

RECORD OF THE SENATE

TUESDAY, NOVEMBER 9, 1999

OPENING OF THE SESSION

At 3:25 p.m., the President Pro Tempore, Hon. John H. Osmeña, called the session to order.

The President Pro Tempore. The 34th session of the Second Regular Session of the Eleventh Congress is hereby called to order.

We shall be led in prayer by Sen. Robert S. Jaworski.

Everybody rose for the prayer.

Senator Drilon. Mr. President, Senator Jaworski has requested me to read the following prayer.

PRAYER

THE ASSURANCE OF PARDON BEARS PEACE

“My Peace I give unto you
It’s a peace that the world cannot give
It’s a peace that the world cannot understand
Peace to know, Peace to live
My peace I give unto you.”

Dear Lord, we pray that Your promise of peace will reign in our beloved land, in the streets, in our homes, in government, as we witness forgiveness and pardon following our confessions of weakness.

Bless each of the members of our big family in the Senate —from the rank and file to the senators, so that peace embracing us now may hold.

Even as new conflicts come upon us, we shall continue to sing praises to You, affirm our faith in You and receive the grace of understanding, and we shall grow in Your promise of peace as limitless as Your love.

Amen.

ROLL CALL

The President Pro Tempore. 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 ..... \*
Senator Teofisto T. Guingona Jr. .... Present
Senator Gregorio B. Honasan ..... Present
Senator Robert S. Jaworski ..... \*
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 ..... Present
The President ..... Absent \*\*

The President Pro Tempore. With 19 senators present, there is a quorum.

The Majority Leader is recognized.

THE JOURNAL

Senator Drilon. Mr. President, I move that we dispense with the reading of the Journal of the previous session—this is No. 33 of Monday, November 8, 1999—and consider it approved.

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

Senator Drilon. I move that we proceed to the Reference of Business.

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

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

MESSAGES OF THE PRESIDENT OF THE PHILIPPINES

The Acting Secretary [Atty. Reyes].

\* On official mission
\*\* On account of illness

The Acting Secretary [Atty. Reyes]. Senate Bill No. 1798, entitled

AN ACT CONVERTING THE MUNICIPALITY OF SABLAYAN IN THE PROVINCE OF OCCIDENTAL MINDORO INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF SABLAYAN

Introduced by Senator Sergio Osmeña III

The President Pro Tempore. Referred to the Committee on Rules

The Acting Secretary [Atty. Reyes]. Senate Bill No. 1799, entitled

AN ACT CONVERTING THE MUNICIPALITY OF SIPALAY INTO A COMPONENT CITY OF THE PROVINCE OF NEGROS OCCIDENTAL TO BE KNOWN AS THE CITY OF SIPALAY

Introduced by Senator Sergio Osmeña III

The President Pro Tempore. Referred to the Committee on Rules

The Acting Secretary [Atty. Reyes]. Senate Bill No. 1800, entitled

AN ACT CONVERTING THE MUNICIPALITY OF HIMAMAYLAN, NEGROS OCCIDENTAL INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF HIMAMAYLAN

Introduced by Senator Sergio Osmeña III

The President Pro Tempore. Referred to the Committee on Rules

The Acting Secretary [Atty. Reyes]. Senate Bill No. 1801, entitled

AN ACT CONVERTING THE MUNICIPALITY OF VIGAN, ILOCOS SUR, INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF VIGAN

Introduced by Senator Sergio Osmeña III

The President Pro Tempore. Referred to the Committee on Rules

The Acting Secretary [Atty. Reyes]. Senate Bill No. 1802, entitled

AN ACT CONVERTING THE MUNICIPALITY OF BAYBAY INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF BAYBAY

Introduced by Senator Sergio Osmeña III

The President Pro Tempore. Referred to the Committee on Rules

The Majority Leader is recognized.

SUSPENSION OF SESSION

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

The President Pro Tempore. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 3:32 p.m.

At this juncture, the President Pro Tempore relinquished the Chair to Sen. Vicente C. Sotto III.

The President Pro Tempore. Thank you very much, Mr. Majority Leader.

RESUMPTION OF SESSION

At 3:33 p.m., the session was resumed.

The Presiding Officer [Sen. Sotto]. The session is resumed.

The Majority Leader is recognized.

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 Presiding Officer [Sen. Sotto]. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1519 is now in order.

Senator Drilon. Mr. President, this is the proposed law providing for the organization and operation of banks, quasi-banks and trust entities. We are still in the period of

interpellations. For this purpose, may I ask the Chair to recognize the principal sponsor, the chairman of the Committee on Banks, Financial Institutions and Currencies, Sen. Raul S. Roco.

**The Presiding Officer** [Sen. Sotto]. Sen. Raul S. Roco is recognized for the continuation of the period of interpellations on Senate Bill No. 1519.

**Senator Drilon.** Mr. President, may I ask the Chair to recognize the Minority Leader for the period of interpellations.

**The Presiding Officer** [Sen. Sotto]. The Minority Leader, Senator Guingona, is recognized.

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

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** May I refer to Section 63 of the bill.

**Senator Roco.** What page is that?

**Senator Guingona.** The version that I have is...

**Senator Roco.** It is on page 31. There is no other version, Mr. President—"Service Fees".

**Senator Guingona.** That is not the—I do not know where—Well, anyway, it is not in this section, Mr. President. It is on the auditing.

**Senator Roco.** On the auditing. Is that Section 56. *Independent Auditor*, on page 27?

**Senator Guingona.** Yes, Mr. President. May we know whether auditors are prevented from receiving gifts, allowances or other benefits from a bank examining the same?

**Senator Roco.** Under the general law on anti-graft, yes, Mr. President.

**Senator Guingona.** But can we not specifically place the same here during the period of amendments?

**Senator Roco.** We have no adverse reaction to such a proposal, Mr. President.

**Senator Guingona.** The section provides for independent auditors.

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** And the same auditor can audit the same banks for any number of years. Would that be correct?

**Senator Roco.** That is possible, even under current practice. In fact, there seems to be... and I need a validation from the officials of Bangko Sentral. They are not yet here. They are on the way.

**Senator Guingona.** Yes, but just as a matter of principle, we were toying with the idea that during the period of amendments, we can have as much as possible checks and balances so that one auditor need not audit the same bank successively.

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** He can return to that bank but just like some senators, he should have a vacation period.

**Senator Roco.** May we request the Minority Leader to consider a period of years as a maximum. I am again speaking from private experience. In a big corporation, if we change auditors, the auditor in a big operation will really have a fantastic and difficult time. It is only in the second or third year that he starts catching the hidden pockets. That is the disadvantage.

On the other hand, when one has the same fellow auditing him, they become friends.

**Senator Guingona.** That is true.

**Senator Roco.** They become friends. *Kung iyong bantay ay hindi na nakapagbantay*, on the other hand, as against the difficulty of a starting new independent auditor, so a balance between those two goals will certainly be appreciated by the committee.

**Senator Guingona.** On the number of years, we will have to consider both arguments and think about it during the period of amendments.

**Senator Roco.** Yes, Mr. President. Whatever the modification, Mr. President, as long as it balances between the two goals, the two policy objectives, that is fine.

**Senator Guingona.** I would like to thank the distinguished sponsor, Mr. President.

May we go to Section 47?

**Senator Roco.** Section 47 on *Renewal or Extension of Loans and Other Credit Accommodations*, page 22.

**Senator Guingona.** Is there any difference between renewal and the grant of a new loan as far as the client is concerned? In other words, would it be less burdensome to the

client and more profitable to the bank, or would it be the same? Because some banks practice the procedure of not extending but just granting new loans. I do not know which one is more burdensome to the client.

**Senator Roco.** Mr. President, it would depend upon the terms of the original loan. For instance, during the years when the foreign currency fluctuation was very bad, there were companies that borrowed money and the loan that they originally borrowed was hedged against the basket of currencies. So the fluctuation did not bother them too much because it was an average between the deutsche mark, the English pound, the American dollar and another basket of currency. When they hedged, they were okay.

Under those conditions, the client or the borrower will insist on extension because that is good for him. Of course, the bank will want to go into a new contractual basis, but that becomes a matter of negotiation between the borrower and the lender. So, a new loan can be good if it gives a client better terms.

**Senator Guingona.** So it all depends.

**Senator Roco.** It all depends on the terms of the original loan.

**Senator Guingona.** Anyway, this provision does not in any way ...

**Senator Roco.** No, Mr. President.

**Senator Guingona.** We leave that to the bank.

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** May I go to Section 46.

**Senator Roco.** Yes, foreclosure.

**Senator Guingona.** This Section 46 allows the extrajudicial foreclosure of the mortgagee having the right to enter upon and take possession of such property foreclosed immediately after the confirmation of the auction sale and administer the same in accordance with law, notwithstanding the fact that the owner has the right to redeem the same for one year.

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** We are concerned with small businessmen or homeowners experiencing temporary difficulties, financial or otherwise, which would be compounded, under this section, by the ejection from their homes. This may be abused by

businessmen with good connections. Someone interested in that property with good connections may encourage the bank to simply foreclose the property and extrajudicially sell all the assets to a close relation of the previous owners in order to avoid paying their workers their separation benefits. It could also be used by landlords to eject low rent-paying tenants. For those reasons, the buyer should therefore be allowed to take possession only after the redemption period. If the distinguished sponsor will agree to that, we will introduce an amendment.

**Senator Roco.** Mr. President, we have no ready study on those abuses; we are familiar with the possibility of abuses. I am also under the impression that the other laws on mortgage will cover that difficulty. But offhand, I do not see the difficulty in acquiring possession after the one-year redemptive period.

**Senator Guingona.** So we will propose the necessary amendment.

**Senator Roco.** There must be a definite guideline because it must address the specific problem of being deprived especially of a home. There may be other instances when the nature of the crop, if it is agricultural, may require an immediate action. But as long as the proceeds or the harvest is given to the rightful owner, the situation may change.

There may also be instances when there is a crime involved, when there is fraud involved where an immediate possession will have to be undertaken.

So subject to varying guidelines for varying situations, Mr. President, we can certainly accept the idea.

**Senator Guingona.** I thank the gentleman for that.

May we go to page 21, Section 45. The Bangko Sentral here may provide incentives to banks which, without government guarantees, extend loans to finance educational institutions, cooperatives, hospitals and other medical services, socialized or low-cost housing.

I am particularly interested in this "socialized or low-cost housing." May we know how, for example, incentives can be given so that banks will extend financing to socialized or low-cost housing? "Socialized and low-cost housing" is defined at present as those costing only up to P180,000 for house and lot.

**Senator Roco.** As used here, it repeats the words of the liberalization of banks law, "socialized" referring to the version of Karina David and "low-cost" referring to the version of Luis Yulo. So that is the difference.

**Senator Guingona.** At P300,000 the most?

**Senator Roco.** Yes, Mr. President.

Socialized housing can also mean that it is higher for the one with a higher income. There are so many variations of what is socialized housing. Maybe we should leave that to the Monetary Board to define what incentives it may be able to give.

But there is developmental impact on socialized housing and low-cost housing. If there can be a secondary market—and I think Senator Biazon will be familiar with this—if we can securitize the promissory note and sell it or rediscount it, then we can have a development aspect in the secondary or even in the tertiary market. That is why the multiplier effect of the housing...

I think it is correct that the President is now looking for another implementor of the housing program because it has a great potential for priming the economy.

**Senator Guingona.** Last time we questioned the distinguished sponsor about the defect in the Agri-Agra law. Would a portion of the Agri-Agra law be converted for low-cost housing? Would it be just as ineffective or would there be...

The secondary market and the tertiary market are still a long way off. Although the need is there, frankly speaking, we will not see the possibility of a secondary market being established within the next two years.

**Senator Roco.** It depends on how the Monetary Board officials act because they can push it. It is to the interest of the financial companies that there is rotation of the money. So the secondary market is useful among the financial institutions. What I borrow, I can relend. So we maximize our potential profit if we lend properly.

I cannot foretell the future, Mr. President. But in direct answer to the query on agri-agra, it may be better to leave this to the Monetary Board officials after they assess how much of the agri-agra is either used or unused.

**Senator Guingona.** They are mostly unused.

**Senator Roco.** Yes, mostly unused, maybe not even through the fault of the banks because the buyers are a little afraid and the lenders are wary.

**Senator Guingona.** In the case of the agri-agra, I think it is the defect in the law itself because the law itself says that the Central Bank may issue rules and regulations including placements and securities as alternatives.

**Senator Roco.** Yes, as an "in lieu of."

**Senator Guingona.** So the banks naturally will take the line of least resistance and instead of lending at a risky means to the farmers, it will agree to securities. So I was wondering whether the Central Bank can make some suggestions as to how to fund this low-cost or socialized housing.

**Senator Roco.** What we may want to do, if the Minority Leader is minded to, is not to state "may provide" but SHALL PROVIDE incentives to banks which do the following things without government guarantees because the critical element here is government guarantee. If a bank lends, for instance, for socialized housing and the government guarantees, then all it has to do is let it default, but without government guarantee which shows the energy behind the initiative.

**Senator Guingona.** At the right time, I will propose to change that word.

**Senator Roco.** The Bangko Sentral Law requires banks to have a quarterly or a semiannual report and that may be a feature of their semiannual report.

