparent remedy. But if there is none and the bank has played the rules, when the judge, for some reason, makes the mistake and restrains, development projects tend to be hindered.

That is why we thought of focusing on the possibility of the supersedeas bond lifting the restraining orders.

Senator Santiago. It seems to me like that is more of a problem of graft and corruption in the judiciary rather than a problem with the respective mechanics of the supersedeas bond. But I take the comments of the sponsor very well. I will proceed now to page 24, Section 53, beginning with line 23, entitled *"Prohibited Transactions."*

Among the items listed as prohibited transaction under Section 53 is the disclosure of information relative to the funds or properties in the custody of the bank belonging to private individuals, corporations or any other entity in the absence of a court order. It is further provided that with respect to bank deposits, the provisions of existing laws shall prevail.

Certain banks are looking into the possibility of outsourcing some functions such as the periodic printing, mailing or delivery of bank statements. As such is seen as more cost-efficient.

In view of the Bank Secrecy Law in the foregoing provision, would banks be barred from outsourcing some of their functions? Would such outsourcing of services be permitted if the service provider is constituted as an agent of the bank and is contractually bound to be subject to the provisions of the Bank Secrecy Law and the provisions of Section 53 of the proposed Law to the same extent as the principal bank? That is the question.

Senator Roco. Yes, Mr. President. It is a very interesting proposal and is in tandem with another proposal we received by phone from somebody listening to us over radio, saying that there are banks that have contractualized. So many of their employees are on contractual basis and, therefore, yields very little protection to the bank's secrecy obligations. Because when employees can be replaced or they come and go after three months, then loyalty to keep the secret is not well-maintained.

This is another aspect. What our distinguished colleague now raises is another possibility of a leak in the bank deposits.

If I were to take a very liberal position, Mr. President, as long as it is fully announced and fully publicized, what the bank does, which risks the possibility of violating bank secrecy, is its problem. It will lose market the moment people know that it is doing these things.

So if I were to take just a free-market frame of mind, I can say that as long as it is publicized, it is well with me. But, Mr. President, maybe these regulatory measures should be respected as the Bank Secrecy Law and the obligations of the banks to keep the secrets of the depositors at this point in time of the development of the Philippines may be very important in terms of civil liberties, in terms of security of our people.

For now, Mr. President, I will request our distinguished colleague to hold for study the suggestion of outsourcing purely banking activities that can endanger bank secrecy.

Outsourcing other things, payment of payroll can be done. Even janitorial services in a bank. I mean the bankers need not know how to clean the corners of the President's room. But outsourcing noninherently banking duties is allowable. But for

those that threaten the lifeblood, the security and secrecy of the bank deposits, we should reflect on that a little, unless we are decided to change the Bank Secrecy Law which the committee will find very difficult to consider.

Senator Santiago. I have no dispute with that perspective. I would just like to enter into the *Record* that if the outsourcing of services should be permitted, it should always be with the proper safeguard such as those that I previously indicated. That is, the service provider is constituted as an agent of the bank and is contractually bound to be subject to the provisions of the Bank Secrecy Law and the provisions of the present Section 53 to the same extent as the principal bank.

On page 27, lines 15 to 16. I am on Section 55.4. Section 55.4 is very short. It provides: "It has committed a major violation as may be determined by the Bangko Sentral." My question is: Should the Monetary Board not be given some broad standards to apply in determining whether a violation is considered to be a major violation or not? Is the Monetary Board required to come up with a list of major violations? Or is the nature of the violations to be determined on a case-to-case basis? It is just for clarity. That is the question.

Senator Roco. We have no problem with clarifying the concepts and the standards by which a violation may be categorized as major or minor, Mr. President.

Senator Santiago. I would like to thank the gentleman for that answer.

On page 28, Section 57. Section 57 is entitled *"Authority to Regulate Electronic Transactions."* This section gives the Bangko Sentral the authority to regulate electronic transactions, processings and recording by banks. The concern that has been expressed by some in the banking industry is the admissibility in evidence of documents and records such as the microfilm, microfiche or modern technology generated or maintained documents or records in case of litigation. Could this matter be addressed in this proposed Law?

Senator Roco. Partially, Mr. President, because I suspect that the *Rules of Court* on the Rules on Evidence should also be modified to establish a standard by which the thread of evidence would be acceptable to a court of law when it refers to electronic impulses.

