

[PRESIDENTIAL DECREE NO. 1827, January 16, 1981]

FURTHER AMENDING REPUBLIC ACT NUMBERED TWO HUNDRED SIXTY-FIVE, AS AMENDED, OTHERWISE KNOWN AS "THE CENTRAL BANK ACT"

WHEREAS, it is the responsibility of the Central Bank of the Philippines to administer the monetary, banking and credit system of the Republic, and as the central monetary authority, to provide policy direction in the areas of money, banking and credit;

WHEREAS, monetary, banking and credit policies should be more responsive to the requirements of economic development;

WHEREAS, the Central Bank should be given greater flexibility in the use of its credit facilities to meet the demands of economic development;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order the amendment of Republic Act No. 265, as amended, as follows:

SECTION 1. A new paragraph is hereby added after the second paragraph of Section 4 of Republic Act No. 265, as amended, to read as follows:

"The Central Bank may compromise, done or release, in whole or in part, any claim of or settled liability to the Bank, regardless of the amount involved, under such terms and conditions as may be imposed by the Monetary Board to protect the interests of the Bank."

SEC. 2. Section 13 of the same Act is hereby amended to read as follows:

"SEC. 13. *Withdrawal of persons having a personal interest.* —Whenever any member attending a meeting of the Monetary Board has a material personal interest, directly or indirectly, in the discussion or resolution of any given matter, said member shall not participate in the discussion or resolution of the matter and must retire from the meeting during the deliberations thereon. The subject matter, when resolved, and the fact that a member had a personal interest in it, shall be made available to the public. The minutes of the meeting shall note the withdrawal of the member concerned."

SEC. 3. Section 25 of the same Act is hereby amended to read as follows:

"SEC. 25. *Creation of the appropriate departments.* —In order to assure the observance of this Act and of other pertinent laws, and of the rules and regulations of the Monetary Board, the Central Bank shall have appropriate supervising and examining departments which shall be charged with the supervision and periodic or special examinations of banking institutions operating in the Philippines, including all Government credit institutions, including their subsidiaries and affiliates, non-bank financial intermediaries, and subsidiaries and affiliates of non-bank financial intermediaries performing quasi-banking functions: *Provided*,

That affiliates of banking institutions, non-bank financial intermediaries, and subsidiaries and affiliates of non-bank financial intermediaries performing quasi-banking functions may be subject to special examination if the circumstances so warrant as determined by the Monetary Board: *Provided, further,* That a subsidiary means a corporation more than 50% or the voting stock of which is owned by a banking institution or non-bank financial intermediary and an affiliate means a corporation which is related or linked to such institution or intermediary through common stockholders or such other factors as may be determined by the Monetary Board. The supervising and/or examining departments shall discharge their responsibilities in accordance with the instructions of the Monetary Board.

"The department heads and the examiners of the supervising and/or examining departments are hereby authorized to administer oaths to any director, officer, or employee of any institution under their respective supervision or subject to their examination and to compel the presentation of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true condition of any institution as well as the books and records of persons and entities relative to or in connection with the operations, activities or transactions of the institution under examination."

"No restraining order or injunction shall be issued by the court enjoining the Central Bank from examining any institution subject to supervision or examination by the Central Bank, unless there is convincing proof that the action of the Central Bank is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier's check, in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this Section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this Section."

SEC. 4. Section 27 of the same Act is hereby amended to read as follows;

"SEC. 27. Prohibitions.—Personnel of the Central Bank are hereby prohibited from:

- a. Being an officer, director, employee, or stockholder, directly or indirectly, of any institution subject to supervision or examination by the Central Bank, except non-stock savings and loan associations and provident funds organized exclusively for employees of the Central Bank, and except as otherwise *provided* in this Act;
- b. Receiving any gift or thing of value from any officer, director, or employee thereof;

- c. Revealing in any manner, except under order of the court, or under such conditions as may be prescribed by the Monetary Board, information relating to the condition or business of any such institution. This prohibition shall not be held to apply to the giving of information to the Monetary Board or the Governor of the Central Bank, or to any person authorized by either of them, in writing, to receive such information.

"Notwithstanding the provisions of this Section and Section 8, members of the Monetary Board and deputy-governors and other personnel of the Central Bank may become directors of any institution subject to supervision or examination by the Central Bank and of any entity related to such institution in connection with financial assistance extended by the Central Bank to such institution and when in the opinion of the Monetary Board it is appropriate to make such designation to protect the interest of the Central Bank.