**Senator Guingona.** Thank you. May we go to Section 44, the same page.

**Senator Roco.** May I just observe, Mr. President, that the Minority Leader is trying to confuse me. He is going backwards. But we can continue.

**Senator Guingona.** Because I just want to be sure that the questions that I ask were not previously asked that is why I am beginning from the bottom.

**Senator Roco.** I have no complaints, Mr. President. The gentleman may proceed.

**Senator Guingona.** Usually in purchases of appliances or vehicles, the borrower already issues out the checks in payment?

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** Will this not result in the banks charging the client's future potential earnings if he tries to preterminate his loan?

**Senator Roco.** On the part of the borrower, the borrower will preterminate, is that correct?

**Senator Guingona.** Yes, the borrower preterminates but he has already paid. I assume that the payments will be credited to him or no more?

**Senator Roco.** I do not follow the thrust of the question. If

the borrower preterminates, it can deprive the banks of projected earnings. In fact, the problem I can see is that I think the banks tend to load interest up-front and then it disappears.

**Senator Guingona.** That is right.

**Senator Roco.** So that if there are 12 installments, the first installment has 20% of the interest; the second installment has 18%, et cetera, all the way down to the last installment until it disappears. I think the last three installments will probably be all on principal already. If the borrower preterminates, theoretically he should save on the interest because he did not use it for a one-year period. But what happens is since he paid ahead on the interest, in the pretermination, the bank collected the interest for the year ahead. That to me is disadvantageous to the borrower.

**Senator Guingona.** Inequitable. So can we, at the proper time...

**Senator Roco.** I just cannot visualize how we will operate that into the law because there may be instances when the borrower himself may also find that good. My problem in addressing specific problems is he cannot maneuver in case there is a change of circumstances. The advantage of up-front interest is we are still using the money of the bank. Because if we have six months reprieve, we do not have to pay any installment.

**Senator Guingona.** Grace period.

**Senator Roco.** If a borrower has six months grace period, the first few installments are still money of the bank. So, he is paying the bank's interest with its money. Later on, after presumably one or two years when the borrower is already operating, then the borrower is now paying the principal. So it makes sense already for the bank and the borrower. So, we can reverse the problem.

What I am trying to avoid is, fossilizing that problem in the provisions of the law, then both the bank and the borrower may lose flexibility. That is why, I tend to say, let the Monetary Board address that.

**Senator Guingona.** But can we uphold the principle that the client in this provision should only give up the unpaid balance of the bank—all the credit accommodations?

**Senator Roco.** What we can do is maybe—and the Minority Leader will have to help me formulate this—if we can say something like an equitable adjustment in case of pretermination so that the BSP is directed to give guidelines on how to make this equitable adjustment. Because the finance people have a way. It is almost logarithm or calculus that they apply. I am not really all that familiar

with the way they calculate, but these are very long formulas. If we just put a general provision on equitable adjustment in case of pretermination, then we did the formula for the guys who understand it.

**Senator Guingona.** Yes, thank you.

**Senator Roco.** Thank you, too.

**Senator Guingona.** May we go to Section 42? No, before that Section 42—43.

**Senator Roco.** Yes, Mr. President. We might as well be consistent.

**Senator Guingona.** This provision says that the amortization schedule of bank loans and credit accommodations shall be adapted to the nature of the operations to be financed. However, in case of loans and other accommodations with maturities of more than five years, provision must be made for periodic amortization payments. But such payments must be made at least annually. There are a number of capital instances as in projects whose gestation period may take more than three years to five years before they begin to receive actual income. Would this not be an impediment to capital-intensive industries that would require a longer gestation period because they have to already pay the amortizations within five years?

**Senator Roco.** Yes. That problem, Mr. President, must be balanced with also the need to make sure of the solvency and the liquidity of the bank, because we cannot hold the money away for too long without getting back into the mainstream of the loan funds.

But if the example is based on a capital-intensive industry, it would be unusual for a capital-intensive industry to go almost on very high-leverage borrowings. Because intensive capital will normally seek equity contributions.

If we are going for a long pull, equity will be critical and the borrowings will have to be just on the normal prudent leverage of whatever for the industry—one is to two, one is to four—whatever the prudent way of leveraging the borrowings. So, I can see the possibility that the Minority Leader points out. But again, too long without reflow is difficult also. It can create a difficulty for your financing institution. But again, while I am not adverse to the idea, it is very difficult to specify a formula for a specific problem. I prefer the flexible provisions although this annual is fairly specific, the way it is stated.

**Senator Guingona.** But it is very constricted in the sense that in no case shall the initial amortization date be later than five years from the date in which the loan or other credit

accommodation is granted. If this were applied to the Philippine government, we will be very hard put, Mr. President.

**Senator Roco.** What will be the proposal from the distinguished Minority Leader?

**Senator Guingona.** In cases of capital-intensive industries, where the real gestation period is five years or three to five years, let us say, then the amortization should be allowed to be made when it earns.

**Senator Roco.** But if we put that in the law, the lender may not just lend because those things have to be negotiated by the borrower and the lender.

**Senator Guingona.** Yes, but the law is already tilted in favor of the bank. And so, there is no flexibility. Could we not just give the banks flexibility?

**Senator Roco.** For negotiations. Supposing we were to say something like that in industries requiring intensive capitalization, there will be flexibility in the terms of the contract between the borrower and the...

**Senator Guingona.** Yes, Mr. President.

**Senator Roco.** Yes, a general provision like that, if that accommodates the problem, can be acceptable, Mr. President.

**Senator Guingona.** May we go to Section 42

**Senator Roco.** Yes are we now in Section 42?

**Senator Guingona.** Yes, Mr. President.

**Senator Roco.** This is the general power.

**Senator Guingona.** The authority to prescribe terms and conditions of loans and other...this is an old provision.

**Senator Roco.** Yes, it is exactly the same but it is an existing provision.

**Senator Guingona.** But it seems to us that this is a provision that further closes the door to venture capital and to such restrictions, for example, in the stock exchange, that a track record of three years should first be established and all that. In other words, I am thinking of people with good ideas, viable projects but with less assets, less collateral where the bank under the conservative or old system would look more to the security and into the assets rather than to the viability of the project.

**Senator Roco.** Yes, that is not precluded by Section 42.

**Senator Guingona.** Is it not?

**Senator Roco.** It is not. In fact, since we are only referring to banks, in the example I can visualize from the observations of the Minority Leader—let us say, the Amazon or the Java language that is now competing with Microsoft—all these are nonbanking. And when we field it into the stock market, people buy it like hot cakes. So that such companies or new genetic engineering companies can operate. If we can invent a system so that the rice will have grains as big as the *pandesal*, then we just cook ten grains for the ten members of the family. And we have *pandesal*. But that one will boom. We can sell that in any stock market. And the banks may not intervene.

**Senator Guingona.** That is very good.

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** Now, going to Section 40...

**Senator Roco.** If it is not too much, Mr. President, could I prevail upon the Minority Leader to begin wherever he wants to end?

**Senator Guingona.** We began from the bottom, then going up.

**Senator Roco.** Yes, Mr. President. We will continue. Section 40... It is taxing my imagination, Mr. President.

Anyway, the Monetary Board is authorized to issue regulations as we can see.

**Senator Guingona.** And we are 100% in favor of this, because it recognizes and complements the previous section where lending is based on viability rather than collaterals.

**Senator Roco.** Very good, Mr. President.

**Senator Guingona.** But since we are delegating to the Central Bank or the Monetary Board the law, what is the criteria for the rules and regulations that will be issued?

**Senator Roco.** I guess that is what we are paying the Monetary Board to figure out.

**Senator Guingona.** But since this is delegation of legislative powers, does the distinguished sponsor not believe that we should put in some sort of criteria or standards?

**Senator Roco.** I am sure, Mr. President, that if we keep on studying and discussing it, we can come up with a criteria. But I

do not feel I have the technical experience to measure that criteria. That is why we hire or we designate seven members of the Monetary Board who, among themselves, should have an accumulated, at least, 150 years of experience to try to figure that out.

It satisfies the rule on primary jurisdiction, Mr. President, that since they are supposed to be the ones to know, we pay them good salaries; let them figure it out.

But again, if the Minority Leader comes up with a specified standard, then we can accommodate him.

**Senator Guingona.** I thank the gentleman for that.

**Senator Roco.** Yes, Mr. President.

This is very good, by the way, based on the gentleman's questions. This is very good for all the gentleman's questions.

**Senator Guingona.** Yes, Mr. President.

**Senator Roco.** This is a new provision.

**Senator Guingona.** It is a new provision and it complements Section 39. Because as the distinguished sponsor pointed out, the loans will not be based on collateral alone, not even on luxury cars alone, but on viability and profitability of a Bill Gates.

**Senator Roco.** Did the gentleman say "buyability?"

**Senator Guingona.** No, it is "viability."

**Senator Roco.** I thought somebody was depending on how much it can be bought.

**Senator Guingona.** Yes, Mr. President. The President has already issued a memorandum that luxury cars can be paid for by the different departments.

At any rate, I think we already covered...

**Senator Roco.** A lot of territories.

**Senator Guingona.** Previous sections.

**Senator Roco.** Yes, Mr. President. I am very happy we are finished. We went from Section 1 to Section 39, I think, last time and now we are back to Section 14.

**Senator Guingona.** Yes, I believe that was covered last time and I give myself the benefit of the doubt. I would like to thank the distinguished sponsor for accommodating us.

**Senator Roco.** The pleasure is all mine, Mr. President.

**The Presiding Officer [Sen. Sotto].** Thank you. It did not escape the presiding officer, gentlemen, to notice that it is not surprising the Minority Leader proceeded and made the interpellations to the reverse because the Chinese read from left to right and they start from what we call the back. It is not surprising because the middle name of the Minority Leader is Go-Guingona, the last name of the sponsor is Co-Roco, as well as the presiding officer, the first name is So-Sotto.

**Senator Drilon.** Mr. President.

**The Presiding Officer [Sen. Sotto].** The Minority Leader is recognized.

**Senator Drilon.** May we now proceed and resume?

**Senator Roco.** We want that noted, Mr. President, for historical purpose.

**Senator Drilon.** May I ask the Chair to recognize Sen. Tessie Aquino-Oreta also for the interpellation.

**The Presiding Officer [Sen. Sotto].** Sen. Tessie Aquino-Oreta is recognized.

**Senator Roco.** May we request the lady senator to move forward so that our back is not towards her.

**Senator Aquino-Oreta.** Thank you, Mr. President. May I ask the good sponsor to yield for some clarificatory questions?

**Senator Roco.** We will exert every effort to be able to answer, Mr. President.

**Senator Aquino-Oreta.** Mr. President, under Section 7 of the bill, there seems to be only three conditions required for the Monetary Board to authorize the organization of a bank or quasi-bank which are:

1. The entity is a stock corporation;
2. That the funds are obtained from at least 20 persons;
3. That the entity satisfies the minimum capital requirement prescribed by the Monetary Board for the categories of banks which are classified also in Section 2.2 as universal banks, commercial banks, branches of foreign banks organized under Republic Act No. 7721; thrift banks such as stock savings and loan associations, savings and mortgage banks, and private development banks as defined under Republic Act No. 7906;



rural banks as defined under Republic Act No. 7353; cooperative banks as defined under Republic Act No. 6938; and a generic provision called Other Classifications which will allow the Monetary Board to categorize other types of banks in the future.

**Senator Roco.** Yes, Mr. President.

**Senator Aquino-Oreta.** Mr. President, my question is: Why are we not providing for a selective criteria or a blueprint to weed out people who may lack the qualification or desirability to own or operate a bank as this may be a way of curbing the proliferation of weak banks? Because as it is now presented, anyone with money or who can put up the required minimum paid-up capital can be licensed to open and own a new bank. Is it not to our interest to prevent, say, drug lords or crime lords to launder ill-gotten money through a bank they control even if these undesirable people are not visible as directors or officers and may put up respectable people as their dummies?

**Senator Roco.** Yes, the lady senator is absolutely right, Mr. President. This general provision in Section 7 just addresses the need. It cannot be single proprietorship, it cannot be partnership, it must be a stock corporation. It must involve more than 20 because if 15 of us gather together to lend to ourselves, maybe we can do that. And then minimum capital requirements. Then it is specifically implemented in Section 13, for instance, on Authority to Register where the Monetary Board and the Securities and Exchange Commission can now look at not only the amount of capital, the financing, but the integrity and responsibility of the organizers.

Then again, in Section 15, the fit-and-proper rule is further amplified. So, while we started with a general provision, the concerns of the lady senator are, we hope, adequately addressed. But if the lady senator feels that there must be an additional subsection to Section 74, for instance, giving the Monetary Board an additional statement and to prescribe other qualifications as the Monetary Board may prescribe, then a general statement to that effect may be welcomed.

**Senator Aquino-Oreta.** I thank the gentleman for that, Mr. President.

The present General Banking Act has a specific provision limiting the stockholders of family groups related to each other within the third degree of consanguinity or affinity to 20% of the voting stock. However, I understand that the proposed Act has no such provision.

From practice, the Philippine Deposit Insurance Corporation has determined that the root cause of bank abuses and failures can be traced to the concentration of ownership in

very few hands which does not provide for a system of check and balance.

Would the repeal of the limit on family stockholding not result in more abuses and bank failures?