Our Rules on Evidence, Mr. President, ties up the instance of photos or pictures. We can establish from the taking of the picture all the way to the printing of the copy of the picture. But today, we cannot pursue the electronic impulse from the first time it is put on by the programmer all the way to its end product somewhere in Hong Kong as it appears in the e-mail and codified with the security. So, it is very difficult today for, I think, practitioners who are still reading the old *Rules of Court* and the Rules on Evidence to grapple with nonmaterial, nonreal objects in the material sense.

This section, Mr. President, can give the monetary authority the ability to put major premises. But it must be completed together with the Supreme Court, the Integrated Bar and the practicing lawyers, to establish how we determine the continuity of the thread of evidence in proving computer or electronic data.

Senator Santiago. I concur with that observation and on that basis may I humbly propose that the committee communicate on an official level with the Supreme Court so that the proper *Rules of Court* could be amended accordingly.

Senator Roco. We will do so, Mr. President.

Senator Santiago. On page 28, Section 59, entitled *"Publication of Financial Statements."* For purposes of the requirement on banks to publish their financial statement as well as those of their subsidiaries and affiliates, what should be considered an affiliate entity? Is it sufficient that the bank, trust or quasi-bank, has 10%, 20% or 40% equity in another entity for such entity to be considered an affiliate? That is the question.

Senator Roco. Yes, Mr. President. My understanding of subsidiaries are majority-owned and affiliates have less than 50%. Under some jurisdictions, however, affiliates are 40% and below. I am not sure how our courts interpret affiliates. I think under Corporation Law, the affiliates will be those that are less than majority-owned. But again, we can clarify this further, and we will appreciate suggestions to that effect.

Senator Santiago. Yes, please. Perhaps we can just uniformize it with the existing Corporation Code.

Senator Roco. Yes, Mr. President. May I just call attention to what the staff has given me. On page 11, Section 25 of the Bangko Sentral Law, it says a subsidiary means a corporation more than 50% of the voting stock of which is owned by a bank or quasi-bank, and an affiliate means a corporation the voting stock of which to the extent of 50% or less is owned by a bank or quasi-bank. It does not add very much to my answer originally, but, again, that is the concept that we are working on.

Senator Santiago. Thank you, Mr. President. Page 30, lines 12 to 14. I am referring to Section 60.

Senator Roco. Yes, Mr. President.

Senator Santiago. Page 30, lines 12 to 14. The last

sentence gives the impression that it is possible for a branch of a foreign bank not to have a permanently assigned capital.

I humbly submit that this is erroneous and should not also be allowed because of policy. The assigned capital requirement is the counterpart of the minimum capital requirement imposed on domestic banks. Please allow me to underscore this.

At no time should branches of foreign banks be allowed to have no definitely assigned capital regardless of the fact that the absence of such assigned capital is disclosed to the Monetary Board. The BSP should not have the authority to waive the assigned capital requirement.

Republic Act No. 7721, Section 4, paragraph (ii), expressly requires branches of foreign banks to have a minimum permanently assigned capital of at least P210 million and an additional P35 million for each additional branch office. So this observation is intended to provoke a reaction to my view—at no time should branches of foreign banks be allowed to have no definitely assigned capital.

Senator Roco. Mr. President, this is a very ticklish topic. Under Republic Act No. 7721, an Act Liberalizing the Entry and Scope of Operations, foreign bank branches seeking entry shall have a permanently assigned capital of not less than US dollar equivalent of P210 million at the exchange rate on the date of the effectivity. Again, this permanently assigned capital was an object of major debate.

I do not fully understand it myself, Mr. President, but I will try to explain it in the hope that we can contribute some basis for my colleague's understanding and development of understanding together with myself.

The foreign banks, because they are incorporated in New York, have P1 trillion for instance. They maintain permanently assigned capital in the sense of bringing in pesos or dollars of a certain amount that they keep within. It is really more fictitious than real because of the transfer of funds. They have this concept of "net due to." Since we have a subsidiary here that is 60%, when we balance the books of the New York Bank, we will determine how much it owes to the Philippine branch or the Philippines owes to the mother bank. So it is largely fictitious, according to them, because of the "net due to." They have this term "net due to" in the banks either the home office or the subsidiary.

In the case of this permanently assigned capital, it becomes a very tricky accounting system and examination by the Monetary Board and the Bangko Sentral. If we will constrict or change the rules on the permanently assigned capital, we will again have to dwell on it very closely in terms of the effect on the foreign banks under the liberalized law.

That is only my concern, Mr. President. But it is very difficult to explain and it is very difficult to understand even if I explain it properly. So, again, I will ask the lady senator's patience on this matter.