"Borrowing from any institution subject to supervision or examination by the Central Bank by examiners and other personnel of the supervising and examining departments of the Central Bank shall be prohibited only with respect to the particular institution in which they are assigned, or are conducting an examination: *Provided, however,* That any credit union or cooperative composed of personnel of the supervising and examining departments of the Central Bank may borrow any time from such institution, subject to Monetary Board approval and *provided* that the loan is fully secured. Personnel of other departments, offices, or units of the Central Bank shall likewise be prohibited from borrowing from any financial institution during the period of time that an application with the Central Bank of such institution is being evaluated, processed, or acted upon by such personnel: *Provided, however,* That the Monetary Board may, at its discretion, indicate the position levels or functional groups to which the prohibition is applicable.

"Borrowing by all full-time Central Bank personnel from any institution subject to supervision or examination by the Central Bank shall be fully secured, fully disclosed to the Monetary Board, and shall be subject to such further rules and regulations as the Monetary Board may prescribe."

SEC. 5. Section 28-A of the same Act is hereby amended to read as follows:

"SEC. 28-A. *Appointment of conservator.*— Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a non-bank financial intermediary performing quasi-banking functions is in a state of continuing inability or unwillingness to maintain a condition of solvency and liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator to take charge of the assets, liabilities, and the management of that institution, collect all monies and debts due said institution and exercise all powers necessary to preserve the assets of the institution, reorganize the management thereof, and restore its viability. He shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or non-bank financial intermediary performing

quasi-banking functions, any provision of law to the contrary notwithstanding, and such other powers as the Monetary Board shall deem necessary.

"As much as practicable, the conservator should not be connected with the Central Bank but should be competent and knowledgeable in bank operations and management. The remuneration of the conservator and other expenses attendant to the conservatorship shall be borne by the bank or non-bank financial intermediary performing quasi-banking functions concerned. He shall report and be responsible to the Monetary Board until such time as the Monetary Board is satisfied that the institution can continue to operate on its own and the conservatorship is no longer necessary. The conservatorship shall likewise be terminated should the Monetary Board, on the basis of the report of the conservator or of its own findings, determine that the continuance in business of the institution would involve probable loss to its depositors or creditors, in which case the provision of Section 29 shall apply."

SEC. 6. Section 29 of the same Act is hereby amended to read as follows:

"SEC. 29. *Proceedings upon insolvency.*— Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts, and the Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and shall designate an official of the Central Bank or a persons of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, exercising all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions.

"The Monetary Board shall thereupon determine within sixty days whether the institution may be reorganized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public and shall prescribe the conditions under which such resumption of business shall take place as well as the time for fulfillment of such conditions. In such case, the expenses and fees in the collection and administration of the assets of the institution shall be determined by the Board and shall be paid to the Central Bank out of the assets of such banking institution.

"If the Monetary Board shall determine and confirm within the said period that the bank or non-bank financial intermediary performing quasi-banking functions is insolvent or cannot resume business with safety to its depositors, creditors and the general public, it shall, if the public

interest requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan. The Central Bank shall, by the Solicitor

General, file a petition in the Court of First Instance reciting the proceedings which have been taken and praying the assistance of the court in the liquidation of such institution. The court shall have jurisdiction in the same proceedings to adjudicate disputed claims against the bank or non-bank financial intermediary performing quasi-banking functions and enforce individual liabilities of the stockholders and do all that is necessary to preserve the assets of such institution and to implement the liquidation plan approved by the Monetary Board. The Monetary Board shall designate an official of the Central Bank, or a person of recognized competence in banking or finance, as liquidator who shall take over the functions of the receiver previously appointed by the Monetary Board under this Section. The liquidator shall, with all convenient speed, convert the assets of the banking institution or non-bank financial intermediary performing quasi-banking functions to money or sell, assign or otherwise dispose of the same to creditors and other parties for the purpose of paying the debts of such institution and he may, in the name of the bank or non-bank financial intermediary performing quasi-banking functions, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of such institution.

"The provisions of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by the court only if there is convincing proof that the action is plainly arbitrary and made in bad faith. No restraining order or injunction shall be issued by the court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act, unless there is convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier's check, in an amount twice the amount of the bond of the petitioner or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not inconsistent with the provisions of this Section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this Section.

"Insolvency, under this Act, shall be understood to mean the inability of a bank or non-bank financial intermediary performing quasi-banking functions to pay its liabilities as they fall due in the usual and ordinary course of business: *Provided, however,* That this shall not include the inability to pay of an otherwise non-insolvent bank or non-bank financial intermediary performing quasi-banking functions caused by extraordinary