**Senator Roco.** In Section 11, Mr. President, Stockholdings of Family Groups, we defined third degree of consanguinity or affinity. In fact, there is a provision that legitimate or common law shall be considered related interests and must be fully disclosed.

In subsequent sections, Mr. President, in the DOSRI prohibitions, the provision on related interests then becomes Section 35 where that is also addressed. So, there is really no diminution of protection against related interests. Then, the single borrowers' limit is still there at 25%, but not to exceed their contribution.

So, those are multiple safeguards that will allay the apprehension of our distinguished friend.

**Senator Aquino-Oreta.** Is the gentleman secured with that?

**Senator Roco.** Yes, Mr. President. In fact, we also imposed transparency provisions. If related interests, for instance, borrow and, let us say, they make *sagad* the 25%, the bank must make that known. And if the depositors are still secure in a bank that lends to its principal officers up to the maximum, having known that, what can we do? The law cannot protect the foolish.

So, we assume that by transparency provisions, a normal prudent depositor will be wary with a bank that has too much DOSRI borrowings.

**Senator Aquino-Oreta.** Just a follow-up question.

**Senator Roco.** Yes, Mr. President.

**Senator Aquino-Oreta.** Mr. President, this concerns the limitation of 40% imposed on the foreign ownership of the voting stocks of domestic banks as stated in Section 10.

If our national policy is to attract foreign investments and foreign capitals in the country and to foster more competition in the banking industry, why not allow up to 100% foreign ownership? Furthermore, is this provision calling for a 40% ceiling of foreign equity investments not contrary to the recently enacted Rural Banks Act allowing 60% ownership?

Is this not also contrary to Republic Act No. 337 which allows foreign banks to own up to 60% of the capital of a subsidiary of

a foreign bank as well as to allow them to own 60% in a joint venture in a domestic bank? Why limit the privilege of foreigners owning up to 100% equity of a domestic bank, those who are already owning 60% of a local bank prior to the enactment of this Act as proposed in Section 71? Is this not discriminatory to other foreign banks who are also interested in investing in the Philippine banking industry?

**Senator Roco.** Mr. President, the lady senator's premises are correct. In fact, in Chapter VIII, page 33, on Acquisition of Voting Stock in a Domestic Bank, 100% is specifically allowed. In fact, even now, that law is provided for. The law provides for a 100% ownership. We are also not averse if Section 10 is an obstacle to further clarify this provision.

The thing with banking, Mr. President, is while for instance, some transactions should be restricted to a majority-owned Filipino ownership, banks—because they are essentially management and financial services, and since money is something that we print ourselves—are dependent upon us. We print our own money. And it is great if we visit the minting plant. It is a good effort. When we do that, we have full control so long as we do not remove the provision and it exists under the Liberalization law—that 70% of the total banking assets must be in Filipino hands. I mean, we do not care how many foreigners there are but they should not exceed. Maybe we relax later on the 70-30 provision but for now that is the law.

So in answer to the lady senator, yes, the 100% ownership in acquisition today can be done and that will not be changed. Any bank that is listed top three in the country of origin and willing to list its shares in the Philippines after, I think, five years of operations can buy any domestic bank so that the original owners can liquify.

The staff gives me a very good observation. Section 10 refers to foreign investors or individuals and nonbanks. Section 71 refers now to foreign investors which are banks. So we restrict the individual or nonbanks because we do not want Bill Gates to own more than 40%, and he can afford.

Since we are encouraging banking expertise and technology transfer, banks that qualify under the Liberalization Law can buy the merged entity of BPI and Far East Bank.

**Senator Aquino-Oreta.** Mr. President, may we now go to the discretion and powers of the Bangko Sentral.

**Senator Roco.** Yes, we refer to Section...

**Senator Aquino-Oreta.** Mr. President, may I be enlightened on how this General Banking Act can prevent the

recurrence of such arbitrary and abuse of discretion of the powers of the BSP. What are the criteria or conditions that are clearly spelled out that will warrant action from the BSP to place a bank under receivership or under liquidation? What recourse or relief mechanisms are given to the bank that may have been, arbitrarily and with grave abuse of discretion, placed under receivership or liquidation that may have completely destroyed the viability and respectability of such bank?

**Senator Roco.** Yes, an abuse of discretion, Mr. President, cannot be avoided because it is an "abuse." The law precisely prohibits an abuse. It is like the Penal Code. It prohibits murder but murders are committed. And an abuse of discretion, in fact, is one. That is why the Supreme Court was mandated and given very enhanced powers of being able to review an abuse of discretion.

So there is nothing in the law, Mr. President, that will prevent people from abusing but that is, of course, the objective of the law. What helps now is the stronger powers of the Bangko Sentral. The Bangko Sentral is given the standards spelled out under Republic Act No. 7653. In addition, under this General Banking law proposal, there is the fit-and-proper rule standard; there is the regular review by the Bangko Sentral.

So we hope it can minimize the possibility. But human beings, if they are looking for "*palusot*," will always find one. To be very candid, this law will not prevent abusive people but we can slam them if the Monetary Board is so desirous.

**Senator Aquino-Oreta.** So we leave the provisions as such. We will not try to put some...

**Senator Roco.** In the Bangko Sentral law, we strengthened it already and there is a report going around—I hope it has been finished—even enhancing some of the visitorial powers of the Bangko Sentral.

**Senator Aquino-Oreta.** In the proposed bill, it seems that only the Bangko Sentral ng Pilipinas has supervisory powers over banks. However, the Philippine Deposit Insurance Corporation, as mandated, is also conferred powers as coregulator and cosupervisor of banks.

Mr. President, my question is: How do we reconcile the powers and responsibilities of these two agencies, namely, the BSP and the PDIC? Is there any duplication of duties and powers between the BSP and the PDIC?

**Senator Roco.** No. In fact, the PDIC can only conduct independent examination when it thinks there is some problem with the bank, but there is no duplication. The definition of the powers and duties of the Bangko Sentral is mandated by the

Constitution. Certainly, the PDIC does not have the powers mentioned in the premises.

**Senator Aquino-Oreta.** But it has some, sort of, duties.

**Senator Roco.** Yes, but only after... In fact, until the Monetary Board... It is the insurer. Look at Orient Bank. When it was passed on to PDIC, PDIC assumed the responsibility. If the lady senator feels that these should be further clarified, the committee will certainly be happy to see how we can further clarify them.

**Senator Aquino-Oreta.** I would like to thank the distinguished sponsor for that, Mr. President.

The recent Asian crisis has been partly attributed to the surge of private short-term capital outflows. This led to the fall of the Thailand baht which, in turn, affected other countries in the region, including the Philippines.

My last two questions are: Are there specific provisions in the proposed General Banking Act that seek to address issues related to private short-term capital inflows and outflows and their possible negative effect on the microeconomic stability of the domestic economy? In other words, are there measures intended to make the domestic economy less vulnerable to short-term capital inflows and outflows?

**Senator Roco.** We can only be made less vulnerable by the way government governs and by the way the financial world is managed by the BSP.

In the Senate, earlier in our sessions, we approved the new Securities Act and that one can be a hedge, can be a protection against rapid movements in the stock market. But it has happened because after we have approved it eight months ago, we have been waiting for it to be approved by the House. Since then the best world has occurred, where from P2—it was able to sell stocks in a span of two weeks in the presence of a certain gambler—it went up P107. It was great if we were on P2. But if we were at P107, that is terrible.

So the whole body of laws should operate. But it depends on how we govern, on how the executive department reacts, on how the Monetary Board protects.

Right now, the initiatives of the Monetary Board, as I understand, is for the ASEAN central bank, and then for the cooperation, of helping each other when somebody is in trouble instead of everybody panicking.

If we believe the literature on Mahathir, I think Mahathir is proving that he had a better idea on how to protect his country.

But because we have been committed to free market, we are not operating the way Mahathir is operating.

So, that policy problem should be addressed by the Department of Finance and the Monetary Board. But more than anything else, it is how we manage the financial system. And we hope that this bill will help the Monetary Board, in fact, manage it even better.

**Senator Aquino-Oreta.** I would like to thank the distinguished sponsor for that. My last question is: Some sectors, like the Philippine Institute of Development Studies, recommend that to make bank supervision more effective, there is a need to repeal the Bank Secrecy law, while the BSP believes that there is no need to repeal the law.

May I know from the sponsor the stand of the committee on this issue and what specific provision, if there is any, in the proposed act intends to complement or reinforce such a view?

**Senator Roco.** The Bank Secrecy law was, in fact, revived in the Bangko Sentral law. This committee and I, as the sponsor of the Bangko Sentral law, thought it was very good that it was so revived. The leading example, of course, is Switzerland. And it is a bad example now. But the secrecy of banking deposits helped them. We hope it helps us not for the illegal activities, but we hope it helps us gather confidence from depositors and international investors.

So, it is not here. The committee is averse to suggestions that the Bank Secrecy law should be modified. Because the way the kidnapers, for instance, were finding out who had the best deposit was terrible. They knew who to kidnap. This is where we need the law enforcers to help protect the public instead of identify the victim.

So the committee, in direct answer to the question, would find it very difficult to agree to the repeal of the secrecy provision.

**Senator Aquino-Oreta.** I do not have any more questions, Mr. President, and I thank the gentleman for his answers.

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

**Senator Drilon.** Mr. President, Sen. Renato L. *Compañero* Cayetano wishes to avail himself of the period of interpellations.

**The Presiding Officer [Sen. Sotto].** Senator Cayetano is recognized.

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

I know I have already asked some questions, but in view of my having read once again this proposed bill, I would ask the indulgence of the good sponsor.

**Senator Roco.** Of course, Mr. President.

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

May I call attention to Section 44 earlier adverted to by the Minority Leader.

**Senator Roco.** Yes, Mr. President.

**Senator Cayetano.** It says here, "prepayment of loans and other credit accommodations."

**Senator Roco.** Yes, Mr. President.

**Senator Cayetano.** I was listening intensely to the dialogue between the sponsor and the Minority Leader, and my interest was caught because once upon a time I tried to prepay an outstanding loan with a bank. But we had an argument as far as the interest payment is concerned.

**Senator Roco.** That is correct. The bank moved it forward.

**Senator Cayetano.** As we know very well, the normal process of payment of loans is, the bank computes it for five years or ten years, including already the interest. And the monthly amortization includes not only the principal but the computed interest.

**Senator Roco.** I think different banks compute differently. But I have seen very often that all the interests are paid ahead.

**Senator Cayetano.** That is right, Mr. President. Anyway, may I suggest that since this prepayment of loan provision is basically for the benefit of the borrower, the borrower shall have the right to preterminate prior to the agreed maturity date, in whole or in part, the unpaid balance of any bank loan or other credit accommodations subject only to the provision of the loan agreement or the credit accommodations. This is quite different from the way this is presently written. Because as presently written, the prepayment will be "subject to such reasonable terms and conditions as may be agreed upon between the bank and its borrower."

**Senator Roco.** Yes, Mr. President.

**Senator Cayetano.** So that presupposes a situation where the borrower now has offered to prepay but the bank is saying, "Okay, let us negotiate the terms and conditions of the prepayment including, of course, the payment of the interest."

My point here is, instead of subjecting this to reasonable terms and conditions as may be agreed upon between the bank and its borrower, it should probably be subject to the loan agreement earlier entered into.

**Senator Roco.** Pursuant to the original terms of the loan agreement.

**Senator Cayetano.** Yes, Mr. President. In that case, there will be no further argument.

**Senator Roco.** I have no problem with the idea, Mr. President, but we may also lose flexibility. We are now addressing the example where they balloon the interest at the beginning.

Supposing it is the reverse and we now want to bargain. Putting the provision in that manner—although I can see the intention and it is noble—may prevent us from getting better terms because we fossilize. The contract now is adopted by reference in Section 44.

Again, as I have said to the Minority Leader, a general provision of equitable adjustments...

The first principle, of course, is that it is covered by the original terms, the Civil Code. But here we can negotiate. But if we say something like "equitable adjustments" that are negotiated, then we are in business and we do not necessarily intrude into their contracts.

**Senator Cayetano.** I appreciate that point, Mr. President. I am only bringing to the attention of the good sponsor that, by nature, the banks or other banks would not like to give up during the prepayment of the loan so much of the interest, unless of course, as I said, we are implementing an existing law on agreement.

Of course, I do realize the point of the sponsor that it might work on the reverse. But probably the question here is, which is more frequently done? What is more frequently done here is the ballooning of the interest, meaning the payment of the interest much ahead of the principal for the next five to six years if it is a ten-year loan. About 80% of the payment goes to the interest.

**Senator Roco.** And the effective rate of interest is much higher than what it looks.

**Senator Cayetano.** Yes, Mr. President.

**Senator Roco.** I have no real problem with stating that it shall be covered or subject to or pursuant to the original terms of

the law on agreement. But we still must allow some flexibility just in case they want to renegotiate.

**Senator Cayetano.** Maybe at the proper time, we can work out a more acceptable provision for the benefit of the borrowers.

In Section 67, *Receivership and Involuntary Liquidation*, I do realize that this does not concern the functions of the PDIC.

**Senator Roco.** Is it Section 57?

**Senator Cayetano.** No, it is Section 67 on page 32. This does not concern the functions and powers of the Philippine Deposit and Insurance Corporation or the PDIC.