Senator Santiago. I will not quarrel with that perspective. May I please just beg consideration by the committee, through the distinguished sponsor, of the concept of equal treatment of the domestic bank with respect to the local branch of a foreign bank. It simply is unintelligent to give a foreign entity better privileges than that enjoyed by our own domestic entities.

Senator Roco. Absolutely, Mr. President. That is why, I think the very first law on banks that puts what we referred to as the parity provisions or "equal-treatment" provision is in Section 8 of Republic Act No. 7721. It was stressed—and this is part of the law—that foreign banks authorized to operate under this law "shall perform the same functions, enjoy the same privileges, and be subject to the same limitations imposed upon a Philippine bank of the same category. These limits include, among others, the single borrowers limit, capital-to-risk-asset ratio as well as capitalization required for expanded commercial banking activities..."

Then it says, "Any right, privilege or incentive granted to foreign banks or their subsidiaries or affiliates under this Act shall be equally enjoyed by and extended under the same conditions to Philippine banks."

I thought that with this single section that this Chamber added—the equal-treatment provision—we equalized the treatment of all banks in the Philippines to the great benefit of the small banks. Thrift banks now, I think, can even issue checks because we put a similar equality provision under other laws. We have expanded and so there is great potential and opportunity for all the banks.

We support unconditionally the concept of giving equal treatment, and we have done so. We thought it has produced good reasons.

Senator Santiago. My last question will be based on page 33, Section 71. Section 71 is entitled *"Acquisition of Voting Stock in a Domestic Bank."*

With respect to Section 71, please allow me, for the record, to reiterate my comments on Section 10. Section 10 is entitled *"Foreign Stockholdings."*

Senator Roco. Yes. Foreigners or nonbanking institutions, I think.

Senator Santiago. My point is that there is a need to confirm whether it is the intent of this particular section

of the proposed Law to actually further liberalize the entry of foreign banks in the country after it has been liberalized under RA No. 7721.

This section expressly contravenes the terms of RA No. 7721 insofar as it allows foreign banks to acquire up to 100% of the voting stock of one domestic bank, disregarding the limit of 60% imposed under Section 2 of RA No. 7721.

Please allow me to note that this "such further liberalization" may need to be studied more thoroughly because obviously it has significant policy implications.

Senator Roco. Yes, we agree, Mr. President. This was arrived at after long, tiresome discussions with many bankers.

What was crafted was precisely an attempt to have a middle ground. Our distinguished friend may note that this privilege is extended by the Monetary Board to foreign banks, which, prior to the effectivity of this bill, availed themselves of the privilege to acquire up to 60% under RA No. 7721.

Our committee's view, Mr. President, is if one can acquire 60% in terms of corporate control, in terms of many other reasons, it is all the same as 100%.

In fact, the committee's view, Mr. President, is that in the real world, if one owns 60%, he will be averse to buy the other 40% because it is better to have somebody in the minority position together with him. He can run the bank and 40% will suffer the same consequences if he misrules. But the 100% is proposed here as a modification of Republic Act No. 7721 in terms of the liberalization of foreign banks.

One of the specific objections, Mr. President, sought to be addressed was, there were banks trying to buy 100%. They just could not find somebody who was willing to stay as 40%. So while they were willing to buy 60% or even 100% to be able to fully run the bank, they have to find somebody who was willing to stay as 40%. So it hindered that development. And yet, even if we combine the total resources of all the 12 or 14 foreign banks, they still constitute only 15% of the total assets of the banking industry.

The law—and it is repeated here, Mr. President, on page 34—specifically establishes that "control of seventy percent (70%) of the resources or assets of the entire banking is held by banks which are at least majority-owned by Filipinos." So while they can own up to 30%, the total combined efforts of the 14 foreign banks constitute only 15%. They can double and that is why it was recommended to allow greater entry. For those who already availed themselves of the 60% is a great idea.

In the situation today, Mr. President, of Nova Scotia—I do not know what is happening—from what I read in the papers, Solid Bank is proposed to be sold to Metrobank but there is a right of first refusal by Nova Scotia. If we do not change the rules, it may be difficult for Nova Scotia because the 40% may not want to sell. But if we change and modify the rules, Nova Scotia, which has been around as a minority stockholder in the Philippines in the Solid Bank group, may be able and may welcome one of the top three banking institutions in Canada to therefore own 100% of Solid Bank if they are minded to. That is the philosophy and the specific problems that the committee had to grapple with in crafting this Section 71.

Thank you, Mr. President.

Senator Santiago. I certainly appreciate the discussion of the policy implications.