I am only asking that because when we have a situation of involuntary liquidation, we are now faced with depositors trying to recover what is recoverable under the PDIC charter, which I think is not more than P100,000 per depositor.

**Senator Roco.** Yes, Mr. President.

**Senator Cayetano.** My point here—and I do not know whether it really belongs here or somewhere else—is, with respect for instance, to certain complaints I have received *vis-a-vis* the payment of P100,000 per depositor from PDIC in view of the liquidation of failing banks, I was made to understand, and again I may be mistaken in this information, that the PDIC has a period of not more than six months within which to pay the insurance of P100,000 per depositor. I think what is happening is that—more than the period of six months, it reached sometimes even eight months, ten months, et cetera—the depositors of the Orient Bank are complaining that they have not been paid. I wonder, as I said, Mr. President, whether this particular provision has somehow any relevance to the PDIC power?

**Senator Roco.** First, it is the BSP that declares a bank under receivership and then the PDIC enters the picture. By way of responding to the Orient Bank situation, it is true that there was some delay in responding to the Orient Bank situation. It was, to me, more because of the inflexibility of the head of the PDIC. He was following some manual and it was being addressed to the letter. So that they reviewed the different branches, for instance, because the bank must inventory its depositors, otherwise it does not know. But although they were already sure of 90% of the depositors, the 10% who may be trying to disappear still held back their decisions when they could have taken care of the many and the smaller ones which they did eventually because we forced them to. In fact, the initial payments were here, I think in one of the committee rooms, because we just told them, "You cannot hold these people, the smaller ones." Now, there were big depositors

involving millions but that is already with the PDIC, Orient Bank and the Monetary Board.

But we may not want to tamper this provision because it is only an enumeration of the remedies available to the Bangko Sentral ng Pilipinas. We have calibrated from fit-and-proper rule to audits, to conservatorship, to receivership and liquidation. I think the heart of this proposal is about the restraining order and the supersedeas bond because supersedeas bond is there anyway and no one suffers when the supersedeas bond can be offered. So if we must touch the PDIC, we would suggest that we do it when we review the charter of the PDIC.

**Senator Cayetano.** I would like to thank the distinguished gentleman for that, Mr. President.

Now, going precisely to the very subject matter of Section 67, which the good sponsor mentioned, it really covers a restraining order. Under what condition or circumstance may, for instance, a private individual seek a restraining order for the receivership or involuntary liquidation? I will make it a related question. Under what circumstances may Bangko Sentral ng Pilipinas oppose this by filing a bond as the provision states?

**Senator Roco.** Under the circumstances allowed by the Rules of Court because there are only instances when restraining order can be issued in any event by the courts; whether it is grave abuse or action so gross that it amounts to loss of jurisdiction or when there is irreparable harm or damage that may occur. And the supersedeas bond has a definition under the Rules of Court—I do not have the Rules of Court with me—but we are not altering the conditions required by the Rules of Court.

**Senator Cayetano.** So the grounds for the injunction will be under the Rules of Court.

**Senator Roco.** Of course, Mr. President.

**Senator Cayetano.** In that case, is it really possible for a single individual, even with a little amount of deposit, to enjoin the receivership or involuntary liquidation of a bank given the circumstances under the Rules of Court?

**Senator Roco.** Of course, and given some abusive judge.

**Senator Cayetano.** Thank you. Finally, Mr. President, I am intrigued by this...

**Senator Roco.** Mr. President, could I just correct myself? Under Section 30 of the Central Bank Act, the actions of the Monetary Board may not be restrained or set aside by a court order on petition for certiorari on the ground that the action taken

was in excess of jurisdiction. Those are the grounds for certiorari. It does not change. But the petition for certiorari may only be filed by the stockholder of record representing the majority of the capital stock. So apparently, in addition to the requirements for the privity of the person who files the case, he must be a stockholder of record, so representing the majority in a bank.

**Senator Cayetano.** In other words, not any particular depositor or creditor?

**Senator Roco.** Yes, that is right.

**Senator Cayetano.** Mr. President, so neither a creditor nor a depositor may enjoin the receivership, I mean after the explanation of the distinguished senator.

**Senator Roco.** Yes, Mr. President. The bank is the creditor so the stockholder of record of the bank.

**Senator Cayetano.** Yes, Mr. President.

**Senator Roco.** But the borrower cannot.

**Senator Cayetano.** He cannot. Because, Mr. President, I can see that, for instance, a bank is on the verge of being involuntarily liquidated by the Bangko Sentral, it may opt or may have some outstanding contract with a business concern. This involuntary liquidation may nullify or create some damages in favor of this business concern. That is why, I was wondering if such individual, whether it is a corporation or a natural person, could possibly bring an injunction which—if I am correct in understanding it—could not be done.

**Senator Roco.** Although normal procedures under the Rules of Court will have to be followed with the additional requirement that the one who files the petition must be a stockholder of record representing the majority.

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

Finally on this trust, I have no particular question here, but just to ask the good sponsor.

As we know very well, under the Constitution, particularly a member of the Cabinet is required to divest, but we know for a fact that it is very difficult to divest in the Philippines. Because if we do that, probably we are bound to lose all our properties, especially real properties and shares of stocks at a very disadvantaged price without the possibility of recovering these.

In the United States, it has what is called "blind trust" which works very well for the members of the Cabinet. Of course, it is

well-written and regulated that the members, for instance, of the Cabinet or the government official required to put up that blind trust, like the President of the United States, cannot in any way intervene both in the investment and in the manner by which the trust funds are being invested by the trustee.

So I was wondering just generally—in order to make it very easy for competent individuals who may wish to join the government but are afraid at this time because of the lack of a necessary law on blind trust—if we can possibly put up a provision here that would create a blind trust in favor of government officials under the Constitution that are required to divest in order to assist these people and in turn, the government itself in getting competent, reliable, and honest individuals?

**Senator Roco.** Mr. President, it may be the inappropriate vehicle for lawmaking because then, this will apply only to banks. But the divestment, if that is needed, may be more critical for land, for manufacturing or foreign investments or for other investibles.

So to put it here will allow us to have a blind trust only with reference to banks if we are talking of bank reforms.

But on matters of policy, I do not know that the problems of Cabinet members should be a matter of too much concern. One, they can refuse. If they think they will lose money, let them not accept. Two, if they are any good after their term, they will recover. Three, that is the essence of public life, I guess. Many may want to be called, but very few are chosen. So to me, that goes with the job description. I do not quite share the concern of giving incentives so that we can select the so-called competent people. There is nothing in wealth that makes them more competent. Simply because they have more investments does not mean that they are more competent.

In fact, money very often is the root of all evil; and evil is very often the root of all money. This is being demonstrated to us by the Blue Ribbon Committee—the search for the fantastic gold. So, I do not share the policy concern of selecting, what, 24, and even amend the laws, so that they can keep their investments low. Do not appoint them.

There are 75 million Filipinos, Mr. President. I think, many who are below 40 are very eminently qualified to run this country, more than the people who are above 50. So, I am not worried.

**Senator Cayetano.** I thank the gentleman for that policy statement, Mr. President. I was seeking a short reply for a question I thought I know is immaterial to the point of discussion, only because the provision on trust came into my mind.

Anyway, I do share some of the thoughts of the good sponsor,

Mr. President, that indeed, if we want to get a good public servant, it would not really matter whether he would have to divest or not. It is a matter of choice. But I just thought that even highly industrialized, highly placed and less corrupt countries have thought of putting up blind trust. It might just be a good reason just to think about it, for purposes of academic discussion.

**Senator Roco.** Let me state by way of responding, just to push through the idea.

A blind trust in my opinion can be constituted under present law, if that is the concern of the gentleman. But for some reason, most of the Cabinet members I have seen in the Commission on Appointments have just decided to take the simple route of supposedly selling out. Later on, when they are no longer there, they surfaced after one year as having repurchased. So, to me, that is a fiction that our political life allows.

The second point I want to say is that I think the golden years of the Cabinet were the years of Paeng Salas, he was 36; at the same time, Tatad, he was 29; Fenny Hechanova, 28, executive secretary, finance secretary; even Maceda, 34. All the golden Cabinet members were below 40 before martial law.

But martial law put a ceiling to the development of leadership skills. It put a ceiling also to the people in this Hall. That is why we develop and we have to rely on the expertise of those who, after 14 years, still have some leadership capacity or pedigree capacity or other gifts that the people would appreciate.

But the Cabinet, Mr. President, has seen Castro, in the time of Magsaysay; has seen people who are mostly below 40. That should be returned to the Philippines because we owe it to a young population to do so.

So, at that age, they do not have investments. They are not worried about blind trust. Their interest becomes so keenly, so intricately associated with the Philippine development that they dedicate themselves to public service. That is, I think, what we should try to get back, not cure the problems of their investments.

If they worry about their investments, let them stay there. Let us not get them into the government, consider certain putative housing czars. If they are worried about their investments, let them stay out of housing.

**Senator Cayetano.** Mr. President, I have no objection to having young men and women in government, even as members of the Cabinet. But I was wondering, is my good friend and sponsor of the bill ruling out the possibility that if he is 40 and over, that is the end of the world for him?

**Senator Roco.** No, Mr. President.

**Senator Cayetano.** So that people who have earned through sweat, tears and sacrifice and have been offered an opportunity to serve their country, but precisely because of the prevailing law that they have to divest and there is no other alternative, are we going to give up on those particular individuals who happen to be 40 or a little bit older?

**Senator Roco.** No, Mr. President. May I explain that. In the Maslow analysis of human motivation, people who have achieved physical and material comfort no longer worry about their material comfort. That is basic in all management. Under the Maslow tradition and theory, if one is older and he is comfortable, he only worries now about his self-fulfillment, his capacity for service. So the least of the problems of those who are established will be their investments, given the opportunity to serve. The investments—sell it. One is given the opportunity to serve the people and he is worried about his investments, what kind of individual is that?

Maslow, Mr. President, is an accepted management model. Maslow says, "The older, the more established, the more dedicated, and sometimes the more philanthropic because they just have more money, the better."

The value of the young under the Maslow model is they are striving. They have not yet developed their self-interest and their vested interests. So, if they develop a commitment to public service, they will dedicate themselves and it becomes intricately connected to national development. We have the civil servants of Japan, the civil servants of England showing this as a model. That is for the professional bureaucrats.

To me, those are the two models that we see, the young, talented who can dedicate themselves to their country. The older, established, do not mind money; one cannot take it anyway. How many times can one eat anyway? How many new shirts can one buy? How many outstanding cars can one use? One can only ride in one car anyway coming to office. To me, Mr. President, we do not exclude the old, but under the idealism of management, Maslow standards, if one is established, good. He is established, he will not worry anymore about money. The young, maybe idealistic, might just be able to resist the temptation of money. We do not exclude above 40 or below 40. To me, all are welcome.

**Senator Cayetano.** That is a pretty good statement of the value of the young and the not-so-young. But, Mr. President, let me just say that when I speak of an accomplished individual who has done well through personal sacrifice and hard work and wanting to join the government service but having difficulty, precisely, of divesting himself of his properties, I am not just talking of himself. I am talking about his family because under the present law now, if one is 40 or 45 and the President says, "I want

you to be my secretary," and he has not thought of what we call state planning, in the meantime, he cannot, legally speaking, divest in favor of his children because that will be illegal. Indeed, I agree again with my good friend and sponsor of this bill that, certainly, the best possible source of public servants are the young, the interested, those who have opted to join public service. Certainly, the not-so-young, the 40 and above who have made their marks on their own through hard work like my good friend and sponsor of this bill, should not be penalized just in the event that he has been called to office, not only as a Cabinet member, but even a higher office. This is the reason why, for academic discussion, I have sought some kind of a policy statement on blind trust only because that was mentioned, I mean, the trust provisions had been mentioned in this bill.

With that, Mr. President, let me thank the good sponsor for the opportunity to share with him not only his thoughts about prepayment of loans but also on what could possibly be the best policy in helping out our people to bring out the very best, both the young and the old, in the public service without losing hard-earned properties.

Thank you, Mr. President.

**Senator Roco.** I thank the gentleman, Mr. President. We welcome the good words and we thank the gentleman for his nice statements. Let me just say two final things.

First, I still think that blind trust can be constituted under the present law.

Second, in the last 28 years, I have yet to see a Cabinet member who suffered because he was a Cabinet member. And if somebody can identify one, then maybe I will feel an urgency to save all these potentially suffering Cabinet members.

Thank you, Mr. President.

**Senator Drilon.** Mr. President, Senator Sergio Osmeña III wishes to take the floor.

**The Presiding Officer [Sen. Sotto].** Sen. Sergio Osmeña III is recognized for the continuation of the interpellation.

**Senator S. Osmeña III.** Thank you, Mr. President. Would the banking guru of the Chamber yield for a few questions?

**Senator Roco.** With trepidation, Mr. President.

**Senator S. Osmeña III.** Mr. President, at the outset, may I just make a couple of observations about the last point that was

discussed by the distinguished gentleman from Taguig, Pateros, Muntinlupa, Bulacan, and Michigan and the distinguished sponsor.

I believe that the blind trust essentially allows a Cabinet member to make a decision without being feared of favoring something or a company in which he has invested. Essentially, I think what happens is that in lieu of a blind trust, normally, the only other alternative will just be to liquidate everything, put it in cash and deposit it, buy T-bills or commercial papers. But with the rising stock market, usually people in Western countries want to be able to ride the wave without being accused later on of making decisions if his assets had not been placed in a blind trust.

In any case, Mr. President, I know that the sponsor is experienced enough in these matters to be able to properly decide that issue.

May I go to page 2, line 22, Section 3.4. Is there any reason, Mr. President, why periodic investigation or examination shall be limited to twice a year?

**Senator Roco.** No, it is arbitrary. It is fairly arbitrary. It can be one periodically held or it can be three, although I suspect that both the Bangko Sentral ng Pilipinas and the banks will resist more. But then there is the normal monthly report and so they can be monitored.

**Senator S. Osmeña III.** I will not swear to it. But I think in one of the briefings that was given by the DBCC, the Development Budget Coordinating Council, in the presentation of the budget at the beginning of one of those years that passed, the Bangko Sentral ng Pilipinas governor then said that they were limiting their inspections to once a year.

**Senator Roco.** And it is preannounced. I think the difference here is that these banks know when the inspectors are coming under the present system. What we are trying to do here is that it is not known when the inspector is coming.

**Senator S. Osmeña III.** Therefore, there can be lightning audit on these banks.

**Senator Roco.** Yes, but maybe one lightning strike is good enough. I mean, I can see that there can be some modifications here.

**Senator S. Osmeña III.** May I try to understand this. Why are we trying to limit it? Of course, the Bangko Sentral has so far been able to distinguish itself for its probity, for its fairness. Sometimes there are suspicions that after the first lightning audit is done, the banks can start fooling around with its books again



knowing that the next lightning audit cannot happen for another 12 months.

**Senator Roco.** May I just call attention to the totality of Section 3. The totality of Section 3 refines the supervisory powers of the Bangko Sentral—from issuing of rules under subsection 3.1, to subsection 3.2 on special examinations, to subsection 3.3 on overseeing—and this is fairly broad to ascertain that laws and regulations are complied with. Then there is what we will now call as the “lightning periodic investigation.” That is why I thought that while it can be done more than once, there may be prudence in not making lightning strike too often.

There is the inquiry on solvency and liquidity and then the prompt corrective action which, in banking terms, has a set of definitions by standard banking disciplinary norms. So it is the interplay of the five that can be done. Theoretically, the interplay of these various mechanisms can be very often. There are only twelve months in one year. But we leave it to the Monetary Board—the supervision group and the monitoring group—to exercise their own activities.

**Senator S. Osmeña III.** Mr. President, may we know the distinction between subsections 3.2, 3.4 and 3.5? Subsection 3.2 deals with special examination; subsection 3.4 deals with periodic investigation or examination; subsection 3.5 deals with inquiring into the solvency and liquidity of the institution. These all sound like the same thing to me—inspecting the books.

**Senator Roco.** That is correct. As a lawyer, subsection 3.2, to me, is a legal audit. It is great for lawyers—legal audits—because we can tell them, “Oh, you have potential violation here.”

There may, in fact, be no violation. We may be preventing and preventive law practice is better than curative. So legal audit is subsection 3.2. It tallies with subsection 3.3. The objective of periodic investigation is whether...

After the regular examination, everybody may relax. When the cat is away, the mouse will play. And it is a good term—the lightning determination. Are they, in fact, conducting their day-to-day business in a safe and sound manner? So the CB officer swoops in. If they are all loafing or they are all playing poker, there really is danger afoot.

It is not so much on examination of whether laws have been complied with, but more on their operations. Imagine if the bank manager regularly comes drunk or comes from the casino. The CB officer wants to be able to be there in the morning when the bank manager arrives from the casino.

Solvency and liquidity are technical terms of whether the

assets conform or balance with their liabilities. Again, this is an accounting. The accountants will probably do this.

Prompt corrective action is a set of powers that I first saw in the Federal Reserve Board. In my materials, I will probably be able to give a copy to the gentleman on the totality of the concepts of prompt corrective action. I think the best example is the Federal Reserve and the Deutsche Bank.

**Senator S. Osmeña III.** What is the letter (n) after the phrase “prompt corrective action?” I see something in parenthesis there.

**Senator Roco.** Yes, the Basel. I am sorry, I was just validating that “prompt corrective action.” There is a set of standards—I heard this also from the gentleman, the Basel standards.

**Senator S. Osmeña III.** Is it the Bank for International Settlements?

**Senator Roco.** Also the BIS.

**Senator S. Osmeña III.** What is this letter (n)?

**Senator Roco.** On what page?

**Senator S. Osmeña III.** On line 28.

**Senator Roco.** It is a new provision. We will notice that this section is put together as new. Look at line 4. The committee identified letter (G) as equivalent to the old provision of 6-Aa. But in the case of Section 3, the way it is put together, especially this prompt corrective action, that is totally new. In this bill, we are now adopting the BIS standards.

When we were discussing the Bangko Sentral at that time, the Monetary authorities resisted. So we yielded to their superior judgment. But now, we are more in line. We will become in line, in fact, with the international standards, and we seem to be ready. The Monetary authorities are the ones who are suggesting it.

**Senator S. Osmeña III.** We are very happy to hear that, Mr. President, because we have received several complaints over the past two or three years from international bankers saying that our books and our accounting seem to be different. When the Central Bank Governor says that the total nonperforming loan level of the commercial banking system is 15%, theirs make it about 22%, which is way above the red line of 15%.

In any case, Mr. President, I just notice—the way the committee report was written—that there seems to be no deletion at all. Is

this a particular style? *Parang wala tayong tinanggal. Puro* amendment by addition.

**Senator Roco.** There were several approaches that we could have adopted. We could have had rifle shots to amend Sections 1, 10, 20, 21, et cetera, and submitted a short, swift report. We were tempted to do that. But what would have happened? For the lawyers and for the bankers, they would have the old book. Then they will have these additions and they will try to print them together, and they will reach conclusions that may not be warranted.

So to avoid that, we put it together after and put it in order. The first thing we did was we removed all the definitions. Because from what we have seen of the legislative process here, when we have definitions—since they are just definitions which do not affect anybody's life really—we have such long, tedious reports, debates on definitions. So we removed all of them.

The next thing we did was we followed a certain logical fashion by repositioning the old sections.

**Senator S. Osmeña III.** May I interrupt, Mr. President.

**Senator Roco.** Yes, Mr. President.

**Senator S. Osmeña III.** I do not disagree that the entire law was reprinted because this is always I think a better way rather than to have amendments. I just wanted to know what were the deletions.

**Senator Roco.** The first thing is thick. I think an eight-page definition. I cannot run through them right now.

**Senator S. Osmeña III.** Maybe the staff of the sponsor can furnish us the set of the deletions.

**Senator Roco.** Yes, we can furnish the gentleman, Mr. President, the set of the deletions. It takes a little time because we clean up. In some, we edited and deleted the words simply because we thought the English was not good.

**Senator S. Osmeña III.** I would like to thank the distinguished gentleman.

Mr. President, on page 5, line 18, Section 10, on foreign stockholdings which provides that foreign individuals and nonbank corporations may own up to 40%.

Now, Mr. President, there are bank-holding companies. Do they qualify as nonbank corporations?

**Senator Roco.** We are referring to the bank-holding companies of the U.S.

**Senator S. Osmeña III.** I am not too sure which countries allow or disallow them. But I am familiar that there are holding companies, in much the same way as there are holding companies for other types of enterprises.

**Senator Roco.** Yes, I have familiarity with the bank-holding companies of New York State. I have a very cursory familiarity with the bank-holding companies of New York State. I have a very cursory familiarity with the bank-holding companies act of the other states. In my view, the bank-holding company is a nonbank.

**Senator S. Osmeña III.** May we know the reason the word "nonbank" is there?

**Senator Roco.** It is the simplest way to put a distinction. We write there a bank or a nonbank. If it is not a bank, it is a nonbank.

**Senator S. Osmeña III.** What is wrong with a bank owning a certain percentage?

**Senator Roco.** That is Section 71. In Section 71, a bank can own even 100%. An individual or a nonbank can own only 40% because we do not know whether he knows banking. But even now, a banking company or a banking corporation, top three in its country of origin, can own 100%. In fact, I think Santander did exactly that.

**Senator S. Osmeña III.** Banco Santander?

**Senator Roco.** Is it Santander or Singapore? Santander owns both. I do not know that there is 100% rather than the branches, but it can be done.

**Senator S. Osmeña III.** Of course, I think one must realize that it is possible for a nonbank group to own more than 40% through layering of holding companies.

**Senator Roco.** Yes, that is possible. But both the nonbank companies and the targeted bank will probably not allow it.

Banking, as I understand it, has become a very esoteric field. Somebody manufacturing tinplates may not be too eager to get into it. In the first place, the end product is very different. One can hold a tinplate. The end product, especially the derivatives that the Minority Leader wants to regulate, the futures, and all these paper and electronic transactions will compel a nonbank not to enter into a field that it does not understand.

**Senator S. Osmeña III.** What kind of safeguards do we have? I do not know if we can really install much. We are familiar with what happened to National Steel Corporation recently.

It closed down last Sunday. And this was taken over by a large foreign group.

**Senator Roco.** Malaysia.

**Senator S. Osmeña III.** These were not fly-by-night operators. Howtech Investment, Wintech Investment, Renong Berhad.

**Senator Roco.** They have some experts on corporate trading.

**Senator S. Osmeña III.** As a matter of fact, they bled the National Steel Corporation dry, Mr. President.

**Senator Roco.** Yes, Mr. President.

**Senator S. Osmeña III.** This is something that would concern us because we could have a particular raid on a local bank here and leave all our small depositors high and dry.

**Senator Roco.** The Monetary Board can prevent that. If these banks fall under its primary jurisdiction, as mandated by the Constitution, the Monetary Board can enter. But in the case of National Steel Corporation, the raid was conducted because of the purchases. First, even the acquisition was leveraged by its own purchase contracts. The supplier became the buyer. The buyer of the company became the source of the supplier for equipment and other materials.

**Senator S. Osmeña III.** That is right. It melted the company.

**Senator Roco.** That is why it ran the company down. It cannot happen with the bank unless all the Monetary Board members are asleep.

**Senator S. Osmeña III.** They have not shown themselves to be wide awake.

**Senator Roco.** We will tell Gov. Rafael Buenaventura to...

**Senator S. Osmeña III.** I have told Governor Buenaventura and former CB Governor Singson about this several times. But the problem is, they always claim that they have limited resources, manpower or rights to go into the bank premises at any time to check out what is going on. But still, what we saw is that without much transparency, they bailed out those banks and now it is the Filipino people left holding the bag.

**Senator Roco.** Mr. President, Gov. Rafael Buenaventura

has been around for only very briefly. So he will have to establish his own track record. In the case of the first chairman of the Monetary Board under the new law, Governor Singson... In the crisis of the last two years, Thailand practically closed 57 banks in the first month. We did not.

**Senator S. Osmeña III.** Two hundred in Indonesia.

**Senator Roco.** Two hundred in Indonesia. We did not. Out of 700 or so rural banks, I think 25 or 27 have collapsed. One was Orient Bank, and that was very clear. I think we can fault the Monetary Board and the PDIC there. Monte de Piedad was the other. But we had a total of—27 plus two plus five—34.

When we have banking institutions numbering almost a thousand and in the midst of the Asian crisis we lost only one commercial bank and 27 rural banks, that is not a mean, that is no small achievement when our competitors, almost on the first salvo of the crisis, just collapsed the banks. So we have a little bragging right in this part of the world. We must give it to them to have bragging rights. After all, *payabangan lamang ito*.

**Senator S. Osmeña III.** No, Mr. President. I have always challenged that.

In Thailand, the total commercial banking loans outstanding amounted to roughly 160% of its gross domestic product. In Japan it was 300%. In Malaysia it was about 190%. In other words, because they were far more successful economically than we were for a longer period of time, their banking system had been able to access more loans overseas than we had.

Remember our economic dynamism began only when our colleague, Senator Guingona, took over as executive secretary. That was the only time the foreign banks would look at us and be willing to lend us money. But Malaysia and Thailand had been enjoying economic prosperity for 10 to 15 years before us. *Dahil maliit ang utang natin*, we did not suffer as much. But it is like bragging that we did not fall so far because we were only in step one or step two of the ladder.

On the other hand, the complaints came pretty incessantly but quietly because they do not want to feel or to rile the powers that be in our central banking system that we have been one of the most nontransparent of all banking sectors in Asia. So the Bangko Sentral would secretly bail out by giving advances in billions of pesos to banks that are in trouble under the pretext of keeping them afloat so that there will be more stability in the banking system.

On the other hand, Mr. President, I think that our banking system would have been far healthier had there been more

transparency, and if the CB had allowed banks which did not quite shape up to close down.

Just as an aside, several small banks were allowed to be organized in the past five years that had no business being allowed to be organized. Which is why it is said that the weakest point in a chain is the weakest link, or a chain is only as strong as the weakest link, and the weakest links in our banking system were the small commercial banks that were dying to get borrowers so they were giving out BMWs as raffle prizes and paying 16% on commercial paper. Of course, the type of people who would borrow at 25% were also the weakest types of credit.