Mr. President, allow me to direct this appeal to all our colleagues in this Hall. We have already liberalized the banking industry under Republic Act No. 7721. Each senator, I believe, is under bounden duty to consider whether we want to further liberalize the entry of foreign banks in our country so as to allow foreign banks to acquire up to 100% of the voting stock of one domestic bank in comparison to the present limit of only 60%.

Senator Roco. Mr. President, just by way of responding to the appeal. For the committee 60% will even be acceptable. But the fact that 60% and 100% do not make a difference when we control is the only reason. Other than that proviso, there is nothing else that has been modified in the liberalized banking law. That is the situation.

Senator Santiago. Mr. President, that is all with this bill. The answers of the distinguished sponsor have been concise and responsive and I thank him.

Senator Roco. Thank you, Mr. President. I certainly prepare doubly whenever our distinguished colleague from Iloilo announces that she will ask questions.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, I now move that we terminate the period of interpellations on Senate Bill No. 1519 under Committee Report No. 29.

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

Senator Drilon. Thank you, Mr. President.

Mr. President, with the permission of the Chamber, I move

that we resume consideration of Senate Bill No. 153 under Committee Report No. 41.

Senator Roco. Mr. President, may I just ask that we suspend it and that the committee amendments be taken up.

Senator Drilon. I am sorry. It is my fault, Mr. President. I withdraw my previous motion.

SUSPENSION OF CONSIDERATION OF S. NO. 1519

I now 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.

Senator Roco. Thank you, Mr. President, and I would also like to thank the Majority Leader.

BILL ON SECOND READING
S. No. 153--Retail Trade Liberalization Act of 1998
(Continuation)

Senator Drilon. Mr. President, I now move to the next item in our agenda and that is Senate Bill No. 153.

I move that we resume consideration of Senate Bill No. 153 as reported out under Committee Report No. 41.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 153 is now in order.

Senator Drilon. Mr. President, we have terminated the period of interpellations.

Sen. Teofisto T. Guingona Jr. wishes to take the floor to deliver a speech against the measure. May I ask the Chair to recognize the Minority Leader.

The President. The Minority Leader is recognized.

SPEECH *EN CONTRA* OF SENATOR GUINGONA
(The Challenge of Retail Trade)

SenatorGuingona. Thank you, Mr. President.

Distinguished President, honorable colleagues:

I hold in high esteem the sponsor of the proposed liberalization of retail trade, the honorable and distinguished gentleman from Cebu, Sergio Osmeña III. I believe in his sincere search to help the consumers secure thru genuine competition better choices of commodities. But with due respect, we do not believe that liberalizing retail trade is the proper solution.

Retail, Mr. President, is an integrated part of the entire economy. It faces challenges similar to the challenges faced by our manufacturers, by our farmers, by our fishermen who produce what we largely consume.

The nation, Mr. President, faces globalization not in the year 2005 under the World Trade Organization, but today from now to year 2002 and beyond under the ASEAN Free Trade Agreement. The members thereof agreed to accelerate the liberalization amongst member-countries, not only for reduced duties of goods but also for investments and industry, and the latest implementation made pursuant to said agreement is Executive Order No. 71 issued in January of this year. Tariffs are lowered on scores of agricultural products, including unprocessed produce like onions, tomatoes, potatoes, beans, pineapples, vegetables, corn, coconut, mushroom, oranges, tobacco, coffee and copra, and many others, subjecting them to progressive reductions from 20% to 15% to 10% to only 3 percent to 5 percent duties by the year 2003. By the year 2001, 90% of our products will be covered by such reduced duties and by the year 2002, 100%, with some flexibility, from zero to 5 percent duties. Then after that follows the WTO reductions in the year 2005.

Dr. Rene Ofreneo, a noted social scientist, observed that the Philippine agriculture today is in shambles. He said:

> We have a full-blown crisis in the production, importation and distribution of rice, which were aggravated by the government's policy of agricultural deregulation, and a commitment to trade liberalization. Corn and sugar have also been performing poorly. Tobacco and coconut are also on a decline. The theory that nontraditional export crops would fare well is now turning out to be only a theory. Philippine pineapple is losing out to Thailand and Indonesia due to cheaper labor, lower land rental and, yes, government subsidy. Philippine banana is no match to the banana being dumped in the Japanese market by Central American producers.
>
> The playing field for business operations is increasingly being tilted in favor of the foreigners. In the case of tariff liberalization, Philippine tariff rates on many products are now way below those of the Asean countries like Thailand and Indonesia. And local industrialists have to do business in a tough environment characterized by weak and collapsing infrastructures,