Perhaps this can be placed in the proper perspective. I do not think the Bangko Sentral has anything to brag about. With the way it has managed, we were lucky and because we were lucky, everybody says, "*Ang galing nila.*" *Hindi po ganiyan.*

As a matter of fact, I would be willing to share with the gentleman some reports made by some of the largest banking institutions in the world.

**Senator Roco.** In fact, Mr. President, we will ask our distinguished friend to give us data and identify these banks, the banks that were given license, which have no business operating, because those are very serious allegations. And as chairman of the Banks Committee, I will feel duty bound to ask for specific information. Number one, we can differ in the assessment. Number two, in growth, second rung or fourth rung, we can differ. Those statements are not so much mine. Hoogman says so. I hate to appeal to authority but I am no expert.

In the new book, *The Depression*, the return of the present economics, that is what he says so. In the book of Senator Pimentel on the lexis and the olive tree, that is what is said so. Thailand and Indonesia closed immediately and bailed them out. We did not. I am pinpointing only on those two. We closed 27 rural banks, small. Orient Bank, troublesome. We should, for all I care, condemn and we have acted as Banks Committee on Orient Bank. Monte de Piedad was before my time. I was not quite there.

**Senator S. Osmeña III.** Does the distinguished gentleman know that if we follow the standards set by other countries, Mr. President, we would have closed down PNB a long time ago? PNB shows a nonperforming loan ratio of about 25% by our accounting, not by western accounting. By western accounting, it is more like 38%.

**Senator Roco.** That is why we want the bill approved so that it can be done in the future. We cannot cure the past anymore but we can cure and prevent the repetition of these bad lessons, Mr. President.

**Senator S. Osmeña III.** Mr. President, may we turn to page 17, line 22. I have a question here. I do not know if this is the proper provision that covers it. But what bothers me here is what it could mean. It reads: "*Provided, however, That loans, credit accommodations and guarantees secured by assets considered as non-risk ... shall be excluded from such limit.*"

Now, "non-risk" are probably loans that have been given a sovereign guarantee or a guarantee by the national government. Am I correct, Mr. President?

**Senator Roco.** I am being told yes, but we may want to read from the beginning because these are provisos just to put in context this "non-risk." It is an exception to the unencumbered deposits.

**Senator S. Osmeña III.** It has nothing to do with the rest of the provision which begins on page 16. I just wanted to perhaps make the sponsor aware that the trouble we have been having with government corporations that extend guarantees like the HIGC, for example, is because they are backed up by the guarantee or the full faith and credit of the national government. Loans that are extended by banks, loans that are guaranteed by HIGC are considered by banks to be nonrisk. But we fall into the moral hazard problem because the bank does not feel that this is a risky loan, it keeps on granting those loans.

That is all I wanted to say, Mr. President. I just wanted to put on record that these moral hazards are not covered totally by provisions like this because I think that this "nonrisk" term should be defined. I know the distinguished gentleman removed all the definitions, but I was hoping that "nonrisk" could be defined and limited so that the banks would be at risk for certain types of loans which may be guaranteed by government-owned and controlled corporations.

**Senator Roco.** As a matter of fact, Mr. President, it may, in fact, be defined and if this is not sufficient, we will welcome modifications to the extent possible in Section 34.5 on page 16, the aspects. There are some: like loans, credit accommodations and acceptances under letters of credit...

**Senator S. Osmeña III.** May I have the line, Mr. President?

**Senator Roco.** I am just isolating line 9, Mr. President. Under letters of credit to the extent covered by margin deposits these will probably not be considered as risks. They will fall under the definition of "nonrisk." "Loans and accommodations secured by obligations of the Bangko Sentral or of the Philippine Government." Again, that is fairly secure. "Loans and credit accommodations"—I am now reading (B)—guaranteed by the government as to the payment of principal and interest."

So, there is a set of described circumstances including letter (E): "other loans or credit accommodations which the Monetary Board may from time to time, specify as non-risk items." So those enumerated under 34.5 at the top of page 16 is an attempt to describe, instead of define, the areas of loans and accommodations which may be considered nonrisk.

**Senator S. Osmeña III.** We appreciate the explanation. However, is this all inclusive?

**Senator Roco.** No. In fact, that is why there are other loans. Letter (E) gives the leeway.

**Senator S. Osmeña III.** Which is why I was trying to make it more exclusive, Mr. President, because the looser the definition, the easier it would be to categorize a certain loan as nonrisk.

**Senator Roco.** Yes. So, we want to make it stricter. The committee will not have problem with that, Mr. President. We will certainly look at the appropriate language.

**Senator S. Osmeña III.** May I request the representative of the Central Bank here to formulate the precise banking language.

**Senator Roco.** All right. We will ask the staff and the representatives of the Bangko Sentral to find an appropriate word. But it may also be good for our distinguished friend to get his staff to define elements. It can be put in proper language, but the elements that we want to cover by his proposed amendments should be inputs from our distinguished friend from Cebu.

**Senator S. Osmeña III.** Unfortunately, the staffer takes care of this particular skill.

**Senator Roco.** Then we will worry about it, no problem.

**Senator S. Osmeña III.** On page 19, Mr. President, Section 39 which covers the requirement for grant of loans and other credit accommodations.

Mr. President, as part of the hearings covered by the committee on this particular committee report, I think the gentleman also considered Senate Bill No. 253—which I had filed and which was a very simple bill—which made it a crime also for auditors.

**Senator Roco.** Yes, the gentleman is referring to Senate Bill No. 253.

**Senator S. Osmeña III.** That is correct. I asked that the banks may demand of their credit applicants statements of their

properties, certified copies of their income and expenditures, and their income tax returns for the preceding three years including the audited financial statements which said tax returns were based on in the evaluation of credit applications and the grant of loans.

Mr. President, I know that the banks have been resisting this particular bill. It has been filed about two or three years ago. But given the problems that we face today in collecting the proper taxes especially from those who can afford to pay taxes, not from the fixed income earners whose salaries are subject to deductions every 15 days, the gentleman and I know that the way our banking system operates here, they respect the second set of books that are usually kept. The first set of books, they show the taxman showing a very small profit or even a loss, but the second set of books shows the real income.

The purpose of this, we know, is to evade income taxes. The banks, as we have seen, have lent hundreds of millions of pesos to a borrower who shows perpetually every year P1 billion or P2 billion in net profit. We know that no self-respecting banker would ever do that. Therefore, their loans were based on the second set of books.

In order for the banks not to be coconspirators in tax evasion and to have a level application of this law, I thought that maybe the kind sponsor considers this as part of the amendment to the banking bill, so that *pantay-pantay lahat*. *Sapagkat ang kinatatakutan ng mga Makati banks* is that they will be put at a disadvantage to the Binondo banks, *sabi po nila sa akin*.

**Senator Roco.** Mr. President, number one, let me just call attention to the way the committee report was written. In fact, the first bill deemed part of this compendium is Senate Bill No. 253.

Number two, the committee will always welcome appropriate wordings. But the very specific mandate under Senate Bill No. 253, if we put them together, can inhibit flexibility of the bank and that may not be necessarily good financing, banking, et cetera. It is such a delicate... *Hindi delikado a*. It is such a sensitive operation that we may require more flexibility than as proposed.

Number three, our distinguished friend and I are willing to sit down on this; I have no fixed thoughts on the matter for now. But I do not know whether mixing duties is good.

When we start making the banks intrude into my tax payments, I do not think that is advisable as a matter of policy. I do not know that these private individuals—that is why I even want secrecy—should start telling me what they think my tax responsibility is. The banks are supposed to secure deposits and lend the money deposited by the public. That is their function and

right. If we make them policemen or tax collectors, I do not know whether that can be worked out.

But having said that, Mr. President, I am just putting that on the table for discussion as just policy considerations. I will certainly mull through it and study it some more.

Thank you, Mr. President.

**Senator S. Osmeña III.** The explanation of the distinguished sponsor is very much appreciated, Mr. President. This is a policy consideration that this Chamber will have to face.

Actually, the wording, Mr. President, does not deviate too far from standard practice. Wherever we go in the world, when we file a loan application, the bank asks us first for the statement of assets and liabilities. The bank asks us for income statement. In other words, the bank has to prove to itself that we are in a position to service the loan. It would be a little bit ridiculous to lend a million pesos to somebody who has shown consistently for the last five years an income of P10,000 a year.

So, it does not deviate. I understand the point that is being raised by the distinguished sponsor. But I think this is standard banking practice now. We are just saying that if the tax returns are part of the determination as to whether this fellow, this borrower has the ability to pay, the tax returns must be audited so that the banks will essentially not be conspiring in the tax evasion of their clients or would-be clients.

Here, we have to face the reality, Mr. President, that many, many borrowers in this country have two sets of books, which is the reason why the banks do not look at the first set, but at the second. We want to avoid that.

**Senator Roco.** That illegality, Mr. President, cannot be cured by law. We just have another violation. In fact, Section 39 of the bill was an effort to incorporate the ideas here but in broad terms. That was the effort exerted. It also tried to incorporate another bill which was referred to as "The Truth in Borrowing Act" which was a recommendation of the Bank Administration and Credit Associations because they taught the responsibility that there is truth from the borrowers' side and there is truth required from the lending institution. Again, having said that, as long as it does not prevent flexibility on the part of the banks, it can be accommodated at the appropriate time.

**Senator S. Osmeña III.** I would like to thank the gentleman for that answer. The gentleman has just brought up another point, the truth in borrowing. Perhaps, Mr. President, at the proper time and proper place, there can be truth in lending provision here.

**Senator Roco.** It is already there, there is truth in lending law. What we are trying to do now, by cause of the credit managers, is we are asking also for a truth in borrowing. We can have fraud on the borrower. It covers some of the goals the gentleman envisioned.

**Senator S. Osmeña III.** Does the truth in lending law cover the effective rate of interest?

**Senator Roco.** I think that is being implemented by the present banks. They always give one this sheet of paper that their effective rate of interest is such and such, the terms of agreement are with reference to this, that set of papers, but borrowers normally do not read. Only lawyers do. Sometimes we are in our keep because of that. Borrowers are so eager because when one borrows, he needs money. If somebody tells, "I will give you P1 million and these are the terms and conditions," one is only too happy. He will worry about it only during the payment scheme.

**Senator S. Osmeña III.** But actually, Mr. President, this has a lot to do with the welfare of our consumers. When one wants to finance a car, he has the option of going to three or four banks. But these banks might give him different interest rates because it is not an apples-and-apples comparison. But if the Bangko Sentral would define what the effective rate will be, and that interest rate is prominently displayed, then the borrower can do an apples-and-apples comparison. When they do front-end discounting, *nag-iiba na iyong* numbers. Those of us who understand this, we are able to compute it. But it is still a hassle even if we understand it because they have a due on sale clauses, they have lots of add-ons, discounts. There is a law in America which covers this. *Pagnakita mo diyang* 3 1/4% rate of interest, one knows he can compare it to the next banks, 3 3/4%. *Hindi na naloloko iyong mga* consumer.

**Senator Roco.** Mr. President, I am not sure how that is supposed to be operationalized. I am under the impression that consumers are the only people who can protect themselves. We cannot relegate to the Bangko Sentral the problem of computing interest and general interest rates. If one is a borrower, he figures it out himself. He, after all, will pay for it. We cannot centralize that, in the same way that we cannot centralize in the Board of Censors the morality of this country. Because if we have an idiot there, he vanishes even those that are good movies, and when we have a relaxed individual there, he allows movies that are not even movies. They are just porno flicks.

I thought, Mr. President, that under the present deluge of information and technology, the Internet and all these available information, it is enough that information is made available and given to somebody. How one exercises his judgment based on that information is his responsibility. The law cannot protect the

foolish from his foolish acts. In fact, that is a precept. Foolish businessmen, they should not be in business. Every businessman should know how to compute. Otherwise, he will never know whether he is doing himself a favor or not. So, that is my reaction. I do not know whether it can be done, if it can be demonstrated. If the Bangko Sentral says, "compute effective interest in the following manner," one still has to compute when one applies with Metro, BPI, or whatsoever. The consumer must still compute. That responsibility should rest with the individual.

**Senator S. Osmeña III.** Mr. President, of course, it can be done. It is being done in other countries that is why I am trying to share with the distinguished sponsor our experiences in other countries.

Believe me, Mr. President, I do not think there is anybody in this room, aside from the bankers, that can immediately tell me which is cheaper, a 10% add-on or a 10% discounted rate of interest.

**Senator Roco.** What does that prove, Mr. President?

**Senator S. Osmeña III.** That proves, Mr. President, that in order to protect the consumer, even the businessman, the formula for determining what the effective rate of interest is should already be set forth by the Central Bank. So that when a bank says, "I am going to lend you a car at 8% interest," the consumer knows that what that bank, what Bank of PI says is 8 percent is also equivalent in that formula as what Far East Bank might be offering at 7.5% interest.

But there are many ways for me to offer a 7.5% loan interest and in the end will cost more than what my competitor bank says his loan is at 8 percent. I am willing to show it to the gentleman.

**Senator Roco.** No, Mr. President. That is why the consumer must judge. Mathematical formulas are determinable. They are there in the books. Any businessman should know how to compute and should learn, if he does not know. If one will give me specific figures, I will get people to help me figure it out.

If I am borrowing money, I will make the judgment on the computations. And not any idiot who tells me that this is the proper way to compute because—

**Senator S. Osmeña III.** These are not idiots, Mr. President.

**Senator Roco.**—computation, Mr. President, is affected by time. There is no centralized authority that can make the judgment for each individual consumer. The individual consumer must compute his potential losses and gains.

**Senator S. Osmeña III.** Mr. President, the consumer has to be protected.

**Senator Roco.** Of course, Mr. President.

**Senator S. Osmeña III.** So, when the banks are required to give all their measurements in inches instead of millimeters or centimeters, that is just a requirement and it will be an apples-to-apples comparison based on what? Anybody who knows his numbers will be able to compute. But I am telling the gentleman that 99% of the borrowers do not know how to compute this and it is very difficult to compute. I, myself, have a difficult time computing it because anybody is able to put a lot of ifs, buts, whys, wherefores. The difference between an interest over 360 days versus a 365 days, the difference in paying monthly, quarterly or every 15 days can amount to a lot of money.

Believe me, Mr. President, most businessmen cannot even compute this because this is a way by which banks are able—I am not blaming banks alone—I mean, by which anybody who lends money is able to...I think, the distinguished Minority Leader who used to be president of a bank himself agrees with me.

Mr. President, I am willing to pull from the Internet the laws from other countries that mandate this.

**Senator Roco.** We will appreciate, Mr. President, such models—

**Senator S. Osmeña III.** Thank you, Mr. President.

**Senator Roco.**—that require central monetary authority to prescribe these formulas.

**Senator S. Osmeña III.** It is not a central monetary authority. It can be incorporated in the bill, Mr. President.

**Senator Roco.** But that is where we have some resistance, Mr. President. Formulas are left to the world of arithmetic, calculus, logarithm or whatever it is that one wants to perform for himself as a businessman.

Putting formulas into a law, that I will have to be convinced, Mr. President.

**Senator S. Osmeña III.** It is not really a formula in the sense that the gentleman understands it. But perhaps, if I am given the opportunity, we can defer this particular point.

**Senator Roco.** No, Mr. President. We will look at the models and laws that say so. But to me the precise impact of the contemporary world is individual responsibility. One judges for himself.

There is so much concern about mixing apples and oranges. But some people make money precisely because they mix apples and oranges.

I have seen several businessmen computing things differently. Because of the tax exemption, for instance, some banks issued a five-year deposit double-your-money scheme. They compute differently. But if one preterminates his deposit, *bahala siya sa computation niya* because his computation may make him lose money. But that is his computation. After all, it is his money. I do not know that Bangko Sentral should be...

**Senator S. Osmeña III.** The gentleman just hit it on the head, Mr. President. The effective rate of interest is the double-your-money. So in five years, one doubles his money and that the consumer can understand. So if we ask each bank: "How many years will it take me to double my money at this particular rate?" Then the consumer will be able to tell the difference. "Ah, this guy is offering 15% but it will take six years to double my money. This other bank is offering 14% but it will take five years to double my money."

So the consumer now knows that the double-your-money thing—five years against six years is what is effective. That is why, what these banks use is what is known as the "effective rate of interest." Because no matter how we compute it, the effective rate is there. I see a man from the Bangko Sentral there and it is very simple, Mr. President. But let me first pull the...

**Senator Roco.** Let me respond to it. This tunnel vision of only looking at apples against apples is not necessarily recommended. In fact, what we are told to do is get out of the box. Think out of the box. If one keeps thinking—comparing apples with apples—we may not end up with good judgment.

For example, in my double-your-money in five years, a bank may give me a better interest but lousy service. Why will I go to them? A bank may give me better interest but my payroll does not come on time. Why will I bank with them? A bank may give me very high interest but will penalize me when it goes below P100,000. I do not want that.

That is why, when the constituents come to me complaining about this bank or that bank, I tell them, "Change banks. Never mind them."

So, we are now comparing apples plus oranges because interest rate plus service, and service, Mr. President, is as myriad as an individual. To me, good service is, when I call, the bank personnel come running. Maybe to another it is good service that they stand up on their chairs whenever they enter the bank. After all, he deposits P1 million a week. Maybe for others, a birthday

card on every birthday is good service. That is myriad. We cannot put that in a lamp like the genie. All this now—I am talking of interest; I am talking of service, maybe reputation or maybe interconnection. I may have the biggest bank here but I do not trust the biggest bank because the country itself collapsed. So I want the smallest bank in London. That is good enough for me.

The individual or the consumer must make the judgment. Central—the effort to centralize judgment is one of the errors that made the Soviet Union collapse. Central economies, central thinking is the source of collapse of economies, Mr. President.

That is why, I have to see the models that our distinguished friend is recommending.

**Senator S. Osmeña III.** Yes, but the gentleman has just made it so complicated. We are not judging it on the color of the bank's logo. We are just saying that when one number is given, particularly the interest rate, the consumer will note that it compares to the number given by another bank. Now, if the consumer prefers one bank that even has lesser effective rate of interest but it has a pretty manager, or because a birthday gift comes on his birthday, well, that is a consumer's judgment. As a matter of fact, there are consumers who would pick a higher interest rate for one or other reasons that the gentleman mentioned. We are not covering that. We are just saying that the most complicated thing is numbers and when these banks say that this is the effective rate of interest, it is the effective rate of interest.

But there is a definition for that, Mr. President. I do not wish to prolong this particular point. We will pull that out and give the gentleman tomorrow a copy and perhaps it is not as complicated as...

**Senator Roco.** No, but it is a perspective, Mr. President. All the economic reform laws are geared towards enhancing individual citizen participation.

That is why as chairman of the committee, I react philosophically when I see—and maybe I do not understand the gentleman correctly—that the proposal tends to centralize and deprives or lessens participation and enhancement of individuals.

We can only grow as a country when our depositors start thinking and say, "This is what I have earned." Who will care for their money? Somebody else? No way. The resignation of Mr. Yulo proves that.

That is all, Mr. President. Maybe we can skip and go to another topic. We will wait for the proposed amendment.

**Senator S. Osmeña III.** On page 21, line 12, Section 45,



it says that the Bangko Sentral may provide incentives to banks which, without government guarantee, extend loans to finance educational institutions, cooperatives, hospitals, socialized or low-cost housing.

Mr. President, does the Bangko Sentral have the mandate to give economic incentives? Is it not the Congress that gives economic incentives and not the Bangko Sentral?

**Senator Roco.** There is nothing mentioned about their giving of economic incentives, Mr. President.

If incentives involve taxes, that will be Congress. By the way, the one who will object to any tampering with this will be the Minority Leader. This one is also in existence under the Liberalization law. The Monetary Board can give what can be an incentive—giving us a window. We can have a rediscounting window opened. We can have a lengthier term for repayment. Maybe. I think this is within the powers of the Monetary Board. I am not saying that this should be done. Maybe, under unusual circumstances, even give us a special base for what we reserved. I mean, I am just saying that it can be done. These are within the powers of the Monetary Board. How, what incentives it will offer is up to the Monetary Board.

**Senator S. Osmeña III.** Are these already existing powers of the Monetary Board, Mr. President?

**Senator Roco.** These powers are in the Bangko Sentral law; these are in the Liberalization law. And this one was put here precisely because of the concern, and this is a new provision. This was precisely concerned to have equitable... Because the big boys, the unibanks and the commercial banks tend to take care of the big loans. When they were lobbying for... "Please remove agri-agra." I said, "No. These are already there." Senator Guingona will jump up and down if I remove it.

But I told them, "Okay, we will lessen." This was the product of the Liberalization law. We will stick to 10. I only wanted six. They said, "No." They did not want foreign banks to enter because they will compete with them, et cetera.

I said, "You are the guys who are saying that we do not want protection. So we will remove. We must compete."

But when they asked for something more—I do not remember what they were asking for—I said: "What will you do for us?"

That is when I gave the flexibility. They got the socialized or low-cost housing. They wanted this. So we gave it to them because it is needed. To finance housing is good.

But I said, "You are getting goodies. Now I want you to do

something else." Then we put in the cooperatives, hospitals, medical services, educational institutions.

That is the balance, Mr. President. Incentives can be given by the Monetary Board as a matter of law.

**Senator S. Osmeña III.** Mr. President, what bothers me is that Congress has given the Bangko Sentral—I will take a look at the two other laws that the sponsor mentioned—too much leeway in determining what types of incentives to give. It is not that I am against extending loans to finance educational institutions, cooperatives, hospitals, medical services, socialized or low-cost housing, but I felt that Congress, as a matter of policy, should retain control of those particular types of incentives and not the Bangko Sentral ng Pilipinas which really should concern itself with monetary aggregates, inflation, interest rates rather than fiscal policy.

**Senator Roco.** Unfortunately, Mr. President, the Constitution says differently. The Constitution requires that the independent Monetary Board be constituted and that its principal obligation is to control and ensure price stability. The other instruments that our distinguished gentleman is talking about, the money aggregates and interest rates, are just instruments to ensure price stability. That is what the Constitution says.

The Constitution also says it must be independent. As a matter of fact, it is probably the only agency today that is independent and can tell the President, "Are we to jump in the lake?" Except that we will get it out and we go after it in the budget. That is how the Constitution visualizes the monetary system.

Even the articles of the IMF, the World Bank and the UBS in their reports have said that that Bangko Sentral law achieved that goal. I think they said that it is the only legislation that ensured or helped the stability of the financial system under President Ramos and hopefully under President Estrada. That is what we understand.

**Senator S. Osmeña III.** There is no difference between what I said and ensuring price stability. As a matter of fact, it is really one and the same thing. Price stability means we control inflation. What I worry about here is that, as a matter of policy, it is being given too much leeways in extending loans to finance educational institutions and cooperatives no matter how great the purpose is. I feel that it is the Executive department and the Congress that should handle this. I do not think there is any country in the world that allows its Federal Reserve Board to do this.

But in any case, let me take a look at the other two laws to check how perhaps we can ...

**Senator Roco.** The gravamen of the issue is whether we

want a strong independent Monetary Board or not. That is all.

**Senator S. Osmeña III.** We do, Mr. President. But it is limited to monetary aggregates like any monetary boards all over the world. That is why it is independent. Because if President Estrada decides to start flooding the market with cheap housing loans and it causes a big increase in the money supply which then creates or demands full inflation, then what the Bangko Sentral does is, it comes in and raises the cost of money by raising interest rates in order to absorb the excess money supply.

**Senator Roco.** What is the gentleman recommending? That we delete Section 45?

**Senator S. Osmeña III.** That we reexamine this particular provision which I believe may go beyond with what is safe and sound.

**Senator Roco.** With a point of view of deleting Section 45?

**Senator S. Osmeña III.** Shall I go back to that? I turned the page already, Mr. President.

**Senator Roco.** I think it is a great innovation, Mr. President.

**Senator S. Osmeña III.** Mr. President, again I would like to have the chance to read those two other laws and come back to this on another occasion.

**Senator Roco.** It is fine, Mr. President.

**Senator S. Osmeña III.** Mr. President, just a general question. It has to do with page 26, Section 54, line 1, conducting business in an unsafe and unsound manner. May I just ask a general question.

How would this particular provision on Senate Bill No. 1519 prevent an Orient Bank from happening again?

**Senator Roco.** No law can prevent a violation of law.

**Senator S. Osmeña III.** That is not my question, Mr. President. So let me try to fine-tune it.

No. 1, the Orient Bank was organized, I believe, in a manner that was financially unsound because it was even allowed to put in as capital contribution inflated real estate.

No. 2, the officers of the bank were able to conduct their business for a long period of time that they practically borrowed all the money themselves. Their re loans practically amounted to 80%-90% of their outstanding loan portfolio. What can we do or

what do we propose to do to make sure that these things are caught at an earlier stage?

**Senator Roco.** We propose that the Monetary Board act more diligently within its powers.

**Senator S. Osmeña III.** Here I am looking at Section 54.

**Senator Roco.** Maybe the gentleman wants to look at all the powers of the Bangko Sentral—both in the Bangko Sentral law and here.

**Senator S. Osmeña III.** Yes, Mr. President. We have looked at that and yet the former Bangko Sentral governor said that he did everything he could, but I think it was too late.

**Senator Roco.** Because no law can prevent a lawbreaker.

**Senator S. Osmeña III.** I am not saying it will prevent. What I am saying is that if it could have been caught earlier. Obviously this was a drawn-out process of...

**Senator Roco.** That means diligent operations and monitoring. That is what we expect the Monetary Board to do.

**Senator S. Osmeña III.** So do we expect the Monetary Board now to be able to get in there quicker?

**Senator Roco.** That depends on the quality of the people in the Monetary Board. That is day-to-day operations. The law cannot make them better; the law cannot give them character; the law cannot make them poorer in management abilities. It has to be watched. The Monetary Board must act according to its duty and within its powers.

**Senator S. Osmeña III.** Therefore, Mr. President, if in the future—God forbid—there is some sort of collusion between the owner of a bank and the enforcement division of the Bangko Sentral ng Pilipinas—something that is also very hard to prove, as the gentleman and I know—then there is nothing we can do to satisfy the public concern that another Orient Bank situation could easily happen again.

**Senator Roco.** The executive department and the Monetary Board will be culpable and will be responsible for that. That is why we pay them salaries.

**Senator S. Osmeña III.** I understand that, Mr. President. That is already existing in the law, is it not?

**Senator Roco.** That is correct. So they must operate and implement.

**Senator S. Osmeña III.** What have we included in this particular bill that will even tighten up...

**Senator Roco.** There is a whole series of calibrated powers, beginning from supervision ending with the BIS which we already discussed—examination, liquidation, receivership, conservatorship, and prompt corrective action. These are the remedies available to them. They will just have to implement them. If they do not know how to implement these, the President should take corrective action and dismiss his classmates.

**Senator S. Osmeña III.** Mr. President, on page 28, Section 59, "Publication of Financial Statements", it mandates or it provides that 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 is located, the publication of financial statements containing at least...

Then we go down to 59.4 where it says, "Bank exposure to its own directors, officers, stockholders, and related interests (DOSRI)." Perhaps the banks may be required to report to the Bangko Sentral ng Pilipinas, not necessarily publish it in a newspaper of general circulation, just its DOSRI exposure every 30 days for purposes of monitoring.

**Senator Roco.** There is nothing problematic about that. I think it can be done even now. But there is mention here of the bank exposure to its own directors, officers, stockholders and related interests. That is part really of the transparency provisions and that is incorporated here.

**Senator S. Osmeña III.** That is good, Mr. President. I like this, except that sometimes quarterly might not be fast enough. Perhaps on DOSRI alone, they can do this on a monthly basis at least to the Bangko Sentral, not necessarily publish it in the newspapers.

**Senator Roco.** Personally, I have no objections to that. I do not know whether the banks will feel that these additional administrative duties on a monthly basis are something that they welcome. It is part of what they report anyway. So it is being done on a monthly basis.

**Senator S. Osmeña III.** Was this done during the Orient Bank? Whoever must have been reading those DOSRI reports must be blind.

**Senator Roco.** But even assuming that they were blind and negligent, it does not argue against the law. Inability of people to comply with the law is not an argument against the law because we prohibit murder and murder is committed every time. If we follow the logic, arguing against a law because of its violation, we will have to repeal the Penal Code.

**Senator S. Osmeña III.** I am not arguing against the law, Mr. President. I am just making a suggestion that perhaps the Central Bank could have caught these violations when they were at a much lower level; if they had more timely reports. But if they had been getting these timely reports and they did not act on them, then I guess that is...

**Senator Roco.** That is correct and maybe somebody has been held culpable.

**Senator S. Osmeña III.** Is the representative of the Bangko Sentral saying that the Orient Bank did submit this?

**Senator Roco.** Mr. President, the staff is a staff and the representatives are here. This is not a committee hearing. The distinguished gentleman should address the questions to me.

**Senator S. Osmeña III.** I am addressing the question to the sponsor. I am asking the sponsor if it is a fact that the Orient Bank was giving monthly reports on its DOSRI to the Bangko Sentral?

**Senator Roco.** Whether it is a fact or not is largely immaterial, Mr. President. If it is a fact and somebody missed it, that was the culpability of the officer in charge. If it did not submit, that is the culpability of the officer in charge and the gentleman is free to prosecute him.

**Senator S. Osmeña III.** Mr. President, I hope the distinguished sponsor will not misunderstand it. I am just asking whether we should put it in here in order to tighten it up. But if it is already in here somewhere and I missed it, then perhaps he should pinpoint it out to me.

**Senator Roco.** But again, whether Orient Bank complied or not, whether the Monetary Board failed in its duty or not is beside the point in this discussion. If the distinguished gentleman wants to add it, maybe he can recommend publication. It is within the Monetary Board regulations. The distinguished gentleman can recommend publication, then we will see.

**Senator S. Osmeña III.** Would the distinguished sponsor be amenable to a proposed amendment for a monthly publication of DOSRI?

**Senator Roco.** We are not averse to the concept, Mr. President.

**Senator S. Osmeña III.** I would like to thank the distinguished gentleman for that, Mr. President.

On page 37, line 12, *Authority to Engage in Trust Business.*

Mr. President, since I am not a lawyer and I am not as acquainted or cannot easily understand the legalese, may I just inquire if there is what is known as "a separation or a wall" between the trust operations of a bank and its normal commercial lending operations?

**Senator Roco.** I have not been a banker but I am being told that the answer is yes, there is supposed to be a separation. I can reach that conclusion though from other sources. Just as a lawyer, trusts are considered as separate persons. Trusts file their own income tax. Trusts have their own reporting duties.

So I would imagine, Mr. President, that a prudent—and I am not saying this from experience on banking—bank will have to separate trust functions because trust functions protect the future beneficiaries. Whereas, banking requires the fastest turnover of money, deposits converted into lendings. So just conceptually, to me, the answer is yes.

**Senator S. Osmeña III.** Yes, Mr. President. My only concern is that one of the reasons for that Wall of China, as it is called in Western economies, is the access of the commercial lending or the normal commercial banking operations of a bank to advance information and a trust usually buys and sells in the stock market.

I was wondering if—again, like I said, I am not a lawyer—there was anything here that has been included to make sure that the Bangko Sentral has much closer hold on this so that whatever information might be gained by the commercial-banking arm of a bank cannot be easily relayed...

**Senator Roco.** Yes. What was added, Mr. President, is in fact marked in the draft. We will notice that while Section 77 coincides with 56.A and 57.A of the General Banking Law as it exists now, and Section 78 coincides with the old Section 56, Section 79 is new—"The Securities and Exchange Commission shall not register the articles of incorporation and bylaws or any amendment thereto, of any trust entity, unless accompanied by a certificate of authority issued by the Bangko Sentral."

This was also threshed out in memos of agreement between the SEC and the Bangko Sentral and I think it is probably covered by regulation, but I am not sure of that.

The Minimum Capitalization is also a new provision—"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." So that is new.

I will have a caveat by comparing the other sections, but the other sections, I think, are either rewordings or restatements of the present sections of the Banking Law.

Let me just add, Mr. President. There are only two new provisions here. A lot of the trust operations are covered by various regulations.

**Senator S. Osmeña III.** Yes, Mr. President. Perhaps, the sponsor would entertain an amendment that will just put it in the law itself rather than just leave it up to the Monetary Board to regulate because later on, as we develop our mutual fund industry in this country, I think, it would give the banks really an undue advantage. *Mayroon silang* advance information while they would be, in effect, competing. The trust departments would be competing with the mutual funds later on.

**Senator Roco.** No. If that is the only concept that can be incorporated, Mr. President, but the rules and regulations are many as regards trust operations. To incorporate them *in toto* will preclude flexibility.

The reason we have primary jurisdiction and powers from the Monetary Board is that it can have some flexibility. But if the concept is to prevent insider trading or insider access to information, the appropriate words can be devised.

**Senator S. Osmeña III.** I thank the gentleman. I am sure it will not be more than a few lines just stating that...

**Senator Roco.** Incidentally, Mr. President, the mutual fund is, by itself, another separate bill. I do not even want to report it out or inflict it on this Chamber because just studying pages 1 and 2 took me one month. So I do not want to inflict that on the Chamber. But if we want to address the mutual funds and self-dealing through mutual fund access to information, that may be the appropriate section. But again in principle, since this bill seeks to prevent self-dealing and prevent gross violations, then we are amenable, Mr. President.

**Senator S. Osmeña III.** I thank the gentleman, Mr. President.

The reason I just brought in the mutual fund sector into this is the prominent mention of the trust business or the trust part of the commercial-banking sector. As the sponsor is aware, trust business and mutual fund business are almost two birds of the same feather. So, what applies to one should also apply to the other.

Mr. President, I had certain concerns over the supervision of the mutual fund sector. Since the Bangko Sentral is the supervisor and the regulatory power over the banking sector, would it be proper here or later on in the Mutual Fund Act to recommend that the BSP supervise and regulate also the mutual fund sector?

**Senator Roco.** I do not have a ready answer for that,

Mr. President. But we can check on how the SEC, the Monetary Board, and maybe we have very few mutual funds, anyway.

**Senator S. Osmeña III.** But when we pass the bill, and it starts growing, the SEC has lesser supervision than the trust companies. *So lugi na naman iyong trust department ng mga bangko.*

**Senator Roco.** Again, in principle, in concept, I have no problems with either. But I just cannot agree immediately because that requires repositioning of manpower.

**Senator S. Osmeña III.** I am willing to wait until the Revised Investment Company Act or the RICA bill is taken up on the Floor, Mr. President.

Lastly, on page 43. This Section 92 is an old provision, I believe. It does not seem to have been amended where the Bangko Sentral supervision and regulation of building and loan associations were phased out and given to the HIGC.

**Senator Roco.** This is new.

**Senator S. Osmeña III.** Is this new? Because it is not in bold letters.

**Senator Roco.** It is line 19. That is why I have to mark it because of the length. It is "(n)". This is new.

**Senator S. Osmeña III.** I see. So, transfer from the Monetary Board to the HIGC is new.

**Senator Roco.** The whole provision is new.

**Senator S. Osmeña III.** Mr. President, it is my concern that the HIGC is in no power, is in no position to supervise building and loans associations. No. 1, it would have to develop duplication of the expertise and the core competencies of the Bangko Sentral. No. 2, it is still too small to do that. No. 3, it is an insurance and guaranty corporation which is a different concept from banking.

**Senator Roco.** May I explain, Mr. President? This was the result of public hearings. All the sectors involved, we asked them how they wanted it and this was a consensus of those affected—the Home Insurance Guaranty Corporation, the Bangko Sentral and those that they regulate, the building and loans associations.

The concept is to phase out because under the Bangko Sentral Law, we did not want the Bangko Sentral to have nonmonetary functions. We really phased out most of the nonmonetary functions. I think this was one of the last functions.

We could not act on it because when we were defining the Bangko Sentral, we had no consensus among the parties.

At the hearings and there was one hearing devoted to this, everybody said, "Phase it out. In the meantime, Bangko Sentral will continue." I think this is what the distinguished gentleman sponsored, when the Home Insurance and Guaranty Corporation assumes supervision and regulatory power over building and loans associations, the existing sections under the General Banking Law shall therefore be deemed...shall now be transferred in terms of powers to the Bangko Sentral. This was the product of a hearing. In principle, again, to the extent that it stopped having nonmonetary, nonprice stability functions, the Monetary Board will be better off. This is one of them. Whether we transfer it to Home Guaranty or to somebody else is another matter to me.

**Senator S. Osmeña III.** I would like to thank the gentleman for that. I just, perhaps, failed to grasp now that building and loans associations which are really lending institutions also are nonmonetary. In any case, Mr. President, perhaps the distinguished sponsor would like to amend this and transfer it to the HLURB, because the HLURB is the regulatory arm. As a matter of fact, there are some functions of the HIGC that were transferred to the HLURB.

**Senator Roco.** The appropriate choice of agency will be welcomed by the committee.

**Senator S. Osmeña III.** I would like to thank the distinguished gentleman. That was my last question. May I just reserve the right at a later date to open up a couple of more questions.

**Senator Roco.** May we request, Mr. President, if the Majority Leader is so minded if we can close now and proceed with further discussions when we go to the period of amendments because we repeat anyway.

**Senator S. Osmeña III.** I have no objection to that, Mr. President.

**Senator Roco.** If it is all right, just to get it out of the way. I understand it is one of the priorities. It is good to get it out of the way. We can discuss the modifications as we go, if the Majority Leader is minded to.

**The Presiding Officer [Sen. Sotto].** The Majority Leader is recognized.

**Senator Drilon.** Yes, Mr. President. With just one slight modification as Senator Pimentel has manifested his desire to

raise questions during the period of interpellations. I have given Senator Pimentel a note just now requesting him to avail himself of the opportunity to raise questions to the sponsor by tomorrow, and we informed Senator Pimentel that, hopefully, we can close the period of interpellations by tomorrow.

**Senator Roco.** Mr. President, maybe we can prevail upon Senator Pimentel to raise the same questions during the period of amendments.

**Senator Drilon.** I think it will do no harm if we can just ask him the opportunity tomorrow. If he will allow, then there is no problem. I would rather defer closure until tomorrow.

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

SUSPENSION OF CONSIDERATION OF  
S. NO. 1519

**Senator Drilon.** With that, Mr. President, I move to suspend consideration of Senate Bill No. 1519 under Committee Report No. 29.

**The Presiding Officer [Sen. Sotto].** Is there any objection? *[Silence]* There being none, the motion is approved.

**Senator Drilon.** There is just one Additional Reference of Business. May I ask the Secretary to read the same before we adjourn, if there is no objection. *[There was none.]*

**The Presiding Officer [Sen. Sotto].** The Secretary will read the Additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS  
RESOLUTION

**The Secretary.** Proposed Senate Resolution No. 611, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS TO IMMEDIATELY CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE MYSTERIOUS CIRCUMSTANCES SURROUNDING THE DEATH OF JUDGE MARTINOCAMPO OF THE REGIONAL TRIAL COURT OF CEBU CITY

Introduced by Senator Renato L. *Compañero* Cayetano

**The Presiding Officer [Sen. Sotto].** Referred to the Committees on Public Order and Illegal Drugs; and Justice and Human Rights

ADJOURNMENT OF SESSION

**Senator Drilon.** Mr. President, I move that we adjourn our session until three o'clock tomorrow afternoon, November 10, 1999.

**The Presiding Officer [Sen. Sotto].** Is there any objection? *[Silence]* There being none, the session is adjourned until three o'clock tomorrow afternoon.

*It was 6:28 p.m.*